

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2022-4

By Mary K. Brown Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BEREA AND THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 860, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor has reported to this Council that the Administration has undertaken collective bargaining negotiations with the Laborers' International Union of North America, Local 860, in an effort to establish an Agreement between the City of Berea and the Bargaining Unit representing employees of the Service Department; and

WHEREAS, such negotiations have developed a proposed Agreement between the City of Berea and the said Bargaining Unit, a true copy of which Agreement is attached hereto as Exhibit "A" and made a part hereof, as if fully rewritten herein; and

WHEREAS, the Mayor has presented the proposed Collective Bargaining Agreement to this Council for its review, approval and ratification, with his recommendation that the Agreement be so approved and ratified as a fair, just and equitable negotiation and settlement of all matters at issue between the City of Berea and the said Bargaining Unit; and

WHEREAS, the Agreement is for a three-year period covering January 1, 2022, through December 31, 2024.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, Cuyahoga County, State of Ohio:

SECTION 1. That this Council finds that the Collective Bargaining Agreement negotiated by the Administration of the City of Berea with Laborers' International Union of North America, Local 860, a true copy of which proposed Agreement is attached hereto, and made a part hereof, as if fully rewritten herein, is a fair, just and equitable resolution of all matters between the City of Berea and the said Bargaining Unit, which are subject to negotiations and settlement pursuant to Chapter 4117 of the Ohio Revised Code, and that the said Agreement covering the period of January 1, 2022 through December 31, 2024, should be, and hereby is, approved, confirmed and ratified by the Council.

SECTION 2. That the Director of Finance be, and hereby is, authorized and directed to pay such funds as may be required pursuant to the terms and conditions of the Collective Bargaining Agreement according to the tenor thereof, and such funds as may be required and necessary to accomplish the same are hereby appropriated and allocated to the various and several funds as may be designated by the Director of Finance for accounting purposes required by law.

SECTION 3. That is, it found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public or as otherwise permitted by the Charter of the City of Berea and Section 121.22 of the Revised Code.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the establishment of Collective Bargaining Agreements is required by law and necessary for the immediate and continued operation of the City, particularly in matters of public safety and service. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earlier period allowed by law.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. _____ No. 2022-4

By Brown Sponsored By Mayor Kleem

PASSED: February 22, 2022

ATTEST: [Signature]
Clerk of Council

APPROVED: February 23, 2022
[Signature]
Mayor

APPROVED AS TO FORM:
[Signature]
Director of Law

AN AGREEMENT

BETWEEN

THE CITY OF BEREA, OHIO

and

THE LABORERS' AND FOREMEN'S
INTERNATIONAL UNION OF NORTH AMERICA
MUNICIPAL COUNTY AND STATE EMPLOYEES'
UNION
LOCAL 860

SERVICE EMPLOYEES

Effective: January 1, 2022
Expires: December 31, 2024

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ARTICLE 1

THE CONTRACT

1.01 This Agreement is entered into by and between the City of Berea, Ohio, hereinafter referred to as the "Employer" and the "City" and the Laborers' International Union of North America, Local 860, hereinafter referred to, variously, as the "Union," the "Bargaining Unit," the "Bargaining Agent" or, individually, as "employee(s)."

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 desires to enter into a collectively-bargained Agreement which has for its purposes, among others, the following: a) to recognize the legitimate interests of the employees to participate through collective bargaining in the determination of certain terms and conditions of their employment; 2) to promote fair and reasonable working conditions; 3) to promote effective and efficient service to the residents of the City of Berea, Ohio; 4) to avoid interruption, interference or inefficiency in the operation of the Government of the City; 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 certain terms and conditions of employment for all full-time employees occupying position(s) in the Department of Public Service. All other employees of the Employer are excluded from the Bargaining Unit.

3.02 The Bargaining Unit shall be composed of four (4) work classifications for employees within the Department of Public Service: Laborers; CDL Technicians, Mechanics and Foreman.

Laborers:

Laborers are those employees who at the time of full-time hire do not possess a Class B commercial driver's license as defined by Ohio Law or if they do possess a Class B license, are hired as a Laborer.

Laborers may perform any task that does not require the possession of a Class B commercial driver's license pursuant to Ohio Law.

Employees in this class who possess or later obtain a Class B commercial driver's license do not automatically advance to the CDL-qualified class of employees. In order to advance to

the next class, a vacancy, as defined by Management, must exist. Such Laborer employee will have preference to advance to the next class over an applicant outside of the Bargaining Unit. Such employee advancing to the next class shall be paid a probationary rate of pay equal to the rate of pay of such employee in effect immediately preceding such advancement. Thereafter, such employee shall be paid at a rate of pay equal to the greater of the pay of such employee just prior to advancement or the scheduled rate of pay on the applicable schedule for such new classification.

CDL Technicians:

CDL Technicians are those employees who at the time of full-time hire to the position possess a Class B commercial driver's license, as defined by Ohio Law.

CDL Technicians may perform any assigned task including, but not limited to, the operation of all motor vehicles, tools, equipment and routine maintenance of vehicles including greasing, changing of oil and other fluids and tires.

A CDL Technician who fails to maintain a Class B CDL driver's license shall be demoted to the Non-CDL class of employees (Laborer) during the term of the disability. Said employee shall be paid at the highest rate for Non-CDL Laborers during the term of disability. Such employee advancing to the next class shall be paid a probationary rate of pay equal to the rate of pay of such employee in effect immediately preceding such advancement. Thereafter, such employee shall be paid at a rate of pay equal to the greater of the pay of such employee just prior to advancement or the scheduled rate of pay on the applicable schedule for such new classification.

Mechanics:

Mechanics are those employees who at the time of full-time hire to the position possess a Class B commercial driver's license, as defined by Ohio Law, and are assigned, primarily, the tasks of maintaining and repairing City vehicles, equipment and tools.

Mechanics may perform all assigned tasks including those performed by CDL-qualified employees.

A Mechanic who fails to maintain a Class B CDL driver's license shall be demoted to the Non-CDL class of employees (Laborer) during the term of the disability. Said employee shall be paid at the highest rate for non-CDL employees (Laborer) during the term of said disability.

Foremen:

Foremen will be those employees who have the responsibility to coordinate the work of service workers engaged in maintenance, repair and related general public service work and other appropriate duties as assigned by or through the Service Director. He or she may examine the work of other Bargaining Unit employees to ensure compliance with the

Service Director or other Supervisor's instructions, proper use of equipment and timely accomplishment of designated tasks. He or she may observe other Bargaining Unit employees to ensure that all proper safety precautions are taken in the use of equipment and performance of assignments and may, upon request, describe facts of any crew member's misconduct which he or she witnessed, without recommending discipline or offering any opinion as to whether such conduct actually violates City policy. To the extent he or she is instructed to engage in "supervisory" tasks, he or she shall never do so with independent discretion or judgment. The City acknowledges that Foremen shall be non-exempt employees under the FLSA or similar state law.

3.03 Skilled Trades Premium

A "Skilled Trades Premium" of \$0.20 per hour shall be paid to all employees for all hours worked, regardless of what work is being performed, as compensation for employees' performance of skilled trades functions for the benefit of the Employer..

3.04 The Employer retains the sole and exclusive right to define jobs by description and to create new job classifications and/or positions as the Employer deems appropriate.

3.05 The Employer shall notify the Union, in writing:

- a. In the event that a new job classification and/or position is established; and,
- b. In the event that a present job classification and/or position is changed in title, where the actual work duties of such retitled classification and/or position remain substantially unchanged from the previous title.

3.06 In the event that the Union determines that a substantial change has occurred in a job classification and/or position which has been previously defined by agreement of the parties to this Agreement, the Union may require a meeting with the Employer to discuss such matter.

3.07 Labor/Management meetings: To facilitate communications, cooperation and efficiency, meetings shall be held quarterly between the Union stewards and the Employer to discuss matters of concern to the Union and to the City. Such meetings shall be held after regular work hours of Union stewards and such stewards shall not be entitled to pay or compensation for such meetings as the same are voluntary on the part of the stewards.

3.08 Licenses:

- a. **Class I Operator for Water Distribution:** Within 30 days of the final execution of this Agreement, the Employer will notify all members of the bargaining unit that they may express interest in seeking a Class I Operator license. In accordance with Ohio's Administrative Rules, only employees with 12-months requisite experience are eligible to become a Class I Operator.

The City will pay for appropriate training and testing for any member of the bargaining unit who expresses interest in pursuing a Class I Operator license. Such training and testing will be done during an employee's regular working hours or will otherwise be considered compensable hours worked.

Any employee who passes the Class I Operator test on his or her first attempt and becomes licensed as a Class I Operator will be placed on a list. Once the list is established, the City shall select up to five (5) employees from the list to be designated as *Service Department Class I Operators*. This selection will be made by departmental seniority. Any employee who is a Class I Operator and functions as such, as of the execution of this Agreement, will be designated as a *Service Department Class I Operator* upon the final execution of this Agreement.

