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A COLLECTIVE BARGAINING AGREEMENT

between

THE CITY OF TALLMADGE, OHIO

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 436

**EFFECTIVE: January 1, 2016**

**EXPIRES: December 31, 2018**

## TABLE OF CONTENTS

EFFECTIVE: JANUARY 1, 2016.....	1
EXPIRES: DECEMBER 31, 2018 .....	1
ARTICLE 1 PREAMBLE .....	4
ARTICLE 2 PURPOSE AND INTENT .....	4
ARTICLE 3 RECOGNITION.....	4
ARTICLE 4 MANAGEMENT RIGHTS.....	4
ARTICLE 5 DUES DEDUCTION.....	5
ARTICLE 6 NO STRIKE .....	6
ARTICLE 7 NON-DISCRIMINATION .....	6
ARTICLE 8 UNION SECURITY .....	7
ARTICLE 9 UNION ACTIVITIES.....	7
ARTICLE 10 ACCESS TO PREMISES .....	8
ARTICLE 11 SHOP STEWARDS.....	8
ARTICLE 12 BULLETIN BOARDS.....	8
ARTICLE 13 PROBATIONARY PERIOD .....	9
ARTICLE 14 SENIORITY.....	9
ARTICLE 15 DISCIPLINE.....	10
ARTICLE 16 LAY-OFF AND RECALL.....	11
ARTICLE 17 SICK LEAVE.....	12
ARTICLE 18 DISABILITY LEAVE .....	14
ARTICLE 19 UNPAID LEAVES OF ABSENCE.....	15
ARTICLE 20 MILITARY LEAVE .....	16
ARTICLE 21 WORK WEEK .....	16
ARTICLE 22 OVERTIME .....	17
ARTICLE 23 WAGES .....	19
ARTICLE 24 COMPENSATORY TIME .....	19
ARTICLE 25 UNIFORM ALLOWANCE.....	20
ARTICLE 26 VACATION.....	20
ARTICLE 27 HOLIDAYS.....	21
ARTICLE 28 SERVICE PAY/LONGEVITY.....	22
ARTICLE 29 INSURANCE.....	23
ARTICLE 30 SEPARATION OF EMPLOYMENT .....	24
ARTICLE 31 EMPLOYEE DEATH BENEFIT .....	24
ARTICLE 32 CONTRACTING OUT/SUBCONTRACTING .....	25
ARTICLE 33 REVIEW OF PERSONNEL FOLDER.....	25

ARTICLE 34 DANGEROUS CONDITIONS OF WORK.....	25
ARTICLE 35 DEFECTIVE EQUIPMENT.....	26
ARTICLE 36 RANDOM DRUG TESTING.....	26
ARTICLE 37 TRANSITIONAL WORK PROGRAM.....	27
ARTICLE 38 FMLA.....	27
ARTICLE 39 HEALTHCARE.....	27
ARTICLE 40 TALLMADGE RECREATION CENTER.....	27
ARTICLE 41 CONFORMITY TO LAW.....	28
ARTICLE 42 TOTAL AGREEMENT.....	28
ARTICLE 43 OBLIGATION TO NEGOTIATE.....	28
ARTICLE 44 GENDER AND PLURAL.....	29
ARTICLE 45 HEADINGS.....	29
ARTICLE 46 LEGISLATIVE APPROVAL.....	29
ARTICLE 47 GRIEVANCE PROCEDURE.....	29
ARTICLE 48 ARBITRATION PROCEDURE.....	31
ARTICLE 49 DURATION.....	32
ARTICLE 50 FILLING VACANCIES WITHIN THE BARGAINING UNIT.....	32
ARTICLE 51 EXECUTION.....	33

## **ARTICLE 1 PREAMBLE**

- 1.01 This Agreement is entered into between the City of Tallmadge, hereinafter referred to as the "Employer", and Teamsters Public Employees of Greater Cleveland and Vicinity (excluding corrections, law enforcement, and safety employees of Ohio), concerning Ohio County of Cuyahoga and Greater Cleveland area, Local 436, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 ensure the orderly and uninterrupted efficient operations of government, the Employer now desires to enter into an agreement reached through collective bargaining which will have as its purpose, among others, the following:
1. To recognize the legitimate interests of the employees of the Employer to participate through collective bargaining in employment;
  2. To promote fair and reasonable working conditions of their employment;
  3. To promote individual efficiency and service to the citizens of the City of Tallmadge;
  4. To avoid interruption of 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, as provided by the State Employment Relations Act, for all full-time blue collar employees employed by the Service Department and occupying the positions of laborers, custodians, equipment operators, technician I, drivers, mechanics and garage helper, group leader, garage group leader, permanent part time general labors, excluding all part-time, seasonal, temporary and probationary employees. All other employees of the Employer are excluded from the Bargaining Unit. Said recognition shall continue for a term as provided by law.

## **ARTICLE 4 MANAGEMENT RIGHTS**

- 4.01 Not by way of limitation of the following, but only to indicate the type of matter or rights which belong to and are inherent to the Employer, the Employer retains the right to:
1. Hire, discharge, transfer, suspend and discipline employees;

2. Determine the number of persons required to be employed, laid off or discharged for just cause;
  3. Determine the qualifications of the 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 of, or the revising of either process or equipment, or both;
  10. Determine work standards and the quality and quantity of work to be produced;
  11. Select and locate building and other facilities;
  12. Establish, expand, transfer, and/or consolidate work processes and facilities;
  13. Consolidate, merge, or otherwise transfer any and all of its facilities, property, processes or work with or to any other municipality or entity or effect or change in any respect the legal status, management responsibility of such property, facilities, processes or work;
  14. Terminate or eliminate all or any part of its work or facilities.
- 4.02 For justifiable cause, the City may require an Employee to submit to psychological testing, drug or alcohol testing.<sup>1</sup>
- 4.03 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 work force which the Employer has not specifically abridged, deleted, granted or modified by the express specific exclusively those of the Employer and shall not be subject to the Grievance Procedure herein contained.

## **ARTICLE 5 DUES DEDUCTION**

- 5.01 During the term of this Agreement, the City of Tallmadge will deduct current Union dues for the Union members, and initiation fees and assessments levied by the Union provided that, at the time of such deduction, there is in the possession of the City a current, written and signed, authorization for the deduction of dues from the employee; all subject to State and Federal laws. Dues will be deducted equally once per month, from the first pay period each month.

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<sup>1</sup>Except by "rebuttable presumption" law

- 5.02 The initiation fees, dues or assessments so deducted shall be in the amounts established by the Union from time to time in accordance with its Constitution and By-Laws. The Union shall certify to the Employer the amounts due and owing from the employees involved.
- 5.03 A check in the amount of the total dues withheld from the employees authorizing a dues deduction shall be tendered to the Union by the fifteenth of the month.
- 5.04 The Union shall indemnify and hold the City harmless against any all claims, demands, suits or other forms of liability that arise out of, or by reason of, action taken or not taken by the City for the purposes of complying with any of the provisions of this Article.
- 5.05 Any and all DRIVE contributions permitted by any Memorandums of Understanding to this Collective Bargaining Agreement entered into by the Employer and the Union shall be administered pursuant to this Article.

