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AGREEMENT  
BETWEEN THE  
CITY OF YOUNGSTOWN

AND

OHIO COUNCIL 8, LOCAL 2312-B, AFSCME

Effective November 15, 2014  
Through September 30, 2017

SERB Case No. 2014-MED-06-0826

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## PREAMBLE

This contract is between the City of Youngstown and the Parks and Recreation Department (hereinafter referred to as the "City" or "Employer") and the Youngstown City Part-Time Parks and Recreation Department Employees, Local 2312-B, AFSCME. The Union will hereinafter be referred to interchangeably as the "Union" or "AFSCME."

## ARTICLE 1 PURPOSE AND INTENT

Section 1. The purpose of this contract is to set forth the understandings as to mutually acceptable rates of pay, hours of work, and other conditions of employment, including a means for equitable adjustment of settlement of alleged grievances.

It is the intent of the parties to promote orderly and peaceful relations with the included employees to insure uninterrupted operation of City services and to achieve the highest levels of employee performance.

It is understood that the effectuation and implementation of this contract must be accomplished consistent with applicable statutes and ordinances, including obtaining the necessary enabling legislation, and all parties by executing this contract signify their intent and desire to assist in obtaining effectuation and implementation.

## ARTICLE 2 SCOPE OF CONTRACT

Section 1. This contract (also referred to as "agreement"), unless expressly stated to the contrary, supersedes and cancels all other written contracts and agreements, with the exception of work rules or local working conditions established by the City or Parks Department, and constitutes the complete and entire understanding and agreement between the parties and concludes collective bargaining (except as provided for in Section 2 herein) for the term of this contract. The parties acknowledge that during the negotiations which resulted in this contract each had the unlimited right and opportunity to make its demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining, and that the contract and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this document. Therefore, the City and the Union for the duration of this contract, each voluntarily and unqualifiedly, waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter, to or covered in this contract, or with respect to any subject or matter not specifically referred to or covered in this contract, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement.

Section 2. If the City is contemplating any changes that may effect wages, hours, and/or conditions of employment not otherwise addressed within this agreement, including the provisions of Article 4, then prior to making such change, the City shall inform the Union of the

proposed change. Upon the written request of either party, the parties will meet and negotiate over the proposed change either to agreement or impasse.

Section 3. Notwithstanding the above, the parties agree that no section of the Civil Service Laws contained in Chapter 124 of the Ohio Revised Code (ORC) pertaining to wages, hours, terms and other conditions of employment, shall apply to bargaining unit employees, where the general or specific matter has been addressed by this agreement. Exclusions to this provision shall be as follows:

- A. The conduct and grading of civil service examinations (as related to the City of Youngstown Civil Service Commission), the establishment of eligible lists from examinations, the original appointments from the eligible lists, and promotional examinations and appointments shall continue to be governed by City Charter, local statutes, ordinances, and the Civil Service Commission Rules and Regulations of the City, as may be applicable.
- B. Sections 124.388 and 124.57 ORC shall continue to apply to bargaining unit employees.

### ARTICLE 3 RESPONSIBILITIES OF THE PARTIES

Section 1. Each of the parties hereto acknowledges the rights and responsibilities of the other party and agrees to discharge its responsibilities under this contract.

The Union and all included employees are bound to observe the provisions of this contract.

The City, its officers and representatives, at all levels, is bound to observe the provisions of this contract.

Section 2. In addition to the responsibilities that may be provided elsewhere in this contract, the following shall be observed:

- 1. There shall be no intimidation or coercion of employees into joining a Union or continuing their membership therein or for refraining from membership and/or participation.
- 2. There shall be no Union activity on City time, except as approved by the City or its representatives.
- 3. There shall be no strikes, work stoppages, or interruption or impeding of work. No officer or representative of any Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activities.
- 4. The applicable procedures of the contract will be followed for the settlement of all grievances.

5. There shall be no interference with the right of employees to become or continue as members of the Union, except as expressly provided in this contract.
6. There shall be no discrimination, restraint, or coercion against any employee because of membership in any union.
7. It is the continuing policy of the City and the Union that the provisions of the contract shall be applied to all included employees without regard of race, color, religion, military status, genetic history, national origin, national ancestry, genetic information, sex, disability or age. The representatives of the Union and the City in all steps of the grievance procedure and in all dealings between the parties shall comply with this provision.
8. There shall be no lockouts.
9. All grievances shall be considered carefully and processed promptly in accordance with the applicable procedures of this contract.

**ARTICLE 4**  
**MANAGEMENT RIGHTS**

Section 1. The City retains the exclusive rights to manage and direct its working force. In the exercise of this right, the City shall observe the provisions of this contract, as well as the provisions of applicable legislation or civil service requirements. Unless the City agrees otherwise in this collective bargaining agreement, nothing in Chapter 4117 of the Ohio Revised Code impairs the right and responsibility of the City of:

1. Determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology and organizational structure;
2. Direct, supervise, evaluate, or hire employees;
3. Maintain and improve the efficiency and effectiveness of governmental operations;
4. Determine the overall methods, process, means or personnel by which governmental operations are to be conducted;
5. Suspend, discipline, demote, or discharge for proper cause, or layoff, transfer, assign, schedule, promote, or retain employees as provided by law;
6. Determine the adequacy of the work force;
7. Determine the overall mission of the Employer as a unit of government;
8. Effectively manage the work force;

9. Take actions to carry out the mission of the public employer as a governmental unit.

The determination of just cause or other legitimate reasons is exclusively subject to this contract's grievance procedure as per Ohio Revised Code.

**ARTICLE 5**  
**UNION MEMBERSHIP, CHECK OFF, AND FAIR SHARE FEE**

Section 1. Union Membership. All employees of the bargaining unit shall be eligible to become members of the Union and to retain such membership if they so choose.

Section 2. Check Off. The City will deduct monthly dues, assessments and initiation fees each as designated by the Local or Council Union Officer who is so empowered. This is to include uniformly required membership dues and assessments of the Union. The deductions are to be made on the basis of the individually signed authorization check off cards. The individual union shall defend and indemnify the City against any claims or demands against it arising out of these deductions.

Section 3. Fair Share Fee. All employees in the bargaining unit, who, after completion of initial probation (i.e., 720 hours) are not members in good standing of the Union, shall pay a fair share fee to the Union to cover each employee's prorated share of: (1) the direct costs incurred by the Union in negotiating and administering this agreement and of settling grievances and other disputes arising under this agreement; and (2) the Union's expenses incurred for activities normally and reasonably employed to effectuate its duties as the exclusive representative of the employees in the bargaining unit covered by this agreement. The fair share fee amount shall be certified to the City by the Treasurer of the Local Union. The assessment and collection of all fair share fees shall be in accordance with Ohio Revised Code Section 4117.09 (C). The deduction of the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction. Payment to the Union of fair share fees shall be made in accordance with the regular dues deductions as provided herein. The Union will notify all members of the bargaining unit of its internal rebate procedure which shall provide for a rebate of expenditures in support of partisan politics or ideological causes not germane to the work of employee organizations in the realm of collective bargaining.

The individual Union shall defend and indemnify the City against any claims or demands against it arising out of these deductions:

Disputes concerning the amount of the fair share fee shall not be subject to the grievance procedure of this agreement. Disputes of such a nature shall be resolved under the Union's internal rebate reduction procedure.