Service Department Class I Operators who maintain their license will be reimbursed for their continuing education training and will receive a stipend of one thousand five hundred (\$1,500.00) annually, as long as the Class I Operator license is maintained and such employees are available to perform the Service Department Class I Operator functions on behalf of the Employer. Any such payments shall be prorated, based on time designated as a Service Department Class I Operator within a given year. (e.g., An employee who is designated as a Service Department Class I Operator for 6 months in a given year, will receive seven hundred fifty dollars (\$750.00).) Service Department Class I Operators must also follow all rules and regulations required of them through the Ohio EPA.

The Employer will reimburse employees who are Class I Operators, but have not been selected from the list to be a Service Department Class I Operator, for appropriate continuing education and training in furtherance of maintaining their Class I Operator license. These employees are considered to be on the Service Department Class I Operator Reserve List.

As Service Department Class I Operator positions become available or as other operational needs may arise, the Employer shall draw eligible employees, by departmental seniority, from the Reserve List and designate them as Service Department Class I Operators in accordance with this Section.

Commencing in 2023, the Employer will annually permit members of the bargaining unit to express interest in becoming Class I Operator. If such employees become a Class I Operator, they will be placed on the Reserve List, unless the Employer has an immediate need for such employee to be designated as a Service Department Class I Operator.

The City may provide and/or reimburse employees for the appropriate experience, training, and testing to pursue a Class II Operator Water Distribution license, but if an employee achieves that or a higher licensure, the maximum annual stipend will not exceed a total of fifteen hundred dollars (\$1,500.00) per year.

b. **Other Licenses:** Employees who have received prior approval from his/her Director to obtain a special license for work specific to their employment will be reimbursed for the cost of the license. Upon receipt of the license, the employee shall receive a stipend of \$100 each year for maintaining the license. Payment will be made in the first pay period of March beginning in the year following the date of obtaining the license. If the license lapses and is reobtained, the yearly payment will begin in the year following the date of reobtaining the license.

ARTICLE 4

MANAGEMENT RIGHTS

4.01 The Employer retains all rights of management, including the rights to: 1) employ, discharge, transfer, suspend and discipline employees; 2) determine the number of persons required to be employed or laid off; 3) determine the qualification(s) of employees; 4) determine the hours to be worked by its employees; and to; 5) make rules and regulations relating to the performance of work assigned to its employees; 6) determine the type of equipment to be used and the sequence of work processes; 7) determine the making of technological alterations by revising either process or equipment or both; 8) determine work standards and the quality and quantity of work to be produced; 9) establish, expand, transfer and/or consolidate work processes and facilities; 10) consolidate, merge or otherwise transfer any or all of its facilities, property, processes or work with, or to, any other municipality or entity, or effect, or change in any respect, the legal status, management or responsibility of such property facilities or processes of work; 11) eliminate all or any part of its work or facilities.

4.02 In addition, the Union agrees that all of the functions, rights, powers, responsibilities and authority of the Employer with regard to the operation of its business and its direction of the work force, which the Employer has not specifically deleted, *granted or modified by the express and specific written provisions of this Agreement* are, and shall remain, exclusively those of the Employer.

ARTICLE 5

NO-STRIKE

5.01 The Union does hereby affirm and agree that it will not, directly or indirectly, call, sanction, encourage, finance, instigate or assist in any way, in any strike, slowdown, walkout, work stoppage or other concerted interference with, or the withholding of services from, the Employer, including the honoring of unsanctioned picket lines, nor shall any employee member of the Union act to do so.

5.02 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 and not sanctioned by the Union and immediately order all employees to return to work forthwith.

5.03 It is recognized by the parties that the Employer is responsible for, and engaged in, activities which affect the health, safety and welfare of its citizens and that any violation of this Article gives rise to irreparable damage to the Employer and the public at large. Accordingly, it is understood and agreed that, in the event of any violation of this Article, the Employer shall be entitled to seek and to obtain immediate injunctive and other relief authorized by Ohio Revised Code Chapter 4117.

5.04 The Employer shall not lock out any employees during the term of this Agreement.

ARTICLE 6

NON-DISCRIMINATION

6.01 The Employer and the Union agree not to discriminate against any employee(s) on the basis of race, color, creed, national origin, age, sex, disability or handicap. The employee and the Union acknowledge that the City has adopted an anti-harassment, including sexual harassment, Ordinance having full force and effect and is hereby incorporated by reference.

6.02 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 non-members.

ARTICLE 7

DUES DEDUCTIONS

7.01 During the term of this Agreement, the Employer shall deduct regular Union dues from the wages of those employees who have voluntarily signed dues deduction authorization forms authorizing such deductions. If the compensation of an employee for any period is insufficient, the Employer shall make the deduction from the next pay period which is sufficient. The Employer shall, in addition to the regular monthly Union Dues as certified by Local 860's Secretary-Treasurer, deduct the special assessment amount from each employee's earnings who has voluntarily signed dues deduction authorization forms authorizing such special assessments, as certified by Local 860's Secretary-Treasurer, which amount shall be remitted by Local 860 to the Laborers' District Council of Ohio as an association/affiliation fee for services provided by that labor organization.

7.02 The Union agrees to supply the Employer with a list of employees for whom dues deductions are to be made.

7.03 A draft in the amount of total dues withheld from employees authorizing such deduction shall be tendered to the Treasurer of the Union within thirty (30) days from the date of making said deductions.

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

ARTICLE 8

UNION REPRESENTATION

8.01 The City recognizes the right of the Union to select Local Officers, Union Stewards and Alternate/Assistant Union Stewards to represent employees as to any and all grievances arising under this Contract.

8.02 The Steward or Alternate Steward shall process grievances and attend meetings provided for in the Grievance Procedure set out below during off-duty time or at such other times as may be approved by the Employer. It is the mutual responsibility of the City and the Union to cooperate in good faith to provide a fair and timely grievance proceeding.

8.03 The Alternate Steward shall act as Steward when the Steward is absent. It is the responsibility of the Union to have a Steward or Alternate Steward assigned to each work location. A Local Union Officer may act as a Steward and will notify the City of any change in such lists.

8.04 An employee has the right, upon request, to the presence and advice of a Union Steward or other Officer at any investigative hearing which may lead to disciplinary action or at any subsequent disciplinary hearing.

8.05 The Local Union Officer shall be admitted to all facilities of the City during normal working hours, upon giving reasonable advance notice and obtaining the approval of the Employer. Such visitation shall be for the purpose of participating in the adjustment of grievances or in attendance upon other meetings as provided herein. Such visitation(s) shall not interfere with the work requirements of any employee or disrupt the operations of the City in any way.

ARTICLE 9

SENIORITY, LAYOFF AND RECALL

9.01 Seniority is defined as the uninterrupted length of continuous service which each employee has in the employ of the City and, secondarily, the uninterrupted length of continuous service which each employee has in a permanently-assigned Work Classification.

9.02 If two (2) or more employees commence employment or are promoted to the same Work Classification, on the same date, the relative seniority between them shall be determined by lot.

9.03 Seniority is terminated upon the occurrence of any of the following:

- a) Voluntary resignation;
- b) Retirement;
- c) Permanent total disability;
- d) Discharge for just cause;

- e) Layoff or Leave of Absence during Probationary Period, or layoff or Leave of Absence for a period equal to a maximum of twelve (12) months for employees having 3 or fewer years of service; 18 months for employees having more than 3 but up to 8 years of service; and 24 months for employees having more than 8 years of service.
- f) Failure to report within five (5) days of recall from layoff or release to return from medical Leave of Absence.

9.04 In the event that the Employer reduces the size of the work force for any reason, such reduction shall require that all temporary and seasonal employees be laid-off first and thereafter such reduction in force shall take place in accordance with the seniority provisions set forth in this Article in inverse order within Work Classification.

9.05 Any employee who is laid off from a particular position may displace any other employee in the Division having lesser seniority. The displaced employee may, in turn, displace any other employee having lesser seniority within the Work Classification to which such displaced employee is permanently assigned; or if not possible, displace any other employee having lesser seniority within the Division. In all cases of displacement pursuant to this paragraph, the employee electing to displace any other employee must be qualified and able to perform the functions of the position sought. Any employee not able to further displace other employees below them shall be subject to layoff. All employees shall retain the right to displace other employees according to the provisions of this paragraph or to accept layoff.

9.06 Upon layoff an employee may, upon request, receive cash payment for all earned, but unused, vacation. Such payment shall be made no later than the second pay period following layoff.

9.07 Any employee(s) scheduled for layoff shall be notified of the same not less than fifteen (15) calendar days in advance of such layoff, together with similar notice to the Union.

9.08 Recall to work shall be in the inverse order of layoff, and all employees shall retain the right to recall for twelve (12), eighteen (18) or twenty-four (24) months from the date of layoff based upon the schedule in 9.03 e).

9.09 Notice of recall shall be sent by U.S. Certified Mail to the address of the employees listed upon the records of the Employer.

9.10 The parties will meet and confer as soon as possible but, except in case of emergency, in no event less than thirty (30) days prior to a scheduled action by the City, prior to any implementation of a layoff, furlough or reduction in hours. In the event the City privatizes work, ultimately, results in the reduction of the work force, the City will meet and confer with the Union prior to such privatization.

