

AGENDA

Monday, December 15, 2014

HOLIDAY RECEPTION

6:00PM

Meetings of Standing Committees

Council Conference Room

6:45 P.M.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

COUNCIL CHAMBERS/CITY HALL

7:00 P.M.

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Approval of the Minutes of the Previous Regular Meeting**

December 01, 2014

- 5. Petitions, Communications, Remonstrance and Memorials**

Presentation of the Salvation Army Mayor's Challenge Red Kettle Trophy

A letter from the Board of Zoning Appeals regarding recommendations from their December 9, 2014 meeting.

- 6. Report of Special Committee**

- 7. Ordinances on First Reading**

P.O. NO. 2014-38 Clerk's Office Authorizing Community Promotion Account (Requesting Second Reading)

P.O. NO. 2014-39 Collective Bargaining Agreement for Firefighters Local 360 1-01-2015 thru 12-31-2016 (Requesting Second Reading)

P.O. NO. 2014-40 Collective Bargaining Agreement for Police Lodge 91 1-01-2015 thru 12-31-2017 (Requesting Second Reading)

P.O. NO. 2014-41 Collective Bargaining Agreement for Sewer Department Local 364 1-01-2015 thru 12-31-2017 (Requesting Second Reading)

P.O. NO. 2014-42 Amending Collective Bargaining Agreement for Central Services Local 364 1-01-2013 thru 12-31-2016 (Requesting Second Reading)

- 8. Resolutions**

R2014-23 Use Variance to allow Auto Body Shop, Auto Repair, and Detailing 1910 N. Cedar St.

R2014-24 Use Variance to allow Auto Body Shop & Auto Paint Shop - 428 S Byrkit St

- 9. Ordinances on Second Reading**

P.O. NO. 2014-36 Transfer Funds - Park Dept. - \$34,000.00 (Assigned to Budget and Finance Committee)

10. Privilege of the Floor – Non-Agenda Items

11. Unfinished Business

12. New Business

Change of Meeting Dates for 2015 Elections

13. Adjournment

At this time I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
December 1, 2014

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Wednesday December 1, 2014 at 7:00 p.m. The meeting was called to order by President Matt Mammolenti all were asked to stand for the Pledge of Allegiance.

Roll Call.

Present: John Reisdorf, Ron Banicki, Kat Voelker, John Roggeman, Mike Compton, Mike Bellovich, Dan Bilancio, Matt Mammolenti.

Absent/Excused: Woody Emmons.

Others present; Mary Ellen Hazen Chief Deputy I, Linda Dotson Chief Deputy II, and Council Attorney Mike Trippel.

The minutes from the November 17, 2014 meeting were approved as received from the City Clerk's Office.

Clerk Block presented the following Appeals and Petitions to the Council, who referred it to the Plan Commission for their recommendation.

<u>APPEAL NO.2014-27</u>	Use Variance to allow Auto Body Shop & Auto Paint Shop – 428 S. Byrkit
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The following proposed ordinances were given first reading, and assigned to committee, to be set for public hearing at the next regular meeting.

PROPOSED ORDINANCE NO. 2014-36

**AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2014**

Transfer Funds – Park Dept. - \$34,000.00
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2014-37AA

**AN ORDINANCE FIXING THE SALARIES FO ALL EMPLOYEES OF THE CITY OF
MISHAWAKA EXCEPT THE SWORN FIRE AND POLICE,
MISHAWAKA PARK DEPARTMENT, ELECTED OFFICALS, AND THE
MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE
YEAR BEGINNING JANUARY 1, 2015.**

Amending the Civil City Salary Ordinance for 2015
(Petitioner Requested Second Reading)

Ms. Voelker made a motion to wave Councils Rules and hear this proposed ordinance under New Business, with a second by Mr. Banicki the motion carried.

Clerk Block read **PROPOSED ORDINANCE NO. 2014-34** opening it for public hearing.

PROPOSED ORDINANCE NO. 2014-34

**AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL
CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME
AMENDED, COMMONLY KNOWN AS “THE ZONING ORDINANCE OF 1966” OF
THE CITY OF MISHAWAKA, INDIANA
(Rezone from C-1 Commercial to R-1 Single Family Residential 422 West 8th Street)**

Ms. Voelker reported the Land Use Planning Committee recommended this proposed ordinance be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

Jeff VanPoppel, said this was his mother’s home and at one time his parents ran a dairy out of the back portion of the lot so part of the property was zoned commercial and the home was zoned residential. He said his request was to rezone the entire property residential so they could now sell the property.

Question was called for at 7:06 p.m. on **PROPOSED ORDINANCE NO. 2014-34** at t 7:06 p.m. with the **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8). **Yes:** Dan Bilancio, John Reisdorf, John Roggeman, Kat Voelker, Matt Mammolenti, Mike Bellovich, Mike Compton, Ron Banicki. Thus it becomes **ORDINANCE NO. 5468**

Clerk Block read **PROPOSED ORDINANCE NO. 2014-35** opening it for public hearing.

PROPOSED ORDINANCE NO. 2014-35

**AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL
CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME
AMENDED, COMMONLY KNOWN AS “THE ZONING ORDINANCE OF 1966” OF
THE CITY OF MISHAWAKA, INDIANA
(Rezone from C-1 Commercial to R-1 Single Family 2410 Lincolnway West)**

Mr. Banicki reported the Land Use Planning Committee recommended this proposed ordinance be adopted and moved for acceptance of same upon a second by, Mr. Reisdorf motion carried.

Patricia Griffey, 56294 Primrose Circle, Elkhart said this property has been a single family residence since 1998 and was asking to have it rezoned to reflect that so she could sell it.

Question was called for at 7:08 on **PROPOSED ORDINANCE NO. 2014-35** with the **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8). **Yes:** Dan Bilancio, John

Reisdorf, John Roggeman, Kat Voelker, Matt Mammolenti, Mike Bellovich, Mike Compton, Ron Banicki. Thus it becomes **ORDINANCE NO. 5469**

PRIVILEGE OF THE FLOOR

Mary Ann Johnson from Walkerton, Indiana said she had heard Mishawaka Council was working on changing the Mishawaka Animal Ordinance and asked if she could meet with that committee to discuss it. Mr. Mammolenti said the committee would be happy to meet with her after the meeting and answer any questions she might have.

Mayor Wood said December 5th Santa would be arriving in Mishawaka on Fire Engine One and there would be the Christmas tree lighting.

Clerk Block announced Mayor Wood was ringing the Salvation Army Bell at the Mishawaka Post Office Tuesday December 2, 2014 from 1:30 to 2:30. She stated it would be a one hour competition against South Bend Mayor Buttigieg to see who gets the Salvation Army Trophy. Ms. Block went on to ask everyone to show up and contribute as Mayor Wood won the trophy last year and we would like to keep it in Mishawaka again this year.

UNFINISHED BUSINESS

None

NEW BUSINESS

Clerk Block read **PROPOSED ORDINANCE NO. 2014-37** opening it for public hearing

PROPOSED ORDINANCE NO. 2014-37AA

AN ORDINANCE FIXING THE SALARIES FO ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT THE SWORN FIRE AND POLICE, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICALS, AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2015.

(Amending the Civil City Salary Ordinance for 2015)

City Controller said she wanted to amend the Salary Ordinance for 2015 regarding the longevity pay for teamsters specifically for Crossing Guards from 21 pay periods to 22.

Question was called for at 7:15 p.m. on **PROPOSED ORDINANCE NO. 2014AA the Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8). **Yes:** Dan Bilancio, John Reisdorf, John Roggeman, Kat Voelker, Matt Mammolenti, Mike Bellovich, Mike Compton, Ron Banicki. Thus it becomes **ORDINANCE NO. 5470AA.**

Clerk Block read **RESOLUTION NO. R2014-21** opening for reconsideration due to error in legal description.

RESOLUTION NO. R2014-21AA

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA
INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A
WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE
PROPERTIES LOCATED AT: West of 1904 East McKinley
(Fiscal Plan Annexation North of 124 Cedar Road)**

Clerk Block stated there needed to be a correction in the legal description of this Resolution that read *Range 3 East*, and should read **RANGE 4 EAST**.

Question was called for 7:16 p.m. on **RESOLUTION NO. R2014-21AA** p.m. the **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8). **Yes:** Dan Bilancio, John Reisdorf, John Roggeman, Kat Voelker, Matt Mammolenti, Mike Bellovich, Mike Compton, Ron Banicki.

Clerk Block read **ORDINANCE NO. 5465** opening for reconsideration due to error in legal description.

ORDINANCE NO. 5465AA

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO
THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING
CLASSIFICATION THEREFORE**

(Annex and Zone Property to C-1 Commercial North of 124 Cedar Road –
Multiple Business)

Clerk Block stated there needed to be a correction in the legal description of this Ordinance that read *Range 3 East*, and should read **RANGE 4 EAST**.

Question was called for at 7:17 p.m. on **ORDINANCE NO. 5465 AA** with the **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8). **Yes:** Dan Bilancio, John Reisdorf, John Roggeman, Kat Voelker, Matt Mammolenti, Mike Bellovich, Mike Compton, Ron Banicki.

Mr. Mammolenti said there would be no Twin Branch Neighborhood Meeting in December.

There being no further business to come before the Council, President Mammolenti adjourned the meeting at 7:18 p.m.

Deborah S. Block
Deborah S. Block, IAMC, MMC, City Clerk

Matt Mammolenti
Matt Mammolenti, Presiding Officer



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

December 11, 2014

RECEIVED
DEBORAH S. BLOCK, MMC

Honorable Members of the Common Council
City of Mishawaka, Indiana

DEC 11 2014

RE: Board of Zoning Appeals Recommendation
December 9, 2014, Public Hearing

CITY CLERK
MISHAWAKA, IN

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above referenced date at which time the following Use Variances were considered:

APPEAL #14-26

An appeal submitted by Lincoln and Susan LeHue requesting a Use Variance for **1915 North Cedar Street** to permit an auto body shop, auto repair, and detailing on I-1 Light Industrial zoned property. *Continued from the November 12, 2014, meeting.*

The Board, with a 2-1 vote for an unfavorable recommendation, is forwarding the request with *no recommendation* due to the lack of a three (3) vote Board majority. Staff would request that if the Appeal is approved that it would be subject to the following conditions:

1. Use variance shall be limited to automotive body shop, auto shop, and auto detailing and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;
2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards provided parking space per use.
3. Temporary signage is prohibited.

APPEAL #14-27

An appeal submitted by JRC Corporation requesting a Use Variance for **428 South Byrkit Avenue** to allow an auto body and auto paint shop on I-2 Heavy Industrial zoned property.

The Board, with a vote of 3-0, forwarded a *favorable* recommendation to the Common Council subject to the following conditions:

1. Use variance shall be limited to automotive body shop and auto painting uses and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;
2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards provided parking space per use;
3. Temporary signage is prohibited;
4. The paint booth shall meet all requirements of the Fire Department for such a use; and
5. The Engineering Department requires an oil/grit interceptor for all floor drains or hand wash basins due to the automotive use.

Sincerely,

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Lincoln & Susan LeHue
Raymundo Lopez

STAFF REPORT

Location: 1915 N Cedar Street

Date: Nov. 12, 2014

Appeal: 14 26

Prepared By: GGS

GENERAL INFORMATION

Applicant: Lincoln & Susan Le-Hue

Status: Property Owner

Request: Use Variance to allow automotive body shop, auto shop, and auto detailing uses

Zoning Classification: I-1 Light Industrial District

Lot Size: 0.74 acres

Applicable Regulations: Section 137-586 I-1 Uses
Section 137-42 (4) Board of Zoning Appeals

SPECIAL INFORMATION

Area Development Pattern: North: I-1 Light Industrial
South: I-1 Light Industrial
East: R-1 Single Family Residential District
West: I-1 Light Industrial

Thoroughfare: North Cedar Street

School District: Mishawaka School City

Township: Penn

Public Utilities: Available

Comprehensive Plan: Industrial

ANALYSIS

The appellants are requesting a use variance to allow automotive body shop, auto shop, and auto detailing uses on the property located at 1915 North Cedar Street. The property is currently zoned I-1 Light Industrial, which does not allow the proposed automobile uses. The appellants states that for over 30 years the Le-Hue Machine was in business at this located and occupied roughly half of the building. The Le-Hue Machine now only occupies one bay of the building. The appellants desire to rent out the remainder of the bays for automotive body shop, auto shop, and auto detailing uses.

A few weeks ago, the appellant came into the Planning Dept. to obtain a sign permit for an automobile use business located on this property. It was at that time that the Staff became aware of the existing auto use on the property and recommended that a use variance be obtained in order for the auto use to continue on the property. The request for the proposed use variance, instead of a rezoning to C-4 Automobile Oriented Commercial, would keep the zoning intact for the future while still enabling them to use the property for automobile commercial use.

The property is located along Cedar Street. Light Industrial zoned properties are located to the north, south, and west. Residential uses are present across Cedar Street. The property contains an existing 10,720 square foot

industrial building, according to assessor records. There are six (6) overhead doors on the building, three (3) on the portion of the building along the east side of the property and (3) on the portion of the building along the north side of the property.

Parking will need to be provided for the industrial zoning of (1) space per employee. The appellant will need to provide verification that these parking requirements will be met.

All pertinent City Departments have reviewed this request and approved offering the following comments:

Engineering Department commented that for the proposed automotive maintenance. If the facility has existing floor drains, then an oil interceptor needs to be in working order and or/installed if an interceptor does not exists.

RECOMMENDATION

The Staff recommends in favor of Appeal 14-26, a use variance for automotive body shop, auto shop, and auto detailing uses at 1915 N Cedar Street, subject to the following conditions:

1. Use variance shall be limited to automotive body shop, auto shop, and auto detailing and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;
2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards provided parking space per use.
3. Temporary signage is prohibited.

This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because of the industrial nature of the area along Cedar Street.
3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use and also protecting the residential users to the north and south.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-1 light Industrial zoning would not allow for the proposed automobile oriented commercial uses.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan given the existing auto commercial uses that are located to the south of this property along Cedar Street.

ATTACHMENTS

AERIAL, PHOTOGRAPHS, VARIANCE REQUEST & LOCATION MAP

AP 14-26

Matt & Kate,

We are contacting you in response to a notice that we received regarding the businesses at 1915 N. Cedar St. which are located behind our home. We have lived at 1905 Margaret Ave. for 18 years. In those 18 years, we have NEVER had an issue with any of the businesses that are located on Cedar St.-until this past summer.

There is someone working most hours of the day AND night-7 days a week. In addition to working, there are always several different cars coming & going, playing very loud music (so loud that they are vibrating their cars & our windows), and burning out their tires. We love spending time outside in our back yard most of the summer evenings, this year has been a very trying summer to be able to enjoy our yard.

It is not just the outside that is disrupted. No one should have to sit inside their home on a nice summer evening & have to turn up their T.V. volume (or close the windows) in order to hear over the noise coming from the businesses across Cedar St.-yet that is what we had to do on numerous occasions. Even when the windows were closed we could still hear the music & our windows would vibrate. We had finally had enough one evening in early October and did place a noise complaint to the dispatch desk of the police department. If we had known that there was a chance to stop this, we would have made several more calls over the summer.

On the morning of Tuesday October 28th, we were both awoken by someone persistently hammering something very loudly at 5:00 a.m. I jumped out of bed to check our back yard because I thought that someone was hammering the lock on our shed. This continued repeatedly for about 30 minutes. I would have called the police at that time, but I did not have the police number handy & would have had to look it up. We have since posted it on our kitchen door. After receiving the notice from the board, we checked with our neighbors Anthony & Tara Paiano at 1823 Margaret Ave. to verify if they had also received the notice. The first thing that Tara said was "Did you hear that hammering the other morning?!"

On the evening of either Monday November 3rd or Tuesday November 4th someone was working until approximately 11:30 p.m. with a loud engine running. This was heard with our windows closed. There have been numerous occasions when we go to bed sometime between 9-11 p.m. but can't go to sleep because of loud music, vibrating windows, car squealing their tires, etc...

There are several of us that are very distraught over the events of this past summer. If you would like to check, please pull into the parking lot at 1915 N. Cedar St. & look at the pavement. You will find MANY black tire marks to corroborate this statement. We do have pictures of that pavement to bring to the meetings.

We hope that you will take our concerns & complaints to heart and help us keep our neighborhood a safe, happy, & QUIET place to live-that is what it has always been until now.

Thank You,
Jeff & Melissa Wisler
1905 Margaret Ave.
574-315-8495 Jeff's cell

Concerning Mishawaka City Zoning Appeal # 14-26 submitted by Lincoln & Susan LeHue requesting a Use Variance for 1915 N. Cedar St. to permit an auto body shop, auto repair, and detailing on I-1 Light Industrial zoned property; We the undersigned strongly disagree with this change and ask for the Zoning Board to **NOT recommend this appeal.**

Name	Address
1.) Jeff Wister	1905 Margaret Ave Mishawaka IN 46545
2.) Melissa Wister	1905 Margaret Ave. Mish. IN. 46545
3.) Christine Hall	1822 Margaret Ave. Mish. IN 46545
4.) Byron Hall	1822 Margaret Ave. Mish. IN 46545
5.) Winn Murray Winn Murray	1913 Margaret Ave. Mish IN 46545
6.) Anthony Paiano	1823 Margaret Ave. Mish. IN 46545
7.) Tara Paiano	1823 Margaret Ave Mishawaka IN 46545
8.) Frank Kuehn	1811 Margaret Ave. Mishawaka IN 46545
9.) Meredith Kuehn	1811 Margaret Ave. Mishawaka, IN 46545
10.) Jenni Strombeck	1729 Margaret Ave Mishawaka IN 46545
11.) Del Strombeck	1729 Margaret Ave Mishawaka IN 46545
12.) Robert	1723 MARGARET AVE MISH. IN 46545
13.) Pamela Querry	1723 Margaret Ave. Mish IN 46545
14.) Esther	1717 Margaret Ave
15.) Joa Schloemer	1711 MARGARET AV IN, 46545
16.) John J. Maico	1623 MARGARET, IN 46545
17.) James J. Maico	1623 MARGARET IN 46545
18.) Beth Patalski	1708 Margaret IN 46545
19.) J. B. Braun	1812 Margaret IN 46545
20.) Susan	1812 Margaret IN 46545

Concerning Mishawaka City Zoning Appeal # 14-26 submitted by Lincoln & Susan LeHue requesting a Use Variance for 1915 N. Cedar St. to permit an auto body shop, auto repair, and detailing on I-1 Light Industrial zoned property; We the undersigned strongly disagree with this change and ask for the Zoning Board to **NOT recommend this appeal.**

- | | Name | Address | |
|------|------------------|------------------------------|----------|
| 21.) | David Price | 1903 N. Merrifield Ave | 46545 |
| 22.) | Maree M. Wiseman | 1915 N. Merrifield | |
| 23.) | Quetta K. Kern | 705 Margaret Ave. Mishawaka | IN 46545 |
| 24.) | David Johnson | 1815 N. Merrifield | |
| 25.) | Michael Wisler | 1905 Margaret Ave. Mishawaka | IN 46545 |
| 26.) | | | |
| 27.) | | | |
| 28.) | | | |
| 29.) | | | |
| 10.) | | | |
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| 18.) | | | |
| 19.) | | | |
| 20.) | | | |

STAFF REPORT

Location: 428 S. Byrkit Street

Date: December 9, 2014

Appeal: 14 27

Prepared By: CH

GENERAL INFORMATION

Applicant: JRC Corporation
Status: Property Owner
Request: Use Variance to allow automotive body shop, and auto painting uses
Zoning Classification: I-2 Heavy Industrial District
Lot Size: 1.24 acres
Applicable Regulations: Section 137-42 (4) Board of Zoning Appeals

SPECIAL INFORMATION

Area Development Pattern: North: I-2 Heavy Industrial
South: I-2 Heavy Industrial
East: I-2 Heavy Industrial
West: I-2 Heavy Industrial

Thoroughfare: South Byrkit Street
School District: Mishawaka School City
Township: Penn
Public Utilities: Available
Comprehensive Plan: Industrial

ANALYSIS

The appellants are requesting a use variance to allow automotive body shop, and auto painting uses on the property located at 428 S Byrkit Street. The property is currently zoned I-2 Heavy Industrial, which does not allow the proposed automobile uses.

A complaint was filed regarding the auto painting use. It was forwarded to the Fire Department for safety concerns. It was at that time that the Staff became aware of the existing auto uses on the property and recommended that a use variance be obtained in order for the auto uses to continue on the property. The request for the proposed use variance, instead of a rezoning to C-4 Automobile Oriented Commercial, would keep the zoning intact for the future while still enabling them to use the property for automobile commercial use.

The property is located along Byrkit Street. Heavy Industrial zoned properties are located to the north, south, east and west. The building is approximately 18,000 square feet with 2 truck bays on the west/front, two garage doors on the north, and two garage doors and 3 pedestrian doors on the south. Parking will need to be provided for the industrial zoning of (1) space per employee. The appellant will need to provide verification that these parking requirements will be met.

All pertinent City Departments have reviewed this request. and approved offering the following comments:

RECOMMENDATION

The Staff recommends in favor of Appeal 14-27, a use variance for automotive body shop and auto painting uses at 428 S Byrkit Street, subject to the following conditions:

1. Use variance shall be limited to automotive body shop and auto painting uses and shall be limited to indoors. No outside storage of inoperable vehicles, materials and/or vehicle parts will be permitted;
2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards provided parking space per use;
3. Temporary signage is prohibited;
4. The paint booth shall meet all requirements of the Fire Department for such a use; and
5. The Engineering Department requires an oil/grit interceptor for all floor drains or hand wash basins due to the automotive use.

This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because of the industrial nature of the area along Byrkit Street.
3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-2 Heavy Industrial zoning would not allow for the proposed automobile oriented commercial uses.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

ATTACHMENTS

AERIAL, PHOTOGRAPHS, VARIANCE REQUEST & LOCATION MAP

DEC 11 2014

CITY CLERK
MISHAWAKA, IN

1st Reading / 2-15-14
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2014-38

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE APPROPRIATION
OF FUNDS NECESSARY TO ESTABLISH A
COMMUNITY PROMOTION ACCOUNT FOR
THE CITY CLERK**

WHEREAS, I.C. 36-7-2-7 authorizes cities to establish accounts to be called “Community Promotion” and authorizes the Common Council to budget and appropriate the funds necessary to pay from the General Fund appropriate expenses.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

SECTION 1. It is desired and deemed necessary to budget and appropriate funds from the General Fund to pay the expenses of, or to reimburse city officials as the case may be, for expenses incurred in promoting “the best interests of the city”.

SECTION 2. The Common Council of the City of Mishawaka authorizes the City Clerk to budget and appropriate funds from the General Fund to provide and pay from “Community Promotions” as he/she sees fit. Funds may include but not be limited to rental of meeting places, meals, decorations, memorabilia, awards, expenses incurred in interviewing applicants, expenses incurred in promoting industrial, commercial and residential development, expenses incurred in developing relations with other units of government and any other expenses of a civic or governmental nature deemed appropriate to be in the interest of the City.

SECTION 2. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this
_____ day of _____, 2014, at _____ o'clock ____M.

Presiding Officer

ATTEST:

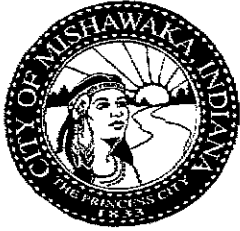
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2014, at
_____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2014, at
_____ o'clock ____M.

David A. Wood, Mayor



City of Mishawaka

OFFICE OF THE CITY CLERK

Deborah S. Block, IAMC, MMC, City Clerk

December 11, 2014

Mishawaka Common Council
Mishawaka City Hall
Mishawaka, IN

Dear Council Members:

On your Council Agenda for December 15, 2014 is a proposed ordinance to formally estagblish a "Community Promotion" line item in the Budget for the City Clerk. Although I have had a "Community Promotion" line permanently placed in the City Clerk budget since 2006 it needs to be formally established by ordinance by the Council according to IC 36-7-2-7.

I am also asking for you to suspend your Council Rules and allow Second Reading and Public Hearing at the meeting on December 15. Thank you for your consideration.