## **ARTICLE 6 NO STRIKE**

- 6.01 The Union hereby affirms and agrees that it will not, either directly or indirectly, call, sanction, encourage, finance or assist in any way, nor shall any employee instigate or participate, either directly or indirectly, in any strike, slowdown, walkout, work stoppage, or other concerted interference with or the withholding of services from the Employer.
- 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 and 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, work stoppage, 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 recognized by the parties that the Employer is responsible for and engaged in activities that are the basis of health and welfare of its citizens and that any violation of this Article would give rise to irreparable damage to the Employer and the public at large. Accordingly, it is understood and agreed that in the event of any violation of the Article, the Employer shall be entitled to seek and to obtain immediate injunctive relief, along with the Union indemnifying and holding the Employer harmless from any and all costs arising from the violation of this Article.
- 6.04 It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate discharge or other disciplinary action as determined solely by the Employer, without the employee having any recourse to any grievance or appeal procedure herein contained.

## **ARTICLE 7 NON-DISCRIMINATION**

- 7.01 The Employer and the Union agree not to discriminate against any employee (s) on the basis of race, color, creed, national origin, age, sex or handicap.
- 7.02 The Union expressly agrees that membership in the Union is at the option of the employee and that it will not discriminate with respect to representation between members and nonmembers.

## **ARTICLE 8 UNION SECURITY**

- 8.01 Membership in the Union is not compulsory. Employees have the right to join, not join, maintain, or drop their membership in the Union as they see fit. Neither Party shall exert any pressure on or discriminate against an employee as regards such matters.
- 8.02 Membership in the Union is separate, apart and distinct from the assumption by one of his equal obligation to the extent that he receives equal benefits. The Union is required under this Agreement to represent all of the employees in the Bargaining Unit fairly and equally without regard to whether or not an employee is a member of the Union. The terms of this Agreement have been made for all employees in the Bargaining Unit and not only for members in the Local Union, and this Agreement has been executed by the Employer after it has satisfied itself that the Union is the choice of a majority of the employees in the Bargaining Unit. Accordingly, it is fair that each employee in the Bargaining Unit pay his own way and assume his fair share of the obligation along with the grant of equal benefit contained in this Agreement.
- 8.03 In accordance with the policy set forth under Sections .01 and.02 of this Article, all employees shall, within thirty (30) days be required to pay either Union dues or an Fair Share Fee as a condition of continued employment, pay to the Union, the employee's exclusive collective bargaining representative, an Fair Share fee. The Employer shall deduct this Fair Share fee by payroll deduction and remit during the same period as dues. The deduction is automatic and does not require the employee's signature on a deduction authorization card. For present employees such payments shall commence thirty (30) days following the effective date or the date of execution of this Agreement, whichever is later.
- 8.04 Personnel hired as "Part-Time" shall not be entitled to any benefits or entitlements contained within this contract except the rate of pay. All permanent part time employees shall also be entitled to the shoe allowance in section 25.03. They shall, however, be obligated to pay the required dues to the Teamsters as indicated within the labor agreement.

## **ARTICLE 9 UNION ACTIVITIES**

- 9.01 TIME OFF FOR UNION ACTIVITIES. The Employer agrees to grant the necessary time off, without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or to service in any capacity on other official Union business, provided five (5) days written notice is given to the Employer by the Union specifying the length of time off. The Union agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.
- 9.02 NO DISCRIMINATION BECAUSE OF UNION ACTIVITIES. Any employee member of the Union acting in any official capacity whatsoever shall not be discriminated against for his acts as such officer of the Union so long as such acts do not interfere with the conduct of the Employer's business, nor there be any discrimination against any employee because of Union membership or activities.

## **ARTICLE 10 ACCESS TO PREMISES**

- 10.01 Authorized agents of the Union shall have access to the Employer's establishment during working hours for the purpose of adjusting disputes, investigating working conditions, collections of dues, and ascertaining that the Agreement is being adhered to, provided, however, that there is no interruption of the Employer's working schedule.
- 10.02 The Employer agrees to allow reasonable use of its buildings and facilities for the purpose of holding Union meetings based upon obtaining prior approval and availability of space; but subject to some reasonable fee as may be charged others for similar activities.

## **ARTICLE 11 SHOP STEWARDS**

- 11.01 The Employer recognizes that the right of the Union to designate Shop Stewards in number as determined by the Union, but acting in absence of the Union Steward. The authority of Shop Stewards so designed by the Union shall be limited to, and shall not exceed the following duties and activities:
1. The investigation and presentation of grievances in accordance with the provisions of the Collective Bargaining Agreement;
  2. The collection of dues when authorized by appropriate Union Action;
  3. The transmissions of such messages and information, which shall originate with and are authorized by the Union or its officers, provided such messages and information have been reduced to writing.
- 11.02 Shop Stewards have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Union. The Employer recognizes these limitations upon the authority of Shop Stewards shall not hold the Union liable for any unauthorized acts.
- 11.03 One Steward shall be permitted to investigate, present and process grievances on or off the property of the Employer. If investigation, presenting or processing grievances can only be done during such Steward's regular scheduled working hours, such Steward shall be granted time off his regular duties by his supervisor. Such time off, however, shall be reasonable so as to cause minimal interference with Employer's operation. If the time used by the Steward to investigate, present or process a grievance is during the regular schedule of work for such Steward; he shall receive his regular pay for the hours he is so occupied that are within his scheduled hours of work.
- 11.04 The Union shall notify the employer in writing and post the names of the Stewards on the bulletin board .

## **ARTICLE 12 BULLETIN BOARDS**

- 12.01 The Employer agrees to provide suitable space for and maintain a bulletin board in each work location. The union shall limit its use of the bulletin board to official Union business, such as meeting notices and Union bulletins.

- 12.02 Notices or postings shall not contain anything of a political or controversial nature, or reflecting upon the City or any of its employees or officers. Copies of all material to be posted shall be provided to Employer at the time of posting.

### **ARTICLE 13 PROBATIONARY PERIOD**

- 13.01 The probationary period for all newly hired employees will be three hundred and sixty-five (365) days. Probationary Employees shall be paid \$1.00 less than regular rate for the period 1-90 days; thereafter they will receive \$.50 less than regular rate for the period 91-180 days; thereafter they shall be paid the regular rate. Employees shall not have seniority during probationary periods; however, upon completion of the probationary period, seniority shall start from the date of hire.
- 13.02 The Employer shall have the sole discretion to discipline or discharge probationary employees and any such action shall not be appealable through any grievance or arbitration procedure herein contained.
- 13.03 Promotion probationary period as follows:  
The promotional probationary period for all newly promoted employees shall be sixty (60) days. Seniority shall not be affected during this sixty-day period. The purpose of this probationary period is to allow the City an evaluation period to determine whether or not the person promoted is capable of performing all of the tasks required for the most recent promotion.
- 13.04 All probationary employees probation periods may be extended by mutual agreement of the city and Union.

### **ARTICLE 14 SENIORITY**

- 14.01 Seniority shall be defined as an employee's uninterrupted length of continuous full-time employment with the Employer. A probationary employee shall have no seniority until he satisfactorily completes the probationary period, when at that time said probationary period shall be added to such employee's total length of continuous employment.

