

**AGREEMENT BETWEEN THE**

**CITY OF DELAWARE**

**AND**

**DELAWARE PUBLIC WORKS,  
UTILITIES, AND PARKS ASSOCIATION**

EST 1808



**JANUARY 1, 2017- DECEMBER 31, 2019**

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## ARTICLE 1

### AGREEMENT

#### Section 1.

This agreement is made and entered into by and between the City of Delaware, (hereinafter referred to as the City,) and **Delaware Public Works, Utilities, and Parks Association** (hereinafter referred to as the Association).

#### Section 2.

This agreement is made for the purpose of promoting cooperation, and orderly, constructive, and harmonious relations between the City, its employees, and the Association. This agreement is intended to formalize the issues approved by the negotiating committees of the administration and the Association. The term of this agreement shall begin on **January 1, 2017** and end on **December 31, 2019**.

## ARTICLE 2

### RECOGNITION

#### Section 1.

The City recognizes the Association as the sole and exclusive representative for all employees included in the Bargaining Unit described in Section 2. of this Article. The Association is recognized by the City as the sole and exclusive representative of all Bargaining Unit members in any and all matters relating to wages, hours and terms and conditions of employment, and the continuation, modification, or deletion of any existing provisions of past Agreements between the parties, and the resolution of questions arising under this Agreement.

The Association is recognized by the City as the sole and exclusive representative of all Bargaining Unit Members in any and all matters relating to wages, hours and terms and conditions of employment, and the continuation, modification, or deletion of any existing provisions of past Agreements between the parties, and the resolution of questions arising under this Agreement.

#### Section 2.

The Bargaining Unit shall include employees in the Department of Public Works, Parks and Natural Resources and Public Utilities Department below the rank of crew leader. Excluded are all supervisors, management level, professional and temporary employees as defined in the act; and all office and clerical employees.

#### Section 3.

For the term of the collective bargaining agreement, part-time employees shall be excluded from the bargaining agreement.

## ARTICLE 3

### DEFINITIONS

For purpose of this bargaining agreement the following terms shall be defined as follows:

**Department Head(s):**

Includes employees designated as Department Heads in the City's annual budget or organizational chart.

**Department(s):**

Includes the Public Works Department, Parks and Natural Resources Department and Public Utilities Department.

**Public Utilities Department:**

Includes the divisions of Collections Systems and Distribution Systems.

**Periods of Employment/Years of Total Service/Years of Service** shall always be based upon permanent Full-Time Employment.

## ARTICLE 4

### MANAGEMENT RIGHTS

Unless the City has set forth in this Agreement a limitation upon the Council's or the City Manager's right or duty to manage the City of Delaware, or the right of the Department Heads to manage their Department the City shall retain all rights imposed upon it by law to carry out the administration of government and management of the City including these Departments. The right to manage shall include, but not be limited to:

- A. The right to direct, supervise, evaluate, hire, promote, transfer, assign, schedule, layoff and retain employees, and also to suspend, discipline, demote and discharge for just cause.
- B. The right to effectively manage the work force and to determine the number of personnel needed in any agency or department, or to perform any function; determine services to be rendered, operations to be performed, utilization of technology, organizational structure and overall budget.
- C. The right to determine the appropriate job classifications and personnel by which government operations are to be conducted; determine the overall mission of the unit of government; maintain and improve the efficiency and the effectiveness of government operations.
- D. The right to make reasonable rules to regulate the work force and to establish and amend personnel policies and procedures relating to any matter which is not set forth in the Agreement.
- E. The right to take any necessary actions to carry out the mission of the City.

## **ARTICLE 5**

### **SENIORITY**

Seniority shall be a factor considered in all promotion, transfer and layoff decisions. Also, no employee shall be discriminated against in any such decision on basis of seniority. Seniority will be determined by length of service with the Public Works, Parks and Natural Resources Department and Public Utilities Department.



## ARTICLE 6

### LATERAL TRANSFERS

#### Section 1.

In the event the City decides to transfer an employee from one division to another and within the same job classification, the employee transferred shall retain his or her grade and step level within the job classification. Seniority may be a factor in selecting the employee to be transferred if the knowledge, skills and abilities are relatively equal to perform the essential job functions. The City retains the right to determine whether a vacancy will be filled by a transfer.

#### Section 2.

In the event application is made by a member for a lateral transfer, and the position is given to someone else, the City will inform the applicant in a timely fashion that his application was received and was given consideration. Seniority may be a factor in selecting the employee to be transferred if the knowledge, skills and abilities are relatively equal to perform the essential job functions.

## ARTICLE 7

### CITY WORK RULES

#### **Section 1. Establishing.**

The City will establish central work rules; such rules shall not be in conflict with this contract. Such rules shall be uniformly applied and any work rules made by individual departments or divisions shall not be in conflict with the central work rules.

#### **Section 2. Posting.**

When existing central work rules department and/or division work rules and personnel policies are changed or new central work rules department and/or division work rules and personnel policies are established, the City shall furnish the Association with a copy of the changed or new rule at least fifteen (15) days prior to the effective notice of the affected changes. If the Association requests, the parties shall meet to discuss the reasonableness of the new or changed work rules and/or policies within seven (7) days of the Association's request. The changed or new central work rule, department and/or division work rules or personnel policies shall be posted prominently on all effected department bulletin boards for a period of seven (7) consecutive days before becoming effective unless an emergency situation requires central work rules or personnel policies to be effective immediately.

#### **Section 3. Notification.**

The City will furnish each member of the bargaining unit with a copy of all central work rules within thirty (30) days after they become effective. New employees shall be provided with a copy of the central work rules at the time of hire.

#### **Section 4. Enforcement.**

Employees shall comply with all central work rules.

## ARTICLE 8

### PROBATIONARY PERIOD

#### Section 1. New Hires Probationary Period.

The probationary period for all newly hired employees will be a period of six (6) months from the date of hire, during which time an evaluation of performance will be conducted by the employee's immediate supervisor. After successful completion of the probationary period, employees will be credited with seniority from the original date of hire. During the probationary period, the member may be dismissed without recourse to grievance/arbitration procedures in this contract.

#### Section 2. Promotional Probationary Period.

Any member who is promoted shall serve a three (3) month probationary period from the date of his promotion, during which time an evaluation of performance will be conducted by the employee's immediate supervisor. If the member fails to demonstrate that he can completely and satisfactorily perform the job within the probationary period, the City may return the employee to his former classification, without any loss in seniority. Any other members who were promoted following and as a result of this member's promotion shall also be returned to their former positions, as long as the member is serving a probationary period for the position.

#### Section 3. Lateral Transfer Probationary Period.

Any member who is laterally transferred from the same pay grade position to another shall serve a three (3) month probationary period from the date of his transfer, during which time an evaluation of performance will be conducted by the employee's immediate supervisor. If the member fails to demonstrate that he can completely and satisfactorily perform the job within the probationary period, the City may return the employee to his former classification, without any loss in seniority. Any other member's promotion or transfer shall also be returned to their former positions.

#### Section 4. Extension of Promotional or Lateral Transfer Probationary Periods.

If the City determines that a member has not satisfactorily performed the job during the probationary period and the City has not returned the employee to his former classification, by written mutual consent the member's probationary period shall be extended for another three (3) month period.

## ARTICLE 9

### CORRECTIVE ACTION AND RECORDS

#### Section 1. Just cause.

Except as provided in the probationary period article of this agreement, no Association member shall be removed, reduced in pay or position, suspended, or reprimanded except for just cause.

#### Section 2. Progressive Discipline.

The City agrees to follow the principle of progressive, corrective action. The Superintendent may skip any step of progressive action if the violations are of a very serious nature. Further, the City agrees to fairly and equitably discipline members.

#### Section 3. Review of Personnel Files.

Any member shall be allowed, upon written request, to review his/her personnel file maintained at the departmental level and/or the Department of Administrative Services. Between 8:00 a.m. and 5:00 p.m., Monday through Friday. Such request shall be made to the Department of Administrative Services directly and review shall be made in the presence of the Department of Administrative Services or their designated representative. Any member may have documents in his/her file copied by staff upon request. The administration may levy a charge for such copying, which charge shall bear a reasonable relationship to actual cost. The official personnel file of all members is kept at the Department of Administrative Services.

#### Section 4. Disclosure of Personnel Files.

The City will only disclose those matters in a member's personnel file as are required to be disclosed by the Ohio public records law, Section 149.43. The City will attempt to notify the member before any information is disclosed if that can be done within a reasonable period of time. If prior notification cannot be given, the member will be notified within a reasonable period of time after the disclosure has been made.

#### Section 5. Performance Evaluations.

A member's signature on any performance evaluation, if any, shall be viewed by the parties hereto, only as a representation that he has read it; it shall not be viewed as a representation that he concurred in any or all of the contents or comments thereon. The member shall be the last person to sign an evaluation and no evaluation comments may be recorded on record copies thereafter. The member shall receive a copy of the evaluation in its final form when he signs it.

#### Section 6. Inaccurate Documents.

Should any member have reason to believe that there are any inaccuracies in documents contained in his file, he may write a memorandum to the Department of Administrative Services explaining the alleged inaccuracy and it shall be attached to the original document. If the Department of Administrative Services concurs with the member's

contention, it shall attach a Department of Administrative Services memorandum to the document in the file and note thereon a concurrence.

**Section 7. Use of Prior Discipline.**

In assessing proper levels of discipline, the City will take into account the length of time since any previous offenses have occurred. Records of instruction and cautioning will not be used as a basis of further discipline two (2) or more years after issuance, records of written reprimand will not be used as a basis of further discipline three (3) years or more after issuance, and all other forms of discipline shall be removed from the personnel file four (4) years from the date of issuance - providing there has been no intervening discipline, discipline records after the 2, 3, or 4 year period shall be disposed of in accordance with the City's Public Records Retention Schedule.

**Section 8. Disciplinary Notification.**

An employee shall be notified within two (2) working days after any determination to discipline such employee, providing the employee is available during this period.

**Section 9. Representation.**

For disciplinary procedures, the employee, if so desired, shall have available the bargaining representative during said proceedings. Management shall advise the employee that they have a right to Association representation and give them a reasonable amount of time to call them.

**Section 10. Disciplinary Investigation.**

Employees under investigation for a disciplinary determination may be placed on administrative leave and any such administrative leave shall be with pay until a determination has been made by the employer. Once the employee is the subject of an investigation, the City will notify the employee, and schedule a review hearing within thirty (30) calendar days. If the investigation involves a criminal nature, the above prescribed time lines shall be waived by the parties. No determination involving a disciplinary suspension without pay or termination shall be made before scheduling a review hearing. A review hearing shall be held before a non-bargaining unit supervisor and corresponding department head for all disciplinary actions which may result in a suspension of three (3) days or less. A review hearing shall be held before the City Manager or his designee for all disciplinary actions which may result in a suspension of more than three (3) days and for terminations. All written information pertinent to the employer's accusations and the names of any witnesses to be called shall be made available to the charged employee reasonably prior to the review hearing. Association representation shall be present at such hearing if so desired by the employee.

