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A COLLECTIVE BARGAINING AGREEMENT

BETWEEN

THE TALLMADGE PART-TIME FIREFIGHTERS ASSOCIATION

ON BEHALF OF THE

TALLMADGE PART-TIME FIREFIGHTERS

AND THE

CITY OF TALLMADGE, OHIO

January 1, 2012 – December 31, 2014

PART-TIME FIREFIGHTERS CONTRACT

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PART-TIME FIREFIGHTERS CONTRACT

1. PREAMBLE

This Agreement is made and entered into by the City of Tallmadge, hereinafter referred to as the Employer, and the Tallmadge Part-Time Firefighters Association representing the Part-Time Firefighters in the City of Tallmadge, and hereinafter referred to as the Association.

2. PURPOSE AND INTENT

In an effort to continue harmonious and cooperative relationships with its employees and to insure the orderly and uninterrupted efficient operation of government, the Employer now desires to enter into an agreement reached through collective bargaining which will have for its purposes, among others, the following:

1. To recognize the legitimate interests of the Part-Time Firefighters to participate through collective bargaining in the determination of the terms and conditions of their employment.
2. To promote fair and reasonable working conditions.
3. To promote individual efficiency and service to the citizens of the City of Tallmadge.
4. To avoid interruption or interference with the efficient operation of the Employer's business.
5. To provide a basis for the adjustment of matters of mutual interest by means of amicable discussion.

3. RECOGNITION

The employer hereby recognizes the Association as the sole and exclusive bargaining agent with respect to wages, hours, and other terms and conditions of employment, as provided by the State Employment Relations Act, for the part-time employees who serve in the categories outlined in Paragraph No. 11 (hereinafter referred to as the Part-Time Firefighters). All other employees of the Employer are excluded from the bargaining unit.

3A. PROBATIONARY EMPLOYEE

All probationary employees shall not be entitled to coverage under the "discipline and discharge" portion of this Agreement. The probationary period shall be for the twelve (12) month period following the hiring of new employees. However, a new employee's probationary period can be extended for an additional twelve (12) months, or for a total of two (2) years, in any situation in which the probationary employee receives an unfavorable written evaluation from the Fire Chief or his designee, prior to the conclusion of his initial twelve (12) month probationary period.

New hires will complete a 90 day orientation and during that period will be scheduled at the discretion of the Chief. After completing 60 days of the orientation period, the Chief will determine if the new hire may sign up for shifts on the regular sign-up schedule for shifts starting the 1st day of the month following their 90 day orientation. If not released to sign up for shifts, the new hire will meet with the Chief to discuss his concerns and outline a plan of action so the new hire can be released to sign up for regular shifts.

4. MANAGEMENT RIGHTS

Not by way of limitation of the following, but to only indicate the type of matters or rights, which belong to and are inherent to the Employer, the Employer retains the right to:

1. Hire, discharge, transfer, suspend and discipline the Part-Time Firefighters for just cause;
2. Determine the number of persons required to be employed, laid off or discharged for just cause;
3. Determine the qualifications of the Part-Time Firefighters covered by this Agreement;
4. Determine the starting and quitting time and the number of hours to be worked by the Part-Time Firefighters;
5. Make any and all reasonable rules and regulations;
6. Determine the work assignments of the Part-Time Firefighters;
7. Determine the basis for selection, retention and promotion of employees to or for positions that are not within the bargaining unit established by this Agreement;
8. Determine the type of equipment used and the sequence of work processes;
9. Determine the making of technological alterations by revising either process or equipment, or both;
10. Determine work standards and the quality and quantity of work to be produced;
11. Select and locate buildings and other facilities;
12. Establish, expand transfer and/or consolidate work processes and facilities;
13. Consolidate, merge or otherwise transfer any and all of its facilities, property, processes or work with or to any other municipality or entity or effect or change in any respect the legal status, management responsibility of such property, facilities, processes or work;
14. Terminate or eliminate all or any part of its work or facilities.

In addition, the Association agrees that all of the functions, rights, powers, responsibilities and authority of the Employer in regard to the operation of its work and business and specifically abridged, deleted, granted or modified by the express and specific written provisions of the Agreement are, and shall remain, exclusively those of the Employer and shall not be subject to the Grievance Procedure herein contained.

5. NO STRIKE/LOCKOUT

The Association hereby affirms and agrees that it will not, either directly or indirectly, call, sanction, encourage, finance or assist in any way, nor shall any employee instigate or participate, either directly or indirectly, in any strike, slowdown, walkout, work stoppage, or other concerted interference with or the withholding of services from the Employer.

In addition, the Association shall cooperate at all times with the Employer in the continuation of its operations and services and shall actively discourage and attempt to prevent any violation of this Article. If any violation of this Article occurs, the Association shall immediately notify all employees that the strike, slowdown, work stoppage, or other concerted interference with or the withholding of services from the Employer is prohibited, not sanctioned by the Association and order all employees to return to work immediately.

The parties recognize that the Employer is responsible for and engaged in activities that are the basis of health and welfare of its citizens and that any violation of this Article would give rise to irreparable damage to the Employer and the public at large. Accordingly, it is understood and agreed that in the event of any violation of this Article, the Employer shall be entitled to seek and to obtain immediate injunctive relief, along with the Association indemnifying and holding the Employer harmless from any and all costs arising from the violation of this Article.

It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate discharge or other disciplinary action as determined solely by the Employer, without the employee having any recourse to any grievance or appeal procedure herein contained.