14.02 An employee's seniority shall be terminated when one or more of the following occur:

1. He resigns;
2. He is discharged for just cause;
3. He is laid off for a period exceeding twelve (12) months;
4. He retires;

5. 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; and
  6. He refuses a recall or fails to report to work within ten (10) work days from the date the Employer sends the employee a recall notice.
- 14.03 If two (2) or more employees are hired on the same date, the most senior employee shall be determined by the highest Civil Service test.
- 14.04 Seniority shall be brought up-to-date by the City as of the signing of this Agreement, and each January 1<sup>st</sup> thereafter, showing the employee's name, title, pay range/step, rate of pay, date of hire, department working in, in order of seniority, posted, and a copy forwarded to the president of Local 436 by January 15<sup>th</sup> of each year and as soon as possible after the signing of this Agreement. Any objection to the seniority list as posted, must be reported to the Employer within ten (10) days from the date posted or it shall stand as accepted.
- 14.05 The departmental seniority list established in 14.04, above, shall be the governing factor for vacation preference.

## **ARTICLE 15 DISCIPLINE**

- 15.01 An employee who is suspended, demoted or discharged shall be given written notice regarding the reason(s) for the disciplinary action within five (5) working days after the Employer has knowledge of the conduct for which an employee is being disciplined. In the case of suspension or discharge, the employee has the right to confer with a representative of the Union. The Employee and the Union will be given at least five (5) calendar days prior notice, of any disciplinary suspension or discharge.
- 15.02 Disciplinary action taken by the Employer shall only be for just cause, and administered in a non-discriminatory manner.
- 15.03 Discipline shall normally be applied in a progressive manner; i.e., oral reprimand reduced to writing, written reprimand, suspension or termination. However, should the severity of an employee's conduct or disciplinary record so warrant, an employee may be subject to suspension or discharge.
- 15.04 The City shall serve the Union Steward or his designee a copy of any disciplinary action taken against any employee immediately after such action.
- 15.05 Records of disciplinary action, whether written or verbal not resulting in time off, which are more than (1) year old, may not be referred to in subsequent disciplinary matters subject to the following criteria:
1. There has been no occurrence of a similar type incident within the past ( 1) year period; and
  2. The Law Director has given written approval after determination that such subsequent non-referral will not adversely impact the City's legal position in any pending or subsequent court action.

- 15.06 Suspension records remain in the employee's file for a period of two (2) years providing there are no further violations. However, in the event an employee is suspended for any period of time, the employee may file a grievance within seven (7) working days from written notice of suspension and invoke the Grievance Procedure as provided herein.

## **ARTICLE 16 LAY-OFF AND RECALL**

- 16.01 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 work force, such reduction shall be made in accordance with the provisions set forth.
- 16.02 Employees shall be laid off according to their seniority within the Bargaining Unit with the least senior being laid off first, providing that all students, temporary, part-time, seasonal and probationary employees within the Bargaining Unit are laid off first in the above respective order. Employees looking to bump must first bump into a vacant position before they may cause displacement of another employee.  
Any employee bumping into a different position must demonstrate, within the thirty (30) day period following the displacement, the necessary skill and ability required in the position into which the employee bumps.
- 16.03 Employee(s) who are displaced (bump) another employee with lesser seniority within the Bargaining Unit.
- 16.04 Employee(s) who are displaced (bumped) by a more senior employee, shall be able to displace (bump) another employee with lesser seniority pursuant to the provisions of Section .03 above.
- 16.05 At the end of the displacing (bumping) process, the employee who is displaced (bumped) and unable or chooses not to displace another employee pursuant to the above provisions shall be laid off.
- 16.06 Recalls shall be in the inverse order of lay-off and a laid off employee shall retain his right to recall for twelve (12) months from the date of his lay-off. Notice of recall shall be sent to the employee's address listed on the Employer's records and shall be sent by certified mail, return receipt. An employee who refuses recall or does not report to work within ten (10) calendar days from the date the employee receives the recall notice, shall be considered to have resigned his position and forfeits all rights to employment .
- 16.07 Employees scheduled for lay-off shall be given a minimum of one (1) pay period advance notice of lay-off.

## **ARTICLE 17 SICK LEAVE**

- 17.01 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 a contagious disease communicable to other employees;
  3. Pregnancy of the employee;
  4. Serious illness, injury or death in the employee's immediate family; and/or
  5. Death of any individual well known to the Employee, in which case the Employee shall not utilize more than one day's chargeable sick leave.
- 17.02 All employees shall earn sick leave at the rate of four and six-tenths (4.6) hours for every eighty (80) hours in pay status and may accumulate such sick leave to an unlimited amount, provided no employee can earn or accrue more than one hundred twenty (120) hours in any calendar year.
- 17.03 An employee who is to be absent on sick leave shall notify the Employer of such absence and reason therefore at least one-half hour before the start of his work shift each day he is to be absent. Nothing in this section precludes anyone from calling in earlier and leaving a message on voicemail.
- 17.04 Sick leave may be used in segments of not less than one half (1/2) hour.
- 17.05 Before an absence may be charged against accumulated sick leave, the Employer may require 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 by the Employer and paid by the Employer. In any event, an employee absent for more than four (4) days of work must supply a physician's report to be eligible for paid sick leave, unless waived by the Director of Public Service.
- 17.06 If an 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 medical examination, the Employer, at his sole discretion, finds that it is not satisfactory evidence of illness, injury or death sufficient to justify the employee's absence, such leave may, at the Employer's sole discretion, be considered an unauthorized leave and shall be without pay.
- 17.07 Any abuse or patterned use of sick leave shall be just and sufficient cause for disciplinary action.
- 17.08 The Employer 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 duties and that his return to duty will not jeopardize the health and safety of other employees.

- 17.09 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, parents, children, and dependents actually 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 spouse, parents, child, brother, sister, in-laws, grandchildren and grandparents.
- 17.10 Upon severance of employment with the City of Tallmadge any full-time employee who receives retirement benefits from OPERS by reason of age and length of service or disability shall be entitled to remuneration in cash for one-half of any unused sick leave accumulated by such employee while an employee of the City of Tallmadge, (Sick leave transferred from another employer shall not be utilized for these calculations) not to exceed one thousand two hundred (1,200) hours of such sick leave and such election shall be deemed to eliminate all sick leave credit accrued by such employee at that time.
1. The employee may elect in writing to be paid in cash for up to four hundred (400) hours annually during the last three (3) years prior to retirement from City employment. The eligible employee must notify the Director of Service and the Director of Finance of this election at least thirty (30) days prior to the first distribution. The election is irrevocable, meaning that once the employee indicates his/her anticipated retirement date, that retirement date cannot be altered without the approval of the City of Tallmadge and all hours paid under this provision shall be deducted from the payment for accrued sick leave as provided under this contract. The final payment shall exhaust the sick leave buyout credit. Any remaining sick leave credit may be used until the employee's retirement date at which time all remaining sick leave credit is exhausted.
  2. Any employee having less than three (3) years until retirement at the time of the enactment of the pre-retirement sick leave payment benefit may elect to receive up to six hundred (600) hours paid of accrued sick leave in each of the last two (2) years preceding retirement subject to the provisions of Paragraph 1 above.
- 17.11 If payment of sick leave credits is made, the Director of Finance of the City shall, within thirty (30) days of such retirement, ten (10) or more year termination or decease, compute the number of unused sick leave hours and pay such employee or to such "Sick Leave Beneficiary" if such employee be deceased, such sum as shall be the result of such computation, charging such sum to the same account of the annual appropriation from which said employee has been paid their regular stipend. Only sick leave earned at the City of Tallmadge shall be utilized for these calculations. (Sick leave transferred from another employer after 1/1/10, shall not be utilized for these calculations)
- 17.12 All cash payments for sick leave earned at the City of Tallmadge (Sick leave transferred from another employer shall not be utilized for these calculations) shall be computed upon one-half (0.5) of the value of such sick leave credits.
- 17.13 Any employee otherwise qualified to receive a sick leave severance benefit who dies shall have the benefit to which he/she is entitled paid to his/her designated beneficiaries, or, where no beneficiary has been designated, to his/her estate.
- 17.14 Employees shall be granted paid time off, not deductible for sick leave, not to exceed three (3) working days for each death in the immediate family of the employee, as defined herein. Additionally, where necessary, an employee may use two (2) additional days chargeable to sick leave for such death. An employee may elect to take one (1) day

funeral leave due to the death of an individual other than a member of their immediate family. This time shall be charged to the employee's sick leave.

