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**AN AGREEMENT**

**between**

**THE CITY OF MIDDLEBURG HEIGHTS, OHIO**

**and**

**LOCAL ASSOCIATION OF  
PUBLIC SERVICE WORKERS**

**EFFECTIVE: January 1, 2013**

**EXPIRES: December 31, 2014**

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**ARTICLE 1**

**PREAMBLE**

1.01 This Agreement is hereby entered into by and between the City of Middleburg Heights, Ohio, hereinafter referred to as "the Employer", and Local Association Of Public Service Workers, hereinafter referred to as "the Union".

**ARTICLE 2**

**PURPOSE AND INTENT**

2.01 In an effort to continue harmonious and cooperative relationships with its employees and to insure its orderly and uninterrupted efficient operations, 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 employees of the Employer 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 Middleburg Heights; 4) To avoid interruption or interference with the efficient operation of the Employer's business; and 5) To provide a basis for the adjustment of matters of mutual interest by means of amicable discussion.

**ARTICLE 3**

**RECOGNITION**

3.01 The Employer hereby recognizes the Union as the sole and exclusive bargaining agent with respect to wages, hours and other terms and conditions of employment for all full-time employees employed in the job classifications listed on Appendix A (Employees) and attached hereto, excluding all part-time, seasonal and temporary employees. All other employees of the Employer are excluded from the bargaining unit. Said recognition shall continue for a term not to exceed the duration of this Agreement.

3.02 In the event the Employer substantially changes and increases job duties to any existing classification, the Union may request negotiations for an establishment of a new wage rate based

upon such increased duties. In the event the parties cannot mutually agree to a new wage rate, the Employer retains the right to adopt a new wage rate. Such adoption and implementation of new wage rate shall not be grievable.

3.03 The Employer may utilize six (6) regular part-time employees in the Service Department who shall be excluded from the bargaining unit. All seasonal employees shall be excluded.

**ARTICLE 4** **DUES DEDUCTIONS AND AGENCY SHOP**

4.01 During the term of this Agreement, the Employer will deduct the initiation fees and monthly Union dues from the wages of those employees who have voluntarily signed dues deduction authorization forms permitting said deductions. The dues deductions shall be made from the first pay check of each month. If the employee's pay for that period is insufficient to cover the amount to be deducted, the Employer will make the deduction from the next pay check, providing the employee will be working during that subsequent period.

4.02 All employees covered by this Agreement who have completed sixty (60) days of employment with the Employer or upon completion of sixty (60) days of employment with the Employer, and have not become Union members, shall pay a "fair share fee", not to exceed the Union's regular monthly dues as a condition of employment with the Employer.

4.03 The Employer agrees to supply the Union with a list of those employees for whom dues deductions have been made.

4.04 A check in the amount of the total dues withheld from those employees authorizing a dues deduction and fair share fees shall be tendered to the Treasurer of the Union within thirty (30) days from the date of making said deductions.

4.05 The City shall provide each newly hired bargaining unit employee with a copy of the Union's fair share fee (agency fee/union shop) notice. Such notice shall be presented to each

newly hired bargaining unit employee within the first thirty (30) days of employment. A sufficient supply of fair share (agency fee/union shop) notices shall be provided by Union to the City to allow the City to meet this obligation. The City shall require that the newly hired bargaining unit employee sign a receipt acknowledging that the notice was presented. The City shall mail each original receipt to the President of the Union.

4.06 The Union hereby agrees to hold the Employer harmless from any and all liabilities or damages which may arise from the performance of its obligations under this Article and the Union shall indemnify the Employer for any such liabilities or damages that may arise.

#### **ARTICLE 5**                      **MANAGEMENT RIGHTS**

5.01 Not by way of limitation of the following paragraph, 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 and transfer employees, suspend, discharge and discipline employees for just cause; 2) determine the number of persons required to be employed or laid off; 3) determine the qualifications of employees covered by this Agreement; 4) determine the starting and quitting time and the number of hours to be worked by its employees 5) make any and all reasonable rules and regulations; 6) determine the work assignments of its employees; 7) determine the basis for selection, retention and promotion of employees to or for positions 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 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) transfer or subcontract work; 14) consolidate, merge, or otherwise transfer any or 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 or responsibility of such property, facilities, processes or work; 15) terminate or eliminate all or any part of its work or facilities.

5.02 In addition, the Union 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 the direction of its workforce which the Employer has not specifically abridged, deleted, granted or modified by the express and specific written provisions of this Agreement are, and shall remain, exclusively those of the Employer.

#### **ARTICLE 6**                      **NO-STRIKE**

6.01 The Union does hereby affirm and agree 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, workstoppage or other concerted interference with the withholding of services from the Employer.

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

6.03 It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate disciplinary action as determined solely by the Employer.

**ARTICLE 7**

**NON-DISCRIMINATION**

7.01 The Employer and the Union recognize their respective responsibilities under Federal and State constitutional and statutory requirements. Therefore, both parties hereby reaffirm their commitments, legal and moral, not to discriminate in any manner relating to employment on the basis of race, color, creed, national origin, handicap, age, sex, or disability.

**ARTICLE 8**

**UNION MEMBERSHIP**

8.01 The Employer and the Union recognize the right of all employees and applicants for employment to be free to join the Union and to participate in lawful concerted Union activities. Therefore, the Employer and the Union agree that there shall be no discrimination, interference, restraint, coercion or reprisals by the Employer or the Union against any employee or any applicant for employment because of Union membership or non-membership.

**ARTICLE 9**

**UNION REPRESENTATION**

9.01 The Employer agrees to recognize the President or any of the three other designated Union officers to act on the Union's behalf for the purposes of performing Union related activities and to meet with Employer representatives as may be required. The Union shall supply the names of the employees so designated to the Employer and shall keep the Employer currently notified of any changes.

9.02 The President or any of the three other designated Union officers may be allowed up to fifteen (15) minutes of his workday at the end of his work shift for only the administration of grievances pursuant to the Grievance Procedure. Prior to the utilization of any of the above time, the President or any of the three other designated Union officers shall request and receive approval in advance for such time from his supervisor with such approval not being withheld in an arbitrary or capricious manner.

9.03 The President or any of the three other designated Union officers having an individual grievance in connection with his own work may ask for another local union officer to assist him in adjusting the grievance with his supervisor.

9.04 The Employer shall supply a copy of this Agreement to each employee within the bargaining unit.

9.05 As soon as practicable, the Employer shall provide each employee a summary every two (2) months of his accumulated sick leave, vacation leave, compensatory time and accumulated time.

#### **ARTICLE 10**                      **BULLETIN BOARDS**

10.01 The Employer shall provide the Union with adequate bulletin board space, which shall be located in the Service Garage. The Union shall be responsible for the care, maintenance and replacement of said bulletin board space. The Employer shall have the right to direct a union officer to remove any material not in conformance with paragraph 10.02, below.

10.02 No notices, memorandums, posters or other forms of communication will be posted on the bulletin board that contain any defamatory, political (except union election notices), controversial material or any material critical of the Employer or any employee of the Employer. The Union shall supply one (1) copy of each such posted material to the Employer prior to the posting of such material. The Employer agrees not to post any notices, memorandums, posters or other forms of communication on this bulletin board space.