Sincerely,

Deborah S. Block, IAMC, MMC
Mishawaka City Clerk

Mary Ellen Hazen, Chief Deputy Linda Dotson, Deputy
City Hall, 600 East Third Street Mishawaka, IN 46544-2241 (574) 258-1616 FAX (574) 258-1728
E-mail: dblock@Mishawaka.in.gov Website: Mishawaka.in.gov



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

December 10, 2014

Mishawaka Common Council
600 East Third Street
Mishawaka, Indiana 46544

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinances, approving the collective bargaining agreements (CBA) between the City of Mishawaka and:

- The International Association of Firefighters Local No. 360;
- The Fraternal Order of Police, Lodge 91;
- The International Brotherhood of Teamsters Local No. 364 (representing the Sewer Department employees); and
- The International Brotherhood of Teamsters Local No. 364 (representing the Central Services Department employees).

I am also requesting both first and second readings of the ordinance be made at the Council meeting on Monday, December 15, 2014 in order that the contract be approved and in effect on January 1, 2015 without the need of a special session of the Common Council.

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Also, feel free to contact me prior to the meeting at 574-258-1702 or at gspiess@mishawaka.in.gov.

Thank you in advance for your consideration.

Sincerely,

Geoff Spiess
Corporation Counsel

Geoffrey D. Spiess
Corporation Counsel
600 East Third Street
Mishawaka, Indiana 46544
(574) 258-1702
fax: (574) 254-0197

Lawrence J. Meteiver
Deputy City Attorney
600 East Third Street
Mishawaka, Indiana 46544
(574) 258-1702
fax: (574) 254-0197

David V. Bent
Deputy City Attorney
320 West Fourth Street
Mishawaka, Indiana 46544
(574) 255-3680
fax: (574) 255-3969

Robert C. Beutter
Deputy City Attorney
4100 Edison Lakes Parkway
Mishawaka, Indiana 46545
(574) 243-4100
fax: (574) 232-9789

DEC 11 2014

CITY CLERK
MISHAWAKA, IN

1st Reading 12-15-14
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2014-39

ORDINANCE NO. _____

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN
THE CITY OF MISHAWAKA AND THE MISHAWAKA FIREFIGHTERS
ASSOCIATION LOCAL NO. 360 OF THE INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, AFL - CIO**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2014; and

WHEREAS, the members of the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 9th day of December, 2014, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The Collective Bargaining Agreement executed the 9th day of December, 2014, effective January 1, 2015, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters is hereby approved.

Section 2. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this 15th day of December, 2014, at _____ o'clock _____.M.

Matt Mammolenti
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of December, 2014, at
_____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of December, 2014, at _____ o'clock
_____.M.

David A. Wood, Mayor

RESOLUTION NO. 2014-08

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE MISHAWAKA FIREFIGHTERS ASSOCIATION, LOCAL NO. 360 OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO

WHEREAS, the City of Mishawaka and the Mishawaka Firefighters Association, Local No. 360 have agreed to a Collective Bargaining Agreement for the period of January 1, 2015 to December 31, 2016; and

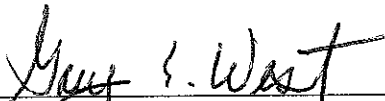
WHEREAS, such Agreement requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Mishawaka that:

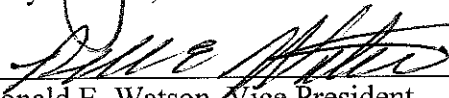
Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the Mishawaka Firefighters, Local No. 360 is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

ADOPTED by the Board of Public Works of the City of Mishawaka, on this 9th day of December, 2014.



Gary E. West, President

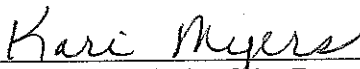


Ronald E. Watson, Vice President



Kenneth Prince, Member

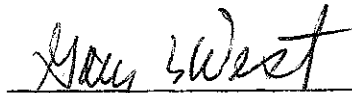
ATTEST:



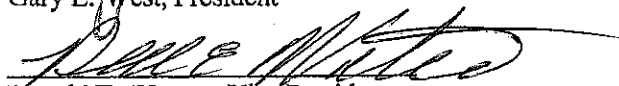
Kari Myers, Clerk of the Board

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives in Mishawaka, Indiana, this ____ day of _____, 2014.

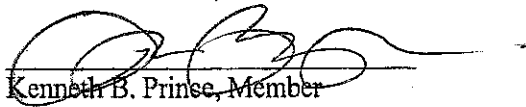
**CITY OF MISHAWAKA, INDIANA
BOARD OF PUBLIC WORKS AND SAFETY**



Gary E. West, President



Ronald E. Watson, Vice President



Kenneth B. Prince, Member

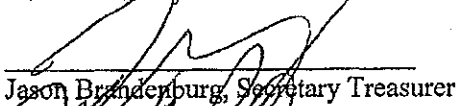
**MISHAWAKA FIREFIGHTERS ASSOCIATION LOCAL NO. 360 OF THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS AFL-CIO**



James Elliott, President



Dave Richards, Vice President



Jason Brandenburg, Secretary Treasurer



Mark Ryan, Recording Secretary



Steve McClain, Committee Member



Kevin Gnivecki, Committee Member

COLLECTIVE BARGAINING AGREEMENT

between

CITY OF MISHAWAKA, INDIANA

and

MISHAWAKA FIREFIGHTERS ASSOCIATION

LOCAL NO. 360

OF THE

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL - CIO

DATED: 1-01-2015 thru 12-31-2016

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EXHIBIT "A" SALARY ORDINANCE

SIGNATURE PAGE

COLLECTIVE BARGAINING AGREEMENT

THIS AGREEMENT entered into on the ____ day of _____, 2014 effective on the 1st day of January, 2015 between the CITY OF MISHAWAKA, INDIANA, hereinafter called "City," and MISHAWAKA FIREFIGHTERS ASSOCIATION, LOCAL NO. 360, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, hereinafter called "Union," WITNESSETH THAT:

The parties hereto, in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

ARTICLE I

Purpose and Definitions

Section 1 - Purpose

The parties enter into this Agreement pursuant to the authority of ordinance Number 1666 passed by the Common Council of the City of Mishawaka on the 6th day of December, 1971. The purpose of this Agreement is to incorporate understandings previously reached and other matters into a formal contract; to promote harmonious relations between the City and the Union in the best interests of the community; to improve the public fire fighting services; and to provide an orderly and equitable means of resolving future differences between parties.

Section 2 - Definitions

(a) City shall include the elected or appointed representatives of the City of Mishawaka, Indiana, including the Fire Chief, Assistant Fire Chiefs and the Chief of the Fire Marshal Division.

(b) Union shall include all other firefighters and the officers or representatives of the Union.

(c) When the singular number is used, it shall include the plural.

(d) The term firefighter shall include all sworn firefighters and all civilian firefighter/paramedics unless specified elsewhere in this Agreement.

ARTICLE II

Coverage

This agreement shall be applicable as to all firefighters of the City of Mishawaka, Indiana Fire Department except the Fire Chief, Assistant Fire Chiefs, and the Chief of the Fire Marshal Division.

ARTICLE III

Recognition

The City recognizes the Union as the sole and exclusive bargaining representative of the employees of the Fire Department.

The City shall not enter into any agreements with its employees individually or collectively or with any other organization which in any way conflicts with the provisions hereof.

The City recognizes the Mishawaka Fire Department as the sole provider of paramedic and ambulance services other than mutual aid agreements.

ARTICLE IV
Rights of Management

Section 1 - General

Except as otherwise provided in this Agreement, or applicable federal or state law, the City in the exercise of its functions of management shall have the right to decide the policies, methods, safety rules, direction of employees, assignment of work, contracting of work, equipment to be used in the operation of the Fire Department, and to determine the hours of work, the right to hire, discharge, suspend, discipline, promote, demote, and transfer firefighters; it is agreed that the enumeration of the above management prerogatives shall not be deemed to exclude other prerogatives not enumerated. Nothing in this Article shall limit or prevent firefighters' rights to the grievance procedure provided for in this Agreement.

Section 2 - Late to Work Clause

In any twelve (12) month period, a firefighter who has been late five (5) times will be given a warning letter advising the firefighter that the sixth (6th) time late will result in a fine equal in amount to loss of one-half (1/2) day's pay, the seventh (7th) time late will result in a fine equal in amount to loss of one (1) day's pay and the eighth (8th) time late will result in the firefighters referral to the Board of Public Works and Safety for disciplinary action.

ARTICLE V

Dues and Deductions

The City shall deduct, as dues, from the pay of each firefighter from whom it receives a written authorization to do so, the required amount for the payment of Union dues, fees, and assessments. Such sums, accompanied by a list of employees who have authorized such deductions and from whom no deductions were made and the reason therefore, shall be forwarded to the Union Secretary-Treasurer within thirty (30) days after such collections have been made.

All firefighters, covered by this contract, who are not members of the Union, shall pay a monthly representation fee to the Union in an amount equal to the actual cost to the Union of its representation of all unit employees, but in no event to exceed the monthly dues and assessments of Union members. The City shall have no obligation to collect the non-union member representation fee. The Union shall indemnify the City for any costs or expenses arising out of a suit or claim against the City brought by a non-union member relating to this Article.

ARTICLE VI

Union Activities

Section 1 - General

Employees and their Union representatives shall have the right to join the Union, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, to express or communicate any views, grievance, complaint, or opinion related to the conditions or compensation of public employment or their betterment, all free from any and all restraint, interference, coercion, discrimination, or reprisal, except as limited by the laws of the City of Mishawaka, State of Indiana, or the United States of America.

Section 2 - Released Time

Officers and other representatives of the Union shall be afforded reasonable time during working hours without loss of pay to fulfill their Union responsibilities, including negotiations with the City, processing grievances, and administering and enforcing this Agreement; provided, however, if such activities cause the Department strength to fall below the minimum required under this Agreement notwithstanding any provisions herein to the contrary, any firefighter called in to maintain the minimum department strength shall be compensated by receiving two (2) hours off duty without loss of regular pay for each hour actually worked and the call-in guarantee of four (4) hours work for four (4) hours pay shall not apply; provided further, that regardless of the number of such hours actually worked.

Notwithstanding any provisions herein to the contrary, any firefighter with less than or equal to two hundred (200) hours in his compensatory time bank called in to maintain the minimum Department strength shall be compensated by receiving two (2) hours off duty without loss of regular pay for each hour actually worked and any firefighter with more than two hundred (200) hours in his compensatory time bank called in to maintain the minimum Department strength shall be compensated by receiving overtime pay. The Union shall be responsible for maintaining the call-in list and furnishing substitute manpower for firefighters released from duty

under this Article.

Section 3 - Bulletin Boards

The Union shall retain the Bulletin Board rights it now has, including the right to post Union notices or other materials. Such boards shall be identified with the name of the Union and the Union may designate persons responsible therefore.

Section 4 - Meetings

The Union may schedule meetings on Fire Department property, insofar as such meetings are not disruptive of the duties of the employees or the efficient operation of the Fire Department.

Section 5 - Union Activities

The President and respective representatives of the Union, not to exceed four (4) persons, shall be allowed time off with pay to attend Union conventions and seminars subject to the approval of the Fire Chief or the Board of Public Works and Safety of the City; provided, however, if such activities cause the Department strength to fall below the minimum required under this Agreement notwithstanding any provisions herein to the contrary, any firefighter with less than or equal to two hundred (200) hours in his compensatory time bank called in to maintain the minimum Department strength shall be compensated by receiving two (2) hours off duty without loss of regular pay for each hour actually worked and any firefighter with more than two hundred (200) hours in his compensatory time bank called in to maintain the minimum Department strength shall be compensated by receiving overtime pay. The call-in guarantee of four (4) hours worked for four (4) hours pay shall not apply. The Union shall be responsible for maintaining the call-in list and furnishing substitute manpower for firefighters released from duty under this Article.

ARTICLE VII

Wages

Section 1 - General

The salary schedule attached hereto as Exhibit "A" shall be effective January 1, 2015 and shall be amended from time to time by action of the Common Council of the City of Mishawaka, Indiana.

Section 2 - Overtime Pay

(a) Overtime pay shall be paid to all 56-hour employees (firefighters other than Fire Marshals) for all work in excess of their regularly scheduled work day (24 consecutive hours). Such overtime shall be paid at the rate of time and one-half of the employee's prevailing hourly rate, provided, however, that all overtime worked on Sundays and holidays shall be paid at the rate of twice the employee's prevailing hourly rate. Double-time is calculated for any overtime worked between 0700 hrs. on Sundays or a holiday until 0700 hrs. the following day.

(b) Overtime pay shall be paid to all 40-hour employees (Fire Marshals) for all work in excess of 40 hours per week. Such overtime shall be paid at the rate of time and one-half of the employee's prevailing hourly rate, provided, however, that all overtime worked on Sundays and holidays shall be paid at the rate of twice the employee's prevailing hourly rate.

(c) An employee's prevailing hourly rate shall be determined by dividing their annual salary by 2,912. This calculation shall include the Pension Equalization Plan Payments to the civilian firefighter/paramedics.

(d) Call-In Pay. When a firefighter is called in to work partial or emergency duty, the firefighter will be guaranteed a minimum of four (4) hours work or four (4) hours pay at overtime rate and any additional fraction of an hour over fifteen (15) minutes shall constitute one (1) hour. When a firefighter is called for a twenty-four (24) hour overtime, the firefighter will be guaranteed twenty-four (24) hours pay at the overtime rate for that day. When a firefighter is mistakenly offered a prescheduled twenty-four (24) hour overtime, management reserves the right to retract

said offer and that member will be guaranteed four (4) hours overtime pay and regain their original place on the twenty-four hour overtime list.

(f) In the event a firefighter is held over their regular work shift, the firefighter shall receive regular overtime pay in increments of one-half (1/2) hour but shall not be guaranteed a minimum of four (4) hours work or four (4) hours pay. By way of example, if a firefighter is held over thirty-one (31) minutes, the firefighter shall be paid for one (1) hour of overtime at the regular overtime rate.

Section 3 - Overtime Pay for Specialty Positions

(a) The City will keep an updated list of those firefighters taking part in the Water Surface Rescue and Recovery Program, Dive Team Program, Tactical Rescue Team and Mechanics.

(b) All firefighters shall have an equal opportunity to attend special schooling for the specialty programs listed above. Firefighters attending such schooling shall be reimbursed for expenses reasonably incurred in the attendance at such schooling and shall be compensated, as if on duty for attendance at such schooling on the firefighter's regularly scheduled day off.

(c) In the event a firefighter is ordered or subpoenaed and appears during off-duty hours before a court, administrative body, or at the County Prosecutor's Office, pertaining to incidents involving the Fire Department, the firefighter shall receive overtime pay. The firefighter shall receive pay for the actual amount of time spent but not less than two (2) hours at the overtime rate of pay. A firefighter who is the subject of a disciplinary hearing shall not be entitled to the benefits provided in this subsection. The firefighter's overtime will be figured less any compensation received from the Courts, attorneys, insurance companies, or any other third party.

Section 4 – Out of Rank Pay

1. Out of rank pay will be paid to all Firefighters scheduled to ride out of rank according to the following schedule:

Firefighter → Driver	\$10
Driver → Officer	\$25
Officer → Higher Ranking Officer	\$25
Firefighter → Officer	\$25
Fire Apparatus Assigned → Ambulance	\$30

1. Firefighters must be scheduled to ride out of rank for 6 hours or more per shift to qualify for out of rank pay. Any firefighter being scheduled to ride out of rank for less than 6 hours will not qualify for out of rank pay.
2. The two (2) members involved in a trade day will not qualify for out of rank pay. If other members are required to work out of rank due to the trade day, they will be eligible for out of rank pay.

Section 5 - Two Thousand Dollars (\$2,000.00) Wage Difference

No more than a two thousand dollar (\$2,000.00) wage difference between the rank of 1st class firefighter and the rank of master firefighter shall occur. Said wage difference between these two ranks shall be maintained in future wage agreements.

Section 6 - Pension Equalization Pay for Non 77 Pension plan Members

For those civilian firefighter/paramedics who do not qualify or do not elect to become members of the 1977 pension fund, the pension equalization pay (PEP) will be offered to the employees as additional wages. The PEP shall be payable in twenty-six (26) equal biweekly pay periods with the regular payroll. The annual PEP will be a combination of a base of three thousand three hundred dollars (\$3,300) and an additional one hundred dollars (\$100) for every full year of continuous service completed by January 1st of each year.

Section 7 – Renegotiation of Wages

It is understood and agreed by the parties hereto that any wage provision contained in this Agreement may be modified at any time by renegotiation with the members of the Common Council of the City of Mishawaka, Indiana. The Common Council and the Union must agree to such renegotiation, and the refusal of either to reopen negotiations for wages shall not be considered a breach of this Agreement or a breach of any other duty or obligation of either.

ARTICLE VIII
Hours of Employment

Section 1 - Work Schedule

(a) The Platoon system shall be a three-platoon system consisting of three shifts. A work day consists of 24 consecutive hours starting at 0700 hours. The regular work schedule of firefighters under this system will be as follows: 24 hours on, 24 hours off, 24 hours on, 24 hours off, 24 hours on, and 96 hours off.

(b) For Fire Marshals, the regular work week shall be thirty-six (36) hours consisting of four (4) days at nine hours per day. Each Fire Marshal shall be entitled to either Monday or Friday off. There shall be no more than three (3) Fire Marshals.

Section 2 - Trading Days

Subject to the approval of the Assistant Chief or the Assistant Chief's designee, and the department being able to meet and maintain minimum manpower requirements, firefighters shall be permitted to voluntarily trade scheduled work and unpicked random days. Random days traded will be used like any other random day would be, with one exception, it does not carry any seniority when a three (3) week posting is necessary. Firefighters will not be allowed to "borrow" time from the City.

ARTICLE IX
Holiday Schedule

For purposes of this agreement, the holidays shall be as follows:

New Year's Day
New Year's Eve Day
Good Friday
Easter Sunday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Friday after Thanksgiving Day
Christmas Eve Day
Christmas Day
3rd Saturday in August Fallen Firefighter

Any firefighter wishing to observe a moment of silence on Patriot Day may do so, so long as the exercise of such does not interfere with the performance of duties or risk public safety.

ARTICLE X

Vacations and Leave

Section 1 – Vacation Eligibility

- (a) All firefighters, except Fire Marshals, will accrue vacation and random time according to the following chart:

VACATION

YEARS OF SERVICE

	3 Day(s) (1st Week)	6 (2 nd Week)	9 (3 rd Week)	12 (4 th Week)	15 (5 th Week)	18 (6 th Week)	Random Days		TOTAL
< 1							Prorated		≤ 4
1	x						4		7
2	x	x					4		10
3	x	x					4		10
4	x	x					4		10
5	x	x	x				4		13
6	x	x	x				4		13
7	x	x	x				4		13
8	x	x	x				4		13
9	x	x	x				4		13
10	x	x	x	x			4		16
11	x	x	x	x			4		16
12	x	x	x	x			4		16
13	x	x	x	x	x		4		19
14	x	x	x	x	x		4		19
15	x	x	x	x	x		5		20
16	x	x	x	x	x		5		20
17	x	x	x	x	x		5		20
18	x	x	x	x	x		5		20
19	x	x	x	x	x		5		20
20+	x	x	x	x	x	x	3		21

(b) After the vacation selection process is completed all remaining random days may be taken in 12 or 24 hour increments.

Section 2 – Vacation Selection

(a) (1) Firefighters may not at any time select a day for vacation or random leave if doing so would reduce the shift strength for that day below the minimum firefighting work force due to other firefighters' vacation and random-leave selections. Firefighters on sick leave shall not be counted in determining shift strength. Firefighters signed up for education leave shall not be counted in determining shift strength until seven (7) calendar days prior to the start of the class, except that firefighters attending a class that lasts longer than fourteen (14) calendar days shall not be counted in determining shift strength.

(2) Each shift will select vacation independent of the other two shifts. Vacations shall be selected on the basis of seniority.

(3) During the first round of selections, firefighters with more than five years of service must select six consecutive work days of vacation (a "two-week vacation"). Firefighters who have completed less than five (5) years of service must select at least four (4) vacation days consecutively, but not more than six (6).

(b) Up to four (4) firefighters per shift shall be eligible on the basis of seniority to select simultaneous two-week vacations without regard to any conflict caused by conditions in scheduling.

(c) Vacation schedules shall be posted by the Fire Department Management by December 1st of each year. Vacation selection shall commence one full cycle after January 1st, and be completed by the end of the 3rd day of that cycle. Each firefighter must be prepared to select their vacation on any day of that cycle, between 0700 and 2000 hours, unless other written arrangements

that do not conflict with the seniority process are made ahead of time with copies going to the Chief or representative and the Union Executive Board. A firefighter who fails to select their vacation during this time will be passed and shall go to the bottom of the vacation selection list. Available days for vacation or random leave are any days beginning between January 2 and January 1 of the following year that the firefighting workforce does not drop below the minimum manpower requirements in Article XIX.

(d) After all firefighters have selected vacations during the first round, the Fire Department Management shall post all days available for firefighters entitled to three or more weeks of vacation or more. During each round of selections after the first round, firefighters may only select up to three workdays per round. Each subsequent selection round will start on the fifth calendar day after the previous round ended (so there will be four calendar days between rounds). After the final vacation-selection round, there will be another round during which firefighters will select one random-leave day based on seniority. All other random-leave days are available on a first-come-first-serve basis.

(e) Any firefighter who splits their two-week vacation in the first round will pick their remaining days from their split two-week vacation as if they were random-leave days (i.e. on a first-come-first-served basis). So if a firefighter chooses to let their vacation become random, they give up seniority selection rights.

(f) Management shall post a master list in all stations, of all days selected by each firefighter after the normal selection process is completed.

(g) When a firefighter is transferred from one shift to another, after vacations are picked, their vacation pick will transfer with them, within one (1) or two (2) work days of the original pick, with the firefighters having the choice of moving forward or backwards of their original vacation pick, it is also understood that if a contractual day(s) or earned time, that was chosen separately becomes the firefighter's regular day off, due to a transfer, they will have the choice to move that day forward or backwards. As an alternative, a firefighter may select another day, as long as the day is available and within the same calendar year.

(h) In the event days become available that were not available at the posting of the random day list, those days and only those days will be posted separately at each station and made available to be picked by seniority after a three (3) week posting period. Any firefighter interested in such days must notify management within the three (3) week posting period by signing the posting list at their station. Any days not selected shall be granted on a first come, first serve basis. If a day becomes available within the three (3) week posting period, it shall be posted as set forth above and the firefighter will be notified one (1) shift day prior to the day in question.

Section 3 - Vacation Eligibility – Fire Marshal Division

Vacation time shall inure to the benefit of the Fire Marshal Division based upon their appointment to the Fire Department as follows:

(a) Fire Marshals having completed one (1) year of service, but less than two (2) years, shall receive four (4) work days of vacation.

(b) Fire Marshals having completed two (2) years of service, but less than five (5) years, shall receive eight (8) days of vacation.

(c) Fire Marshals having completed five (5) years of service, but less than twelve (12) years shall receive fifteen (15) work days of vacation.

(d) Fire Marshals having completed twelve (12) years of service, but less than seventeen (17) years of service shall receive twenty (20) work days of vacation.

(e) Fire Marshals having completed seventeen (17) years of service, but less than twenty-five (25) shall receive twenty-six (26) work days of vacation.

(f) All employees assigned as Fire Marshals shall receive 2 random days in addition to their vacation days.

(g) All employees assigned as Fire Marshals will have their vacation selections approved by the Chief of the Inspection Bureau.

ARTICLE XI

Seniority, Layoff, Recall and Lateral Transfer

Section 1 – Seniority, Layoff and Recall

(a) Seniority shall be determined by the date of the firefighter's appointment to the Department. If more than one (1) firefighter has the same date of appointment, then seniority shall be determined alphabetically.

(b) A "lay-off" is hereby defined to be a necessary reduction of the work force of the Fire Department. Lay-offs shall be made in the reverse order of seniority; that is, the firefighter with the least seniority shall be laid off first and the firefighter with the most seniority shall be laid off last.