The Employer agrees that it will not lockout the Part-Time Firefighters, nor do anything else to interrupt or prevent continuity of service by members of the bargaining unit.

6. HIRING AND PROMOTION

New applicants who seek employment in the bargaining unit or bargaining unit members seeking promotions within the bargaining unit shall complete the appropriate written application and submit it to the Fire Chief. All tests shall be administered by the Tallmadge Civil Service Commission, which shall calculate the results from these tests and shall forward them to the Fire Chief, who shall in all cases make the final selection.

Firefighters holding the minimum classification of at least five (5) years service shall be eligible for one of the positions of Lieutenant. Only Lieutenants will be eligible for one of the positions of Captain. ¹The positions of Lieutenant and Captain, when vacant, may be filled at the discretion of the Fire Chief.

In filling the position of Full-Time Firefighter, members of the Association shall be preferred, all qualifications being equal. All promotions shall be filled in as expeditious a manner as possible.

7. RESIDENCY

All members of the Part-Time Firefighters' bargaining unit shall reside within a 15-mile radius of the Tallmadge Circle, at the time of appointment and continuing throughout their employment with the City of Tallmadge.

8. DETERMINATION OF LEVEL/TRAINING

For use in this agreement, the Part-Time Firefighters shall be classified as to their level of training as follows:

1. EMT-A: A member of the Tallmadge Fire Department certified by the State of Ohio as an Emergency Medical Technician (EMT) at any level less than that of EMT-P (Paramedic), and certified as Firefighter I or II.
2. EMT-P: A member of the Tallmadge Fire Department certified by the State of Ohio as an Emergency Medical Technician – Paramedic (EMT-P), and certified as Firefighter I or II.
3. Lieutenant – A member holding the rank of Lieutenant.
4. Captain- A member holding the rank of Captain.
 - All members of the Tallmadge Fire Department Part Time Association hired before January 1, 2003, shall continue at their current assigned level.
 - All EMT-A's employed by the Tallmadge Fire Department (Part Time Association) shall not be required by the City of Tallmadge to upgrade their certification for continued employment, but shall be required to maintain their certification for continued employment.
 - All EMT-P's employed by the Tallmadge Fire Department (Part Time Association) shall be required to maintain their certification for continued employment.

6. LICENSE / CERTIFICATION RESPONSIBILITY

In order to maintain proficiency within the Fire Department it is incumbent upon all members to keep all licenses and certifications current. Therefore, all members shall be required to provide the Fire Chief's office with proof of each certification and, or, license they possess. Additionally, they shall provide proof of each subsequent re-certification or re-licensing prior to the original expiring.

9. WORK PERIOD

The Part-Time Firefighters shall be required to work as follows:

The work period for the Part-Time Firefighters shall be defined as a fourteen (14) day, 106 hour period, consistent with the Fair Labor Standards Act. For the purposes of this agreement the following shall also apply:

- A. Each Part-Time Firefighter shall be required to sign up and work for seven (7), six-hour shifts each month.
 - 1. Each day of the month shall be broken up into four (4) consecutive six-hour shifts with the first beginning at midnight. The manner and priority of sign up shall be determined by the Tallmadge Firefighters' Association.
 - 2. However, all sign ups must be completed at least five (5) days prior to the beginning of the next month. In the event that any six-hour shifts are not covered by a Part-Time Firefighter, at least five (5) days prior to the beginning of the month, and there are Part-Time Firefighters who have not signed up for a minimum of seven (7) six-hour shifts, the Administration may randomly assign those Part-Time Firefighters who have not signed up for the requisite number of shifts, to cover shifts for which no Part-Time Firefighter has not signed up, up to their seven (7) shift minimum.
 - 3. A shift is considered worked when the firefighter works a minimum of 5 consecutive hours of the scheduled 6 hour shift.
 - 4. Any Part-Time Firefighter not working the required 7 shifts for two (2) consecutive months, is subject to progressive discipline up to and including dismissal, unless such absence is for just cause or excused (LOA, illness, injury, etc.)

10. ASSOCIATION ACTIVITIES

Regular Association meeting will be held on the 4th Monday of each month at Fire Station 1, 85 W. Overdale Drive, at the discretion of the Association President, without pay, at a time to be determined at least one week prior to the meeting. The City will make a concerted effort to avoid scheduling training sessions that conflict with the pre-scheduled association meeting.

There is hereby established a pooled fund of twenty four (24) hours paid time which shall be allocated annually for members of the Executive Committee of this bargaining Unit. It may not be carried over from one year to another. It shall be used only for those issues designated as "Union Business" by the Bargaining Unit. Once the fund is completely exhausted, there will be no further payment by the City of Tallmadge for Union Business.

11. WAGES AND OTHER COMPENSATION

SECTION 1 - Effective January 1, 2012 the bargaining unit members shall receive a 1.0 % increase in wages for all assigned duties in the following job classification based on their current highest pay rate in the previous year:

- | | |
|--------------------|------------------|
| 1. EMT-A Certified | \$17.33 per hour |
| 2. EMT-P Certified | \$19.14 per hour |

SECTION 2 - Effective January 1, 2013 and January 1, 2014 the bargaining unit members shall receive a 1.0 (%) percent increase in wages.

SECTION 3- In addition, the Employer and Association agree that:

1. When the Part-Time Firefighters are called out for emergency duties, they shall be paid a minimum of two (2) hours per call out.
2. Total time worked, if over two (2) hours, shall be calculated to the next nearest quarter hour.