Section 4. Employees may authorize the Employer to deduct voluntary contributions to the Public Employees Organized to Promote Legislative Equality (PEOPLE) by payroll deductions (check off). Upon receipt of the employee's PEOPLE deduction authorization, the Employer shall make the deduction and remit monthly to PEOPLE all such deducted contributions. PEOPLE contributions shall be deducted separately from dues or fair share fee deductions. Employees may withdraw their authorization for such deduction upon written notification to the Employer.

The Employer assumes no obligation, financial or otherwise arising out of this provision of this Article. The Union hereby agrees to hold the Employer harmless from any claims, actions or proceedings by any employee arising from deductions made by the Employer pursuant to this provision. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

## ARTICLE 6 RECOGNITION

Section 1. The City, within the scope of its legal authority does hereby recognize Local 2312-B and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, called the Union, and its designated agents or representatives, as the sole and exclusive bargaining agent for those employees of the bargaining unit with respect to wages, hours of work, and other conditions of employment. The term "bargaining unit" shall include all regular part-time employees of the City Parks Department who work in a classification set forth below:

Cashier; Crew Leader; Laborer; Paint Crew; Park Utility Specialist

"Regular part-time employee" as used herein shall mean a part-time employee regularly scheduled less than twenty-eight (28) hours per week. Part-time employees do not change status merely because they may actually work twenty-eight (28) or more hours on an intermittent basis. The parties both acknowledge that regular part-time employees as defined herein are not entitled to City sponsored health care benefits or any other benefit except as specifically provided for in this Agreement.

Seasonal, casual, and external interim employees shall not be considered "part-time" and shall not be entitled to benefits. Seasonal employees employed for a time period of sixteen (16) weeks or less are excluded from the bargaining unit irrespective of the weekly hours worked during the defined time period.

With respect to a probationary employee, it is agreed between the Union and the City that a probationary employee may not avail himself of the benefits of this agreement for the length of his probationary period.

Section 2. Excluded from Bargaining Unit. The Union agrees that this agreement applies solely to the bargaining unit described above. It is further recognized and agreed that full-time positions, and fiduciary, supervisory, management, professional, seasonal, intermittent, student, casual, external interim, and/or confidential positions within the Parks Department shall be excluded from the bargaining unit and such persons shall not be members of the Union and shall not be solicited for membership.

Those persons in categories hereinabove mentioned are prohibited from personally engaging in any collective bargaining procedures or grievance procedures under this contract save and except as members of management.

**ARTICLE 7**  
**SEVERABILITY AND LEGALITY**

Section 1. It is the intent of the City and the Union that this contract and its various provisions shall be effective and carried out in accordance with the applicable law. If any provision or part of this contract is found to be contrary to law, illegal by a court having jurisdiction and authority to make that decision, that provision, article, or part of this contract so held to be illegal shall alone be null and void. The remainder of this contract in all parts shall remain in full force and effect. In the event that any part of this contract should be found by the proper court to be contrary to law, the City and the Union shall meet within fourteen (14) days of the finalization of the decision to discuss same and to determine whether a lawful alternative provision can be agreed upon. In the event this meeting should occur, the only matter to be discussed would be the question of a lawful alternative provision.

**ARTICLE 8**  
**DEFINITIONS**

Section 1. Vacancies. The term “vacancies” as used in this contract shall be defined as a job opening where the City has increased a number of part-time jobs in a particular bargaining unit classification or where a part-time opening occurs in an existing job as a result of a promotion, transfer, quit, discharge or other termination of employment or when a new part-time job is created, and where the City intends to fill that part-time job.

**ARTICLE 9**  
**SENIORITY**

Section 1. Seniority shall be an employee’s uninterrupted length of continuous service with the City Parks Department. Seniority shall be computed based upon hours worked and employees shall be credited with one (1) year of service for each 2080 regular hours worked (one-quarter of service seniority for each five hundred twenty [520] hours worked). Seniority does not accrue during periods of unpaid status including layoff. An employee shall have no seniority for the probationary period, but completion of the probationary period shall result in seniority commencing retroactively to the date of hire. In the event of a tie in seniority, actual regular hours worked will be utilized.

Section 2. The City shall post a Seniority Roster once annually for this bargaining unit.

Section 3. Seniority shall be broken or terminated when an employee:

- A. Quits or resigns;
- B. Is discharged for just cause;
- C. Is laid off for a period of time greater than the recall period;

- D. Is absent without leave for two (2) consecutive workdays and fails to give proper excuse or notice of the reasons for absence unless the failure to give notice was beyond the reasonable control of the employee;
- E. Fails to report for work when recalled from layoff within five (5) working days from the date on which the City sends the employee notice by certified mail (to the employee's last known address as shown on the City's records).

Section 4. The City agrees to provide the Union with a copy of the appointment letter for any employee newly hired into a bargaining unit position. This appointment letter will be transmitted to the Union President/designee within five (5) working days of the issuance of the appointment letter.

Each new employee shall be given a copy of the current contract by the Union.

## ARTICLE 10 TRANSFERS AND PROMOTIONS

Section 1. Whenever there is a job vacancy in the exclusive bargaining unit covered by this contract, and the City intends to fill the vacancy, a notice of the opening shall be posted for ten (10) calendar days in the parks department. Part-time laborer vacancies shall be posted and/or advertised simultaneously. All employees in the unit in which the vacancy is to be filled shall have a ten (10) calendar day period in which to bid for the job by submitting a written application to the Department Head and the Mayor's designee. All applications timely filed shall be reviewed by the City and the job will be awarded within fourteen (14) calendar days. If no one in the unit is awarded the position, the job may be posted and/or advertised for applicants outside of the bargaining unit.

Section 2. Part-time positions will be awarded in accordance with the following preference:

- A. The qualified employee with the greatest seniority.
- B. The City shall have the right to establish minimum qualifications for each job within the bargaining unit.
- C. "Qualified," as used herein, shall mean the employee who meets the minimum qualifications for the position as established by the following: recent/updated job description, the job posting, consideration of required knowledge, skills, abilities, education, experience, and currently active work record. It is understood that an unacceptable work record (e.g., active discipline of record) may cause an employee to fail to meet any minimum qualifications.
- D. The provisions of this article shall apply to instances where an employee bids on a lower paid classification, an equally paid classification, and a higher paid classification.

Section 3. The probationary period for promotions shall be a reasonable period of time, but not more than five hundred twenty (520) hours of actual work on the job for which the employee has bid. During this period, the employee will be expected to demonstrate his/her ability to perform the job on a regular basis. If the employee cannot demonstrate that ability at any point during the promotional probationary period, he/she will be returned to his/her previously held position with no right of appeal. Employees will be given reasonable help and supervision. He/she will be considered to have qualified on the new job when he/she satisfactorily performs the required duties with no more supervision than is required by other qualified employees on the same or similar job, and when his/her record as to the quality and quantity of work meets the standards applicable to the job.

Section 4. An employee who is awarded a job under these provisions shall receive the applicable rate for the new classification.

Section 5. Each posting shall indicate the classification, the position control number, the location of the job, the pay rate, the potential range of regularly scheduled hours, the minimum qualifications for the position, the date the posting goes up and the date the posting expires. THIS IS FOR INFORMATION PURPOSES ONLY. The Union president shall receive a copy of the job posting.

Section 6. For purposes of this agreement, the following definitions shall apply:

- A. Promotion: advancement from a position in a lower pay grade to a position in a higher pay grade;
- B. Lateral transfer: movement from one classification to another classification in the same pay grade; e.g., an employee in the same pay grade as the posted position but in a different job classification may bid on the job recognizing there will be no change in pay.