#### **ARTICLE 11**                      **PROBATIONARY PERIOD**

11.01 All newly hired employees will be required to serve a probationary period of one hundred and eighty (180) calendar days. During said period, the Employer shall have the sole discretion to discipline or discharge such employee(s) and any such action shall not be appealable through

any grievance or appeal procedure herein. The Employer may shorten or waive this period at its discretion.

11.02 A probationary employee will be eligible for health care and sick leave benefits provided by the Employer the first full month following his date of hire.

11.03 If an employee is discharged or quits while on probation and is later rehired, he shall be considered a new employee and shall be subject to the provisions of paragraphs 11.01 and 11.02.

**ARTICLE 12**                      **PERSONNEL FILES**

12.01 In imposing discipline on a current charge, the City shall not take into account any previous written reprimand or suspensions of one (1) or two (2) days which occurred more than two (2) years previously. Suspensions of three (3) or more days or greater discipline shall not be taken into account on a current charge which occurred more than five (5) years previously.

**ARTICLE 13**                      **SENIORITY**

13.01 Seniority shall be defined as an employee's uninterrupted length of continuous employment with the Employer. A probationary employee shall have no seniority until he satisfactorily completes the probationary period which will be added to his total length of continuous employment.

13.02 An employee's seniority shall be terminated when one (1) or more of the following occur:

- a) he resigns;
- b) he is discharged for just cause;
- c) he is laid-off for a period of time exceeding eighteen (18) months;
- d) he retires;

- e) he fails to report for work for more than three (3) working days without having given the Employer advance notice of his pending absence, unless he is physically unable to do so as certified by the appropriate authority;
- f) he becomes unable to perform his job duties due to illness or injury and is unable to return to work upon the expiration of any leave applicable to him;
- g) he refuses to recall or fails to report to work within five (5) working days from the date the Employer sends the employee a recall notice.

13.03 If two (2) or more employees are hired or appointed on the same date, their relative seniority shall be determined by the drawing of lots.

13.04 The City shall provide the Union with a current seniority list on a yearly basis. The seniority list shall be made by classification and shall contain a listing of the date of hire, the name, address and pay rate. The City shall provide the Local Union President with a written list of additions to or deletions from the seniority list, if any, on a quarterly basis.

#### **ARTICLE 14                      LAYOFF AND RECALL**

14.01 Where, because of economy, consolidation or abolishment of functions, curtailment of activities or otherwise, the Employer determines it necessary to reduce the size of its workforce, such reduction shall be made in accordance with the provisions hereinafter set forth.

14.02 Employees within affected job titles shall be laid off according to their relative seniority (within the bargaining unit) with the least senior being laid off first, provided that all students, temporary, part-time, seasonal and probationary employees within the effected job title(s), within the bargaining unit, are laid off first in the above respective order. For the purposes of this Article, "department" or "bargaining unit" shall mean the various positions included within Appendix A of this Agreement.

14.03 Employees who are laid off from one (1) job title may displace (bump) another employee with lesser seniority in a lower rated job title within the department.

14.04 Employees who are displaced (bumped) by a more senior employee shall be able to displace (bump) another employee with lesser seniority in a lower rated job title pursuant to the provisions of paragraph 14.03, above.

14.05 In all cases where one (1) employee is exercising his seniority to displace (bump) another employee, his right to displace (bump) into another job title is subject to the conditions that he is qualified for the position and able to perform the functions and duties of the position to which he is attempting to displace (bump) into.

14.06 At the end of the displacing (bumping) process, the employee who is displaced (bumped) and unable to displace another employee pursuant to the above provisions shall be laid off.

14.07 Employee(s) who are laid off shall have the option of displacing (bumping) another employee pursuant to the above provisions, or being directly laid off by the Employer.

14.08 Recalls shall be in the inverse order of layoff and a laid off employee shall retain his right to recall for eighteen (18) months from the date of his layoff.

14.09 Notice of recall shall be sent to the employee's address listed on the Employer's records and shall be sent by certified mail. An employee who refuses recall or does not report to work within five (5) working days from the date the Employer mails the recall notice, shall be considered to have resigned his position and forfeits all rights to employment with the Employer.

14.10 Employee(s) scheduled for layoff shall be given a minimum of fifteen (15) calendar days advance notice of layoff.

**ARTICLE 15**

**WORKDAY AND WORKWEEK**

15.01 The normal workweek for regular full-time employees shall be forty (40) hours of work in five (5) days of eight (8) consecutive hours each day, exclusive of the time allotted for meals during the pay period starting at 12:01 a.m., Saturday and ending at Midnight, Friday. Starting time shall be at the discretion of the Department Head.

15.02 This Article shall not be construed as a guarantee of hours of work per day or per week. In the event it is necessary to reduce the hours of work for any employee(s), the Employer shall meet with the Union and discuss said changes with the Union before any such changes are implemented.

**ARTICLE 16**

**REST PERIODS**

16.01 There shall be two (2) fifteen (15) minute rest periods on each shift each workday. The rest periods, to the extent practicable, will be scheduled during the middle two (2) hours of each half shift, but they may not be scheduled immediately before or after the meal period or at the start or end of a shift, except for other mutually agreed upon schedules.

16.02 In order to minimize down time, rest periods shall be taken during natural breaks in work assignments with the approval of their supervisor and on the job site weather conditions permitting. One (1) member of a crew may be allowed to obtain refreshments for rest periods that can be taken on the job site, with the approval of the supervisor.

**ARTICLE 17**

**LUNCH PERIODS**

17.01 All employees will be allowed a maximum of thirty (30) uninterrupted minutes for a scheduled lunch period which is to be taken at a time designated by the Employer.

**ARTICLE 18**

**MILITARY LEAVES**

18.01 An employee shall be granted a leave of absence for military duty in accordance with State and Federal Laws.

**ARTICLE 19**

**UNION LEAVE**

19.01 A leave of absence without pay may be granted at the Employer's discretion to one (1) employee at any one (1) time upon the request of the Union for such leave. The Union or the employee shall file a written notice with his Department Head at least one (1) week in advance of the date the leave is to commence, along with indicating the length of time the leave encompasses. Leave requests shall not be routinely denied but shall be limited according to the operational needs of the Employer. Employees on said leave shall receive no fringe benefits after two (2) weeks.

**ARTICLE 20**

**UNPAID LEAVES OF ABSENCE**

20.01 An employee who has completed one (1) year of continuous service with the Employer may be granted a leave of absence without pay for a period determined by the Employer because of injury, illness or other compelling reasons. The decision to grant the leave or the length of the leave period will be at the discretion of the Employer.

20.02 All leaves of absence (and any extensions thereof) must be applied for and granted in writing on forms provided by the Employer with a copy for the employee. Except in cases of emergency, the leave request shall be filed with the employee's Department Head not later than two (2) weeks prior to the date on which the leave is to start. Along with the request for the leave, he shall supply any and all available documentation in support of said leave. This documentation shall consist of medical proof of disability in cases where the leave is for medical purposes and the specific reasons. An employee will be notified in writing within ten (10)

calendar days from the date the application was made of the approval or disapproval of the leave of absence request. An employee who is granted such a leave shall not accrue any benefits during his absence, except seniority. The employee may continue his insurance coverages by paying the appropriate monthly premiums to the Director of Finance during the leave.

