

**Agreement**

**Between**

**Metro Communications Agency**

**and**

**AFSCME Local 3516**

**January 1, 2021, through December 31, 2023**

## INDEX

<u>Articles by Description</u>		<u>Page</u>
<b>C</b>		
Committee for Union-Management Cooperation		
Article 35 .....		38
<b>D</b>		
Definitions		
Article 3 .....		2
Demotion		
Article 17 .....		17
Discipline and Discharge		
Article 19 .....		18
Drug- and Alcohol-Free Workplace		
Article 34 .....		37
Duty-Incurred Injury		
Article 30 .....		34
<b>E</b>		
Emergency Call Time		
Article 8 .....		9
Employee/Union Rights		
Article 22 .....		22
<b>F</b>		
Funeral Leave		
Article 28 .....		32
<b>G</b>		
Grievance Procedure		
Article 20 .....		20
<b>H</b>		
Holidays		
Article 23 .....		24
Hours of Work		
Article 5 .....		7
<b>I</b>		
Insurance		
Article 32 .....		36

<u>Articles by Description (continued)</u>	<u>Page</u>
<b>J</b>	
Jury Duty and Witness Fees	
Article 27 .....	32
<b>L</b>	
Layoff, Rehiring after Layoff	
Article 18 .....	18
Leave of Absence	
Article 26 .....	29
<b>M</b>	
Management Rights	
Article 21 .....	21
Military Service Leave	
Article 29 .....	33
<b>N</b>	
Nepotism/Conflict of Interest	
Article 36 .....	39
New Hire Probationary Period	
Article 13 .....	14
Non-Discrimination	
Article 33 .....	37
<b>O</b>	
Overtime	
Article 9 .....	10
<b>P</b>	
Payroll Deduction of AFSCME	
Article 2 .....	1
Promotion	
Article 14 .....	15
<b>R</b>	
Reclassification	
Article 16 .....	17
Recognition	
Article 1 .....	1
Retirement	
Article 31 .....	36

<u>Articles by Description (continued)</u>		<u>Page</u>
<b>S</b>		
Seniority		
Article 12 .....		12
Sick Leave		
Article 25 .....		28
<b>T</b>		
Tardiness		
Article 6 .....		8
Term		
Article 37 .....		40
Time Trade		
Article 10 .....		10
Transfer		
Article 15 .....		15
<b>U</b>		
Uniforms		
Article 11 .....		11
<b>V</b>		
Vacation		
Article 24 .....		26
<b>W</b>		
Wages		
Article 4 .....		4
Working in a Higher Classification		
Article 7 .....		8
<u>Exhibits by Description</u>		<u>Page</u>
Authorization for Payroll Deduction of Dues		
C.....		43
Official Grievance Form		
B.....		42
Payroll Matrixes 2021-2023		
A.....		41
Request for Accumulated vacation Option 40/40/40		
D.....		44
<u>Appendices by Description</u>		<u>Page</u>
Moral Turpitude		References
A.....		45

<b><u>Articles by Number</u></b>		<b><u>Page</u></b>
01 Recognition .....		1
02 Payroll Deduction of AFSCME .....		1
03 Definitions .....		2
04 Wages .....		4
05 Hours of Work .....		7
06 Tardiness .....		8
07 Working in a Higher Classification .....		8
08 Emergency Call Time .....		9
09 Overtime.....		10
10 Time Trade.....		10
11 Uniform.....		11
12 Seniority .....		12
13 New Hire Probationary Period.....		14
14 Promotion.....		15
15 Transfer.....		15
16 Reclassification .....		17
17 Demotion.....		18
18 Layoff, Rehiring after Layoff .....		18
19 Discipline and Discharge .....		18
20 Grievance Procedure .....		20
21 Management Rights .....		21
22 Employee/ Union Rights.....		22
23 Holidays .....		24
24 Vacation .....		26
25 Sick Leave.....		28
26 Leave of Absence.....		29
27 Jury Duty and Witness Fees.....		32
28 Funeral Leave .....		32
29 Military Service Leave .....		33
30 Duty-Incurred Injury.....		34
31 Retirement.....		36

<b><u>Articles by Number (continued)</u></b>	<b><u>Page</u></b>
32 Insurance .....	36
33 Non-Discrimination.....	37
34 Drug and Alcohol-Free Workplace .....	37
35 Committee for Union-Management Cooperation .....	38
36 Nepotism/Conflict of Interest .....	39
37 Term.....	40
<b><u>Exhibits by Letter</u></b>	<b><u>Page</u></b>
A. Payroll Matrixes 2021-2023 .....	41
B. Official Grievance Form .....	42
C. Authorization for Payroll Deduction of Dues .....	43
D. Request for Accumulated vacation Option 40/40/40.....	44
<b><u>Appendices by Letter</u></b>	<b><u>Page</u></b>
A. Moral Turpitude References.....	45

## **ARTICLE 1 RECOGNITION**

The Employer hereby recognizes the Union as the sole collective bargaining representative pursuant to SDCL 3-18 for purposes of establishing wages, hours, and conditions of employment for all the employees employed by the Employer in the following described positions: Communications Operator, Advanced Communications Operator and Shift Supervisor.

If any provision or portion of the Agreement be rendered or be declared illegal by reason of any existing or subsequent statute, or by decision of a court, such invalidation shall not affect the remaining provision or portions of the Agreement.

## **ARTICLE 2 PAYROLL DEDUCTION OF AFSCME**

The Employer shall deduct regular monthly Union dues from the pay of each employee covered by this agreement provided that at the time of such deduction there is in the possession of Agency Business Manager an unrevoked written assignment, executed by the employee, in the form and according to the terms of the authorization form (Exhibit C). The authorization may be revoked by the employee by giving written notice to Business Manager during the period from November 1 to November 30 of each year.

Previously signed and unrevoked written authorizations shall continue to be in effect for any employee reinstated following layoff, leave of absence, or suspension not exceeding sixty (60) days; previous authorizations of other employees rehired or reinstated shall not be considered in effect.

The authorization for deductions shall be made by the last day of the pay period to be effective in that pay period.

If the Agency Business Manager receives an employee revocation during the period of November 1 through November 30, no deductions will be made for any month in the subsequent year.

At the time of the execution of this agreement, the Union shall advise the Agency Business Manager, in writing, the exact amount of regular union dues in the exact dollar amount for each Union member. If, subsequently the Union requests the Employer to deduct additional union dues, the request shall be effective only upon written assurance by the Union to the Agency Business Manager that additional amounts are regular union dues duly approved in accordance with the Union constitution and bylaws.

The Employer shall not be liable for the remittance or payment of any sums other than those constituting actual deductions made; and, if for any reason it fails to make a deduction for any employee as above provided, it shall make that deduction from the employee's next pay period in which union dues are normally deducted after written notification to the Agency Business Manager of the error or omission. If the Employer makes an overpayment to the Union, the Employer will deduct that amount from the next remittance to the Union. The Union agrees to indemnify and hold the Employer harmless against any and all claims, suits, orders, or judgments brought or issued

against the Employer as a result of any action taken or not taken by the Employer under the provisions of this Article.

### **ARTICLE 3** **DEFINITIONS**

*Days:* All references to days in this agreement shall be interpreted as calendar days unless specifically stated otherwise.

*Differential Rate:* As used in this agreement is a pay bonus based upon the nature of the hours worked, such as differentials for hours worked during a specified period. This type of pay premium would be considered a differential added to each applicable hour of pay, not guaranteed overtime. Hours to be paid with this “bonus” premium are counted as hours actually worked for the purposes of calculating overtime hours in the week. This does not create duplication or pyramiding of overtime since this is not overtime pay, but rather a differential.

*Employee:* A regular full-time employee.

*Employer:* Metro Communications Agency.

*Exigent:* As used in this agreement is a situation that demands unusual or immediate action.

*Gender:* The use of the masculine gender in this agreement shall be construed as including both genders and not as a sex limitation.

*Guaranteed Overtime:* As used in this agreement is premium pay based both upon the specific type of hours worked, such as hours worked for on-call assignments and emergency call-in duty. The overtime rate of either 1 ½ or 2 times the regular base hourly rate is specified in the respective sections of this contract and is paid, guaranteed, for all of the specific hours worked whether the total hours worked for the week exceed 40 hours or not. Since the specified hours are already guaranteed overtime pay, they are not counted again as hours actually worked for the purposes of calculating additional overtime for the week. If counted again as hours actually worked towards overtime, the result would be duplication, or pyramiding, of overtime which is not permitted by the terms of this agreement.

*Management Employee:* Means an employee and classification in the salary system not represented by a collective bargaining unit. Management employees are classified as exempt under FLSA.

*On-Call:* As used in this agreement describes a 4 hour period of time, generally prior to the start or after the end of a regularly scheduled shift when a designated employee must remain available to fill short notice vacancies within their classification should the need arise. Since on-call assignments can be traded, these assignments can also be standalone periods of time or just before or after the end of shorter working periods of time. To be eligible for on-call compensation, designated staff must remain available for

contact by the agency, have the ability to arrive to work within the minimum response time and be available to work during the entire on-call period.

*Pay Grade:* A portion of the pay plan into which positions are assigned. Pay grades will include steps within identified pay ranges.

*Regular Base Hourly Rate:* As used in this agreement is the rate at which an employee would be paid for one hour of regular non-overtime work in his/her current pay grade and step. This rate does not include any other payments except as specifically provided in the Fair Labor Standards Act or this agreement for the purposes of determining overtime rates.

*Regular full-time employee:* A person hired by the Employer in a position authorized and budgeted by the Metro Communications Agency as an average of 36-hour per week position within the bargaining unit.

*Regular Overtime Rate:* As used in this agreement is the premium rate paid for all hours actually worked in a 40-hour work week which are in excess of 40 hours, and that have not already been specifically guaranteed as overtime. The overtime rate is 1½ times the employee's regular rate of pay, in accordance with the Fair Labor Standards Act. Regular overtime is computed on a weekly, not daily, basis. Any reference to overtime or pay at 1½ times the regular base rate in this agreement will be defined as regular overtime for interpretive purposes unless specifically identified as "guaranteed" overtime, or holiday differential rate.

*Required Time:* As used in this agreement is a vacancy that is required to be filled to maintain minimum staffing levels.

*Separation:* Resignation in good standing, discharge, retirement, or death. When an employee's employment with the Agency is separated voluntarily or involuntarily, that employee's official date of separation shall be the last day actually worked by the employee, unless the employment separation is due to a personal illness or injury, or death of the employee. In the case of separation due to personal illness, injury, or death, the employee's official separation date will be the date the employee is determined to be unable to return to work or when the employment is otherwise separated by the Agency, whichever is sooner.

*Shift Employees:* An employee whose scheduled hours and days of work are rotated to provide coverage for 24-hour, 7-day-a-week operation.

*Similar Offenses:* As referenced in Article 19, Section 2 of this agreement, a violation of the same nature or equivalent severity.

*Spouse:* Spouse will refer to any person, possessing a valid marriage certificate, who is lawfully married to another person under the state law in effect at the time and in the place where the marriage was celebrated. Spouse does not include any person in a formal relationship by a state not designated as marriage, such as domestic partnership or a civil union.

**Steps:** The pay rate allocated to a pay grade and listed as Steps 1 through 18 for Communications Operator, and Steps 1 through 16 for all other classifications.

**Step Anniversary Date:** This date, for purposes of step advancement eligibility, is the day and month established when an employee is placed into a new pay grade as the result of hire, promotion, demotion, or transfer to another classification with a different pay grade. An employee's step anniversary date may be adjusted if the employee's service is interrupted by unpaid leave of 30 or more calendar days, if an employee's step advancement is delayed without retroactivity on the basis of performance, or if the date is adjusted as the result of the terms of this agreement. If cause is shown on the basis of performance and a step increase is delayed, the month and day when the step is eventually granted will become the employee's new step anniversary date. The year of the step anniversary date changes as the employee moves step to step.

## **ARTICLE 4 WAGES**

**Section 1. Classification and Pay Grades.** The classifications and pay grades for classifications included in this bargaining unit for 2021-2023 are set forth in Exhibit A attached:

2021	1.75% percent higher than the pay grades established in 2020
2022	1.75% percent higher than the pay grades established in 2021

Pay grades for 2021 and each year thereafter shall be effective as of the first day of the first complete pay period beginning in the new calendar year, except as otherwise specified in this agreement.

**Section 2. Step Increases.** An employee's step anniversary date for purposes of step advancement is the day and month established when an employee is placed into a new pay grade as the result of hire, promotion, or demotion to another classification with a different pay grade. The year of the anniversary date changes as the employee moves step to step. Employee progression through step advancement will be allowed pursuant to the following tables:

**Communications Operator:**

<b>From Step</b>	<b>To Step</b>	<b>Waiting Period in Months</b>
1	2	6 Months
2	3	6 Months
3	4	12 Months
4	5	12 Months
5	6	12 Months
6	7	12 Months
7	8	12 Months
8	9	12 Months
9	10	12 Months
10	11	12 Months
11	12	12 Months
12	13	12 Months

13	14	12 Months
14	15	12 Months
15	16	12 Months
16	17	12 Months
17	18	12 Months

**Advanced Communications Operator:**

From Step	To Step	Waiting Period in Months
1	2	12 Months
2	3	12 Months
3	4	12 Months
4	5	12 Months
5	6	12 Months
6	7	12 Months
7	8	12 Months
8	9	12 Months
9	10	12 Months
10	11	12 Months
11	12	12 Months
12	13	12 Months
13	14	12 Months
14	15	12 Months
15	16	12 Months

**Shift Supervisor:**

From Step	To Step	Waiting Period in Months
1	2	12 Months
2	3	12 Months
3	4	12 Months
4	5	12 Months
5	6	12 Months
6	7	12 Months
7	8	12 Months
8	9	12 Months
9	10	12 Months
10	11	12 Months
11	12	12 Months
12	13	12 Months
13	14	12 Months
14	15	12 Months
15	16	12 Months

**Section 3. Step Denial.** If cause is shown by the Director or designee, advancement to the next higher step will be denied with a written explanation in the form of a performance evaluation. Any employee denied step advancement at the time of his/her eligibility may be granted the step advancement any time thereafter at the sole discretion of the Agency Director.