- 17.15 The full-time personnel who shall be called to serve on a municipal, county, federal or grand jury or to be examined at specified time as a juror shall be granted the time necessary to serve on such jury or to attend such examination. All such time shall be considered jury duty and shall not be charged to such employee's vacation or sick leave. The City of Tallmadge shall reimburse the employee for any differential between his normal rate of pay and the compensation received for such jury duty. All employees are to report back to work when service ends or when service ends early.
- 17.16 The parties incorporate the mandatory provisions of the Family Medical Leave Act by reference. It is further agreed that F.M.L.A. entitlements shall be used concurrently with existing leave entitlements. Seniority shall accumulate during a F.M.L.A. leave and existing life insurance shall be maintained.

## **ARTICLE 18 DISABILITY LEAVE**

- 18.01 When an employee is injured in the line of duty while actually working for the Employer, he shall be eligible for paid leave, in the amount equal to his base wage, not to exceed thirty (30) calendar days from the injury date, providing that within the thirty (30) calendar days he files for Workers' Compensation and signs a waiver assigning to the Employer those sums of money he would ordinarily receive as weekly compensation as determined by law for that number of weeks he receives benefits under this Article. Such leave shall commence after the employee utilizes his sick leave for the first five (5) work days. Sick leave will be reimbursed to the extent of Workers' Compensation benefits received by the Employer.
- 18.02 If the employee has filed for Workers' Compensation and at the end of this thirty (30) calendar day period, the employee is still disabled, the leave may be extended for an additional period not to exceed eleven (11) months, during which the employee will be compensated as follows:
1. One hundred percent (100%) of his weekly base pay.. Such employee may elect to use his accumulated sick leave or combination of both during the continuance of such disability.
- 18.03 The employer shall have the right to require the employee to have a physical exam by a physician's certification that the Employee is unable to return to work due to the injury as condition precedent to the employee receiving benefits under this Article. The designated physician's opinion shall govern whether the Employer shall extend the period of leave. Refusal of an employee to submit to the required physical exam shall be just cause for termination.
- 18.04 In the event that the City of Tallmadge should purchase disability income insurance, each employee shall execute an assignment of benefits to the City of Tallmadge to the extent of any compensation received by the employees set forth herein, above.

## ARTICLE 19 UNPAID LEAVES OF ABSENCE

- 19.01 An employee who has completed ninety (90) days of continuous service with the Employer may be granted a leave of absence without pay because of injury, illness, education purposes, employment by the Union, or other personal reasons, including maternity leave. The decision to grant the leave or the length of the period will be at the discretion of the Employer with due consideration given to the reasons and evidence presented by the employee to the Employer.
- 19.02 All leaves of absence (and any extension thereof) must be applied for and granted in writing on forms provided by the Employer (with a copy to 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 reason for the leave when the leave is for other purposes. An employee will be notified in writing five (5) working days from the date the application was made of the approval or disapproval of the leave of absence request for ten (10) working days or less. For a leave request in excess of (10) working days, the employee will be notified within two (2) weeks from the date the application was made of the approval or disapproval of the leave. An employee who is granted such a leave shall not accrue any benefits during this absence, including seniority.
- 19.03 Leaves of absence will not be granted for the employee to seek employment with another employer, nor shall any 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 shall be subject to disciplinary action.
- 19.04 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 work.
- 19.05 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.
- 19.06 Employees absent from work without authorization or approval shall be considered on an unauthorized leave. An unauthorized leave for a period of more than three (3), eight (8) hours consecutive working days may, at the Employer's discretion, be considered an automatic resignation and subject the employee to other disciplinary action.
- 19.07 In the event that a Bargaining Unit member who becomes unable to perform his job duties due to illness or injury unrelated to work does not return to work within ninety (90) days after the expiration of any and all benefits which he is entitled to utilize, that Bargaining Unit member will, at the Employer's discretion, be considered an automatic resignation and subject to termination. In the event that the terminated Bargaining Unit member can demonstrate that he is physically able to perform all duties required of him within one (1) year after termination, he will be offered any suitable employment opportunity which the Employer has within the Bargaining Unit, at a level equal to or lower than the position he was terminated from.

## **ARTICLE 20 MILITARY LEAVE**

- 20.01 The Employer will accord the employees all rights existing under its policy concerning Military Service Leave. The Employees will be subject to all provisions of this policy, and will be required to conduct themselves in accordance with all policy requirements. In the event that the policy is determined to be in conflict with state or federal law, the conflicting state or federal provision shall control.
- 20.02 In the event the Employer modifies this policy during the term of this Agreement, the Employees and the Union will be notified of the modification(s) thirty (30) calendar days prior to the implementation of the modification.

## **ARTICLE 21 WORK WEEK**

- 21.01 The standard work week shall commence at 12:01 a.m. Sunday and end at 12:00 midnight the following Saturday; except that:
1. An employee's workweek shall normally be scheduled between 12:01 a.m. Monday and end at 12:00 midnight the following Friday.
  2. The Employer and the Union may mutually agree to alter the standard work week or work day for an experimental period up to ninety (90) days to schedule employees for other than the established day time shift. The afternoon, nighttime and/or weekend shift (s) shall be posted for five (5) work days prior to Employee (s) being assigned to the shifts.
    - A. Employees who may desire to work the afternoon or nighttime or weekend shifts must submit a written request not later than the end of the fifth work day of the posting period. The shift assignment shall be given to the more/most senior qualified employee who has requested it. An employee given the assignment via seniority must remain on the shift at least four (4) consecutive months if requested by the Employer. Thereafter the Employee may return to his or her previous shift. If no Employee requests to be assigned, then the least senior employee (s) shall be assigned.
    - B. The decision to cancel afternoon, nighttime, or weekend shift (s) is solely at the employer's discretion and any such decisions are not subject to the parties' grievance/arbitration procedures.
- 21.02 Forty (40) hours per week shall be the standard work week. It may be accrued through working either a 5- day x 8 hours per day schedule, or, by working 4- ten hour days. In either case, the schedule shall be run from Monday through Friday. The city shall provide the union with 7 days' notice of its intent to utilize a 4 x 10 hour schedule.
- 21.03 Eight (8) hours per day shall be the standard work day, however, the city may schedule the work assignments over 4 ten hour schedules. When the 10-hour schedule is utilized, there will be no payment of time and one half hourly rate for hours worked in excess of 8, unless the time worked is in excess of 10 hours.