20.03 Leaves of absence shall not be granted for the employee to seek employment with another employer, nor shall the employee work for another employer during the time period he is on leave. Any employee who works for another employer while on leave shall have his leave canceled immediately and be subject to disciplinary action.

20.04 When an employee returns to work after a leave of absence, he will be assigned to the position which he formerly occupied or to a similar position if his former position no longer exists at the applicable rate of pay, provided the employee is able to perform the work.

20.05 An employee may, upon request, return to work prior to the expiration of any leave of absence, provided that such early return is agreed to by the Employer.

## **ARTICLE 21**                      **INJURY LEAVES**

21.01 When an employee is injured in the line of duty while actually working for the Employer, necessitating his absence from work for more than three (3) workdays, he shall be eligible for a paid leave not to exceed ninety (90) calendar days. At the Employer's request, the employee shall file a claim with Worker's Compensation, for Temporary Total (TT) payments or similar wage loss, and assign to the Employer those sums he receives as Temporary Total Compensation. In the event Worker's Compensation pays benefits to the employee and/or Employer, the employee's sick leave for the first three (3) days shall be restored to the amount of compensation paid for those days.

21.02 If at the end of this ninety (90) day period, the employee is still disabled, the leave may, at the Mayor's sole discretion, be extended for an additional ninety (90) calendar day period, or any portion thereof.

21.03 The Employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the Employer resulting in the physician's certification that the employee is unable to work due to the injury as a condition precedent to the employee receiving any benefits under this Article. The designated physician's opinion shall govern whether the employee is actually disabled or not, but shall not govern whether the Employer shall extend the period of leave.

21.04 In the event the Employer grants injury leave and the employee's Workers Compensation claim is ultimately denied on the substantive merits of a claim after all administrative appeals through the Bureau and/or Ohio Industrial Commission, or after the employee's failure to timely appeal through the administrative process, the employee shall reimburse the Employer all sums advanced. Reimbursement shall first be charged to accrued but unused sick leave, if available. If further reimbursement is necessary, the employee shall either forfeit his vacation leave and/or reimburse the Employer through payroll deductions.

21.05 The Employer shall have the right to implement a reasonable transitional work policy or restricted duty policy.

## **ARTICLE 22**                      **SICK LEAVE**

22.01 Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee; 2) exposure by the employee to contagious disease communicable to other employees; and 3) serious illness, injury or death in the employee's immediate family.

22.02 All non-probationary full-time employees shall earn sick leave at the rate of one and one-quarter (1 1/4) days per month and may accumulate such sick days to an unlimited amount; provided, however, that an employee shall not earn sick leave for any month unless he is in full pay status for at least twenty (20) days during such monthly period.

22.03 An employee who is to be absent on sick leave shall notify his supervisor of such absence and the reason therefore at least one-half (1/2) hour before the start of his work shift each day he is absent.

22.04 Sick leave may be used in segments of not less than one (1) hour, then one-quarter (1/4) hour segments.

22.05 Before an absence may be charged against accumulated sick leave, the Department Head may require, for cause, such proof of illness, injury or death as may be satisfactory to him, or may require the employee to be examined by a physician designated and paid for by the City. In any event, an employee absent for three (3) or more consecutive days must supply a physician's report at the employee's expense to be eligible for paid sick leave unless such physician's report is waived by the Department Head.

22.06 If the employee fails to submit adequate proof of illness, injury or death upon request, or in the event that upon such proof as is submitted or upon the report of a medical examination, the Department Head finds there is not satisfactory evidence of illness, injury or death sufficient to justify the employee's absence, such leave may be considered an unauthorized leave and shall be without pay.

22.07 Any abuse of sick leave or the patterned use of sick leave shall be just and sufficient cause for discipline as may be determined by the Employer.

22.08 The Department Head may require an employee who has been absent due to personal

illness or injury, prior to and as a condition of his return to duty, to be examined, by a physician designated and paid by the Employer, to establish that he is not disabled from the performance of his normal duties and that his return to duty will not jeopardize the health and safety of other employees.

22.09 When the use of sick leave is due to illness or injury in the immediate family, "immediate family" shall be defined to only include the employee's spouse, children or parents residing with the employee. When the use of sick leave is due to death in the immediate family, "immediate family" shall be defined to only include the employee's mother, father, spouse, child, brother, sister, father-in-law, mother-in-law and grandparents.

22.10 An employee who transfers from this department to another department of the Employer shall be allowed to transfer his accumulated sick leave to the new department.

22.11 Any employee of the Employer who has accumulated sick leave earned from being employed by the State of Ohio or any other political subdivision of the State of Ohio and who has become employed by the Employer within ten (10) years from his date of termination from such other public employer shall be allowed to transfer said accumulation to his sick leave accumulation with the Employer.

22.12 Upon the retirement of a full-time employee who has not less than (10) years of continuous service with the Employer, such employee shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement multiplied by one-third (1/3) the total number of accumulated but unused sick days earned by the employee as certified by the Finance Director, providing that such resulting number of days to be paid shall not exceed eighty-five (85) days. Upon the retirement of a full-time employee who has not less than fifteen (15), twenty (20), twenty-five (25) or thirty (30) years of service with the City, such employee shall be

entitled to one-third (1/3) payout as set forth herein, not to exceed ninety-five (95) days for employees with fifteen (15) years of service, one hundred five (105) days for employees with twenty (20) years of service, one hundred fifteen (115) days for employees with twenty-five (25) years of service and one hundred twenty-five (125) days for employees with thirty (30) years of service.

22.13 An employee eligible for cash payment pursuant to paragraph 22.12 above, may at his option, elect to take an early retirement with the monetary value of such cash payment being applied towards said early retirement.

22.14 Normal sick leave usage shall not count against employees in personnel evaluations.

22.15 Employees may, at their option, convert unused sick leave hours in a plan year as follows.

Any employee attaining a sick time bank of nine hundred sixty (960) hours by June 30, of any year, will be eligible for a cash payment based on a portion of the amount of sick leave accrued and unused during the next year, starting July 1, through June 30, of the following year. The employee must elect to be paid the sick time conversion by June 1 of the qualifying year. The benefit shall be paid during the month of July following the accrual year in accordance with the following schedule:

Employees attaining and maintaining nine hundred sixty (960) hours of sick time shall receive a payment equal to thirty-five (35%) percent of the unused sick leave accrued during the plan year.

After fifteen (15) years of continuous service – forty (40%) percent of unused sick leave accrued during the plan year.

After twenty (20) years of continuous service – forty-five (45%) percent of unused sick leave accrued during the plan year.

After twenty-five (25) years of continuous service – fifty (50%) percent of unused sick leave accrued during the plan year.

After thirty (30) years of continuous service – fifty-five (55%) percent of unused sick leave accrued during the plan year.

After thirty-five (35) years of continuous service – sixty (60%) percent of sick leave accrued during plan year.

Payment for said sick leave shall be at his or her daily rate of pay at the time of conversion.

If the sick time conversion is not elected, any accrued buy unused sick time will remain in the employee's sick time bank and either be used in accordance with the sick time provision as defined in this Article or be paid at the time of retirement in accordance with Section 22.12.