ARTICLE 10

PROBATIONARY PERIOD

10.01 All newly-hired employees are required to serve a Probationary Period of six (6) months. During the Probationary Period, the newly-hired employee will not be covered by the terms of the Agreement and the Employer shall have sole discretion to discipline or discharge any such probationary employee and any such action shall not be appealable through any grievance or appeal procedure contained herein.

10.02 If an employee is separated from service with the City during the initial Probationary Period and is later rehired, such employee shall be considered a new employee and shall be subject to the provisions of paragraph 10.01 above.

10.03 All newly-promoted employees are required to serve a promotional probationary period of six (6) months. During such period the Employer shall have the sole discretion to return such employee to the position previously held and any such action shall not be appealable through any grievance or appeal procedure contained herein.

10.04 During the Probationary Period established in this Article, an employee shall have no seniority with the Employer. Upon satisfactory completion of the Probationary Period, the employee shall have seniority commencing with the date of hire.

10.05 Such probationary employees may not qualify for overtime during the first six (6) months except for overtime carrying over from a scheduled shift, provided the City first offers such overtime to full-time bargaining unit members and no full-time bargaining unit member accept the overtime assignment, or exigent circumstances require the immediate assignment of overtime to such probationary employees. "Exigent circumstances" for purposes of this Section includes a probationary employee being held over as part of a crew to complete an assigned task. Examples of this include, but are not limited to repairing water main breaks. After completing probation, new members will have overtime hours pro-rated to the average of the rest of the membership.

ARTICLE 11

HOURS OF WORK

11.01 The normal work week for regular full-time employees shall consist of forty (40) hours of work in five (5), eight (8) hour work days, exclusive of time allotted for meals. The hours of work set out herein shall not be construed as any guarantee of hours to be worked in any day or any week.

11.02 The Employer shall not stagger the workweek for the sole purpose of depriving any employee of overtime.

11.03 Any employee who is engaged in snow plowing, salting or ice control shall work a maximum of sixteen (16) hours in any twenty-four (24) hour period. In the event that the normal workday shall include a portion of such sixteen (16) hour period, the employee may work as much as the normal workday as does not exceed the sixteen (16) hour limitation.

11.04 The Employer reserves the right to implement a permanent or seasonal second and/or third shift as dictated by operational needs and determined solely by the Employer. Any employee assigned to and who actually works a second shift will be paid an additional \$.50 per hour as a shift premium. Any employee assigned to and who actually works a third shift will be paid an additional \$.75 per hour as a shift premium.

11.05 Lunch and Break Periods

The following policy addresses meal period and breaks for day shift employees:

- a. The standard work day for day shift employees is 7 am to 3 pm.
- b. Employees working the standard work day are not entitled to a formal meal or break period. However, it is understood that employees may occasionally need to use restroom facilities during their shift.
- c. Employees wanting coffee, water or other beverages or snacks should do their best to acquire them before the shift begins.
- d. No employee shall be required by management to take a lunch break.
- e. Exceptions - Employees wishing to take a meal break must comply with the following:
 1. The standard work day for employees wishing to take a meal break is 7 am to 4 pm.
 2. The meal break is from 11:30 am to 12:30 pm.
 3. The entire work crew must consent to taking a meal break.
 4. A Superintendent must be advised at the beginning of the shift if a meal break will be taken by a crew.
 5. Employees taking a meal break should punch in and punch out for their break.
 6. Employees shall use their personal vehicle for transportation during the meal period, and shall not utilize a City vehicle for this purpose.

ARTICLE 12

OVERTIME

12.01 For the purpose of this Article, overtime work is defined as any work actually performed in excess of forty (40) hours in any week or in excess of eight (8) hours in any day. For the purpose of calculating overtime, all Leave with Pay calculated elsewhere in this Agreement shall be included as work actually physically performed.

12.02 Any employee who works overtime, as defined in paragraph 12.01 above, shall be compensated at the rate of one and one-half (1-1/2) times their regular hourly rate for all overtime hours worked. In addition, an employee working overtime that is directly before or after an assigned shift, or an employee that is called-in to work at a time other than the assigned shift for emergency overtime shall receive the same shift differential as those employees regularly or temporarily assigned to the shift for those hours actually subject to a shift differential. Emergency overtime is defined as water or sewer work, or in situations so designated by the Director of Public Service as emergencies. The regularly hourly rate includes any applicable shift differential.

12.02.01 Cold weather overtime

Any employee working emergency overtime in temperatures of 10 degrees or below, shall be paid at a rate of two times the regular hourly rate. Emergency overtime is defined as water and sewer work or in situations so designated by the Director of Public Service as an emergency.

In order to qualify for the cold weather overtime rate, the air temperature must remain at or below 10 degrees for a minimum of four hours from the time that the employee is called to work. The City shall use the National Weather Service records for zip code 44017 to determine eligibility.

12.03 Compensatory Time may be banked to a maximum of eighty (80) hours and will be earned and paid at the same rate as other overtime. The time can be used with the permission of the Employer in blocks of two(2) hours.

An employee who accrues the maximum of eighty (80) hours of Compensatory Time in a calendar year is not required to use all of the eighty (80) hours that the employee has initially banked before accruing additional Compensatory Time, provided that the employee cannot exceed the annual maximum of eighty (80) hours of accrued time in a calendar year.

All Compensatory Time that has not been used or paid by December 31 of any year shall be paid to the employee by the end of the succeeding January at such employee's preceding December rate of pay, except that at such employee's option, exercisable in December, such employee may opt to carryover up to twenty-four (24) hours of such Compensatory Time to the succeeding year. Notwithstanding the above, the City has the right to reject a request for Compensatory Time, if necessary, to meet operational needs and manpower requirements.

12.04 The Employer shall distribute overtime work in a fair and equitable manner to all employees within the Division every six (6) months as best as practical.

The Employer shall keep a record of the overtime hours worked by each employee on a list. Overtime hours and missed opportunities shall be recorded on this list at the end of each

pay period. The list shall be posted on the Union bulletin board or in a location easily accessible by Bargaining Unit employees at least every two weeks.

An employee who is offered overtime work and is unavailable or declines to work the overtime, shall, for the purposes of overtime equalization, be credited with the overtime hours as if he worked the hours.

Overtime shall initially be offered to all qualified employees in the affected classification on the basis of seniority. Once every qualified employee has been offered one overtime assignment, future overtime assignments shall be offered to the employee capable of performing the work who has the least number of overtime hours worked or refused. If an insufficient number of employees accept the overtime work, the Employer may assign the overtime work to those individuals capable of performing the work who have the least seniority.

12.05 Any employee assigned overtime work after completing a regular work day and leaving a job site shall be compensated at one and one-half (1-1/2) times the regular rate of pay for all overtime hours actually worked; but in any event, such employee shall be paid one and one-half (1-1/2) times the higher rate for not less than three (3) hours, whether or not the employee actually performed physical work during such three (3) hour period.

ARTICLE 13 **RATES OF PAY**

13.01 Commencing January 1, 2022, all employees shall be paid bi-weekly according to the wage schedule set out in Exhibit A, attached hereto and made a part hereof as if fully rewritten herein.

13.02 Effective January 1, 2023, all employees shall be paid bi-weekly according to the wage schedule set out in Exhibit A, attached hereto and made a part hereof as if fully rewritten herein.

13.03 Effective January 1, 2024, all employees shall be paid bi-weekly according to the wage schedule set out in Exhibit A, attached hereto and made a part hereof as if fully rewritten herein.

13.04 All employees covered by this Agreement shall be paid at an hourly rate, multiplied by the number of hours worked. Solely for the purpose of reporting annual income to any legitimate inquiry, the annual wage of any employee may be reported as the multiplication of the hourly rate times Two Thousand and Eighty (2,080).

13.05 In the event an employee is designated as crew leader as selected and appointed solely by the Employer, such employee shall receive an additional \$1.00 per hour.

ARTICLE 14 **LONGEVITY COMPENSATION**

14.01 All employees shall receive additional compensation for continuous full-time length of service with the Employer according to the following schedule:

On December 1 in the calendar year following the year in which the employee completes five (5) years of continuous full-time service, such employee shall receive One Hundred Dollars (\$100).

On December 1 in each calendar year following the year in which the payment set out in sub-paragraph a) above has been made, the employee shall receive an amount calculated by multiplying the total number of consecutive years of continuous full-time service, minus three (3) times Eighty-Five Dollars (\$85).

ARTICLE 15

UNIFORM ALLOWANCE

15.01 Immediately following the completion of the Probationary Period provided for in Article 10 above, and in the pay-period containing February, each employee shall receive the sum of One Thousand Dollars (\$1,000) cash money for a clothing allowance. The clothing allowance in the first year of employment shall be pro-rated based on whole months of employment between the date of completion of the Probationary Period and February of the next succeeding year.

15.02 All employees shall meet the requirements of the Employer as to the use and wearing of appropriate clothing in the performance of assigned work. Failure to meet such clothing requirements shall be cause for disciplinary action, including dismissal.

15.03 The Employer will provide an adequate amount of work gloves, as determined and selected by the Employer. The employees shall be responsible for any other gloves as necessary to perform their job.