(c) A "recall" shall be an increase of the work force with the Fire Department following a lay-off. Recall shall be by seniority with the firefighter with the most seniority being the first individual to be recalled and the firefighter with the least seniority being the last individual to be recalled.

(d) In the event of a personnel reduction, no new employees shall be hired until all laid off employees are recalled or have refused to return to work.

(e) If any position on the Fire Department presently being performed by a firefighter is performed by a civilian or volunteer help, no firefighter shall be laid off as a result.

ARTICLE XII

Sick Leave

Section 1 – Firefighter

During illness, a firefighter's pay shall continue subject to the right of the Board of Public Works and Safety to require a physician's statement confirming the firefighter's illness and their inability to perform their duties. Medical disabilities shall be determined by the firefighter's pension board. Medical disability for a Civilian Firefighter/Paramedic shall be determined by the City's designated physician.

Section 2 – Work-Related Injury – Civilian Firefighter/Paramedic

The City will provide a disability and income program for civilian firefighter/paramedics. This insurance benefit shall continue in effect until such time as a similar disability insurance program for municipal civilian firefighter/paramedics shall be established and funded by the Federal government, the State of Indiana, or some other governmental agency.

ARTICLE XIII

Funeral Leave

In case of death in the firefighter's immediate family (meaning parent, spouse, grandparent, grandchild, parent-in-law, brother, sister, sister-in-law, brother-in-law, child or stepchild), a firefighter shall receive upon request, two (2) consecutive work days off without loss of regular pay, to make preparations for and attend, the funeral and burial of such relative and to attend to any necessary business or legal matters of the decedent or their estate. In addition, the Fire Chief shall have the right to grant, in appropriate cases and at their sole discretion, additional days off work for funerals.

The same right to funeral leave as set forth above shall be applicable in cases of death to an aunt or uncle of the firefighter, to a firefighter's nieces and nephews, to the aunts, uncles, nieces and nephews of the firefighter's spouse, and the grandparents of the firefighter's spouse. In such instances, the leave shall be only one (1) work day off without loss of regular pay. A firefighter who serves as a pallbearer in any funeral shall be entitled to whatever time off is needed on the day of the funeral to serve as a pallbearer without loss of pay. This does not apply to a firefighter that is on a pallbearers list. For Fire Marshals, the days off provided for in the above section shall be three consecutive eight (8) or nine (9) hour work days only.

Funeral leave under this Article XIII shall be taken at the time the death occurs. If a firefighter is on vacation when the death giving rise to the funeral occurs, the firefighter shall not be entitled to take the funeral leave as an extension to their vacation.

ARTICLE XIV

Insurance

Section 1 - Life and Accident

The City shall maintain in effect for each firefighter a life insurance policy of Fifteen Thousand (\$15,000.00) Dollars double indemnity.

The City shall also provide a \$50,000.00 life insurance policy for each civilian firefighter/paramedic in the event they are killed in the line of duty; provided, however, if federal or state legislation is passed providing such coverage, as in the instance of the police and firemen, then the City need not provide such coverage. Such a policy must include coverage for death by disease contracted in-the-line-of-duty.

Section 2 - Medical and Hospital

The City shall offer medical and hospital care coverage to all firefighters, including those off work due to injury and/or illness, throughout the life of the Agreement complying with the terms included in the Insurance Memorandum attached to this agreement.

ARTICLE XV

Uniform Allowance

(a) The City shall, in addition to all other compensation herein granted, pay each firefighter an annual uniform allowance of:

\$1,250.00

to purchase and maintain uniforms as prescribed by the Chief. In consideration of this allowance, the firefighters agree to keep their uniforms in neat, clean and in good repair and to replace all worn out clothing as necessary.

(b) No new items of clothing shall be required unless the Union is in agreement, provided, however, that this paragraph shall not apply to any safety items which may in the future be mandated by IOSHA or OSHA.

(c) The City shall provide and replace damaged protection gear at no expense to the firefighter. Protection gear shall consist of the firefighter's helmet, turnout coat and pants, a protective hood, boots and gloves, and helmet visors. A firefighter must relinquish all damaged protective gear before the City is obligated to replace such gear

ARTICLE XVI

Duties of Firefighters

- (a) Firefighters duties shall consist of the following:
 - (1) All work directly connected with firefighting services, emergency medical services, fire prevention, and public education.
 - (2) Specialty work including water and aerial rescue services, hazardous material emergency response services, water rescue and recovery, fire protection services in the area of code enforcement and fire and arson investigation.
 - (3) Keeping all staffed stations and fire department vehicles clean, including performing general-maintenance tasks for the presentable upkeep of station grounds and quarters.
- (b) Firefighters shall not be required to perform heavy maintenance work or work which requires special skills, including plumbing, electrical work, and painting; however, a firefighter may voluntarily perform these tasks if qualified.
- (c) After all of the duties required under paragraph (a) are performed to the satisfaction of the Fire Chief or representative, firefighters may engage in personal activities which do not interfere with the duties of other members of the fire department.
- (d) Firefighters shall not be required to engage in training, schooling or station maintenance on Sundays or on the Holidays listed in this Agreement. Management may provide training on two (2) Saturdays per year, per shift. Any further Saturday training sessions require advance approval by the Union's Executive Board. Management shall provide a minimum of seven (7) days notice prior to each occurrence of Saturday training.

ARTICLE XVII

Strike Prohibition

The Union will not engage in, nor sanction, strike action, slow down, "blue flu," or similar action during the life of this Agreement or any extension thereof. If this Article is violated, the participants shall be immediately subject to discharge as provided in Ordinance Number 1666 of the City of Mishawaka.

ARTICLE XVIII

Joint Safety Committee

Section 1 - Adoption of Safety Program

A joint safety program shall be adopted and enforced by a joint safety committee comprised of an equal number of representatives from the Union and the City.

Section 2 - Special Items of Safety Equipment

The Cascade system or any replacement system shall be tested not less than annually and maintained in good working order and not less than twenty-five (25) self-contained breathing apparatus in good working order shall be provided by the City so that all members of the Fire Department will have at their disposal protection from dangerous gas and smoke.

Section 3 - Fresh Air Tanks

Fresh air tanks shall be tested hydrostatically at least every five (5) years, per code No. DOT 49 CFR.

Section 4 - Testing of Other Items

All aerial ladders shall be tested, at least once every three (3) years for defects and all defects shall be promptly repaired by the City.

ARTICLE XIX
Department Strength

Section 1 - Minimum Work Force

- (a) The minimum work force will be twenty-nine (29) firefighters per day.
- (b) Seven (7) firefighters will be allowed off per day. In the event of sickness, vacation, or any other reason whatsoever the work force is reduced below the minimum manning requirement, the Officer in Charge will then refer to the proper overtime list for the next man in line to work.
- (c) A minimum of three (3) lead paramedics will remain on duty per shift.

Section 2 - Department Strength

- (a) The minimum firefighting work force shift shall be assigned to manning emergency firefighting equipment.
- (b) Each pumper truck and aerial/pumper combination truck in service shall run and be manned by at least three (3) firefighters.
- (c) Each rescue truck unit in service shall run and be manned by at least two (2) firefighters.
- (d) Each paramedic ambulance shall run and be manned by at least one (1) lead paramedic and one (1) advanced EMT.
- (e) The City will man and run a minimum of three (3) paramedic ambulances. The City may run a fourth (4th) ambulance only after at least four (4) pumper trucks or aerial/pumper combination trucks are manned by at least four (4) firefighters each. This requirement may be suspended for requested occasions only with the approval of the Union's Executive Board for each occasion.
- (f) In the event a rescue truck or aerial truck unit is out of service because of a mechanical breakdown, a reserve engine may be placed in service as a replacement, manned by not less than

two (2) firefighters and used only as a rescue truck or aerial truck unit. Under no circumstances shall the reserve engine be used as a pumper truck unless manned by not less than three (3) firefighters. In the event the reserve engine is used as a pumper truck while manned by less than three (3) firefighters, then the firefighters next in line on the recall list shall be entitled to overtime pay of not less than four (4) hours.

(g) Whenever a reserve pump truck is put in service to take the place of a piece of equipment that is manned normally by two (2) firefighters and enough manpower is available, it shall be manned with three (3) firefighters.

(h) All disabled firefighting motor vehicle equipment, excepting automobiles, shall be repaired and placed back in service as soon as reasonably possible.

Section 3 - Vacancies

(a) The City will make a diligent effort to fill all vacancies in the Fire Department within sixty (60) calendar days after such vacancies occur. In the event a vacancy is not filled within sixty (60) calendar days, the City shall furnish immediately thereafter a written explanation to the Union outlining the reason the vacancy has not been filled.

(b) All vacancies in rank as a result of a promotion shall be filled within thirty (30) days.

(c) All vacancies in ranks as a result of a resignation, retirement, or termination will be filled within thirty (30) days, or when the vacating firefighter ceases to receive compensation by the City for hours worked or other time owed, whichever is later. Vacancies will be posted within seven (7) days of action by the Board of Public Works and Safety creating the vacancy.

Section 4 – Driver Operator and Master Firefighter Positions

(a) There shall be not less than thirty (30) firefighters holding the rank of Driver Operator (DO).

- (b) All firefighters shall be automatically promoted to the rank of Master Firefighter on or before the third anniversary of their hire date.

Section 5 – Rank Structure

- (a) Effective January 1, 2013, the rank structure will be as follows:
- (1) Probationary Firefighter
 - (2) 1st Class Firefighter
 - (3) Master Firefighter
 - (4) Driver Operator
 - (5) Paramedic
 - (6) Lieutenant
 - (7) Fire Marshal
 - (8) Shift Supervisor
 - (9) Captain
 - (10) Battalion Chief
 - (11) Assistant Chief
 - (12) Chief

Section 6 – Master Firefighter

Once a firefighter achieves the rank of Master Firefighter or higher, the base pay for such firefighter thereafter shall never be less than that paid to other Master Firefighters, regardless of the subsequent rank of such firefighter. The Board of Safety reserves the right to refuse a request made by a firefighter for voluntary demotion from the rank of Master Firefighter.

ARTICLE XX

Grievance Procedure and Arbitration

(a) A "grievance" is defined to mean any difference that may arise between the parties or between the City and a firefighter covered by this Agreement as to any matter involving interpretation, meaning, application or violation of any of the provisions of this Agreement. A "grievant" is defined as any firefighter employee covered by this Agreement, group of firefighter employees or the Union.

1. It shall first be the responsibility of the grievant to reduce the grievance into writing within sixty (60) days after it arises and present it to the Chief.

2. If the grievance is not resolved after a period of seven (7) days after being presented to the Chief or acting Chief, the written grievance shall be presented to the City's Board of Public Works and Safety within ninety (90) days for determination and settlement.

3. If the grievance is not settled by the Board of Public Works and Safety within fourteen (14) days to the satisfaction of the grievant, then the matter may be submitted to arbitration in accordance with the terms and conditions set forth below.

(b) The establishment of this method of arbitration shall not in any way whatsoever be deemed to be a recognition by the City of compulsory arbitration as a superior method of settling labor disputes, but rather shall be deemed to be a recognition solely of the necessity to provide an alternative method or mode of settling labor disputes where employees must, as a matter of public policy, be denied the usual right to strike. Therefore, in the event that the grievant and the City are unable to satisfactorily resolve a grievance before the Board of Public Works and Safety, either party may send written notice of a demand for arbitration to the other party and the dispute shall be submitted to arbitration before an impartial arbitrator selected as provided below.

If within ten (10) days after the notice of the demand for arbitration, the parties are unable to agree upon an arbitrator, then the grievant may request the American Arbitration Association or Federal Mediation and Conciliation Service to submit a panel of names and the selection of the

arbitrator made by alternately striking names from the panel. The impartial arbitrator shall hold hearings upon the issues, make such investigations as shall be deemed necessary to a proper decision and render such decision in writing. The decision of the arbitrator shall be final and binding upon the parties. The arbitrator is authorized to conduct such hearing in an informal manner and without recourse of the technical, common-law rules of evidence required in judicial proceedings. Every person who is a party to such proceeding shall have a right to submit evidence in open hearing and shall have the right of cross-examination. Hearings may be held at any place in the county agreed to by the parties or in the absence of agreement, as determined by the arbitrator.

(c) The arbitrator's fees and necessary expenses of arbitration shall be borne equally by the Union and City. However, it is understood and agreed that such fees and expenses shall not include attorney's fees of either party.

ARTICLE XXI

Savings Clause

If any provision of this agreement, or application thereto to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this Agreement and the application of such provisions to other persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

ARTICLE XXII

Indemnification

Section 1 - Claims and Judgments

The City shall indemnify and hold harmless any firefighter from all legal claims, suits, costs and judgments arising out of the acts or omissions of the firefighter arising out of and in the course of the performance of the duties of such firefighter subject to the terms and conditions contained herein. Indemnity shall not be provided in the event any firefighter willfully violates any legal order of a superior officer, the rules and regulations of the Fire Department, or is guilty of gross negligence or of willful or wanton misconduct.

Section 2 - Executions on Judgments

The City shall take such actions as it deems appropriate to forestall the execution of judgment against a firefighter personally and notwithstanding such efforts by the City, the City will indemnify and hold harmless the firefighter on any judgment covered under Section 1 of this Article subject to terms and conditions contained herein.

Section 3 - Trials

(a) The City shall provide legal counsel of the City's choosing to any firefighter against whom legal action has commenced, within the coverage set forth in Section 1 of this Article.

(b) The firefighter shall have the option to retain their own attorney at their own expense to represent their interests in litigation without any effect on the responsibilities of the City under this Article.

Section 4 - Firefighter's Responsibilities

(a) As a condition precedent to the right of indemnification under this Article, any firefighter desiring indemnification shall:

(1) Tender in writing to the City's attorney a notice of its right to appear and defend any litigation as may result in a judgment covered by this Article and grant to the City the right to make such investigation, negotiation and settlement of any claim as the City deems appropriate.

(2) Give written notice containing the particulars sufficient to identify the firefighter involved and information as to the time, place and circumstances thereof to the City's attorney as soon as reasonably practical following a covered occurrence.

(3) Forward immediately any or all suit papers, demands, notices, summons, complaint or other process received by such firefighter or their representative to the City's attorney.

(4) Cooperate with the City in the conduct, defense or settlement of any legal proceeding and additionally grant the City the right to free access and use of all hospital, medical and doctor's records and reports as to any firefighter's physical or mental condition in the conduct, defense or settlement of any legal proceedings.

ARTICLE XXIII

Specialty Position

A. In recognition of the special and unique services performed by certain firefighters for the City, the City agrees to pay specialty pay to those firefighters who perform the following duties:

1. Advanced Emergency Medical Technician (AEMT).
2. Water Rescue and Recovery.
3. Self-Contained Breathing Apparatus.
4. Mechanics.
5. Firefighter/Paramedic
6. Reserve Firefighter/Paramedic
7. Civilian Firefighter/Paramedic
8. Information Technology (IT)

All specialties will receive a specialty check. Participation in any specialty listed in this article is not mandatory.

B. Definitions.

1. **“Advanced Emergency Medical Technician (AEMT)”** means a firefighter who is certified by the Indiana Emergency Medical Services Commission as an AEMT, and is qualified by the local Medical Control Board to provide advanced life support care. An AEMT is a firefighter who can perform advanced life support skills, which include, but are not limited to: manual defibrillation, electrocardiogram interpretation, and intravenous injection.
2. **“Water Rescue/Recovery Team”** means those firefighters regularly assigned to the Water Rescue and Recovery Team in accordance with the standard operating procedures currently in effect. Such standard operating procedures shall not be changed except by mutual consent of the City and the Union. ”

3. **"Self-Contained Breathing Apparatus Technician"** means those firefighters assigned to maintaining, repairing, testing and all records keeping activities as required by federal and state regulations with respect to self-contained breathing apparatus.
4. **"Mechanics"** means those firefighters assigned to the maintenance and repair of fire suppression vehicles and all other Fire Department mechanical equipment.
5. **"Lead Paramedic"** means a paramedic who has obtained lead paramedic status from the St. Joseph County EMS Committee.
6. **"Firefighter/Paramedic"** means a firefighter who is dually certified as both a firefighter and a paramedic and is assigned to an ambulance.
7. **"Reserve Firefighter/Paramedic"** means a firefighter who is dually certified as both a firefighter and a paramedic and is assigned to a suppression apparatus.
8. **"Civilian Firefighter/Paramedic"** means a firefighter paramedic assigned to an ambulance and receives the PEP compensation.
9. **"Paramedic"** includes Firefighter/Paramedics, Reserve Firefighter/Paramedics, and Civilian Firefighter Paramedics.
10. **"Information Technology" (IT)** means a firefighter who maintains the computer systems within the Fire Department including but not limited to Firehouse software, Mobile Data Terminals, and GPS data.

C. The City agrees to train at least the following number of firefighters for the EMT specialty:

<u>Specialty</u>	<u>Number of Firefighters</u>
EMT-A	10 (annually)
EMT-P	3 (annually)

Training slots for the EMT-A and EMT-P specialty shall be filled by seniority.

D. The City agrees to offer to train at least the following number of firefighters for each of the following specialties:

<u>Specialty</u>	<u>Number of Firefighters</u>
Water Rescue/Recovery Team	12
Water Rescue/Recovery Team Leaders	3
Self-Contained Breathing Apparatus Technician	3
Mechanics	3
IT	2

The City shall train such additional firefighters as may be necessary, from time to time, to maintain the specialty programs listed in this paragraph, provided, however, there are firefighters available who desire to be so trained.

E. If less than the specified number of firefighters enroll to be trained for a particular specialty, then the City shall be obligated to train only those firefighters who have enrolled in a specialty program.

F. If a firefighter withdraws from certain specialty training after the training commences or fails to successfully complete such training for any other reason, the firefighter shall still be counted toward the City's obligation to train a specific number of firefighters for that specialty.

G. The City shall provide all specialty training at no cost to the firefighters who wish to secure the specialty.

H. The City shall establish specialty programs for the specialties set forth in this Article and maintain them for the life of this Agreement and any extensions of this Agreement.

I. Specialty pay shall be prorated to the date of acquiring the specialty. The following specialty pays are established:

<u>Specialty</u>	
Water Rescue/Recovery Team	\$ 950.00
Water Rescue/Recovery Team Leaders (3)	\$ 1050.00

Self-Contained Breathing Apparatus Technician	\$ 1,000.00
Mechanics	\$ 2,500.00
IT	\$ 1,500.00

The following specialties shall be paid on a two (2)-tier schedule.

Tier 1 is awarded for certification (and maintenance of certification). Tier 2 is awarded upon completion of 50 scheduled days on an ambulance in a given calendar year (November 1 through October 31 of the following year).

<u>Specialty</u>	<u>Tier 1</u>	<u>Tier 2</u>
AEMT	\$1000.00	\$3000.00
Paramedic	\$2000.00	\$4000.00
Lead Paramedic	\$4000.00	\$6000.00

J. If a firefighter is required to attend off-duty training or certification classes in order to achieve specialty status and gives prior notice to the Fire Chief, or representative, the firefighter shall be reimbursed for each hour of necessary off-duty training at the applicable overtime rate. All specialty programs shall be operated strictly in accordance with the standard operating procedures presently in effect. Once in effect, such standard operating procedures shall not be changed except by mutual agreement between the Union and the City.

K. If a firefighter is required to attend off-duty training or certification classes in order to maintain specialty status and gives prior notice to the Fire Chief, or representative, the firefighter shall be reimbursed for each hour of necessary off-duty training at the applicable overtime rate.

L. If at any time within ten (10) years of receiving such training a firefighter loses his or her paramedic certification or leaves employment of the City of Mishawaka's Fire and EMS Department, the firefighter agrees to reimburse the City for costs associated with paramedic training on a pro rata basis. After completing seven (7) years assigned to an ambulance, an individual may request in writing to the Chief to be assigned to a fire-suppression vehicle. The firefighter making the request will have first priority for the next available fire-suppression-vehicle opening. Management will accommodate requests for transfer from full-time ambulance duty prior to seven (7) years, subject to manpower restrictions.

ARTICLE XXIV

Job Posting

In the event of an opening or vacancy within the Mishawaka Fire Department, the Chief will post the opening or vacancy for bids at all fire stations. The posted openings or vacancy shall remain open for bids for a period of ten (10) days. Any firefighter wishing to bid for such opening or vacancy shall sign the job posting sheet and complete required forms.

ARTICLE XXV

Pay Days

Section 1 - Pay Period

Firefighters shall be paid bi-weekly, (every other Friday).

Section 2 - Additional Pay Periods

All other pay shall be dispersed by the City as follows:

(a) Uniform allowance pay will consist of four (4) equal and separate checks payable quarterly on or before the first (1st).

(b) If a regular pay day falls during a firefighter's vacation, the firefighter shall receive their pay check in advance prior to going on vacation, providing they make a written request for their check two (2) weeks in advance to the person responsible for Department payroll.

(c) Payment of Specialty Pay. All specialty pay shall be paid in a lump sum as part of the last pay in November of each year.

ARTICLE XXVI

Training New Firefighters

Upon commencement of employment, a firefighter shall not be considered part of the firefighting work force until having received at least one hundred eighty-nine (189) hours of on-the-job training. Training will be performed Monday through Friday, except for firefighters to attend Recruit Fire Academy events scheduled on Saturdays.

ARTICLE XXVII

Emergency Leave

Firefighters shall have the privilege of leaving the fire station for immediate family emergencies. In such cases, the following guidelines must be followed as closely as possible;

- (a) Firefighter must notify the Officer in Charge of the emergency.
- (b) Firefighter must call Officer in Charge within the first two (2) hours and give their status as to if he/she will be returning to work in the next two (2) hours.
- (c) Once the emergency is taken care of and the firefighter's presence is no longer needed, they shall return to work.
- (d) The Officer in Charge will call in overtime if below the minimum manpower and it is determined that the firefighter on emergency leave will not be returning to work within the four (4) hour time frame set forth above.
- (e) Any added days needed, the firefighter is required to make their own arrangements, such as, to trade days, take vacation days, or arrangements made through the Chief.

ARTICLE XXVIII

Overtime Call-In Procedure

Section 1 - Purpose of Article

- (a) For regular overtime to maintain Article XIX, Section 1, for twenty-four (24) hour, partial, and order in overtime.
- (b) Overtime is to be offered to firefighters in a uniform manner of rotation based on last date of accepted overtime. A master overtime list will be maintained by the Officer in Charge for twenty-four (24) hours, partial, and ordered to work overtime
- (c) Overtime will be managed by an automated system agreed upon by Union and Management.
- (d) In the event of a disagreement on which automated system to use or of automated technology failure, the Officer in Charge will default to manual calling of overtime based on last accepted overtime date.

Section 2 - Call-In Procedure

- (a) All members will be defaulted as not available for overtime, except for the ordered to work list, where all members will be defaulted to available. Each member will be responsible to log into the automated system and mark the dates they would be available for overtime. You are not required to accept the overtime if it is offered, however, members are encouraged to only mark themselves available the dates they would accept overtime.
- (b) Overtime will be managed from three (3) lists of the members that mark themselves available each day: twenty-four (24) hour, partial, and ordered to work.
- (c) If an available overtime slot is for a Lead Paramedic position, it must be designated as such during the overtime call in procedure and filled before other overtime can be filled.

- (d) All twenty-four (24) hour overtime slots will be filled before partial overtime slots. A partial overtime is any overtime that originates as less than twenty-four (24) hours and will be filled from the partial overtime list.
- (e) If a member is working a partial overtime slot and another partial overtime slot becomes available during that day, the member working the partial overtime will have the option to extend their partial overtime to fill the new partial overtime slot that is needed. If that members declines to work the new partial overtime slot, a new call out for partial overtime will begin.
- (f) Members will have the option to accept the 24 hour overtime slots as noted: 24 hours, first 12 hours, second 12 hours, decline. Overtime that originates as a twenty-four (24) hour overtime will continue to be filled from the twenty-four (24) hour overtime list. (i.e., if a member accepts twelve (12) hours of a twenty-four (24) overtime slot, the remaining twelve (12) hours will continue to be filled from the twenty-four (24) hour overtime list.)
- (g) Members will maintain their place on the overtime list if they turn down an offer to work overtime. When a member accepts an overtime assignment they will be placed at the bottom of the overtime list.
- (h) Each member will have the option of being contacted via phone call, text message, or email.
- (i) The automated system will wait 5 minutes between contacting members to allow for that member to respond before moving on to the next member on the list. After the initial contact, the overtime may be accepted until secured.
- (j) Each shift Officer in Charge will secure their own shift overtime needed for the next shift day.
- (k) If a member calls in sick creating a need for an overtime slot, that slot will be filled as soon as possible by the Officer in Charge.