**Section 4. Step Anniversary Date and Effective Date of Wage Change.** The effective date of any wage change will be computed from the beginning of a payroll period if the personnel action is up to seven days past the beginning of the payroll period. If the personnel action is on or after the eighth day following the beginning of the payroll period, the wage change will be computed from the beginning of the next payroll period. Time in grade does not accrue during the period of an approved leave of absence without pay in excess of three (3) months.

**Section 5. Shift Differential.** Employees who work any hours between 1400 and 0600 shall be paid a shift differential of \$.75 per hour. Shift differential pay shall be in addition to the employee's regular base hourly rate of pay for all hours actually worked in delivery of dispatch/911 services during that time; delivery of dispatch/911 services as described in this section includes fully trained, recruits, and probationary status employees. Shift differential will not apply to any hours paid as sick leave, vacation, or hours paid for time not actually worked in the delivery of dispatch/911 services, as noted above. For example, shift differential does not apply to travel, training received while not performing delivery of dispatch/911 services, or meeting time.

**Section 6. Travel Time.** An employee who travels on official business for the Employer, including normal job responsibilities, travel to and from meetings, conferences, or training will be paid according to the minimum requirements of the Fair Labor Standards Act. The Director or his designee shall have the authority to flex employee schedules within the workweek to limit the amount of overtime.

**Section 7. Pay Period.** The employee shall be paid once every two weeks. The beginning and ending of the pay period shall be determined by the Employer. There shall be mandatory direct deposit of all payroll checks.

**Section 8. Tactical Dispatch Duty Assignments.** Employees assigned as tactical dispatchers shall receive \$.55 per hour in addition to their base hourly rate of pay. This incentive will be paid only for hours engaged in tactical dispatch operations or tactical dispatch training. Tactical dispatch duties are considered duty assignments at the sole discretion of management.

**Section 9. On-Call Pay.** Employees assigned to be on-call shall receive \$2.50 per hour for their time. On-call employees must be able to report to the agency within 60 minutes of being requested or at the time specified by the supervisor if later. On-call employees must remain fit for duty at all times during their on-call period.

In the event an on-call employee is requested to report for duty they will be guaranteed 1.5 times their normal rate of pay from the time they report until their regularly scheduled shift begins or they are released from duty, except for hours worked on the recognized holidays of Thanksgiving and Christmas Day as defined within this contract, which will be guaranteed 2.0 times their normal rate of pay from the time they report until their regularly scheduled shift begins or they are released from duty, whichever comes first. Assignment as on-call will be determined by seniority. On-call assignments may be traded with supervisor or management approval.

An on-call employee may not work trade for another employee at the same time they are on-call.

An on-call employee may not exceed 12 consecutive hours of work in addition to on-call time. An on-call employee may only hold over to cover additional hours if they were not required to fill a vacancy during their early-in on-call assignment, if any, and the combined total hours worked will not exceed 12 consecutive hours. An on-call employee may only cover additional early-in hours when they are assigned hold-over on-call time, if any, and their possible combined total hours worked will not exceed 12 consecutive hours. On-call employees may not sign up for vacancies that would potentially place them over the 12 hour threshold assuming they have to fill a vacancy during their on-call time(s). Hours paid for on-call time when the on-call employee has not reported for duty do not count towards the 12 hour work day limitation as noted in Article 5, Section 3.

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

**Section 1. Employer Schedules.** The Employer shall establish the scheduled hours of work for employees. Daily and weekly schedules, having regular starting and ending times, may be permanently or temporarily changed by the Employer to suit varying business conditions and will be posted at least fourteen (14) working days in advance of the start of the employee's workweek, unless doing so is not feasible due to exigent circumstances. Any schedule change affecting an entire shift will be posted 30 days in advance of the change begin date and where practical, advance notice of the change will be provided to AFSCME #3516 leadership.

**Section 2. Workweek.** The present workweek of forty (40) hours in each seven (7) day period is the standard used for purposes of overtime computation. The workweek shall begin at 0000 on Monday and end at 2359 Sunday. However, all hours worked in any continuous period of time beginning prior to 2359 on Sunday and extending past 0000 on Monday will be considered hours worked on Sunday. Also, all hours worked by any final shift (currently C shift) staff during any part of the final shift (currently C shift) period including any continuous period of time extending past 0000 on Monday will be considered hours worked on Sunday.

**Section 3. Workday.** The regular workday shall not exceed 12 hours of work. Upon mutual agreement between the employee and the employer, 12 hour work days may be exceeded. On call and scheduled meetings shall not count towards the 12 hour work day limitation.

**Section 4. Breaks.** Two 15-minute breaks are allowed in a regular workday consisting of eight hours. A third 15-minute break is allowed for employees working a 10- or 12-hour day. Breaks shall be taken at the discretion of the Shift Supervisor with consideration to staffing and workload. The Shift Supervisor shall have the authority to require operators to take their breaks within the PSB Campus when necessary due to workload, weather, special assignments, or other Agency needs. Unused breaks may not be banked for future use or otherwise be compensated. Breaks, as identified within this section, shall be considered paid breaks.

**Section 5. Guarantee of Hours.** Nothing in this article or anywhere else in this agreement shall be construed as a guarantee of a specific number of hours of work per week for any employee covered by this agreement.

**Section 6. Required Time.** Required Time will be defined as a vacancy that is required to be filled to maintain minimum staffing levels following the exhaustion of on-call personnel. Minimum staffing levels are set by the Director of Metro Communications Agency and will be maintained at all times. So long as it does not impede the normal operation of the Agency, the following will be used for filling these vacancies: Agency Seniority shall be used to determine priorities for obtaining qualified volunteers; Job Classification Seniority shall be used to determine priorities for requiring staff to work when a qualified volunteer does not accept a vacancy.

**Section 7. Hour Adjusting.** It is the policy of Metro Communications Agency to allow employees the option to exceed the standard work week due to holiday pay and/or when covering vacancies created by exigent circumstances. Employees may hour adjust in any increment that is acceptable to management. Job Classification Seniority shall be used to determine priorities for hour adjusting, so long as it does not impede the normal operation of the Agency.

## **ARTICLE 6 TARDINESS**

**Section 1. Employee Responsibility.** It is the employee's responsibility to report to work promptly as scheduled, including but not limited to overtime, trade shifts, departmental meetings, and training sessions. It is the employee's responsibility to contact the shift supervisor as soon as they know that they will be late for duty. Employees are considered late one minute after the scheduled beginning of a shift.

**Section 2. Supervisor Responsibility.** The Shift Supervisor has the discretion to relieve the tardy employee of the shift or advise the employee not to report for duty if a replacement has been scheduled. The tardy person may be allowed to work the second half of the shift. Time lost due to tardiness will be taken without pay.

## **ARTICLE 7 WORKING IN A HIGHER CLASSIFICATION**

When an employee is temporarily assigned to perform duties by the Employer which are not contemplated within the scope or function of the employee's own classification, and are the duties of an established classification with a higher maximum rate of pay than the employee's regular assigned pay grade, and the temporary assignment is for a period of one workweek or more, the employee shall receive the following adjustment in addition to their regular base hourly rate of pay while holding this temporary assignment:

Advanced Communications Operator	5% adjustment
Shift Supervisor	8% adjustment

## ARTICLE 8

### EMERGENCY CALL TIME

#### **Section 1. Minimum Pay and Duty.**

- a) An employee who is not on call and has been called to report to work immediately shall be guaranteed overtime pay at the rate of 1 1/2 times his/her regular base hourly rate for all hours worked outside of their scheduled shift or a minimum of two (2) hours of 1.5 times his/her regular base hourly rate of pay, whichever is greater, provided the employee reports to work within 1 hour of receiving the immediate call in request.
  - i. If Emergency Call Time hours occur on the recognized holidays of Thanksgiving and Christmas Day, as defined within this contract, the employee will be guaranteed 2.0 times their normal hourly rate of pay for the hours as described within this article.
- b) The call-in time begins when the employee reports to the assigned worksite ready for work and ends when the employee is released from duty or his/her scheduled duty hours begin, whichever is earlier, subject to the two (2) hour minimum described in 1a.
  - i. Tactical Dispatch Special Duty Time qualifying as Emergency Call Time shall begin when the employee accepts the assignment.
  - ii. Employees whose emergency call time begins within 2 hours of their scheduled work day will remain at work or report immediately to work from their emergency call-in worksite should they be released from emergency call-in duty prior to two (2) hours.
- c) Temporary modifications to the regular workday to meet urgent agency needs does not constitute an emergency call-in, provided that the employee whose regular workday is modified has already arrived at the workplace, or has not left the workplace to return home, when the modification occurs.
- d) The employee must report to work within one hour of receiving the immediate call-in request in order to receive the pay as provided in Section 1a. Where an employee does not report to work within one hour, the employee will be paid his regular hourly rate for all hours worked on call-in.

**Section 2. Definition.** An emergency call-in is a requirement to report to work immediately on a nonscheduled day or during nonscheduled hours, to work an unspecified period of time provided the employee is requested to report to work as soon as possible after receiving the request and arrives within one (1) hour of the request.

## ARTICLE 9 OVERTIME

### **Section 1. Overtime Rate.**

- a) Employees covered by this agreement shall be paid overtime at the rate of 1 1/2 times the employee's regular base hourly rate of pay for all authorized hours actually worked in excess of forty (40) hours per seven (7) day workweek.
- b) To earn overtime, an employee must actually be on duty for the overtime hours.

**Section 2. Overtime Requirements.** The Employer retains the right to require an employee to work overtime after making a reasonable effort to obtain a qualified volunteer(s). No employee shall be required to work more than 12 hours of shift work per day and shall have a minimum of 8 hours off between shifts. A minimum of eight hours of separation between shifts and meeting, in-services, and training is not required. Meetings and trainings scheduled with less than 8 hours between shift work will be considered optional, while in-services are considered mandatory.

Staff are encouraged to arrange hour adjust for scheduled shift work, when staffing allows, in order to provide 8 hours of separation for optional meetings and trainings, and any in-services where this separation cannot be accommodated by scheduling; the agency will provide advance notice, either through monthly meetings under Article 35 Committee for Union-Management Cooperation or directly with union leadership, when 8 hours of separation cannot be accommodated for mandatory events such as in-services.

**Section 3. Probationary Employee.** A newly hired probationary shift employee may be eligible for overtime upon successful completion of initial training.

**Section 4. Non-duplication of Overtime Pay.** Under no circumstances will duplication or pyramiding of overtime hours be permitted in the determination of hours actually worked for purposes of computing overtime pay.

## ARTICLE 10 TIME TRADE

**Section 1. Approval and Reporting.** Trade time is between employees and is not tracked by Metro Communications Agency. However, the Shift Supervisor must be notified of all time trades.

- a) Shift employees shall have the right to trade shifts with the approval of the Shift Supervisor as long as the change does not interfere with the normal operation of the Employer. A time trade between shift employees of different classifications shall be allowed at the sole discretion of the Director or designee. The Employer retains authority to grant or deny a time trade.
- b) Time trade is limited to 50% of an employee's regularly scheduled hours in any given pay period, unless approved by the Director or designee. (Example: If an employee is regularly scheduled 80 hours in a pay period the maximum amount of

trade they may coordinate is limited to 40 hours for the same period, unless specifically authorized by the Director or designee.) Trading of RDO's within the workweek will not count towards 50% limitation.

- c) One operator per shift shall be allowed off on time trade when another operator is off on scheduled leave. Two operators per shift may be allowed off on a time trade in the same workday provided there is no other scheduled leave on that day. The number of employees on time trade per shift in the same workday may be adjusted at the discretion of the Director.
- d) The obligation to fulfill the work on a regularly scheduled shift remains with the employee who agreed to work the shift as a time trade.
- e) Metro Communications Agency will not reimburse employees for trade time not paid back.
- f) Advanced Communications Operators who are assigned a recruit will be allowed to trade time only with Advanced Communications Operators or supervisory staff available to provide training services.
- g) A time trade exceeding a period of one consecutive workweek will require the application of Article 7 Working in a Higher Classification.
- h) An on-call employee may not work trade for another employee at the same time they are on-call.

**Section 2. Probationary Employee.** Newly hired probationary shift employees may be eligible for time trade upon successful completion of initial training.

**Section 3. Pay.**

- a) The Employer shall incur no additional wage responsibility or additional accrued benefits liability because of a time trade.
- b) The hours worked shall be excluded by the Employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation. Where one shift employee substitutes for another, each shift employee will be credited as if he/she had worked his normal work schedule for that shift.

**ARTICLE 11  
UNIFORM**

**Section 1. Uniforms and Allowance Upon Hire.** The employer shall provide the following work uniform provisions for newly hired employees:

3 uniform tops

**Section 2. Annual Allowance.** Effective January 1 of each year, each member of the bargaining unit shall be eligible to receive 2 additional uniforms tops, with the following exception: bargaining unit members who are newly hired shall be eligible to receive this annual allowance on the later of the following dates: 1) after successful completion of the Agency's training program, or 2) after 6 months of service.