15.04 The Employer shall reimburse non-probationary employees for the cost of bib overalls and an outer jacket, not to exceed Three Hundred Dollars (\$300) in total cost to the City, but not more than once every five (5) years. In order to receive such reimbursement, employees must provide the Employer receipts for the purchased bib overalls and/or outer jacket.

ARTICLE 16

EXPENSE ALLOWANCE

16.01 Any employee who is authorized by the Employer to use a private automobile for a business purpose shall be compensated in cash money for such use at the rate of reimbursement per mile consistent with Internal Revenue Service Regulations then in effect.

16.02 No private automobile shall be used for a business purpose unless proof of liability insurance upon the same in an amount not less than Three Hundred Thousand Dollars (\$300,000) shall be provided to the Employer.

ARTICLE 17

INSURANCE

17.01 The Employer shall provide, at no cost to the employee, insurance upon the life of all employees who have completed one (1) month of continuous service with the City, in the amount of Twenty-Five Thousand Dollars (\$25,000). All employees shall have the further option to purchase additional life insurance in the amount of up to a total of One Hundred Fifty Thousand Dollars (\$150,000) subject to insurability requirements of the carrier, upon the payment of the appropriate premium for such additional amount of insurance.

17.02 The Employer shall continue to provide all medical and hospitalization insurance in effect for employees who have completed sixty (60) days of employment and their dependents upon the terms and conditions of the City of Berea Health Insurance Plan (Summary Plan Document) provided that the employee contribute the following health care premium share for the actual cost of his or her health insurance: 8%.

Such hospitalization insurance includes provisions for basic medical, major medical, prescription drug, dental care and vision care benefits. The prescription drug plan is hereby amended to provide for a three tier program, that the employee's co-pay for Tier 1, generic drug prescriptions shall be Ten Dollars (\$10) per prescription; and the employee's co-pay for Tier II, formulary drugs shall be Twenty Dollars (\$20) per prescription; the employee's co-pay for Tier III, non-formulary drugs, subject to prior approval, shall be Thirty-five Dollars (\$35) per prescription.

17.03 The Employer reserves the right to change insurers in any and all matters of insurance covered by this Agreement; provided, however, that the benefits are equal to or greater than existing prior to such change.

17.04 Joint Medical/Hospital Insurance Committee. The parties agree that in an effort to reduce hospitalization/medical costs citywide, a Joint Medical/Hospitalization Insurance Committee will be formed and with a representative from the Laborers International Union of North American Municipal, County and State Employees Union Local 860, will be established and convened at least one (1) time per year or more, if practicable, to review alternative insurance coverage and plans and make recommendations to the Employer. As part of this process, the representatives shall have access to all non-confidential information. The Union may designate an employee as a representative on the committee and the Employer will require the City insurance representative to actively participate with the committee.

The Committee will analyze cost containment measures including, but not limited to, deductibles, co-pays, out-of-pocket maximums, prescription drug coverage and possible changes in providers. All City employees are to share in any cost reductions achieved by the Committee.

ARTICLE 18

PAYMENTS UPON DEATH

18.01 Upon the death of an employee, all sums earned and accrued pursuant to this Agreement shall be paid, in order as allowed by law, to: a) the next of kin, b) other beneficiary(ies) designated by such deceased employee or c) the estate of such deceased employee.

ARTICLE 19

SICK LEAVE

19.01 Sick Leave shall be defined as an absence with pay necessitated by:

- a. Illness or injury to the employee;
- b. Exposure by the employee to a contagious disease communicable to other employees; and/or
- c. Illness, injury or death in the immediate family of the employee as defined in paragraph 19.07 below.

19.02 All employees shall earn Sick Leave at the rate of five (5) hours per bi-weekly pay period during which such employee actually worked or was absent by reason of Leave granted in this Agreement. An employee may accumulate Sick Leave to an unlimited amount.

19.03 An employee who is to be absent on Sick Leave shall notify the Employer of such absence and the reason therefore at least one (1) hour before the start of the work shift on each day of absence, unless hospitalized.

19.04 Sick Leave may be used in segments of not less than four (4) hours, except when such Sick Leave occurs during a scheduled work period or in cases of special emergencies approved by the Employer, on which occasions it may be used in segments of not less than one (1) hour.

19.05 In the event an employee is absent for more than two (2) consecutive regularly-scheduled shifts, more than four (4) regularly-scheduled shifts in any fourteen (14) consecutive day period or has a pattern of five (5) or more single days absence in a calendar year by reason of illness, the Employer may require appropriate and satisfactory proof as to the reason for such absence before the absence(s) may be charged against accumulated Sick Leave. In addition, the Employer may require of any employee claiming Sick Leave as set out in this paragraph a statement from a physician licensed to practice medicine in the State of Ohio indicating the ability of such employee to return to active duty in the capacity which was left by reason of such illness.

If the employee fails to submit appropriate and satisfactory proof of illness or, if required, fails to submit a statement as to physical fitness for returning to duty, any absence relating thereto shall be considered an Unauthorized Leave Without Pay.

19.06 Any abuse of Sick Leave shall be just and sufficient cause for a disciplinary action, including dismissal. Examples of patterns of abuse include: 1) absences occurring repetitively immediately before, or after weekends, holidays or vacation days; 2) before or after paydays; 3) when difficult jobs or assignments are scheduled; 4) during certain times during the month or year, and 5) absences which cause individual work performance or operational needs to suffer. The accumulated Sick Leave of an employee may be a component in the determination of a pattern of abuse of Sick Leave but shall not be the sole determinant thereof.

19.07 Sick Leave may be used due to illness or injury of a member of the immediate family defined to include those persons who reside with the employee or are dependents of the employee consistent with the Family and Medical Leave Act but not inconsistent with Article 45 of this Agreement.

19.08 An employee who leaves the service of the Employer voluntarily and who has not less than ten (10) years of continuous employment with the said Employer, or an employee who has qualified for retirement benefits under the Public Employees Retirement System by reason of employment with the City of Berea solely, without regard to the number of years of service of consecutive service with the Employer, shall be entitled to receive a cash payment equal to the hourly rate of pay at the time of such separation multiplied by one-third (1/3) the total number of accumulated but unused Sick Leave hours earned by such employee, providing that such resulting number of hours shall not exceed three hundred and sixty (360) hours, but provided further that an employee who has twenty (20) years of cumulative service with the City of Berea, without reference to previous employment with any other Employer other than the City of Berea, shall receive one-third (1/3) of accumulated Sick Leave.

If the total amount to be paid under this provision exceeds \$1,500.00, the payments outlined above shall be paid in three annual installments, the first occurring on the date of the employee's retirement and/or voluntary termination; the second payment occurring on the first anniversary date of the employee's retirement; and the third payment occurring on the second anniversary date of the employee's retirement. If the total amount to be paid under this paragraph is equal to or less than \$1,500.00, the amount due shall be paid in a lump sum on the date of the employee's retirement and/or voluntary termination.

If an employee dies prior to retirement or if an employee with accumulated Sick Leave exceeding \$1,500.00 dies prior to the second anniversary date of the employee's retirement, all unpaid accumulated sick due to the employee under this provision shall be paid to his or her designated beneficiary.

19.09 Attendance Premium – An employee shall qualify for one day of additional pay at the regular hourly rate of pay for such qualifying employee for every quarter (January through March; April through June; July through September; and/or October through December) in which the employee actually works all scheduled days during such quarter or is absent during such quarter only by reason of use of Personal Leave or prior approved use of Compensatory or Vacation Time, or Jury Duty or Funeral Leave of an immediate

family member. Such additional one-day's pay shall be paid to the qualifying employee within 30 days after such quarter at the rate of pay in effect at the end of such quarter commencing in the second quarter of 2007.

19.10 An employee with twenty (20) or more years of service with the Employer may elect to sell back to the Employer up to sixteen (16), eight (8) hour days of such employee's accumulated Sick Leave in any one calendar year. For each eight (8) hour day sold back, one (1) day of Sick Leave shall be deducted from such employee's accumulated Sick Leave and such employee shall be entitled to receive a cash payment equal to the hourly rate of pay at the time of such sell-back multiplied by one-third (1/3) of the total number of Sick Leave hours sold back, minus any applicable taxes and withholdings. Each payment shall be due and payable on the second pay date of the month of January of each year. All payments made to employees, by reason of this Article, shall be made in one (1) draft separate and distinct from the regular bi-weekly salary payments.

ARTICLE 20

VACATION LEAVE

20.01 Each employee is entitled to annual Vacation Leave with pay according to the following schedule based upon continuous employment with the City;

- a. Two (2) weeks in the calendar year in which the employee completes one, two, three- and four-years' service; and thereafter.
- b. Three (3) weeks in the calendar year in which the employee completes five, six, seven, eight, nine- and ten-years' service; and thereafter.
- c. Four (4) weeks in the calendar year in which the employee completes eleven, twelve, thirteen, fourteen, fifteen and sixteen years' service; and thereafter.
- d. Five (5) weeks in the calendar year in which the employee completes seventeen, eighteen, nineteen and twenty years' service; and thereafter.
- e. Six (6) weeks in the calendar year in which the employee completes twenty-one or more years' service with the Employer.