Years of continuous service shall be determined as of June 30 preceding the accrual year. Years of service accumulated by an officer or employee in one department or division who transfers to another department or division shall count towards continuous service. Employment with the State or any other political subdivision of the State shall count towards continuous service provided the employee is employed by the City within ten (10) years from his or her termination from such other public employer. Purchased service credit shall count towards longevity of service. Each three (3) years served as a part-time office or part-time employee of the City shall count as one (1) year of continuous service for the purpose of the annual conversion program.



President's Day

New Year's Eve (1/2 day)

Good Friday

Floating Holidays (2 days)

Memorial Day

Independence Day

Labor Day

25.02 In order to be eligible for the above holidays, the employee must report to work and actually work the last scheduled work day before the holiday and immediately after the holiday, unless specifically excused by the Department Head or the Mayor, or the employee is on an authorized vacation. In the event an employee has been scheduled to work on a holiday as part of his regular shift and does not come to work without an acceptable excuse, he then will lose his holiday pay. An employee on an approved paid extended sick leave for five (5) or more days may be eligible for holiday pay at the discretion of the Department Head.

25.03 When any of the above holidays fall on a Sunday, the following Monday shall be observed as the holiday and a holiday falling on a Saturday shall be observed on the preceding Friday.

25.04 The "floating holiday" may be taken at the discretion of the employee, providing he receives advance approval from his Department Head or the Mayor.

25.05 When an employee works on any of the above holidays or the date on which it is celebrated, he shall receive his regular hourly rate or overtime pay, if applicable, plus his holiday pay.

## **ARTICLE 26**

### **VACATIONS**

26.01 Each full-time employee shall earn and be entitled to paid vacation in accordance with the following schedule:

<u>Length of Service</u>	<u>Weeks</u>
After one (1) year	Two (2)
After five (5) years	Three (3)
After ten (10) years	Four (4)
After fifteen (15) years	Five (5)
After twenty (20) years	Six (6)

26.02 Earned vacation shall be earned on the employee's anniversary date in accordance with the above schedule and used within the next twelve (12) months, providing the employee is employed at that time. There is no proration of vacation time.

26.03 Vacation time shall be taken at a time approved of by the Mayor or Department Head with the most senior employee granted a preference when two (2) or more employees request the same time period.

26.04 An employee who has earned vacation time by reason of being employed in this Department shall be able to transfer his vacation time to another Department should he elect a transfer.

26.05 Any employee who quits or is terminated or retires and has unused vacation time shall receive the prorated portion of any fully earned but unused vacation leave at the time of separation. In the case of death of an employee, the unused vacation leave shall be paid to his estate.

26.06 Vacation time shall not be carried over from one (1) year to another without the express written authorization of the Mayor. Any vacation time that is unused within the year granted shall be deemed forfeited unless deemed otherwise by the Council.

26.07 An employee who has been employed for a length of time so that the employee is eligible for four (4) weeks vacation or more in any one (1) year, shall be allowed to accumulate up to one (1) week of vacation each year to be applied in a manner to permit the retirement of the employee earlier than the retirement date to which the employee would otherwise be entitled. The length of such early retirement shall be equal to the number of weeks saved pursuant to this paragraph.

26.08 Any employee of the Employer who has accumulated and earned vacation time from being employed by the State of Ohio or any other political subdivision of the State of Ohio and who has become employed by the Employer within ten (10) years from his termination from such other public employer shall be allowed to transfer said vacation time to his accumulated vacation time with the Employer.

26.09 The parties agree that Middleburg Heights Ordinance No. 1995-41, a copy of which is attached as Exhibit A, is incorporated into this Agreement. The benefits contained in the ordinance must be elected by the employee. This Agreement shall prevail over any specific conflicting provisions of the Ordinance.

26.10 Any employee who has twenty (20) or more years of full-time service with the City of Middleburg Heights shall be permitted to exchange the fifth and/or sixth week of vacation for cash. Any employee wishing to exchange vacation for cash must notify the Service Director prior to the beginning of the year and the amount that would have been paid for vacation will be paid in equal installments over the year.

## **ARTICLE 27**

### **VACANCIES AND JOB POSTINGS**

27.01 When a job vacancy or vacancies occur within the bargaining unit, the Employer will post an announcement of such vacancy or vacancies. Said postings shall remain posted for a

period of five (5) working days. The announcement shall contain the job title of the vacancy, a brief job description and the rate of pay.

27.02 Any employee wishing to apply for the posted vacancy must submit his application in writing to the Department Head by the end of the posting period in order to be considered for the position. All applications which are timely filed will be reviewed by the Employer on the basis of seniority, experience, skill and ability to perform the work in question.

27.03 An employee awarded a higher paying job under this Article shall be paid the probationary rate of pay of the new job for a period of ninety (90) calendar days and shall upon the satisfactory completion of his probationary period, be paid the working rate.

27.04 An employee who is awarded a new job shall be required to satisfactorily complete a ninety (90) calendar day probationary period. If, during this period or at the end of this period, it is determined that the employee cannot satisfactorily perform the new job, he will be reduced to his previously held position at his prior rate of pay.

## **ARTICLE 28**

### **INSURANCES**

28.01 The Employer will continue to pay the full premiums of either the individual or family plan as appropriate for the insurance coverage presently in effect with the City insurance coverage being subject to the co-pays and provisions as stated below:

- (a) the Employer and employee shall pay eighty (80%) percent and twenty (20%) percent, respectively, of the first five thousand (\$5,000.00) dollars (in network) (employee co-pay contribution is 30% for outside of the network); and
- (b) basic insurance coverage will include physical examinations and supplements as prescribed by a medical physician. This does not include over the counter vitamins; and

- (c) such plan shall continue to include the existing prescription drug rider however, the prescription coverage co-pay shall be five (\$5.00) dollars for generic drug prescriptions; fifteen (\$15.00) dollars for formulary brand name drugs and thirty (\$30.00) dollars for name brand prescriptions. Pharmacy filled prescriptions shall have a maximum of thirty (30) days. The City will maintain its mail order service for a ninety (90) day supply for maintenance drug prescriptions. Employees also have the option of receiving maintenance drug prescriptions at Walgreen pharmacies so long as the City maintains such maintenance prescription plan with Walgreen. The mail order plan or Walgreen option for maintenance drug prescriptions is mandatory; and
- (d) The plan shall require a twenty (\$20.00) dollar office co-pay for each doctor's office visit (Single or Family).
- (e) The plan shall require a fifteen (\$15.00) dollar co-pay for each visit to a mini clinic operated by a pharmacy or approved by the Plan Administrator.
- (f) The plan shall require a fifty (\$50.00) dollar co-pay for each emergency room visit. The emergency room co-pay will be waived if admitted to the hospital during the visit.
- (g) Health insurance shall not include payment for abortions for eligible employees or dependents and all prior coverage is hereby eliminated. The health insurance plan shall pay for oral contraceptives.
- (h) Employees who are eligible for health care may "opt-out" at their election, and shall receive payment of one hundred (\$100.00) dollars per month for a family

plan and fifty (\$50.00) dollar per month for a single plan opt-out benefit. The City will implement this provision subsequent to the execution of the CBA.

(i) The parties agree that the health insurance plan shall include a fifty (\$50.00) dollar penalty (precertification penalty) in the event an employee fails to precertify for surgery or a hospital stay under the health plan.