**Section 3. Return on Separation of Employment.** The employee shall return the following items purchased by and/or through the Employer upon termination, resignation, or retirement: all clothing provided to the employee by the employer with the Metro Communications insignia or patch, county building entry badge and key(s), and headset.

**Section 4. Uniform Specifications.**

- a) Standard uniform specifications and approved clothing vendors shall be established by Management.
- b) The standard uniform is expected to be worn while on duty, except as provided elsewhere in this article or at the discretion of the Director or designee.

**Section 5. Tactical Dispatcher Uniforms.** The employer shall provide the following work uniform provisions when assigned the tactical dispatcher special duty:

1 shirt  
1 jacket

**ARTICLE 12  
SENIORITY**

**Section 1. Definitions.**

- a) Agency Seniority: Seniority within the agency shall be deemed to be the employee's total length of continuous service with the Employer as a regular full-time employee since the employee's last date of hire.
- b) Job Classification Seniority: Seniority within the job classification shall be deemed to be that portion of the employee's total length of service accrued continuously in a classification above or equal to a specific job classification.

**Section 2. Seniority List.** A list of employee seniority shall be posted on the Employer department bulletin board on or about January 15 and July 15 of each year this contract is in existence. The seniority listing shall include employee name, hire date, and job classification. Any employee who deems that his seniority date has been incorrectly identified in the seniority listing may, within 30 work days from the date of posting, ask for a correction or resort to the grievance procedure.

**Section 3. Loss of Seniority Rights.** Employees' seniority may be broken only for the following reasons:

- a) The employee quits and fails to return to full duty status after 60 calendar days.
- b) The employee retires.
- c) The employee is discharged, and the discharge is not reversed by the grievance procedure.
- d) The employee is laid off for a period of more than one year.
- e) An employee's seniority shall be interrupted by reason of his inability to obtain from a physician, or physicians, after expiration of disability benefits, or twelve (12) weeks FMLA, whichever shall first occur, a certificate stating that the employee is able to return to his former position. At this time, the employee will receive a written notice from Employer stating that he is terminated.
- f) The employee does not return to work within three (3) days of the specified end of the leave of absence.
- g) Failure to report to work within five (5) working days from the date the Employer sends notification of callback following layoff by certified mail to the employee's last known address, email if provided, and phone call.

**Section 4. General Provisions.**

- a) Job Classification Seniority shall be used to determine priorities for bidding shifts, regular days off (RDO), and vacations so long as it does not impede the normal operation of the Agency.
  - i. Mid-term vacancies involving new shift staff shall be first offered by seniority to all staff within the shift affected. Once the vacancy is filled by an existing employee the resulting vacancy will not be offered to other existing employees. It will be filled by the new employee. Employees voluntarily filling these vacancies will not be guaranteed accommodations for any previously scheduled leave.

Example: Vacancy occurs on A shift and a new employee is available to be placed on A shift; the A shift vacancy will first be offered by seniority to current A shift staff; if an A shift employee accepts the vacancy their existing leave will be preserved and any additional leave needed because of changed RDOs must be requested based on policy for leave maximums per shift per day; the new employee will be placed in the position vacated by the senior employee.

- ii. Mid-term vacancies involving only existing shift staff may cross shifts and shall be offered by seniority within staff and/or shift where management has identified least disruption of current staffing. Employees voluntarily filling these vacancies will not be guaranteed any previously scheduled leave.

Example: Vacancy occurs on A shift without any new employees to be added to shift staff; staffing of other shifts are reviewed and it is determined that moving a B shift employee who has RDOs that include a Tuesday will result in the least disruption to all shift staff; The A shift vacancy will be offered by seniority to all B shift staff having a Tuesday for one of their RDOs; if one of the senior staff offered the opportunity accepts the A shift vacancy, their existing B shift leave which qualifies for approval under policy leave maximums on A shift will be preserved, and any additional leave because of changing shifts/RDOs will need to be requested based on policy for leave maximums per shift per day; If none of the senior B shift employees accept the shift change, the least senior B shift employee with a Tuesday as one of their RDOs will be required to move to the A shift vacancy and all previously approved vacation will be honored on the A shift.

- b) If two or more Employees shall be determined to have the same Job Classification Seniority, then amongst or between those Employees only Agency Seniority shall be deemed controlling. In the event two or more Employees have the same Job Classification and Agency Seniority, then test scores shall be the tie breaker. In the event two or more of those Employees have the same test scores, the date of application will be the tie breaker.
- c) Agency Seniority shall be used when recalling laid-off employees and awarding vacancies to qualified volunteers.
- d) Service under temporary employment is excluded from the calculation of any seniority.

## ARTICLE 13

### NEW HIRE PROBATIONARY PERIOD

**Section 1.** All new employees shall be on probationary status for twelve (12) months. The new hire probationary employee may be discharged summarily at the discretion of the Director without the recourse afforded to nonprobationary employees herein.

## ARTICLE 14 PROMOTION

**Section 1. Definition.** Promotion as used in this agreement shall apply to an actual vacancy resulting in the movement of an employee from his present job classification to another job classification within the bargaining unit having a higher maximum regular base hourly rate of pay.

**Section 2. Eligibility for Promotion.** Candidates must have a satisfactory service rating on their most recent annual evaluation in order to be considered eligible for promotion.

**Section 3. Probation.**

- a) A promotion shall not be deemed complete until a period of probation not to exceed twelve (12) months has elapsed. Should a probationary employee be absent from the job for more than thirty (30) days, the probationary period will be extended for a period of time equal to the absence in order to enable the employee to complete his/her full probationary period.
- b) If, at any time during the probation period, a promotional employee is appraised less than satisfactory in performance, the employee shall be returned to the position from which he was promoted. The action of returning a promoted employee to their former position shall not be considered a grievance as defined in Article 18, Section 1.

**Section 4. Step Placement.** When an employee is promoted, the employee shall be placed into the pay step of the new position which is at least, and closest to, the following percentages higher than the pay step received prior to the promotion:

Advanced Communications Operators	5%
Shift Supervisor	8%

If the maximum pay step of the new position is less than the percentage increase identified in this section, the employee will be placed at the maximum step with the lower percentage increase. The employee will not be eligible for a step increase upon completion of probation, but will be eligible for step progression in the normal prescribed intervals and procedures as defined in Article 4, Wages.

**Section 5. Anniversary Date.** The step anniversary date for future step increase eligibility shall be the effective date of the promotion.

## ARTICLE 15 TRANSFER

**Section 1. Definition.** A transfer is an employee-initiated request, as the result of a posted vacancy, to move from one job classification to another job classification having an equal or lower maximum regular base hourly rate of pay.

**Section 2. Probation.**

- a) A transfer shall not be deemed complete until a period of probation not to exceed six (6) months has elapsed. The length of service necessary to qualify an employee for additional promotions/transfers shall not be less than six (6) months in the transferred position except that the Director shall have the authority to waive this length of service based on individual circumstances. Should a probationary employee be absent from the job for more than 30 days, the probationary period will be extended for a period of time equal to the absence in order to enable the employee to complete the full probationary period.
- b) Should a probationary employee decide within thirty (30) calendar days of transfer to return to his/her former position, the employee shall make the request to his/her current manager, and may be returned to his/her former position within ten (10) calendar days, if that former position has not yet been filled or eliminated. Should a probationary employee request to return to their former position after the thirty (30) calendar day requirement, the request shall be decided based on the vacancy status of the position.
- c) If at any time during the probation period a transferred employee is appraised less than satisfactory in performance, the employee may be discharged or reduced upon the recommendation of the Manager. The Manager shall notify the Director at the end of the probation period as to acceptance or rejection of the probationer.

**Section 3. Step Placement.**

- a) When an employee transfers from one job classification to another job classification with the same or lower maximum regular base hourly rate of pay, the employee must have completed a minimum of one year of experience in the same field at the same level of difficulty for each step granted above Step 1 in the new pay scale. The salary step placement will be made at the discretion of the Director.

After successful completion of a six (6) month probation period, the transferred employee may be eligible to advance to the next step. An employee shall only be eligible for such step increase in the event that their regular base hourly rate of pay was reduced at the time of transfer.

**Section 4. Anniversary Date.** The employee's step anniversary date for future step increase eligibility will not be adjusted unless there is a change in the employee's regular base hourly rate of pay.

In the event that such employee's regular base hourly rate of pay is changed, the step anniversary date for future step increases shall become the effective date of the transfer.

**Section 5. Transfer Posting.** A circular of information concerning the qualifications or limitations, definition of duties, deadline for applying, and such other data as may be desirable shall be prepared and posted in advance of transfer examinations, if any.

## ARTICLE 16 RECLASSIFICATION

**Section 1. Definition.** Reclassification shall apply to personnel action where no actual vacancy exists, but an employee's job classification and/or pay grade is changed. This personnel action will result from a management-initiated job audit or reorganization.

**Section 2. Probation.** A reclassification shall not require the completion of a probationary period. The employee will progress in the normal prescribed intervals based on the effective date of their last increase.

**Section 3. Step Placement.**

- a) When an employee is reclassified to a position having a higher maximum regular base hourly rate, the employee's pay shall be increased to the pay step amount which is next over the pay they received prior to the reclassification.
- b) When an employee is reclassified to a position having the same maximum regular base hourly rate, the employee's pay step amount shall remain the same.
- c) When an employee is reclassified to a position having a lower maximum regular base hourly rate, the employee's pay shall be decreased to the pay step amount closest to their present regular base hourly rate. However, when the employee's regular base hourly rate of pay, prior to the reclassification, is greater than the maximum rate of the newly assigned pay grade, the employee's regular base hourly rate of pay shall be frozen as of the date of the reclassification. The employee's regular base hourly rate shall remain frozen until such time as the maximum step of the pay grade assigned to the employee's classification is equal to or greater than the employee's frozen rate of pay. When that occurs, the employee shall be placed into the maximum step of the new pay grade assigned to the employee's classification. In order to remain at the frozen status, the employee's performance must be rated as satisfactory. If the employee's performance is less than satisfactory, the employee may face disciplinary action. Additionally, the employee will lose their frozen pay status and the employee's regular base hourly rate shall be adjusted to reflect the maximum step of the new pay grade assigned to the employee's classification.

**Section 4. Anniversary Date.** The employee's anniversary date for future step increases will not be adjusted unless there is at least a 3 percent increase in the employee's regular base hourly rate of pay. In the event such employee's regular base hourly rate of pay is increased by at least 3 percent or more, the anniversary date for future step increases shall become the effective date of reclassification. When an employee is reclassified to a position having a lower regular base hourly rate, the employee's anniversary date will not be adjusted.

## **ARTICLE 17 DEMOTION**

**Section 1. Definition.** Demotion shall apply to a personnel action where an employee for disciplinary reasons is involuntarily demoted to a lower position classification.

**Section 2. Step Placement.** A demoted employee's step placement will be calculated by placing the employee at the lower classification at the step they would have achieved had they never been promoted.

**Section 3. Anniversary Date.** The employee's anniversary date for future step increases shall be the effective date of the demotion.

## **ARTICLE 18 LAYOFF, REHIRING AFTER LAYOFF**

**Section 1. Layoff.** Employees may be laid off or demoted whenever in the opinion of the Metro Director there is need to reduce the workforce. The term demoted in reference to layoff means the reassignment, not requested by the employee, from one position to any lower paying position. When this is done for nondisciplinary reasons, then it shall be done to avoid laying off the employee. In any case involving a demotion under the terms of this article, the employee involved shall have the right to elect which alternative he will take, the demotion or layoff. The employee with the least Agency Seniority shall be laid off first.

**Section 2. Recall.** Employees laid off shall be returned to work according to their seniority, provided they are qualified to perform the work of the open recall position. Employees being returned to work shall be notified of their return by certified mail to their last reported address, email if provided, and phone call. The recalled employee must report within five working days of such notification. Failure to report within the specified time shall be considered as a voluntary resignation. The union president will receive a copy of the employee's notice to return to work by first class mail.

**Section 3. Pay.** In cases of layoff or demotion under this article, no employee's rate of pay shall be altered or stopped until that employee has been given at least ten working days' notice of the layoff/demotion. At the discretion of the Metro Director, the employee's actual presence at the job site, after said notice is given, may be waived if the employee is designated to be laid off. Upon notice of layoff and the presence in the workplace waived, the employee shall receive all pay the employee would have received during the ten-workday period.

## **ARTICLE 19 DISCIPLINE AND DISCHARGE**

**Section 1. Demotion, Suspension, Discharge.** No employee shall be suspended, discharged, or demoted from his/her position except for just cause.

**Section 2. Causes for Demotion, Suspension, Discharge.** The following will be considered just cause for discharge, suspension, or demotion of an employee. However, just cause for discharge, suspension, or demotion is not limited to those conditions and occurrences listed herein.