20.02 For the purpose of calculating Vacation Leave, only such time as the employee has in continuous full-time service with the City of Berea shall be utilized and no credit for previous employment other than with the City of Berea shall be given. The provision of this paragraph shall not act to modify, alter or change the calculation of Vacation Leave for any present employee, whose Vacation Leave has been calculated heretofore by means of any credit for prior service.

20.03 Scheduling

- a. All employees may take Vacation Leave at any time during the calendar year at the convenience of the Employer. During the months of January and

February of each year, all employees shall be given an opportunity to indicate Vacation Leave preference. Using such preference list, the Employer shall assign Vacation Leave as much as possible according to such employee preference, with appropriate considerations for operations and seniority.

- b. In the month of January, no more than two (2) employees can use vacation time off per week.
- c. In the month of February, no more than three (3) employees can use vacation time off per week.

The Director or designee may approve any and all or part thereof, vacation time based upon Departmental needs. Any employee who fails to indicate Vacation Leave preference during the time set out herein shall be assigned Vacation Leave at the sole option of the Employer.

Once Vacation Leave has been scheduled, there shall be no changes except with the expressed approval of the Director of Public Service.

20.04 Vacation Leave shall be taken in increments of not less than one (1) week (5 days); however, employees may take less than one (1) week if the week requested falls within a holiday week.

The vacation days remaining unused from the holiday vacation week must be scheduled no later than May 31st of each calendar year or those unused vacation days shall be taken before May 31st, after receiving prior approval from the supervisor.

Employees with five (5) or more weeks of Vacation Leave must schedule the first four (4) weeks by February 28th, the remainder of Vacation Leave must be scheduled by May 31st, based on availability.

20.05 Vacation Leave shall not be carried over from one (1) calendar year to the next calendar year, except in extraordinary circumstances and only then upon the approval of the Director of Public Service and the Mayor and the subsequent ratification of the same by the Board of Control.

20.06 "Continuous employment" for the purpose of calculating Vacation Leave shall not be deemed to be interrupted by absence on Sick Leave, or other absence on Leave authorized by the Employer pursuant to the Agreement, provided the employee returns to full-time active employment with the Employer on or before the expiration of such Leave.

20.07 Upon the separation of any employee for any reason whatsoever, except discharge for cause or resignation without fourteen (14) days' notice, any and all Vacation Leave then unused which has accrued to the benefit of such employee during the calendar year of such separation or carried over from previous years, shall be paid in cash money immediately upon such separation. Any Vacation Leave to be paid in cash money pursuant to the

provisions of this paragraph shall be considered paid in full as of the date of separation from service and no date of separation shall be moved forward in time by reason of Vacation Leave. All employees separated from the City for any reason whatsoever shall be deemed to leave the employment of the City as of the date of their final physical presence as an employee at an assigned duty in the service of the City.

ARTICLE 21

HOLIDAY LEAVE

21.01 All employees shall receive Holiday Leave, with regular compensation, on the following scheduled days:

- January 1
- Martin Luther King Day
- President's Day
- Memorial Day
- Juneteenth
- July 4
- Labor Day
- Veteran's Day
- Thanksgiving Day and day after Thanksgiving
- December 24
- December 25
- One additional day at the option of the employee

21.02 In order to be eligible for Holiday Leave, an employee must report to work and physically work the last-scheduled work shift before such Holiday Leave and the first regularly-scheduled work shift after such Holiday Leave, unless the absence is due to a bona fide illness or injury as substantiated by a statement from a physician licensed to practice medicine in the State of Ohio indicating the inability of such employee to be on active duty that day or, specifically, excused from the same by the Employer or absent by reason of Leave granted elsewhere in this Agreement, with the exception of Sick Leave, unless such Sick Leave is occasioned by reason of a job-related illness.

21.03 In the event that Holiday Leave granted in paragraph 21.01 above falls on a Saturday or Sunday or during other Leave granted elsewhere in this Agreement, such Holiday Leave shall be taken at such other time as designated by the Employer.

21.04 All Holiday Leave not taken prior to December 26 of each year shall be compensated in cash money no later than the end of January immediately following, but at the rate of pay in effect in the preceding December, and such payment in cash money shall be separate and distinct from any other regular compensation to be received.

21.05 Any employee called in to actually work Thanksgiving, Christmas or New Year's Day shall be paid overtime at double (twice) the regular hourly rate for such actual work of such employee.

ARTICLE 22

PERSONAL LEAVE

22.01 Each employee shall earn Personal Leave with pay at the rate of one-fourth (1/4) day for each calendar month of service completed, provided that the employee has actually worked and been physically present at all times during the regular work period scheduled for such employee or been absent by reason of Leave granted elsewhere in this Agreement, with the exception of Sick Leave, Personal Leave with pay must be scheduled with the approval of the Service Director or his designee.

22.02 Personal Leave may be carried over from one calendar year to the next; provided, however, that no employee shall accumulate a total amount of Personal Leave in excess of nine (9) days. Accumulated Personal Leave shall be forfeited upon separation from employment with the Employer and shall not accrue to the benefit of the employee's estate, heirs or assigns.

22.03 Personal Leave shall be taken in not less than two (2) hour increments at the option of the employee but scheduled with the approval of the Employer.

ARTICLE 23

FUNERAL LEAVE

23.01 All employees shall be granted Funeral Leave according to the following schedule, to-wit:

- a. Upon the death of a close friend, an employee may use personal days or compensatory time to attend the funeral of a close friend.
- b. Upon the death of a stepbrother, stepsister, grandparent or grandchild, one (1) day of Funeral Leave.
- c. Other than as provided in d) below, upon the death of an immediate family member, the employee will receive three (3) days of Funeral Leave. "Immediate family member" shall be defined to include spouse, child, stepchild, mother, father, mother-in-law, father-in-law, brother or sister.
- d. Upon the death of a spouse or child or stepchild residing with the employee, five (5) days.

23.02 In the event that an employee requires Funeral Leave in addition to the time set out in paragraph 23.01 above, such employee may utilize any and all accumulated unused Personal Leave, Holiday Leave or Vacation Leave.

ARTICLE 24

MILITARY LEAVE

24.01 An employee shall be granted a leave of absence for military duty in accordance with State and Federal law

ARTICLE 25**JURY DUTY LEAVE**

25.01 Any employee who is called for Jury Duty, whether federal, county or municipal, shall suffer no loss in regular compensation. Any compensation received from such Court for jury service shall be surrendered to the Employer.

ARTICLE 26**COURT APPEARANCE LEAVE**

26.01 Any employee who is required to appear in any Court due to a job-related incident where the employee is not a plaintiff or other claimant, shall suffer no loss in regular compensation. Any compensation received from such Court as for such appearance shall be surrendered to the Employer.

ARTICLE 27**LEAVE WITHOUT PAY**

27.01 An employee may be granted a Leave Without Pay for a period not to exceed one (1) year for sickness, disability, educational development or other reasons found to be in the mutual interests of the Employer and the employee. Such Leave Without Pay must be approved by the Service Director and the Mayor and ratified by the Board of Control. All approved Leave Without Pay under this Article shall be inclusive of Family and Medical Leave under this Agreement.

ARTICLE 28**UNAUTHORIZED LEAVE**

28.01 Employees absent from work without a bona fide excuse acceptable to the Director of Public Service shall be considered on Unauthorized Leave. An Unauthorized Leave for a period more than one (1) assigned working day shall be considered as an automatic resignation from service with the City.

ARTICLE 29**GRIEVANCE PROCEDURE**

29.01 All employees have the right to present a grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal. It is the intent and purpose of the parties to this Agreement that all grievances shall be settled, if possible, at the lowest step of this Grievance Procedure.

29.02 For the purposes of this Grievance Procedure, the terms are defined as follows:

- a. Grievance: A "Grievance" is a dispute or controversy arising from the application or interpretation of the specific and express written provisions of this Agreement.
- b. Aggrieved Party: The "aggrieved party" is an employee or group of employees within the Bargaining Unit, or the Union, who may file a grievance.

- c. Party in Interest: A "party in interest" is any employee named in a grievance who is not the aggrieved party.
- d. Days: A "day" is a calendar day, excluding Saturdays, Sundays and holidays recognized by the Government of the United States of America.