SECTION 5 - Wages Differential for Officers:

1. Lieutenants will be paid an additional 5% over that of an EMT-P.
2. Captains will be paid an additional 5% over that of a Lieutenant.

SECTION 6 – Service Pay Payment

- A. That each member of the Association, upon completion of a full year of service defined as at least five hundred (500) hours annually, shall be entitled to remuneration in addition to that otherwise provided, in the following amounts after completion of service with the City for the following periods of time:
1. For at least five (5), but less than ten (10) years of service when completed, the total sum of two hundred dollars (\$200.00) annually.
 2. For at least ten (10), but less than fifteen (15) years of service when completed, the total sum of three hundred dollars (\$300.00) annually.
 3. For at least fifteen (15), but less than twenty (20) years of service when completed, the total sum of four hundred dollars (\$400.00) annually.
 4. For at least twenty (20) or more years of service when completed, the total sum of five hundred dollars (\$500.00) annually.

- B. For any employee who has not completed a full year of service, that is, has worked less than five hundred (500) hours during the previous year (November 1 to October 31), Service Pay shall not be paid, regardless of years in service.
- C. Service Pay payments shall be made in the amounts as contained in the above schedule, minus all deductions required by law, on the last Part-Time Firefighter pay date in November of each year.
- D. In the event a Part-Time Firefighter's Service pay increases during the year for which he is being paid in November, then such payment shall be pro-rated within the Service Pay classifications on a monthly basis with the employee receiving credit for the higher rate for the month in which, by his anniversary date, he is entitled to the higher rate.
- E. Any Part-Time Firefighter leaving for other than termination for just cause shall receive the pro-rated portion of Service Pay payment based upon the date of leaving, provided the employee has met the pro-rated requirement for hours worked to the date the employee terminates employment.
- F. Any firefighter who is on approved Leave of Absence or unable to work due to extended illness or injury shall receive a prorated portion of the Service Pay based on the months they were available to work and has averaged 42 hours per month for those months worked.

SECTION 7 – Work incentive

Any employee who works more than seven (7) shifts during a calendar month shall be paid a bonus of \$20 per shift over the 7 required shifts. A shift is defined as a work period in which the firefighter works a minimum of five (5) consecutive hours of his scheduled 6 hour shift. Hours worked prior to or beyond the scheduled shift cannot be accumulated to create a shift bonus.

Modified sick leave from Section 16 cannot be used to qualify for the \$20 work incentive bonus.

If the Fire Chief chooses to utilize a firefighter for duties such as fire prevention or computer data entry beyond the required seven (7) shifts per calendar month, the firefighter shall earn one (1) bonus shift for every six (6) hours worked on such assignment. The Fire Chief shall be the sole determinate of the recognition of these hours. His determination shall not be subject to appeal or arbitration.

12. OVERTIME COMPENSATION

Any work performed by a member of the Association in excess of that member's allowable limits, with the standard work period consisting of one hundred six (106) hours in two weeks, shall be paid in accordance with the Fair Labor Standards Act.

13. HOLIDAY BENEFITS

A Part-Time Firefighter of the Association who has been an employee in excess of thirty (30) calendar days shall be entitled to holiday benefits for those holidays listed below:

1. New Year's Day
2. Easter Sunday
3. Memorial Day
4. Independence Day (July 4th)
5. Thanksgiving Day
6. Christmas Day
7. Labor Day
8. Christmas Eve, from 12 noon until 12 midnight
9. New Year's Eve, from 12 noon until 12 midnight

In the event eligible Part-Time Firefighters work on any day listed above as a traditional holiday, they shall be paid at their regular rate of pay plus half time.

The City will include "regular rate of pay plus half time" for those hours worked on Christmas Eve and New Year's Eve between the hours of 12 Noon until 12:00 Midnight.

14. UNIFORMS

The Part-Time Firefighters, who have completed a full year of service defined as at least five hundred (500) hours worked in the year prior to the calculation of the uniform maintenance allowance, shall be entitled to a uniform maintenance allowance, irrespective of the type of assignments for which they are scheduled, for the purpose of purchasing items approved by the Administration.

- A. The amount of uniform maintenance allowance to be paid to each member of the bargaining unit who has worked a full year as defined above shall be four hundred and fifty dollars (\$450.00) annually. The uniform allowance shall be paid by check, on the March 15th pay period.
- B. Each Part-Time Firefighter shall be entitled to a uniform maintenance allowance annually subject to the following terms and conditions:
 1. That such uniform maintenance allowance period shall be computed from January 1st to December 31st of each year.
 2. That any new member hired into the bargaining unit shall be eligible for the full uniform maintenance allowance for the calendar year when they are hired.
 3. In their second calendar year of employment, the employee shall not be required to meet the full year service requirement. Their second year allowance shall be prorated according to the month in which they were hired in the first year.
 4. All members shall purchase a Class "A" dress uniform before July 1ST of the fourth year following their hire date. The details and requirements of all uniforms shall be issued by the Fire Chief.

5. Under no circumstances will an employee be granted more than one uniform allowance in any year.
6. Any firefighter who is on approved Leave of Absence or unable to work due to extended illness or injury shall receive a prorated portion of the Uniform Allowance based on the months they were available to work and has averaged 42 hours per month for those months worked.

15. INSURANCE COVERAGE

The Part-Time Firefighters shall be included under the liability insurance policies carried and paid for by the employer as well as worker's compensation insurance coverage, errors and omissions insurance, and death and disability insurance. The Part-Time Firefighters receive no benefits other than those described above or elsewhere in this Agreement.