## ARTICLE 11 TEMPORARY PAY RATE

Section 1. In the instance where an employee is directed or designated during a regular shift to perform the job duties and responsibilities of a higher classification within the bargaining unit, for one full shift or more, the employee shall be paid the base rate for the higher classification or his existing rate, whichever is higher, for all such hours worked. This temporary pay rate for the job performed shall also be made if the employee is held over from his regular shift and assigned to a job out of his/her job description for two (2) hours or more. This provision shall not apply for periods when an employee is being trained/cross-trained.

Section 2. It is understood by the parties hereto that if an assignment involves the employee working in a task or position that pays less than his regular job or position, said employee will continue to be paid the wage or salary earned in his regular classification.

Section 3. For the purpose of filling a temporary job or an assignment of a temporary nature where an increase in wage is involved, seniority will be considered. However, the employees

selected must have the ability and qualification to perform the duties required by the position to be filled.

**ARTICLE 12**  
**LAYOFF AND RECALL**

1. When the City determines a reduction in the working force is necessary, employees shall be laid off on the basis of seniority within the affected position/classification. An employee who is laid off shall be able to bump the least senior employee in an equal or lower rated classification within the bargaining unit. It is understood that part-time employees in this bargaining unit shall be laid off prior to full-time employees in the same classification within the Local 2312 deemed certified bargaining unit. However, if the Employer determines that part-time positions need to be continued and no full-time employees from the deemed certified bargaining unit exercise their bumping rights, affected part-time employees will be retained for the applicable part-time positions based upon seniority.
  - A. Any employee who is bumped out of the classification shall have the same right to exercise his seniority in the above-prescribed procedure.

For the purpose of this agreement, a job abolishment is construed to be a layoff.
  - B. Failure of an employee to exercise his bumping rights shall constitute a waiver of those rights.
2. In the event employees have the same seniority, the following tie breakers will be used:
  - A. Civil service test scores;
  - B. Sign-up number on test application list;
  - C. In the event all tied employees do not have a civil service test score and a test application number, alphabetical order will then apply.
3. The Union shall receive a copy of all layoff notices. Upon the request of either party, the parties will meet to discuss the layoff and potential bumping.
4. All regular part-time employees shall be given a minimum of five (5) calendar days advance notice of layoff or job abolishment indicating the circumstances which make the layoff necessary. Regular scheduled weekly work hours of remaining bargaining unit positions/employees may need to be adjusted following any layoff and bumping process.
5. The City shall recall employees from layoff by classification, by seniority. Recalls from layoff shall be made in the reverse order of the layoff provided that the employee recalled has the ability to perform satisfactorily the duties for the job for which he is recalled. Employees transferred to other positions as a result of layoffs shall have a preferred right to return to their former position. Employees being recalled shall be notified to report for

work by notice from the Employer sent by mail to the employee's last known address. Such employee shall have five (5) calendar days from the date of receipt of such notice to report to work. The employee shall be responsible for keeping the Employer informed of his current address. Employees shall be recalled from layoff to their classification or be returned to their former classification (if they have bumped) ahead of job posting or hiring for that classification.

6. The length of the recall period shall be one (1) year.

### ARTICLE 13 INSURANCES

Section 1. AFSCME Health and Welfare Fund. The City will provide the amount of six dollars and seventy-five cents (\$6.75) per month per bargaining unit employee to the Ohio AFSCME Care Plan for vision care coverage. It is specifically noted that the provision of these benefit is through the Ohio AFSCME Care Plan and the City's obligation is limited to the payment of six dollars and seventy-five cents (\$6.75) per month per bargaining unit employee to the Ohio AFSCME Care Plan.

This shall not set a precedent for the City to pay health care benefits for part-time AFSCME employees in future negotiations.

### ARTICLE 14 HOLIDAYS

Section 1. A bargaining unit employee required to work on any of the following designated holidays shall receive time and one half his regular rate of pay (premium pay) for all such hours worked on the holiday:

- |                  |                     |
|------------------|---------------------|
| 1. Memorial Day  | 2. Fourth of July   |
| 3. Labor Day     | 4. Thanksgiving Day |
| 5. Veterans' Day |                     |

In order to be paid premium pay for any aforementioned holiday, an employee must work his/her last scheduled shift prior to and his/her first scheduled shift following the holiday, as well as the holiday itself.

### ARTICLE 15 VACATION

Section 1. Part-time employees do not receive paid vacation. However, part-time employees may receive service credit for their part-time service should they advance to a full-time position within the City or within another City bargaining unit. Service credit, if any, shall be in accordance with the provisions of the applicable contract covering the full-time position.

**ARTICLE 16**  
**SICK LEAVES AND LEAVE WITHOUT PAY**

Section 1. Sick Leave.

- A. Each employee shall be eligible to earn sick leave at the rate of .0577 hours of sick leave for each hour worked, not to exceed eighty (80) hours of sick leave per year. Sick leave shall carry over from year to year and accumulate without limit, except for the annual limitation noted above.
- B. Sick leave compensation shall be computed at the employee's normal hourly rate at the time absence occurs.
- C. The department head may require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. This statement will be acceptable if legible, subject to verification at a later time by the City. If medical attention is required, or an absence extends for three (3) work days or more, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave. Falsification of an application for leave, a written signed statement, or a physician's certificate shall be grounds for disciplinary action, including dismissal.
- D. Absence Control  

Employees shall maintain a minimum of the equivalent of two (2) work weeks of accrued sick leave. There is an eighteen (18) month grace period from an employee's initial hire date to accrue these hours. Any employee without such accumulation is required to submit a signed medical practitioner's statement in order to be eligible to receive sick leave payment.
- E. Any employee suspected of abusing sick leave and/or showing a pattern of abuse shall be subject to counseling by the supervisor or his designee. A pattern of abuse consists of absence as evidenced by a frequency or pattern contiguous or related to holidays, weekends, or other scheduled time off, and/or other consistent or regular usage resulting in a low balance of accumulated sick leave in contrast to years of service. Further abuse/patterned use will result in disciplinary action.

Section 2. Disability Separation. An employee who has exhausted all applicable paid leave and any applicable FML (Family and Medical Leave) who remains unable to return to work may be eligible for a disability separation in accordance with the applicable provisions of the Civil Service Rules of the City.

**ARTICLE 17**  
**UNIFORM ALLOWANCE**

Section 1. The City shall provide two (2) sets of long or short sleeve shirts and pants annually to crew leaders, laborers and park utility specialists. The City will also provide coveralls for Park Department laborers as needed. Leather shoes/boots are required footwear for Parks Department

employees. Effective January 1, 2015, Laborers, Park Utility Specialists and Crew Leaders are eligible for a one hundred dollar (\$100.00) annual reimbursement for the purchase of approved work shoes/boots contingent upon a recent receipt of purchase by the employee.

Section 2. All employees provided uniforms by the City shall wear these uniforms to work or be subject to progressive disciplinary action.

## ARTICLE 18 WORK POLICIES/WORK RULES

Section 1. Work Day and Work Week. The scheduled work day/work week for part-time employees varies. Schedules and starting and quitting times shall be established by the Employer based upon operational and program needs. The normal scheduled work week for part-time employees shall normally generally consist of less than twenty-eight (28) hours per week. Those conditions where deviations from normal scheduling are required are controlled and subject to the prerogatives established in Article 4 of this contract.

Section 2. Pay Period. Pay periods shall consist of two (2) consecutive workweeks; i.e., fourteen (14) calendar days.