29.03 The following procedures shall control the administration of this Grievance Procedure:

- a. Except at Step 1, a grievance shall identify the aggrieved party; the Article of this Agreement grieved; the time and place of all alleged events or conditions constituting the grievance; the identity of the party alleged to have caused the grievance, if known to the aggrieved party; and a general explanation of the grievance.
- b. Except at Step 1, all decisions made upon any grievance shall be rendered, in writing, at each step of the Grievance Procedure with copies to the aggrieved party and any representative.
- c. If a grievance concerns more than one (1) employee, it may initially be submitted at Step 3.
- d. All matters concerning the filing of grievances shall be conducted during non-working hours, unless otherwise authorized by the Employer.
- e. Any employee having a grievance may discuss the matter informally with the appropriate supervisor and agree to informally resolve the grievance without the intervention of the Union; provided, however, that the terms of this informal resolution are acceptable to the employee. In the event that a grievance is resolved without a formal determination, the terms of such informal resolution shall not be deemed to create a binding precedent for future proceedings on other similar matters.
- f. This Grievance Procedure does not require an employee to pursue the remedies herein provided and does not impair or limit the right of an employee to pursue any other remedies available under law. Conversely, an employee who pursues any remedy other than those explicitly provided for by this Grievance Procedure shall automatically be considered to have waived all remedies provided under this Grievance Procedure.
- g. The time provisions herein are to be strictly applied and any grievance not filed within the specified time limits shall be void.
- h. This procedure shall not be used for the purpose of changing, amending, modifying or altering any of the provisions of this Agreement.

29.04 All grievances are administered according to the following Grievance Procedure:

Step 1:

An employee who may have a grievance shall notify the immediate supervisor of such grievance, in writing, within five (5) days of the occurrence of the facts giving rise to the same. The supervisor shall schedule an informal meeting with the employee within five (5) days of the employee's filing the grievance. The purpose of this meeting will be to discuss the dispute and resolve it informally. The Supervisor shall verbally report the determination resultant from such informal meeting to the employee within five (5) days thereafter.

Step 2:

In the event that an employee initiating a grievance is not satisfied with the decision rendered by means of Step 1 above, the employee may give written notice of the grievance to the Service Director within five (5) days from the date of the decision rendered in Step 1 above. Within ten (10) days after such written notice to the Service Director, he/she shall hold a formal hearing upon such grievance and the Service Director may invite any persons whom he may deem necessary for the fair and impartial determination of the grievance. Within ten (10) days from the date of such hearing, the Service Director shall issue a written decision upon the grievance with a copy to the aggrieved party.

Step 3:

In the event the employee initiating the grievance is not satisfied with the decision rendered by means of Step 2 above, the employee may give written notice of the grievance to the Mayor within five (5) days from the date of the decision rendered in Step 2 above. Within ten (10) days after such written notice to the Mayor, the Mayor shall hold a formal hearing upon such grievance. The Mayor may invite any other person or party necessary to provide information required for the rendering of a fair and equitable decision. Within ten (10) days from the date of such hearing, the Mayor shall issue a written decision upon such grievance with copies to the aggrieved party and all parties present at such hearing.

ARTICLE 30

ARBITRATION PROCEDURE

30.01 If a grievance is unresolved by the Grievance Procedure, the aggrieved party may submit the grievance to arbitration not less than thirty (30) days following the completion of the Grievance Procedure. The grievance must concern either a contract violation or discipline of one (1) day or more off. Within ten (10) days thereafter, the parties shall meet to attempt to mutually agree upon an Arbitrator. Union may request a panel of seven (7) Arbitrators from the Federal Mediation and Conciliation Service. The Arbitrator shall be

selected by the parties using the alternative strike method until one Arbitrator remains, who shall hear the grievance.

30.02 The Arbitrator has no authority to 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 law or violates any term or condition of this Agreement.

30.03 The Arbitrator shall not decide more than one (1) grievance on the same hearing day(s) except by mutual written agreement of the parties.

30.04 The arbitration hearing(s) shall be conducted in accordance with FMCS rules.

30.05 The fees and expenses of the Arbitrator and the cost of the hearing room, if any, are assessed against the party losing the grievance or split equally between the parties upon a split award. 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.

30.06 The decision of the Arbitrator, and any award made, shall be in writing and delivered within thirty (30) calendar days from the final day of hearing, unless extended, by agreement. The decision of the Arbitrator shall be final and binding upon the parties.

30.07 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 any determination that the Union may have failed to fairly represent a member of the Bargaining Unit during the exercise of any rights provided by the Grievance and/or Arbitration Procedures.

ARTICLE 31 **EMPLOYEE RIGHTS**

31.01 An employee has the right to the presence of counsel or other representative chosen by such employee, but not both, at all stages of the Grievance Procedure provided in Article 29 and Arbitration Procedure provided in Article 30, and at all disciplinary hearings before the Service Director or the Mayor.

31.02 Before an employee may be charged with a violation of Divisional Rules and Regulations for a refusal to participate in an internal investigation, the employee shall be advised that any such refusal to participate may be the basis for disciplinary action, including dismissal.

31.03 There shall be no press release(s) initiated by the Employer or the Union regarding any employee under investigation.

ARTICLE 32 **SAFE WORKPLACE**

32.01 Any employee who becomes aware of a dangerous working condition shall immediately report such condition to the Employer, in writing. The Employer shall investigate any such condition thus reported and shall remedy such condition.

32.02 Any employee operating a motor vehicle provided by the Employer who becomes aware of a defect in such motor vehicle shall immediately report such defect to the Employer, in writing. The Employer shall have such vehicle inspected by a mechanic and shall remedy such defect, if any, forthwith.

ARTICLE 33 **VACANCIES AND POSTING**

33.01 In the event that a vacancy occurs within the Bargaining Unit, the Employer shall post an announcement of such vacancy for a period of five (5) workdays. Such announcement shall contain the job title, rate of pay and a brief description of duties.

33.02 Any employee wishing to apply for a vacancy, as in paragraph 33.01 above, shall submit an application, in writing, to the Employer.

33.03 Any employee who is awarded a vacancy, as in paragraph 33.02 above, shall be considered in a Probationary Period for six (6) months and shall be paid at the Probationary wage rate for such position in accordance with the attached Pay Rate Schedule. In the event that such employee does not perform satisfactorily in the new position during the Probationary Period, such employee shall be returned to the position previously held, at the prior rate with no loss of seniority.

ARTICLE 34 **TEMPORARY ASSIGNMENTS**

34.01 All employees may be required to perform any and all temporarily-assigned duties, regardless of the usual or customary duties generally assigned to such employees.

34.02 In the event that a temporary assignment as set out in paragraph 34.01 above shall be for a period exceeding one (1) working day, the employee shall be given a written notice of such temporary assignment. If an employee is given a temporary assignment to duties compensated at less than the regular wage rate of such employee, the employee shall continue to receive the regular wage rate of the permanent position held. If an employee is given a temporary assignment to duties compensated at an amount greater than the regular wage rate of such employee, the employee shall be paid at the Basic Hourly Rate established for such higher-paid duties.

34.03 Any employee who is temporarily assigned, as in paragraphs 34.01 and 34.02 above, shall remain in such temporarily-assigned position during such time as a vacancy continues to exist in such position, but in no event shall any temporary position continue for a period greater than thirty (30) days.

ARTICLE 35 **PERSONNEL FOLDER**

35.01 An employee shall have the right to sign any and all documents placed into his/her personnel file. All references to reprimands occurring more than two (2) years prior to the action shall not be considered in future disciplinary actions; provided, however, that there

has been no other disciplinary action taken against such employee during the said two (2) year period.

ARTICLE 36 **TOTAL AGREEMENT**

36.01 This agreement represents the entire Agreement between the Employer and the Union and, unless specifically and expressly set forth in the 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.

ARTICLE 37 **CONFORMITY TO LAW**

37.01 This Agreement shall be subject to, and subordinated to, any applicable present and future federal and state law, and 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.

37.02 If the enactment of legislation or a determination by a court of final and competent jurisdiction (whether in a proceeding between the within 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.

37.03 In the event any federal or state legislation affects a change with respect to health care and such legislation would alter the implementation or terms of the health care as provided in Article 17, Insurance, of this Agreement, the parties will meet to negotiate with respect to the effect of such change.

ARTICLE 38 **DURATION**

38.01 This Agreement shall become effective at 12:01 a.m., January 1, 2022, or upon the date of execution and shall continue in full force and effect, along with any amendments made and annexed hereto until midnight, December 31, 2024. In the event that this Agreement shall be executed at a date later than January 1, 2022, all terms and conditions herein contained shall be retroactive to January 1, 2022, except as otherwise noted in this Agreement. Any sums to be paid to an employee by reason of the retroactive application of this Agreement shall be paid to such employee in a draft separate and distinct from all of the payments to be made pursuant to this Agreement.

ARTICLE 39 **HEADINGS**

39.01 It is understood and agreed that the use of Headings before Articles and Sections is for convenience only and that no Heading shall be used in the interpretation of said Article or Section nor effect any interpretation of any Article or Section.

ARTICLE 40**OBLIGATION TO NEGOTIATE**

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

40.02 For the life of this Agreement, the Employer and the Union each agree that neither shall be obligated to negotiate collectively with respect to any subject or matter referred to or covered in this Agreement, nor 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 of the negotiation and execution of this Agreement.

ARTICLE 41**MISCELLANEOUS**

41.01 The Employer shall provide the Union with adequate bulletin board space located in the Division. The Union shall be responsible for the care, maintenance and replacement of the bulletin board. The Employer shall have the right to remove any material not in conformance with paragraph 41.02 below.

41.02 No notices, memoranda, posters or other forms of communication are to be posted on the bulletin board established in paragraph 41.01 above that contain any defamatory, political or controversial material, or any material critical of the Employer or any employee of the Employer.