(l) If an overtime slot is not able to be secured from the list of members available, the automated system will send out a master overtime request to all members on the department. The first person to respond to that request will be awarded that overtime. That member will then be moved to the bottom of the list.

(m) If after the master overtime request, the overtime slot is still not secured, the Officer in Charge may “order” someone to work the vacancy. The Officer in Charge shall maintain an “ordered to work” record and shall rotate this duty equally among all Fire Department personnel. Ordered to work shall be offered by reverse seniority. Any firefighter that is ordered to work shall maintain their place on the voluntary overtime list and be moved to the bottom of the “ordered to work” list. Any employee that is “ordered to work” overtime shall only be mandated to work 12 hours maximum as a result of that “order to work”. Members cannot be “ordered to work” if it coincides with a vacation day, random day, or SC day.

(n) If there is a need for “Emergency Overtime” during a multi alarm incident, the Officer in Charge will send out an “Emergency Overtime” request via the automated system to all members of the Fire Department. Members can accept this “Emergency Overtime” on a first come first serve basis. Members who accept this “Emergency Overtime” will not be moved on the voluntary overtime list.

(o) If there are not the required number of Lead Paramedics assigned to the ambulances per shift and an overtime slot is needed, that overtime slot will be offered to Lead Paramedics before any Lead Paramedic not assigned to an ambulance is moved to an ambulance. If no Lead Paramedic accepts the overtime slot, the Officer in Charge may then move the non-ambulance assigned Lead Paramedic to an ambulance and fill the overtime slot with another member. This is to be done before ordering a Lead Paramedic to work.

ARTICLE XXIX

Bill of Rights

All firefighters who are members of the bargaining unit on full-time active duty shall be entitled to the protection of what shall hereafter be termed as the "Mishawaka Firefighters Bill of Rights."

1. All firefighters shall have the right to Union representation selected from a list prepared by the Union during any interview or questioning involving a disciplinary matter.

2. When for any reason any firefighter is under investigation by the city for conduct which results in dismissal, criminal charges or suspension for more than five (5) days (40 hours) the following rules are hereby established and shall be followed to insure such investigations are conducted in a manner conducive to public confidence, good order and discipline while, at the same time, observing and protecting the individual rights of each firefighter:

(a) Advance Notice - Prior to being interviewed, a firefighter shall be:

(i) Informed in writing of the nature of the investigation; informed of other information necessary to reasonably apprise them of the nature of the allegations of the complaint, including the date, time and location of the occurrence;

(ii) If prior to or at any time during the interrogation of a firefighter, it is determined that he/she may be charged with a criminal offense or be suspected of being implicated in a criminal offense, they shall be immediately informed of their constitutional rights and the investigation shall be terminated unless the firefighter chooses to waive their constitutional rights of self-incrimination;

(iii) Afforded an opportunity and facilities to contact and consult privately with an attorney of their choosing and/or representative of the Union;

(iv) Whenever a delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not an issue, advance

notice shall be given the firefighter not less than twenty-four (24) hours before the initial interview commences or written reports are required from the firefighters.

(b) Interview Safeguards - Any interview of a firefighter shall be when the firefighter is on duty unless the seriousness of the complaint dictates otherwise.

(i) Interviews shall take place at the firehouse facility, or elsewhere if mutually agreed, unless the emergency of the situation necessitates otherwise.

(ii) The firefighter may have a Union representative and/or attorney present to witness the interview. However, the interview may not be unduly delayed awaiting an unavailable Union representative when other Union representatives are available.

(iii) An attorney or representative chosen by the firefighter must be, depending upon the seriousness of the investigation and the need for immediate action, available within a reasonable period of time and under no circumstances will any interrogation session be delayed more than twenty-four (24) hours because of the unavailability of the attorney or representative chosen by the firefighter. However, no matter how extreme an emergency exists, no interrogation shall take place until the firefighter shall be given a minimum of three (3) hours to obtain the services of a representative and/or attorney.

(iv) During the interrogation of the firefighter, the attorney or representative shall not make any statements or objections of any kind to the investigator nor will they in any way impede the interrogation but will restrict their remarks to conferring with the firefighter. The representative's failure to object to a question shall not constitute a waiver of their ability to later object to any questions asked.

(v) Interviews shall be done under circumstances free of intimidation or coercion and shall not otherwise violate the firefighter's constitutional rights. The firefighter shall not be subjected to offensive or abusive language. No promise or reward shall be made as an inducement to answer questions.

(vi) Interviews shall not be overly long. The firefighter shall be entitled to

reasonable intermissions as they shall request for personal necessities, telephone calls, rest periods, with one (1) ten (10) minute intermission every hour, if they request.

(vii) All interviews shall be limited in scope to activities, circumstances, events, conduct or acts which pertain to the subject of the investigation.

(viii) Investigations shall be concluded without delay.

(c) Charges Filed

(i) The firefighter will be furnished with a copy of the summary report of the internal investigation which will contain all material facts of the matter.

(ii) The firefighter will be furnished with the names of all witnesses and complainants who will appear against the firefighter and/or whose statements will be used against them.

(d) Resulting Disciplinary action

(i) When the investigation results in a determination of a sustained complaint, only the findings will be placed in the firefighter's personnel file, unless the firefighter requests inclusion of the complete record.

(ii) No dismissal, demotion, or other punitive measures shall be taken against the firefighter unless they are notified of the action and a reason for such action prior to the effective date of such action.

3. Personal Privileges

(a) No firefighter shall be required for purposes of assignment or other personnel action to disclose any item of their property, income, assets, source of income or personal or domestic expenditures including those of any member of their family, unless such information is obtained pursuant to proper legal process or tends to indicate a conflict of interest with respect to the performances of their official duties.

(b) No firefighter shall have their residence, private place of business, if any, private

vehicle or locker space assigned to them by the Fire Department searched unless a valid search warrant is obtained or they voluntarily agree to such search.

(c) No member of the immediate family of the firefighter shall be required to give a statement to the investigator and prior to requesting any member of the immediate family of the firefighter to give a statement, the firefighter shall be given notice of such intended request and the firefighter shall be given an opportunity to confer with that family member before that family member shall be asked to give a statement.

4. Political Activities - No firefighter shall be prohibited from engaging in political activities except when on duty.

5. Polygraph Examinations - A firefighter under investigation shall not be required to take a polygraph examination unless their accuser or accusers agree to take such a polygraph examination, and have taken such examination prior to the firefighter being asked to take such examination: provided, however, anything in this Article to the contrary notwithstanding, none of the charts, conversations, discussions, questions or results derived from such polygraph examination shall be used against such firefighter in any civil or criminal proceeding. In the event the polygraph examiner desires to question the firefighter after the polygraph test has been administered, the examiner shall first advise the firefighter of their rights in writing and if the firefighter waives in writing their rights, then any statements made by such firefighter may be used against such firefighter.

6. Drug-Free Workplace – Firefighters shall be subject to the provisions of the City's Drug-Free Workplace Policy as such policy exists as of the date of this Agreement. However, a firefighter shall not be required to submit to any such tests in regard to any occurrence at a time when the firefighter, while off duty, was compelled to take immediate firefighting action in

response to an emergency situation. The City shall agree to train firefighters on Drug-Free Workplace Policy prior to implementation, and will also train new hires as needed. The Union President will be notified at any time a firefighter is selected for a random test of any kind.

7. Maintenance of Records

(a) Complaints investigated by the Department shall be handled in the following manner by classification:

(i) Unfounded, exonerated, and non-sustained complaints shall be destroyed upon the resolution of the matter, with the firefighter who is the subject of the complaint having a right to be present during the destruction, if they so desire. Said firefighter shall be informed of the proposed destruction before it takes place.

(ii) Sustained complaints may be kept in the personnel file for a period of three (3) years at the end of which time they shall be destroyed, in the presence of the firefighter who is the subject thereof, if they so desire, provided, however, the personnel file shall nevertheless contain a summary record of discipline setting forth the appropriate dates, charges, findings and penalty imposed.

(b) A firefighter shall have the opportunity, at a reasonable time during office hours, to review their active file and any closed investigative file in which they were the accused. In the event there is any comment adverse to their interests in their personnel file, the officer shall have the right to file a written response thereto, which written response shall be attached to said adverse comments; and, additionally, they shall have the right to file a grievance in regard to any such matter which is of such gravity that it could affect their promotional opportunities, which grievance shall then be processed in accordance with grievance procedures.

(c) Any firefighter who is reprimanded in any way, either orally, in writing, by suspension, deprivation of overtime or any other benefits, or disciplinary action in any way, shall have the right of appeal as provided by law.

ARTICLE XXX

Call in Emergency Duty

Section 1 - Emergency Call In As Defined by Officer In Charge

(a) The Officer in Charge will determine the need to call in the appropriate number of personnel for the specific emergency. The Officer in Charge or his/her designee will be in charge of securing the necessary emergency personnel. All call records will be maintained and recorded into the appropriate overtime list.

(b) The City will work towards a system that, when it is made available, the Officer in Charge will use a computer generated system to send out a mass contact of all firefighters using any or all methods of phone, mobile phone, text, or e-mail. The firefighters making contact with dispatch or the Officer in Charge on a first come first serve basis will be awarded the emergency overtime and must report as soon as possible. Once all necessary positions have been filled another mass contact will be sent out to cancel the emergency contact process. All firefighters must provide at least one working phone contact number at all times for the purpose of emergency call in but may also provide as many contact methods as possible voluntarily.

(c) Each firefighter making contact back will be told where the Emergency is and where to report.

ARTICLE XXXI

Specialty Teams

All specialty teams shall be operated strictly in accordance with each program's the Standard Operating Procedure (S.O.P.), in effect as of the date of this Agreement. An S.O.P. relating to a specialty team shall not be changed except by mutual agreement between the Union and the City.

ARTICLE XXXII

Termination of Employment

Upon the termination of a firefighter's employment with the City, the firefighter shall receive all benefits under this contract, prorated to the last day of their employment. Clothing allowance will be prorated by the months worked each quarter. When a firefighter leaves employment with the City for whatever reason, accrued vacation days or leave day shall be taken as time off provided, or paid for these days. However, if the firefighter is dismissed for cause, then the firefighter shall be paid for any accrued vacation time.

ARTICLE XXXIII
Retiree Health Insurance

Each retired firefighter of the City of Mishawaka Fire Department shall be eligible for health coverage or credit according to the parameters set forth by ordinance of the City.

ARTICLE XXXIV

Duration

Section 1 - Duration

This Agreement shall be in effect January 1, 2015, following approval by the Union, resolution of the Board of Public Works and Safety and ordinance of the Common Council of the City of Mishawaka, and shall remain in force and effect to and including the 31st day of December, 2016.

Section 2 - Future Negotiations

The parties agree that commencing not later than June 1st, 2016, they will undertake negotiations for a new collective bargaining agreement.

Section 3 - Renegotiation and Amendment

Notwithstanding any provision herein to the contrary, it is understood and agreed by the parties hereto that any provision contained in this Agreement may be amended at any time by the mutual agreement of the parties hereto.

Section 4 - Relations to Rules and Regulations

This Agreement shall supersede any rules and regulations inconsistent herewith, provided, however, rules and regulations not inconsistent with this Agreement may be adopted and promulgated by the Board of Public Works and Safety of the City of Mishawaka pursuant to Indiana statute.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives in Mishawaka, Indiana, this ____ day of _____, 2014.

**CITY OF MISHAWAKA, INDIANA
BOARD OF PUBLIC WORKS AND SAFETY**

Gary E. West, President

Ronald E. Watson, Vice President

Kenneth B. Prince, Member

**MISHAWAKA FIREFIGHTERS ASSOCIATION LOCAL NO. 360 OF THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS AFL-CIO**

James Elliott, President

Dave Richards, Vice President

Jason Brandenburg, Secretary Treasurer

Mark Ryan, Recording Secretary

Steve McClain, Committee Member

Kevin Gnivecki, Committee Member

1st Reading 12-15-14
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 17 2014

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2014-40

ORDINANCE NO. _____

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN
THE CITY OF MISHAWAKA AND THE MISHAWAKA FRATERNAL ORDER
OF POLICE, LODGE 91**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the Mishawaka Fraternal Order of Police, Lodge 91 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2014; and

WHEREAS, the members of the Mishawaka Fraternal Order of Police, Lodge 91 have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 9th day of December, 2014, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with Mishawaka Fraternal Order of Police, Lodge 91, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The Collective Bargaining Agreement executed the 9th day of December, 2014, effective January 1, 2015, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters is hereby approved.

Section 2. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this 15th day of December, 2014, at _____ o'clock _____ .M.

Matt Mammolenti
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of December, 2014, at
_____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of December, 2014, at _____ o'clock
_____.M.

David A. Wood, Mayor

RESOLUTION NO. 2014-09

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF
MISHAWAKA AND THE MISHAWAKA FRATERNAL ORDER OF POLICE,
LODGE 91

WHEREAS, the City of Mishawaka and the Mishawaka Fraternal Order of Police,
Lodge 91 have agreed to a Collective Bargaining Agreement for the period of January 1,
2015 to December 31, 2017; and

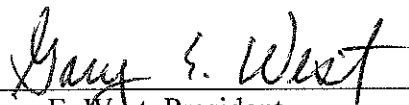
WHEREAS, such Agreement requires the approval of the Mishawaka Board of Public
Works and Safety and the Mishawaka Common Council;

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of
the City of Mishawaka that:

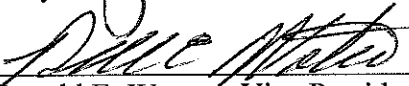
Section 1. The attached Collective Bargaining Agreement between the City of
Mishawaka and the Mishawaka Fraternal Order of Police, Lodge 91 is hereby approved,
and

Section 2. This Resolution shall be forwarded to the Mishawaka Common
Council for its review and final action.

ADOPTED by the Board of Public Works of the City of Mishawaka, on this 9th
day of December, 2014.



Gary E. West, President



Ronald E. Watson, Vice President



Kenneth Prince, Member

ATTEST:

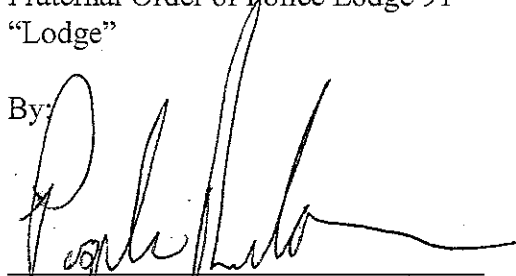


Kari Myers, Clerk of the Board

Signed and dated this 9th day of December, 2014.

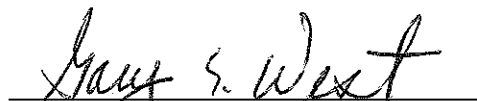
Fraternal Order of Police Lodge 91
"Lodge"

By:

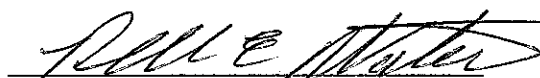

Pasquale Rulli, Jr., President

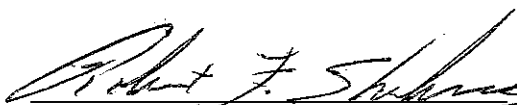
Board of Public Works and Safety
for and on behalf of the City of Mishawaka,
Indiana

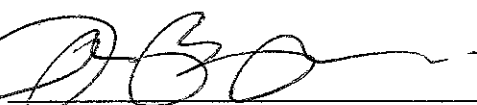
By:

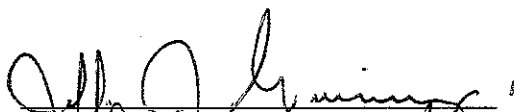

Gary E. West, President


Robert Ashburn, Vice President


Ronald E. Watson, Vice-President

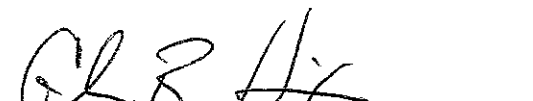

Robert Sherburn, Wage and Grievance

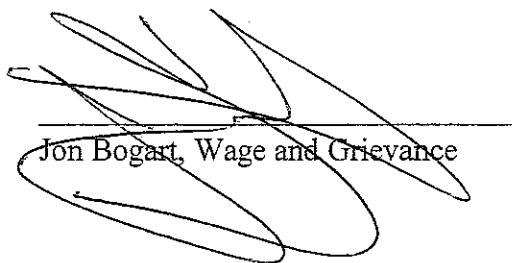

Ken Prince, Member


Jeff Giannuzzi, Wage and Grievance

ATTEST:


Kari Myers, Clerk, BPWS


Glenn Hixenbaugh, Wage and Grievance


Jon Bogart, Wage and Grievance



COLLECTIVE BARGAINING AGREEMENT

Between

CITY OF MISHAWAKA, INDIANA

And

**MISHAWAKA FRATERNAL ORDER OF POLICE,
LODGE 91**

Dated January 1, 2015 - December 31, 2017

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COLLECTIVE BARGAINING AGREEMENT

This Agreement is entered into between the City of Mishawaka, Indiana, hereinafter called "City", and the Mishawaka Fraternal Order of Police, Lodge No. 91, hereinafter called "Lodge".

WITNESSETH THAT:

The parties hereto, in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

ARTICLE I **PURPOSE AND DEFINITIONS**

Section 1 - Purpose

The parties hereto have entered into this Agreement pursuant to the authority of Ordinance Number 1666 passed by the Common Council of the City of Mishawaka on the 6th day of December, 1971, to incorporate understandings previously reached and other matters into a formal contract; to promote harmonious relations between the City and the Lodge, in the best interests of the community; to improve the public police protection; and to provide an orderly and equitable means of resolving future differences between parties.

Section 2 - Definitions

- A. "City" shall include the elected or appointed representatives of the City of Mishawaka, Indiana, including the Police Chief and Division Chiefs, but there shall be no more than three (3) Division Chiefs.
- B. "Lodge" shall include the officers or representative of the Lodge
- C. When the singular number is used, it shall include the plural.
- D. All reference to policeman or policemen or police officer (s) in this Agreement shall designate both sexes, and whenever the male gender is used, it shall be construed to include both male and female.

ARTICLE II **COVERAGE**

This Agreement shall be applicable to all police officers of the Police Department of the City of Mishawaka except the Police Chief and Division Chiefs.

ARTICLE III **RECOGNITION**

The City recognizes the Lodge as the sole and exclusive bargaining representative of the employees of the Police Department.

The City shall not enter into any agreements with its employees individually or collectively or with any other organization which in any way conflicts with the provisions hereof.

ARTICLE IV **RIGHTS OF MANAGEMENT**

Except as otherwise provided in this Agreement, or applicable federal or state law, the City in the exercise of its functions of management shall have the right to decide the policies, methods, safety rules, direction of employees, assignment of work, contracting of work, equipment to be used in the operation of the Police Department; and to determine the hours of work, the right to hire, discharge, suspend, discipline, promote, demote, and transfer policemen; it is agreed that the enumeration of the above management prerogatives shall not be deemed to exclude other prerogatives not enumerated. Nothing in this Article shall abdicate the policemen's rights to the grievance procedure.

ARTICLE V **LODGE ACTIVITIES**

Section 1 - General

Employees and their Lodge representatives shall have the right to join the Lodge, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, to express or communicate any views, grievance, complaint, or opinion related to the conditions or compensation of public employment or their betterment, all free from any and all restraint, interference, coercion, discrimination, or reprisal, except as limited by the laws of the City of Mishawaka, State

of Indiana, or the United States of America.

Section 2 - Released Time

Officers and other representatives of the Lodge shall be afforded reasonable time during working hours without loss of pay to fulfill their Lodge responsibilities, including negotiations with the City, processing grievances, and administration and enforcement of this Agreement; provided, however, that such absences will not cause shift strength to fall below the minimum strength requirements for a shift as required by this Agreement.

Section 3 - Bulletin Boards

The Lodge shall retain the bulletin board rights it now has, including the right to post Lodge notices or other materials. Such boards shall be identified with the name of the Lodge and the Lodge may designate persons responsible therefore.

Section 4 - Meetings

The Lodge may schedule meetings on Police Department property, insofar as such meetings are not disruptive of the duties of the employees or the efficient operation of the Police Department.

Section 5 - Lodge Activities

The President and respective representatives of the Lodge and any members who are elected to a State or National Lodge office shall be allowed time off with pay to attend State and National conventions, seminars and meetings as long as the minimum strength requirements on their respective shifts are met. If a representative's shift is below minimum strength, then the representative shall nonetheless be allowed the time off but without pay.

Section 6 - Dues and Representation Check-Off

The City shall collect Lodge dues from Lodge members and representation fees levied by the Lodge for non-Lodge members on a monthly basis from all police officers within the bargaining unit who have executed the proper authorization for dues or representation fee check-off. The City shall deduct from the first pay check of each month the authorized Lodge dues for such month and promptly remit the same to the Secretary of the Lodge. The City shall continue to deduct monthly Lodge dues and representation fees at the rate in force on the date of the signing of this Agreement, until officially notified in writing of a change by the Lodge President, who shall be the sole authorized representative of the Lodge for the purpose of certifying the amount of such change.

Section 7 - Representation Fee

Non-members of the Lodge shall pay a representation fee for the services of the Lodge in acting as the bargaining representative. Such representation fee shall be in an amount equal to the membership dues of the Lodge less the cost of any benefits provided solely for Lodge members. Non-Lodge police officers who refuse to sign an authorization form for the deduction of such representation fee or who revoke an executed authorization form shall have a continuing enforceable obligation to pay the representation fee directly to the Lodge. The City shall have no obligation to collect such representation fee except as set forth in Section 6 of this Article and the Lodge shall indemnify the City for any costs or expenses arising out of any suit or claim brought by a non-member of the Lodge relating to this Article.

Section 8 - Use of City Equipment

The Lodge shall have the right to make reasonable use of the Police Department duplicating equipment, computing and office equipment, all in accordance with the City's procedures, provided, however, such use shall not be disruptive of department business. The Lodge agrees to pay the reasonable costs for such use.

Section 9 - Exercise Room

The City shall continue to make available to the Lodge facilities at least equal to those presently provided for use by the Lodge as weight and exercise rooms and for the Lodge's desk and file cabinets. The Lodge agrees to keep the equipment in working order and keep the area clean.

ARTICLE VI **DIVISIONS AND HOURS OF WORK**

Section 1 – Divisions

There shall be only the following divisions within the Police Department:

- A. Uniform Division
Traffic Bureau to consist of a minimum of one (1) officer. The head of the Traffic Bureau will hold the rank of Captain.
- B. Detective Division
- C. Services Division

Section 2 - Work Schedule

The regular work schedule of police officers shall be as follows:

- A. Uniform Division police officers shall work six (6) consecutive days with three (3) consecutive days off. Rotations within a shift shall not be changed without the consent of the affected police officer.
- B. The hours of the Traffic Bureau officers will be flexible to assure the orderly function of the Traffic Bureau. Accordingly, the daily working hours and weekly rotation of the Traffic Bureau officers shall be set by the mutual agreement of the Chief of Police and the Traffic Bureau Captain. No more Than Two Thousand Two (2,002) hours per year will be worked by the Traffic Bureau officers without reimbursement of overtime pay. The Traffic Bureau officers shall not be utilized in such a manner as to evade the paying of overtime to other police officers.
- C. The Detective Division and the Services Division shall work not more than 2,002 hours per year, consistent with division work schedules and the efficient operation of the Police Department. Such employees shall work an average of Thirty-Eight and One-Half (38.5) hours per week.
- D. A regular work day shall consist of Eight and One-Quarter (8.25) hours, which time shall include thirty (30) minutes for a meal subject to call. Coffee breaks shall also be allowed subject to call.
- E. During any time period when a minimum of twenty (20) officers are assigned to each of the three (3) existing shifts within the Uniform Division, the City may establish and maintain a fourth shift within the Uniform Division. No non-probationary police officer shall be assigned to the fourth shift against his will, nor shall any officer be transferred from one of the three (3) existing shifts to the fourth shift if the transfer will cause any of the three (3) existing shifts to fall below twenty (20) assigned officers. Following the establishment of the fourth shift, officers shall be entitled to request assignment to said shift as part of the next regular Seniority Pick of Shift process established by this Agreement.