## ARTICLE 10

### GRIEVANCE PROCEDURE

#### Section 1.

Should any difference or dispute arise between the City and any employee or group of employees with respect to the interpretation or application of a specific and identified provision of this Agreement, it will be considered a grievance and must be resolved in accordance with the following procedure.

#### **Step 1.**

If the Association, any employee or group of employees believes that he has a grievance (as defined above), he/she shall first cite in writing the specific contract clause violated, and the specific relief requested. The grievance shall be reduced to writing and shall be signed by the aggrieved employee or employees and bargaining unit representative. The written grievance shall be signed off on by the immediate superintendent or his/her designee acknowledging receipt of the grievance. Any grievance not reduced to writing and submitted to the superintendent or his/her designee within twenty-one (21) calendar days of the event giving rise to the grievance, or within twenty-one (21) calendar days after the Association or the affected employee(s) should have know of the event giving rise to the grievance, it shall be considered abandoned. The superintendent shall hold a Step One hearing within fourteen (14) calendar of receipt of the grievance. The superintendent shall issue a written answer within fourteen (14) calendar after the Step One hearing. If no answer is given in the time limits set forth above, the grievance shall be resolved in the favor of the grievant or Association. This resolution shall set no precedence for future grievances. If the Association does not timely appeal a grievance, it shall be considered abandoned. If satisfactory disposition is not made by the superintendent, then within fourteen (14) calendar days:

#### **Step 2.**

The grievance shall be presented to the Department Head or his/her designee by the aggrieved employee or employees and Association representative. The written grievance shall be signed off on by the Department Head acknowledging receipt of the grievance. The Department Head or his/her designee shall hold a Step Two hearing within fourteen (14) calendar days of receipt of the grievance. The Department Head or his/her designee shall issue a written answer within fourteen (14) calendar days after the Step Two hearing. If no answer is given in the time limits set forth above, the grievance shall be resolved in the favor of the grievant or Association. This resolution shall set no precedence for future grievances. If the Association does not timely appeal a grievance, it shall be considered abandoned. If satisfactory disposition is not made by the Department Head, then within fourteen (14) calendar days :

**Step 3.**

The grievance shall be presented to the City Manager or his/her designee by the aggrieved employee or employees and Association representative. The written grievance shall be signed off on by the City Manager or designee acknowledging receipt of the grievance. The City Manager shall hold a Step Three hearing within fourteen (14) calendar days of receipt of the grievance. The City Manager or his designee shall issue a written answer within fourteen (14) calendar days after the Step Three hearing and be final and binding except for demotion, termination or suspension of an employee for more than three days. If no answer is given in the time limits set forth above, the grievance shall be resolved in the favor of the grievant or Association. This resolution shall set no precedence for future grievances. If the Association does not timely appeal a grievance, it shall be considered abandoned:

**Step 4.**

In cases of termination, demotion or suspension of three days or more should the grievant or Association, after receiving the written answer to his/her grievance in Step 3 of the Grievance Procedure, still feel that the grievance is unresolved to his/her satisfaction, he/she may, upon approval of the Association, request it be heard before an arbitrator. The Association must make application to the City for arbitration within fourteen (14) calendar days of the Association's receipt of the written answer in Step 3.

**Step 5.**

Within fourteen (14) calendar days following receipt of the Association's application for arbitration, the City Manager, or his designee, and an Association Representative will consult and attempt to select an impartial arbitrator by mutual agreement. In the event these representatives cannot reach an agreement on an arbitrator, by joint letter the parties will request the Federal Mediation and Conciliation Service, to submit a panel of seven (7) arbitrators who are Ohio residents and National Academy Certified from which the City and the Association shall select one by mutual agreement. If agreement cannot be reached as to one mutually acceptable arbitrator from the panel, an arbitrator will then be selected by the representatives of the parties alternately striking names and selecting the final remaining name. The City shall retain the right to strike the first name.

The Association agrees that the City, at their choosing, may request to use a panel of arbitrators from the American Arbitration Association (AAA). The City agrees that if they request AAA panel, that they shall pay the cost of said panel.

**Step 6.**

The arbitrator shall conduct a fair and impartial hearing on the grievance, hearing and recording testimony from both parties and applying

the rules of the FMCS or American Arbitration Association. The arbitrator shall not have the authority to add to, delete from, or modify any provisions of this Agreement. It is expressly understood that the ruling and decision of the arbitrator, within his function as described herein, shall be binding. The costs of any proofs produced at the direction of the arbitrator, the fee of the arbitrator and the rent, if any, for the hearing room shall be borne by the losing party. The expenses of any witnesses shall be borne, if at all, by the party calling them. The fees of the court reporter, if any, shall be paid by the party asking for one; such fees shall be split equally if both parties desire a reporter or request a copy of the transcript. Grievant, or grievance representatives, and witnesses called by the City who appear at such a hearing during their normally scheduled working hours shall not suffer any loss of pay.

**Step 7.** The arbitrator shall render in writing his findings as quickly as possible within thirty (30) calendar days after the hearing, or within thirty (30) calendar days after submission of post-hearing briefs, if any, and shall forward such findings and all supporting data to the office of the Human Resources Department and to the Association.

**Section 2.**

It is the Administration's and the Association's intention that all the time limits in the above Grievance Procedure shall be met. To the end of encouraging thoughtful responses at each step, however, the Association's and the Administration's designated representative may mutually agree, at any step, to additional short extensions of time, but any such agreement must be in writing and signed by the parties. In the absence of such mutual extensions, the grievant may, at any step where a response is not coming within the specified time limits, presume the grievance to be granted by the Administration in full, and the Administration shall immediately implement the requested remedy. This granting shall set no precedence for future grievances. Any step in the grievance procedure may be skipped by mutual consent.

**Section 3.**

In each step of the grievance procedure outlined in Section 1 above, certain specific representatives shall be given approval to attend the meetings therein prescribed. Upon prior notice, either party may bring additional representatives to any meeting in the grievance procedure.

**Section 4.**

No member or official of the Association shall be removed, disciplined, harassed, or discriminated against because he has filed or pursued a grievance under these procedures.

**Section 5.**

A grievant or Association Representative shall not suffer any loss of pay for time spent presenting a grievance in any of the steps in this grievance procedure.



**Section 6.**

A grievant shall be entitled to an Association representative at steps 1, 2, 3 and 4 of this procedure. The Association representative shall be entitled to present the grievance on behalf of the grievant if the grievant so desires, to ask questions and to have full participation. The grievant's Association representative will not suffer any loss of pay for time spent representing a grievant in discussions under this procedure.

**Section 7.**

All meetings regarding this grievance procedure may occur during the grievant's duty hours and the grievant and his representative, if he desires one, shall be released from duty for the purpose of attending such meetings provided that neither the grievant nor his representative, if one is desired, are needed to satisfy the City's manpower needs.

## ARTICLE 11

### LABOR/MANAGEMENT COMMITTEE

#### Section 1. Committee.

The Association and the City agree to establish a labor/management committee, which will consist of three (3) members of the Association and one Staff Representative, and three (3) members of management, with at least one of whom is to be from outside the Public Works Department, Parks and Natural Resources Department and Public Utilities Department.

#### Section 2. Purpose.

The City and the Association recognize the benefit of exploration and study of current and potential problems and differences via meetings of representatives to exchange views and information. The City and the Association agree to meet periodically for the duration of this agreement for the purpose of discussion, exploration and study of such matters as are of vital concern to both. The party requesting the meeting shall be responsible for scheduling the meeting and preparing the agenda. Unless agreed to otherwise, the meeting shall be limited to a discussion of matters contained in the agenda.

## ARTICLE 12

### HOURS OF WORK AND PREMIUM PAY

The work week for full time employees shall be forty (40) hours of work performed in five, eight (8) hours shifts, worked from Sunday through Saturday of each work week. The work week schedule will be established by each department. Each employee may be provided with a daily unpaid thirty (30) minute lunch break.

The parties agree that for certain activities that require the advanced scheduling of eight (8) hour work shifts occurring outside of the normal work schedule, that the members effected shall be compensated by adding 45 cents per hour for all hours worked outside of the members normal work week schedule. Such activities may include but not be limited to nighttime facility maintenance, street and traffic maintenance or utility repairs, and for winter snow and ice management.

If the Employer has a need to modify an employee's work schedule, the employee(s) shall be notified in writing fourteen (14) calendar days in advance of the scheduled change by the Employer.

This Article is not intend to limit the City's right to schedule overtime when it is determined to be necessary by the City

**ARTICLE 13**

**WAGES AND PAY PLAN**

**Section 1.** For the dates specified below, the new pay rates are effective for the pay period beginning with the date noted. The following pay rates reflect a 2% increase for 2017, a 2% increase for 2018 and a 2% increase for 2019.

<b>PAY RATES BEGINNING DECEMBER 28, 2016.</b>						
<b>PAY GRADE</b>		<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>
0	HOURLY	14.99	15.47	16.44	17.48	18.51
I	HOURLY	18.56	19.34	20.09	20.97	21.87
II	HOURLY	20.34	21.28	22.25	23.03	24.08
III	HOURLY	21.30	22.35	23.50	24.43	25.13

<b>PAY RATES BEGINNING DECEMBER 27, 2017.</b>						
<b>PAY GRADE</b>		<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>
0	HOURLY	15.29	15.78	16.77	17.83	18.88
I	HOURLY	18.93	19.73	20.49	21.39	22.31
II	HOURLY	20.75	21.71	22.70	23.49	24.56
III	HOURLY	21.73	22.80	23.97	24.92	25.63

<b>PAY RATE BEGINNING DECEMBER 26, 2018.</b>						
<b>PAY GRADE</b>		<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>
0	HOURLY	15.60	16.10	17.11	18.19	19.26
I	HOURLY	19.31	20.12	20.90	21.82	22.76
II	HOURLY	21.17	22.14	23.15	23.96	25.05
III	HOURLY	22.16	23.26	24.45	25.42	26.14

<u>PAY GRADE</u>	<u>CLASSIFICATION</u>
0	No current position
I	Technician I
II	Technician II
III	Technician III

## ARTICLE 14

### OVERTIME & COMPENSATORY TIME

#### Section 1.

Members shall be compensated at straight-time rates for all hours in paid status, except that all hours in paid status in excess of forty (40) hours in any workweek shall be compensated for at a rate of time and one-half of the member's current rate of compensation. Payment in cash shall be made for any overtime due at the time of separation from the City service.

#### Section 2.

In lieu of cash payment, the member may request to be compensated for overtime by compensatory time off in accordance with law. Such compensatory time off shall be equal to one and one-half (1.5) hours for each hour of overtime compensation to which the member is entitled. All requests for compensatory time are subject to approval of the department head. Compensatory time shall be taken at a time mutually agreeable to the supervisor and the employee

#### Section 3.

Members may accumulate up to eighty (80) hours of compensatory time. When a member has eighty (80) hours of accumulated compensatory time, all further overtime will be paid in cash.