41.03 The Employer shall provide all necessary hand tools and toolboxes for each employee classified as a Mechanic. Larger tools (i.e. floor jacks, large pneumatic guns, etc.) shall be supplied to the Mechanic pool. Mechanics shall submit a list of required hand tools and boxes to the Director of Public Service. The Director shall purchase these tools and assign them to the Mechanics. In the event a tool is damaged or broken, it shall be returned to the Employer for replacement. When a Mechanic leaves the employ of the City, he shall be held liable for all missing tools originally assigned to him. The cost of all missing tools, less depreciation, shall be deducted from the final pay.

41.04 The Employer shall provide all employees covered by this Agreement benefits similar to those provided to other employees of the City pursuant to Ordinance No. 85-85, relative to the PERS contribution pickup.

41.05 Employer will provide or cause to be provided, on an annual basis, to each member of the Bargaining Unit, vaccinations for hepatitis, tetanus and flu, all at Employer's expense.

41.06 This Agreement constitutes the entire understanding and agreement of the parties hereto and no parol statements of any kind shall vary the express written conditions hereof. No Ordinances or other laws established by the Employer, now or in the future, shall be controlling or applicable to the matters herein negotiated between the parties. This Agreement is the sole governing instrument regulating the conduct of the Employer and the employee in relation to each other and no Ordinance or other laws of the Employer are applicable to the Employer-employee relationship established by this Agreement.

ARTICLE 42 DISCIPLINARY PROCEDURE

42.01 This procedure shall only apply to all non-probationary employees covered by this Agreement.

42.02 The following disciplinary actions can be taken against an employee for just cause:

- a. Non-Appealable Disciplinary Action
Counseling;
- b. Appealable Disciplinary Action
Written reprimands (through the Mayor's level);
Suspension for three or less days;
Suspension for four or more days;
Demotion;
Termination.

42.03 Any disciplinary action must be initiated by the Employer in accordance with this procedure within thirty (30) working days of the Employer's being on notice of the event(s) giving rise to the action. Employer shall be considered to be "on notice" if the event(s) giving rise to the action would have reasonably been discovered through good faith supervision. This time limitation shall not apply to any instance in which an employee makes any attempt to prevent the discovery of a wrongdoing. Furthermore, the Union shall not unreasonably deny requests for extension.

42.04 The following administrative procedures shall apply to disciplinary actions:

- a. The Employer, the employee involved and the Union are encouraged to settle disciplinary matters informally. All parties shall extend a good faith effort to settle the matter at the earliest possible time. The Employer is encouraged to hold an informal meeting with the employee for the purpose of discussing the matter prior to the formal presentation of written charges. At this meeting the specific nature of the matter will be addressed and the Employer may offer a proposed disciplinary penalty. The employee must be advised before the meeting that he/she is entitled to representation by the Union or counsel during the initial discussion.
- b. If a mutually-agreeable settlement is not reached at this informal meeting, the Employer will, within five (5) days, prepare a formal Notice of Discipline and present it to the employee. A copy will also be given to the Union. If no informal

meeting is held, the Employer may just prepare a Notice of Discipline and present it to the employee and the Union.

This Notice of Discipline must include:

1. The date the Notice of Discipline was issued;
2. The specific acts for which discipline is being imposed;
3. The penalty proposed;
4. The following statement of employee rights:

"All employees shall have the following rights:

An employee shall be entitled to representation by a Union representative or counsel at each step of the disciplinary procedure.

Except in cases of counseling, an employee may appeal disciplinary action to the Service Director within five (5) days of receiving this Notice.

No recording device or stenographic or other record shall be used during the questioning of an employee unless the employee is advised in advance that a transcript is being made and is thereafter supplied a copy of the record, at least thirty (30) days prior to the date of any related hearing. The cost of the transcript will be borne by the party requesting the copy of the transcript.

An employee shall not be coerced, intimidated or suffer any reprisals either directly or indirectly that may adversely affect his hours, wages or working conditions as the result of the exercise of his rights under this procedure.

Where the Employer seeks as a penalty the imposition of any suspension without pay, demotion or termination, the Notice of Discipline shall be served in person or by registered or certified mail, return receipt requested.

An employee may resign following the service of a Notice of Discipline. Any such resignation will be processed in accordance with the terms of this Agreement and the employee's employment shall be terminated.

Upon receipt of the Notice of Discipline, the employee may choose to accept the proposed discipline or to file an appeal with the Service Director within five (5) days. The employee's appeal shall start at Step 2 of the Grievance Procedure set forth above in paragraph 29.04 and proceed in accordance with paragraph 29.04 and Article 30.

42.05 Discipline shall not be implemented until either:

- a. The matter is settled; or
- b. The employee fails to file an appeal under this procedure within the time frame provided by this procedure; or
- c. The penalty is imposed after a pre-disciplinary hearing by the Mayor or his designee; or
- d. The penalty is upheld by the arbitrator or a different penalty is determined by the arbitrator.

42.06 A failure to submit an appeal within the above time limit of five (5) days shall be construed as an agreement to the disciplinary action by the affected employee and Union. All subsequent appeal rights shall be deemed waived.

42.07 A disciplinary matter may be settled at any time. The terms of the settlement shall be agreed to in writing. An employee executing a settlement shall be notified of the right to have a Union representative or counsel, or to decline any such representation. In the event any employee declines Union representation, the Union shall have a right to be present. A settlement entered into by an employee, or the Union on his behalf, shall be final and binding on all parties. The Union shall be notified of all settlements.

42.08 An employee may be suspended with pay at any time during the process if the Employer, at its sole discretion, determines the employee's continued presence on the job represents a potential danger to persons or property, or would interfere with the Employer's operations. A suspension without pay, demotion or discharge may be imposed concurrent with or subsequent to the decision of the pre-disciplinary hearing.

ARTICLE 43 **FAMILY MEDICAL LEAVE**

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

44.02 The Employer may require an employee to use accrued vacation, holiday or accumulated sick leave, which shall be inclusive of the twelve (12) weeks of Family Medical Leave. The Employer shall not require an employee who has forty (40) hours or less of vacation or sick leave to exhaust such vacation time or sick leave time which shall constitute separate banks of time under this provision.

44.03 A husband and wife employed by the City of Berea in any position or capacity are eligible for FMLA. Leave up to a combined total of twelve (12) weeks of leave during the twelve-month period referenced in Section .01 if the leave is taken:

- a. For the birth of the employee's son or daughter or to care for the child after birth;

- b. For placement of son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
- c. To care for the employee's parent with a serious health condition.

ARTICLE 44

SUBSTANCE TESTING AND ASSISTANCE

44.01 All employees are subject to drug and alcohol testing pursuant to the policy attached as Exhibit B.

ARTICLE 45

EXECUTION

46.01 IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be duly executed this _____ day of _____, 2022, and made effective as of January 1, 2022, unless otherwise expressly provided hereinabove.

FOR THE UNION:

**Laborer's International
Union of North America
Local 860**

For the Union

For the Union

For the Union

FOR THE EMPLOYER:

City of Berea, Ohio

Mayor Cyril Kleem

Antonio Armagno, Service Director

Barbara Jones, Director of Law

EXHIBIT A - SERVICE DEPARTMENT WAGES

2022 - 2023 - 2024

LABORERS

	0 - 6 months	Annual	>6 months - 3 years	Annual	>3 years	Annual
2022	\$19.66	\$40,892.80	\$24.79	\$51,563.20	\$25.53	\$53,102.40
2023	\$20.25	\$42,120.00	\$25.53	\$53,102.40	\$26.29	\$54,683.20
2024	\$20.86	\$43,388.80	\$26.29	\$54,683.20	\$27.07	\$56,305.60

CDL TECHNICIANS

	0 - 6 months	Annual	>6 mo. - 3 years	Annual	>3 - 8 years	Annual	>8 years	Annual
2022	\$22.12	\$46,009.60	\$25.21	\$52,436.80	\$28.46	\$59,196.80	\$30.85	\$64,168.00
2023	\$22.78	\$47,382.40	\$25.96	\$53,996.80	\$29.31	\$60,964.80	\$31.77	\$66,081.60
2024	\$23.46	\$48,796.80	\$26.73	\$55,598.40	\$30.18	\$62,774.40	\$32.72	\$68,057.60

MECHANICS

	0 - 6 months	Annual	>6 mo. - 3 years	Annual	>3 - 8 years	Annual	>8 years	Annual
2022	\$26.96	\$56,076.80	\$31.10	\$64,688.00	\$31.62	\$65,769.60	\$32.41	\$67,412.80
2023	\$27.77	\$57,761.60	\$32.03	\$66,622.40	\$32.56	\$67,724.80	\$33.38	\$69,430.40
2024	\$28.60	\$59,488.00	\$32.98	\$68,598.40	\$33.53	\$69,742.40	\$34.38	\$71,510.40

FOREMEN

2022	\$35.79	\$74,443.20
2023	\$36.86	\$76,668.80
2024	\$37.96	\$78,956.80

Exhibit B - SUBSTANCE ABUSE TESTING AND ASSISTANCE POLICY

It is the policy of the City of Berea that its workplace be free of substance and alcohol abuse. Consequently, the use of illegal drugs or substances prohibited under the provisions of the United States Department of Transportation drug and alcohol testing requirements and/or covered under this Agreement is prohibited. Further, employees who use or are under the influence of alcohol while on duty shall be deemed to have engaged in prohibited conduct. The purpose of this policy is to foster a safe, drug and alcohol-free workplace, and environment conducive to the successful accomplishments of the City's goals and mission, the enhancement of employee well-being, increased employee productivity, the reduction of accidents, injuries, and fatalities, and the abatement of risks created by employees who are on duty in an impaired condition.