- a) Conviction of any felony offense or of a misdemeanor that involves moral turpitude. Moral turpitude shall be defined as set forth in SDCL 22-1-2(25) and Administrative Rule 2:05:03:02 (see Appendix A).
- b) Offensive conduct or language toward the public or toward Agency, City, or County employees or other conduct unbecoming an employee of the Agency.
- c) Violation of any lawful or reasonable official regulation, order or policy, or failure to obey any lawful or reasonable direction made and given by a superior where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline, or resulted or may be reasonably expected to result in loss or injury to the Agency, or to the public.
- d) Dishonesty.
- e) Incompetence or inefficiency in the performance of the duties of his/her position.
- f) Failure to follow Agency policies and procedures.
- g) Carelessness or negligence with the property of the Agency.
- h) Release of confidential information outside the scope of official business of the Agency. Falsification of records or personal misrepresentation of a fact as it relates to his/her job duties or profession.
- i) Use of one's position for personal gain or use of Agency ID to gain special privileges from a person or business, not authorized by Management.
- j) Repeated tardiness.
- k) Abuse of sick leave privileges.
- l) Sleeping on duty.
- m) Inducement of or attempt to induce an employee of the Agency to commit an unlawful act or to act in violation of any lawful and reasonable regulation or order; or acceptance of any fee, gift, or other valuable thing in the course of work or in connection with it for personal use from any citizen, when such fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment.
- n) Abusive personal conduct or language toward the public or fellow employees, or abusive public criticism of a superior or elected official.

- o) While employed, has unlawfully used, possessed, manufactured, distributed, or dispensed any controlled substance or drug paraphernalia at any time on or off the job or unlawfully has any detectable level of any controlled substance in the body at any time on or off the job.
- p) While working, performing job duties while on the Agency's premises, or while operating Agency equipment or vehicles on Agency work time, has used or possessed alcohol, or has a detectable alcohol level of .02 or greater in the body. An exception may be granted by the Director or his designee for unopened bottles as part of a ceremonial presentation.
- q) Absent from duty without authorization.
- r) Prior disciplinary actions when the employee has a history of similar offenses and has not responded to lesser discipline; these may include identified patterns of inappropriate behavior or similar behavior of a more egregious nature.
- s) Determination of any other act or omission deemed sufficient just cause by the Employer.

**Section 3. Notice.** An employee discharged, suspended, or demoted from his/her position will be furnished in writing the reasons for the action taken and the employer will immediately forward a copy of the reasons for the action in writing for inclusion in the employee's personnel file.

**Section 4.** Suspension, demotion, and discharge may be the subject of a grievance as set forth in Article 20, Grievance Procedure.

## ARTICLE 20 GRIEVANCE PROCEDURE

**Section 1. Definition.** A grievance is a complaint by an employee concerning the interpretation or application of the provisions of this agreement and the complaint has not been resolved satisfactorily in an informal manner between the employee and their immediate supervisor or member of Management.

**Section 2. Procedure.** The sole grievance procedure allowed under this Agreement is as follows:

- a) Step One. The employee shall submit in writing, using the grievance form as shown in Exhibit B, to the Business Manager a grievance within fifteen calendar days. This fifteen day time period shall begin the first day following the time the employee had knowledge or should have had knowledge of the alleged grievance. If a grievance is not presented within this time period, it shall be considered "waived."

The written grievance shall contain a statement of the facts, the provision or provisions of the Agreement which the Employer is alleged to have violated, the date of the alleged violation, and the relief requested. The grievance form shall be signed by the aggrieved employee(s) and/or a designated Union Representative.

The aggrieved employee shall have the right to process his grievance individually, by the Union, and/or by an attorney. The Business Manager shall sign the form when it is presented.

Within seven business days of the receipt of the grievance, the Director or his designee will meet with the employee, who may be accompanied by their representative, to discuss the grievance. This seven-day time period shall begin the first day following the receipt of the grievance. Within seven business days of this meeting, a written decision will be submitted to the employee by the Director.

- b) Step Two. If the employee disagrees with this decision, the employee and their representative may, within 30 days, initiate an appeal to the Department of Labor under the provisions of SDCL 3-18. Any decision of the Department of Labor may be appealed to Circuit Court.

**Section 3. Pay at Grievance Meeting.** Grievances under Step One may be processed during the employee's working hours without penalty of loss of pay. An employee who acts as a Union Representative in the grievance meeting under Step One shall be at the employee's basic hourly rate for actual time spent within his/her normal daily work schedule.

A Union Representative may also be paid at the employee's basic hourly rate of pay for attendance at a grievance meeting which occurs outside their shift, or to provide an 8 hour separation from their regular shift, in equivalent  $\frac{1}{4}$  hour increments as staffing allows for hour adjust of scheduled work hours within the same work week; since union leadership has the ability to choose who will attend these meetings and these are adjustments to scheduled working hours and may limit these opportunities for other staff to hour adjust, the total hours adjusted for grievance meetings are included in the calculation of maximum hours as defined below.

Regardless of any of the foregoing, the Union shall be permitted a period of time not to exceed a total of 52 hours per year to investigate, present and process grievances, and attend disciplinary meetings, during scheduled and/or adjusted working hours without loss of time or pay.

**Section 4. Extension of Time Limitations.** It is agreed that all time limitations in this article may be extended up to a maximum of sixty (60) days by mutual agreement of all parties involved. Extensions must be granted in writing.

## ARTICLE 21 MANAGEMENT RIGHTS

**Section 1.** Except to the extent expressly modified by a specific provision of this agreement, the Employer reserves and retains solely and exclusively all of its statutory and common law rights to manage the operation of MCA, as such rights existed prior to the execution of this Agreement and the Union, by executing this contract, recognizes the existence and correctness of such rights and prerogatives including but not limited to the following:

- a) Operate and manage all manpower, facilities, and equipment.
- b) Determine work assignments and establish, alter, or eliminate work schedules or functions in accordance with Agency needs and to contract or subcontract all or any of the functions of the Employer that do not take work away from the bargaining unit.
- c) The right to establish standards of quality and quantity of work and to conduct employee evaluations.
- d) The right to adopt, modify, change, enforce, or discontinue any existing rules, regulations, procedures, and policies that are not in direct conflict with any provisions of this agreement and where practical, advance notice of the change will be provided to affected employees.
- e) To transfer, promote, or demote employees, or to terminate or otherwise relieve employees from duty for just cause and to lay off or relieve employees due to lack of work or funds.
- f) The right to set up safety rules and enforce penalties for their violation.
- g) To recruit, select, and determine the number of all types of employees required.
- h) To establish Employer functions and programs, including the setting and amending of budgets.
- i) To determine the utilization of technology and manpower and to modify organizational structures; to select, direct, and determine the number of personnel engaged in total functions or any particular part thereof.
- j) To perform any inherent managerial functions not specifically limited by this agreement and to take such other measures as the Employer or Metro Council may deem necessary for the orderly and efficient operation of the Agency.
- k) To determine the mission, policies, and standards of service provided to the public, the City, and the County.

**Section 2.** To the extent that the above rights are specifically limited, in whole or in part, by the provisions of this agreement, alleged violations are subject to the grievance procedure.

## ARTICLE 22 EMPLOYEE/UNION RIGHTS

**Section 1. Non-Interference.** The Employer agrees not to interfere with the rights of employees to become members of the Union or not become members of the Union, and there shall be no discrimination, interference, restraint, or coercion by the Employer against the employee because of any union membership or lack of union membership.

The Union recognizes its responsibility as bargaining agent and agrees to represent all employees in the bargaining unit without discrimination, interference, restraint, or coercion.

It is the exclusive privilege of the union to select the individuals that will be representing the interests of the union for any formal committees or activities, sponsored or created by the Agency in writing, to which the union has designated representatives.

**Section 2. Union Rights.** The Employer agrees that during working hours, on the Employer's premises, without loss of pay, Union Representatives shall be allowed to:

- a) Post Union Notices on Agency Bulletin Boards in a space reserved for Union Notices.
- b) Attend labor management meetings, as long as there is no interference with the operation of the dispatch center.
- c) To investigate any grievance or dispute so that it may be properly presented to Management. Prior to any proposed investigation of grievances, the Union Representative shall obtain permission from Management, which will be granted unless the representative or grievant is working on something that requires their immediate attention. If permission cannot be immediately granted, the Employer will arrange to allow investigation of the grievance within three (3) days.
- d) Confer with Management concerning the enforcement of any provisions of disagreement.

**Section 3. Agency Visits for Union Business.** The Employer agrees that an accredited representative of the American Federation of State, County, and Municipal Employees (AFSCME) shall have access to the premises of the Employer to conduct Union business with notification to Management.

**Section 4. Union Representation at Disciplinary Action.** At any meeting between a representative of the Employer and an employee in which discipline (including warnings which are to be recorded in the personnel file, suspensions, demotions, or discharge) is to be discussed, the employee may have a Union Representative present if the employee so requests. Pay for union representation under this section shall be at the employee's basic hourly rate for actual time spent within his/her normal daily work schedule.

A Union Representative may also be paid at the employee's basic hourly rate of pay for attendance at a disciplinary meeting which occurs outside their shift, or to provide an 8 hour separation from their regular shift, in equivalent  $\frac{1}{4}$  hour increments, as staffing allows for hour adjust of scheduled work hours within the same work week; since union leadership has the ability to choose who will attend these meetings and these are adjustments to scheduled working hours and may limit these opportunities for other staff to hour adjust, the total hours adjusted for disciplinary meetings are included in the calculation of maximum hours as defined below for grievance related processes.

Regardless of any of the foregoing, the Union shall be permitted a period of time not to exceed a total of 52 hours per year to investigate, present and process grievances, and attend disciplinary meetings, during scheduled and/or adjusted working hours without loss of time or pay.

**Section 5. Absence for Labor Conventions and Activities.** The Agency agrees to grant the necessary time off, without discrimination and without pay, to Union officers and official delegates designated by the Union to attend an official labor convention. This time shall be subject to the following limitations: time off for union officers and other official delegates shall not exceed a combined total of 48 hours in a calendar year, must be taken in not less than 4 hour increments by each attendee, and must not result in any vacancies at time of scheduling. Absences for a Labor Convention shall require fifteen (15) calendar days' written notice.

The participation in union activities such as Union meeting and committee meetings will be permitted only during off duty hours.

**Section 6. Negotiation Time.** Members of the Union negotiating team, who are Agency employees, will be allowed to attend negotiation sessions during regularly scheduled duty hours. The time of each Agency employee spent on attendance at negotiation sessions during their regularly scheduled duty hours shall be compensated by the Agency at his basic hourly rate, subject to the following limitations:

- a) Total compensation paid to the Union negotiation team will not exceed combined total of 60 hours for all members.
- b) Compensation for Union negotiating team members will also be paid at the employee's basic hourly rate for the time spent preparing for negotiations during regularly scheduled working hours as long as it does not impede the operations of the center.
- c) Union negotiation team members may arrange hour adjust of scheduled shift work, when staffing allows within the same work week, in order to provide for payment of time spent negotiating or 8 hours of separation for negotiations where this separation cannot be accommodated by scheduling; payment for this time will be at the employees basic hourly rate of pay. Any additional time spent attending negotiations by the employee during his regularly scheduled duty hours may be taken as vacation or time off without pay, all as allowed by existing staffing at time of scheduling; since these are adjustments to scheduled working hours and may limit these opportunities for other staff, the total hours of absence for negotiations are included in the calculation of maximum hours as described above.

## ARTICLE 23 HOLIDAYS

**Section 1. Definition.** Holidays shall mean days in which employees, whose services are not essential on holidays, are permitted to absent themselves from work with pay.

**Section 2. Eligibility.** Employees are eligible for holiday pay from their first day of employment. An employee shall not be paid holiday pay for holidays which occur during an approved unpaid leave of absence.

To be eligible for holiday pay, the employee must have worked or have been on authorized paid leave on the last shift prior to the holiday and the first shift following the holiday.

An employee on unauthorized leave or suspension on the day preceding, day of, or day following a holiday is not eligible for holiday pay.

**Section 3. Official/Designated Holidays.**

- a) The following holidays are established as official holidays of the Employer:

New Year's Day	First Day of January
Dr. Martin Luther King, Jr. Day	Third Monday of January
Presidents' Day	Third Monday of February
Memorial Day	Fourth Monday of May
Independence Day	Fourth Day of July
Labor Day	First Monday of September
Native American Day	Second Monday of October
Veterans' Day	Eleventh Day of November
Thanksgiving Day	Fourth Thursday of November
Christmas Day	Twenty-fifth Day of December

**Section 4. Holiday Pay for Shift Workers.**

- a) Shift workers shall receive eight (8) hours of holiday pay at their regular base hourly rate of pay.
- b) In addition to the holiday pay, shift workers who are scheduled to work on an official holiday as provided in Section 3 a) of this article shall be paid at the holiday differential rate equal to 1 1/2 times the employee's regular base hourly rate for the number of hours actually worked on the official holiday, except as follows:
- i. The holiday differential rate for all hours worked on Christmas Day or Thanksgiving Day holidays shall be equal to two (2) times an employee's regular base hourly rate of pay.
  - ii. The holiday differential rate will not apply to hours worked on the holiday for which the employee is guaranteed overtime pay such as on-call assignment or emergency call-in duty.
- c) Holiday differential for hours worked on a holiday shall begin at the beginning of the first shift (currently A shift) on the day of the holiday and end at the end of the last shift (currently C Shift) the day following the holiday.
- d) All hours paid at the holiday differential rate will be considered hours actually worked for purposes of computing overtime in that week.

## ARTICLE 24

### VACATION

#### **Section 1. Eligibility.**

- a) Regular full-time employees shall be granted vacation with pay based on the employee's completed years of service with the Employer. Such vacation shall accrue on a biweekly basis.
- b) Vacation leave accrual shall begin with employee's first day of employment with the Employer, but may not be used until the employee has completed six (6) months of service and has successfully completed the agencies initial training program, whichever is later. The Director may grant the use of vacation during this period at his sole discretion.