16. MODIFIED SICK LEAVE CREDIT

Members of the Association shall **not** be entitled to sick leave. The union recognizes that this provision specifically waives any rights to sick leave benefits beyond the following provision.

Each firefighter shall earn 1 hour of modified sick time credit (but not sick leave pay) for each calendar month in which they work a minimum of 42 shift hours. If a firefighter must call off for a shift due to illness, they shall not be paid sick leave, but those modified sick leave hours shall be recorded as worked for longevity and uniform allowance calculations.

Modified sick leave credit cannot be used to qualify for the \$20 work incentive bonus of section 7. If the use of modified sick leave credit is approved by the Fire Chief, and it causes the firefighter to drop below their required seven (7) shifts per month, the firefighter may use their approved modified sick leave credit to avoid discipline resulting from working less than the required seven (7) shifts per month.

Such modified sick leave credit shall not be calculated and maintained in the Finance Department with regular sick leave credit but rather shall be calculated and maintained by the Fire Chief's Office since such modified sick leave credit is not recognized by the City of Tallmadge as "regular" sick leave.

Use of modified sick leave credit requires the approval of the Fire Chief and shall be related to illness, injury, disease, death of family member, pregnancy, or other medical condition approved by the Fire Chief. Failure to secure such approval may result in the credit's use being denied by the Fire Chief. The Fire Chief's determination of approval or disapproval shall not be subject to appeal nor arbitration.

Unused sick leave credits may accumulate from year to year but shall never exceed 60 hours.

17. MILITARY DUTY

Any member of the bargaining unit who is called to military service shall be reinstated as a member of the Fire Department upon application within ninety (90) days of his release from active duty. They shall retain their previous rank and seniority in the Fire Department.

18. PAYROLL PERIOD

The payroll period shall be defined as a four-week period, that corresponds to the regularly scheduled Employer payday. Payroll sheets must be submitted to the Fire Chief eleven (11) days prior to the pay date. Each year a Payroll Period Schedule shall be posted for the entire year.

19. DUES AND DEDUCTIONS

During the term of this Agreement, the Employer will deduct current consistent dues for the Tallmadge Firefighters Association provided that the time of such deduction, there is in the possession of the Employer a current, written and signed authorization for the deduction of dues for the employee, all subject to State and Federal laws.

Previously signed authorizations shall continue to be effective until revoked in writing,

Dues deductions shall be made at least on a monthly basis, and paid to the Association, with the Employer providing a list of those employees for whom dues deductions have been made.

The Association and the Part-Time Firefighters shall indemnify and save the City/ Employer harmless against any and all claims, demands, suits or other forms of liability that arise out of by reason of action taken or not taken by the Employer for purposes of complying with any of the provisions of this Article.

20. TRAINING REIMBURSEMENT

The City agrees to pay the Part-Time Firefighters' tuition costs when due for all state-certified training programs for certification as Firefighter, EMT-A or EMT-P, and for all required EMS continuing education courses. Additionally, the City agrees to pay the tuition cost when due for any other Fire, EMS, or other Fire Service related training programs after prior approval by the Administration. At no time will the Firefighter be expected to pay for such courses, and then await reimbursement by the Employer.

However, the Association recognizes the high cost of tuition for this training. Therefore, the Association on behalf of the Part-Time Firefighters, agrees that any Part-Time Firefighter will reimburse the City for certain tuition costs advanced on their behalf as follows:

1. The Firefighter will repay the City 100% of tuition costs advanced by the City for their certification as Firefighters, EMT-A or EMT-P or any other training if the Firefighter fails to satisfactorily complete such course(s). This repayment obligation may be imposed upon the Firefighter who fails to satisfactorily complete such course(s) and who cannot demonstrate good cause for the non-completion of said courses, or leaves employment within three (3) years of completion of such course(s).

When an employee is denied a request for payment by the Administration, the employee may file a written appeal to a committee consisting of the Fire Chief, the Director of Administration and a member of the Association. The committee will meet to discuss any appeals filed by a member of the Association.

A travel or related expense may be the subject of reimbursement only if such event is recommended by the Fire Chief and approved by the Director of Public Safety in advance of incurring such expense.

Such travel reimbursement may be given only for official City business requiring the use of non-city owned transportation and shall be reimbursed at the maximum rate allowed by the I.R.S. only when such business requires travel in excess of a sixty (60) mile radius of the City:

1. In addition, sums will be paid for road or bridge toll charges and parking.

No travel related expenses other than that provided in above shall be paid unless such travel requires overnight stay by virtue of such duties performed or distance traveled.

If a member of the bargaining unit is entitled to travel, related expenses other than as mileage, as provided above, such expenses shall be those that are solely related to the member and shall include all conditions and restrictions hereinafter imposed:

1. No advance will be granted for amounts less than twenty-five dollars (\$25.00)
2. Reimbursement of parking fees will be made upon presentation of receipts when travel is by City car or by private car eligible for mileage reimbursement.
3. Reimbursement for lodging shall be only on the basis of single occupancy; unless more than one employee is on official City business, in which case double occupancy rates will be paid.
4. Reimbursement will be made for telephone charges only when such calls are solely for the purpose of official City business; and for one personal phone call per day.
5. The cost of meals for a full day shall not exceed twenty-five dollars (\$25.00) for such day.
6. No reimbursement shall be made for any charges for liquor or similar beverages.