## ARTICLE 15

### CALL IN PAY & ON-CALL DUTY

When a member is called back for work by the appointing authority, or his designee, beyond one-half hour from the time he reports off duty, he shall be paid or credited with a minimum of three (3) hours. The City maintains the right to retain that employee at the job site for the purposes of related work at the discretion of the Superintendent. Call in pay does not apply when an employee is asked to continue to work beyond their normal work schedule, or is asked to report early.

A member on on-call duty is responsible for answering and responding to emergency phone calls during all hours outside his normal work schedule i.e. evenings and weekends. When a member is assigned on-call duty, he shall be compensated \$50.00 per week (fifty dollars per week) for each week he remains on on-call duty.

## ARTICLE 16

### HOLIDAY PAY & PERSONAL LEAVE

#### Section 1.

The following are designated as paid holidays for members:

New Year's Day, January 1	Little Brown Jug Day, ½ day
Martin Luther King Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving Day
Independence Day, July 4	Day before Christmas, ½ day
Labor Day	Christmas Day, December 25

#### Section 2.

If one of the holidays set forth above occurs while an employee is on vacation leave, such day shall not be charged against his/her vacation leave.

#### Section 3.

For each of the holidays specified in Section 1 of this Article on which a member works, he shall be entitled to holiday compensation of time and one half the member's regular rate of pay for all hours worked, in addition to the members eight (8) hours or four hours for half days of regular holiday pay, whichever is appropriate. Compensation for holidays may be in the form of cash or compensatory time off at the option of the member.

#### Section 4.

In the event that the Federal Government designates a specific day for any of the aforesaid holidays, then such holiday shall be observed by the City in accordance with such Federal designation, when any such holiday falls on a Saturday it shall be observed on the Friday immediately preceding, and when any such holiday falls on a Sunday, it shall be observed on the Monday immediately succeeding.

#### Section 5.

Members shall be credited with thirty-two (32) hours of personal leave a year. Use of personal days shall be at the member's discretion with the approval of the Department Head or Superintendent. Members shall notify the Department at least thirty (30) minutes prior to the start of the member's tour of duty for which he intends to use a personal day. Requests for personal leave may only be denied based on operational emergency. A phone message shall be an acceptable form of notice in a given department, if it is an acceptable form of notice for sick leave usage in the same department.

#### Section 6.

All members will be permitted to accumulate three (3) years' worth of personal days. A member may elect to cash in up to one year's worth of personal days each year. The



Department Head will post a notice in June informing members of the required deadline for selling holiday time. A member must inform the Department Head prior to August 1 of the year preceding the calendar year in which he intends to make the trade.

**Section 7.**

At the time of separation, a member shall be compensated for all accrued, but unused, compensatory time and personal leave.

**ARTICLE 17**

**VACATION TIME**

**Section 1.**

The vacation year for members shall end at the close of business on the last pay period that ends in the month of December.

**Section 2.**

Each full-time status member shall accrue vacation leave by pay period at the annual rate of work hours based on years of total service which is established in the schedules contained in Section 3 of this Article. Any period of interruption of service due to resignation, layoff, disciplinary suspension, or discharge for cause, will not be included in the computation of total service. Time not in paid status, excepting military leave, shall also be excluded in computing total service. In computing years of service, the higher rate of accrual will be on the first day of the first pay period in which a year of service is completed.

**Section 3.**

The following vacation accrual schedules are established:

<b>YEARS OF TOTAL SERVICE</b>	<b>VACATION HRS/YEAR</b>	<b>VACATION HRS/PAY</b>
Start through 5 years	80.6	3.1
6 through 10 years	119.6	4.6
11 through 15 years	161.2	6.2
16 plus years	200.2	7.7

**Section 4.**

Any vacation balance in excess of the maximum number of work hours established in this paragraph shall become void as of the close of business on the last day of the last pay period that ends in the month of December.

<b>YEARS OF TOTAL SERVICE</b>	<b>MAXIMUM ACCRUAL OF VACATION HOURS</b>
Start through 5 years	241.8
6 through 10 years	358.8
11 through 15 years	483.6
16 plus years	600.6

**Section 5.**

To be eligible for bi-weekly (pay period) vacation accumulation, a member must be in paid status for a minimum of 72 hours within that pay period; except that when a member

is required to report for work and does so report and is denied work because of circumstances beyond his control, absence from work for the balance of that day shall not be construed as unpaid work status.

**Section 6.**

A member in full-time status who is to be separated from the City service through discharge, resignation, retirement or layoff, and who has unused vacation leave to his credit, shall be paid in a lump sum for such unused vacation leave in lieu of granting a vacation leave after his last day of active service with the City. Such payment shall be paid at the member's hourly rate of pay at time of separation.

**Section 7.**

When a member dies while in paid status in the City service, any unused vacation leave to his credit shall be paid in a lump sum to the surviving spouse, dependents, or the employee's estate, or such other person the member may have designated in writing.

**Section 8.**

Requests for vacation during this period shall be submitted to the Superintendent no later than March 1st of each year. Conflicts in scheduling for those who have submitted requests during this period will be resolved on the basis of length of service with the City. Exceptions may be made by the Superintendent if circumstances warrant. Requests turned in after this date may be approved with a 24 hour notice on a first-come, first-served basis if no one else is scheduled for the requested time period and it will not adversely affect the shift. Requests for leave with less than a 24 hour notice will only be considered if an employee has no personal leave available

**Section 9.**

A member may elect to trade up to three (3) weeks of vacation time for equivalent pay during any calendar year. The Department Head will post a notice in June informing members of the required deadline for selling vacation time. A member must inform the Department Head prior to August 1 of the year preceding the calendar year in which he intends to make the trade and must maintain at least forty (40) hours of vacation time in the employee's account after said trade takes place.

**Section 10.**

Members may request up to three consecutive weeks of vacation, except during the months of June, July and August.

**Section 11.**

All vacation requests, including in the early sign-up period, must be approved by the Superintendent.

## ARTICLE 18

### SICK LEAVE

#### Section 1.

Each City employee shall be entitled to sick leave with pay of four and six-tenths (4.6) hours for each completed eighty (80) hours of service.

Employees may use sick leave upon the approval of the City for the following reasons:

- A. Illness or injury of the employee or his immediate family.
- B. Medical, dental, or optical examinations or treatment of an employee or his immediate family, which requires the employee's attendance.
- C. If a member of the immediate family is afflicted with a contagious disease, or when, through exposure to a contagious disease, the presence of the employee at his job will jeopardize the health of others.
- D. Pregnancy and/or childbirth and other conditions related thereto inclusive of leave for male employees for the care of the employee's wife and family during postnatal period.

For purposes of this section, the definition of immediate family shall be: grandparents, mother, mother-in-law, father, father-in-law, brother, sister, brother-in-law, sister-in-law, daughter-in-law, son-in-law, spouse, child, stepchild, grandchild, legal guardian, or other person who stands in the place of a parent (in loco parentis).

Employees are required to report their intent to use sick leave at least 30 minutes prior to the start of the each workday, unless the employee has made other reporting arrangements with his immediate supervisor, ~~and state the nature of illness.~~ The employee shall make this phone call unless medically detained by a physician at the time. The supervisor or other designated person may contact the employee sometime during the day to discuss the reasons for the absence.

#### Section 2.

Sick leave must be taken in one-half (½) hour increments.

#### Section 3.

If a member used 0 hours of sick leave in any one calendar year, that member shall be credited with an additional three (3) vacation days the following year. If a member uses between one (1) and eight (8) hours of sick leave in any one calendar year that member shall be credited with an additional two (2) vacation days the following year. If a member uses between nine (9) and sixteen (16) hours of sick leave in any one calendar year that member shall be credited with one (1) additional vacation day the following year. At the member's option, any additional vacation days earned can be taken in the form of vacation leave or compensation in cash.

#### Section 4

Any City employee who has accumulated at least 800 hours of sick leave credit may, during any calendar year, convert any excess thereof up to 120 hours of sick leave to vacation leave on the basis of two hours for one (1) hour vacation leave.

**Section 5.**

Any member separated from City service for other than just cause shall be paid for all accumulated and unused sick leave on the basis of one (1) hour of pay for every three (3) hours of unused sick leave up to 650 hours. A member separated from City service for other than just cause shall be paid for any accumulated and unused sick leave for those hours which exceed 650 on the basis of one (1) hour of pay for every two (2) hours of unused sick leave. Total sick leave payout cannot exceed sixteen (16) weeks pay.

**Section 6.**

Upon separation, for any reason other than termination with just cause, of any employee who has completed a minimum of fifteen (15) years of service with the City, all unused sick leave credit will be converted to terminal leave pay on the basis of one (1) days pay for every two (2) unused sick leave days, to a maximum of sixteen (16) weeks pay.

**Section 7.**

An employee shall complete and sign a leave use form provided by the City to justify the use of sick leave. Payment for sick leave is subject to final approval by the Director or his designee. The City may require the employee to furnish a statement from a licensed medical practitioner if medical attention was sought or for any absence in excess of three (3) consecutive days whether for the employee or his immediate family. Such statement shall include the nature of the illness or injury, the inability to perform his duties, the prognosis, and the estimated date when the employee can be expected to return to work. Failure of the employee to provide such statement and sick leave use form when requested may result in the denial of sick leave pay.

**Section 8.**

Falsification of an application for sick leave or a medical practitioner's statement may be grounds for disciplinary action. The City maintains the right to have any employee examined by a licensed medical practitioner selected and paid by the City. Alternatively, the employee required to see a physician may see a physician of his own choosing, but in that event will not be reimbursed for the costs incurred.

The City may deny the payment of sick leave if the investigation indicates that the absence was not within the provisions of this article. Denial of sick leave payment shall not preclude the City from implementing any disciplinary action.

**Section 9. Sick Leave Abuse**

It is the mutual interest of the members and the City to prevent the abuse or misuse of sick leave. The acceptable usage of sick leave shall be pursuant to the regulations contained in this article.

Employees shall not abuse, show a pattern of sick leave and/or leave without pay usage.

The abuse of sick leave or the patterned use of sick leave shall be just and sufficient cause for discipline in accordance with Article 9. A request of sick leave shall be denied if the employee fails to comply with the procedures for proper sick leave usage, fails to present a required physician's statement as required by the contract, or if an investigation of a request for sick leave discloses facts inconsistent with the proper use of sick leave. Falsification of applications for sick leave or the filing of sick leave applications and documentation with intent to defraud, may result in the disapproval of sick leave and may be grounds for disciplinary action, up to and including discharge.

Any employee who is hospitalized shall not have such period of leave considered in determining whether the employee is abusing sick leave benefits.

The implementation of this section does not preclude the right of the City to discipline an employee for the abuse of sick leave, to require a statement from the employee's physician as required by the contract, or to have the employee examined by a physician. Any employee who has been disciplined for abuse of sick leave, may be required to furnish a statement from the employee's physician for each use of sick leave up to six months in duration. The City may, with mutual agreement of both parties, extend the need for sick leave verification for an additional six month period. The City also maintains the right to investigate all absences.