#### **Section 2. Maximum Balance and Payment.**

- a) Regular full-time employees may accumulate vacation as set forth in Section 3 of this article without limitation, provided that as of December 31 of each calendar year the employee's maximum balance of unused vacation shall not exceed 260 hours. Any unused vacation hours remaining in an employee's accumulated balance in excess of 260 hours as of 12 midnight on December 31 of each year shall be forfeited, except as specifically set forth in this article.
- b) In the event of discharge or resignation any vacation time the employee has accumulated and not used before the date of separation from employment, up to the maximum allowable accumulation as specified in Section 2a, shall be paid at the employee's regular base hourly rate as of the date of separation to the employee.
- c) In the event of death while employed, any vacation balance accrued shall be paid to the employee, or to the surviving spouse, or if no spouse survives, to their estate at the employee's regular base hourly rate as of the date of death.

#### **Section 3. Accrual Schedule.**

- a) An employee shall receive a full or prorated vacation benefit with full pay based on the following schedule, and each new level in the schedule shall become effective in the pay period in which the employee's employment date occurs and available for use on the first day of the following pay period:

<u>Years Completed</u>	<u>Hours per Pay Period</u>
0 but less than 3	3.15
3 but less than 4	3.75
4 but less than 5	4.16
5 but less than 10	4.65
10 but less than 11	5.00
11 but less than 12	5.30
12 but less than 13	5.55
13 but less than 14	5.89
14 but less than 15	6.25
15 but less than 16	6.50

16 but less than 17	6.81
17 but less than 18	7.16
18 but less than 19	7.39
19 years and over	7.75

#### **Section 4. When Taken.**

- a) Vacation shall be taken at the time the Director or designee shall designate. In designating vacation time, the seniority and preferences of employees shall be followed unless absence of the employee will impede the operation of the department.
- b) Vacation leave must be taken in increments of no less than quarter (1/4) hour, unless less than one quarter hour of vacation is available in which case the employee must take the remaining vacation in a single increment.
- c) Employees may schedule vacation prior to its anticipated accrual, but may not use vacation until after it has been accrued as specified in this article. However, the Agency Director has discretion to advance leave in extraordinary circumstances.
- d) Vacation leave request of two shifts or less shall be completed and submitted to the Director or designee at least 2 hours in advance of the requested leave date.
- e) Vacation leave request of three shifts or more shall be completed and submitted to the Director or designee at least two (2) days in advance of the beginning of the requested leave period.
- f) Vacation time shall not be scheduled or used in any manner for purposes of extending an employee's official date of separation from the Agency.

**Section 5. 40/40/40 Vacation Option Request.** Once per calendar year an employee may request to be paid for the equivalent of their regularly scheduled work week of accumulated vacation (for example 40 (forty) hours), using the request for accumulated vacation option 40/40/40 form as shown in Exhibit D, in conjunction with taking the equivalent of their regularly scheduled work week of vacation (for example 40 (forty) hours) provided that after the reduction of the combined leave and cash out (for example 80 (eighty) hours) the employee retains a minimum vacation balance of the equivalent of one week of their vacation leave (for example 40 (forty) hours). The cash out of the vacation will be paid with the last payroll prior to the vacation. If the employee does not use equivalent of their regularly scheduled work week of requested vacation, the employee's pay will be reduced by the cash out on the next payroll. All vacation leave taken under this policy must be taken in continuous blocks of time and may not be segmented.

## ARTICLE 25

### SICK LEAVE

**Section 1. Definition.** Sick leave is defined to mean the absence of an employee because of illness, injury, or attendance upon a member of immediate family due to illness or injury.

**Section 2. Definition of Immediate Family.** For purposes of sick leave usage, immediate family shall mean child, spouse, parent, spouse's parent, or legal dependent residing in the employee's home; also an employee's grandparent, grandchild, or sibling when afflicted with a serious medical condition.

**Section 3. Investigation.** Sick leave shall be granted as a privilege and not a right, and the claim of such leave shall be subject to such investigation as the Director deems necessary. If sick leave appears to be abused or when an employee consistently uses sick leave in conjunction with days off or as it is earned, the employee requesting sick leave may be required to furnish proof of illness. Abuse of sick leave privileges constitutes grounds for disciplinary action.

**Section 4. Eligibility and Accrual.** Eligibility for use of sick leave shall begin on the date of employment and the employee shall accrue sick leave at the rate of 3.7 hours for each full two weeks of completed service. Sick leave must be taken in increments of no less than quarter (1/4) hour, unless less than one quarter hour of sick leave is available in which case the employee must take the remaining sick leave in a single increment.

**Section 5. Employee Notification.** An employee taking sick leave shall notify the Shift Supervisor at least two (2) hours before the start of the assigned work shift.

**Section 6. Outside Employment.** An employee is prohibited from using sick leave benefits while simultaneously engaging in non-Agency employment duties.

**Section 7. Health Care Provider Certificate.** The Director may require that sick leave be granted only by a certificate evidencing the sickness, signed by the employee's attending medical doctor, or the Employer may require the employee to report to the Employer-designated medical doctor for a physical examination.

In any event, no sick leave with pay, for personal illness, or for attendance upon a member of the immediate family requiring the employee's care or attendance shall be granted for a period longer than three (3) consecutive work days unless a certificate from a duly licensed health care provider is presented to the Director.

This certificate must be from the attending health care provider and must include a written statement indicating medical necessity for the employee's absence on the specific date(s) due to personal illness or attendance upon a member of the employee's immediate family.

If the employee is absent due to an FMLA qualified circumstance, the paid or unpaid sick leave absence will be designated as FMLA leave and treated in accordance with Article 26 Leave of Absence of this agreement.

**Section 8. Physician/Dental Appointments.** Sick leave may be used while actually attending either physician or dental appointments provided the appointment has been scheduled during the employee's regularly scheduled work hours.

**Section 9. Sick Leave Payout.** Upon retirement or resignation in good standing, an employee will be paid for one-third of accumulated sick leave up to a maximum of three hundred twenty (320) hours at the employee's current rate of pay. To qualify for this benefit, the employee must have worked at least 16 consecutive years for Metro Communications Agency.

**Section 10. Military Incapacitation.** Employees who are discharged from military duty orders will be allowed to use sick leave for absences due to injury or illness associated with their military duty as long as such member is not otherwise receiving other benefits such as incapacitation pay through the military. If an employee is receiving military benefits or pay during such absences, they may not use sick leave simultaneously.

**Section 11. Leave Donation Policy.** The agency shall maintain a leave donation policy and shall not make substantive changes to the policy without Union review following Article 35 Union-Management Cooperation.

## **ARTICLE 26 LEAVE OF ABSENCE**

**Section 1. Approval and Length of Unpaid Leaves of Absence.** Requests for unpaid leave of absence shall require the approval of the Director. No leave of absence, whether granted, extended, or continued, shall exceed one (1) year, except as otherwise provided in this article. Requests for unpaid leave will only be considered in the event that the employee has used all available paid leave time; e.g. vacation.

Time off without pay, without requiring the employee to first use all available paid leave time, will be permitted only where specifically noted in this agreement.

An employee on an authorized unpaid leave of absence is not guaranteed reemployment at the termination of the leave except as specifically otherwise provided in this agreement or by state or federal law.

### **Section 2. Family/Medical Leave.**

**Eligibility.** The FMLA requires the Agency to provide up to 12 weeks of unpaid, job protected leave to eligible employees for certain family and medical reasons during a 12-month period. Employees are eligible for FMLA leave if they have worked for the Agency for at least one year and worked 1,250 hours over the previous 12 months.

**Use of Paid Leave Benefits—Concurrent with FMLA.** The Agency requires employees to use paid leave benefits before unpaid leave may be granted. If an employee has available paid leave benefits at the time family medical leave is required,

the family medical leave will run concurrently with the use of those paid leave benefits until they are exhausted or until the available 12-week FMLA leave period ends, whichever comes first. If an employee's available paid leave benefits are exhausted prior to the end of the 12-week FMLA period, the remainder of the period shall be granted as unpaid leave.

**Reasons for Taking FMLA Leave—Family, Medical, and Military.** The following conditions represent qualified FMLA leave:

**Family Leave:**

- a) For birth of a son or daughter, and to care for the newborn child;
- b) For placement of a son or daughter for adoption or foster care;

**Medical Leave:**

- a) To care for the employee's spouse, son or daughter, or parent who has a serious health condition;
- b) Because of a serious health condition that makes the employee unable to perform the employee's job;

**Military Leave:**

- a) Because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation; or
- b) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious injury sustained in the line of duty on active duty is entitled up to 26 weeks of leave in a single 12-month period to care for a service member.

**Requesting Leave and Notice Requirements.**

- a) In the case of family/medical leave taken for the care of a healthy newborn child, newly adopted child, or newly placed foster child, the leave must be taken in a single period, or intermittently at the discretion of the Director, not to exceed twelve (12) weeks which must commence within twelve (12) months after the date of the child's birth or placement for adoption or foster care. The employee is required to submit to the Agency, prior to the commencement of the family/medical leave, a signed statement that he intends to return to his position upon expiration of the leave. In addition, the employee must provide at least two weeks' advance notice of the date he intends to return to work. Circumstances may require that family/medical leave for the birth of a child, or for placement for adoption or foster care, begin prior to the actual birth or placement.
- b) An employee requesting family/medical leave for the serious illness of a child, spouse, or parent or a family/medical leave for his own personal serious health condition will be permitted to take the 12 weeks of family/medical leave either consecutively or intermittently. Each time family/medical leave is requested on this basis, the employee must request the family/medical leave, except where leave is not foreseeable, at least two weeks prior to the date the leave is to begin. The employee must also provide to the Agency written certification from a medical physician describing the nature of the health condition and its probable duration.

The employee must also provide the employer with two weeks' notice prior to return to work date, whenever practicable.

**Medical Certification and Recertification.** The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met. The Agency may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the Agency's expense) and a fitness for duty report prior to returning to work.

The Agency may require recertification no more frequently than every 30 days unless (a) employee requests extension; (b) circumstances change significantly; and (c) employer doubts validity of the certification or the employee's stated reason for the absence. Certification and recertification when required will be at the employee's expense. No second or third opinion on recertification can be required.

**Health Plan Benefits—Returning from Leave.** Health/dental insurance benefits will be maintained for the employee during the family/medical leave period provided that the employee continues to pay the employee portion of the premium for that insurance at least one month in advance of the coverage. If the employee chooses not to return to work for reasons other than a continued serious health condition, or other circumstances beyond the employee's control, the employee will be required to reimburse to the Agency the amount paid by the Agency for the employee's health insurance premium during the leave period.

Employees returning from family/medical leave shall be returned to their previous position, or a similar position, with the same rate of pay as they received prior to the commencement of the unpaid family/medical leave.

**Administration.** In all cases, it is the employer's responsibility for determining whether leave qualifies as FMLA. The Agency may inquire as to the nature of the need for leave in order to assess the application of FMLA. Except as otherwise provided in this section, all family/medical leave will be administered according to the requirements of the Family & Medical Leave Act of 1993 and the National Defense Authorization Act (NDAA) of 2008.

**Section 3. Benefit Accruals.** An employee on an approved unpaid leave of absence shall retain his/her seniority as of that day. Seniority shall not be accumulated except as specifically provided by state or federal law.

Sick leave or vacation leave time shall not be accumulated during an authorized unpaid leave of absence of one (1) or more hours.

When an employee is suspended without pay, or absent without authorization, all accruals of vacation and sick leave will be suspended as well for the entire period of unpaid absence.

**Section 4. Extension of Probation.** Should any probationary employee be absent from the job for an approved leave without pay, the probationary period may be extended to enable the employee to complete their full probationary period.

**Section 5. Unapproved Absence.** Absence from duty without leave or failure to report after leave has expired or has been disapproved, revoked, or canceled shall be grounds for suspension, reduction, or discharge.

**Section 6. Medical Benefits.** Except as otherwise provided in this agreement or by state or federal law, health/dental insurance coverage may be continued during an authorized leave of absence without pay, so long as the employee continues to pay 100 percent of the premium for that coverage one month in advance of coverage.

## ARTICLE 27 JURY DUTY AND WITNESS FEES

**Section 1. Jury Duty.** Any employee who is summoned for jury duty shall not suffer any loss of regular base pay; however, upon the termination of jury duty, the employee shall remit to the Employer any fees, mileage, or other remuneration received for their participation in jury duty.

A shift employee will be eligible for regular base pay for each quarter hour of jury duty during the scheduled shift. A shift employee will also be eligible for regular base pay for each quarter hour served when required to serve jury duty outside of normal work hours but within the same 24-hour period as a scheduled shift.

Any employee who wishes to keep jury duty remuneration must use their vacation accruals. If jury duty is scheduled on the employee's regular scheduled day off, the employee will not be compensated by the Employer and the employee may accept any jury duty remuneration.

**Section 2. Witness Fees.** In the event an employee is required to act as a witness in his or her capacity as an employee of the Employer, all time spent in legal proceedings as a witness will be compensable at the employee's regular base hourly rate of pay provided that all witness fees, allowances, or other remuneration received by the employee for his/her participation as a witness shall be promptly delivered to the Employer. The employee must appear in uniform. All such time shall be counted as hours worked for purposes of computing overtime. The employee will immediately notify their immediate supervisor upon being served the subpoena. If the subpoena requires attendance on a regularly scheduled day off, the employee will report the time as time worked for purposes of pay reconciliation.