(j) The City will continue its "cafeteria plan." (a.k.a. Section 125 Plan)

28.02 The Employer shall provide a fifty thousand (\$50,000.00) dollar life insurance policy for employees.

**ARTICLE 29**                      **WAGE RATES**

29.01 Effective January 1, 2013, all employees shall receive wages in accordance with the following salary schedule:

<u>Job Title</u>	<u>Probationary Rate</u>	<u>Work Rate</u>
Laborer	\$22.32	\$23.24
Service Specialist (fka Truck Driver)	\$22.82	\$23.76
Equipment Operator	\$24.81	\$25.49
Assistant Mechanic	\$25.47	\$26.86
Mechanic	\$27.11	\$28.76
Lead Mechanic		\$29.31
Animal Control Officer	\$25.31	\$25.49
Assistant Animal Control Officer	\$24.05	\$24.62
Lead Sign Technician	\$25.35	\$26.10

Building Maintenance Specialist	\$23.61	\$24.48
Building Maintenance II	\$24.77	\$25.65
Arborist	\$24.81	\$25.49

29.02 Effective January 1, 2014, all employees shall receive wages in accordance with the following salary schedule:

<u>Job Title</u>	<u>Probationary Rate</u>	<u>Work Rate</u>
Laborer	\$22.77	\$23.70
Service Specialist (fka Truck Driver)	\$23.28	\$24.24
Equipment Operator	\$25.31	\$26.00
Assistant Mechanic	\$25.98	\$27.40
Mechanic	\$27.65	\$29.34
Lead Mechanic		\$29.90
Animal Control Officer	\$25.82	\$26.00
Assistant Animal Control Officer	\$24.53	\$25.11
Lead Sign Technician	\$25.86	\$26.62
Building Maintenance Specialist	\$24.08	\$24.97
Building Maintenance II	\$25.27	\$26.16
Arborist	\$25.31	\$26.00

Laborers with five (5) or more completed years of service shall be paid at the Service Specialist work rate.

29.03 All employees while serving a probationary period shall be paid the probationary rate as provided in the salary schedule. Upon the satisfactory completion of his probationary period, he shall be paid the working rate as provided for in his job title.

29.04 All employees shall be paid their bi-weekly paycheck through direct deposit at a financial institution of the employee's choice. Employees must notify the Employer within thirty (30) days after hire of the selection of such financial institution. In the event no selection is identified, the Employer shall institute an employee direct deposit at a financial institution of its choosing.

29.05 The Employer shall have the right to institute a record-keeping and payroll system of its choosing.

### **ARTICLE 30**                      **PENSIONS**

30.01 The Employer shall maintain a "tax saving pension plan" wherein the Employer deducts the employee's contribution to the Public Employees Retirement System ("PERS") prior to calculating withholding taxes, upon approval of the I.R.S. and/or P.E.R.S. Such tax saving pension plan shall be the "salary reduction" method.

30.02 For administrative purposes, the employee's gross salary shall be reduced by the full amount of said contribution. The member contributions which are "picked up" by the Employer shall be treated in the same manner as contributions made by members prior to the commencement of the "pick up" program and will, therefore, be included in "compensation" for the purposes of the PERS calculations, and for the purposes of the parties in fixing salaries and compensation of members as set forth in this Agreement. The Employer's contribution to the PERS will be calculated on the full salary of members before the "pick up" is deducted from gross salary.

**ARTICLE 31**

**LONGEVITY**

31.01 All employees shall receive longevity payments commencing upon the completion of five (5) years of continuous full-time employment with the City of Middleburg Heights in the amount of three hundred seventy-five (\$375.00) dollars, which shall be increased by seventy-five (\$75.00) dollars for each succeeding year of employment.

31.02 Longevity payments shall be made in a lump sum on the basis of the completion of a full year of service in the first regular pay period in December of each year. All longevity payments shall be by direct deposit.

31.03 If, because of leave without pay, employment separation or break in continuous service, an employee does not work a full year, the amount payable shall be prorated to correspond to the actual length of service during the current year and be paid immediately upon termination.

**ARTICLE 32**

**LABOR-MANAGEMENT COMMITTEE**

32.01 A Labor-Management Committee shall be created consisting of not more than two (2) Union members and not more than two (2) Employer representatives to meet and discuss appropriate subjects of mutual concern. Such meetings shall be on a quarterly basis unless either party requests a meeting of the Committee. Dates and times of such meetings shall be mutually agreed upon.

**ARTICLE 33**

**OVERTIME PAY**

33.01 All employees when performing assigned overtime work will be entitled to receive pay at the rate of one and one-half (1 1/2) times their regular hourly rate for all hours actually worked in excess of eight (8) hours in any day or forty (40) hours in any week. Employees shall be able to accrue compensatory time up to one hundred sixty (160) hours in lieu of cash overtime payments. There shall be no pyramiding of overtime payments.

33.02 Employees use of compensatory time is limited to one hundred and four (104) hours per calendar year. Compensatory time may not be taken without prior approval of the Service Director or his designee.

33.03 For the purposes of computing overtime pay, holidays and vacation time shall be counted as time actually worked. The City will include longevity pay for inclusion of the calculation of the overtime rate.

33.04 All employees shall receive their regular hourly rate for all hours worked, unless those hours worked are subject to the overtime provisions of this Article. In the event an employee works on a holiday, he shall receive his regular hourly rate or overtime pay, if applicable, plus his holiday pay.

33.05 Any employee who is recalled to work after leaving work or on a day when he is not scheduled to work shall be given a minimum of two (2) hours work or two (2) hours pay at his regular hourly rate, providing that the time worked or paid for does not abut the employee's work day.

33.06 Any employee who maintains twenty (20) or more hours of compensatory time may convert all unused compensatory hours into cash by electing to do so in May or October of each year. The conversion must be requested in writing on a form designated by the Finance Department. Payment of such time will be made within thirty (30) days after the request is received. Employees must convert compensatory time in full hours.



**ARTICLE 36**

**UNIFORMS AND FOUL WEATHER GEAR**

36.01 The Employer will continue to supply uniforms with a seasonal change to those employees receiving such uniforms, along with buying work gloves for all employees needing such gloves and shall replace them upon the surrender of the worn-out pair.

36.02 The Employer will provide each employee with a raincoat with a hood or a rain hat, rain pants, rubber boots and replacements due to normal use, providing the employee signs for the raincoat(s) and rubber boots and pays the replacements costs for any raincoat not returned when requested by the Employer.

36.03 The Employer will pay a four hundred fifty (\$450.00) dollar uniform allowance to each employee on June 1<sup>st</sup> of each year, providing the employee is employed by the Employer at that time.

36.04 The Employer will pay a two hundred twenty-five (\$225.00) dollar tool allowance to each Assistant Mechanic and Mechanic by January 31<sup>st</sup> of each year, providing the employee is employed by the Employer at that time.

**ARTICLE 37**

**BARGAINING UNIT WORK AND SAFETY**

37.01 Supervisory employees may perform bargaining unit work, providing that such work shall not result in the lay-off of any present employee. The use of summer workers and regular part-time employees will not act to cause the lay-off of any present employee nor will summer workers and regular part-time employees be routinely scheduled to work overtime that is normally given employees.