Section 3 - Trading Days

- A. Subject to the approval of the officer in charge of the shift or any captain in the absence of all of the officers in that shift, police officers shall be permitted to voluntarily trade work or leave days provided however no police officer may work more than sixteen (16) hours in a twenty-four (24) hour period and no police officer may work more than two (2) sixteen (16) hour shifts consecutively, i.e., two (2) days

of double shifts worked back-to-back. No police officer shall be permitted to trade for more than 60 (sixty) days in any one (1) calendar year but this limitation shall not apply if trading is for the purpose of participating in athletic events or FOP activities. It must be agreed that:

1. The trade is voluntary;
 2. The trade is for the employee's personal benefit and not the City's benefit;
 3. The time exchange slip will record the trade between the two (2) undersigned employees and will be signed by BOTH employees; and
 4. The time trades will have no effect on the hours of work regarding computation of overtime.
- B. To accomplish such a change, the requesting policeman shall prepare a work exchange slip in duplicate, and he will secure the other policeman's signature or initials on the work exchange slip. The slip shall then be signed by the person in charge of the shift. One (1) copy of the slip will remain with the officer in charge of the shift, and one copy will be attached to the work schedule at the desk area.
- C. Policemen may work any of their off days, i.e. days off, vacation, random days, etc., with no restriction except that they may not work double shifts back-to-back.
- D. The City shall not be involved or responsible in any way to assure that a police officer is reimbursed time owed him or her as a result of trading days.

Section 4 - Working Hours

- A. The Uniform Division shall have three (3) shifts: day shift, afternoon, and midnight shift. The hours of each shift shall be as follows:
- | | |
|-----------------|-------------------------|
| Day Shift | 6:30 a.m. to 2:45 p.m. |
| Afternoon Shift | 2:30 p.m. to 10:45 p.m. |
| Midnight Shift | 10:30 p.m. to 6:45 a.m. |
- B. The hours of the Detective Division and the Services Division shall be set by the City but the work shift shall be Eight and One-Quarter (8.25) consecutive hours.

ARTICLE VII
EXTRA DUTY AND EXTRA DUTY PAY

Section 1 - Call-In Authorization

Only the officers listed below shall have authority to call in personnel for extra duty pay:

- A. Mayor
- B. Chief of Police;
- C. Division Chief of Police;
- D. In the absence of the Chief of Police or the Division Chief, then the Officer in Charge of the Shift.

Section 2 - Extra Duty Pay

- A. Any police officer who works in excess of his regularly assigned work week or work day schedule shall receive extra duty pay in addition to any other benefits to which he may be entitled. Except as otherwise established by this Agreement, such extra duty pay shall be paid at the rate of time and one-half of the police officer's prevailing hourly rate, provided, however, that all extra duty worked on holidays and Sundays shall be paid at twice the police officer's prevailing hourly rate. A police officer's prevailing hourly rate shall be determined by dividing his annual salary by Two Thousand and Two (2,002).
- B. Extra duty shall be assigned to police officers as uniformly as possible. In no case shall the City be required to call the officer whose absence created the need for overtime, no matter where the officer's name is on the extra duty roster. The officer's name shall remain in the same order on the list.
- C. The City shall post two (2) extra duty rosters. One extra duty roster, which shall be known as the Uniform Division extra duty roster, shall list the names of all officers assigned to the Uniform Division, except the Traffic Bureau officers, DARE officers, and Community Relations officers, in order of seniority. The other extra duty roster, which shall be known as the Combined extra duty roster, shall list the names of all officers assigned to the Detective Division, as well as all officers assigned to the Services Division, the Traffic Bureau officers, DARE officers, and Community Relations officers, in order of seniority. These rosters shall be posted on January 1st of each calendar year and shall terminate on December 31st of that year. During the year, the number of extra duty hours worked by each officer shall be recorded after

the police officer's name on each roster.

(1) Assigned Extra Duty

Whenever the City is aware more than six (6) days in advance that a police officer will be needed for extra duty, the extra duty shall be assigned as follows:

The City shall post on the bulletin board a notice stating the number of officers needed, whether the work is that normally performed by Uniform officers, the event, the date and the hours to be worked. Each day to be worked as extra duty shall be posted separately. The extra duty sheet will be posted for not less than four (4) days.

A police officer desiring the extra duty shall sign the sheet. The City shall award the extra duty to the most senior officer with the least amount of extra duty hours worked. If the extra duty is that which is normally performed by Uniform Division officers, then only officers whose names appear on the Uniform Division extra duty roster will be awarded the extra duty. Officers whose names appear on the Combined extra duty roster will be awarded the extra duty only if no officer whose name appears on the Uniform Division extra duty roster signs the sheet. Nothing contained in this section shall be interpreted as entitling an officer assigned to the Services Division, the Traffic Bureau officers, DARE officers, and/or Community Relations officers to the receipt of an extra duty assignment which is of a nature normally performed by officers assigned to the Detective Division.

The police officer assigned the extra duty shall be notified as soon as possible. Management shall post the assignment notification sheets in several locations around the Mishawaka Police Station. The locations for posting are as follows: Squad Room, Detective Bureau and Communications area (Radio Room). In addition, copies shall be distributed to the Chief's Office, Uniform Division Chief's Office, and to the Lodge President. The Lodge President shall also be furnished copies of the sign up sheets containing the officers' signatures.

Officers signing for the overtime shall be responsible to verify whether they have received the overtime assignment. If the officer is off duty for any reason, he/she may verify his/her overtime by telephoning the Chief's Office, the Uniform Division Chief or the Radio Operator on duty as the radio is manned twenty-four (24) hours a day.

Emergency extra duty and call-in duty worked after the overtime has been assigned shall not affect the assignment.

(2) A probationary officer shall be eligible to work extra duty once the officer counts toward the minimum shift strength established by this Agreement.

(3) Emergency Extra Duty

Whenever the City is aware less than six (6) days in advance that a police officer will be needed for extra duty, except where the need for extra duty on a particular shift on a particular day arises after the commencement of the shift, the extra duty shall be assigned in the following manner:

The City shall first refer to the police officers working the shift immediately preceding the shift within each division on which the extra duty officer is needed. The City shall offer that extra duty to the police officer on that shift with the most seniority and the least number of extra duty hours worked not exercising vacation. In the event of a refusal of emergency extra duty time, the police officer shall not be charged on the extra duty roster for refusal and the City shall offer the extra duty time to the next police officer on the preceding shift with the most seniority and the least number of extra duty hours worked who is not exercising vacation, until a police officer accepts the extra duty assignment. In the event no police officer from the preceding shift who is not exercising vacation accepts the extra duty assignment, the City shall then refer to the appropriate extra duty roster.

In the event the emergency extra duty assignment is of a type normally performed by Uniform Division officers, the City shall refer to the Uniform Division extra duty roster and offer the extra duty to the police officer who has the most seniority with the least number of extra duty hours worked not exercising vacation. In the event of a refusal, the City shall continue down the Uniform Division extra duty roster offering the extra duty time to the police officer with the most seniority and the least number of extra duty hours worked or refused not exercising vacation until a police officer accepts the extra duty assignment. If all officers whose names appear on the Uniform Division extra duty roster refuse the extra duty assignment, the City shall then refer to the Combined extra duty roster and offer the extra duty assignment to the most senior officer on that roster with the least number of extra duty hours worked who is not exercising vacation until an officer accepts the extra duty assignment. Should all officers not exercising vacation be called and no officer has accepted the extra duty assignment, the City shall refer back to the Uniform Division extra duty roster and call officers exercising vacation, followed by the Combined extra duty roster.

When a regularly scheduled shift within the Uniform Division would otherwise commence without a sufficient number of officers on duty to meet the minimum shift strength established by this Agreement, despite the City's good faith efforts to fill the extra duty assignment by offering the same to officers on the proceeding shift for voluntary acceptance and/or to make use of the call-in procedure as required above, the City shall be entitled to order a sufficient number of the least senior officers assigned to the preceding shift who are qualified to accept extra duty assignments under the terms of this Agreement to continue their patrol duties until such time as the officers needed to bring the affected shift up to minimum shift strength arrive at the Police Station to commence their emergency extra duty assignment. The officers so ordered to continue their patrol duties shall receive hour-for-hour extra duty pay at twice their hourly rate of pay and the extra duty hours worked by such officers shall not be logged on the applicable extra duty roster.

Any officer ordered to stay past his/her shift will only be required to do this once during HIS/HER six day rotation. If overtime is needed within the same rotation, and nobody accepts it, the next officer with the least amount of seniority (regardless of hours) will be ordered to stay and so on. The officer ordered to stay will do so for the entire shift. The officer calling in overtime will only be required to go through all the call in list ONCE. In the event that an officer would call back and accept the overtime he/she may take the overtime and the officer ordered to stay may leave once relieved.

With respect to emergency extra duty in the Detective Division, the Chief of Police, or the Detective Division Chief shall have the right to award extra duty to officers within that Division as they feel necessary. Officers awarded extra duty within the Detective Division shall be paid twice the officer's prevailing hourly rate for each hour worked. A diligent effort shall be made to award extra duty to officers that have been assigned a particular case and the overtime will be directly related to such case. All extra duty hours shall be logged on the Combined extra duty roster.

In the event that a detective is needed for general investigation (emergency call in), the officer doing the call in will refer to the combined extra duty roster (detective's) and follow the procedure set forth in ARTICLE VII for the uniform division. The FOP will concede that it would be impossible at times for the officer in charge to know who is working a particular case.

Where the need for extra duty on a particular shift on a particular day arises after the commencement of the shift, the City shall first refer to the police officers working the shift immediately succeeding the shift within each division on which the extra duty officer is needed. The City shall offer the extra duty to the police officer on that shift with the most seniority and the least number of extra duty hours worked. In the event

of a refusal of the emergency extra duty assignment, the police officer shall not be charged on the extra duty roster for refusal and the City shall offer the extra duty time to the next police officer on the succeeding shift (not exercising vacation) with the most seniority and the least number of extra duty hours worked until a police officer accepts the extra duty assignment. In the event no police officer from the succeeding shift accepts the extra duty assignment, the City shall then refer to the Uniform Division extra duty roster, and, if necessary, to the Combined extra duty roster, beginning with those officers not exercising vacation, for purposes of awarding the emergency extra duty assignment.

In the event no officer from the combined list accepts the overtime they will then go to the officers on vacation starting with the most senior officer with the least amount of hours. If at this time no officer has accepted the overtime, then the least senior officer on the uniform division extra duty roster will be ordered to work.

(4) When an officer has worked a shift and accepts eight (8) hours overtime on the immediately succeeding shift, the officer may notify the Officer in Charge of the succeeding shift (the "OT shift") that he/she is opting for a split shift. The Officer in Charge will then contact officers scheduled to work the shift following the OT shift (who are not on vacation) and offer the second half of the OT shift to those officers. If no officer accepts, then the officer who accepted the overtime shall work the full eight (8)-hour assignment. If an officer does accept the second half of the split shift, each of the officers involved will have four (4) hours noted on the extra duty roster.

- D. Officers not wishing to work call-in overtime may sign a waiver to this effect. This waiver may be revoked in writing at any time upon twenty-four (24) hours written notice.
- E. The City will post on the board those officers assigned to traffic, photograph, scuba diving and water rescue, breathalyzer, HAZMAT (hazardous materials), bomb squad, Tactical Emergency Response Team (SWAT), range officer, arson, evidence technician, homicide investigator, Field Training Officer (FTO), Community Relations Officer, polygraph examiner, DARE unit, STOP unit, Canine unit, SUDS unit, DRE (Drug Recognition Expert), motorcycle officer, instructors, and Services Division officers. The posting shall be kept current showing the number of extra duty hours worked by each police officer within their respective specialty or specialties. All extra duty hours worked by the above listed officers shall be logged on both the appropriate specialty list and the appropriate extra duty roster. Any officer accepting an emergency extra duty assignment within a specialty area shall receive hour-for-hour extra duty pay at twice the officer's prevailing hourly rate of pay.

Any police officer having completed Vehicle Crash II, (ILEA Standard) may be placed on the Traffic Specialty list. On seniority / least numbers of hours worked within that specialty, two (2) officers may be called in on an overtime basis to assist the Traffic Captain or his designee at fatal and serious injury accidents unless the accident is determined to fit FACT criteria.

If a trained specialty officer is needed in a specialty other than traffic, the City may call in a police officer for extra duty from the posted specialty list having the most senior officer on the list with the least amount of overtime worked within their specialty being called in first. If the police officer with the most seniority and the least amount of overtime hours worked within their specialty cannot be reached after a diligent effort to contact has been made, then such officer may be bypassed.

- F. Notwithstanding any contrary provision contained in this Agreement, no officer shall be entitled to work more than sixteen (16) consecutive hours, whether as the result of the acceptance of an extra duty assignment or otherwise, unless the time to be worked in excess of sixteen (16) hours is the result of the continuation of the officer's second eight (8) hour shift.
- G. All extra duty hours worked by an officer, except those hours worked as part of the continuation of a regularly scheduled shift or where an officer is ordered to accept the extra duty assignment in accordance with this Agreement shall be logged on the appropriate extra duty roster. The extra duty hours shall be logged on the appropriate extra duty roster regardless of whether an officer chooses to receive monetary payment or compensatory time as compensation for the extra duty hours worked.
- H. Notwithstanding any language in this Agreement to the contrary, an officer who is off duty and operating a vehicle provided to him as part of the Mishawaka Police Department's Assigned Vehicle Program shall not be compensated for the first fifteen (15) minutes during which the officer assists a citizen, answers a dispatch call, or otherwise acts in a law enforcement capacity. Thereafter, should the nature of the incident require the continuing intervention of the officer or should the officer be required to prepare a written report concerning the incident while off-duty, the officer shall receive extra duty pay at one and one-half (1.5) times the officer's prevailing hourly rate. Such extra duty pay shall be calculated and paid in increments of fifteen (15) minutes, adding an additional fifteen (15) minutes for any additional fraction thereof in excess of fifteen (15) minutes.

Section 3 - Holiday Schedule

A. For the purposes of this Agreement, the holidays shall be as follows:

1. New Years Day
2. Martin Luther King Day
3. Good Friday
4. Easter Sunday
5. Memorial Day
6. Independence Day
7. Labor Day
8. Thanksgiving Day
9. Friday after Thanksgiving
10. Christmas Eve
11. Christmas Day
12. New Year's Eve

Section 4 - Court Time Pay

A Police Officer shall receive a witness fee for appearing during off-duty hours in accordance with the following provisions:

- A. When an officer appears as a necessary witness at the Mishawaka Division of the St. Joseph Superior or Circuit Court, the Mishawaka Board of Public Works and Safety, except when the Police Officer himself/herself is the subject of the disciplinary proceeding before the Board, or at the St. Joseph County Prosecutor's Office or St. Joseph County Clerk's Office for the purpose of signing affidavits, except that affidavits will be signed on duty at the Mishawaka Police Station whenever possible, the officer shall receive the sum of One Hundred Seventy-Five and 00/100 Dollars (175.00) per appearance. In addition, the officer shall receive hour-for-hour pay at one and one-half (1.5) times his prevailing hourly rate of pay for time spent at court in excess of three (3) hours, adding one (1) hour for any additional fraction thereof in excess of thirty (30) minutes.
- B. When an officer appears at any other court, administrative hearing or arbitration hearing located in St. Joseph County, Indiana, or elsewhere, except as provided in Paragraph A above, the officer shall receive the sum of Two Hundred and 00/100 Dollars (\$200.00) per appearance, less any compensation received for time and travel from any other sources within the City. In addition, the officer shall receive hour-for-hour pay at one and one-half (1.5) times his prevailing hourly rate of pay for time spent at court in excess of four (4) hours, adding one (1) hour for any additional fraction thereof in excess of thirty (30) minutes.

- C. No witness fees shall be paid for civil court trial appearances unless the subject of the litigation involves matters investigated or witnessed by the police officer in the line of duty.
- D. In the event a police officer is subpoenaed by the City to testify in any court, administrative or arbitration proceeding or hearing outside St. Joseph County, then in addition to the witness fee established herein, the police officer shall also receive reimbursement for all reasonable and necessary expenses incurred, including, without limitation, gasoline, mileage, meals and room expense. Reimbursement will only occur pursuant to compliance with the adopted City travel policy.
- E. Police officers employed in part-time employment by the terms of which compensation is received for performing police-type duties shall not be entitled to compensation under this Article if such officers are involved in any incident or situation which is a direct result of such part-time private employment.
- F. Any police officer who retires or leaves the Department and is required to testify on behalf of the City in any court trial, arbitration hearing or administrative proceeding shall be paid by the City as specified in this Article.
- G. In all proceedings before the Board of Public Works and Safety, subpoenas for a police officer will be reviewed by the Clerk of the Board who will report any abuse of the subpoena power to the Board of Public Works and Safety. In such case, the Board shall have the right to regulate the time and date that witnesses will be required to appear in such a manner that will not impede the presentation of the respondent's case and will not result in the payment of excessive and needless witness fees to police officers subpoenaed as witnesses.
- H. When an officer appears at a proceeding described in this Section while on duty and the officer's participation in the proceeding continues past the end of his regularly scheduled work day, the officer shall not receive the witness fee set out above. Rather, the officer shall receive only hour-for-hour extra duty pay under the terms set out in Article VII, Section 2 of this Agreement.
- I. When an officer receives a subpoena to appear on a single day at two (2) or more separate proceedings and at two or more different locations, the officer shall be entitled to receive a corresponding number of separate witness fees. However, if all the multiple proceedings are scheduled to commence before 12:00 P.M. (i.e. in the morning) within the same building or if all the multiple proceedings are scheduled to commence after 12:00 P.M. (i.e. in the afternoon) within the same building, then the

officer shall only receive one (1) witness fee.

J. When an officer's appearance is continued over from a morning session to an afternoon session on a single day, the officer shall be entitled to only one (1) witness fee.

K. In the event that any shift of the Uniform Division would fall below Minimum shift strength due to an officer being in court, emergency extra duty will be called in as follows:

If court falls in the first four (4) hours (06:30 – prior to 10:30) (14:30 – prior to 18:30) (22:30 – prior to 02:30) of the shift, the city shall refer to the police officers working the shift immediately preceding to fill the Minimum shift strength.

If court starts in the second four hours of the shift, (10:30 – 14:30) (18:30 – 22:30) (02:30 – 06:30) the city shall refer to the police officers working shift succeeding to fill the Minimum shift strength.

In the event that no police officer accepts the overtime the city shall refer to Article VII, Section 2.

The above agreement pertains only to times when emergency overtime is needed due to officers being in court. It does not change any other provisions in this Agreement.

L. An officer may not take off a portion of a shift in order to receive court time pay for a witness appearance during that time off.

Section 5 - Shooting Time Pay

A. A police officer is entitled to miss two (2) shoots per year. However, this section shall not be interpreted so as to allow an officer to refuse to attend a shoot when ordered to do so while on duty. In the event a police officer is required to shoot while off duty, the officer shall receive two (2) hours of extra duty pay unless the department required him to spend more than two (2) hours at the range and if so the police officer shall receive hour for hour pay after the second hour adding one (1) hour for any fraction thereof in excess of thirty (30) minutes.

B. The top three (3) shooting officers each year, as determined by score on annual shooting qualification tests, will each receive an additional day off, called a shooting day. Use of the shooting day may not bring staffing below minimum shift strength and must be approved in advance by the Chief of Police.

Section 6 - Renegotiation of Wages

It is understood and agreed by the parties hereto that any wage provisions contained in this Agreement may be modified at any time by renegotiations with the members of the Common Council of the City of Mishawaka, Indiana. Both parties must agree to such renegotiation, and the refusal of one party to reopen negotiations shall not be considered a breach of this Agreement or a breach of any other duty or obligation of said party.

Section 7 - Pay Days

- A. Police officers shall be paid bi-weekly, every other Friday. An annual bi-weekly schedule of paydays shall be posted annually before each first payday.
- B. All other pay shall be disbursed by the City as follows:
 - 1. Clothing allowance checks will consist of two (2) equal checks paid on April 1st, and October 1st of each year.
 - 2. Witness fees will be paid at the same time and in the same manner as is extra duty pay.
 - 3. Extra duty pay shall be paid with the next regular pay check following the period during which such extra duty pay was earned.
 - 4. All checks paid will have the proper deductions for such items as taxes, insurance, pension, United Way, savings bonds and credit union.
- C. If an error is made in a police officer's pay, it shall be corrected no later than the next paycheck. If the amount in error is a substantial amount or is not corrected in the next paycheck, a special check shall be issued to immediately correct the error.
- D. If a regular payday falls during a police officer's vacation, he shall receive his paycheck in advance prior to going on vacation, provided he makes a written request for his check two (2) weeks in advance. Requests shall be made to the Services Division.

Section 8 - Jury Duty

Any police officer who is required to report for and/or perform jury duty shall receive time off his regular scheduled work day (s) with full pay, less any compensation received from any other source other than the City.

Section 9 - Overtime Pay or Overtime Compensation

Any police officer who is entitled to overtime pay as previously stated within this Agreement shall have the option of taking the overtime in the form of cash or in the form of compensatory time. The compensatory time shall be given at a rate that is equal to the officer's rate of overtime. Compensatory time may be substituted instead of overtime for all extra hours worked with the exception of State and Federal grants.

Section 10 – Sub-Sergeant Officer in Charge of Shift

When an officer holding a rank below Sergeant is placed in charge of a shift, that officer will be paid an additional \$25.00 for that shift.

ARTICLE VIII **VACATIONS**

Section 1 - Eligibility and Amount

A. Vacation time shall inure to the benefit of police officers based upon years of service as follows:

1. Police officers having completed one (1) year of service, but less than two (2) years, shall receive one (1) week of vacation and 1 (one) random day.
2. Police officers having completed two (2) years of service, but less than three (3) years, shall receive two (2) weeks of vacation and two (2) random days.
3. Police officers having completed three (3) years of service, but less than five (5) years, shall receive two (2) weeks of vacation and three (3) random days.
4. Police officers having completed five (5) years of service, but less than ten (10) years, shall receive three (3) weeks of vacation and three (3) random days.
5. Police officers having completed ten (10) years of service, but less than fifteen (15) years, shall receive four (4) weeks of vacation and four (4) random days.
6. Police officers having completed fifteen (15) years of service, but less than twenty (20) years, shall receive five (5) weeks of vacation and five (5) random days.
7. Police officers having completed twenty (20) years of service, but less than twenty-five (25) years, shall receive six (6) weeks of vacation and six (6) random days.
8. Police officers having completed more than twenty-five (25) years of service shall

receive six (6) weeks of vacation and seven (7) random days.

9. If the first Sunday following the vacation is a scheduled work day, then, the police officer shall have that Sunday off work as an additional day of vacation.

- B. Vacation shall be selected in each division by seniority per shift. Vacation schedules shall allow one officer per shift per division to start vacation on each Sunday of the year, thus causing an overlapping effect. The right to such overlapping vacation has been agreed to by the City and the Lodge.
- C. In the event a police officer, while off duty as a result of his vacation or random days taken in conjunction with his vacation is ordered back to work by the City, accepts an emergency extra duty assignment, or is subpoenaed to appear in Court regarding a matter related to his employment as a police officer, the City shall pay the officer two (2) times his prevailing hourly rate of pay for the hours worked or the witness fee established by this Agreement, whichever is applicable, and shall also return the earned vacation day to the officer, on a one day for one day's ratio. The City must grant all requests by an officer to exercise an earned vacation day returned in accordance with this provision if at the time of the request the affected shift is at or above the minimum shift strength established by this Agreement. Furthermore, the City must grant at least two (2) earned vacation day requests on each shift each day, even if the affected shift is already below minimum shift strength, except that if the affected shift is already one (1) below minimum shift strength as a result of an officer exercising a random day, the City must grant only one (1) earned vacation day request. The officer must make an attempt through the Chief's Office to secure an excuse from the subpoena.