#### **Section 10. Transfer of Time**

Employees hired prior to 1/1/2014 may not transfer or "carry-over" accrued or unused sick leave to the City from another employer. Each member hired by the City of Delaware after January 1, 2014 may transfer accrued sick leave hours from previous employment with any public agency but such sick leave hours will not be eligible for conversion or payment upon separation pursuant to sections 4, 5, or 6. In addition, sick leave usage by members who transfer in sick leave hours will first be charged to sick leave hours accumulated while employed by the City of Delaware. Members will only be eligible to utilize hours transferred in from prior public employment when they have no balance of sick leave available from sick leave accrued while employed by the City of Delaware.

## ARTICLE 19

### INJURY LEAVE

#### Section 1.

All regular full-time City employees shall be entitled to injury leave with pay, less any Worker's Compensation weekly salary benefits which he/she may be awarded by the Ohio Industrial Commission (OIC), for a period not to exceed 120 working days for employees working a 40-hour workweek for each injury incurred in the performance of employment duties with the City, provided that the following procedures are followed:

- A. In all cases of personal injury to any regular full-time City employee as a result of the performance of employment duties, the employee shall complete an accident/injury investigation form and in conjunction with his/her Department Head shall report such injury to the Department of Administrative Services immediately and ensure that a claim is filed with the OIC.
- B. In the event that time off from work is required by the injured employee, they will be granted injury leave from the first day of injury, if the proper documentation is submitted to the City of Delaware. This documentation will include, but not be limited to, a statement from the employee's physician, an Agreement covering Compensation Reimbursement, any necessary OIC forms and other documents as may be required by the City. In the event that the OIC determines that the injury is NOT employment related, any time the employee is, or has been, absent from work shall be deducted first, from any accrued sick leave, then accrued vacation, or accrued compensatory time off, other than compensatory time for overtime worked.
- C. During the period of time an injured employee is being paid under this policy, all normal benefits given to regular full-time City employees shall remain in force with no deductions to earned sick leave and/or vacation time.
- D. In all cases where leave of more than 120 working days for employees working a 40-hour workweek is taken, the City Manager may extend such leave by up to an additional 120 working days for employees working a 40-hour workweek, if such necessity is determined to his/her satisfaction. Each employee requesting such an extension under this policy may be required to furnish a current affidavit from a licensed physician setting forth the need for the extension.

**ARTICLE 20**

**FUNERAL LEAVE**

**Section 1.**

Each regular full-time employee shall be entitled to funeral leave with pay according to the following schedule:

<b>DAYS/HOURS OF LEAVE</b>		
<b>Leave for Death of:</b>	<b>Local Funeral</b>	<b>Other Funeral</b>
Immediate Family Member	1-3 days*	1-5 days*
Other Relative	May Use Up To 1 Scheduled Work Day of Accrued Leave**	May Use Between 1-3 Scheduled Work Days of Accrued Leave**

\* One work day/shift is automatic for the day of the funeral, but additional time up to the maximum shall be given only with approval of the Department Head.

\*\* All leave time with approval of the Department Head/Superintendent.

**Section 2.**

For the purposes of this Article, "Immediate Family Member" means spouse, child, brother, sister, parents, step-child, step-brother, step-sister and step-parents, grandparents, sister in law, brother in law and parents in law.

**Section 3.**

For the purposes of the Article, "Local Funeral" means a funeral in the City of Delaware, or within fifty (50) miles thereof.



**ARTICLE 21**

**LONGEVITY COMPENSATION**

**Section 1.**

Members shall receive, in addition to other pay called for herein, Longevity Compensation based on completed years of service according to the following table:

After five (5) years of continuous service	\$550/year
After ten (10) years of continuous service	\$750/year
After fifteen (15) years of continuous service	\$950/year
After Twenty (20) years of continuous service	\$1,150/year

**Section 2.**

The longevity compensation shall be paid, in accordance with the above schedule, in two (2) separate lump sum payments during the first pay periods of June and December of each year.

**Section 3.**

Upon termination of service for other than just cause, members who are eligible for longevity pay under this Section (or in the event of death, the surviving spouse, dependents or estate) will be paid, as part of their terminal pay, the final partial year of longevity compensation, prorated to the number of months completed during said partial year since the member's last payment date.

**Section 4.**

For the purpose of this Article, continuous years of service shall include approved military leave and any time in paid status.

## ARTICLE 22

### DUES AND FAIR SHARE FEE

#### Section 1. Dues

The City agrees to deduct from the wages of any employee who is a member of the Public Works, Utility and Parks Association Bargaining Unit all dues uniformly required for the term of this agreement in accordance with the authorization/check off card. The Association will notify the City by January 1 of each year of the dues it charges and its current membership. All dues collected shall be paid over by the employer once each month to the AFSCME Ohio Council #8, Local 3238, 6800 North High Street, Worthington, Ohio 43085. The City Auditor shall provide the Association with an alphabetical list of names, social security numbers, and addresses of those employees who had Association dues deducted along with the amount of dues deduction.

#### Section 2. Payroll Deduction of Fair Share Fee

The City shall deduct from the pay of members of the bargaining unit who elect not to become or remain members of the Association, a fair share fee to be paid to the Association as a condition of continued employment.

All bargaining unit employees who do not become members in good standing of the Association are required to pay a fair share fee to the Association, as a condition of employment. This condition is effective sixty-one (61) days from the employee's date of hire or on the date this agreement is effective, whichever is later.

The deduction of the fair share fee from any earning of the employee is automatic and does not require a written authorization for payroll deduction. The deduction of fair share fee will not be made until the Employer receives written notice to begin deductions from the Controller of Ohio Council 8.

- A. Notification of the Amount of Fair Share Fee – Notice of the amount of fair share fee to be deducted monthly, which shall not exceed 100% of the Association dues for members, shall be transmitted by the Association to the City Finance Director prior to February 15 of each year during the term of this contract for the purpose of determining the amount to be payroll deducted. The City agrees to transmit all amounts deducted to the Association once each month, at the same time and to the same place as regular membership dues. The City Finance Director shall provide the Association with an alphabetical list of names, social security numbers, and addresses of those employees who had fair share fee deducted along with the amount of the fair share fee deduction.

- B. Procedure for Rebate – The Association represents to the City that an internal rebate procedure has been established in accordance with Section No. 4117.09(c) of the Revised Code, and that a procedure for challenging the amount of the representation fee has been established and will be given to each member of the bargaining unit who does not join the Association, and that such procedures and notice shall be in compliance with all applicable state and federal laws and the Constitution of the United States and the State of Ohio.
- C. Entitlement to Rebate – Upon timely demand, non-members may apply to the Association for rebate of the fair share fee pursuant to the internal procedures adopted by the Association.
- D. Disputes between fair share fee payers and the Association regarding fair share shall be processed under the Association’s internal dispute resolution procedure and are not subject to the grievance and arbitration procedure of this contract.
- E. Association Indemnification – The Association hereby agrees that it will indemnify and hold harmless from any claims, actions, or proceedings commenced by an employee against the City arising out of deductions made by the City pursuant to this Article.

## ARTICLE 23

### CLOTHING

#### Section 1.

The following clothing items of clothing will be provided to each member:

- Two (2) sweatshirts with city logo (Purchased by the city)
- Five (5) tee-shirts with city logo (Purchased by the city)
- Steel toe work boots (Purchased by the city or employee)
- Insulated bib overalls and jacket (Purchased by the city or employee)

#### Section 2.

The city will provide each employee with five t-shirts and two sweatshirts per year. Color and style of t-shirts and sweatshirts shall be as directed by the city. Jackets may be hip or waist-length with matching bib coveralls. Employees shall be permitted to choose the brand of cold weather gear to be purchased as long as they are duck brown in color (dark blue or black for mechanics). As an alternative to the duck brown jacket, a class 3 (lime yellow) waterproof, lined jacket may be worn. Members may purchase their own boots, bib overalls and jacket through a dealer, or order through the city. The city will provide each employee with up to \$350.00 per year, in total purchase credit or reimbursement for the purchase of boots, and up to \$250.00 in total purchase credit or reimbursement, once every three years, for the purchase of a set of bib overalls and jacket.

#### Section 3.

Each member shall be issued one (1) hard hat and one (1) class 3 safety vest and work gloves. When the item reaches the end of its useful life, or is damaged not due to negligence, it will be replaced. The employee is responsible for the daily care, maintenance and security of all items provided by the City. A member who has lost or misplaced items shall replace the item at their cost. Upon termination, all items provided pursuant to this Article must be returned to the City.

#### Section 4.

At the request of the member, the City will provide dark blue uniform pants at sufficient quantity to have a clean uniform for each work day. Uniforms will be laundered by the City.

#### Section 5.

None of the items listed in Section (1) of this Article, may be worn while off duty. Uniform pants and City logo tee shirts must be worn during and only during assigned work hours. The uniform will consist of long dark blue pants and tee shirts with the City logo and must be neatly worn, tucked in and clean in appearance on a daily basis. Tee shirts will be laundered by the employee.

**Section 6.**

The City will provide additional safety apparel as needed at the discretion of the City including but not limited to eye, hearing and respiratory protection.

## ARTICLE 24

### HEALTH AND SAFETY

#### Section 1.

The City agrees to continue to provide a safe and healthy work environment for all employees, consistent with its obligations under law and the Association agrees to cooperate with the City in its efforts to maintain a safe and healthy work environment.

#### Section 2.

For purposes of this Section, "unsafe equipment" and "unsafe conditions" means equipment or conditions which, even if reasonable care and caution are used, present an unreasonable risk of injury to an employee or others. All employees shall promptly report to their supervisor any equipment or condition which is allegedly unsafe. Employees will not be disciplined for reporting allegedly unsafe equipment or conditions to their supervisor, or for refusing to operate unsafe equipment or work under unsafe conditions. If it is determined by management that equipment or conditions are unsafe, then reasonable and prompt steps will be taken to correct the problem.

#### Section 3.

The City shall provide inoculations, as deemed necessary by the City, to each member to protect against infectious diseases (including hepatitis) or other workplace hazards to which a member may be exposed. It shall be mandatory for all members to receive preventative inoculations provided by this Article unless determined to be medically inappropriate.

**ARTICLE 25**

**INSURANCE**

**Section 1. Hospitalization, Surgical and Major Medical.**

The City will continue to provide comprehensive hospitalization, surgical and major medical coverage for all full-time members and their eligible dependents. The City may implement a Preferred Provider Organization (PPO). The Plan, if implemented, will provide for the following deductibles and co-payments as follows:

	<b>NETWORKS PROVIDERS</b>	<b>NON-NETWORK PROVIDERS</b>
Annual Deductible Single Family	None None	\$ 500.00 \$1000.00
Office Visit Co-pay	\$10.00	N/A
ER Visit Co-Pay	\$50.00 unless admitted into the hospital, otherwise co-insurance will apply in excess of the deductible	N/A
Co-insurance  Single  Family	90/10% of first \$1,000 80/20% of next \$3,000 90/10% of first \$2,000 80/20% of next \$5,000	50/50% of first \$5,000  50/50% of first \$10,000

The parties acknowledge that all of the "wellness benefits" are subject to all of the generally applicable plan limits, such as deductibles and co-payments. Contributions will be deducted from the member's gross income prior to taxes, subject to compliance with all applicable federal tax regulations.