37.02 A Safety Committee consisting of the Service Director and his appointee and two (2) Union members shall confer quarterly, if necessary, to maintain safe working conditions for employees. If conditions warrant, at the Service Director's discretion, meetings may be held



39.02 In the event an employee loses his CDL or is not successful in passing the CDL examination, the Employer shall place the employee into another available job he is capable of performing, if another job is available, at the new job's regular wage rate. Such placement shall supersede lateral transfers, the posting procedure and work week or shift preference transfers.

39.03 If no job is available, the employee shall be laid off with no bumping rights for a period of six (6) months in order for the employee to obtain his CDL. Upon obtaining the CDL, the employee shall be returned to his previous job. In the event the employee does not obtain his CDL within six (6) months of layoff, he shall be automatically discharged with no appeal through the grievance or arbitration procedure.

39.04 Employees required to take the driving portion of the CDL examination may be permitted to use a City vehicle for that examination, at the Department Head's discretion.

39.05 Employees who acquire and maintain a Class A CDL, and submit proof thereof to the Employer, will be compensated an additional three hundred fifty (\$350.00) dollars to be paid in the first regular pay period in December.

39.06 Employees who acquire and maintain a Class B CDL, and submit proof thereof to the Employer, will be compensated an additional two hundred fifty (\$250.00) dollars to be paid in the first regular pay period in December.

#### **ARTICLE 40**                      **GENDER AND PLURAL**

40.01 Whenever the context so requires, the use of 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 said genders. By the 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 as being discriminatory by reason of sex.

**ARTICLE 41**

**HEADINGS**

41.01 It is understood and agreed that the use of headings before Articles or Sections is for convenience only and that no heading shall be used in the interpretation of said article or section or effect any interpretation of any article or section.

**ARTICLE 42**

**OBLIGATION TO NEGOTIATE**

42.01 The Employer and the Union acknowledge that during negotiations which preceded this Agreement, each 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/negotiations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

42.02 Therefore, for the life of this Agreement, the Employer and the Union each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or 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 negotiated and signed this Agreement.

42.03 This Article shall not operate to bar negotiations over any subject or matter which the Employer and the Union mutually agree to negotiate.

**ARTICLE 43**

**TOTAL AGREEMENT**

43.01 This Agreement represents the entire agreement between the Employer and the Union and unless specifically set forth in the express written provisions of this Agreement, all rules,



45.03 An employee may resign following the service of a Notice of Discipline. Any such resignation will be processed in accordance with the provisions contained herein and the employee's employment shall be terminated.

45.04 Discipline shall be imposed only for just cause. The specific acts for which discipline is being imposed and the penalty proposed shall be specified in the Notice of Discipline. The Notice served on the employee shall contain a reference to dates, times and places, if possible, and shall also be given to the local union president and steward.

45.05 Where the Service Director seeks as a penalty the imposition of a suspension without pay, a demotion or removal from service, notice of such discipline shall be made in writing and served on the employee personally or by registered or certified mail, return receipt requested, with a copy to the local union president and steward.

45.06 Discipline shall not be implemented until either:

1. the matter is settled, or
2. the employee fails to file a grievance within the time frame provided by this procedure, or
3. the penalty is upheld by the arbitrator or a different penalty is determined by the arbitrator, or
4. the penalty is imposed after the decision of the Mayor or his designee.

45.07 The Notice of Discipline served on the employee shall be accompanied by written statement that:

1. the employee has a right to object by filing a grievance within five (5) working days of receipt of the Notice of Discipline;

2. the Grievance Procedure provides for a hearing by an independent arbitrator as its final step;
3. the employee is entitled to representation at every step of the proceeding;

45.08 If a grievance is filed and pursued within the time frames provided below, no penalty can be implemented, except as provided in paragraph 44.12, until the matter is settled or the arbitrator renders a determination.

45.09 The following administrative procedures shall apply to disciplinary actions:

- A. The Service Director and the employee involved are encouraged to settle disciplinary matters informally. Each side shall extend a good faith effort to settle the matter at the earliest possible time. The Service Director shall hold an informal meeting with the employee and his representative for the purpose of discussing the matter prior to the formal presentation of written charges. The specific nature of the matter will be addressed, and the appointing authority may offer a proposed disciplinary penalty. The employee must be advised before meeting that he is entitled to representation by the Union.
- B. If a mutually agreeable settlement is not reached at this informal meeting the Service Director will, within five (5) working days, prepare a formal Notice of Discipline and present it to the employee and steward. The Notice of Discipline will include advice as to the employee's rights in the procedure, and the right of representation.
- C. Upon receipt of the Notice of Discipline, the employee may choose to accept the proposed discipline or to appeal by filing a grievance with the Mayor, pursuant to

Step 3 of the grievance Procedure. The appeal must be filed at Step 3 within five (5) working days from receipt of the Notice of Discipline.

45.10 A failure to submit an appeal within the above time limit shall be construed as an agreement to the disciplinary action by the effected employee and Union. All subsequent appeal rights shall be deemed waived.

45.11 A disciplinary matter may be settled at any time. The terms of the settlement shall be agreed to in writing. An employee executing a settlement shall be notified of the right to a representative. A settlement entered into by an employee shall be final and binding on all parties. The Union shall be notified of all settlements.

45.12 An employee may be suspended with pay at any time during the process. A suspension without pay may be imposed concurrent with or subsequent to the decision at Step 3. An employee who is suspended without pay shall continue to receive health insurance coverage as set forth in this Agreement. An employee who is discharged after the decision of the Mayor or designee shall not receive insurance coverage but may be eligible to purchase such insurance through the COBRA provisions.

45.13 The Union on behalf of all the employees covered by this Agreement and its own behalf, hereby waives any and all rights previously possessed by such employees to appeal any form of disciplinary action (e.g., suspensions, demotion or discharge) to any Civil Service Commission.

#### **ARTICLE 46**                      **GRIEVANCE PROCEDURE**

46.01 Every employee shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal. 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.

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

- a) Grievance - A "grievance" shall be defined as only a dispute or difference between the Employer and the Union or between the Employer and an employee concerning the interpretation, and/or application of and/or compliance with any express provision of this Agreement, including all disciplinary actions.
- b) Aggrieved Party - The "aggrieved party" shall be defined as only any employee or group of employees within the bargaining unit or the Union on behalf of the employees within the bargaining unit.
- c) Days - A "day" as used in this procedure shall mean calendar days, excluding Saturdays, Sundays or holidays as provided for in this Agreement.

46.03 The following procedures shall apply to the administration of all grievances filed under this Grievance and Arbitration Procedure.

- a) Except at Step 1, all grievances if possible shall include the name and position of the aggrieved party; the identity of the provisions of this Agreement involved in the grievance; the time and place where the alleged events or conditions constituting the grievance took place; the identity of the party responsible for causing the said grievance, if known to the aggrieved party; and a general statement of the nature of the grievance and the redress sought by the aggrieved party.
- 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 Union and to aggrieved party if any.

- c) If a grievance affects a group of employees working in different locations, with different principals, or associated with an employer-wide controversy, it may be submitted at Step 3.
- d) The preparation and processing of grievances shall be conducted only during the time provided in Article IX.
- e) Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the administration and having said matter informally adjusted without consulting the Union, provided that the adjustment is not inconsistent with the terms of this Agreement. In the event that any grievance is adjusted without formal determination, pursuant to this procedure, while such adjustment shall be binding upon the aggrieved party and shall, in all respects, be final, said adjustment shall not create a precedent or ruling binding upon the Employer or the Union in future proceedings.
- f) The existence of this Grievance Procedure, hereby established, shall not be deemed to require any employee to pursue the remedies herein provided and shall not impair or limit the right of any employee to pursue any other remedies available under law, except that any employee who pursues any other available remedy other than provided by this procedure, shall be foreclosed from any further action on such grievance under this 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 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.