Section 2 - Compensation Time Owed

A. Officers shall be able to request compensation time owed from any supervisor within their division and the compensation time owed shall be awarded on a first requested, first received basis. Compensation time owed requests shall be stamped on a time clock. The City must grant all compensation time owed requests, provided that the City may only grant such requests when the affected shift is above minimum shift strength. At no time may the City grant a compensation time owed request if the resulting shift strength would drop below the minimum as set by this agreement.

Section 3 - Random Days

- A. Officers shall be able to request a random day from any supervisor within their division and the random day shall be awarded on a first requested, first received

basis. The random day selected shall be within one (1) year from the date of the request. Random day requests shall be stamped on a time clock. The City must grant all such requests if, at the time of the request, the affected shift is at or above the minimum shift strength established by this agreement. Furthermore, the City must grant at least one (1) random day request on each shift each day, even if the affected shift is already below minimum shift strength, except when the affected shift has fallen below minimum shift strength as a result of an officer's absence due to a vacation day.

- B. Random days may be accumulated from year to year. Police officers will make an effort to take all of their random days in the year that they are due; provided, however, that a police officer may not carryover more than eighteen (18) days under this Section.
- C. Random days shall be allotted as of January 1st.

Section 4 – Earned Vacation Days

- A. Earned vacation days may be accumulated from year to year. Police officers will make an effort to use all of their earned vacation days in the year that they are due; provided, however, that a police officer may not carry over more than six (6) earned vacation days under this section
- B. All earned vacation days accumulated prior to January 1, 2009 will be in a separate bank and available to be used by the police officer as established by this agreement. No additional days may be added to this bank. Any earned vacation days that are available in this bank must be used before any other earned vacation days are used.

Section 5 - Vacation Selection

- A. Vacations may be picked for two (2) week slots in the first round, or if officers choose to split their two (2) week pick they can pick one a (1) week vacation slot on the first round. If an officer chooses to make his first selection in a one-week increment, the officer's second week of vacation must be chosen in the second round. All further selections will be for one-week blocks, except as provided in subsection B. The police officer shall sign a vacation schedule and note the date and time signed. The police officer next in seniority on the shift will have not less than three (3) days to pick his vacation selection. If such police officer fails to pick within the three (3) days the next police officer in seniority can pick and so on down the list. The police officer that is passed over for failure to pick his/her vacation can sign any time but he/she must pick the vacation from the weeks that are open at the time he/she signs.
- B. Any officer entitled to one (1) week of vacation may choose to take his selection as one (1)

weeklong vacation or as six (6) random days. Any officer entitled to two (2) weeks of vacation may choose two (2) weeks vacation, or twelve (12) random days, or one (1) week vacation and six (6) random days. Any officer entitled to three (3) weeks of vacation may choose three (3) weeks vacation, or eighteen (18) random days, or one (1) week of vacation and twelve (12) random days, or two (2) weeks of vacation and six (6) random days. Officers entitled to four (4), five (5), or six (6) weeks of vacation may also take up to three (3) weeks (18 days) as random days. No officer may take more than three (3) weeks of vacation as random days (18 random days).

Section 6 - Computation of Years of Service

Vacation time is computed on the basis of a police officer's years of service. If a police officer completes a sufficient number of years of service so as to entitle him to additional vacation time as hereinabove provided, he shall receive such additional vacation time during the calendar year that he completes such year of service.

ARTICLE IX **SENIORITY, LAYOFF AND RECALL**

Section 1 - Definition of Terms

- A. Seniority shall be determined by the date of the police officer's appointment by the Board of Public Works and Safety. If more than one police officer has the same date of appointment, then, seniority shall be determined alphabetically.
- B. A "layoff" is hereby defined to be a necessary reduction of the work force of the Mishawaka Police Department. Layoffs shall be made in the reverse order of seniority; that is, the police officer with the least seniority shall be laid off first, and the police officer with the most seniority shall be laid off last.
- C. A "recall" shall be an increase in the work force of the Police Department following a layoff. Recall shall be by seniority with the police officer with the most seniority being the first man to be recalled and the police officer with the least seniority being the last man to be recalled.
- D. All civilian personnel shall be laid off before any police officer is laid off.

Section 2 - Seniority Pick of Shift

- A. Shift preference shall be granted to all police officers and shall be determined on the basis of Departmental Seniority.
 - 1. The City will provide a Shift Preference Slip to every police officer on or

before September 1st each year.

- a. It will be the police officer's responsibility to obtain his own Shift Preference Slip in cases where the police officer will be gone during the September 1st to 15th dates due to vacation, random days or trading days.
 - b. In case of illness, schools, departmental business, the Chief will provide the police officer the Shift Preference Slip early, or see that the police officer gets a slip and has the opportunity to fill it out.
2. The police officer shall fill out the Shift Preference Slip and return it to the Lodge Wage & Grievance Committeeman on or before September 15th, listing his first, second and third choices of shifts. If the police officer fails to return his Shift Preference Slip on or before September 15th, he may be assigned to any shift that the Chief determines to be in the best interests of the Department.
 3. On or before September 25th, the Chief and the Wage & Grievance Committee will review the slips and assign police officers on a seniority basis to each shift, as requested by the police officer. They will make a diligent effort to keep the changed police officer's rotation or work schedule as close as possible to his former rotation or schedule.
 4. If an officer is promoted to a rank on a specific shift and voluntarily leaves that shift, his rank on the new shift will be First Class Patrol Officer.
 5. The new list will take effect the first full schedule in January.
- C. The Chief of Police will post the new list of Shift Personnel on or before October 1st, along with the work week rotation or work schedule after the new list is posted. The vacation list will be posted only after the new list and rotations are posted.
- D. No extra duty pay will be paid as a result of the Shift Change due to the September Shift Preference by Seniority Pick.
- E. A police officer can only request a Shift Preference change within his own division, e.g. Uniform, Detective Division, Services, etc.
- F. After the Seniority Pick of Shift process is completed and in effect, the Chief has the right to change a police officer's shift only for the betterment of the Department.

1. If there is such a change, an officer shall have the right to use the Grievance Procedure proceeding directly to the Board of Public Works and Safety.
 2. If there is such a change, the Chief will post any vacancy or opening which shall be filled as provided in Section I herein below.
 3. In the event no one applies for such a vacancy or opening, the Chief has the right to fill such vacancy or opening with the least senior officer that counts toward shift strength.
 4. Any police officer involved in such a change shall have at least sixteen (16) hours off between his old shift and his new shift.
 5. In the event of a change under this Section, any police officer required to work more than his regular work week shall receive extra duty pay as provided in the Collective Bargaining Agreement.
- G. Police officers will have a commitment of one (1) year on the shift after the September Seniority Pick of Shift process is completed, unless an opening or vacancy is posted in that year.
1. A committee shall be established for the purpose of ruling on any request by a police officer for a shift change for a valid reason during the year. Such committee shall be comprised of the President and Vice President of the Lodge, the Chief of Police, the appropriate Division Chief, and a fifth person from the bargaining unit, whose name shall be drawn by lot. This committee shall determine whether the request for the shift change is to be granted. In the event such request is granted, the opening shall be posted for a period of five (5) days. The most senior police officer of equal rank bidding on the opening shall have the right to make the change. If no police officer of equal rank bids for the opening, then the police officer requesting the change shall bear the responsibility to secure another police officer to change with him on the desired shift. The officers involved shall take one another's rotation with no extra duty time pay to either police officer.

If such a change in shift does take place, the requesting police officer will in a period of each fifteen (15) days resubmit a request setting forth reasons to continue the change. This then will be reviewed by the committee to see if the change request is still valid. If the committee finds the change request still to be valid, the change will remain in effect for fifteen (15) more days

pending a new request from the requesting officer.

At such time as the request is denied, the requesting officer and changed officer from the requesting shift will be returned to their regular assigned shifts.

2. Should any police officer request a change in Divisions after the September pick, he will have to replace the lowest seniority Second Class Patrol Officer in the requested Division.
3. In the event of an opening or vacancy in the Detective Division, Services Division or Traffic Bureau, such opening or vacancy shall be filled by the appointment of the Chief of Police.
4. If a police officer is required to change Divisions, the Seniority Pick process shall be instituted, meaning that if a police officer is taken out of the Detective Division or Services Division, such officer shall be able to transfer to a shift of his request in the Uniform Division, if the police officer has the Departmental Seniority to do so. The bumped police officer will have the same right to bump. Bumping rights shall take effect immediately.

H. In case of a non-rank opening or vacancy on a shift after the September Seniority Pick, the Chief will post the vacancy or opening for bids.

1. In the event the vacancy or opening is one with rank (Captain, Lieutenant, Sergeant), the Chief has the right to promote, transfer, or demote from any shift or Division to replace the open rank. When said position has been filled, the Chief will then post the resulting vacancy or opening for bids.
2. The Chief reserves the right to have a new recruit work on any shift or any Division for the first year on the Department without changing any regular police officers on that shift.
3. The recruit's regular work week rotation will be kept as close as possible to what it was before any change; extra duty pay will be paid if he is required to work over his regular work week.
4. Immediately upon a recruit's completion of his first year with the Department, his slot will be posted for bid and shall be filled as set forth in Section I below.

I. Posting opening for bids.

1. The Chief will post on the bulletin board any Second Class Patrol Officer vacancy or opening on a shift during the year.
2. A posted opening or vacancy will be left up for bids ten (10) days.
3. A police officer bidding on a vacancy or opening shall sign the posted list and indicate his seniority date.
4. Department seniority shall determine the police officer who gets the vacancy or opening.
5. The same process will go into effect to replace the police officer who got the bid.
6. In the event no one bids on a vacancy or opening, the Chief shall have the right to fill the opening or vacancy with the lowest in seniority police officer or to fill the opening or vacancy with a probationary officer.
7. All posted vacancies shall be filled within thirty (30) days after posting is completed.
8. All ranks shall be filled within thirty (30) days.

J. Emergency or Temporary Openings or Vacancies.

1. For temporary openings under two (2) weeks, Article XVII of this Agreement shall apply.
2. In the event an opening or vacancy should occur on a shift due to illness, schooling, vacations, or other similar reasons, for a period of more than two (2) weeks, the Chief may replace the police officer in the following manner:
 - a. The temporary opening will be posted as a "temporary opening" for four (4) days. The police officer with rank of not less than Second Class Patrol Officer with the most seniority who signs for the opening shall get it.
 - b. During the temporary assignment or replacement, the police officer's

regular work week shall not be changed without his permission.

- c. In the event no one bids on the vacancy or opening, the Chief has the right to assign the least senior officer that counts toward shift strength to fill the opening or vacancy.
- K. The Chief shall have the right to determine the number of police officers to be assigned and which division, but this number shall be set prior with shifts being determined by the seniority pick of shift.
- L. Any officer assigned to the Traffic Bureau will remain eligible to exercise his rights to bump from shift to shift on the basis of seniority. Officers of the traffic bureau will also retain their rights to request transfers out of the Bureau, under the authority and provisions of this Agreement.
- M. Anything in this Article to the contrary notwithstanding, the Uniform Division rank shall be not less than the following:

Day Shift

- 1 Captain
- 1 Lieutenant
- 4 Sergeants

Afternoon Shift

- 1 Captain
- 1 Lieutenant
- 3 Sergeants

Midnight Shift

- 1 Captain
- 1 Lieutenant
- 3 Sergeants

Any rank held in excess of the minimum set forth above shall nonetheless be subject to the bumping procedures by Second Class Patrol Officers and First Class Patrol Officers as set forth in the Seniority Pick of Shift Article.

ARTICLE X

SICK LEAVE

Section 1 – Definition

Sick leave shall be that period of time between the time and date that an officer notifies the Police Department of his unfitness for duty due to illness or injury and such time as that officer reports to Department management that he is again fit for duty. The officer shall complete a written Explanation of Absence from Duty on the form provided by the Mishawaka Police Department on the day the officer returns to duty. A copy of the form is attached to this Contract.

Section 2 - Explanation of Absence from Duty Form

The Explanation of Absence From Duty Form to be filed by an officer to terminate sick leave shall include the following information: name of officer, dates of absence, hours lost, reason for absence (personal illness, emergency, injury) with explanation, was doctor contacted, name of doctor, diagnosis, statement that officer is completely recovered from illness or injury, statement concerning any other gainful employment during or after absence, date of report and signature of officer.

Section 3 – Policy

During sickness, including pregnancy, a police officer's pay shall continue for a maximum of sixty (60) working days, subject to the right of the Board of Public Works and Safety to require a physician's statement confirming the police officer's illness and his inability to perform his duties. Medical disabilities shall be determined by the police officer's pension board.

Section 4 – Notice

It shall be the responsibility of each individual officer to contact the Police Department prior to his assigned duty time notifying it of any illness or injury that renders him unfit for duty.

Section 5 - Outside Employment

No officer shall engage in employment outside the Police Department during the hours that the officer is being paid by the City or the eight (8) hours immediately following the officer's use of a sick day. This provision shall not be interpreted to in any way preclude an officer from engaging in outside employment when he is exercising his right to a random day, vacation day, or compensatory time.

Section 6 - Physical/Mental Condition

Every officer shall maintain physical and/or mental condition at all times. If an officer is

unable or unwilling to perform his assigned duties due to lack of good physical and/or mental condition, the Chief may order such officer to undergo appropriate examination and testing by doctors or other health care providers to determine the officer's fitness for duty. After hearing before the Board of Safety, the Board may put the officer on sick leave status or refer him to the Police Pension Board for medical disability review.

Section 7 - Work-Related Injury

- A. The City agrees, for the life of this Agreement, to maintain the present level of Worker's Compensation insurance with a qualified insurance carrier.
- B. When a police officer is absent from duty due to an illness or injury arising out of or in the course of his employment by the City and which is compensable under the Indiana Worker's Compensation Act, the City will make up the difference between the amount of daily benefits to which he is entitled under such Act and the amount of daily salary he would have received if he were working for a period not to exceed fifty-two (52) weeks. Following such fifty-two (52) week period, the police officer's health and ability to perform work for the Police Department shall be reviewed by the City. If the police officer is able to return to work, he shall do so; and if not, the City will refer the police officer to the Police Pension Board.

Section 8 - Physical Examinations

Each officer may undergo, at the City's expense, one (1) comprehensive physical examination every three (3) years, commencing January 1, 2002. The physical examination shall be performed by a physician or physicians chosen by the City. One-third (1/3) of the officers employed by the Police Department shall have the option to undergo the physical examination each year. No officer shall be entitled to receive additional monetary or other compensation as a result of undergoing this physical examination.

ARTICLE XI **FUNERAL LEAVE**

In case of death in the police officer's immediate family or the police officer's spouse's immediate family (meaning parent, step-parent, spouse, grandparent, grandchild, parent-in-law, brother, sister, sister-in-law, brother-in-law, child or step-child) a police officer shall receive upon request, four (4) consecutive work days off without loss of regular pay to make preparations for and attend the funeral and burial of such relative and to attend to any necessary business or legal matters of the decedent or the decedent's estate.

In the event of the death of the police officer's or the police officer's spouse's aunt, uncle,

niece, nephew or first cousin or in the event a police officer is designated to serve as a pallbearer at any funeral, then in such instances, a police officer will have the day of the funeral off without loss of regular pay.

In addition, the Police Chief or Division Chief, or if either are unable to be reached, then the officer in charge of the police officer's shift, shall have the right to grant, in appropriate cases and in their sole discretion, additional days off work for funerals.

ARTICLE XII **INSURANCE**

Section 1 - Life and Accident

The City shall contribute at least at the present level which it is contributing toward the cost of the life insurance policy in the amount of \$15,000.00 double indemnity for each police officer.

Section 2 - Medical and Hospital

The City shall offer medical and hospital care coverage to all officers throughout the life of the Agreement complying with the terms included in the Insurance Memorandum attached to this Agreement

ARTICLE XIII **UNIFORM ALLOWANCE**

The City shall, in addition to all other compensation herein granted, pay each officer a uniform allowance of Two Thousand Fifty and 00/100 Dollars (\$2050.00) annually to purchase and maintain uniforms as prescribed by the Chief. In consideration of this allowance, the police officers agree to keep their uniforms neat, clean, and in good repair and to replace all worn-out clothing as necessary.

ARTICLE XIV **DUTIES OF POLICE OFFICERS**

Police officers shall not be ordered or required to perform any unrelated duties not falling within the purview of full-time members of the police force except to raise or lower the flag, shovel snow on the front walk to the curb when not shoveled by the janitor and the janitor is not available to perform such duties, and perform such reasonable and necessary vehicle maintenance as is called for by any General Order and/or Rules and Regulations governing the Mishawaka Police Department's Assigned Vehicle Program.

ARTICLE XV
STRIKE PROHIBITION

The Lodge will not engage in, nor sanction, strike action, slow down, "blue flu", or similar action during the life of this Agreement or any extension thereof. If this Article is violated, the participants shall be immediately subject to discharge as provided in Ordinance Number 1666 of the City of Mishawaka.

ARTICLE XVI
JOINT SAFETY COMMITTEE

Section 1 – Definition

A joint safety program shall be adopted and enforced by a joint safety committee comprised of an equal number of representatives from the Lodge and the City.

Section 2 - Safety Equipment

- A. The City shall make reasonable provisions for the safety and health of the police officers during the hours of their employment. It shall endeavor to maintain its equipment in safe operating condition. The City shall furnish such protective devices and/or equipment as it deems necessary to properly safeguard the health and safety of the police officers and protect them from injury.
- B. In the event a police officer believes that his assigned vehicle is unsafe for use during his tour of duty, he shall return it to the station. If the Officer in Charge of the police officer's shift agrees with the police officer, the vehicle shall be deadlined and the condition slip made out on the vehicle. The vehicle will remain deadlined until the proper repairs are made. No police officer will be required to drive an unsafe vehicle.
- C. All Uniform Division vehicles used in the line of duty shall be equipped with a departmental shotgun (loaded) with at least five extra shells located inside the vehicle. The shotgun will be located inside the vehicle within easy access to the police officer and will be equipped with a locking device.
- D. All police department vehicles used in the line of duty shall be equipped with air conditioning, AM/FM radio and heater, and all of such items shall be maintained in working condition.
- E. Given the unique demand on the tires of the Uniform Division squad cars, it is essential for safety of operation of squad cars that the tires be in excellent condition.

Tires on the Uniform Division squad cars which have less than 25% of the tread shall be replaced immediately. No police officer shall be forced to operate a squad car unless the tires meet or exceed these minimum requirements.

ARTICLE XVII

DEPARTMENT STRENGTH

Section 1 - Department Strength

It is agreed between the parties that the police work force will be maintained at regular strength at all times. Whenever the force is reduced below the regular scheduled level, due to sickness, vacation, leave or any other reason, the Chief of Police or Division Chief of Police will then refer to the extra duty schedule for the next man in line to work.

The City will make a diligent effort to fill all vacancies in the Department within thirty (30) days after such vacancies occur.

Section 2 - Minimum Strength

A. The minimum strength the Uniform Division can operate with, will be as follows:

Day Shift 6:30 a.m. to 2:45 p.m.
Sunday-Saturday: a minimum of nine (9) officers on motorized patrol.

Afternoon Shift 2:30 p.m. to 10:45 p.m.
Sunday-Saturday: a minimum of nine (9) officers on motorized patrol.

Midnight Shift 10:30 p.m. to 6:45 a.m.
Sunday-Saturday: a minimum of nine (9) officers on motorized patrol.

However, the Uniform Division will operate with a minimum of ten (10) officers on all shifts, beginning with Day Shift on June 1, concluding at the end of the Midnight Shift that begins on September 30.

B. The City will determine the number of men to be assigned inside. The "desk" position will be staffed with at least one (1) police officer during the hours that are consistent with records hours. The City shall retain the right to place officers at the "desk" position outside of records hours if needed. Furthermore, the "desk" position may be utilized as a light duty position if necessary.

C. In the event the shift strength falls below the above described minimum strength, the Extra Duty Article VII, Section 2 (i) and Section 2 (iii) will go into effect.

- D. Probationary officers shall count as shift strength 6 (six) months after graduating from the law enforcement academy. However, any Probationary Officer who on the date of hiring has already graduated from either the Indiana Law Enforcement Academy or another certified law enforcement academy recognized by the State of Indiana shall be counted toward minimum shift strength three (3) months after said officer's date of hire, subject to being released from the FTO program. Probationary officers shall be eligible to work extra duty at the time they count toward minimum shift strength.

Section 3 - Detective Division

- A. The Detective Division shall consist of not less than nine (9) detectives and one (1) Division Chief. All vacancies will be filled within thirty (30) days.
- B. In the event the City is asked to participate in a special crimes unit or similar type operation, the parties will meet for the purpose of negotiating mutually satisfactory changes in this Agreement for the purpose of allowing the City's participation.

Section 4 - First Class Patrol Officer Positions

- A. A police officer shall be automatically promoted to the rank of First Class Patrol Officer on or before the third anniversary of his date of hire. The term "bargaining unit" shall mean all slotted positions, except the Police Chief and the Division Chiefs. All vacancies in rank shall be filled within thirty (30) days.

- B. Maintenance of First Class Patrol Officer Pay.

Once a police officer achieves the rank of First Class Patrol Officer or higher, the base pay for such officer thereafter shall never be less than that paid to other First Class Patrol Officer, regardless of the subsequent rank of such police officer. The Board of Safety reserves the right to refuse a request made by a police officer for voluntary demotion from the rank of First Class Patrol Officer.

- C. Effective January 1, 1991, and thereafter, the pay difference between the ranks of Second Class Patrol Officer and First Class Patrol Officer shall be Two Thousand (\$2,000.00) Dollars.

ARTICLE XVIII **PERSONAL SERVICE RECORDS**

- A. No person, excepting the Mayor, the members of the Board of Public Works and Safety, the Police Chief, the Division Chiefs and the Assistant City Attorney in

connection with the pending grievance or disciplinary matter involving the police officer, shall read, view, or copy a police officer's personnel file which is kept by the Police Department.

- B. A police officer shall be given a copy of all additions to his personnel service record.

ARTICLE XIX

GRIEVANCE PROCEDURES

- A. Should any police officer or group of police officers feel aggrieved concerning his or her or their wages, hours and conditions as controlled by this contract, excluding the disciplining of a police officer which is governed by the Board of Public Works and Safety and excluding matters which are within and a part of the jurisdiction of the Common Council, or concerning any matter or conditions arising out of any employee-employer relationship, including any kind of unjust discrimination and any matter or condition affecting his or their health and safety, adjustment shall be sought as follows:

1. It shall first be the responsibility of the employee or group of employees to seek relief from his or their immediate superior in charge of his or their work position. At this stage, the grievance can be submitted orally or can be submitted in writing. The grievance must be presented within thirty (30) days from the date the Union or the individual grievant become aware of the alleged incident, whichever occurs later.
2. If such grievance is not resolved to the satisfaction of the employee or group of employees, the problem shall be put into writing by the individual or group, and together with an assigned wage and grievance committee member, presented to the Officer in Charge of his or their shift.
3. If the grievance is still not resolved after a period of seven (7) days, the Wage and Grievance Committee of the Lodge shall meet with the Chief of Police to settle the grievance.
4. If the aggrieved police officer shall have found no satisfaction after seven (7) days, the written grievance shall be presented to the City's Board of Public Works and Safety for determination and settlement; if the matter is not settled by the Board of Public Works and Safety within fourteen (14) days to the satisfaction of the aggrieved police officer, the issue or

complaint may be submitted to arbitration in accordance with the terms and conditions set forth under this contract for arbitration.