7. The Director of Finance may allow other miscellaneous expenses if he/she deems such expenses to be incurred for the benefit of the City.
8. No reimbursement of any nature shall be made unless receipts therefore are presented to the Director of Finance; and if questioned by the Director of Finance, fully explained to the satisfaction of said Director of Finance.

The Director of Finance shall pay the travel reimbursement to the employee within a reasonable time after all required submissions have been made to the Director of Finance; but in no event shall payment be delayed for more than forty-five (45) days unless such Director of Finance indicates an investigation of the same.

21. LABOR-MANAGEMENT COMMITTEE

There shall be a Labor-Management Committee consisting of up to three (3) Association Representatives, and up to three (3) Employer Representatives.

Upon mutual agreement, the committee shall meet at the request of either party, to discuss matters of mutual concern, excluding issues subject to the Grievance Procedure or topics of collective bargaining, unless the parties mutually agree to discuss these issues.

The Committee shall have the authority to make recommendations to the Association and the Employer. All policy changes to be made according to Articles 24 and 25 of this contract require a majority agreement to become effective.

Service on this committee will be without pay, after the exhaustion of the twenty four (24) hours granted under section 10 of this contract, except for firefighters scheduled for duty at that time period.

22. NON-DISCRIMINATION

The parties to this Agreement shall not discriminate for or against any employee on the basis of membership or position in the Association.

23. DISCIPLINE AND DISCHARGE

SECTION 1 - RIGHTS

- A. Other than probationary employees, members of the bargaining unit shall have all rights and privileges under this Article.
- B. No non-probationary Part-Time Firefighter shall be reduced in pay or position, suspended, removed or reprimanded except for just cause.
- C. In addition to the Employee who is being disciplined, the Association shall also

receive a copy of all disciplinary notices immediately upon issuance through the mailbox of the Association Representative designated as the Association's "disciplinary notice recipient".

D. The Chief shall conduct an interview concerning any discipline issued with the individual who is the subject of the discipline, upon the request of that individual.

SECTION 2 - DEPARTMENTAL HEARINGS

A. Prior to any departmental hearing of a Part-Time Firefighter, he will receive from the Fire Chief or his designee, a written statement of all charges and specifications. At the hearing, the Part-Time Firefighter who is the charged party will be allowed to be represented and will be allowed to call witnesses material to his defense. The charged party shall have the opportunity to confront and cross-examine his accuser. For any alleged offense for which suspension or dismissal is contemplated, the Part-Time Firefighter has the right to a hearing with representation.

B. The charged party or his representative may make a written request for a continuance. Such request will be granted where practical. The length of such continuance shall be mutually agreed upon whenever possible.

C. The City will make all good faith efforts to notify the charged party of any charges or of any decision reached as a result of a departmental hearing prior to any public statement.

SECTION 3 – PROGRESSIVE ACTION

Where appropriate, the principles of progressive disciplinary action will be followed with respect to offense, at the discretion of the City. The progression will at least include: 1) a documented oral reprimand, 2) then a written reprimand, 3) then a demotion and/or a suspension for the same or related offense, prior to a dismissal. Should the Employer determine to invoke summary discharge, the burden of proof will be on it to show with clear and convincing evidence that the seriousness of the offense outweighed the obligation to apply the provisions of the above discipline procedure.

SECTION 4 - DURATION OF RECORDS

All actions, except documented oral reprimands (written reprimands, suspensions or dismissal) will be maintained in each bargaining unit member's personnel file throughout their period of employment with the exception that any record of written reprimands will be removed from their file upon the written request of the member, one (1) year after such reprimand was given if no further disciplinary action has occurred. Written reprimands so removed from a personnel file shall be given to the Part-Time Firefighter along with their letter of request for such removal. In any case in which a written reprimand, suspension, or dismissal is disaffirmed through the grievance procedures or by a court of competent jurisdiction, the personnel records shall clearly indicate such disaffirmance. In addition, unsubstantiated or unproven allegations or complaints of misconduct made against a Part-Time Firefighter and appearing in the department files shall not be considered in future disciplinary action or promotional considerations and shall not be shared outside the department.

24.

RANDOM DRUG TESTING

- A. The City may not require an employee to submit to medical testing and psychological testing, except for pre-employment testing, or upon a showing of reasonable suspicion. The City may require an employee to submit to drug or alcohol testing for pre-employment testing, or upon a showing of reasonable suspicion. Except for the "Rebuttable Presumption Law passed in 2004.
1. Any testing shall be conducted solely for administrative purposes and the results obtained shall not be used in criminal proceedings. Under no circumstances may the results of drug screening or testing be released to a third party for the use in a criminal prosecution against the affected employee.
 2. An employee refusing to undergo the required testing shall be subject to disciplinary action up to and including discharge. Upon request, an employee shall be entitled to the presence of an Association Representative before testing is administered.
 3. Any alternate testing undertaken by employees within three (3) days of a positive test will be considered for any disciplinary purposes.
 4. Any positive test shall be confirmed by quantitative analysis for the classes of drugs screened positive on the initial test. All confirmatory tests shall use the gas chromatography/mass spectrophotometer (GC/MS) method of detection.
 5. Any positive test, which has been confirmed, shall result in discipline of the employee. Any discipline, which shall result from a positive test, shall be processed through the disciplinary procedure in this contract and shall include a first offense rehabilitation program. The City agrees to pay for any costs incurred by the employee for the first offense rehabilitation program which are not covered by the employee's primary employer's insurance coverage, including co-pays and insurance deductibles. In no case will the City pay for treatment beyond the first offense.
 6. Each person who tests positive for illicit drug or improper alcohol use shall be medically evaluated, counseled and treated for rehabilitation, if required. In addition, at any time an employee may voluntarily enter the first offense rehabilitation program without fear of disciplinary actions against him, at the same benefit level as described above. This program is designated to provide care and treatment for employees who are in need of rehabilitation. Details concerning treatment any employee receives, shall remain confidential and shall not be released to the public, but shall be released to the Department of Administration.