Section 3. Overtime. An employee shall receive one and one-half (1 1/2) times his/her hourly rate for each hour or fraction thereof which he or she works in excess of forty (40) hours of work in a seven (7) day period.

Section 4. Work Rules. The Union recognizes that the Employer, under this agreement, has the right to promulgate and implement new and revised work rules, regulations, and policies and procedures which regulate the conduct of employees and the conduct of the Employer's services and programs.

Prior to implementation or modification of any new or existing rule, regulation, policy or procedure which affects members of the bargaining unit, the Employer will notify the Union and meet with the Union to discuss the matter prior to the date of implementation.

The Employer recognizes and agrees that no work rules, regulations, policies or procedures shall be maintained or established that are in violation of any expressed terms or provisions of this agreement.

Section 5. Lunch and Breaks. Employees scheduled to work four and one-half (4 1/2) hours or more on a given work day shall receive a thirty (30) minute unpaid duty free lunch.

Employees shall receive a ten (10) minute break for each full four (4) hours of work on a given work day. The breaks shall be taken at a time and in a manner that does not interfere with the efficiency of the work unit.

Section 6. Drug Testing Program. The drug testing program shall be attached as an addendum to this agreement as Appendix D.

The Union and City agree that all employees of the City shall be subject to random drug and alcohol testing as outlined in Appendix D.

Section 7. Health and Safety Standards. The City agrees to furnish, and to maintain in safe working condition, all tools, vehicles, and equipment required to safely carry out the performance of job duties of all Union members. All members are responsible for immediately reporting to their immediate supervisor/designee any unsafe conditions or practices and for properly using and caring for all vehicles, tools, and equipment furnished by the City. Safety concerns shall be an appropriate topic for labor/management meetings and/or review by the Safety Committee.

#### ARTICLE 19 PERSONNEL FILE

Section 1. The City may compile and maintain an official personnel file for each employee. This file, if compiled, shall be in the custody of the head of the department. The personnel file of each employee shall contain the name, address, and other identifying information as to the employee. Each employee shall notify the City as to his or her change of address and/or phone number at least within fourteen (14) calendar days of said change or changes. If there is a failure of notification as to any change of address or phone number, the address or phone number last given to the City shall be used.

#### ARTICLE 20 GRIEVANCE AND ARBITRATION PROCEDURES

Section 1. Definition. A grievance is any dispute between an employee and the City or its representative involving the interpretation or application of this collective bargaining contract.

All grievances shall be processed on forms which appear in Appendix A of this contract.

A grievance can be started by the Union Representative starting at Step 1. Grievances must be started within fourteen (14) calendar days following the occurrence that initiated the dispute. Nothing in this article shall be interpreted as discouraging or prohibiting informal discussions of a dispute by the employee and the City prior to the filing or starting of the grievance.

#### Section 2.

##### Step 1

If an employee has a dispute with the City, he and his Union Representative may elect to discuss said matter with his/her immediate supervisor. The supervisor shall answer, in writing, within five (5) calendar days from the date that the complaint is made.

### Section 3.

#### Step 2

If the employee is not satisfied with the response and answer of the City given at Step 1, the employee may request his/her Union to submit the grievance in writing to the head of the department or his authorized representative within seven (7) calendar days of the date of the Step 1 answer to the grievance.

All documents to be considered in Step 2 must be dated, signed by the employee and the Union and presented within the seven (7) calendar day period following the supervisor's answer to the grievance. If the grievance is timely presented to the head of the department or his/her representative, a meeting must be arranged by the head of the department or his/her authorized representative within fourteen (14) calendar days to consider and discuss the dispute. The City shall render its decision in response to the grievance no later than seven (7) calendar days after the prescribed meeting. This decision must be in writing and signed by the head of the department or his/her authorized representative.

If the Union is not satisfied with the decision of the head of the department or his/her authorized representative within fourteen (14) days from receipt of that decision, the Union may then process the grievance to the Mayor's designee.

### Section 4.

#### Step 3: Mayor's Designee

The Mayor's designee shall then either grant the remedy requested by the employee or hold a hearing to evaluate and decide the grievance within ten (10) calendar days. Within ten (10) calendar days of this hearing, the Mayor's designee shall make a decision in writing and transmit a copy of same to the Union and the affected employee.

In the event that the Mayor's designee does not grant the remedy requested by the employee and instead determines to hold a hearing as provided in the preceding paragraph, the hearing shall be held on the third Friday of each month. The grievant shall be entitled to be present at the hearing as well as the President and Local Union Steward who might be involved. A staff representative of the Union shall also be present. The time limits specified in the preceding sections shall be tolled so as to accommodate these meetings.

### Section 5.

#### Step 4 - Arbitration

If the grievance is not satisfactorily settled at Step 3, the Union may, within thirty (30) calendar days after receipt of Step 3 answer, submit the grievance to arbitration. Failure to appeal within the thirty (30) calendar days will cause the grievance to be considered untimely.

Within ten (10) days of the receipt of the appeal to arbitration, the Union shall request a list of nine (9) arbitrators from the Federal Mediation and Conciliation Services (FMCS). Within seven (7) calendar days of the receipt of this list, the parties shall meet/confer to select an arbitrator. The method used to select shall be the "alternate strike" method of selection with the Union striking the first name and then the Employer striking a name and continuing in such manner until only one name remains. The remaining name shall be deemed as selected to hear the case. Either party may reject one (1) list in its entirety and any financial cost for a second or third list shall be the responsibility of the party rejecting the list. No more than a total of three (3) lists may be requested from FMCS unless a third list is mutually rejected by the parties.

The arbitrator shall be requested to make his written decision on the grievance within thirty (30) calendar days after the conclusion of the arbitration hearing process.

The City shall furnish an appropriate room and facilities for the arbitration hearing and if this involves costs, said costs shall be equally borne by the City and the Union. The arbitrator's fees and other expenses shall be borne by the loser of the arbitration; except the cost associated with the appearance of witnesses, attorneys, the production of documents, or other fees whether they be for consultants or otherwise shall be borne solely by the party which calls the witnesses or employs the attorneys or consultants.

The authority of the arbitrator shall be subject to the following limitations:

- A. The arbitrator shall have no power to add to, delete from or modify any of the terms of this agreement or to rule on any matter except when this agreement is in full force and effect. The arbitrator shall have no power to establish language for this agreement or to change any existing wage rates or fringe benefits.
- B. The arbitrator shall have no authority to impose any obligations upon the City unless clearly required by an express provision of this agreement.
- C. All findings and decisions for back pay shall be limited to the amount of wages the employee otherwise would have earned less an unemployment compensation that he may have received during the period in question and wages or salaries earned from other sources during that period.
- D. The grievance procedure set forth in this contract shall be the exclusive method of reviewing and settling disputes between the City and the Union and/or between the City and an employee (or employees), and all decisions of arbitrators consistent with Step 4 and all pre-arbitration settlements reached by the City and the Union shall be final, conclusive, and binding on the City, the Union and the employees.
- E. The Local Union President shall not lose regular straight time pay while attending arbitration proceedings during normal work hours.

Section 6. Time Limits and Forfeitures. If the grievant fails to advance his/her grievance to the next step within the time limitations provided in this article, the decision by the City's representatives at the previous step shall then be conclusive.

If the City through its representatives and agents fail to hold a hearing or file a decision within the time limits provided herein, the grievance may be advanced to the next step.