I. Situations Under Which an Employee or Prospective Employee May Be Tested

A. Pre-Employment Drug Testing

1. As part of the City's employment procedures, all applicants will be required to undergo a post-offer, pre-employment drug test/screening that is conducted by a contractor designated by the City. Any offer of employment is contingent upon, among other things, satisfactory completion of this test/screening.

B. Reasonable Suspicion Testing

1. Reasonable suspicion that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner may be based upon, but not limited to:
 - a. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence or withdrawal of a drug or alcohol;
 - b. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use or trafficking;
 - c. Information provided by reliable and/or credible sources;

- d. Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practice.
- C. Post-Incident Testing
 - 1. An "incident" is defined as an occurrence
 - a. Involving a city-owned vehicle or a privately-owned vehicle operated while conducting city business, which results in:
 - 1) A fatality; or
 - 2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - 3) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle or where damage to any property, real or personal, exceeds \$500.
 - b. Involving any act(s) of an act of violence committed by an Employee against another person. An "act of violence" is an assault, as defined in Ohio Revised Code 2903.13.
- D. Follow up Testing after Return to Work from Assessment or Treatment
 - 1. This type of testing occurs at the point an employee who has previously tested positive returns to work.
 - 2. The return-to-work test is required before the employee is allowed to return. Once an employee passes the drug and/or alcohol test and returns to duty, there may be additional tests conducted over a period of at least one year. Any employee with a second positive test result will be terminated.
- E. Notwithstanding provision contained in this Agreement, all employees who are required to hold a Commercial Driver License are subject to all drug and alcohol testing requirements under the Ohio Revised Code, the Ohio Administrative Code, Federal Law, and mandated by the Department of Transportation.

II. Testing Procedures

- A. In general

1. The City will use a testing site that affords visual and aural privacy, to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results. This site will have available all of the necessary equipment, personnel, and materials for breath and drug testing. The City's alcohol and drug testing sites are located at University Hospital Parma Occupational Health Clinic, Brook Park Urgicare, Strongsville Urgicare, and/or another similarly licensed and capable facility; however other sites meeting the criteria set forth within may perform any test in the event that as a result of an accident, medical attention is sought at another suitable medical facility.
2. Any employee required to submit to an alcohol and/or drug test will be required to provide positive identification.
3. All alcohol and/or drug screening tests shall be conducted by medical laboratories meeting the standards of the National Institute of Drug Abuse and the National Institutes of Health. All urine specimens to be tested for the presence of controlled substances will be analyzed by a laboratory certified under the DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs. All drug tests required by the City will therefore be shipped for analysis to a NIDA certified laboratory. No test shall be considered positive until it has been confirmed by a gas Chromatography/Mass Spectrometry full scan test or its equivalent.
4. The costs of testing required by the employer shall be paid by the employer.

B. Results

1. Alcohol testing: A positive result of blood alcohol concentration of .04% or above shall entitle the Employer to proceed with sanctions as set forth in this agreement.
2. Controlled substance test result
 - a. Initial Screen: All urine specimens will be initially tested for the use of controlled substances by an immunoassay screen, which will eliminate negative urine specimens from further consideration. Any positive test results in an initial test will be subject to confirmation through an additional, more precise and accurate testing methodology.

The cut-off level set forth below will be used for the initial screening of specimens to determine whether they are negative for the following drugs:

- 1) Marijuana metabolites-50 ng/ml
 - 2) Cocaine metabolites -300 ng/ml
 - 3) Opiate metabolites-300 ng/ml *
*(25 ng/ml if immunoassay specific for free morphine)
 - 4) Phencyclidine-25 ng/ml
 - 5) Amphetamines -1,000 ng/ml
- b. Confirmatory tests: Any urine specimen identified as positive on the initial test screen will be confirmed by a second analytical procedure independent from the initial test and which uses a different chemical technique and procedure. Gas chromatography/mass spectrometry will be used to confirm initial positive test results.

The cut-off levels set forth below will be used to establish the existence of a "confirmed positive" test result:

- 1) Marijuana metabolites- 15 ng/ml
(Delta 9.-tetrahydrocannabinol 1-9-carboxylic acid)
 - 2) Cocaine metabolites - 150 ng/ml
(Benzoylecgonine)
 - 3) Opiates
Codeine-300 ng/ml Morphine -300 ng/ml
 - 4) Phencyclidine -25 ng/ml
 - 5) Amphetamines
Amphetamine -500 ng/ml
Methamphetamine - 500 ng/ml (specimen must also contain amphetamine at a concentration of 200 ng/ml or greater)
- c. All confirmed positive and negative test results will be reported by the laboratory to a Medical Review Officer before they are communicated to the City.

To ensure that every employee who might be subjected to drug and alcohol testing by the City is treated in a fair and impartial manner, the City has retained the services of a Medical Review Officer (MRO). The MRO is a licensed physician with knowledge of substances abuse disorders who will review and interpret positive test results from the laboratory. The MRO will also review the chain of custody to ensure that it is sufficient and complete on its face and may request quantification of the test results from the lab.

III. Employees' Rights Related to An Initial Positive Test Result

- A. In the event of a positive result, the MRO will contact the employee directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. The employee will be given an opportunity to explain the findings to the MRO prior to the issuance of a report of a positive test result to the City. The MRO can request information on recent medical history and on medications taken within the last thirty days by the employee. In the event that the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position.
- B. If the MRO has made reasonable, but unsuccessful efforts at contacting the individual, the MRO may contact the City in order to communicate said results. In all cases, the City shall not be informed of a positive test result until the employee has been informed or reasonable efforts have been made to inform the employee.
- C. In the event of a positive result, the employee has the right to have the sample split and tested by another DHHS-certified laboratory. Said request must be made to the MRO within 72 hours of notice to the employee that the test was positive. The cost of the test under this section is the responsibility of the employee.

IV. Rehabilitation/Discipline

- A. If the testing required has produced a positive result, the City may take disciplinary action and/or may require the employee to participate in any rehabilitation or detoxification program that is covered by the employee's health insurance. The City will not otherwise pay the costs of a rehabilitation program not covered by the employee's health insurance. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, vacation leave, and any other paid leave days for a period of the program. If no such leave credits are available, the employee may apply for unpaid leave.

- B. If a rehabilitation or detoxification program is offered, the employee will not be permitted to return to the workplace until the employee demonstrates through a retest that he or she is no longer abusing any substance. Such employee may be subject to random testing upon return to work for a period of one (1) year from the date of return to work. As a condition of their continued employment, the employee must remain alcohol and drug free. Any employee in a rehabilitation or detoxification program in accordance with this Agreement will not lose any seniority or benefits.
- C. If the employee is referred to a rehabilitation or detoxification program, the City will be informed whether the employee is attending sessions and actively participating but will not receive information about the specifics of the counseling.
- D. The City will hold all employees accountable in terms of substance use but also supports rehabilitation.
 - 1. Those employees who come forward voluntarily to identify that they have a substance use problem will receive the City's support and assistance and will not be subject to disciplinary action. However, if an employee has a substance use problem and does not come forward, and the employee then tests positive for drug or alcohol use in violation of this Policy, the City reserves the right to take appropriate action, which may include referral to treatment, suspension without pay and/or termination. In all cases, the City reserves the right to take appropriate disciplinary action for other acts of misconduct which may be related to the use of alcohol and/or drugs.
 - 2. The City agrees that in the absence of other acts of misconduct, an employee testing positive for the first time for alcohol and/or other legally prescribed or over-the-counter medications will be referred to a rehabilitation program.
 - 3. There is a presumption that an employee who is found guilty or pleads no contest to a criminal offense related to substance use that occurs on City property or in a City vehicle or while conducting City business, will be terminated.
 - 4. In all other cases, whether an employee who tests positive will be allowed to sign a "last-chance" agreement to seek assistance aimed at changing substance use behavior will be determined individually based on such factors as quality of performance, length of service, willingness to acknowledge a problem and seek help and whether the use of any alcohol and/or drugs occurred while conducting City business.

5. An employee's failure to cooperate in the implementation of this policy may be subject to disciplinary action.

V. Confidentiality

- A. To protect the confidentiality of employees, all records of drug and alcohol testing will be stored separately and apart from the employee's general personnel documents. Access to these records shall be limited to designated City officials. Those designated City officials that shall have access to these records are charged with the responsibility of maintaining the confidentiality of these records in accordance with state and federal law. Any breach of confidentiality concerning these records may result in disciplinary action.