7. When completion of such program and a retest demonstrates that the employee is no longer illegally using a controlled substance or alcohol, the employee shall be returned to his position. Such employee may be subject to random re-testing upon his return to his position for a period of one (1) year from the date of his return. Any employee in the above mentioned rehabilitation or detoxification programs will not lose any seniority or benefits should it be necessary that he be required to take a medical leave of absence without pay for a period not to exceed ninety (90) days.
8. Once treatment and follow-up care are completed, at the end of two years thereafter, if no additional incident occurs, the records of treatment and positive test results shall be retired to a closed medical record.
9. Drug tests may be performed at any time upon reasonable suspicion of drug or alcohol use.
10. All tests must be performed by laboratories certified under the Department of Health and Human Services (DHHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs" 53 FR 11970, April 11, 1988, and subsequent amendments thereto (previously termed "NIDA-Certified"). The standards include procedures for chain of custody, security, storage, processing, testing and reporting. A list of laboratories currently certified under these regulations can be obtained, with notice, from the Human Resources Department.
11. For the purpose of implementing the provision of this article, each bargaining unit member shall execute medical releases in order for the City to obtain the results of the physical examinations/drug-screen testing provided for in this article. Except as otherwise provided by State or Federal Law with regard to communicable diseases, or with the permission of the employee, the releases referred to in this section shall authorize only the release of examination results and progress reports pertaining to the drug-screening test results. No other medical finding may be released without the express written permission of the employee.

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PHYSICAL ABILITY/PROFICIENCY TESTING

This section will be held in abeyance throughout 2009; however, it will be reinstated in 2010 should testing become part of the Full Time Fire Contract in the same year. Any remuneration provided to the Full Time Fire Contract shall also be provided to this contract.

The City and the Union both agree that training in the theory of fire fighting and emergency medical procedures are necessary for the health and safety of both the citizens and the employees.

PHYSICAL ABILITY TESTING

The City and the Union also agree that all members of the Fire Department shall maintain themselves in a good physical condition. This is necessary so that they will be able to carry out the strenuous physical contacts often required of them. Therefore, each member shall prove that they can competently complete a Tallmadge Firefighter Physical Ability/Proficiency Test, annually, in order to maintain their employment status.

The Association will administer the test under the supervision of the Chief or Assistant Chief.

All initial testing will be off duty with two (2) hours minimum pay. Any retesting will be paid to the nearest quarter hour subject to one retest in any 30-day period.

Up to two (2) administrators will be paid off duty, minimum two (2) hours, plus at least one (1) Association Executive Board representative present at all tests. Additional test administrators require City approval.

The physical ability test is contained in Addendum A of this Labor Agreement. Any changes in this test must be completed by February 1st of each year through the Labor/Management process.

Each calendar year every firefighter must re-take and pass the test. All members hired on or after January 01, 2000, must pass the test in 8 minutes or less to maintain their employment. Firefighters hired prior to 1/1/2000 must not exceed their previous year's time by more than 10%.

Any member who fails the test must re-take the test and better their time in each re-test by 10% until they pass the test. Failure to pass the test may result in discipline as follows:

Any member who fails to pass the test has thirty (30) days to pass a retest, or, the next available test.

If the employee does not pass the retest within the thirty (30) days, they shall be suspended until they do pass or sixty (60) days have lapsed. The suspension shall be avoided if the employee demonstrates a 10% improvement with each test until he/she passes the test.

If the employee fails to pass the test within the 90 day period, provided that the test was offered, they shall be terminated.

If, any member is employed in a similar position elsewhere and they are required to pass a similar test, they may submit the results of the test taken under the direction of the other entity as proof of satisfactory testing for this category test, if, the examination was taken within 90 days.

These time limits may be extended by mutual agreement. Injury or illness waiver may be granted only with a written physician's excuse.

26. GRIEVANCE PROCEDURE

Every Part-Time Firefighter shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal and shall have the right to be represented by a person or persons of his own choosing at all stages of the Grievance Procedure. It is the intent and purpose of the parties to this agreement that all grievances shall be settled, if possible, at the lowest step of this procedure. The Union shall designate a Chief Spokesperson on each grievance presented, who shall have full authority to resolve that grievance.

For the purposes of this procedure, the below listed terms are defined as follows:

A. GRIEVANCE – A “Grievance” shall be defined as a dispute or controversy arising from the alleged misapplication or misinterpretation of only the specific and express written provision of this Agreement.

B. GRIEVANT – The “Grievant” shall be defined as a Part-Time Firefighter or Group of Part-Time Firefighters within the bargaining unit who actually file(s) the grievance.

C. PARTY IN INTEREST - A “party in interest” shall be defined as any employee of the Employer named in the grievance who is not the Grievant.

D. DAYS – A “day” as used in this procedure shall mean calendar days, excluding Saturdays, Sundays, or Holidays.

The following procedures shall apply to the administration of all grievances filed under this procedure:

A. Except at Step 1, all grievances shall include:

1. The name and position of the Grievant;
2. The identity of the provisions of this Agreement involved in the grievance;
3. The time and place where the alleged events or conditions constituting the grievance took place;
4. The identity of the party responsible for causing the said grievance, if known to the Grievant; and
5. A general statement of the nature of the grievance and the redress sought by the Grievant.