**Section 3. Failure to Deliver Jury Duty or Witness Fees.** Any employee who fails to deliver either jury per diem or witness fees and expenses to the Employer while retaining his/her base pay for the same period of time may be subject to disciplinary action up to and including discharge.

## ARTICLE 28 FUNERAL LEAVE

**Section 1. Leave.** Employees are permitted to use up to four (4) days of their available sick leave for attendance at any funeral service plus reasonable travel time. Use of sick leave within this four-day per-funeral limitation includes additional time for funeral

planning and conducting estate business following that funeral when the employee's non-professional time is needed for these purposes,

This four-day limit for a single funeral may be extended at the discretion of the Director. An employee will be allowed to use up to a maximum of eighty (80) hours of sick leave as funeral leave in one calendar year.

Any additional time required to make arrangement for or to attend a funeral, or to attend to estate business following a funeral, may be taken as vacation or time off without pay.

**Section 2. Notification.** The employee shall provide notification to the Shift Supervisor prior to taking time off for funeral leave.

## **ARTICLE 29** **MILITARY SERVICE LEAVE**

**Section 1. Request for Military Leave of Absence.** An employee who wishes to be granted military leave of absence must submit the request and a copy of his/her official orders or other records from the military service to the Director prior to the dates of attendance. If the Reservist or National Guard member submits a copy of his/her official annual training schedule prior to the beginning of the year's military activities, the employee need only submit separate requests and orders for those training duties not included on the annual schedule, or when the annual schedule is modified.

**Section 2. Active Duty.** An employee who enlists or is called into active duty for the military service of the United States or who, in time of national emergency, voluntarily enlists for active duty shall be granted military leave for the time necessary to permit completion of the military service.

In order to have reemployment rights, a person leaving active duty in the military service of the United States must apply to the Employer for reemployment within the allowable time periods established under the Uniformed Services Rights and Reemployment Rights Act (USERRA) of 1994.

**Section 3. Reserve or National Guard: Initial Active Duty for Training, Annual Encampment, Weekend Drill, and Other Training Duty.** An employee who enlists as a reservist or a member of the National Guard shall be granted time off without pay for initial active duty for training, annual training encampment, weekend training drills, and other active and inactive training duty.

The Reservist or National Guard member must report back to his/her civilian job at the beginning of his/her first regularly scheduled shift on the first day after the completion of initial active duty for training or other training duty plus the necessary travel time to return from the training site to the place of employment. He/She is also entitled to a reasonable rest time, and a reasonable time thereafter if return is delayed by factors beyond his/her control. If an employee fails to report to his/her job within this specified time period, he/she may be subject to the penalties which would be imposed on any employee who is tardy or absent without permission.

If an employee separates his/her employment with the Employer in order to enlist in the Reserves or National Guard, he/she must reapply to the Employer within 31 days after his/her separation from initial active duty for training in the Reserves or National Guard in order to retain reemployment rights.

**Section 4. Seniority Rights.** During an unpaid military leave of absence, the seniority of an employee, for purposes of accrual and vesting rights, shall continue and accumulate in the same manner and to the same extent as if said leave of absence had not been granted, and the employee had been continuously in the employ of the Employer. An employee on military leave of absence shall be entitled to all rights and benefits as are defined by applicable federal statutes.

**Section 5. Probationary Employee.** An employee who is serving on probation may likewise be granted a military leave of absence under the provisions of the above sections of this article.

**Section 6. Applicable Statutes.** Any employee who participates in any branch of the Military Service of the United States is covered by and subject to Federal Statute, U.S. Code Title 38, Chapter 43, and all other applicable statutes.

**Section 7. Compensation.** MCA will compensate employees on annual military training assignments and serving under federal or state active duty assignments the difference between their military base pay and their regular base hourly rate of pay.

## **ARTICLE 30** **DUTY-INCURRED INJURY**

All employees shall be covered by the South Dakota Codified Law, Title 62. Employees that are injured on the job must report their injuries to a supervisor or a management employee immediately upon the occurrence of an injury or as soon thereafter as practicable within three business days. A First Report of Injury or incident report will be completed by the employee and submitted to the Business Manager who will forward it to the insurance company.

**Section 1. Eligibility.** An employee who sustains a disabling injury or illness by accident arising out of and in the course of employment for the Agency, and the disabling injury was not caused by willful neglect on the part of the employee, shall in lieu of sick leave receive workers' compensation payments at the rate of 80 percent of his or her regular base weekly earnings, not including overtime, as of the date of the injury or illness for a period not to exceed one hundred and eighty (180) days from the date of injury or illness.

Thereafter, workers' compensation payments shall be made at the times and at the rate from time to time specified by South Dakota Workers' Compensation Law.

While receiving workers' compensation payments at the state rate, the employee may use accrued sick leave, vacation, or other available paid time off benefits to maintain regular base weekly earnings, not including overtime, as of the employee's last day worked immediately preceding the most recent absence from work due to a duty-incurred injury or illness.

**Section 2. Light-Duty Assignments.** If, upon determination of an employee's physical restrictions by the employee's medical doctor, and/or by an Agency-designated medical doctor at the Agency's request, the employee is determined to be physically able to perform duties of another nature, the employee may be assigned to those duties for the duration of the disability at the sole discretion of the Agency.

Any employee reassigned to duties of another nature shall be compensated at a rate of pay determined by the Agency commensurate with the temporary assigned duties, not to exceed the employee's rate of pay as of the date of injury. If the rate of pay for the light duty assignment is less than the employee's rate of pay as of the date of injury, the pay may be supplemented with workers' compensation payments as specified by South Dakota Workers' Compensation Law. This reassignment may continue for a period determined by the Agency not to exceed six months after reassignment to other duties. Upon the employee's return to his full unrestricted duties held at the time of injury, the employee shall be paid at his current rate of pay including step advancements or pay rate adjustments he would have otherwise received during the absence from his regular duties.

If light duty within those restrictions is not available with the Agency, the employee may be permitted to engage in outside employment within the work restrictions set by the physician due to the duty-incurred injury or illness.

**Section 3. Personal Activities.** Activities of a personal nature carried out while on duty, on or off Agency property, which are not directly related to and do not arise out of an employee's employment as an employee of the Agency do not constitute employment-related activities. Therefore, injuries incurred or arising out of these activities shall not be considered "duty-incurred" for purposes of the application of this article, and will not be considered duty-incurred injuries for purposes of determining compensability under the workers' compensation statutes of the state of South Dakota.

Any injury or illness incurred through personal activities while off duty on or off Agency property shall not be considered "duty-incurred" for purposes of the application of this article or the application of state Workers' Compensation statutes.

**Section 4. Agency Designated Holidays.** If a Agency-designated holiday occurs while an employee is absent from work due to a duty-incurred injury or illness, the employee shall be paid regular holiday pay for that day at the employee's regular base hourly rate of pay as of the employee's last day worked immediately preceding the absence from work. This regular holiday pay shall be taxable and shall be paid in lieu of the workers' compensation payment at the rates specified in this section for that day. This substitution of holiday pay is only administrative and will not otherwise affect the employee's worker's compensation status.

**Section 5. Administration and Application.** Administration: Compensation and coverage for duty-incurred injuries or disease incurred by employees covered by this agreement shall be administered in all respects according to the provisions and intent of South Dakota Workers' Compensation Law, except as specifically otherwise provided in this agreement.

**Section 6. Work Safety.** No employee shall be subject to disciplinary action by reason of the employee's failure or refusal to operate or handle any piece of equipment or work in any work situation that the employee believes will place him/her or a third party in imminent danger of injury. If it is later proven that the employee's objection was not legitimate, then this paragraph would not prevent the Agency from taking disciplinary action for the employee's failure or refusal to perform his/her duties.

It is the obligation of any employee to immediately contact his/her immediate supervisor, coordinator, or management employee to report any equipment or working condition that appears to be unsafe for authorization to proceed with operations. If it is found that an employee has knowingly failed to meet this obligation, that employee may be subject to disciplinary action.

## **ARTICLE 31 RETIREMENT**

All full-time Metro employees participate in the South Dakota Retirement System retirement benefits are funded by employee contributions and matched by equal contributions from the Employer. All retirement and employee and survivor disability benefits are established by the South Dakota Retirement System and may be subject to change during the term of this Agreement. Employer agrees to continue participation in the South Dakota Retirement System and to make all employer contributions as may be required during the term of this Agreement.

## **ARTICLE 32 INSURANCE**

### **Section 1. Group Health and Dental Insurance.**

- a) Regular full-time employees are eligible to participate in the Metro Communications Agency Employee Group Health Benefit Plan, or reduced hours if required to comply with state or federal requirements. The condition of eligibility for coverage of employees and their dependents for health/dental insurance programs are outlined in the respective summary plan description.
- b) The Employer and employees will pay the following percentage of the total premium cost of health and dental insurance:

<b>Agency Contribution</b>	<b>Employee Contribution</b>
75%	25%

**Section 2. Life Insurance.** During the term of this agreement, the Employer shall provide full-time employees covered by this agreement with life insurance coverage equal to \$15,000. The Employer reserves the right to provide this life insurance under a group insurance policy or policies issued by an insurance company selected by the Employer.

**Section 3. Plan Modifications.** The Employer reserves the right to make program modifications to the Health and Dental Insurance Plans with feedback from union leadership. A Health Insurance Committee shall be established, composed of up to two persons appointed by the Employer and up to two employees appointed by the Union. The purpose of the Committee is to review available health insurance plans and provide feedback to the Director regarding such plans.

## **ARTICLE 33 NON-DISCRIMINATION**

**Section 1.** The Employer and the Union each agree that they will not discriminate against any employee due to the employee's race, color, creed, gender, disability, sexual orientation, gender identity, national origin, veteran's status, membership or non-membership in the Union, or any other protected group in accordance with state and federal law.

Any dispute concerning the interpretation and/or application of this section shall be processed through the appropriate federal or state agency or court rather than through the grievance procedure set forth in this Agreement.

**Section 2.** The parties agree that the Employer may take reasonable action that is in accord with what is legally permissible under the Americans with Disabilities Act (ADA) in order to be in compliance with the ADA, notwithstanding any other provisions of this Agreement.

## **ARTICLE 34 DRUG- AND ALCOHOL-FREE WORKPLACE**

It is the responsibility of all Metro Communications employees to abide by the terms of the Employer's Drug- and Alcohol-Free Workplace policies as a condition of employment. Any violations or noncompliance with these policies will subject an employee to disciplinary action up to and including termination. The extent and type of action taken with an employee who violates the Employer's drug- and alcohol-free workplace policies will be based upon:

- a) The seriousness of the violation or offense;
- b) The employee's past employment and performance record;
- c) The impact of the violation upon the employee's future job performance; and
- d) The employee's willingness to participate in controlled substance or alcohol abuse assistance and rehabilitation.

The Employer and the Union will encourage employees to seek assistance whenever necessary to overcome a drug or alcohol abuse problem. The Employer provides access to controlled substance and alcohol abuse counseling and rehabilitation through the Employer's Employee Assistance Program (EAP) for all of its regular employees. Employees needing help in dealing with such problems are encouraged to use the Employee Assistance Program to aid them in overcoming their illness. Conscientious efforts to seek such help will not jeopardize any employee's job.

Current employees, including those subject to disciplinary action if the decision has been made to retain the employee, shall be permitted to take a family/medical leave of absence, as provided in the Leaves of Absence article of this agreement, for the purpose of undergoing medically supervised substance abuse treatment and rehabilitation through a treatment program approved by the Employer. Such leave may be approved if requested after the employee has violated the provisions of the Drug- and Alcohol-Free Workplace policies.

All employees covered by this agreement, who are not mandatorily subject to Federal FHWA drug and alcohol testing regulations, shall be subject to random and post-accident drug and alcohol testing. For purposes of the application of the post-accident testing provisions of the Employer's Drug and Alcohol Free Workplace policy, all Employer-owned or -leased vehicles or vehicles operated by the City or the County shall be considered in the application of this policy.

The Employer's Drug- and Alcohol-Free Workplace Policy, insofar as it impacts the terms and conditions of employment for employees covered by this agreement, shall not be modified unless negotiated with the Union. The Employer reserves the right to make modifications as may be required by law.

## **ARTICLE 35** **COMMITTEE FOR UNION-MANAGEMENT COOPERATION**

**Section 1. Composition.** The parties recognize the benefit of exploration and study of current and potential problems and differences and an exchange of views and information by meetings of representatives of the parties. Accordingly, the Employer and the Union shall maintain a joint committee of six members: three of which shall be appointed by the Employer, to include the Director and/or Deputy Director, and three by the Union. However, reasonable accommodations will be made in the event of unforeseen circumstances such as scheduling conflicts.

**Section 2. Purpose.** It is agreed that the function of this joint committee shall be to attempt to head off minor problems, resolving a situation before it becomes major and ripens into a grievance, and discuss problems or changes in operations that might improve efficiency, productivity or the working environment. The committee shall not engage in collective bargaining nor in any way modify, add to, or detract from the provisions of this basic Contract.

Safety briefings or similar communication may be utilized to communicate significant events and related response plans with Union leadership when timely in-person meetings are not practical, especially in situations of high security for operational staff.

These communications do not alter the chain of command but are instead an opportunity for Union leadership to be apprised of appropriate details and provide opportunity for feedback.

**Section 3. Meetings.** Committee meetings shall be held once each month, during business hours and following union compensation guidelines as provided in this contract. Meetings are not to exceed two hours per month. The committee may decide to cancel and/or postpone meetings.