Effective January 1, 2012 employees will contribute to the cost of the health benefit plan in an amount equal to 11% of the established monthly COBRA rate utilized by the City. Effective January 1, 2013 employees will contribute to the cost of the health benefit plan in an amount equal to 15% of the established monthly COBRA rate utilized by the City. Annually, on April of the following years, the percentage of COBRA will be established. Contributions will be deducted from all members in a paid status based on twelve (12) months times the monthly rate, divided by the number of pay periods per year (26). An example would be: \$68.33/mo. x 12 = \$819.96, \$819.96/26 pay periods = \$31.53 per pay period In the event federal tax regulations are changed so that medical benefit plans are

no longer tax exempt, the City will not be responsible to pick up the member's tax burden.

The City will permit employees who have alternate health options through a spouse to opt out of the City plan in return for a payment of \$100 per month. Families who have both spouses employed full time by the City of Delaware will not be eligible to opt out of the plan. One spouse will carry the cost of the plan minus the opt out payment. The employee will provide proof that they do in fact have other coverage before the City will drop that employee's current coverage. The City will continue to provide dental coverage if it is not provided under the employee's spouse's insurance. A member may elect to return to coverage under the City's insurance plan by notifying the City in writing of any substantial changes in circumstances which the member determines justifies such decision. The member must give thirty (30) days notice of his or her election to return to the City's plan, except in the case of an emergency, such as sudden loss of spouse's coverage, significant cost increase of spouse's coverage, divorce or other change in family status. The plan will comply with Internal Revenue Code Section 125 which governs this matter.

Employees who opt out of the health insurance program will be compensated as follows:

No Coverage	\$100 per month
Maintain Prescription Only	\$60 per month
Maintain Dental Only	\$65 per month
Maintain Prescription and Dental	\$55 per month

**\* An employee may not elect to have medical coverage only.**

Payments will begin on the first pay period of the month following 30 days notice of an employees desire to drop coverage. A form will be provided which will contain all information necessary to discontinue coverage under the plan. The form must be signed and returned to the Department of Administrative Services. Until such time that an employee is effectively dropped from City coverage, they will be subject to any payroll contributions.

All payments made in lieu of insurance coverage will be included as other pay on employee's paycheck. This income will not be included in income subject to PERS contributions but will be subject to all applicable taxes.

## **Section 2. Prescription Card.**

The City will provide a prescription card plan for members and their dependents.

The retail benefits will be the following:

- 80/20% for generic drugs
- 50/50% name brand drugs with a \$25 co-pay for each disbursement

The mail order benefits will be the following:

- 90/10% for generic drugs and



- 75/25% for name brand drugs with no \$25 co-pay
- The maximum expense an employee will pay for coinsurance is \$250 annually for single coverage and \$500 for family annually for prescription benefits, however, the \$25 co-pay for retail name brand drugs will not count towards the calculation of the \$250 or the \$500 coinsurance maximum and will always apply even after an employee reaches the coinsurance maximum expenditure.

**Section 3. Dental Care Plan.**

The City will maintain the current dental coverage for all members.

**Section 4. Life Insurance.**

The City will maintain life insurance for all members at a face value of \$40,000.

**Section 5.**

The City shall provide a certificate of coverage for each member. Such a certificate shall be for the members' family situation.

**Section 6. Smoking Cessation Contribution.**

The City agrees to participate in the cost to a member who chooses to access a smoking cessation program, up to 50% of the total cost and no more than \$75 per pay period. A prerequisite is that a member who chooses to participate should first have made a good faith effort to quit smoking on their own, or in another manner. The City encourages smoking cessation in the interest of employee health, and to try to keep down future medical costs.

**Section 7.**

The City and the Association agree to participate in a city-wide employee-management insurance review committee for the purpose of mutually monitoring the status of the health plan. This review committee shall meet at least annually.

The City reserves the right to change providers of health benefits including the PPO Plan, the prescription card plan and the dental plan.

The Employer agrees to provide bargaining unit employees health plan coverage. Such coverage may be provided through a self-funded plan or an outside insurance carrier. Cost containment measures may be adopted by the Employer in consideration of projected costs, market availability of coverages and utilization. The Employer shall meet and confer with the Association regarding health care providers and levels of coverage but the Employer shall make the final determination if a consensus is not reached.

**Section 8.**

If the City makes vision coverage available to employees, it will contribute up to \$6 a month, on behalf of the employee, towards the monthly premium. The employee will be responsible for the balance of the monthly cost of the coverage selected.

## ARTICLE 26

### TUITION REIMBURSEMENT

All full-time employees with one or more years of continuous active service shall be eligible for a reimbursement of instructional fees for undergraduate or graduate courses towards a degree or certification, pre-approved by the City and voluntarily undertaken by the employee. The tuition reimbursement program shall be subject to the following conditions:

- A. There must be a direct correlation between the member/s duties and responsibilities and the courses taken or the degree program pursued. The Department Head has the sole and final discretion to approve or disapprove tuition reimbursement requests. All courses must be taken during other than scheduled working hours. Any situation which, in the discretion of the Department Head, would require an employee's presence on the job shall take complete and final precedence over any time scheduled for courses. All scheduled hours for courses of instruction must be filed with the department head.
- B. Any financial assistance from any governmental or private agency available to a member, whether or not applied for and regardless of when such assistance may have been received, shall be deducted in the entire amount from the tuition reimbursement the member is eligible for under this Section. If a member/s tuition is fully covered by another governmental or private agency, then the member is not entitled to any payment from the City.
- C. Employees seeking authorization of a tuition reimbursement must first submit to the Department Head for review, prior to September 30 of the year proceeding when the classes are to be taken, all necessary information pertaining to the proposed course degree to be pursued, the educational institution and the employee's best estimate of courses, cost, dates and times.  
  
Courses must be taken at accredited colleges, universities, technical and business institutes or at their established extension centers, and these must first be approved by the City. Seminars, conferences and workshops are not included.
- D. Reimbursement for tuition will be made when the member satisfactorily completes (attains at least a grade of "C" or its equivalent for graduate work) a course and presents an official certificate or its equivalent and a receipt for payment or a copy of the unpaid bill from the institution confirming completion of the approved course.
- E. No reimbursement will be granted for books, paper, supplies of whatever nature, transportation, meals, or any other expense connected with any course, except the cost of tuition and fees as outlined in paragraph d.
- F. Any employee participating in the tuition reimbursement program who resigns

(except resignation due to disability), retires or is discharged for cause must repay the tuition reimbursement paid by the City for courses taken less than two years prior to the date of termination or discharge. If necessary, this amount will be deducted from the employee's terminal leave pay or final paycheck.

## ARTICLE 27

### COMMERCIAL DRIVERS LICENSE

#### Section 1. Reimbursement of the Test

The City will reimburse the cost of the passed portions of the test for commercial driver's licenses to members who are required to have them to perform their jobs.

#### Section 2. Maintenance of a CDL

All members are required to maintain a valid Ohio CDL. The City will reimburse the cost of renewing a CDL.

#### Section 3. Periodic records check

The City, at least twice per calendar year, shall verify that each member has a valid Ohio CDL with the Ohio Department of Public Safety. Members shall consent to all checks and the City shall bear all cost associated to check a members record. Members are encouraged to request a copy of the record.

#### Section 4. Failure to report a violation

All members shall report within 30 days all traffic convictions (commercial and private). Failure to disclose a conviction may result in disciplinary proceedings.

#### Section 5. License suspension, revocation, cancellation, or disqualification

Members that have suspended, revoked, cancelled or disqualified licenses without work privileges may be subject to termination of employment. The member will have 30 calendar days from the date of any suspension, revocation, cancellation or disqualification to secure working privileges. During this time the member must use accrued leave. A member who does not have sufficient leave balances may be subject to termination of employment.

Members that voluntary disclose a suspension, revocation, cancellation, or disqualification voluntarily will be given consideration that the disclosure was of a voluntary nature.

#### Section 6. Drug and Alcohol Testing

Members who have CDL's are subject to the Substance Abuse Policy attached as Appendix B.

## **ARTICLE 28**

### **PARKS AND RECREATION CREDIT**

The City agrees to provide each member with a credit for each year of this contract to be applied to a City Pool membership, City Golf Course membership or punch-card, or City rentals (shelters or Hilborn Room). The amount of the credit shall be \$60. This membership is defined and regulated by the Recreation Services Department and members shall abide by the stipulations set forth by the department both in definition and restrictions. This credit amount is fixed, regardless of changes in membership fees that may occur. In addition, the City will provide to each member a 20% discount on all individual registrations for City recreation programs.

## ARTICLE 29

### **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITIES**

#### **Section 1.**

The City and the Association agree that, neither shall discriminate against any employee of the bargaining unit because of race, color, religion, sex, national origin, age, disability, ancestry, marital status (except where it is in violation of the City's established nepotism policy), political affiliation, or sexual preference. Nor shall the City or the Association discriminate against any employee of the bargaining unit because of his/her membership or non-membership in the Association. Both the City and the Association recognize their respective responsibilities under applicable federal, state, and local laws, and executive order relating to civil rights and employment practices.

All references to members of the bargaining unit in this Agreement shall mean both sexes. Wherever the female gender only is used, it shall be considered to include male and female employees.

#### **Section 2. Sexual Harassment and Employment Opportunities.**

The policy is included in the City of Delaware Employee Handbook.

## ARTICLE 30

### LAYOFF AND ABOLISHMENTS

- A. The Civil Service Commission places the following procedures to be the sole and exclusive procedures for implementing a layoff or job abolishment directly affecting employees and that any statutory procedures in conflict with the following, including RC124.421 through 124.328 (or others that may apply) are hereby specifically waived.”
- B. **Determination of Need for Layoff.**  
When the City determines that a layoff or job abolishment is to occur, the City shall notify, in writing, the affected employees thirty (30) days in advance of the effective date of the layoff or job abolishment. Upon request of an Employee Organization during this thirty (30) day period, the City agrees to meet and confer with representatives of the Employee Organization regarding the effects of the layoff and to explore possible alternatives to avoid the need for the layoff. Such meeting shall not delay the implementation of the layoff unless the parties mutually agree to an alternative to the layoff.
- C. **Determination of Positions to be Laid Off.**  
The City shall determine in which classification(s) and which work section(s) layoffs will occur. Within each classification affected, employees will be laid off in accordance with their seniority (least senior first) and their ability to perform the remaining available work without further training.
- D. **Recall Rights.**  
Employees who have completed their original probationary period, who are laid off, shall be placed on a recall list for a period of one (1) year. If a position from which the employee was laid off becomes available within this time frame, employees who are still on the recall list shall be recalled in the inverse order of their layoff.
- E. **Notice of Recall.**  
Notice of recall shall be sent to the employee by certified mail. The City shall be deemed to have fulfilled its obligation in this respect by mailing the recall notice to the last mailing address provided by the employee.
- F. **Return to Duty.**  
The recalled employee shall have twenty-five (25) calendar days following the mailing of the recall notice to notify the City of the employee’s intent to return to work and shall have thirty (30) calendar days following the mailing of the recall notice in which to report for duty, unless a later date is specified in the notice.