All grievances shall be submitted to FMCS within ninety (90) calendar days of the grievance being submitted for arbitration or the grievance will be considered untimely.

#### Grievance and Arbitration

Grievances resolved for the reason that either party failed to act within the prescribed time limitations shall not be considered a precedent for any other case.

In all steps of the above grievance procedure, the Union shall be required to prepare the copies of the grievance and the City shall be required to receipt said copy or copies of the grievance and present said receipted copy to the Union. The Union shall have the sole authority to withdraw grievances.

#### Certification of Union Representative

The Union shall certify to the Parks Director and the Mayor's designee those persons in the department who are authorized by the Union to process grievances. The City shall not be required to engage in the grievance procedures herein if the Union is represented by someone other than a properly authorized and certified representative or grievance person. This requirement can be waived only by the City. Certification and all notification as to the grievance person is the responsibility of the Union. The person certified shall be recognized by the City of Youngstown as the Union's representative for employee grievances in the appropriate unit.

Section 7. Class-Action Grievance. In the event a substantial number of employees, five (5) or more, are affected similarly by an action of the City, the Union may file a class action grievance at Step 3 of the grievance procedure. All affected grievants must be listed on and sign the grievance form. The Union agrees to provide copies to all individuals carbon copied on the grievance form, as contained in Appendix A-1 of the contract.

Section 8. Policy Grievance. In the event that any clause in the agreement other than Article 20 is alleged to have been violated, even if at the time of the alleged violation it affects but a single employee, the Union may file a policy grievance over the matter at Step 3 of the Grievance Procedure.

### **ARTICLE 21** **PREDISCIPLINE/DISCIPLINE**

Section 1. The City will take whatever disciplinary action it intends to take against an employee within sixty (60) days of the department head's knowledge of the alleged infraction of City rules or policies. No employee shall be disciplined except for just cause. Violations of City/departmental rules, regulations, policies or procedures are just cause for discipline. Additionally, incompetency, inefficiency, dishonesty, immoral conduct, insubordination,

discourteous treatment of the public or others, neglect of duty, absence without leave, alcohol/substance abuse including impairment while on duty, failure of good behavior, any conduct unbecoming a representative of the Employer, or any other acts of misfeasance, malfeasance or nonfeasance, shall be just cause for disciplinary action.

Section 2. Except in cases of serious or gross misconduct (including, but not limited to, criminal misconduct, fighting, substance abuse on the job, theft, unauthorized use of City equipment, etc.), discipline shall be applied in a corrective and progressive manner.

Forms of disciplinary action include:

1. Oral reprimand (letter of instruction and cautioning);
2. Written reprimand;
3. One or more day(s) suspension (including a suspension without pay or a working suspension or suspension of record);
4. Termination

A working suspension or suspension of record requires an employee to report to work and be paid for such time worked during the period of suspension. The working suspension is recorded in the employee's personnel file in the same manner as other disciplinary action and has the same weight and effect as a suspension without pay.

Disciplinary action taken shall be commensurate with the offense and the progression of discipline will take into consideration intervening discipline and related offenses. Disciplinary actions shall be initiated as soon as reasonably possible consistent with the other requirements of the article. Copies of all disciplinary actions shall be sent to the Union and the employee and a copy shall be placed in the employee's personnel file.

Section 3. Should the alleged offense be of such serious importance as to warrant an employee's immediate discipline, the employee shall be suspended without pay until such time as a predisciplinary meeting is scheduled. If, after a meeting is held for an employee who has been placed on suspension as outlined above, the initial suspension is found to be excessive or without just cause, the employee shall receive the appropriate amount of back pay and benefits.

Section 4. In the event of a suspension of an employee without pay the employee shall have the right to have his Union president present. The employee shall be permitted to discuss the suspension with the representative in a private area made available by the Employer before he/she is required to leave the premises. An employee who is suspended without pay shall be given written notice of the suspension stating the reasons for such action. A copy of this notice shall be sent to the Union.

Section 5. Whenever the Employer determines that an employee may be suspended, reduced in pay or position, or terminated, a predisciplinary meeting will be scheduled to provide the employee the opportunity to respond to the allegations of misconduct. The Employer shall notify the employee in writing of the alleged misconduct prior to the meeting. This notification shall also include the time and place of the predisciplinary meeting, to be held within twenty-four (24) hours, between management and the employee.

Section 6. Prior to the scheduled start of the meeting, the employee may choose to waive, in writing, the opportunity for the meeting and accept the discipline contemplated by the Employer.

Section 7. If requested by the employee, the employee may be accompanied by a Union representative. The meeting will not be delayed due to any unavailability of a specific Union representative. The employee shall be given the opportunity to respond to, refute or rebut the alleged charges of misconduct.

Section 8. The Employer, following the predisciplinary meeting, will determine what discipline, if any, is appropriate. The Union may appeal the Employer's decision directly to Step 2 of the grievance procedure.

Section 9. All disciplinary actions shall be carried out in a private and businesslike manner and where practicable, out of the presence of other employees.

Section 10. Disciplinary Records. Records of disciplinary action shall cease to have force and effect or be considered in future discipline matters, provided that there has been no other intervening discipline, according to the following schedule:

Letters of Instruction and Cautioning	twelve (12) months
Oral Reprimand and Written Reprimands	twenty-four (24) months
Suspensions, Fines, and Reductions	twenty-four (24)/thirty-six (36) months

Discipline for drug and alcohol-related offenses or violations of the parties' drug and alcohol testing policy are not subject to the twenty-four (24)/thirty-six (36) month provisions listed above and shall be considered in all future discipline for a period of ten (10) years.

## ARTICLE 22 WAGES

Effective upon ratification, the hourly wage rates for all bargaining unit classifications shall be established as set forth in Appendix B.

## ARTICLE 23 MISCELLANEOUS

1. For those employees who are reimbursed for the use of their personal vehicle on a per mile basis, the rate shall follow the same rate as the IRS. Changes in the IRS rate shall be implemented within thirty (30) days of the City receiving notice of the change.
2. Probationary Period
  - A. New Hire (Initial). New employees and those hired after a break in City service under the terms of this Contract will be regarded as probationary employees for the first seven hundred twenty (720) hours of actual work and will receive no continuous service credit during such period. Probationary employees may be laid off or discharged as exclusively determined by City management.

- B. Promotional (Non-Initial). Promoted employees will be regarded as non-initial probationary employees for the first five hundred twenty (520) hours of actual work. Non-initial probationary employees may be returned to their former position at any time during the non-initial probationary period as exclusively determined by City management.

3. New Jobs

If a new part-time job is established within the Parks Department, which has not previously been classified, the Union may request to meet with the City for the purpose of discussing whether the classification is appropriate for inclusion within the bargaining unit. In the event the City and the Union are unable to reach an agreement, either party may petition the State Employment Relations Board on the issue.

4. Union Representative

- A. The City agrees that one previously identified non-employee officer or representative of the Union shall be permitted to enter the City's facilities and sites during working hours. Such visitation shall be for the purpose of processing grievances or to attend other meetings permitted herein. Such activities shall not interfere with the normal work duties of the employee except to the extent authorized in advance by the City. Such individual shall give as much advance notice as possible of his intent to visit City facilities and sites.
- B. The City shall recognize one (1) Steward and one alternate from the bargaining unit. The steward or alternate steward, after reporting to their immediate supervisor, shall be permitted reasonable time to investigate, present and process grievances on the premises of the City, during normal working hours, without loss of pay. The Union shall furnish the City with written notification of the steward and alternate and shall notify the City in writing of any changes.