21.04 Members of the Bargaining Unit shall be granted a period of time no less than thirty (30) minutes and no longer than sixty (60) minutes for lunch. The length of and time of taking such lunch time shall be determined by the Supervisor of the Department or the Director of Public Service. The employee shall receive no pay during such period, nor shall such time be used to compute hours worked for any purpose. Lunch periods may be taken at the end of the work day with supervision approval..

1. However, if the employee works regular scheduled hours at any time during Saturday or Sunday or works a regular scheduled shift starting anytime between 4:00 p.m. and 4:00 a.m. on any day of the week; such employee shall receive thirty (30) minutes for lunch for which he will be paid his regular pay.

## **ARTICLE 22 OVERTIME**

- 22.01 By definition, worked hours will not include sick time for overtime calculation purposes, however, regular holiday hours, and vacation hours will be added to the calculation.
- 22.02 **8 Hour / 10 Hour Day.** When an employee is scheduled to work a 8-hour schedule, he/she will earn overtime for any work performed in excess of an 8 hour day. When an employee is scheduled to work a 10-hour schedule, he/she will earn overtime for any work performed in excess of a 10-hour day
- 22.03 **40-Hour Week.** Any work performed by an eligible employee in excess of forty- (40) hours in a standard workweek shall be compensated at the rate of one and a half (1.5) times the normal rate of the employee performing such work.
- 22.04 **Sunday.** Any work performed by an eligible employee on a Sunday shall receive a minimum of three (3) hours pay for such duty at a rate of two (2) times the normal rate of the employee performing such work.
- 22.04 **Holiday.** Any work performed by an eligible employee on a Holiday as described in Section 27.03 shall receive a minimum of three (3) hours pay for such duty at a rate of two (2) times the normal rate of the employee performing such work.
- 22.05 **Emergency Call-In.** Any employee called for duty which is non-contiguous with their normal work day shall receive a minimum of three (3) hours pay for such duty at one and half (1.5) times their normal rate of pay.
- 22.06 **Scheduled work on Saturday.** Any employee that is scheduled to work on Saturday must meet the requirements of Section 22.03 to receive overtime
- 22.07 When it becomes necessary to work overtime, the Employer agrees to attempt to distribute overtime on an equal basis with consideration being given to those persons in a seniority status.
- 22.08 Overtime for garage and water employees shall be offered on a voluntary rotating basis. If no employee agrees to work after one time through the entire roster for department requiring overtime, then the employer will call in employees on a reverse seniority basis.

- 22.09 For Road Department employees only and between the periods of November 15<sup>th</sup> to March 14<sup>th</sup>, a volunteer overtime list shall be distributed weekly within the Road Department. It will be the Union Steward's obligation to see that all employees within the Road Department have the ability to sign for overtime for the following week. This sign-up sheet shall be given to the Road Superintendent prior to the beginning of the normal workweek that such work is to be performed. Employees are not guaranteed overtime if they sign up but merely will be the first to be offered it if needed. Additional employees should be called by seniority on a continuous rotating basis. No average hour's board will be kept during this time period.
- 22.11 For the period between March 15<sup>th</sup> and November 14<sup>th</sup> overtime shall be offered on a voluntary basis in order of average hours. If no employee agrees to work after one time through the entire roster for that department requiring overtime, the employees from the other two (2) departments (Water/Sewer or Garage) shall be requested to work. If none agree voluntarily, then the employer will call in employees on a reverse seniority basis and the employees shall work. The intent of this section is to provide a means by which the City may – when no one will volunteer and if needs arise – force employees, youngest seniority first, to perform the duties the city needs done.

The average hour board shall be zeroed-out on March 15<sup>th</sup> of each year. The volunteer list shall include Equipment Operator, Technician I, and General Laborers. In the event an employee does not possess the certification to perform a specific overtime task, he/she may be "passed over" to the next employee on the overtime list that does possess the necessary certification. The passed over employee shall be assigned the very next overtime assignment for which he/she possess the necessary certification.

- 22.12 In the event that the entire department requiring overtime had been notified and additional manpower is still needed.
- 22.13 When an employee works out of classification, they must be paid at that job classification rate,

**ARTICLE 23  
WAGES**

23.01 Effective on January 1, 2016 employees in the following classification shall be paid as follows:

	(3.0%) <u>1/1/2016</u>	(3.0%) <u>1/1/2017</u>	(3.0%) <u>1/1/2018</u>
General Laborer	\$16.43	\$16.92	\$17.43
Technician I	\$21.45	\$22.09	\$22.75
Mechanic Helper	\$21.57	\$22.22	\$22.89
Equipment Operator	\$24.60	\$25.34	\$26.10
Garage Mechanic	\$24.60	\$25.34	\$26.10
Garage Group Leader	\$27.02	\$27.83	\$28.66
Traffic Technician	\$25.70	\$26.47	\$27.26

If any other city union or city employee group receives a salary increase of greater than 3.0% during any of the above contract years, the above percentage increases shall be increased to said greater increase percentage.

23.02 When employees perform work "out of classification" (defined as an employee with a lower job classification performs a task of a higher job classification – ie. A General Laborer performs a Technician I level job skill, that lower job classification level will receive compensation at the same rate the individual at the higher level would have received for performing that same task. The duration of time the higher rate is paid shall be rounded up to the next highest hour for the actual time spent performing the task/operating the equipment. The employee must possess the knowledge, skills and abilities to perform that particular task.

23.03 The personnel who occupy the position of Garage Mechanic shall receive three hundred twenty five (\$325.00) annually as a tool allowance, which shall be paid by the Director of Finance upon receiving the appropriate receipts of purchase from the employee during the course of the contract year.

23.04 Any employee who is issued a pager for the purpose of responding to call-outs from the Stow Dispatch or other entities, shall be compensated at the rate of \$125 per week. The supervisor shall attempt to recognize individual preferences, but shall have the final right to pick who shall carry the pagers, including individuals outside the water and sewer department.

**ARTICLE 24  
COMPENSATORY TIME**

24.01 The granting of compensatory time off shall not be unreasonably denied.

- 24.02 On December 1 of each year any employee who has unused accumulated compensatory time off shall be paid by the Director of Finance at his/her normal rate of pay in effect at the time such compensatory time was earned for such prior unused accumulated time off, and such payment shall be made within thirty (30) days of such date. The outstanding balance of compensatory time on December 2 will be zero (0) hours.
- 24.03 At any point in time prior to December 1, if the member exceeds one hundred sixty (160) hours of accrued compensatory time, the member shall be paid by the Director of Finance at his/her normal rate of pay in effect at the time such compensatory time was earned for such prior unused accumulated time off in excess of one hundred sixty (160) hours. No employee may accumulate more than one hundred sixty (160) hours of compensatory time.