Upon returning to work, an employee must be able to perform the essential functions of the position at the time of recall.

G. **Seniority Defined.**

For purposes of layoff, seniority shall be defined as an employee's length of continuous employment with the City.

H. **Right to Bump.**

An employee laid-off shall have the right to bump another City employee having less continuous service than the laid-off employee. Such laid off employee will have the right to bump any less senior employee in the bargaining unit providing he is qualified to perform the duties of the position he requests.



## ARTICLE 31

### ASSOCIATION REPRESENTATION

#### **Section 1. Association Representatives.**

Representatives of the Association shall be admitted to the City's facilities for the purpose of processing grievances or attending meetings.

#### **Section 2. Grievance Representatives.**

Three (3) members of the Bargaining Unit, one (1) from each department, are to serve as Association Stewards who shall be recognized by the City. The Association shall designate one (1) of these members to act as Chief Steward.

#### **Section 3. Listing of Representatives.**

The City shall recognize the following Association Representatives: President, Vice President, Secretary and Treasurer, Steward, Chief Steward, and Staff Representatives. The Association shall furnish the City with a written list of its officers, representatives, and stewards within five (5) days after their designation or any change.

#### **Section 4. Access to City Premises by Representatives.**

It is understood that grievance representatives, as well as officers of the Local Association may, while on duty, interview managerial and other staff and obtain needed information from the office during duty hours, provided that advance supervisory approval is obtained and provided such activity does not interfere with, disrupt, or interrupt normal departmental operations. The Employer will not arbitrarily deny and/or interfere with the Association's investigation of a grievance.

ARTICLE 32

SANCTITY OF AGREEMENT

All parties agree that this Agreement shall remain in force from the signing date of this contract through December 31, 2017 and that neither party shall attempt to achieve the alteration of this Agreement by recommending changes in, additions to, or deletions from, the Charter, Ordinances, and Resolutions or the Civil Service Commission rules and regulations.

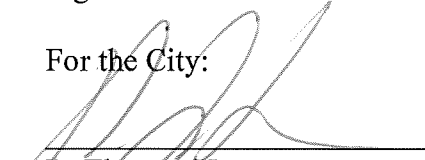
Section 1.

By affixing appropriate signatures below, the representatives of the Delaware Public Works, Utilities, and Parks Association and the City agree to the terms and conditions of this employment agreement. The language of said foregoing terms and conditions of employment is hereby deemed to be acceptable to both parties and recommended to be forwarded to the Delaware City Council for the necessary legislative approval, ratification, and adoption.


Section 2.

Signed and dated at Delaware, Ohio, on this 12<sup>th</sup> day of January, 2017.

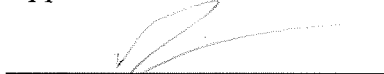
For the City:

  
\_\_\_\_\_  
R. Thomas Homan  
City Manager

For the Association:

  
\_\_\_\_\_  
Brian Ross  
Association President

Approved as to Form:

  
\_\_\_\_\_  
Darren M. Shulman  
City Attorney

**APPENDIX A  
CITY OF DELAWARE  
SUBSTANCE ABUSE POLICY  
FOR COMMERCIAL DRIVER LICENSED DRIVERS**

**1.0 Purpose and Responsibility.**

The Drug Program Coordinator shall plan for, implement, administer, coordinate and evaluate the City of Delaware's Commercial Drivers License Substance Abuse Policy, including any testing and education programs developed for City commercial licensed drivers, and shall ensure City of Delaware's compliance with provisions of the federal Drug-Free Workplace Act of 1988 and 49 CFR Parts 40, 382, 391, 392 and 395 and any subsequent amendments for the safety of Delaware City's employees and the general public.

**2.0 Scope.**

This policy applies to all employees of the City of Delaware holding a commercial drivers license (CDL) as a part of their work duties, such as to operate a commercial motor vehicle or perform a safety sensitive function as defined for drivers in 49 CFR ¶ 382.109.

**3.0 Distribution.**

This policy is distributed to all Appointing Authorities, Office, Departments, and Employees of the City of Delaware.

**4.0 Definitions of Terms.**

For purposes of this policy:

- (A) "Abuse" means:
  - (1) Any use of an illegal drug;
  - (2) Intentional misuse of any over-the-counter drug in cases where such misuse impairs job performance or behavior;
  - (3) Use of any prescription drug in a manner inconsistent with its medically prescribed intended use, or under circumstances where use is not permitted;
  - (4) Use of alcohol where such use impairs job performance or behavior; and
  - (5) Intentional and inappropriate use of any substance, legal or illegal, which impairs job performance or behavior.
- (B) "Agency" means any office, department, commission, board, institution or facility under the direction of the City of Delaware.
- (C) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or any other alcohol defined in 49 CFR §382.107.
- (D) "Alcohol test" means, evidential breath testing, or non-evidential saliva testing, as defined in 49 CFR Parts 40 and 382, to determine the concentration of alcohol in an employee's system.
- (E) "Applicant testing" means testing of final applicants for position in City service who appear to have tentatively met all relevant employment criteria but have not

- been formally offered employment with the City.
- (F) "Appointing Authority" means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, institution, or facility.
  - (G) "Chain of Custody" means procedures to account for the integrity of each specimen for testing by tracking its storage from point of collection to final disposition.
  - (H) "Collection Site" means a place designated by the City Manager where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs or alcohol.
  - (I) "Confirmation Test" means a second test or analytical procedure that identifies the presence of a specific drug or metabolite or provides quantitative data of alcohol concentration. For controlled substances the confirmation method must utilize gas chromatography/mass spectrometry (GC/MS).
  - (J) "Controlled Substance" means those drugs defined in 49 CFR § 382.107 (marijuana, cocaine, opiates, amphetamines, phencyclidine).
  - (K) "Drug" means:
    - (1) Any drug which, under the Federal Food, Drug and Cosmetic Act, federal narcotic law, Sections 3715.01 to 3715.72, or Chapter 3719 of the Ohio Revised Code, may be dispensed only upon a prescription;
    - (2) Any drug which contains a Schedule V controlled substance and which is exempt from Chapter 3719 of the Ohio Revised Code, or to which such chapter does not apply; or
    - (3) Any other substance defined in Section 4729.02 of the Ohio Revised Code.
  - (L) "Drug Program Coordinator" means the person responsible for implementing, directing and managing the substance abuse policy within the City. The Drug Program Coordinator serves as the City's principal contact with the testing laboratory and maintains the effective operation of the policy within the City.
  - (M) "Drug Test" means a chemical test administered for the purpose of determining the presence or absence of a controlled substance in a person's bodily fluids.
  - (N) "Employee" means any person holding a CDL in a position subject to appointment, removal, promotion, or reduction by an appointing officer who is paid by warrant of the City.

- (O) "Employee Assistance Program" means the program through which employees may secure confidential counseling for personal behavior and/or health issues, including assessment of drug and alcohol dependency and rehabilitation. The Employee Assistance Program is currently administrated by \_\_\_\_\_.
- (P) "Follow-up Test" means drug and/or alcohol test requirements for employees referred to a counseling or rehabilitation program, such as those recommended by or associated with the Employee Assistance Program, who are identified as needing assistance in resolving alcohol misuse and/or controlled substance use problems. Such employees shall undergo unannounced follow-up testing for a time period and frequency stipulated by the Drug Program Coordinator. Such testing also may be in addition to testing which may be imposed as a component of the counseling or rehabilitation program itself.
- (Q) "Illegal Drug" means any controlled substance as defined in this policy, and any drug defined in this policy that is used, possessed or distributed (1) for purposes other than as prescribed or manufactured; or (2) in violation of any federal, state or local law.
- (R) "Initial Test" means an immunoassay screen to determine the presence or absence of controlled substances or their metabolites in specimens, and an analytical procedure to determine alcohol concentration in an employee's body.
- (S) "Laboratory" means a facility authorized under 49 CFR Part 40 to perform testing for drugs or alcohol for employees of any office, department, commission, board, institution, or facility of City government.
- (T) "Medical Review Officer" (MRO) means a person who is a licensed physician and a certified MRO with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all confirmed positive test results together with an employee's medical history and other relevant biomedical information.
- (U) "City of Delaware Commercial Drivers License Substance Abuse Policy" means the implementation of drug-free workplace programs to ensure the City of Delaware's compliance with provisions of the federal Drug-Free Workplace Act of 1988, the federal 49 CFR Parts 40, 382, 391, 392, and 395, and/or subsequent amendments.
- (V) "Positive Test Result" means a confirmed drug or alcohol test result which indicates the presence of a controlled substance, or of alcohol, at a level prohibited under the Department of Transportation's ("DOT's") controlled substance and alcohol testing regulations, 49 CFR Parts 40 and 382.

- (W) "Prescription" means a written or oral order for a drug for the use of a particular person given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by federal, state and/or local laws.
- (X) "Reasonable suspicion testing" means alcohol or controlled substance testing based on a belief that an employee is under the influence of, or is using, possessing, or distributing controlled substances or alcohol, or is otherwise in violation of the City's policy. Such a belief may be drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:
- (1) Observable phenomena, such as direct observation of drug use and/or the appearance, behavior, speech, body odor or physical symptoms or manifestations of using or being under the influence of a drug or alcohol;
  - (2) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness, or deterioration in work performance;
  - (3) A report of drug use provided by reliable and credible sources;
  - (4) Evidence that an individual has tampered with a drug or alcohol test during his/her employment;
  - (5) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of alcohol and/or other drugs while working, or while on the employer's premises or operating the employer's vehicle, machinery, or equipment;
  - (6) The occurrence of an incident involving an employee's on the job actions which has resulted in the personal injury of any person, or in which property damage has occurred, and any of one (1) through five (5) above apply.
- (Y) "Specimen" means urine, breath, saliva or blood obtained from the human body.
- (Z) "Refusal" means conduct that obstructs or delays compliance with any provision of this policy (including any part of the testing process), failure to provide adequate breath for alcohol testing without a valid medical explanation, or failure to provide an adequate urine sample not due to a genuine inability.
- (AA) "Safety sensitive" means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for work, and includes the functions listed in 49 CFR § 382.107.
- (BB) "Workplace" means a City-owned or utilized premise for official City business or any place where official City business is conducted.