46.04 All grievances shall be administered in accordance with the following steps of the Grievance Procedure.

Step 1:

An employee who believes he may have a grievance shall present it in writing to the employee's supervisor within five (5) days of the occurrence of the facts giving rise to the alleged grievance. The supervisor shall meet with the employee within five (5) days of the rendering of the grievance and shall give his answer within five (5) days of the meeting to the employee's steward with a copy to the employee.

Step 2:

If the aggrieved party initiating the grievance is not satisfied with the written decision at the conclusion of Step 1, a written appeal of the decision may be filed with the employee's Department Head within five (5) days from the date of the rendering of the decision at Step 1. Copies of the written decision, if available, shall be submitted with the appeal. The Department Head shall convene a hearing within ten (10) days of the receipt of the appeal. The hearing will be held with the steward and local union president. The Department Head shall issue a written decision to the local union president and a copy to the employee if the employee requests one, within fifteen (15) days from the date of the hearing.

Step 3:

If the aggrieved party is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Mayor within five (5) days from the date of the rendering of the decision in Step 2. Copies of the written decisions, if available, shall be submitted with the appeal. The Mayor or his designee shall convene a hearing within ten (10) days of the receipt of the appeal. The hearing will be held with the local union president, a representative from the Union and any other party necessary to provide the required information for the rendering of a proper decision. The Mayor or his designee shall issue a written decision to the Union representative and local union president with a copy to the employee if the employee requests one within fifteen (15) days from the date of the hearing. If the union is not satisfied with the decision at Step 3, it may proceed to arbitration pursuant to the Arbitration Procedure contained in Article XLIV.

#### Step 4: Grievance Mediation

Section 1: All grievances not settled at Step 3 shall be mediated prior to being referred to arbitration, unless the parties mutually agree that the case should not be mediated. The parties shall attempt to select a mediator by mutual agreement. If they are unable to agree, then they shall request a mediator be provided by the Federal Mediation and Conciliation Service. The cost for mediation shall be shared equally by the parties.

Section 2: Mediation efforts shall be informal in nature. The mediator may employ all of the techniques commonly associated with mediation, including private caucuses with parties. No verbatim record of the proceeding shall be taken. Formal rules of evidence will not apply and there will be no procedural constraints regarding the review of facts or arguments. Written materials presented to the mediator will be returned to the party at the conclusion of the conference.

Section 3: If the grievance remains unresolved at the end of the mediation session, the mediator will provide an oral (or if the parties prefer, a written) advisory opinion as to how the grievance is likely to be decided if it is presented in arbitration. This opinion is non-binding and inadmissible in any subsequent arbitration proceedings. Nothing said or done by the mediator and no settlement offer made by a party may be referenced or introduced into evidence at an arbitration of the grievance.

#### **ARTICLE 47**

#### **ARBITRATION PROCEDURE**

47.01 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 timely default of the Employer, then within thirty (30) days after the rendering of the decision at Step 4 or a timely default by the Employer at Step 4, the union may submit the grievance to arbitration. Within this thirty (30) day period, the parties will meet to attempt to mutually agree upon an arbitrator selected from the permanent panel created by this procedure. If such agreement is not reached, then the panel members' names will be stricken alternatively until one (1) name remains who shall be designated the arbitrator to hear the grievance in question.

47.02 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 make any award that itself is contrary to law or violates any of the terms and conditions of this Agreement.

47.03 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.

47.04 The hearing or hearings shall be conducted pursuant to the Rules of Voluntary Arbitration of the American Arbitration Association.

47.05 The fees and expenses of the arbitrator and the cost of the hearing room, if any, will be paid by the losing party. 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 or the shared expense of the other party.

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

47.07 There is hereby created a permanent panel of arbitrators to be used for the selection of an arbitrator pursuant to this Arbitration Procedure. Those individuals placed on this panel shall be: 1) Dr. Harry Graham; 2) Dennis E. Minni, Esq.; and 3) James Mancini, Esq.

47.08 The aggrieved employee and a Union representative shall not lose any regular straight time pay for time spent while attending scheduled arbitration hearings.

47.09 The Union agrees to indemnify and hold the Employer harmless against any awards for back pay to an employee that may arise out of a determination that the Union failed to fairly represent a member of the bargaining unit during the exercise of his rights as provided herein, providing the Employer is not found to have contributed to the Union's failure to fairly represent the bargaining unit member.

#### **ARTICLE 48**

#### **SUBSTANCE TESTING AND ASSISTANCE**

48.01 Drug and alcohol screening/testing shall be conducted randomly, upon reasonable suspicion and upon injury to oneself in the line of duty. Drug screening/testing shall be conducted solely for administrative purposes and the results obtained shall not be used in any criminal proceedings. Under no circumstances may the results of drug screening or testing be released to a third party, except in workers' compensation proceedings pursuant to law. The

following procedure shall not preclude the Employer from other administrative action but such actions shall not be based solely upon the test results.

48.02 All drug and alcohol screening tests shall be conducted by medical laboratories licensed by the State of Ohio. The procedure utilized by the test lab shall include a chain of custody procedure and mass spectroscopy confirmation of any positive initial screening.

48.03 Drug screening tests shall be given to employees to detect the illegal use of a controlled substances as defined by the Ohio Revised Code. If the screening is positive, the employee shall be ordered to undergo a confirmatory test of blood by the gas chromatography-mass spectrophotometry method which shall be administered by a medical laboratory licensed by the State of Ohio. The employee may have a second confirmatory test done at a medical laboratory licensed by the State of Ohio of his choosing, at his expense. This test shall be given the same evidentiary value of the two (2) previous tests.

48.04 Upon the findings of positive test results for an illegal controlled substance by the chemical tests, the Employer shall conduct an internal investigation to determine if facts exist to support the conclusion that the employee knowingly used an illegal controlled substance. Upon the conclusion of such investigation, the Employer may have the right to disciplinary action. The Employer may require the employee to participate in a rehabilitation or detoxification program, as determined by appropriate medical personnel. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick leave, vacation leave, and personal days for the period of the detoxification program. If no such leave credits are available, such employee shall be placed on a medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program and a retest that demonstrates the employee is no longer illegally using a controlled substance, the employee shall

be returned to his position. Such employee may be subject to periodic retesting at the discretion of the Employer upon his return to his position. 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.

48.05 If the employee refuses to undergo rehabilitation or detoxification, or if he fails to complete a program of rehabilitation, or if he tests positive at any time within eighteen (18) months after his return to work upon completion of the program of rehabilitation, such employee shall be subject to disciplinary action. Except as otherwise provided herein, costs of all drug screening tests and confirmatory tests shall be borne by the Employer. For the purpose of this article, "periodic" shall mean not more than three (3) times per year, except that drug tests may be performed at any time upon "reasonable suspicion" of drug use.

48.06 No drug testing shall be conducted without the authorization of the Service Director. If the Service Director orders, the employee shall submit to a toxicology test in accordance with the procedure set forth below. Refusal to submit to toxicology testing after being ordered to do so may result in disciplinary action.