5. All new Park Department laborers or park utility specialists may be required to have a CDL at the time of hiring. Any employee hired prior to January 1, 2006, employed as a Park Department laborer or park utility specialist will have twelve (12) months to obtain a CDL, if a CDL is required for the position. The City shall pay the cost of obtaining an initial Commercial Driver's License (CDL) if the City requires the CDL for the position. An employee required to hold a CDL shall be entitled to a fifteen cent (\$.15) per hour wage supplement for maintaining the required licensure.

6. Jury Duty - any employee while serving as a juror on a duty day shall receive full pay and benefits from the City and shall reimburse to the City any pay received from the courts. If not reimbursed to the City within thirty (30) days, the City will deduct the amount from the employee's next pay and the employee may be subject to discipline.

**ARTICLE 24**  
**LABOR MANAGEMENT MEETINGS**

Section 1. In the interest of sound Labor-Management relations, the Union and the Employer will meet at agreeable dates and times for the purpose of discussing those matters outlined below. No more than two (2) employee representatives of the Union, three (3) representatives of the Employer, and one (1) non-employee representative of the Union shall be permitted to attend such meetings, unless otherwise agreed.

The purpose of such meetings shall be to:

1. Discuss the administration of this contract;
2. Notify the Union of changes made by the Employer which may affect bargaining unit members;
3. Discuss grievances which have not been processed beyond the final step of the grievance procedure when such discussions are mutually agreed to by the parties;
4. Disseminate general information of interest to the parties;
5. Give the Union representatives the opportunity to share the view of their members and/or make suggestions on subjects of interest to their members;
6. Discuss ways to improve efficiency and work performance; and
7. Consider and discuss health and safety matters;
8. Training, educational and development opportunities.

The parties shall provide each other with an agenda of the issues to be discussed at least one (1) week prior to the scheduled date of the meeting.

Section 2. The party requesting a special meeting, other than the regular quarterly meeting outlined in Section 1 shall furnish an agenda at least seven (7) calendar working days in advance of the scheduled meeting with a list of matters to be taken up in the meeting and the names of those representatives who will be attending.

Section 3. Bargaining unit employee representatives attending Labor Management meetings shall not suffer a loss in pay for straight time hours spent in such meetings, if held during the employee's regular scheduled hours of work.

**ARTICLE 25**  
**LICENSURE MAINTENANCE/REPORTING REQUIREMENTS**

Section 1. The parties agree that certain classifications within the bargaining unit require, as a basic condition for employment, the employee to obtain and maintain a valid motor vehicle

operator's license, Commercial Driver's License, or other job-related license (i.e., Registered Sanitarian, etc.).

Section 2. The parties agree that the following provisions shall govern instances where an employee fails to maintain the required licensure.

- A. 1<sup>st</sup> Offense- Failure to Maintain Licensure with Notice to the Employer. The parties agree that if an employee fails to maintain the necessary licensure, but notifies the Employer prior to the beginning of the workday following the date that the employee knew, or should have known, of his failure/suspension/revocation, then the employee may be demoted to a classification where the job duties do not constantly require the licensure, if a vacancy is available, and assigned duties that do not involve the required licensure, so long as such work exists for no longer than one (1) month.

Should the Employer determine that no vacancy exists or that non-licensure work is no longer available, the employee will be placed on an unpaid leave of absence until such time as the failure/suspension/revocation is remedied or lifted. Within fourteen (14) calendar days of the failure/suspension/revocation being remedied or lifted, the employee shall take the necessary actions to reinstate his license, present to the Employer the valid necessary license, and return to duty. An employee that fails to take the necessary steps to reinstate his license and/or return to duty within the fourteen (14) calendar days of the failure/suspension/revocation being remedied, shall be considered to have voluntarily resigned from his position.

- B. 1<sup>st</sup> Offense- Failure to Maintain Licensure without Notice to the Employer. The parties agree that if an employee fails to maintain the necessary licensure, and fails to notify the Employer of such failure/suspension/revocation as described above, then the employee shall be subject to termination, for failure to remain qualified to perform the duties of his position.
- C. 2<sup>nd</sup> Offense- Failure to Maintain Licensure. The parties agree that if an employee fails to maintain the necessary license for a second time during the term of his employment, where his classification requires the maintenance of a valid license, then the employee shall be subject to termination, for failure to remain qualified to perform the duties of his position.

Section 3. Annual License Checks. Each employee shall be required to complete a waiver for the Employer that will allow it to check/verify the status of any job-related licensure annually.

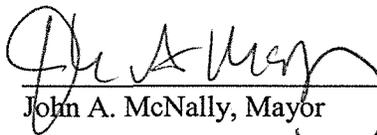
## ARTICLE 26 TERMINATION OF CONTRACT

This contract shall become effective November 15, 2014, and remain in full force and effect until September 30, 2017.

**SIGNATURE PAGE**

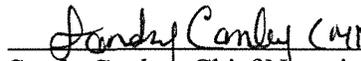
IN WITNESS WHEREOF, the parties hereto have set their hands this 24<sup>th</sup> day of November, 2014.

For the City of Youngstown *Doc # 14-667*  
*12/4/14*

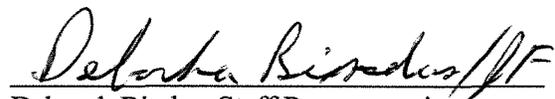
  
John A. McNally, Mayor

  
David Bozanich, Director of Finance

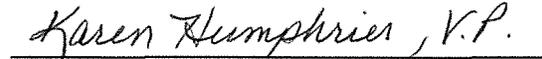
  
Martin Hume, Director of Law

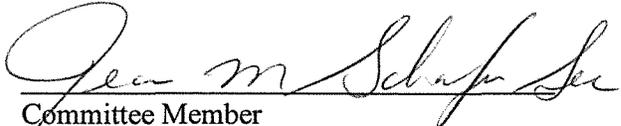
  
Sandy Conley, Chief Negotiator  
Clemans, Nelson, & Associates, Inc.

For the Union

  
Deborah Bindas, Staff Representative

  
Anna Fulmer President of A.F.S.C.M.E. 232  
Committee Member

  
Karen Humphries, V.P.  
Committee Member

  
Jean M. Schap  
Committee Member

**APPROVED AS TO FORM**

  
Martin Hume, Director of Law



**APPENDIX A  
(CONTINUED)  
CITY OF YOUNGSTOWN RESPONSE TO GRIEVANCE**

NO. \_\_\_\_\_ STEP \_\_\_\_\_  
NAME OF RESPONDENT \_\_\_\_\_  
RANK AND/OR DESIGNATION TO PROCESS GRIEVANCE \_\_\_\_\_  
DATE OF HEARING \_\_\_\_\_

RESPONSE TO CITY TO HEARING BEFORE DEPARTMENT HEAD OR HIS/HER REPRESENTATIVE \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DISPOSITION \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE WITH RANK OR DESIGNATION

\_\_\_\_\_  
DATE

**CITY OF YOUNGSTOWN  
MAYOR'S DESIGNEE DECISION**

NO. \_\_\_\_\_ STEP \_\_\_\_\_  
DATE RECEIVED BY MAYOR'S DESIGNEE \_\_\_\_\_  
NAME OF GRIEVANT \_\_\_\_\_  
DISPOSITION \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF PERSON DISPOSING OF GRIEVANCE