B. Except at Step 1, all decisions shall be rendered in writing at each step of the grievance procedure. Each decision shall be transmitted to the Grievant and his representative, if any.

C. If a grievance affects a group of Part-Time Firefighters working in different locations, with different principals, or associated with any employer-wide controversy, it may be submitted at Step 3.

D. The preparation of grievances shall be conducted only during non-working hours.

E. Nothing contained herein shall be construed as limiting the right of any Part-Time Firefighters having a grievance to discuss the matter informally with any appropriate member of the City Administration, and having said matter informally adjusted without the intervention of the Association, provided that the adjustment is not inconsistent with the terms of this Agreement. In the event that any grievance is adjusted without a formal determination, pursuant to this procedure, while such adjustment shall be binding upon the Grievant and shall, in all respects, be final, said adjustment shall not create a precedent or ruling binding upon the Employer in future proceedings.

F. The Grievant may choose whomever he wishes to represent him at any step of the grievance procedure.

G. The time limits provided herein will be strictly adhered to and any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the Employer fails to reply within the specified time limit, the grievance shall be deemed denied and shall automatically move to the next step. The time limits specified for either party may be extended only by written mutual agreement.

H. This procedure shall not be used for the purpose of adding to, subtracting from or altering in any way, any of the provisions of this agreement.

All grievances shall be administered in accordance with the following steps of the grievance procedure.

STEP 1

A Part-Time Employee who believes he may have a grievance shall notify the Fire Chief or his designee of the possible grievance within five (5) days of the occurrence of the facts giving rise to the grievance. The Fire Chief will schedule an informal meeting with the Part-Time Employee and his representative, if the representative's presence is requested by the Part-Time Firefighter, within five (5) days of the date of the notice by the Part-Time Firefighter/Grievant. The Fire Chief, Grievant and Grievant's representative(s), if his/her presence is requested by the Grievant, will discuss the issues in dispute with the objective of resolving the matter informally.

STEP 2

If the dispute is not resolved informally at STEP 1, it shall be reduced to writing by the Grievant and/or his representative, if any, and presented to the Fire Chief as a grievance to the Fire Chief within five (5) days of the informal meeting or notification of the Fire Chief's decision at STEP 1, whichever is later, but not later than seven (7) days from the date of the meeting if the Fire Chief fails to give the Grievant an answer. The Fire Chief shall give his answer to the Grievant, with a copy to the Grievant's representative, if any, within five (5) days of the receipt of the written grievance.

STEP 3

If the Grievant is not satisfied with the written decision at the conclusion of STEP 2, a written appeal of the decision may be filed with the Director of Public Safety within five (5) days from the date of the rendering of the decision in STEP 2. Copies of the written decisions shall be submitted with the appeal. The Director of Public Safety or his designee, shall convene a meeting within ten (10) days of the receipt of the appeal. The meeting shall be held with the Grievant, his representative, if any, and any other party necessary to provide the required information for the rendering of a proper decision. The Director of Public Safety or his designee shall issue a written decision to the Grievant, with a copy to the Grievant's representative, if any, within fifteen (15) days of the date of the meeting. If the Grievant is not satisfied with the decision at STEP 3, he may proceed to arbitration pursuant to the arbitration procedure herein contained.

27. ARBITRATION PROCEDURE

In the event a grievance is unresolved after being processed through all of the steps of the Grievance Procedure, unless mutually waived or having passed through the various steps by time limit default (s) of the Employer, then within ten (10) days after the rendering of the decision in Step 4, the Grievant may submit the grievance to arbitration.

The arbitrator shall have no power or authority to add to, subtract from, or in any manner alter the specific terms of this Agreement, or to make any award requiring the commission of any act prohibited by law, or to make any award that itself is contrary to the law or violates any of the terms and conditions of this Agreement.

The arbitrator shall not decide more than one (1) grievance on the same hearing day or series of hearing days, except by the mutual written agreement of the parties.

The hearing(s) shall be conducted pursuant to the Rules of Voluntary Arbitration of the American Arbitration Association.

The fees and expenses of the arbitrator and the cost of the hearing room, if any, shall be borne by the party losing the grievance. All other expenses shall be borne by the party incurring them. Neither party shall be responsible for any of the expenses incurred by the other party.

The arbitrator's decision and award will be in writing and delivered within thirty (30) days of the date the record is closed. The decision of the arbitrator shall be final and binding upon the parties.

The parties shall request a list of available arbitrators from the American Arbitration Association and shall proceed to select an arbitrator from any such list provided by that organization, pursuant to their rules and utilizing the alternate strike method.

The Association agrees to indemnify and hold the Employer harmless against any and all claims, demands, suits or other forms of liability that may arise out of any determination that the Association failed to fairly represent a member of the bargaining unit during the exercise of his rights as provided by the Grievance and Arbitration Procedures herein contained.

28. LEAVE OF ABSENCE

A Part-Time Firefighter who has completed one (1) year of continuous service with the Employer shall be entitled to a leave of absence in any five (5) year period. Such leave shall not exceed a three (3) month period of time. At no time shall more than three (3) Part-Time Firefighters be on leave of absence at the same time. A Part-Time Firefighter may receive more than one (1) leave of absence in any five (5) year period, or a leave of absence of greater than three (3) months duration for good cause, which shall include illness, injury or emotional distress. Under no circumstances shall the Fire Chief be required to grant a leave when three (3) Part-Time Firefighters are already on leave of absence. At the sole discretion of the Fire Chief, any of the above restrictions may be waived.