## **ARTICLE 25 UNIFORM ALLOWANCE**

- 25.01 The Employer agrees that if any employee is required to wear any kind of uniform or safety equipment as a condition of his continued employment, such uniform or safety equipment shall be furnished and maintained by the Employer free of charge, at the standard required by the Employer, and he shall receive five (5) uniform changes per week. In addition, all members of the Bargaining Unit shall receive one (1) complete rain suit and summer T-shirts (3 per year) which shall be replaced as normal wear and tear dictates.
- 25.02 The Employer shall provide work gloves for employees, which, when worn out, shall be replaced by the Employer, upon presentation of the worn out pair.
- 25.03 The Employer shall reimburse each employee (full time and permanent part time) up to a maximum of two hundred and fifty (\$250) dollars annually for the purchase of winter clothing and the purchase or repair of steel toe safety work shoes. A check shall be issued every year at the second pay of January that will be part of the regular paycheck.

## **ARTICLE 26 VACATION**

- 26.01 The vacation schedule for all regular full-time employees shall be as follows:
1. Upon completion of 1 year service – 10 work days.
  2. Upon completion of 5 years service – 15 work days.
  3. Upon completion of 10 years service – 20 work days.
  4. Upon completion of 15 years service – 25 work days.
- 26.02 Entitlement to vacations under Article 26 shall be determined as of the employee's anniversary date each year.

- 26.03 Within the Street Department four (4) employees; within the Water and Sewer Department two (2) employees and within the Garage Department two (2) employees may be permitted to take vacation off at the same time upon thirty (30) day written notice to and approval of the Employer, if such can be accommodated by the work schedule. Such requests shall not be unreasonably denied.
- 26.04 Vacation and compensatory time for the next year shall be selected on the basis of seniority between Dec. 2 and January 31 of the prior year. Employees shall be notified on or before February 28th whether or not their vacation selections are approved.
- 26.05 If vacation and compensatory time is not scheduled at that time, it shall be approved on a first come, first-served basis, subject to scheduling considerations. Such requests shall not be unreasonably denied.
- 26.06 Each eligible employee shall be allowed to carry over to the next immediate year earned vacation time to a maximum of ten (10) days. The employee may also choose to be paid in lieu of vacation carry-over. Such payments shall be made in the month of January of each year following the year earned.

## **ARTICLE 27 HOLIDAYS**

- 27.01 An employee who has been a regular employee of the City in excess of thirty (30) calendar days shall be entitled to holiday benefits for those holidays enumerated in Section .03 below.
- 27.02 An employee who has been a regular employee of the City in excess of (1) year shall be entitled to holiday benefits for those holidays enumerated in Section .04 below.
- 27.03 Holidays are as follows, to wit:
1. New Years Day
  2. Memorial Day
  3. Independence Day
  4. Labor Day
  5. Thanksgiving Day
  6. Christmas Day
  7. Good Friday
  8. Friday after Thanksgiving Day

In the event that an eligible employee works on any day designated as a holiday (floating holidays not included), they shall be paid at double time (2.0) their regular rate of pay; and in addition, they shall receive their regular holiday pay, or at their option, be allowed compensatory time off in lieu of their holiday pay subject to other rules affecting compensatory time off. In the event an eligible employee does not work on any day designated as a holiday, they shall be paid their regular rate of pay; or at their option be allowed compensatory time off in lieu of their holiday pay subject to other rules affecting compensatory time off.

- 27.04 Floating holidays are as follows, to wit:
1. Presidents Day (effective January 1, 2004)
  2. Martin Luther King Day
  3. Three (3) Personal Holidays

Employees will be permitted to take a floating holiday upon a five (5) day written notice to and approval of the employer, if such can be accommodated by the work schedule. Such requests shall not be unreasonably withheld.

## **ARTICLE 28 SERVICE PAY/LONGEVITY**

28.01 All full-time regular employees shall be entitled to remuneration in addition to that otherwise provided in the following amounts after completion of service with the City for the following periods of time:

1. For five (5) years of service when completed, the sum of seventeen cents (\$.173) per hour.
2. For ten (10) years of service when completed, the additional sum of seventeen cents (\$.173) per hour.
3. For fifteen (15) years of service when completed, the additional sum of seventeen cents (\$.173) per hour.
4. For twenty (20) years of service when completed, the additional sum of seventeen cents (\$.173) per hour.
5. For twenty-five (25) years of service when completed, the additional sum of seventeen cents (\$.173) per hour.

Employees hired after July 1, 2000 will receive an initial .20-cent increase over their starting wage. Whenever an employee works out of classification, or, are promoted (within this union), the .20 increase shall be added into the new hourly rate. However, they shall never receive another longevity based rate increase throughout their careers with the city.

28.02 Service Pay/Longevity payments contained in the above schedule will be included in the employee's biweekly base pay.

28.03 In the event an employee's service pay/longevity increases during the year for which he/she is being paid, he/she will receive pro-rated credit for the higher rate for the biweekly period in which, by his/her anniversary date, he/she is entitled to the higher rate.

## ARTICLE 29 INSURANCE

- 29.01 This Union will receive the same medical coverage as is provided to nonunionized employees of the city. The Employer shall expressly reserve the right to change insurance carriers or coverage.
- 29.02 In addition to the existing employee contribution, effective January 1, 2016 bargaining unit employees' premium contributions per employee will continue to increase from the 2015 contribution rate by fifty (50) percent of any increased premium cost to the City to a maximum per pay period of an additional \$ 10 for single coverage, \$15 for employee +1 coverage, and \$20 for family coverage. The Finance Director shall withhold these charges from the employee pay checks.

Effective January 1, 2017 bargaining unit employees' premium contributions per employee will further increase by fifty (50) percent of any increased premium cost to the City to a maximum per pay period of an additional \$15 for single coverage, \$20 for employee +1 coverage, and \$ 25 for family coverage. The Finance Director shall withhold these charges from the employee pay checks.

Effective January 1, 2018 bargaining unit employees' premium contributions per employee will further increase by fifty (50) percent of any increased premium cost to the City to a maximum per pay period of an additional \$ 15 for single coverage, \$20 for employee +1 coverage, and \$ 25 for family coverage. The Finance Director shall withhold these charges from the employee pay checks.

Effective January 1, 2016 the City shall have a cap placed on increases. The City's increased premium costs shall increase to a maximum per pay period of an additional \$20 for single coverage, \$25 for employee +1 coverage and \$30 for family coverage.

Effective January 1, 2017 the City's increased premium costs shall increase to a maximum per pay period of an additional \$21 for single coverage, \$26 for employee +1 and \$31 for family coverage.

Effective January, 2018 the City's increased premium costs shall increase to a maximum per pay period of an additional \$22 for single coverage, \$27 for employee +1 and \$32 for family coverage.

If the City 's cap that is mentioned in the previous three paragraphs increases beyond these rates the Cost Containment Committee shall be immediately notified and provided 15 days from such notification to alter the coverage levels to bring the City's cost increase to a figure below the above-provided caps. If the Cost Containment Committee is unable to recommend such an alteration in coverage to the Mayor, then the Mayor shall be given the right to unilaterally make such changes as long as all nonunion employees are provided with the same coverage as union members. Such changes are not subject to the grievance process of this contract.

If other city employees are subsequently provided a lower employee cost program for premium increases, that lower cost program shall be provided to members.