\_\_\_\_\_  
DATE DISPOSED

COPIES TO: GRIEVANT; PRESIDENT OF UNION; DEPARTMENT HEAD;  
MAYOR'S DESIGNEE

**APPENDIX A  
CITY OF YOUNGSTOWN  
GRIEVANCE FORM  
(CONTINUED)  
SUMMARY AND DISPOSITION SHEET**

NO. \_\_\_\_\_ STEP \_\_\_\_\_

DEPARTMENT AND/OR DIVISION \_\_\_\_\_

NAME OF GRIEVANT \_\_\_\_\_

DATE FILED \_\_\_\_\_

SIGNATURE OF PERSON RECEIVING SAME FOR CITY \_\_\_\_\_

- THIS GRIEVANCE IS SETTLED
- THIS GRIEVANCE IS NOT SETTLED
- I APPEAL TO THE \_\_\_\_\_ STEP
- I DO NOT WISH TO APPEAL
- I APPEAL TO THE DEPARTMENT HEAD
- I APPEAL TO THE MAYOR'S DESIGNEE
- I APPEAL TO ARBITRATION

COMMENTS \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
UNION REPRESENTATIVE

**APPENDIX B**  
**WAGE SCHEDULES**

**Effective November 15, 2014**

	<b>Classification</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>
1	Laborer Cashier Paint Crew	\$7.95	\$8.05	\$8.20
2	Park Utility Specialist*	\$8.25	\$8.40	\$8.55
3	Crew Leader**	\$9.25	\$9.45	\$9.65

Newly hired employees will be placed at the start rate and advance to the next step in the first full pay period of January of the subsequent year provided they have completed initial probation. Thereafter, the employee will advance in January of each applicable calendar year.

\*Incumbent Park Specialist to be placed at \$8.40 - November 15, 2014.

\*\*Incumbent Crew Leader to be placed at \$9.65 - November 15, 2014.

**Effective July 1, 2015**

	<b>Classification</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>
1	Laborer Cashier Paint Crew	min. wage*	\$0.10 above min. wage	\$0.25 above min. wage
2	Park Utility Specialist	\$8.40	\$8.55	\$8.70
3	Crew Leader	\$9.40	\$9.60	\$9.80

Newly hired employees will be placed at the start rate and advance to the next step in the first full pay period of January of the subsequent year provided they have completed initial probation. Thereafter, the employee will advance in January of each applicable calendar year.

\*Subject to change based upon any applicable state/federal adjustment.

**APPENDIX B**  
**WAGE SCHEDULES**

Effective July 1, 2016

	<b>Classification</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>
1	Laborer Cashier Paint Crew	min. wage*	\$0.10 above min. wage	\$0.25 above min. wage
2	Park Utility Specialist	\$8.55	\$8.70	\$8.85
3	Crew Leader	\$9.55	\$9.75	\$9.95

Newly hired employees will be placed at the start rate and advance to the next step in the first full pay period of January of the subsequent year provided they have completed initial probation. Thereafter, the employee will advance in January of each applicable calendar year.

\*Subject to change based upon any applicable state/federal adjustment.

APPENDIX C  
CITY OF YOUNGSTOWN  
DRUG AND ALCOHOL TESTING PROGRAM

A. Purpose: Notice

1. The City of Youngstown has a legal responsibility and management obligation to ensure a safe work environment, as well as paramount interest in protecting the public by ensuring that its employees have the physical stamina and emotional stability to perform their assigned duties. A requirement for employment must be an employee who is free from drug dependence, illegal drug use or drug and alcohol abuse.
2. Liability could be found against the City and the employee if the City fails to address and ensure that employees can perform their duties without endangering themselves or the public.
3. There is sufficient evidence to conclude that use of illegal drugs, the misuse of drug and drug, or alcohol dependence seriously impairs an employee's performance and general physical and mental health. The illegal possession and use of drugs and narcotics by employees is a crime in this jurisdiction and clearly unacceptable.
4. Further, the magnitude of harm and risk are increased where employees carrying out safety-sensitive functions are impaired. Thus, those personnel occupying safety-sensitive positions are subject to greater scrutiny for the use of illegal drugs or the abuse of drugs or alcohol.

B. Definitions

1. "Employee" means all union personnel employed by the City. "Safety-sensitive employee" means those personnel occupying positions where the essential functions of the position involve the discharge of duties fraught with risks of injury to others such that a momentary lapse of attention can have disastrous consequences. Safety-sensitive positions include those where the employee is working with or in close proximity to children.
2. "Safety sensitive functions" means all time an employee is at work or required to be in readiness for work.
3. "Reasonable suspicion" means an apparent state of facts, circumstances or information which exists from an inquiry by the supervisor or from a creditable source which would induce a reasonably intelligent and prudent person to believe the employee was under the influence or using drugs/narcotics.

C. General Rules

1. Employees shall not take any narcotics or dangerous substances unless prescribed by a person licensed to practice medicine. Employees who are required to take prescription

medicine shall notify their immediate supervisors of the medication prescribed and the nature of the illness or injury. Any statutory defined illegal use of drugs by an employee, whether at or outside City employment, shall not be tolerated.

2. All property belonging to the City is subject to inspection at any time without notice as there is no expectation of privacy. Property includes, but is not limited to, City-owned vehicles, desks, containers, files and storage lockers.
3. Employees who have reasonable basis to believe that another employee is illegally using drugs or narcotics shall report the facts and circumstances immediately to their supervisor.
4. Failure to comply with the intent or provisions of this section may be used as grounds for disciplinary action. Refusal by an employee to take the required drug test or follow the regulations prescribed in this section shall result in immediate relief from City duties pending disposition of any administrative personnel action.

D. Policy - Drug Testing and Alcohol Testing

Pre-Employment Testing

All prospective appointees for any safety-sensitive position in the City will be routinely tested for drug or narcotic usage. The testing procedure and safeguards set forth in this section shall be followed. Applicants testing positive for drugs or refusing a drug test shall not be hired.

Reasonable Suspicion Testing

Reasonable suspicion drug and/or alcohol testing will be required if a supervisor or management person has reasonable suspicion to believe that an employee is under the influence of alcohol or drugs, using illegal drugs, or has a substance abuse problem. Employees to be tested under reasonable suspicion shall be driven to the test site by a supervisor.

A supervisor who orders a drug or alcohol test when there is a reasonable suspicion of the use of alcohol or any drug or narcotic shall forward a report containing the facts and circumstances directly to the department head. The employee shall be verbally advised of any applicable reasonable suspicion at the time of the test and receive a written statement of the same reasonable suspicion within twenty-four (24) hours of the test.

Post-Accident Testing

Post-accident testing for drugs and alcohol will be required after accidents occurring while an employee is carrying out safety sensitive functions in the following circumstances:

Any accident involving a fatality; any moving vehicle accident in which the employee driver is cited and there is disabling damage to the vehicle(s) requiring tow-away; or any moving vehicle accident in which: the employee driver is cited and off-site medical treatment is required: for any drivers or passengers.

#### Random Testing

Up to five percent (5%) of all covered employees may be randomly tested for alcohol per year and twenty percent (20%) may be randomly tested for drugs per year.

All safety-sensitive employees will be included in a computer-based random selection pool and names of employees selected for testing shall be returned to the random pool after testing to insure that each employee's chances of being selected are the same.