## 5.0 Policy.

### **Voluntary Compliance.**

Employees who -- before committing a violation of this policy -- voluntarily disclose to their employer that they have a drug and alcohol problem, will be offered confidential assistance in contacting counseling and treatment programs and provided information about any available insurance coverage or benefits. Depending on the nature of their problem, their job duties, and work history, such employees may be placed on unpaid leaves of absence, transferred to non-safety-sensitive jobs, and/or otherwise reasonably accommodated as may be required by law. Such employees shall be required to document to the City's satisfaction their successful completion of, or participation in, an appropriate, supervised treatment program. Such employees also may be required to comply with other appropriate conditions of treatment and/or continued employment as the City may determine, including, but not limited to, agreeing to take and pass drug and/or alcohol tests at any time or during a specified period of time as may be requested by City of Delaware.

If, at any time after voluntarily coming forward under this provision, should said employee violate any provision of this policy, he/she will become subject to the disciplinary consequences as defined in this policy.

### **Prohibited Conduct.**

The following shall be considered "prohibited conduct" for purposes of this policy:

No employee shall report for duty or remain on duty while having an alcohol concentration of .04 or greater.

No employee shall be on duty or operate a commercial motor vehicle while possessing alcohol unless the alcohol is manifested and transported as part of a shipment.

No employee shall use alcohol while performing safety-sensitive functions.

No employee shall perform safety-sensitive functions within four (4) hours after using alcohol.

No employee required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

No employee shall refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test.

No employee shall report for duty or remain on duty when the employee possesses or uses any controlled substance, except when possession or use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to perform his/her job and/or operate a commercial

motor vehicle.

If an employee engages in prohibited conduct, the employee is not qualified to perform a safety-sensitive position and/or drive a commercial motor vehicle. Such employee shall be immediately removed from service and will be subject to the disciplinary consequences set forth in this policy.

**Alcohol Testing Techniques and Methods.**

The City of Delaware will perform alcohol testing using a device that is on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) and meets the DOT's testing requirements. This may be a breath testing device or a saliva-based testing device provided through a vendor or agent. The device will be operated by a technician who is certified and trained on the specific device he or she will be operating. If directed to submit to alcohol testing, the employee shall report to the alcohol testing site as notified by the City. The employee shall follow all instructions given by the alcohol technician.

As applicable, any initial test indicating a blood alcohol concentration (BAC) of .02 or greater will be confirmed on an evidential breath testing device (EBT) operated by a breath alcohol technician (BAT). The confirmation test should be performed no sooner than 15 minutes and no later than 30 minutes following the completion of the initial test. In the event the confirmation test indicates a BAC of .02 to .0399, the employee shall be removed from duty for 24 hours or until his/her next scheduled on-duty time, whichever is longer. Employees with tests indicating a BAC of .04 or greater are considered to have engaged in prohibited conduct, which subjects them to the disciplinary consequences set forth in this policy. With respect to timing, all alcohol tests shall be performed just prior to, during, or just after duty.

- (A) All procedures and protocols for collection and testing of an employee's breath or saliva for alcohol shall conform to the methods and procedures set forth in this policy or in DOT regulations.
- (B) Test results shall be reported to the Medical Review Officer (MRO) within twenty-four hours of the testing procedure.
- (C) The employee assistance program shall provide to the Drug Program Coordinator a monthly statistical summary of all alcohol testing information including the number of employees tested and the results of that testing. This information should be forwarded no later than fourteen calendar days after the end of the month covered by the summary.

**Drug Testing Techniques and Methods.**

Drug testing normally will be performed through urinalysis. Urinalysis will test for the presence of drugs and/or metabolites of the following controlled substances: (1) marijuana; (2) cocaine; (3) opiates; (4) amphetamines; and (5) phencyclidine (PCP).

The urinalysis procedure starts with the collection of a urine specimen. Urine specimens will be submitted to a SAMHSA-certified laboratory for testing. As part of the collection process, the specimen provided will be split into two vials: a primary vial and a secondary vial. The SAMHSA-certified laboratory will perform initial screenings on all primary vials. In the event



that the primary specimen tests positive, a confirmation test of that specimen will be performed before being reported by the laboratory to the MRO as a positive.

All laboratory results will be reported by the laboratory to a Medical Review Officer (MRO) designated by the City of Delaware. Negative test results shall be reported by the MRO to the City. Before reporting a positive test result to the City, the MRO will attempt to contact the employee to discuss the test result. If the MRO is unable to contact the employee directly, the MRO will contact the City management official designated in advance by the City, who shall, in turn, contact the employee and direct the employee to contact the MRO. Upon being so directed, the employee shall contact the MRO immediately or, if after the MRO's business hours and the MRO is unavailable, at the start of the MRO's next business day. In the MRO's sole discretion, a determination will be made whether a result is positive or negative. If, after failing to contact the MRO after 5 days, or if the employee cannot be contacted at all within 30 days, the MRO may verify the test as positive.

Pursuant to DOT regulations, individual test results will be released to the City of Delaware and will be kept strictly confidential unless consent for the release of the test results has been obtained. Any individual who has submitted to drug or alcohol testing in compliance with this policy is entitled to receive the results of such testing upon timely written request.

An individual testing positive may make a request of the MRO to have the secondary vial tested. The secondary vial must be tested by a different SAMHSA-certified lab than tested the primary specimen. The individual making the request for a test of the second specimen must pre-pay all costs associated with the test. The request for testing of a secondary specimen is timely only if it is made to the MRO within 72 hours of the individual being sent notice of a positive test result.

(A) The initial drug testing protocol for City employees and applicants for City employment shall use an assay technique which SAMHSA requires. The initial cutoff levels and the drug panel for testing shall meet National Institute On Drug Abuse criteria to determine whether specimens are negative for the following five drugs or classes or drugs:

<b>DRUG CLASS</b>	<b>INITIAL TEST LEVEL (ng/ml)</b>
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	300
Phencyclidine	25
Amphetamines	1,000

**\*25 ng/ml if immunoassay specific for free morphine.**

- (B) These test levels and initial test methods shall be subject to change by the City of Delaware if advances in technology, changes in regulations or other consideration warrant identification of these substances at other concentrations. Initial test methods and test levels for other drugs meeting certification criteria of the National Institute On Drug Abuse shall be added to the testing protocol as deemed necessary by the Drug Program Coordinator.

**Confirmatory Testing.**

- (A) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed below:

DRUG CLASS	CONFIRMATORY TEST LEVEL (ng/ml)
Marijuana metabolites	15
Cocaine metabolites	150
Opiate: Morphine Codeine	*300 *300
Phencyclidine	25
Amphetamines: Amphetamine Methamphetamine	500 500

- (B) All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."
- (C) Confirmatory test levels shall be subject to change if advances in technology, changes in regulations, or other considerations warrant identification of these substances at other concentrations. Confirmatory test methods and testing levels for other drugs meeting certification criteria of the National Institute On Drug Abuse shall be added to the testing protocol as deemed necessary by the Drug Program Coordinator.

**Collection and Handling of Specimens.**

The testing laboratory and any collection facility with which it is affiliated are responsible for conducting specimen collection and handling for drug and alcohol testing pursuant to 49 CFR Parts 40 and 382 of the federal Department of Transportation's regulations. Employees directed to submit to a drug and/or alcohol test must fully cooperate with the testing process, and comply with all specimen collection and chain of custody procedures and requirements, as a condition of continued employment. Employees who fail or refuse to do so will be subject to the disciplinary consequences set forth in this policy.

**Reporting of Test Results.**

- (A) The laboratory shall report test results to the MRO. All test results shall be certified as accurate by the responsible person at the laboratory. Results should not be transmitted by telephone, and transmission by other electronic means (computer, teleprinter or facsimile) shall be permissible. All specimens which test negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive for a specific drug or drugs.
- (B) The Medical Review Officer may, at his/her discretion, request that the laboratory provide quantization of test results. The Medical Review Officer will not normally report quantization of test results, but will only report whether the test was positive or negative unless prior written approval to provide other information is authorized by the Drug Program Coordinator.
- (C) The employee assistance program shall provide to the Drug Program Coordinator a monthly statistical summary of urinalysis testing information or any other documentation pertaining to the testing process as requested by the Drug Program Coordinator. This information should be forwarded by registered or certified mail no later than fourteen calendar days after the end of the month covered by the summary.

### **Records and Specimen Retention.**

- (A) Unless otherwise instructed in writing by the Drug Program Coordinator, all records pertaining to a given specimen should be maintained by the laboratory for a minimum of two years.
- (B) All positive urine specimens shall be routinely retained in frozen storage (-20 degrees C or less) so as to be available for any necessary retest for a period of one year, unless authorized otherwise in writing by the Drug Program Coordinator.

### **Applicant Testing.**

- (A) Every application for employment with the City of Delaware service shall state: "All applicants tentatively selected for this position will be required to submit to urinalysis to test for illegal drug use prior to appointments. An applicant with a positive test shall not be offered employment."
- (B) Each applicant shall be notified that appointment to the position will be contingent upon a negative test result and the City's final overall assessment of the applicant for employment with the City. Failure of the vacancy announcement to contain this statement shall not preclude applicant testing and the City's final overall assessment.
- (C) The Drug Program Coordinator shall direct applicants to the appropriate collection site. The test must be undertaken as soon after notification as possible. A driver/applicant is not required to submit to a urine drug test if (1) the City of Delaware can verify that the driver has participated in a valid drug testing program within the preceding thirty (30) days; (2) while participating in that program, was either tested within the past six (6) months or participated in a random selection program for the previous twelve (12) months; and (3) no prior employer has knowledge that the driver violated any part of the regulations within the last six (6) months.
- (D) Applicants shall be advised of the opportunity to offer an explanation or submit medical documentation of legally prescribed medications which may explain a positive test result. Such information will be reviewed only by the Medical Review Officer in conjunction with his/her determination of the validity of a positive confirmatory test result.
- (E) Any office/department of City government shall decline to extend a final offer of employment to any applicant with a verified positive test result or who refuses to submit to testing. Such applicant will not be reconsidered for City employment for a period of one year.
- (F) DOT regulations may require that the City of Delaware obtain certain drug and alcohol testing records from employee's previous employers for the previous two years. The City may verify that no prior employer of the employee has records indicating violations of any DOT rule pertaining to controlled substance or alcohol use within the previous two (2) years. As a condition to employment, the employee shall provide the City with a written authorization for all previous employers within the past two years to release such drug and alcohol testing records.

### **Reasonable Suspicion Testing.**

- (A) Where there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is using, possessing or under in influence of, or that his/her job performance or behavior is impaired by, alcohol or a controlled substance, or if he/she is

otherwise exhibiting conduct or behavior that falls within this policy's "reasonable suspicion testing" definition, the employee may be required to submit to drug and/or alcohol testing.