- 29.03 If during any year the City is impacted by the "Cadillac tax" of the Affordable Care Act the Cost Containment Committee shall be immediately notified and provided 15 days from such notification to alter the coverage levels to bring the City's cost increase to below the level necessary to avoid the Cadillac Tax. If the Cost Containment Committee is unable to recommend such an alteration in coverage to the Mayor, then the Mayor shall be given the right to unilaterally make such changes as long as all nonunion employees are provided with the same coverage as union members. Such changes are subject to the grievance process of this contract.
- 29.04 Consistent with the Ohio Revised Code, Chapter 2744.07, the Employer shall provide for the defense and indemnification of any employee in any civil action brought against him by reason of his employment with the City of Tallmadge.
- 29.05 The Employee shall be represented, to the extent that he was acting in good faith and within the scope of his employment or professional responsibility. Should the Employer decline to represent the employee pursuant to this paragraph, the employee shall have available the remedy guaranteed in Ohio Revised Code 2744.07 C.
- 29.06 Representation and defense by the Employer shall be limited to the extent that it shall not indemnify said employee for punitive or exemplary damages, but only those compensatory damages where the employee was acting in good faith and within the scope of his employment.
- 29.07 This Union will receive the same medical coverage as is provided to other employees of the city. The Employer shall expressly reserve the right to change insurance carriers or coverage.

### **ARTICLE 30 SEPARATION OF EMPLOYMENT**

- 30.01 Upon leaving the employ of the Employer for whatever reason, such employees shall be paid all forms of remuneration to which he/she may be lawfully entitled. Payment of the same to the employee shall be paid at the next regular payday following that in the week of termination of such employment.

### **ARTICLE 31 EMPLOYEE DEATH BENEFIT**

- 31.01 Upon the death of a member employee, and, notification by their spouse, the city will pay up to 50% (maximum of 1200 hours /2) of their remaining accrued sick time bank earned at the City of Tallmadge (**Not sick leave transferred from another employer after 1/1/10**), all compensatory time and all other holidays and vacation time owed to the deceased employee; to the surviving spouse. This is a benefit in addition to any life insurance provided by the city to its employees.

**ARTICLE 32**  
**CONTRACTING OUT/SUBCONTRACTING**

- 32.01 The Employer reserves the right to contract out or subcontract work which requires a degree of specialization not present in the Bargaining Unit, or is of such a nature that, in the Employer's sole discretion, performance by Bargaining Unit members is not practical.
- 32.02 Such contracting out or subcontracting shall not be done for the sole purpose of reducing the employee work week, hourly rates of pay, or to erode job classification.
- 32.03 The Employer agrees to notify the Union in the event that this Article is utilized.

**ARTICLE 33**  
**REVIEW OF PERSONNEL FOLDER**

- 33.01 Members of the Bargaining Unit shall be allowed to review their personnel folders at any reasonable time upon request. If a member, upon examining his personnel folder, has reason to believe that there are inaccuracies in those documents to which he has access; the member may write a memorandum to the Employer explaining the alleged inaccuracy. If, upon investigation, the Employer sustains such allegation, they shall do one of the following:
1. The member's memorandum may be attached to the material in question, and filed with it and the Employer shall note thereon their occurrence; or
  2. The Employer may remove the inaccurate material from the personnel folder if they feel that its inaccuracies warrant such removal; or
  3. The Employer may remove and destroy the material in the presence of the employee and the Union.
- 33.02 It is agreed that supervisory and administrative personnel may only divulge any material in any personnel folder in accordance with applicable State and Federal law.
- 33.03 The Union will in no way hinder or interfere with any State or Federal regulations regarding an employee's folder. However, the Union may view an employee's personnel folder upon a written authorization from said employee to the Employer's Director of Public Service, authorizing the viewing of same.

**ARTICLE 34**  
**DANGEROUS CONDITIONS OF WORK**

- 34.01 Under no circumstance will an employee be required or assigned when such is known to the Employer to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment. Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, before starting his next shift, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident.

- 34.02 Safety and Health. The Employer and the Union agree that the safety and health of all employees are matters of the highest importance and each will cooperate in an effort to prevent injury.
- 34.03 The Union agrees that careful observance of safe working practices and Employer safety rules is a primary duty of all employees. The Employer agrees that there will be uniform enforcement of such rules against employees; said rules shall be enforced without discrimination. Violation of Employer safety rules subjects the offending employee to disciplinary action.

## **ARTICLE 35 DEFECTIVE EQUIPMENT**

- 35.01 The Employer shall not knowingly require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the driver can see the same.
- 34.02 Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies, one copy retained by the employee. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.
- 34.03 When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working or operating condition and receives no consideration from the Employer, he shall take the matter up with the officers of the Union who will take the matter up with the Employer.

## **ARTICLE 36 RANDOM DRUG TESTING**

- 36.01 The Employer will accord the employees all rights existing under its policy concerning Drug and Alcohol Testing. The Employees will be subject to all provisions of this policy, and will be required to conduct themselves in accordance with all policy requirements. In the event that the policy is determined to be in conflict with state or federal law, the conflicting state or federal provision shall control.
- 36.02 In the event the Employer modifies this policy during the term of this Agreement, the Employees and the Union will be notified of the modification(s) thirty (30) calendar days prior to the implementation of the modification.

**ARTICLE 37  
TRANSITIONAL WORK PROGRAM**

- 37.01 The Employer will accord the employees all rights existing under its policy concerning its Transitional Work Program. The Employees will be subject to all provisions of this policy, and will be required to conduct themselves in accordance with all policy requirements. In the event that the policy is determined to be in conflict with state or federal law, the conflicting state or federal provision shall control.
- 37.02 In the event the Employer modifies this policy during the term of this Agreement, the Employees and the Union will be notified of the modification(s) thirty (30) calendar days prior to the implementation of the modification.

**ARTICLE 38  
FMLA**

- 38.01 The Employer will accord the employees all rights existing under its policy concerning Family Medical Leave. The Employees will be subject to all provisions of this policy, and will be required to conduct themselves in accordance with all policy requirements. In the event that the policy is determined to be in conflict with state or federal law, the conflicting state or federal provision shall control.
- 38.02 In the event the Employer modifies this policy during the term of this Agreement, the Employees and the Union will be notified of the modification(s) thirty (30) calendar days prior to the implementation of the modification.
- 38.03 According to the Federal FMLA law, after twelve (12) weeks, an employee's position is not guaranteed. Another position may be offered if available

**ARTICLE 39  
HEALTHCARE**

- 39.01 The Employer will accord the employees all rights existing under its policy concerning Health Care. The Employees will be subject to all provisions of this policy, and will be required to conduct themselves in accordance with all policy requirements. In the event that the policy is determined to be in conflict with state or federal law, the conflicting state or federal provision shall control.
- 39.02 In the event the Employer modifies this policy during the term of this Agreement, the Employees and the Union will be notified of the modification(s) thirty (30) calendar days prior to the implementation of the modification.

**ARTICLE 40  
TALLMADGE RECREATION CENTER**

- 40.01 All employees, their legal dependents (as defined by the City's medical insurance eligibility requirements) are eligible for annual membership at the Tallmadge Recreation Center at one-half the rate of City residents.