#### Return to Duty Testing and Follow-up Testing

Any employee who tests positive on a drug or alcohol test must be evaluated, treated and must successfully complete a drug or alcohol treatment program and be given a return to duty test with passing results as a condition for returning to duty. The alcohol test result must be less than 0.04 BAC, and the controlled substance test must be negative. After testing positive for drugs and returning to duty, the employee will be subject to random urinalysis at any time for a two (2) year period.

#### Alcohol Testing Procedures

Alcohol tests shall be by breathalyzer (EBT) administered by a certified Breath Alcohol Technician (BAT). A breath alcohol content (BAC) of 0.04 shall be considered a positive test.

The test shall take place at a location that assures privacy and denies access to unauthorized individuals. The employee will provide photo ID and has the right to request ID of the BAT. A copy of the result will be provided to the employee.

A confirmation test will be required of any result showing an alcohol concentration level of 0.04 or greater. Positive test results shall be immediately transmitted to an employer representative in a confidential manner.

An employee testing 0.04 or above shall be removed from duty for no less than twenty-four (24) hours. If an employee testing 0.04 or above was driven to a testing site by a supervisor, the supervisor shall drive the employee home after testing or the employee may choose to contact a family member or other individual to drive him/her home. If the employee drove himself/herself, the employee will remain at the test site until a supervisor arrives to drive the employee home. The employee shall be responsible to make arrangements for his vehicle left at work or the testing site.

### Drug Testing Procedure

Drug testing shall be by urinalysis for the presence of metabolites of cannabinoids (marijuana), cocaine, opiates, amphetamines, methamphetamine, oxycodone (oxycotin), propoxyphene, benzodiazepines, barbiturates, methylenedioxymethyl amphetamine (Ecstasy) phencyclidine;) (PCP), and such other controlled substances as warranted by statutory updates/societal change. A "split sample" method of collection will be used. The primary specimen shall be subject to an instant testing method. The foregoing drugs test positive at the following thresholds:

<u>Drug</u>	<u>Initial Screening</u>	<u>Confirmation</u>
Cannabinoids (marijuana)	50 ng/ml	15 ng/ml
Cocaine	300 ng/ml	150 ng/ml
Non-Prescribed Steroids	N/A	N/A
Methamphetamine	1,000 ng/ml	500 ng/ml
Amphetamines	1,000 ng/ml	500 ng/ml
Opiates	2,000 ng/ml	2,000 ng/ml
Oxycodone (oxycotin)	100 ng/ml	100 ng/ml
Propoxyphene	300 ng/ml	300 ng/ml
Benzodiazepines	300 ng/ml	300 ng/ml
Barbiturates	200 ng/ml	300 ng/ml
Methylenedioxymethyl amphetamine (Ecstasy)	500 ng/ml	500 ng/ml
Phencyclidine (PCP)	25 ng/ml	25 ng/ml
Non-Prescribed Steroids/anabolic Steroids	200 ng/ml	200 ng/ml
Non-Prescribed Vicodin	N/A	N/A
Methadone	300 ng/ml	300 ng/ml
6-Acetylmorphine	10 ng/ml	10 ng/ml

In the event that the primary specimen tests positive, a confirmatory test will be performed. The confirmatory test shall be performed by a DHHS certified laboratory. An employee may request a re-test within seventy-two (72) hours of being informed of a positive result and may have the re-test performed at a different DHHS certified laboratory at the employee's cost.

Urine collection for controlled substances shall be at a collection site which shall have in place sufficient security measures to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to the area where records are stored, and shall use chain of custody procedures and chain of custody forms. The date, time, and purpose of handling or transfer and every individual in the chain of custody shall be identified and documented.

Specimen collection shall occur in a private setting and procedures shall be used that do not demean, embarrass or cause physical discomfort to the employee. The collection site

technician shall be of the same sex as the employee to be tested. The employee will provide photo ID.

A tamper-proof seal shall be used on the containers and they shall be labeled with the date and the employee's identifying number, and shall be initialed by the employee. The employee shall also be required to sign a certification on the custody and control form that the sample is his.

The laboratory shall report test results in a manner ensuring confidentiality to the employer's Medical Review Officer (MRO).

The MRO shall report only that the test was positive or negative, and if positive, for which drugs. However, the MRO may reveal the quantitative test results to the employer, the employee or decision maker in a lawsuit, grievance, or by other proceedings initiated by or on behalf of the employee and arising from a verified positive drug test.

The MRO will contact the employee directly, where possible, for a medical interview prior to verifying a test result as positive.

Any employee shall upon written request have access to any records relating to his or her drug test.

#### Refusal to Test

An employee's refusal will be considered as a positive test and subject him to discipline under part (C) of the Discipline section of this program. Refusal includes failure to appear for any test or to remain at the testing site until testing is completed; refusal to sign the prescribed form(s); failure to provide sufficient breath or urine sample to complete the test without adequate medical explanation for the failure; failure to undergo a medical evaluation directed by the MRO; failure to cooperate with any part of the testing process; and having an adulterated or substituted test result.

Any person refusing to take a pre-employment test will not be hired. An employee refusing to take a return to duty test cannot be returned to duty.

#### Required Evaluation and Treatment

No covered employee known to be using drugs, or known to have tested positive for drugs, shall be permitted to perform or continue to perform safety-sensitive functions.

Any covered employee found to have engaged in prohibited drug or alcohol use shall be informed of available resources to evaluate and resolve problems with the misuse of alcohol and drugs and provided with a list of substance abuse professionals and counseling and treatment programs.

The covered employee must be evaluated by a substance abuse professional (SAP) to determine what assistance, if any, the employee needs; must follow any rehabilitation program prescribed; must be evaluated to determine that he has properly followed said rehabilitation program; and, after a determination that he has successfully complied with an education and/or treatment program, must pass a return to duty alcohol or drug test.

### Discipline

- A. Employees who have tested positive on a drug and/or alcohol test shall be subject to disciplinary action. If the employee agrees to enter and successfully complete a rehabilitation program, the disciplinary action will not exceed thirty (30) calendar days for the first offense. Thereafter, for a period of two years, the employee shall be subject to random urinalysis at any time.
- B. Discipline for subsequent positive findings on a drug or alcohol test shall be administered in a progressive and uniform manner and may require the employee to enter into a "last chance agreement" for continued employment.
- C. Refusal to test, follow-up positive drug or alcohol tests, or failure to successfully complete a rehabilitation program will subject a covered employee to immediate termination.

### Costs

The cost of an employee-requested retest of a urinalysis sample, and the cost of an alcohol or drug rehabilitation program (including testing while in a rehabilitation program) required under this policy after a positive drug or alcohol test result, shall be the responsibility of the employee.

An employee who tests positive on a drug or alcohol test, and cannot return to work pending a negative re-test or completion of a drug or alcohol rehabilitation program, will be required to use accrued paid vacation or personal leave, accrued paid sick or medical leave, or unpaid leave pursuant to the City of Youngstown's Family Medical Leave Act Policies and Procedures.

**SIDE LETTER**  
**PART-TIME HOURS**

Notwithstanding the parties' agreement to reduce the threshold for part-time employee hours under this Agreement, the parties agree that to the extent the City can continue to offer part-time hours as was done previously without exposing itself to potential liability for the offering of health care benefits it will continue to do so. The parties further acknowledge, however, that at any point during the course of this agreement, the City, at its sole and exclusive discretion, may limit part-time scheduling as specifically provided in this Agreement. During the course of this Agreement, both parties agree that they shall meet and discuss the issue of part-time hourly scheduling limitations and health care once further guidance is available concerning federal health care mandates and hour thresholds or within a reasonable time period of a request being submitted by either party.