- (B) As applicable, reasonable suspicion will be assessed by at least.
  - (1) one supervisor trained in compliance with 49 CFR §382.603;
- (C) Reasonable suspicion testing shall also include incident-based accident or unsafe practice testing. Such testing may be required of employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to themselves, to others, or overall operations. Such incident-based testing can also be for conditions and situations and according to procedures prescribed in the section below entitled, "Post-Accident Testing."
- (D) The employee shall be asked to provide the urine sample or submit to a breath or saliva test for alcohol in accordance with criteria delineated in this policy.
- (E) The City will endeavor to train supervisors and managers properly in accordance with §382.603 to address the abuse of alcohol or other drugs by employees, to recognize facts that give rise to reasonable suspicion, and to document facts and circumstances of a finding of reasonable suspicion as prescribed in this policy. Failure to receive such training shall not, however, invalidate otherwise proper reasonable suspicion testing.
- (F) Employees shall be given the opportunity to offer an explanation or submit medical documentation of legally prescribed medications or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the Medical Review Officer in conjunction with his/her determination of the validity of a positive confirmatory test and shall be released to the employer only to explain a test result.

### **Random Testing.**

- (A) All employees to whom this policy applies are subject to random testing at any time during working hours.
- (B) Employees to be tested will be selected using a computer-based random selection.
- (C) The number of such tests per calendar year shall equal or exceed:
  - (1) 50% for illegal drugs
  - (2) 10% for alcoholof the average number of employment positions covered by this policy and shall be spread throughout the year as determined by the City.
- (D) No supervisor, official, and/or manager shall have any control over the probability of an individual's selection for random testing. Random selection, by its very nature, may result in employees being selected in successive random selections or selected more than once in a calendar year. Alternatively, some employees may not be selected in a calendar year.
- (E) A City official shall notify an employee when that employee is selected. Once notified, every work-related action the employee takes must lead to a collection. If the employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered a refusal to test and will subject the employee to the disciplinary consequences set forth in this policy. However, employees who, for legitimate reasons, are unavailable on the day of their selection shall be returned to the

selection pool.

- (F) Employees shall be given the opportunity to offer an explanation or submit medical documentation of legally prescribed medications or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the Medical Review Officer in conjunction with his/her determination of the validity of a positive confirmatory test and shall be released to the employer only to explain a test result.

**Post-Accident Testing.**

An employee must submit to drug and alcohol testing any time he or she is involved in an accident where 1) a fatality is involved; or 2) the employee receives a citation for a moving violation arising from the accident, and any party involved requires immediate treatment for an injury away from the accident scene, or if any vehicle involved incurs "disabling damage" (i.e., must be towed away). Following any accident, the driver must contact the City of Delaware as soon as possible. If the employee previously has been presented with an information card setting forth certain instructions for post-accident drug and alcohol testing, the employee shall follow the instructions contained on the information card as well as any additional instructions from the City or its representatives.

Any time a post-accident drug or alcohol test is required, it must be performed as soon as possible following the accident. If no alcohol test can be made within eight (8) hours, attempts to perform an alcohol test should cease. If no urine collection can be obtained for purposes of post-accident drug testing within thirty-two (32) hours, attempts to make such collection should cease.

In the event that federal, state, or local officials, following an accident, conduct breath or blood tests for the use of alcohol, and/or urine tests for the use of controlled substances, these tests may meet the requirements of this section, provided the tests conform to applicable federal, state, or local requirements. The City of Delaware may request testing documentation from such officials and/or the persons or entities that performed the collection and testing. If applicable, the City may ask the employee to sign a release allowing the City to obtain such test results.

In the event an employee is so seriously injured that the employer cannot provide a sample of urine, breath or saliva at the time of the accident, the City may ask and require the employee to provide necessary authorization for the City of Delaware to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the employee's system at the time of the accident.

**Substance Abuse Evaluation, Return To Duty, and Follow-Up Testing.**

Any employee who engages in prohibited conduct shall be provided with the names, addresses, and telephone numbers of qualified substance abuse professionals (SAPs). If the employee desires to become requalified, the employee must be evaluated by a SAP and submit to any treatment the SAP prescribes. Following evaluation and treatment, if any, in order to become requalified and return to work, the employee must submit to and successfully pass a return-to-duty drug and/or alcohol test. Passing the test requires a test result indicating an

alcohol concentration of less than 0.02, and/or a verified negative result for controlled substances use. Such employee is also subject to follow-up testing. Follow-up testing is separate from and in addition to the City's reasonable suspicion, post-accident, return-to-duty, and random testing procedures. The schedule for follow-up testing shall be unannounced and in accordance with the instructions of the SAP. Follow-up testing may continue for a period of up to sixty (60) months following the employee's return to duty. Pursuant to a DOT requirement, no fewer than six (6) tests shall be performed in the first twelve (12) months of follow-up testing. The costs of any SAP evaluation or prescribed treatment shall be borne by the employee. Also, the City cannot guarantee or promise a position to the employee if or when he/she regains qualified status.

#### **Finding of Employee Alcohol and/or Drug Use and Disciplinary Consequences.**

- (A) Employees who engage in prohibited conduct or otherwise violate any provision of this policy will be immediately removed from driving a commercial motor vehicle or performing any safety-sensitive function. Such employee will also be subject to disciplinary action, up to and including immediate termination, as determined by the City. The severity of the action chosen will depend on the facts and circumstances of each case. In every case where an immediate termination does not occur, the employee will receive a minimum **thirty day** unpaid **suspension** from work.
- (B) An employee may be found in violation of this policy on the basis of any available evidence including, but not limited to:
  - (1) Direct observation;
  - (2) A refusal or failure to comply with any requirement under this policy;
  - (3) Evidence obtained on the basis of a co-worker complaint;
  - (4) Evidence obtained from a drug or alcohol-related conviction or arrest;
  - (5) A verified positive test result; or
  - (6) An employee's voluntary admission.
- (C) Any employee who has submitted to drug or alcohol testing in compliance with this policy is entitled to receive the results of such testing upon timely written request to the City's Drug Program Coordinator.
- (D) In the event that an employee's employment is not terminated on the first occasion in which the employee has a confirmed positive alcohol or drug test, in addition to a minimum thirty day unpaid suspension from work, the following action shall occur:
  - 1) The employee shall be given the names, addresses, and telephone numbers of qualified substance abuse professionals (SAPs). If the employee desires to be requalified, the employee must be evaluated by a SAP and submit to any treatment the SAP prescribes. Following evaluation and treatment, if any, in order to become requalified, the employee is required to successfully complete a return-to-duty drug and/or alcohol test. Such driver will also be subject to follow-up testing as described in this policy.
  - 2) The employee will be re-tested for alcohol and/or drug use upon completion of his/her evaluation by the SAP and prescribed treatment or the thirty day suspension, whichever is later. In addition the employee will be subject to follow-up tests as part of the employee's rehabilitation. These unannounced tests cannot be less frequent than six in the first twelve months. In no event will the employee be allowed to

return to the workplace prior to being evaluated by a SAP and completing any prescribed treatment.

- 3) If the employee requests to have the secondary vial tested and the retest results prove to be negative, such employee's non-paid suspension shall be changed to a paid leave of absence.
  - 4) In the event that an employee's employment was not terminated in the first occasion of a confirmed positive alcohol or drug test, on any second occasion in which the employee has a confirmed positive alcohol or drug test, the employee will be discharged from his/her position with the City of Delaware
- (E) Any refusal to submit to an alcohol and/or drug test shall be deemed as having a confirmed positive test result as stipulated in paragraph (D) of this section. Refusal to submit to a test will be grounds for refusal to hire driver/applicants.
- (F) Attempts by an employee to alter, substitute, or falsify any specimen provided for drug or alcohol testing shall subject the employee to immediate termination.
- (G) Nothing herein is intended to limit the rights of employees under applicable collective bargaining agreements.



**Disciplinary Action: Federal Drug-Free Workplace Act of 1988.**

As required by the Federal Drug-Free Workplace Act of 1988, each employee in an agency receiving federal grant funds shall be required to notify his/her agency head or the agency head's designee, within five calendar days after he/she is convicted of a violation of any federal or state criminal drug statute, provided such conviction arose from an occurrence at the workplace or any location where the employee was working at the time of the incident which led to the conviction. Each agency shall be required to notify any federal agency with which it has a contract or grant, within ten calendar days after receiving notice from the employee, of the fact of such conviction. Any employee's failure to report such a conviction will subject such employee to disciplinary action, up to and including termination. An agency head or his/her designee may send the employee to the employee assistance program for referral and treatment, or may take appropriate personnel action against such an employee, up to and including termination. Whatever the case, such action shall be taken within thirty calendar days of the employer's notification of the employee's conviction.

**Appeal of Drug Test Results.**

- (A) Employees who have a confirmed positive drug test result may ask to have the secondary vial tested within seventy-two hours of receiving the initial test result. Such requests shall be in writing, signed, and dated, and shall be presented to the immediate supervisor of the employee. The supervisor will immediately (within 24 hours) forward such request to the Drug Program Coordinator. The laboratory performing such a retest shall be certified by the National Institute On Drug Abuse.
- (B) Any such retest shall be at the expense of the employee. In the event that the event retest results prove to be negative, the expense of the retesting will be born by the City of Delaware.
- (C) An employee request for a retest shall not delay the imposition of appropriate disciplinary action or referral to an alcohol and/or drug abuse rehabilitation program.

**Drug-Free Workplace Training/Education.**

- (A) The Drug Program Coordinator shall provide, or arrange to have provided, information and training programs concerning the impact of alcohol and other drug abuse on job performance, as well as information concerning the employee assistance program and any other resources available for employee assistance in dealing with a substance abuse problem.
- (B) All employees shall be furnished a copy of the City's substance abuse policy and testing procedures. The Drug Program Coordinator shall provide educational materials that explain the requirements of § 382.601, consequences of violating the regulations, and the employer's policies and procedures with the respect to meeting these requirements.

- (C) All new employees shall be furnished a copy of such document and such procedures at the time of their orientation, but no later than thirty (30) calendar days from the first day of their employment.
- (D) The Drug Program Coordinator shall develop and implement, or arrange to have implemented, a training and education program for supervisors and managers to provide knowledge and skills essential for their recognizing and addressing alcohol and other drug abuse among employees and to facilitate their participation in the implementation and administration of drug and alcohol testing and other drug-free workplace programs within the agency in which they work. The City shall ensure that supervisors designated to determine whether or not reasonable suspicion exists to require a driver to undergo testing under §382.307, receive at least 60 minutes of training on recognizing alcohol misuse, and receive at least 60 minutes of training on recognizing controlled substance use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
- (E) Each office/department shall be required to document to the Drug Program Coordinator that it has distributed copies of the Substance Abuse Policy to all employees. All employees shall sign an acknowledgment that they have read and understand the policy and work rules pertaining to it. This acknowledgement shall be kept in the employees' file. Agencies shall review the policy annually with employees.

**Confidentiality.**

To the extent required by law, the City of Delaware will keep confidential, any and all drug and/or alcohol treatment records, medical records, positive test results, and information it provides its Medical Review Officer, unless a written release, signed by the employee, is on file with the Drug Program Coordinator. Such records and information shall be kept in secure files separate from personnel files. Ordinarily, such information will be disclosed within the City only on a need-to-know basis, and disclosed outside the City only where required by law or where a claim, charge, or lawsuit is filed against the City or its agent involving such information.