5. The police officer may be represented by legal counsel only before the Board of Public Works and Safety and hearing before the arbitrator.
 6. Nothing in this Article shall prevent a police officer from processing his own grievance without the assistance of the Lodge.
- B. Should the Chief of Police feel aggrieved concerning actions initiated by the FOP Lodge #91, or a group of members of the FOP Lodge #91, which allegedly violates this contract or are in conflict with this contract, adjustment may be sought as follows:
1. It shall be the responsibility of the Chief of Police to put into writing such alleged violation and present it to the President of the FOP Lodge #91 and the head of the Wage and Grievance Committee.
 2. If the grievance is not settled at this stage within fourteen (14) days to the satisfaction of the aggrieved Chief of Police, the alleged violation shall be presented to the FOP membership by the President of the FOP Lodge #91 and the Wage and Grievance Committee.
- C. Captains shall not be part of the Lodge's Wage and Grievance committee; provided, however, that the exclusion of Captains from such committee shall not be interpreted to mean that Captains are in any way excluded from the bargaining unit set forth in this Agreement.

ARTICLE XX

CHAIN OF COMMAND

The City shall maintain and post a complete chain of command for each Division and shift within that Division. The chain of command shall include a list of all departmental ranks or positions and shall include the name of each man who holds such rank or position.

ARTICLE XXI

ARBITRATION

The establishment of this method of arbitration shall not, in any way whatsoever, be deemed to be a recognition by the City of compulsory arbitration as a superior method of settling

labor disputes but rather shall be deemed to be a recognition solely of the necessity to provide some alternative method or mode of settling labor disputes where employees must, as a matter of public policy, be denied the usual right to strike.

Therefore, in the event that the police officer and the City are unable to resolve a grievance, working conditions, contract interpretation, rules and regulations, or policies over which there is a dispute, within thirty (30) days from and including the date of their first meeting, excepting matters coming within the exclusive jurisdiction of the Board of Public Works and Safety pertaining to disciplining pursuant to Indiana statute, including methods and subjects established by the grievance procedure, any and all unresolved issues shall be submitted to arbitration as hereinafter provided, excluding matters which are within and a part of the jurisdiction of the Common Council.

- A. Within five (5) days from the expiration of the thirty (30) day period referred to above, the police officer or Lodge and the City through its Board of Public Works and Safety shall select and name an arbitrator. If on the expiration of the period allowed therefore the parties are unable to agree upon an arbitrator, the American Arbitration Association shall select an arbitrator upon request in writing from either the police officer, the Lodge, or the City.
- B. The arbitrator shall set a date for a hearing within ten (10) days after the date of his appointment and shall give at least seven (7) days notice in writing to the police officer, Lodge and City of the time and place of such hearing.
- C. The arbitrator is hereby authorized to conduct such hearing in an informal manner and without recourse to the technical common-law rules of evidence required in judicial proceedings, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administration or judicial review of all questions of fact if substantial, reliable and probative evidence supports such arbitrator's determination. The arbitrator shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every person who is a party to such proceedings shall have the right to submit the evidence in open hearing and shall have the right of cross-examination.
- D. The hearing conducted by the arbitrator shall be concluded within twenty (20) days of the time of commencement, and within ten (10) days after the conclusion of the hearing. The arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the police officer, Lodge and the City. The decision of the arbitrator shall be binding upon both the police officer, the Lodge and the City.

- E. The arbitrator's fees and necessary expenses of arbitration shall be paid by the losing party. It is agreed by the parties that such fees and expenses shall not include the attorney fees of either party.

ARTICLE XXII

DURATION

Section 1 - Effective Date

This Agreement shall be in effect from the 1st day of January, 2013 providing that it is approved by the Lodge and by Resolution of the Board of Public Works and Safety and the Common Council of the City of Mishawaka and shall remain in force and effect to and including the 31st day of December, 2014.

Section 2 - Future Negotiations

The parties agree that, commencing no later than the 31st day of August, 2014, they will undertake negotiations for a new Agreement.

Section 3 - Renegotiation and Amendment

Notwithstanding any provision herein to the contrary, it is understood and agreed by the parties hereto that any provision contained in the Agreement may be amended at any time by the mutual agreement of the parties hereto.

Section 4 - Relation to Regulations and Rules

This Agreement shall supersede any rules and regulations inconsistent herewith, provided, however, rules and regulations not inconsistent with this Agreement may be adopted and promulgated by the Board of Public Works and Safety of the City of Mishawaka pursuant to Indiana statutes.

Section 5 - State of Emergency

In the event that a state of civil emergency is declared by the Mayor (civil disorders, natural disasters, etc.), the following provisions of this Agreement - Article VI, Sections 1-4; Article VII, Section 1, Section 2 (i) and 2 (ii); Article VIII, Section 2; Article XI; Article XVII - may be suspended by the Mayor during the time of the emergency.

ARTICLE XXIII

SAVINGS CLAUSE

If any provision of this Agreement, or application thereto to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this Agreement and the application of such provisions to other persons or circumstances other than those to which it is held invalid, shall

not be affected thereby.

ARTICLE XXIV

GENERAL MATTERS

Section 1 - Police Department Rules

- A. Any changes in the Police Department Rules and Regulations will be discussed with the Lodge representatives prior to promulgation.
- B. All rules and regulations of the Police Department shall be issued in written form and shall be submitted to the Lodge at least seven (7) days before they are to take effect.

Section 2 - Job Security

The City and the Lodge agree that no permanent job presently being performed by a full-time police officer will be eliminated if it causes a reduction in the number of sworn officers.

Section 3- Light Duty

- A. There shall be at least four (4) light duty positions available. If a light duty position is available, the City shall provide light duty for any police officer requesting it during the time the police officer is temporarily disabled from performing his regularly assigned duties. An officer who is placed on light duty may be reassigned to any shift or division within the Police Department.
- B. An officer will make a written request for light duty status to the Chief of Police. At that time the officer will also turn in written documentation from the officer's physician as to the reason the officer can not perform the full duties of a police officer. The physician must be a licensed M.D. in the State of Indiana, and the statement will include:
 - A description and extent of limitations;
 - The probable length of limitations;
 - The prognosis for recovery; and
 - A recommendation as to the extent of any duty restrictions.

Light duty status will be granted for a thirty (30) day period or less. At the discretion of the Chief, an officer may be granted another thirty (30) day light duty assignment upon request, but an officer can not be on light duty for more than one hundred twenty (120) days for any single injury or illness.

Before the officer's return to regular duty, the officer must have a written statement from the Physician stating the officer may return to work. If the officer assigned to

light duty is unable to return to full duty at the end of the light duty assignment, the officer will be placed on available paid sick leave. If the officer's paid sick leave has expired the officer may be placed on any other available paid leave for which he is eligible. If the officer is not eligible for any paid leave, the officer will be placed on unpaid leave and fully advised concerning any disability pension for which he may be eligible.

Section 4 - Right to Record Meetings

The Lodge or the City shall have the right to tape record any meeting held between the City and the Lodge reference wages and grievances.

Section 5 - Keeping of Police Officer's Gun

Upon leaving the department for any reason other than a quit or a fire, the police officer shall retain his/her service weapon which had been issued to him/her by the City.

Section 6 - Lodge Representation

Any police officer questioned by any superior with respect to any matter which might involve disciplinary action shall have the right to have a representative of the Lodge present during such questioning. In the event such questioning is being recorded, the police officer shall be informed prior to any such recording and shall be furnished with a copy of the recording and given the opportunity to make a transcription of the recording.

ARTICLE XXV **INDEMNIFICATION**

Section 1 - Claims and Judgments

- A. The City shall indemnify and hold harmless any police officer from all legal claims, suits, costs and judgment arising out of the acts or omissions of the officer arising out of and in the course of the performance of the duties of such officer; provided, however, that if an employer other than the City provides indemnification for the actions of the officer, the City shall not provide indemnification. Indemnity shall not be provided in the event any police officer willfully violates any legal order of a superior officer or the rules and regulations of the Police Department.
- B. Should any criminal action be instituted against any police officer for any action arising out of and in the course of the performance of the duties of such office and should such proceeding be dismissed or result in a final disposition in favor of such person, the City shall reimburse such officer for the cost of defending such proceeding including reasonable counsel fees and expenses of the original hearing or trial or all appeals.

Section 2 - Executions on Judgments

The City shall take such actions as it deems appropriate to forestall the execution of judgment against a police officer personally and if notwithstanding such efforts by the City execution takes place, the City will indemnify and hold harmless the police officer on any judgment covered under Section 1 of this Article

Section 3 – Trials

- A. The City shall provide legal counsel of the City's choosing to any police officer against whom legal action has commenced, as set forth in Section 1 of this Article. However in no case shall the legal counsel provided by the City have been involved in the prosecution of an administrative or disciplinary action against the officer which was based upon the same set of facts underlying the legal action in question.
- B. The police officer shall have the option to retain his own attorney at his own expense to represent his interests in litigation without any effect on the responsibilities of the City under this Article.

Section 4 - Police Officer's Responsibilities

- A. As a condition precedent to the right of indemnification under this Article, any police officer desiring indemnification shall:
 - 1. Tender in writing to the City's attorney a notice of its right to appear and defend any litigation as may result in a judgment covered by this Article and grant to the City the right to make such investigation, negotiation and settlement of any claim if the City deems appropriate.
 - 2. Give written notice containing the particulars sufficient to identify the police officer involved and information as to the time, place and circumstances thereof to the City's attorney as soon as reasonably practical following a covered occurrence.
 - 3. Forward immediately any or all suit papers, demand notices, summons, complaint or other process received by such police officer or his representative to the City's attorney.
 - 4. Cooperate with the City in the conduct or settlement of any legal proceedings and additionally grant the City the right to free access and use of all hospital, medical and doctor's records and reports as to any police officer's physical or mental condition in the conduct or settlement of any legal proceedings.

ARTICLE XXVI
BILL OF RIGHTS

All police officers within the bargaining unit shall be entitled to the protection of what shall hereafter be termed the "Mishawaka Police Officers' Bill of Rights."

- A. All police officers shall have the right to Lodge representation selected from a list prepared by the Lodge or the police officer shall have the right to select an active police officer in good standing with the Lodge, during any interview or questioning involving a disciplinary matter.
- B. When for any reason a police officer is under investigation by the City for conduct which results in dismissal, criminal charges, or suspension for more than five (5) days, the following additional rules are hereby established and shall be followed:

Section 1- Interviews

- A. Advance Notice

Prior to being interviewed for any reason which could lead to disciplinary action, an officer shall be:

- 1. Informed in writing of the nature of the investigation and whether he is a witness or a suspect, if and when known; informed of other information necessary to reasonably apprise him of the nature of the allegations of the complaint, including the date, time and location of the occurrence;
- 2. If prior to or at any time during the interrogation of a police officer it is determined that he may be charged with a criminal offense or be suspected of being implicated in a criminal offense, he shall be immediately informed of his constitutional rights and the investigation shall be terminated unless the officer chooses to waive his constitutional rights of self-incrimination;
- 3. Afforded an opportunity and facilities to contact and consult privately with an attorney of his choosing and/or representative of the Lodge;
- 4. Whenever a delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not an issue, advance notice shall be given the officer not less than twenty-four (24) hours before initial interview commences or written reports are required from the officer.

B. Interview Safeguards

Any interview of an officer shall be when the officer is on duty unless the seriousness of the complaint dictates otherwise.

1. Interviews shall take place at the Mishawaka Police Station facility, or elsewhere if mutually agreed, unless the emergency of the situation necessitates otherwise.
2. The officer may have a Lodge representative and/or an attorney present to witness the interview provided the representative and/or attorney does not participate in the interview. However, the interview may not be unduly delayed awaiting an unavailable Lodge representative when other Lodge representatives are available.
3. An attorney or representative chosen by the officer must be, depending upon the seriousness of the investigation and the need for immediate action, available within a reasonable period of time and under no circumstances will any interrogation session be delayed in excess of twenty-four (24) hours because of the unavailability of the attorney or representative chosen by the officer. However, no matter how extreme an emergency exists, no interrogation shall take place until the officer shall be given a minimal of three (3) hours to obtain the services of a representative and/or attorney.
4. During the interrogation of the officer, the attorney or representative shall not make any statements or objections of any kind to the investigator nor will he in any way impede the interrogation but will restrict his remarks to conferring with the officer. The representative's failure to object to a question shall not constitute a waiver of his ability to later object to any questions asked.
5. The officer being interviewed shall be informed of the name, rank, and command of the Officer in Charge of the investigation and the interviewing officer.
6. Interviews shall be done under circumstances free of intimidation or coercion and shall not otherwise violate the officer's constitutional rights. The officer shall not be subjected to offensive or abusive language. No promise of award shall be made as an inducement to answer questions.

7. Interviews shall not be overly long. The officer shall be entitled to reasonable intermissions as he shall request for personal necessities, telephone calls, rest periods, with one ten (10) minute intermission every hour, if he requests.
8. All interviews shall be limited in scope in activities, circumstances, events, conduct or acts which pertain to the subject of investigation.
9. Interviews and investigations shall be concluded with no unreasonable delay.

C. When the investigation results in charges being filed:

1. The officer will be furnished with a copy of all documents in the Internal Investigation file which will contain all material facts of the matter under investigation;
2. The officer will be furnished with the names of all witnesses and complaints who will appear against him and/or whose statements will be used against him.

D. When disciplinary action results:

1. When the investigation results in a determination of a sustained complaint and disciplinary action, only the findings and the disciplinary order will be placed in the officer's personnel file unless the officer requests inclusion of the complete record.
2. No dismissal, demotion, or other punitive measures shall be taken against an officer unless he is notified of the action and a reason for such action prior to the effective date of such action.

Section 2 - Personal Privileges

- A. No officer shall be required for purposes of assignment or other personnel action to disclose any item of his property, income assets, source of income or personal or domestic expenditures including those of any member of his family, unless such information is obtained pursuant to proper legal process or tends to indicate a conflict of interest with respect to the performance of his official duties.
- B. No officer shall have his residence, private place of business, if any, private vehicle or locker space assigned to him by the Mishawaka Police Department

searched unless a valid search warrant is obtained or he voluntarily agrees to such search.

- C. No member of the immediate family of the officer shall be required to give a statement to the investigator and prior to requesting any member of the immediate family of the officer to give a statement, the officer shall be given notice of such intended request and the officer shall be given an opportunity to confer with that family member before that family member shall be asked to give a statement.

Section 3 - Political Activities

Except when on duty, no officer shall be prohibited from engaging in political activities.

Section 4 - Blood, Breath and Urine Tests

Blood, breath and urine tests for controlled substances are mandatory for any member of the department who is suspected of being under the influence of alcohol or any drug while on duty; provided, however, that the officer shall not be required to submit to any such tests in regard to any occurrence at a time when he, while off duty, was compelled to take immediate police action in response to an emergency situation.

Section 5 - Polygraph Examinations

The police officer under investigation shall not be required to take a polygraph examination unless his accuser or accusers agree to take such a polygraph examination, and have taken such examination prior to the police officer being asked to take such examination; provided, however, anything in this Article to the contrary notwithstanding, none of the charts, conversations, discussions, questions or results derived from such polygraph examination shall be used against such officer in any disciplinary proceeding nor used against any such officer in any civil or criminal proceeding. In the event the polygraph examiner desires to question the police officer after the polygraph test has been administered, the examiner shall first advise the officer of his rights in writing and if the officer waives in writing his rights, then any statements by such officer may be used against such officer.

Section 6 - Maintenance of Records

- A. Complaints investigated by the Department shall be handled in the following manner by classification:
1. Unfounded, exonerated and non-sustained complaints shall be destroyed upon the lapse of two years from the date of complaint with the enforcement officer who is the subject of the complaint having a right to be present during the destruction, if he so desires. Said officer shall be informed of the proposed destruction before it takes place.

2. Sustained complaints may be kept in the personnel file for a period of three (3) years at the end of which time they shall be destroyed, in the presence of the law enforcement officer who is the subject thereof, if he so desires, provided, however, the personnel file shall nevertheless contain a summary record of discipline setting forth the appropriate dates, charges, findings and penalty imposed.
- B. A police officer shall have the opportunity at a reasonable time during office hours, to review his active personnel file and any closed investigative file in which he was the accused. Although such request may be made verbally, it shall be accompanied by written request signed by the officer for a matter of record. In the event there is any comment adverse to his interests in his personnel file, the officer shall have the right to file a written response thereto, which written response shall be attached to said adverse comments; and, additionally he shall have the right to file a grievance in regard to any such matter which is of such gravity that it could effect his promotional opportunities which grievance shall then be processed in accordance with grievance procedures.
 - C. Any officer who is reprimanded in any way, either orally, in writing, by suspension, deprivation of overtime or any other benefits, or disciplinary action in any way, shall have the right of appeal as provided by law.
 - D. A written warning given to an officer shall remain in the officer's personnel file for a period of six (6) months from the date of issue. Upon the expiration of this period, the warning shall be removed from the personnel file and destroyed, in the presence of the affected officer if he so desires.
 - E. A written reprimand given to an officer shall remain in the officer's personnel file for a period of one (1) year from the date of issue. Upon the expiration of this period, the reprimand shall be removed from the personnel file and destroyed, in the presence of the affected officer if he so desires.

Section 7 – Limitations

No police officer shall be subject to internal discipline by the Mishawaka Police Department for any cause or matter occurring more than 60 (days) from the date that the City first became aware of the alleged incident. Notwithstanding this provision, and in accordance with Indiana Code §36-8-3-4(n), if an officer is subject to criminal charges as a result of an incident, the Board of Public Works and Safety may place the officer on administrative leave with or without pay. Any other disciplinary action by the City shall be stayed until the disposition of the criminal charges in the trial court. At such time the criminal charges are

resolved in the trial court, no police officer shall be subject to internal discipline by the Mishawaka Police Department unless it is within the remainder of the 60-day window as provided in this section.

ARTICLE XXVII
FAMILY LEAVE

In the event of a child born to a police officer or a police officer's spouse, a police officer shall receive eight (8) continuous hours leave time without loss of pay to attend the child's birth. Any additional leave time, for family or medical purposes, shall be granted by the Chief, or in his absence the Shift Commander, in accordance with the Family and Medical Leave Act of 1993.

ARTICLE XXVIII
RANK STRUCTURE

- A. The President of the Board of Public Works and Safety shall be the executive head of the Department of Police with the following officers of the department as listed below in order of rank:
1. Chief of Police
 2. Division Chiefs of Police
 - (a) Uniform Division Chief
 - (b) Detective Division Chief
 - (c) Services Division Chief
 3. Captains of Police
 4. Lieutenants of Police
 5. Sergeants of Police
 6. First Class Patrol Officers
 7. Second Class Patrol Officers
 8. Probationary Officers

The above ranks will be recognized throughout the department regardless of the individual's

unit or duty assignment.

Authority within this Police Department shall be delegated through the above departmental command channels and recognized in that order.

Whenever two or more officers of equal rank are present (unless specifically stated otherwise), the officer with seniority in rank shall be in command and fully responsible for police activities. Whenever equal rank is concerned, caused by the absence of a superior officer, seniority of service in rank will prevail and that officer shall be in charge unless otherwise ordered. This order of command shall be in force on all members of the Police Department. The above and foregoing shall not affect bumping rights.

ARTICLE XXIX

CANINE AND SPECIAL ASSIGNMENT OFFICERS

Section 1 - Canine Officers

- A. Police officers assigned to Canine duty may be assigned to any division within the Police Department at the sole discretion of the Chief of Police. In the event a Canine officer is assigned to the Uniform Division that officer shall count toward minimum shift strength and shall work such hours as assigned by the Police Chief.
- B. An officer assigned to Canine duty shall be required, as part of his regular duties, to spend off-duty time caring, grooming, feeding, exercising, and training the police dogs owned by the Mishawaka Police Department.
- C. The City shall grant each officer assigned to Canine duty one (1) hour of time off each workday, in order to compensate the officer for the off-duty care and training duties performed.
- D. The City shall compensate each officer assigned to Canine duty for his off-duty participation in any demonstration or similar activity by the payment of extra duty pay as defined by this Agreement or by awarding the officer compensatory time at a rate equal to the officer's rate of extra duty pay.

Section 2 - Special Assignment Officers

- A. Police officers assigned to the Special Operations (SOS) unit, Metro Homicide, Special Victims Unit, DARE unit, Community Relations, Canine unit, Services Division, as well as the Traffic Bureau officers shall be considered to be on special assignment. Such officers shall not count toward the minimum shift strength requirements established by this Agreement and shall work such hours as are

assigned by the Chief of Police.

- B. Special assignment officers shall not be used in such a manner as to avoid the assignment of extra duty to other officers. Nor shall such special assignment officers be used in such a manner as to circumvent the minimum shift strength requirements established by this Agreement

ARTICLE XXX **SCHOOLS**

- A. The City shall select and post all available openings for advanced training covering all specialties, including traffic. Officers shall be given an opportunity to attend such schooling by signing the posted list. Selections of the officers shall be made from those who have signed the list with the City choosing from the list. No officer may be scheduled for training while on vacation. Any officer failing a specialty course more than once may be disqualified from further attendance at the discretion of the City.
- B. When an officer is directed by management to attend mandatory schooling or training, the officer will receive overtime pay at one and one-half hours for each hour spent in attending such schooling or training. No officer may be scheduled for training while on vacation. This provision will not apply, however, to officers attending the basic course of instruction at the Indiana Law Enforcement Academy.

ARTICLE XXXI **COMPENSATORY TIME**

- A. When attending schooling or training on a voluntary basis, a police officer shall be given compensatory time at a rate of one and one-half (1.5) hours for each hour of schooling or training attended.
- B. Compensatory time owed by the City for voluntary schooling, training or heavy maintenance work may be taken by officers but will not take precedence over random days and may not be given if the absence of the officer will cause the shift's strength to fall below minimum strength.
- C. In the event a police officer retires, quits or is discharged with time owed on the books, past practice will be followed.
- D. Once compensatory time is authorized, the date may not be revoked or cancelled.

ARTICLE XXXII
DRUG - FREE WORKPLACE

In recognition of the importance, both in human and economic terms, of alcohol and drug abuse, the City of Mishawaka and its administration is committed to make every effort to have a drug and alcohol free workplace and workforce. The rules related to Drug Free Workplace are attached and made a part of this Contract as an Exhibit.

Signed and dated this _____ day of December, 2014.

Fraternal Order of Police Lodge 91
"Lodge"

By:

Board of Public Works and Safety
for and on behalf of the City of Mishawaka,
Indiana

By:

Pasquale Rulli, Jr., President

Gary E. West, President

Robert Ashburn, Vice President

Ronald E. Watson, Vice-President

Robert Sherburn, Wage and Grievance

Ken Prince, Member

Jeff Giannuzzi, Wage and Grievance

ATTEST:

Kari Myers, Clerk, BPWS

Glenn Hixenbaugh, Wage and Grievance

Jon Bogart, Wage and Grievance

DEC 11 2014

CITY CLERK
MISHAWAKA, IN

1st Reading 12-15-14
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2014-41

ORDINANCE NO. _____

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN
THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE SEWER
DEPARTMENT, REPRESENTED BY THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS LOCAL NO. 364**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2014; and

WHEREAS, the members of the International Brotherhood of Teamsters Local No. 364 have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 9th day of December, 2014, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with the International Brotherhood of Teamsters Local No. 364, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The Collective Bargaining Agreement executed the 9th day of December, 2014, effective January 1, 2015, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 is hereby approved.

Section 2. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this 15th day of December, 2014, at _____ o'clock _____ .M.

Matt Mammolenti
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of December, 2014, at
_____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of December, 2014, at _____ o'clock
_____.M.

David A. Wood, Mayor

RESOLUTION NO. 2014-10

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND EMPLOYEES OF THE MISHAWAKA SEWER DEPARTMENT – REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 364

WHEREAS, the City of Mishawaka and the International Brotherhood of Teamsters, Local No. 364, representing member-employees of the Mishawaka Sewer Department, have agreed to a Collective Bargaining Agreement for the period of January 1, 2015 to December 31, 2017; and

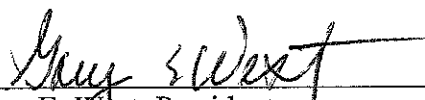
WHEREAS, such Agreement requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Mishawaka that:

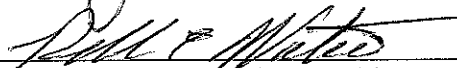
Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Teamsters, Local No. 364 is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

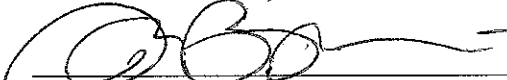
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 9th day of December, 2014.