**Section 4. Minutes.** Minutes of the joint committee meetings shall be taken by management and distributed through agency email or memorandum.

## ARTICLE 36 NEPOTISM/CONFLICT OF INTEREST

**Section 1.** Metro Communications Agency permits the employment of qualified relatives and roommates of employees as long as such employment does not, in the opinion of the Agency, create actual conflicts of interest. For purposes of this policy, "qualified relative" is defined as a spouse, child, parent, sibling, grandparent, grandchild, corresponding in-law, or "step" relation. For the purposes of this policy "roommate" is defined as any persons sharing the same permanent address. The Agency will use sound judgment in the placement of qualified relatives and roommates in accordance with the following guidelines:

- a) Employees who are qualified relatives or roommates, are permitted to work on the same shift, provided no direct reporting or supervisor to subordinate relationship exists. That is, no employee is permitted to work within "the chain of command" when one's qualified relative or roommate's work responsibilities, salary, hours, career progress, benefits or other terms and conditions of employment could be influenced by the other qualified relative or roommate.
- b) Employees who are qualified relatives or roommates may have no influence over the wages, hours, benefits, career progress and other terms and conditions of the other qualified relative or roommate.
- c) Employees who marry or whose living arrangement changes to one where they become a qualified relative or roommate while employed are treated in accordance with these guidelines. That is, if in the opinion of the Agency, a conflict arises as a result of the relationship, one of the employees may be transferred at the earliest practicable time.

Any exceptions to this policy must be approved by the Director or his/her designee.

## ARTICLE 37

### TERM

This Agreement shall be effective as of the 1st day of January, 2021, and shall remain in full force and in effect for three (3) years from the date thereafter.

This Agreement may be reopened upon written notice to the other for the purposes of modifying the agreement specifically pertaining to Article 4, Wages. Either the Agency or the Union must notify the other party of their intent to modify the Agreement no later than February 1, 2022 for 2023 modifications. Any modifications negotiated to these specific articles of this Agreement under the terms of this section shall supersede terms and conditions set forth in those articles at the time of the Agreement's adoption and shall remain in effect through the Agreement's expiration date of December 31, 2023.

This contract shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing by February 1, 2023 that it desires to modify, or renegotiate, this agreement for the 2021-2023 contract. In the event that such notice is given, negotiations shall begin no later than April 1, 2023. This Agreement shall remain in full force and effect during the period of negotiations or until otherwise mutually terminated thereafter in writing by the parties.

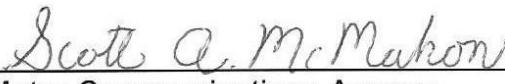
For the Employer:  
Metro Communications Agency

---



---

Metro Management Council  
Mayor Paul TenHaken, Chair

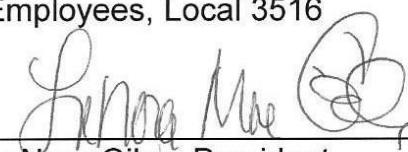
  
\_\_\_\_\_  
Scott A. McMahon

---

Metro Communications Agency  
Scott A McMahon, Director

American Federation of State,  
County, and Municipal  
Employees, Local 3516

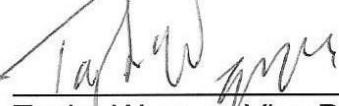
---



---

LeNora Giles, President

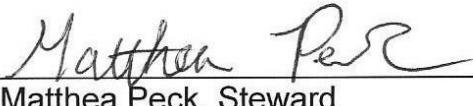
---



---

Taylor Wegner, Vice President

---



---

Matthea Peck, Steward

**EXHIBIT A**  
**PAYROLL MATRICES 2021-2023**

POSITION	Grade	2021 Payroll Matrix: (1.75%)																	
		1 6 mo	2 6 mo	3 1 yr	4 1 yr	5 1 yr	6 1 yr	7 1 yr	8 1 yr	9 1 yr	10 1 yr	11 1 yr	12 1 yr	13 1 yr	14 1 yr	15 1 yr	16 1 yr	17 1 yr	18 1 yr
Communications Operator	120	21.84	22.70	23.62	24.08	24.56	25.05	25.56	26.07	26.60	27.13	27.67	28.23	28.79	29.35	29.95	30.55	31.16	31.79
Advanced Communications Operator						1 yr	1 yr	1 yr	1 yr	1 yr	1 yr	1 yr	1 yr	1 yr					
Shift Supervisor	130	25.84	26.36	26.88	27.42	27.97	28.53	29.10	29.68	30.27	30.88	31.50	32.13	32.77	33.42	34.10	34.78		
Shift Supervisor	140	28.99	29.57	30.16	30.76	31.38	32.01	32.65	33.30	33.96	34.65	35.35	36.05	36.77	37.51	38.26	39.02		

POSITION	Grade	2022 Payroll Matrix: (1.75%)																	
		1 6 mo	2 6 mo	3 1 yr	4 1 yr	5 1 yr	6 1 yr	7 1 yr	8 1 yr	9 1 yr	10 1 yr	11 1 yr	12 1 yr	13 1 yr	14 1 yr	15 1 yr	16 1 yr	17 1 yr	18 1 yr
Communications Operator	120	22.22	23.10	24.03	24.50	24.99	25.49	26.01	26.53	27.07	27.60	28.15	28.72	29.29	29.86	30.47	31.08	31.69	32.35
Advanced Communications Operator						1 yr	1 yr	1 yr	1 yr	1 yr	1 yr	1 yr	1 yr	1 yr					
Shift Supervisor	130	26.29	26.82	27.35	27.90	28.46	29.03	29.61	30.20	30.80	31.42	32.05	32.69	33.34	34.00	34.70	35.39		
Shift Supervisor	140	29.50	30.09	30.69	31.30	31.93	32.57	33.22	33.88	34.55	35.26	35.97	36.68	37.41	38.17	38.93	39.70		

**EXHIBIT B**  
**OFFICIAL GRIEVANCE FORM**

AFSCME LOCAL \_\_\_\_\_  
STEP \_\_\_\_\_



**OFFICIAL GRIEVANCE FORM**

NAME OF EMPLOYEE \_\_\_\_\_ DEPARTMENT \_\_\_\_\_

CLASSIFICATION \_\_\_\_\_

WORK LOCATION \_\_\_\_\_ IMMEDIATE SUPERVISOR \_\_\_\_\_

TITLE \_\_\_\_\_

**STATEMENT OF GRIEVANCE:**

List applicable violation: \_\_\_\_\_

---

---

---

Adjustment required: \_\_\_\_\_

---

---

---

---

---

---

I authorize the A.F.S.C.M.E. Local \_\_\_\_\_ as my representative to act for me in the disposition of this grievance

Date \_\_\_\_\_ Signature of Employee \_\_\_\_\_

Signature of Union Representative \_\_\_\_\_ Title \_\_\_\_\_

Date Presented to Management Representative \_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

Disposition of Grievance: \_\_\_\_\_

---

---

---

**THIS STATEMENT OF GRIEVANCE IS TO BE MADE OUT IN TRIPPLICATE. ALL THREE ARE TO BE SIGNED BY THE EMPLOYEE AND/OR THE AFSCME REPRESENTATIVE HANDLING THE CASE.**

ORIGINAL TO \_\_\_\_\_

COPY \_\_\_\_\_

COPY: LOCAL UNION GRIEVANCE FILE

**NOTE: ONE COPY OF THIS GRIEVANCE AND ITS DISPOSITION TO BE KEPT IN GRIEVANCE FILE OF LOCAL UNION.**

**EXHIBIT C**  
**AUTHORIZATION FOR PAYROLL DEDUCTION OF DUES**  
**AFSCME Local 3516**

To the Metro Communications Agency, I, \_\_\_\_\_ (Name) \_\_\_\_\_, hereby authorize and direct the Metro Communications Agency to deduct from my wages regular biweekly membership dues to be paid to the elected Treasurer of the Union. This authorization is revocable upon my giving the Agency Business Manager a notice of revocation during the period of November 1 through November 30 of the calendar year.

I understand the following:

Previously signed and unrevoked written authorizations shall continue to be in effect for any employee reinstated following layoff, leave of absence, or suspension not exceeding sixty (60) days; previous authorizations of other employees rehired or reinstated shall not be considered in effect.

The authorization for deductions shall be made by the last day of the pay period to be effective in that pay period.

If the Agency Business Manager receives an employee revocation during the period of November 1 through November 30, no deductions will be made for any month in the subsequent year.

The Union shall advise the Agency Business Manager, in writing, the exact amount of regular union dues in the exact dollar amount for each Union member. If, subsequently the Union requests the Employer to deduct additional union dues, the request shall be effective only upon written assurance by the Union to the Agency Business Manager that additional amounts are regular union dues duly approved in accordance with the Union constitution and bylaws.

The Employer shall not be liable for the remittance or payment of any sums other than those constituting actual deductions made; and, if for any reason it fails to make a deduction for any employee as above provided, it shall make that deduction from the employee's next pay period in which union dues are normally deducted after written notification to the Agency Business Manager of the error or omission. If the Employer makes an overpayment to the Union, the Employer will deduct that amount from the next remittance to the Union. The Union agrees to indemnify and hold the Employer harmless against any and all claims, suits, orders, or judgments brought or issued against the Employer as a result of any action taken or not taken by the Employer under the provisions of this Article.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT D**  
**REQUEST FOR ACCUMULATED VACATION OPTION**  
**40/40/40**

40/40/40 Policy: An employee may request to be paid for the equivalent of their regularly scheduled work week (for example (40) hours) in accumulated vacation in conjunction with taking the equivalent of their regularly scheduled work week (for example (40) hours) of vacation provided that after the reduction of the combined total of these hours from their vacation accrual, the employee retains a minimum vacation accrual balance equal to one regularly scheduled work week (for example (40) hours). The cash out of the vacation will be paid with the last payroll prior to the vacation. If the employee does not use the equivalent of their regularly scheduled work week of requested vacation, the employee's pay will be reduced by the cash out on the next payroll. All vacation required to be taken under this policy must be taken in continuous blocks of time any may not be segmented.

To request pay for accumulated vacation under the above policy, please complete the following. In order to ensure payment before vacation, this information **must be received by the Agency Business Manager at least TWO WEEKS PRIOR** to the first day of your vacation. Remember, you must first have authorization for your vacation.

Leave Totaling: \_\_\_\_\_

#Hours	Day of Week	Starting Time	Month/Day/Year

Day of Week	Ending Time	Month/Day/Year

*I am requesting to be paid for the equivalent hours of my regularly scheduled work week of accumulated vacation in conjunction with taking an equal number of hours of vacation. I understand that after the reduction of the combined hours of vacation accruals, I must have a minimum vacation balance of the equivalent of one regularly scheduled work week.*

Employee Name (Please Print) \_\_\_\_\_ Date Requested \_\_\_\_\_

Employee Signature \_\_\_\_\_

APPROVED BY:

Manager \_\_\_\_\_

Business Manager Use Only \_\_\_\_\_

Date form received \_\_\_\_\_ Date of cash out \_\_\_\_\_  Vacation taken/Pay date taken \_\_\_\_\_

## APPENDIX A

### MORAL TURPITUDE REFERENCES

#### **South Dakota Administrative Rule:**

**2:05:03:02. Moral turpitude.** For the purpose of this chapter, the term moral turpitude in the phrase, misdemeanor involving moral turpitude, has the same meaning as in SDCL 22-1-2(25) and includes a conviction or suspended imposition of sentence for any of the following:

- (1) Driving under the influence of alcoholic beverages or drugs or with more than the legally permissible amount of blood alcohol;
- (2) Interference with another's civil rights;
- (3) Practicing a profession without a required license;
- (4) Malfeasance, misfeasance, or nonfeasance in public office; or
- (5) An offense involving marijuana or a controlled substance.