48.07 The employee and Union shall be given a copy of the laboratory report of both specimens before any discipline is imposed.

#### **ARTICLE 49**                      **FAMILY MEDICAL LEAVE**

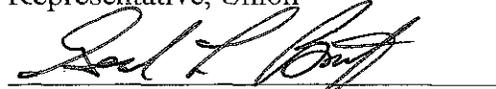
49.01 Employees may request and be granted time off without pay pursuant to the Family Medical Leave Act of 1993. Such time off without pay shall not exceed twelve (12) weeks in any twelve (12) month period. Leave under this provision shall be computed when first approved. During such leave the employee shall continue to receive health care insurance.



Representative for Local  
Association of  
Public Service Workers

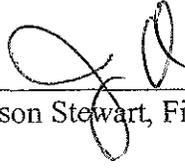


Representative, Union



Representative, Union

Gary W. Starr, Mayor



Jason Stewart, Finance Director

Labor\Middle\AFSCME-exp-2014-RED

## APPENDIX A

1. Laborer
2. Service Specialist (fka Truck Driver)
3. Equipment Operator
4. Assistant Mechanic
5. Mechanic
6. Lead Mechanic
7. Lead Sign Technician
8. Animal Control Officer
9. Assistant Animal Control Officer
10. Building Maintenance Specialist
11. Building Maintenance Specialist II
12. Arborist

## **EMPLOYEE RIGHTS**

You have been served with a Notice of Discipline. Under the labor contract you have rights as listed below. PLEASE READ THESE RIGHTS THOROUGHLY BEFORE YOU AGREE OR DISAGREE WITH ANY PROPOSED DISCIPLINARY ACTION.

If, after reading your rights and discussing the matter with your representative, you agree to the proposed discipline, you may simply sign this form at the bottom to note your agreement, and return it to your Appointing Authority.

If you disagree with the discipline, you should state your reasons in writing in the space provided below, and return this form to your Appointing Authority within 5 working days of receipt of the Notice of Discipline

### **RIGHTS**

1. You are entitled to representation by the Union at each step of this procedure.
2. You have the right to object to the proposed discipline by filing a disciplinary grievance within 5 working days of receipt of the proposed discipline with your Appointing Authority.
3. If you file your objections, the Appointing Authority will schedule a formal meeting within 10 working days of receipt of this form to discuss the matter. You may have representation at this meeting.
4. The Appointing Authority will report his/her decision within 5 working days following the close of the hearing.
5. You will have 10 working days after receipt of the Appointing Authority's decision in which to appeal the decision pursuant to the Grievance Procedure.

APPEAL OR ACCEPTANCE OF DISCIPLINARY ACTION

To The Employee:

This form must be returned within five (5) working days to the Appointing Authority.

\_\_\_\_\_ I AGREE WITH AND ACCEPT THE PROPOSED DISCIPLINE

\_\_\_\_\_ I WISH TO APPEAL THE PROPOSED DISCIPLINE FOR THE FOLLOWING

REASONS: (Optional) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If more space is needed, attach extra sheets of paper)

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Approved:      Date: \_\_\_\_\_

Appointing Authority Signature: \_\_\_\_\_

**NOTICE OF DISCIPLINARY ACTION**

TO:

FROM:

DATE:

SUBJECT: Proposed Disciplinary Action

You are hereby notified that your Appointing Authority (Employer) proposes to take the following disciplinary action against you:

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You have certain rights regarding the appeal of the above proposed disciplinary action.

Please read the attached information regarding these rights.

\_\_\_\_\_  
APPOINTING AUTHORITY

If Suspension: \_\_\_\_\_ days, (Effective \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_)  
Mo. Day Yr.

If Termination: Effective \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Mo. Day Yr.

STEP 2 SUMMARY

To the Employee and Appointing Authority

Please complete this form showing the disposition of the proposed discipline following your informal meeting. One (1) copy should be retained by the Appointing Authority and one (1) by the Employee and his/her representative, if any.

\*\*\*\*\*

DISCIPLINARY MATTER SETTLED:

Discipline to be imposed: \_\_\_\_\_

\_\_\_\_\_

Effective (Date): \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Appointing Authority Signature

\_\_\_\_\_  
Date

\*\*\*\*\*

DISCIPLINARY MATTER NOT SETTLED:

I hereby request a formal grievance be filed at Step \_\_\_\_\_ of the Grievance Procedure.

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

\_\_\_\_\_  
Date

**CITY OF MIDDLEBURG HEIGHTS, OHIO**Ordinance No. 2012- 9<sup>o</sup>Introduced By: Mayor Starr**AN ORDINANCE  
AUTHORIZING THE MAYOR OF THE CITY OF MIDDLEBURG HEIGHTS  
TO ENTER INTO A CONTRACT WITH LOCAL ASSOCIATION OF  
PUBLIC SERVICE WORKERS AND DECLARING AN EMERGENCY**

WHEREAS, Council and the Administration have conducted extensive negotiations with Local Association of Public Service Workers, as the bargaining representative for certain employees of the Service Department; and

WHEREAS, such negotiations have provided a tentative agreement between the parties; and

WHEREAS, Council and the Administration have reviewed such proposal and do desire to ratify and adopt such Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

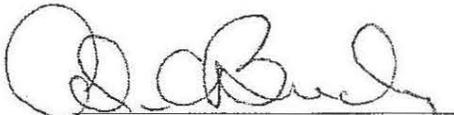
Section 1: That the Mayor be and he is hereby authorized and directed to enter into an agreement with Local Association of Public Service Workers, on behalf of certain employees of the Service Department, a copy of which agreement is attached hereto and made a part hereof as though fully rewritten herein, marked "Exhibit A".

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 3: That any and all ordinances in conflict with the express provisions of the Agreement are superseded by this Agreement.

Section 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City of Middleburg Heights, Ohio. Such necessity exists by reason of the fact that in order to facilitate payment of compensation to certain employees of the City, the foregoing Ordinance is required at the earliest possible time; wherefore, this Ordinance shall take effect and be in force from and after its passage and approval by the Mayor.

Passed: 12-11-12

  
President of Council

Attest: M. Meala  
Clerk of Council

Presented To Mayor: 12-11-12

Approved On: 12-11-12

	Yea	Nay
Budney	<u>X</u>	_____
Ali	<u>X</u>	_____
Guttmann	<u>X</u>	_____
Castelli	<u>X</u>	_____
McGregor	<u>X</u>	_____
Bortolotto	<u>X</u>	_____
Grech	<u>X</u>	_____

  
Mayor

I, Mary Ann Meala Clerk of  
the Council of the City of Middleburg Hts., Ohio,  
hereby certify that Ord. 2012-99  
adopted by the Council of the City of Middleburg  
Hts., on 12/11/12 was posted for a period  
of fifteen days, beginning 12/14/12  
and remained so posted for fifteen days at the two  
posting places as designated by Charter.

Mary Ann Meala  
Clerk

CERTIFICATE

I, Mary Ann Meala Clerk of Council of the City of Middleburg Heights, Ohio, do  
hereby certify that the foregoing is a true and accurate copy of Ord. 2012-99  
passed on the 11<sup>th</sup> day of December 20 12 by said Council.

Mary Ann Meala  
Clerk of Council