All leaves of absence must be applied for and granted in writing. Except in cases of emergency, all leaves shall be applied for at least thirty (30) days in advance of the start of such leave of absence. Along with the request for leave, the Part-Time Firefighter shall apply any and all available documentation in support of such leave of absence request, including medical proof where appropriate.

To ensure continuity, an additional signature line for the Union Representative shall be placed on all leaves of absences. The Union Representative should sign the LOA prior to sending it to the Chief.

An employee shall be notified of the decision of the Fire Chief on such leave request within ten (1) days after he has received the request.

29. SUSPENSION-EMERGENCY

In cases of emergencies arising beyond the control of the City, the Union agrees to waive time limits on grievances and any limitations on scheduled hours of work or time off.

30. GENDER AND PLURAL

Whenever the context so requires, the use of the words herein in the singular shall be construed to include the plural, and words in the plural, the singular, and words whether in the masculine, feminine or neuter gender shall be construed to include all of the said genders. By use of either the masculine or feminine genders, It is understood that said use is for convenience purposes only and is not to be interpreted to be discriminatory by reason of sex.

31. CONFORMITY TO LAW

This Agreement shall be subject to and subordinated to any applicable present and future Federal, State, and Local laws. The invalidity of any provision of this Agreement by reason of any such existing or future law shall not affect the validity of the surviving provisions.

The City and Union recognize and abide by those laws and directives issued by Federal and State agencies to ensure a safe and non-discriminatory work environment for all employees as represented by EEO (Equal Employment Opportunity), Sexual Harassment, Occupational Health and Safety, and Violence in the Workplace.

If the enactment of legislation, or a determination by a court of final and competent jurisdiction (whether in a proceeding between the parties or in one not between the parties but controlling by reason of the facts) renders any portion of this Agreement invalid or unenforceable, such legislation or decision shall not affect the validity of the surviving provisions of this Agreement, which shall remain in full force and effect as if such invalid provision thereof had not been included herein.

32. OBLIGATION TO NEGOTIATE

The Employer and the Association acknowledge that during negotiations which preceded this Agreement, each has had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of the right and opportunity are set forth in this Agreement.

Therefore, for the life of this Agreement, the Employer and the Association each voluntarily and unqualifiedly waive the right, and agree that the other shall not be obligated to bargain/negotiate collectively with respect to any subject covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they bargained/negotiated and signed this Agreement.

Further, it is agreed by the Employer and the Association that negotiations for the period commencing with the expiration of this Agreement, shall begin on or about September 1, 2005.

33. TOTAL AGREEMENT

This Agreement represents the entire agreement between the Employer and the Association and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits, and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer, without any such modifications or discontinuance being subject to any grievance or appeal procedure herein contained.

34. LEGISLATIVE IMPLEMENTATION

It is agreed by and between the parties that any provision of this Agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds, therefore, shall not become effective until the appropriate legislative body has given its approval.

additional funds, therefore, shall not become effective until the appropriate legislative body has given its approval.

35. DURATION

This Agreement shall become effective at 12:01 a.m., on the date of its execution and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2014 and thereafter until the parties enter into a new contract or terminate relations.

It shall be the Employer's responsibility to supply a copy of this Agreement to each member of the bargaining unit.

36. EXECUTION

IN WITNESS THEREOF, the parties hereto have caused this agreement to be duly executed this 9th day of January, 2012.

FOR THE ASSOCIATION:

David J. Gaver

FOR THE EMPLOYER:

David H. Line
T. Farwell

APPROVED AS TO FORM:

Megan E. Kaber

DIRECTOR OF LAW

PART TIME FIREFIGHTERS CONTRACT

ADDENDUM A

THE TALLMADGE FIRE DEPARTMENT PHYSICAL ABILITY TEST

The following (10) tests are designed to test the physical fitness of applicants to perform minimum but routine tasks performed while fighting fires. The test items simulate tasks that are routine at a scene and are not unusual. The tasks will be performed in provided fire gear: fire coat, helmet, gloves, bunker pants, air pack, and 5 pound ankle weights (in lieu of fire boots). The total weight of this gear is approximately 50 pounds. These tasks are timed and are to be performed in a continuous sequence. The time to perform these tasks is eight (8) minutes or less.

1. Supply Line Drag - Drag a 2 1/2" supply hose 75'.
2. Hydrant Open - Open the operating valve of a fire hydrant 13 turns.
3. 1 3/4" x 200' Hose Pull & Drag - Pull 200' of hose from the bed of the fire truck and drag it 75'.
4. 1 3/4" Charged Hose Pull - Pull a 1 3/4" charged fire hose through a building.
5. Ladder Lift and Carry - Remove a ladder from the rack, place it upon your shoulder, carry around the fire truck and return to the rack.
6. Hi-Rise Hotel Pack - Place 1 3/4" fire hose pack upon your shoulder and carry it up and down 1 flight of stairs three complete times.
7. Victim Search and Rescue - Candidate must crawl through a maze upon their hands and knees with a "blacked out" mask.
8. Drag Dummy 30'.
9. Ax-Fire Extension - Candidate will strike 3 targets over their head 15 times each with a hammer.
10. Fan Hang - Carry a smoke ejector from a fire truck and hang upon the door.