**Source:** 25 SDR 124, effective April 8, 1999.

**General Authority:** SDCL 34-45-26, 34-45-29.

**Law Implemented:** SDCL 34-45-24, 34-45-29.

#### **South Dakota Codified Law:**

##### **22-1-2. Definitions.**

Terms used in this title mean:

- (1) If applied to the intent with which an act is done or omitted:
  - (a) The words, "malice, maliciously," and all derivatives thereof import a wish to intentionally vex, annoy, or injure another person, established either by proof or presumption of law;
  - (b) The words, "intent, intentionally," and all derivatives thereof, import a specific design to cause a certain result or, if the material part of a charge is the violation of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature;
  - (c) The words, "knowledge, knowingly," and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge if that person is aware that the facts exist which bring the act or omission within the provisions of any statute. Knowledge of the unlawfulness of such act or omission is not required;
  - (d) The words, "reckless, recklessly," and all derivatives thereof, import a conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances if that person consciously and unjustifiably disregards a substantial risk that such circumstances may exist;
  - (e) The words, "neglect, negligently," and all words derived thereof, import a want of attention to the nature or probable consequences of an act or omission which a prudent person ordinarily bestows in acting in his or her own concerns;
  - (f) If the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, intent, or malice also constitutes sufficient culpability for such element. If recklessness suffices to establish an element of the offense, then knowledge, intent or malice also constitutes sufficient culpability for such element. If knowledge suffices to establish an element of an offense, then intent or malice also constitutes sufficient culpability for such element. If intent suffices to establish an element of an offense, then malice also constitutes sufficient culpability for such element;

- (2) "Actor," the person who takes the active part in a transaction;
- (3) "Affirmative defense," an issue involving an alleged defense to which, unless the state's evidence raises the issue, the defendant, to raise the issue, must present some credible evidence. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense;
- (4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;
- (5) "Check," any check, draft, order or other commercial device which orders a financial institution to pay a sum certain of money on its presentation;
- (6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;
- (7) "Consideration," any type of property or thing of legal value, whether delivered in the past, present or to be delivered in the future. The term includes an unfulfilled promise to deliver. The term may include an advantage or benefit to the promisor or a loss or detriment to the promisee. Any amount, advantage or inconvenience, no matter how trifling, is sufficient to constitute consideration;
- (8) "Controlled weapon" includes any firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;
- (9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;
- (9A) "Critical infrastructure facility," any of the following facilities, whether in operation, idle, or under construction, maintenance or repair, that are enclosed by a fence or other physical barrier that is obviously designed to exclude trespassers and are clearly marked with a sign that is posted on the property and reasonably likely to come to the attention of any trespasser that indicates that entry is forbidden, or any pole or tower used for any of the purposes in this subdivision, whether enclosed or marked with a sign or not:
  - (a) Electric utility facility, including a power generation facility, an electric transmission facility, an electric station or substation, or any other facility used to support the generation, transmission, or distribution of electricity;
  - (b) Water tower, municipal or rural water system well, water intake structure, or water treatment facility;
  - (c) Natural gas utility facility, including a regulator station, a compressor station, an odorization facility, a mainline valve, a natural gas storage facility, or any other facility used to support the acquisition, transmission, distribution, or storage of natural gas;
  - (d) Tank farm, pipeline terminal, pipeline, pump or compressor station or storage facility for gasoline, crude or refined or synthetic oil, ethanol, propane, liquid natural gas, or other hazardous liquid;
  - (e) Transportation facility, including a port, railroad switching yard, or trucking terminal;
  - (f) Hazardous waste storage, treatment, or disposal facility;
  - (g) Oil and gas locations, facilities, and equipment, including temporary drilling rigs, permanent oil and gas product facilities, and artificial lift equipment;
  - (h) Communications services facility, infrastructure or equipment involved in the carriage of essential communications services for both wired and wireless communications, switching, routing, repeater/amplifier equipment or other electronic equipment, macro and micro wireless towers using federally licensed

- spectrum, video headend equipment, and satellite communications receiver or transmission equipment;
- (i) Dam that is owned by the state or a subdivision;
  - (j) Facility either(i) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)); or(ii) is identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program; or
  - (k) Any construction area, pipe yard, or laydown yard for any of the above, whether permanent or temporary in nature;
- (10) "Dangerous weapon" or "deadly weapon," any firearm, stun gun, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm;
- (11) "Dealer in stolen property," any person who:
- (a) Is found in possession or control of property stolen from two or more persons on separate occasions; or
  - (b) Has received stolen property in another transaction within the year preceding the commencement of the prosecution; or
  - (c) Trades in property similar to the type of stolen property received and acquires such property for a consideration which that person knows is substantially below its reasonable value;
- (12) "Deprive," to take or to withhold property of another or to dispose of property of another so as to make it unlikely that the owner will receive it;
- (13) "Destructive device,"
- (a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or
  - (b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;
  - (c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;
- (14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5;
- (15) "Financial institution," a bank, insurance company, credit union, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;
- (16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the term, gunpowder, includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;
- (17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon;
- (18) "Government," the United States, any state, county, municipality, school district, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of any of the foregoing;
- (19) "Immediate family," any spouse, child, parent, or guardian of the victim;

- (20) "Insanity," the condition of a person temporarily or partially deprived of reason, upon proof that at the time of committing the act, the person was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated unlawful or antisocial behavior;
- (21) "Intoxication," a disturbance of mental or physical capacities resulting from the introduction of substances into the body. Intoxication is not, in itself, a mental disease or defect;
- (22) "Law enforcement officer," any officer, prosecutor, or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention, detection, or prosecution of crimes, for the enforcement of the criminal or highway traffic laws of the state, or for the supervision of confined persons or those persons on supervised release or probation;
- (23) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device;
- (24) "Mental illness," any substantial psychiatric disorder of thought, mood or behavior which affects a person at the time of the commission of the offense and which impairs a person's judgment, but not to the extent that the person is incapable of knowing the wrongfulness of such act. Mental illness does not include abnormalities manifested only by repeated criminal or otherwise antisocial conduct;
- (25) "Moral turpitude," an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a person owes to his fellow man or to society in general;
- (26) "Motor vehicle," any automobile, motor truck, motorcycle, house trailer, trailer coach, cabin trailer, or any vehicle propelled by power other than muscular power;
- (27) "Obtain,"
  - (a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the actor or another; or
  - (b) In relation to labor or service, to secure performance thereof;
- (28) "Occupied structure," any structure:
  - (a) Which is the permanent or temporary habitation of any person, whether or not any person is actually present;
  - (b) Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or
  - (c) In which at the time any person is present;
- (29) "Offense" or "public offense," any crime, petty offense, violation of a city or county ordinance, or act prohibited by state or federal law;
- (30) "Pass," to utter, publish or sell or to put or send forth into circulation. The term includes any delivery of a check to another for value with intent that it shall be put into circulation as money;
- (31) "Person," any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society. If the term is used to designate a party whose property may be the subject of a crime or petty offense, it also includes the United States, any other country, this state, and any other state or territory of the United States, and any of their political subdivisions, agencies, or corporations;
- (32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive;
- (33) "Private place," a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;
- (34) "Process," any writ, warrant, summons, or order issued in the course of judicial proceedings;
- (35) "Property," anything of value, including, but not limited to, motor vehicles, real estate, tangible and intangible personal property, contract rights, choses-in-action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic

- animals, food and drink, electric or other power, services, and signatures which purport to create, maintain, or extinguish any legal obligation;
- (36) "Property of another," property in which any person other than the actor has an interest upon which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of an actor may not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;
- (37) "Public employee," any person employed by the state or any of its political subdivisions, who is not a public officer;
- (38) "Public office," the position held by a public officer or employee;
- (39) "Public officer," any person who holds a position in the state government or in any of its political subdivisions, by election or appointment, for a definite period, whose duties are fixed by law, and who is invested with some portion of the sovereign functions of government;
- (40) "Public record," any official book, paper, or record created, received, or used by or in any office or agency of the state or of any of its political subdivisions;
- (41) "Publish," to disseminate, circulate or place before the public in any way, other than by speech which is not mechanically or electronically amplified;
- (42) "Receive," to acquire possession, control or title, or to lend or borrow on the security of the property;
- (43) "Service," labor that does not include a tangible commodity. The term includes, but is not limited to: labor; professional advice; telephone, cable television and other utility service; accommodations in hotels, restaurants or elsewhere; admissions to exhibits and entertainments; the use of machines designed to be operated by coin or other thing of value; and the use of rental property;
- (44) "Seller," any person or employee engaged in the business of selling pistols at retail;
- (44A) "Serious bodily injury," such injury as is grave and not trivial, and gives rise to apprehension of danger to life, health, or limb;
- (45) "Short rifle," any rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;
- (46) "Short shotgun," any shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches;
- (47) "Signature," any name, mark or sign written with intent to authenticate any instrument or writing;
- (48) Deleted by SL 2005, ch 120, § 357
- (49) "Structure," any house, building, outbuilding, motor vehicle, watercraft, aircraft, railroad car, trailer, tent, or other edifice, vehicle or shelter, or any portion thereof;
- (50) "Stun gun," any battery-powered, pulsed electrical device of high voltage and low or no amperage that can disrupt the central nervous system and cause temporary loss of voluntary muscle control of a person;
- (50A) "Unborn child," an individual organism of the species homo sapiens from fertilization until live birth;
- (51) "Unoccupied structure," any structure which is not an occupied structure;
- (52) "Vessel," if used with reference to shipping, any ship of any kind and every structure adapted to be navigated from place to place;
- (53) "Victim," any natural person against whom the defendant in a criminal prosecution has committed or attempted to commit a crime;
- (54) "Voluntary intoxication," intoxication caused by substances that an actor knowingly introduces into his or her body, the tendency of which is to cause intoxication;
- (55) "Written instrument," any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of value, right, privilege or

identification, which is capable of being used to the advantage or disadvantage of some person.

**Source:** Preliminary clause: SDC 1939, § 13.0102; SL 1976, ch 158, § 1-1; SL 1977, ch 189, § 2; SL 1994, ch 351, § 41. Subd. (1): SDC 1939, § 13.0102 (1); SL 1976, ch 158, § 1-1 (1); SL 1977, ch 189, § 3; SL 1978, ch 158, § 1; SL 2005, ch 120, § 357. Subds. (2), (3): SL 1976, ch 158, § 1-1 (2), (3). Subd. (4): SL 1985, ch 190, § 3. Subd. (5): SL 1976, ch 158, § 1-1 (5); SL 2005, ch 120, § 357. Subd. (6): SL 1985, ch 190, § 4. Subd. (7): SL 1976, ch 158, § 1-1 (6). Subd. (8): SL 1976, ch 158, § 14-1; SL 1977, ch 189, § 4; SL 2005, ch 120, § 357. Subd. (9): SL 1976, ch 158, § 1-1 (7); SL 1977, ch 189, § 5; 1 158, § 2; SL 1978, ch 169, § 9; SL 1988, ch 185; SL 1992, ch 165; SL 2001, ch 145, § 2; SL 2002, ch 102, § 1; SL 2005, ch 120, § 357; SL 2007, ch 141, § 1. Subd. (10): SL 1976, ch 158, § 1-1 (8); SL 2005, ch 120, § 357. Subd. (11): SL 1976, ch 158, § 30A-1 (1); SL 1977, ch 189, § 6; SL 2005, ch 120, § 357. Subd. (12): SL 1976, ch 158, § 30A-1 (2). Subd. (13): SL 1972, ch 140, § 1 (a); SDCL Supp, § 22-14A-1 1976, ch 158, § 1-1 (9); SL 1977, ch 189, § 7. Subd. (14): SL 1972, ch 140, § 1 (b), (c); SDCL Supp, §§ 22 22-14A-3; SL 1976, ch 158, § 1-1 (10). Subd. (15): SL 1976, ch 158, § 1-1 (11). Subd. (16): SL 1976, ch 158, § 1-1 (12); SL 1977, ch 189, § 8; SL 2005, ch 120, § 357. Subd. (17): SL 1976, ch 158, § 14-1 (1). Subd. (18): SL 1976, ch 158, § 30A-1 (3). Subd. (19): SL 1986, ch 192, § 2; SL 2005, ch 120, § 357. Subd. (20): SL 1983, ch 174, § 2; SL 2005, ch 120, § 357. Subd. (21): SL 1976, ch 158, § 1-1 (14). Subd. (22): SL 1976, ch 158, § 1-1 (15); SL 1977, ch 189, § 9; SL 2005, ch 120, § 357; SL 2011, ch 114, § 1. Subd. (23): SL 1976, ch 158, § 14-1 (2); SL 1977, ch 189, § 10 Subd. (24): SL 1976, ch 158, § 1-1 (16); SL 1977, ch 189, § 11; SL 1983, ch 174, § 1; SL 2005, ch 120, § 357. Subd. (25): SL 1976, ch 158, § 1-1 (17). Subd. (26): SL 1976, ch 158, § 1-1 (18); SL 1977, ch 189, § 12; SL 2005, ch 120, § 357. Subd. (27): SL 1976, ch 158, § 30A-1 (4). Subds. (28) to (30): SL 1976, ch 158, § 1-1 (19) to (21). Subd. (31): SDC 1939, § 13.0102 (4); SL 1976, ch 158, § 1-1 (22); SL 1995, ch 122, § 2; SL 2005, ch 120, § 357. Subds. (32) to (35): SL 1976, ch 158, § 1-1 (23) to (26); SL 2005, ch 120, § 357. Subd. (36): SL 1976, ch 158, § 30A-1 (5); SL 2005, ch 120, § 357. Subds. (37) to (41): SL 1976, ch 158, § 1-1 (27) to (31); SL 2005, ch 120, § 357. Subd. (42): SL 1976, ch 158, § 30A-1 (6). Subd. (43): SL 1976, ch 158, § 1-1 (32); SL 1977, ch 189, § 13. Subd. (44): SL 1985, ch 190, § 5. Subd. (44A): SL 2005, ch 120, § 114. Subd. (45): SL 1976, ch 158, § 14-1 (3); SL 2005, ch 120, § 357. Subd. (46): SL 1976, ch 158, § 14-1 (4); SL 2005, ch 120, § 357. Subd. (47): SDC 1939, § 13.0102 (5); SL 1976, ch 158, § 1-1 (32); SL 2005, ch 120, § 357. Subd. (48): SL 1976, ch 158, § 30A-1 (7); SL 2005, ch 120, § 357. Subd. (49): SL 1976, ch 158, § 1-1 (33); SL 2005, ch 120, § 357. Subd. (50): SL 1985, ch 175, § 1. Subd. (50A): SL 1995, ch 122, § 1. Subd. (51): SL 1976, ch 158, § 1-1 (34). Subd. (52) SDC 1939, § 13.0102 (6); SL 1976, ch 158, § 1-1 (35); SL 2005, ch 120, § 357. Subd. (53): SL 1986, ch 192, § 2. Subd. (54): SL 1976, ch 158, § 1-1 (36); SL 2005, ch 120, § 357. Subd. (55): SDC 1939, § 13.4102; SDCL § 22-39-34; SL 1976, ch 158, § 1980, ch 264, § 1; SL 2020, ch 79, § 1.