## **ARTICLE 41 CONFORMITY TO LAW**

- 41.01 This Agreement shall be subject to and subordinated to any applicable present and future Federal or State laws. The invalidity of any provision (s) of this Agreement by reason of any such existing or future law shall not affect the validity of the surviving provisions.
- 41.02 If the enactment of legislation, or a determination by a court of final and competent jurisdiction (whether in a proceeding between the parties or in one not between the parties but controlling by reason of the facts) renders any portion of this Agreement invalid or unenforceable, such legislation or decision shall not affect the validity of the surviving provisions of this Agreement, which shall remain in full force and effect as if such invalid provision(s) thereof had not been included herein.
- 41.03 In the event any portion of this Agreement is found invalid, pursuant to Section .02 above, the parties shall meet within sixty (60) days to negotiate a valid alternative.

## **ARTICLE 42 TOTAL AGREEMENT**

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

## **ARTICLE 43 OBLIGATION TO NEGOTIATE**

- 43.01 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 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.
- 43.02 Therefore, for the life of this Agreement, the Employer and the Union each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain/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 bargained/negotiated and signed this Agreement.

## **ARTICLE 44 GENDER AND PLURAL**

44.01 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 to be discriminatory by reason of sex.

## **ARTICLE 45 HEADINGS**

45.01 It is understood and agreed that the use of headings before articles or section if for convenience only and that no heading shall be used in the interpretation of said article or section nor affect any interpretation of any article of section.

## **ARTICLE 46 LEGISLATIVE APPROVAL**

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

## **ARTICLE 47 GRIEVANCE PROCEDURE**

47.01 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 and shall have the right to be represented by a person of his own choosing at all stages of the Grievance Procedure. It is the intent and purpose of the parties to this Agreement that all grievances shall be settled, if possible, at the lowest step of this procedure.

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

1. Grievance – A "grievance" shall be defined as a dispute or controversy arising from the alleged misapplication or misinterpretation of only the specific and express written provisions of this Agreement.
2. Aggrieved Party – The "aggrieved Party" shall be defined as only any employee or group of employees within the Bargaining Unit actually filing a grievance.
3. Party in Interest – A "Party in interest" shall be defined as any employee who is not the aggrieved Party.

4. Days – A “day” as used in this procedure shall mean calendar days, excluding Saturdays, Sundays or Holidays as provided for in this Agreement.

47.03 The following procedures shall include:

1. Except at Step 1, all grievances shall include:
  - A. The name, and signature of the aggrieved Party;
  - B. The identity of the provisions of this Agreement involved in the grievance;
  - C. The time and place where the alleged events or conditions constituting the grievance took place;
  - D. The identity of the Party responsible for causing the said grievance, if known to the aggrieved Party; and
  - E. A general statement of the nature of the grievance and redress sought by the aggrieved Party.
2. 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 aggrieved Party and his representative, if any.
3. 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.
4. The drafting of grievances shall be conducted only during non-working hours. An “Aggrieved Party” must sign the grievance.
5. 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 the intervention of the Union, provided that the adjustment is not inconsistent with the terms of this Agreement. In the event that any grievance is adjusted without a formal determination, pursuant to this procedure, while such adjustment shall be binding upon the aggrieved Party and create a precedent or ruling binding upon the Employer in future proceedings.
6. The aggrieved Party may choose whomever he wished to represent him at any step of the grievance procedure.
7. 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 automatically have waived and forfeited any remedies provided by this procedure.
8. The time limits provided herein will be strictly adhered to and any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the Employer fails to reply within the specified time limit, the grievance

shall be deemed denied and shall automatically move to the next step. The time limits specified for either Party may be extended only by written mutual agreement.

9. 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.

Step 1:

An employee who believes he may have a grievance shall, within five (5) days of the occurrence of the facts giving rise to the grievance, provide a written request for an informal meeting with the Assistant Superintendent for the purpose of discussing the possible grievance. If requested, the Assistant Superintendent will schedule an informal meeting with the Employee and his representative within three (3) working days of the date of the notice by the Employee. The Assistant Superintendent, employee and the employee's representative, if requested, shall meet to discuss the issues in dispute with the objective of resolving the matter informally.

Step 2:

If the dispute is not resolved informally at Step 1, it shall be reduced to writing by the aggrieved Party and/or his representative, if any, and presented as a grievance to the aggrieved Party's Superintendent within five (5) days of the informal meeting or notification of the supervisor's decision at Step 1, whichever is later, but not later than seven (7) days from the date of the original meeting. If the finding of the Assistant Superintendent is unsatisfactory to the aggrieved, the matter shall be referred to the Superintendent. He shall give his answer to the aggrieved Party, and the aggrieved Party's representative, if any, within five (5) days of the receipt of the written grievance.

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 decision shall be submitted with the appeal. The Mayor shall convene a meeting within ten (10) days of the receipt of the appeal. The meeting will be held with the aggrieved Party, his/her representative, if any, and any other Party necessary to provide the required information for the rendering of a proper decision. The Mayor shall issue a written decision to the employee, with a copy to the Employee's representative, if any, within fifteen (15) days from the date of the meeting. The Arbitration Procedure (Article 42) will apply after all steps in the Grievance Procedure (Article 41) have been exhausted.

## **ARTICLE 48 ARBITRATION PROCEDURE**

- 48.01 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 time limit default (s) of the Employer, then within a ten (10) 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, the panel members'

names will be stricken alternately (Union striking first) until one name remains, who shall be designated the arbitrator to hear the grievance in question.

- 48.02 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 to make any award that itself is contrary to the law or violates any of the terms and conditions of this Agreement.
- 48.03 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.
- 48.04 The hearing (s) shall be conducted pursuant to the Rules of the Voluntary Arbitration of the American Arbitration Association.
- 48.05 The fees and expenses of the arbitrator and the cost of the hearing room, if any, shall be borne by the Party losing the grievance. All other expenses shall be borne by the Party incurring them. Neither Party shall be responsible for any of the expenses incurred by the other Party.
- 48.06 The arbitrator's decision and award will be in writing and delivered within thirty (30) days from the date the record is closed. The decision of the arbitrator shall be final and binding upon the Parties.
- 48.07 There is hereby created a permanent panel of arbitrators to be used for the selection of arbitrators pursuant to this Arbitration Procedure. Those individuals placed on this panel shall be:
1. Robert G. Stein-C
  2. Marvin Feldman – U

The arbitrators listed shall be selected by alternating choice method. A coin toss may be used to determine who gets the first elimination.

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

## **ARTICLE 49 DURATION**

- 49.01 This Agreement shall become effective at 12:01 a.m. on Jan. 1, 2016 and shall replace any existing Agreement, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2018.

## **ARTICLE 50 FILLING VACANCIES WITHIN THE BARGAINING UNIT**

- 50.01 The Employer reserves the right to determine when and if a vacancy occurs. If the employer has determined that a vacancy has occurred within the Bargaining Unit, members of the Bargaining Unit shall be provided first opportunity to bid on the position

based upon experience first, and then seniority, provided the employee satisfies all minimum requirements established by the employer. If no members of the Bargaining Unit apply for the vacancy, the Employer may fill the position at its discretion according to prevailing law.

50.02 All employees within the Bargaining Unit who transfer between departments shall initially serve a probationary period of sixty - (60) days.

### ARTICLE 51 EXECUTION

51.01 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed this 23 day of FEBRUARY, 2016.

FOR THE UNION

Saymon Tiboni Pres.  
Name, Title

John M. Fortugno Sec. Treas.  
Name, Title

Christy Ann V-Pres.  
Name, Title

FOR THE CITY

Clara Hillier Mayer  
Name, Title

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Name, Title

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Name, Title