Gary E. West, President

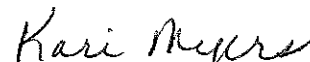


Ronald E. Watson, Vice President



Kenneth Prince, Member

ATTEST:



Kari Myers, Clerk of the Board

Approved this 9th Day of December, 2014.

BOARD OF PUBLIC WORKS AND SAFETY
for and on behalf of the
CITY OF MISHAWAKA, INDIANA

By Gary West
Gary West, President

By Ronald Watson
Ronald Watson, Vice-President

By Ken Prince
Ken Prince, Member

ATTEST: Kari Meyers
Clerk, BPWS

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 364 affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

By Robert Warnock III
Robert R. Warnock, III, President

By Jim Szucs
Jim Szucs, Business Agent

**ARTICLES OF AGREEMENT
CITY OF MISHAWAKA SEWER DEPARTMENT
AND TEAMSTERS LOCAL UNION NO. 364
1-1-2015 through 12-31-2017**

THIS AGREEMENT is between the City of Mishawaka (the Employer) and Teamsters Local No. 364 (the Union).

The Employer and the Union desire to establish and maintain sound labor relations, to facilitate the peaceful adjustment of grievances which may arise between the Employer and its employees, to promote safe and efficient operation of the department, and to strive for a high standard of workmanship in the Department.

**ARTICLE 1
RECOGNITION, UNION SHOP AND CHECK-OFF**

Section 1.

- A. No unit employee shall be required to become a member of the Union as a condition of employment or continued employment, and the parties agree that there shall be no discrimination by either the Employer or the Union against any unit employee because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of individual employee.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether the individual employees are Union members or not, owes the same duty of representation to all unit employees and agrees to provide such services to all unit employees; therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost incurred by the Union for its representation of all unit employees, but such amount shall not exceed the monthly dues assessed Union members. The Union further agrees that no portion of the union dues or service fee assessments shall be used or expended for the support of political campaigns of individual, local, state, or national political candidates for public office, nor shall any union dues be used for this purpose.
- D. The Employer shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10th) day of the following month; provided, however, the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the Employer of a written notice of revocation of such order by the employee.
- E. The Employer shall not be held liable for not collecting union dues or service fees for any month in which the employee receives (after deduction) pay less than the amount of such dues or service fees during the last pay period.
- F. In the event an employee is receiving advance pay, such employee's union dues or service fees shall be deducted from that pay.
- G. Union dues and service fees shall be authorized only during the existence of this Agreement.

ARTICLE 2
DEFINITIONS

The following definitions are a part of this Agreement:

- A) **Advance Pay** -- Any compensation earned by an employee that is paid one (1) to three (3) days before that employee's vacation leave period begins.
- B) **Bargaining Unit** -- All employees of the Mishawaka Sewer, Street, Central Motor Pool and Park Departments who are represented by the Union for collective bargaining purposes.
- C) **City** -- Shall mean the Civil City of Mishawaka.
- D) **Classification** -- Means any grouping of employees with similar job duties and with the same rate of pay.
- E) **Compensatory Time** -- Means paid time off, which is accrued for overtime hours actually worked at the rate consistent with overtime pay.
- F) **Employee** -- All persons employed full-time by the City of Mishawaka Sewer Department, except department heads, supervisors, professional people, general foremen, part-time employees, temporary employees, office manager, and clerical personnel.
- G) **Full-Time Employee** -- An employee who works at least forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- H) **Holiday Rate** — Employee's regular pay rate plus time and one-half.
- I) **Immediate Family** -- Means father, mother, sister, brother, spouse, child, grandparents, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-father, step-mother, step-children, or other person residing in the same household of the affected employee.
- J) **Extended Family** -- Means uncle and aunt.
- K) **Occurrence (attendance)** -- means a failure to punch in or out, a late arrival, an early leave, or an absence that is not paid or excused in accordance with the terms of the Collective Bargaining Agreement.
- L) **Occurrence (disciplinary)** -- means a verbal warning, written warning, suspension or discharge for a violation of the Department's policies, procedures, rules and regulations.
- M) **Overtime** -- Any hours worked beyond the eight (8) hour workday or beyond the forty (40) hour workweek.
- N) **Part-Time Employee** -- An employee that works less than forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- O) **Probationary Employee** -- A newly hired full-time employee who has worked for less than 91 calendar days. Such employee will be on probation for a period of 90 calendar days from the date of hiring unless the parties mutually agree to extend the probationary period and may be laid off or discharged during this period without recourse to this Agreement. After an employee's probationary period ends, the employee shall become a regular full-time employee and shall be subject to all the

terms and conditions of this Agreement. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.

- P) **Pyramid** -- Means compensating an employee twice for the same hours worked or compensating them at an amount equal to twice the permissible holiday or premium rates. Pyramiding does not include compensation for work performed on a holiday.
- Q) **Reckless Misconduct** -- An employee engages in reckless misconduct when he intentionally does an act, or intentionally fails to do an act in violation of his duty that creates an unreasonable risk of danger to others.
- R) **Supervisor** -- Any employee who is part of management and not a member of the bargaining unit.
- S) **Temporary Employee** -- An employee who works full-time or part-time but for less than five (5) consecutive months in a calendar year.

ARTICLE 3

RIGHTS OF MANAGEMENT

Nothing in this Agreement shall permit or authorize the Union or any of its members to officiate in management or in a supervisory capacity. It is agreed that the Employer will not use this prerogative for the purpose of discrimination against the Union.

Except where specifically restricted in this Agreement, the parties agree that the Employer shall possess all the customary prerogatives of management including, but not limited to, those enumerated below:

- A) To hire, promote, suspend, discharge or otherwise discipline employees for violation of rules it deems necessary to impose for the overall benefit of the residents of the City of Mishawaka, its employees and/or its plant operations, or for other proper and just causes.
- B) Nothing in this Article shall abrogate the employee's rights to the grievance procedure.
- C) To share resources (personnel) at all sites and locations within the bargaining unit. This provision only applies to personnel with the qualifications requisite to perform the work to be done. This provision shall not be construed, however, in such a manner as to preclude training or work required in emergencies where qualified bargaining unit employees are unavailable for required work.

ARTICLE 4

HOURS OF WORK

Section 1. Eight (8) consecutive working hours within a twenty-four (24) hour period will constitute a normal workday. Five (5) consecutive workdays, or forty (40) consecutive work hours shall constitute a normal workweek. All employee shall be paid time and one-half for all work done in excess of eight (8) consecutive hours per day or in excess of forty (40) work hours per work week. Overtime, premium and holiday rates shall not be pyramided. Double time will be paid for any Sunday worked and for all hours worked in excess of twelve (12) hours per shift.

Section 2. Unless otherwise stated by the employer, the work hours for employees shall be 7:00 a.m. to 3:00 p.m. If the employer chooses to deviate from this schedule, the employer shall provide the employees with at least five (5) working days notice of any new schedule changes prior to their implementation. If the employer

gives less than five (5) working days notice, the parties must mutually agree to the schedule change. There shall be one work break per day of one-half (1/2) hour length to be taken at the city garage or place designated by the employer. If it becomes necessary for employees to work through their scheduled break, the break may be waived with supervisory approval, and the employee's workday will end one-half hour earlier than the normal scheduled time.

Section 3.

- A) For the computation of overtime, an excused absence or an official holiday will be computed as a day worked.
- B) Employees can accrue up to twenty-four (24) hours of compensation time. Employees will be given the option of pay or comp time for hours earned up to twenty-four (24) hours. Any hours earned over twenty-four (24) will be paid out in overtime pay. Employees must make a good faith effort to use comp time in a timely fashion. Comp time may be requested at any time, and may be granted at the complete discretion of management. Employees must realize, however, that a comp time request is more likely to be granted the earlier it is requested.

Section 4.

- A) If a job cannot be completed during the regular shift and management decides that the job must be completed on that particular day, the employee who has been working on that job during his regular shift shall be entitled to the overtime prior to senior employees being asked for overtime.
- B) If an employee works on a scheduled day off, that employee will be guaranteed four (4) hours of work. If the employee completes the work for which he was scheduled in less than the guaranteed work period, then, at the employee's option, he may elect to be paid for the time actually worked, or he may perform other work assigned by management until the guaranteed work has expired.
- C) If an employee is recalled to work after their regular shift, that employee will be guaranteed two (2) hours of work. However, if that employee completes the work for which he was recalled in less time than the guaranteed two (2) hours of work and chooses to punch out instead of performing other work assigned by management, he shall only be paid for the time he actually works.

Section 5. If, under normal operating conditions, management determines that additional employees are needed for work, management shall select employees for overtime work according to Article 4, Section 4, (A) in the Sewer Contract, and then from the overtime rotation list, taking first those employees within their classifications by seniority. Management shall update the rotation list for employees each day.

After-hours overtime in the event of an emergency will be offered first to the appropriate classification and then to the next qualified employee at the top of the rotation list. If an after-hours emergency occurs that requires any other classifications then those classification will first be considered before going to the rotation list. Any employee working overtime in a classification that is at a higher rate will be paid at the higher rate for overtime worked.

Section 6. Only in the event of a blatant overtime missed assignment, where management has not corrected a reported error, will pay be awarded. All other overtime missed assignments will be corrected by the subsequent assignment of overtime work.

ARTICLE 5
TARDINESS/LEAVING EARLY

Section 1. The following disciplinary schedule shall be followed:

<u>Number of Tardiness/Leaving Early</u>	<u>Disciplinary step</u>
One (1)	Verbal Warning
Two (2)	1' Written Warning
Three (3)	2""1 Written Warning
Four (4)	1 Day off Without Pay
Five (5)	2 Days off Without Pay
Six (6)	3 Day off Without Pay
Seven (7)	Discharge

The number of occurrences accrued during the previous calendar year will be dropped to zero (0) on January 1 of the following year.

ARTICLE 6
HOLIDAYS

Section 1. Employees shall be granted ten (10) paid holidays each year in accordance with the City's holiday schedule. The City's holiday schedule will be posted by December 1st of the prior calendar year. In addition, the employees shall have two (2) random holidays each year.

Section 2. Any employee who works on any holiday shall receive their regular hourly rate plus time and one-half (1½) for the amount of hours worked; provided, however, the employees have worked the regularly scheduled day before and after the holiday unless officially excused by the Department Head or his assistants.

Section 3. Any employee called to work on a scheduled holiday shall be paid the holiday rate plus a minimum of four (4) hours' work at the double time rate.

ARTICLE 7
VACATIONS

Section 1.

A) Employees hired before January 1, 2011 with less than 25 years of service will retain their current vacation time off and thereafter earn vacation under the new schedule. Employees hired before

January 1, 2011 with more than 25 year of service will retain 30 working days of vacation.
Employees hired after January 1, 2011 will earn vacation in accordance with Section 2-598 of the Mishawaka Code of Ordinances.

B) Employees with the most department seniority shall have priority in selecting their vacation periods. Seniority will prevail for any vacation time selected for the year, as long as the vacation time was selected between January 1 and March 31. After March 31, all vacations will be granted on a first come, first awarded basis. However, all vacation periods selected by employees are subject to prior

approval by the employer. The employer may deny a vacation request if the employer believes that granting a vacation to an employee will adversely affect the efficient operations of the department.

- C) An employee shall not take more than two (2) weeks of vacation (10 working days) at one time unless otherwise permitted by the Department Head.
- D) Vacations can be taken in one-half day or one full day increments upon providing the department head twenty-four (24) hours' notice.

In computing vacation time to be allowed, years of service shall be deemed to be the calendar year in which the employee will have completed the years of service listed in the above schedule. With the exception of the employee with only one (1) year of service, that employee will receive his/her five (5) days after their anniversary date.

Section 2. When a paid holiday occurs during an employee's vacation, he shall receive an additional day of paid vacation.

Section 3. Bonus Days - A maximum of four (4) bonus days will be awarded on January 1. One (1) Bonus Day will be earned every three months if an employee has received no more than one occurrence (attendance or disciplinary) in a three month period. A newly hired employee may earn Bonus Days prorated from the date of hire to the next December 31 calculated on the basis of one Bonus Day for each full three (3) month period of employment. Such days shall be awarded the next year. An Occurrence is defined as anytime an employee is in violation of departmental rules, fails to punch in or out, leaves before completion of shift without supervisor's approval or is late.

Bonus days may be taken in one-half (½) day increments. Bonus days may be requested at any time, and are granted at the complete discretion of management. Employees must realize, however, that a bonus day request is more likely to be granted the earlier it is requested.

Section 4. No vacation time or bonus days may be carried over to the next year. The employee must make every effort to use his paid time off during the year it is available.

ARTICLE 8 **GROUP INSURANCE**

- A) The City will continue to provide health insurance to employees and their families at the same cost to the employee as other City departments.
- B) Employees under the age of sixty-five (65) shall receive Fifteen Thousand Dollars (\$15,000) life insurance.

ARTICLE 9 **RETIREMENT PROGRAM**

Section 1. PERF - The Employer agrees to continue the regular Public Employee's Retirement Fund.

Section 2. Retiree Health Insurance - The retiree health insurance plan shall be consistent with the policy established in Section 2-160 of the Mishawaka Code of Ordinances.

ARTICLE 10
STEWARDS

Section 1. The Employer recognizes the right of the Union to designate a steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement or any action in violation of law, except as authorized by official action of the Union.

Section 2. The Union shall be allowed space for a Union bulletin board on which to post notices. Only notices concerning Union business shall be posted.

Section 3. Employees who are representatives of the Union shall not leave jobs or work areas for the purpose of assisting in the settlement of grievances or attending meetings with management representatives until prior permission has been obtained from their immediate supervisors, which permission shall not be unreasonably withheld. Meetings are to be held during regular working hours unless determined otherwise by mutual agreement.

ARTICLE 11
SENIORITY

Section 1. Types of Seniority - City employees within a bargaining unit shall obtain seniority on their 91st day of continuous, full-time employment, and such seniority shall be calculated to include the prior 90 day probationary period when successfully completed.

In the event a probationary employee has been given a thirty (30) or sixty (60) day extension after their 90-day probationary period to obtain his CDL, the employee will have no bidding rights until the employee has received his CDL. If the employee is unable to obtain his CDL within the agreed extension period, the employee will have no seniority and will be terminated.

There shall be two types of seniority for Mishawaka Sewer Department employees:

A) Bargaining Unit Seniority

Bargaining unit seniority shall be computed from the employee's most recent date of hire in this bargaining unit.

B) Departmental Seniority

Departmental seniority shall be computed from the employee's most recent date of hire within the specific department in which he is presently employed.

Section 2. Computation of Seniority - Any time spent by an employee on sick leave, vacation and military leave shall be included within the computation for seniority.

Section 3. Seniority Loss - The seniority of an employee shall terminate under any of the following conditions.

A) When a laid-off employee fails to give notice of his intention to return to work within three (3) working

days after the city has sent a certified letter to his last known address requesting his return to work.

- B) When a laid-off employee gives timely notice of his intention to return to work after the City has requested his return but fails to return to work on the specified date and time of recall.
- C) When an employee resigns his employment with the City.
- D) When an employee is discharged for just cause.
- E) When an employee is laid off for more than twelve (12) months.
- F) When an employee receives total permanent disability compensation.
- G) When an employee retires.

ARTICLE 12

LAYOFF PROCEDURES

Section 1. If it becomes necessary for the employer to lay off employees working in skilled or semiskilled job classifications, the employer shall follow departmental seniority in determining which employees within each prescribed job classification to lay off. Employees with the least amount of seniority within each job classification shall be the first employees laid off. However, senior employees so laid off shall have the right to work within their department if qualified in a classification where their seniority warrants.

If a laid-off employee is not qualified in any other skilled or semi-skilled classification, he shall then be able to bid into the general labor job classification within his department and replace the junior employee in that classification. All employees doing so will retain their total departmental seniority.

Section 2. If the employer must lay off an employee working in a general labor classification, the employer shall lay off those employees with the least departmental seniority. Any laid-off employee shall be placed on a departmental call-back roster and a bargaining unit call-back roster.

Section 3. Voluntary Layoffs - In the event of a work slowdown, the employer may offer a voluntary layoff (VLO) to employees by seniority. The employees choosing to accept a VLO will be released for the day without pay. In the event no employee volunteers for layoff, the employee with the least departmental seniority will be released for the day without pay. Any employee who has punched in will punch out, and will be paid for the time worked on the clock for that day.

ARTICLE 13

CALL-BACK

Section 1. Call-back Roster - In the event that an employee is laid off, the name of that employee will be placed on a departmental call-back roster and a bargaining unit call-back roster. The roster will contain the employee's name, address and telephone number, amount of departmental seniority and bargaining unit seniority, the department from which the employee was laid off, the employee's last job classification and the employee's qualifications.

Section 2. Call-back Procedure - When a job becomes available in the Sewer Department covered by this

agreement and there are employees whose names are on the departmental call-back roster, the employee with the most departmental seniority who is qualified for the job shall be offered the job. Once the departmental seniority list is gone thru the bargaining unit seniority list will be used. If there are employees whose names are on the bargaining unit call-back roster, the employee with the most bargaining unit seniority who is qualified for the job shall be offered the job

Section 3. Employee Call-back Rights and Obligations - Employees whose names are on the callback roster may refuse to take a job in a department other than the one from which they were laid off without loss of seniority. However, any employee refusing to work in the department from which he was laid off for which he is qualified shall be terminated.

Section 4. Notice of Recall - In the event of a recall, an employee shall be given one (1) week's notice of recall by certified mail to his last known address. In the event that the recalled employee fails to make it known, within three (3) working days of the receipt of the letter, to the City Personnel Department of his intent to accept or reject the recall offer (as provided in paragraphs entitled, Callback Procedure and Employee Call-back Rights and Obligations), that employee shall lose his bargaining unit seniority and shall be terminated from employment.

Section 5. City Records - It is the responsibility of all laid off employees to furnish the Personnel office with a current mailing address and telephone number. Any laid off employee not doing so shall be terminated.

ARTICLE 14 **JOB VACANCIES**

Section 1. If there is an apparent vacancy in a job classification covered by this agreement, the employer shall post such vacancy within five working days of the occurrence of said vacancy; or post that the vacancy will not be filled at this time. All vacant and newly-created positions covered by this Agreement shall be posted for bid at the department at which the opening exists for a period of three (3) working days. If no employee from that department bids and qualifies for that job opening, then the job opening shall be posted for a period of three (3) working days at all other City bargaining unit work sites and the Personnel office. There shall be a maximum of two (2) successive bids to fill vacancies caused by the initial bid. Only one (1) later move or transfer within the bargaining unit per employee within a six (6) month period may be exercised. This provision may be waived by mutual agreement between the City and the Union.

Section 2. Bidding Priorities - Provided the employee who bids for the job opening is qualified for the job, current employees will be given priority to fill the job opening as follows:

- A) First priority will be given to employees with the greatest departmental seniority in the department in which the job exists.
- B) Second priority will be given to employees with the greatest bargaining unit seniority.
- C) Employees will be given consideration in filling posted vacant positions in the Mishawaka Utilities that are open to the public.
- D) Departmental Seniority is not transferable from department to department.

Section 3. Qualifications for Jobs - Employees shall be allowed a reasonable qualifying time with a thirty (30) day maximum to qualify for the vacancy. The Department Head will determine the qualifications of the employee and will also give specific reasons resulting in disqualification. Any dispute arising from the

Department I lead's decision is subject to the review of a Qualifications Committee composed of an equal number of representatives of the Employer and the Union. If an employee is disqualified, he shall be returned to his original job classification without loss of seniority.

Section 4. Promotion - Any unit employee who accepts a non-bargaining unit position within his department will have a thirty (30) day tryout period before being removed from the Union seniority list. After thirty (30) days of employment such employee's seniority will be frozen for the duration of his service in a non-bargaining unit job. If said employee is permitted by the Employer to return to the bargaining unit in an open job, he will carry his total bargaining unit service as of his seniority date.

ARTICLE 15 **PAYDAYS**

Pay will be distributed as prescribed by the City Controller.

ARTICLE 16 **FLEXIBLE TIME OFF/LONG-TERM DISABILITY**

Section 1. Flexible Time Off (FTO)

- A) In recognition of the need for its employees to be away from work, employer agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5) day waiting period for Long Term Disability Leave (LTD) described in Section 2. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.
- B) FTO accrual shall begin on the first day of employment for full-time employees and maybe taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (1/2) day per month and continue at the same rate for each month of credited service.
- C) FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in (G) of this section.
- D) FTO days may be taken in full or half-day increments. If becoming ill at work and leaving early, employees will be charged with one-half (1/2) FTO day if leaving after amid-shift and a full FTO day if leaving before mid-shift.
- E) Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness of for the required five (5) day LTD waiting period described in Section 2. If all FTO days or any other paid leave time is not available, any short-term illness will be an excused absence, but without pay. Likewise, any long-term illness will result in a loss of pay for the five (5) day waiting period. The city retains the right to limit the number of excused absence occurrences as described in this subsection.
- F) Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The city recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the

responsibility of the employee to inform his/her supervisor as soon as possible prior to the beginning of a workday or shift of such absence and when the employee expects to be able to return to work.

- G) Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.
- H) All FTO days shall be on the basis of the employee's regular base day's salary.
- I) Employer will buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application prior to this buy-back arrangement if so desired. In any event, employer will not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in paragraph (J) of this section.
- J) In the event a regular, full-time employee's service to the employer is terminated, including termination due to death or retirement, he/she shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

Section 2. Long-Term Disability (LTD) – The long-term disability plan shall be consistent with the policy established in Section 2-596 of the Mishawaka Code of Ordinances.

ARTICLE 17 **FUNERAL LEAVE AND LEAVE OF ABSENCE**

Section 1. An employee will be eligible for paid funeral leave for three (3) working days to make preparations for and attend the funeral and burial of a member of the employee's immediate family and to attend to any necessary legal matters of the decedent or his estate. An employee will be eligible for paid funeral leave for one (1) working day to make preparations for and attend the funeral and burial of a member of the employee's extended family and to attend to any necessary legal matters of the decedent or his estate.

Section 2. Employees may be granted leave of absence without pay and without discrimination or loss of seniority rights for justifiable reasons agreed upon by both the Department I lead and representatives of the Union. The maximum leave of absence, except in cases of compulsory military service, shall be for no more than twelve weeks. In the event such a leave is requested, the procedures outlined in the Family Medical Leave Act will be followed. Failure to comply with this provision shall result in the complete loss of rights for the employee involved. Seniority will be frozen during leaves of absence, except in cases involving military service and on-the-job injury.

ARTICLE 18 **JURY DUTY**

The Employer agrees to pay an employee who is called and serves as a juror in a legally constituted court the difference between his earnings as a juror and the straight time earnings he would have realized had he worked his scheduled shift. In order to be eligible for payment, employees must notify their supervisor within twenty-four (24) hours after receipt of notice of selection for jury duty, and must furnish a written statement from the appropriate public official showing the date and time served and the amount of pay received. An employee required to report at a specific time for examination as a prospective juror shall be compensated as provided above to the extent he is required to lose time from work for such examination. The examination notice is to be shown to the employee's supervisor as soon as practicable.

ARTICLE 19
GRIEVANCE PROCEDURE AND ARBITRATION

Section 1. Procedure to be followed:

The employer and the Union recognize that, from time to time, grievances, disputes and complaints may arise over matters within the purview of this Agreement. Therefore, whenever the Union or any employee feels that the Employer has acted erroneously or improperly in interpreting and applying any of the provisions of this Agreement, then the Union or the employee may invoke the provisions of Article 19. Except in the first step, all grievances and answers shall be in writing. The grievance shall be processed only after working hours or by mutual agreement in a manner hereinafter set forth.

First Step: The aggrieved employee shall present his grievance individually, or with the union representative, to his immediate supervisor within five (5) working days of the occurrence of the grievance. The immediate supervisor shall respond to the grievance within five (5) working days after it is presented to him.

Second Step: If the grievance is not settled in the First Step, the employee alone, or the employee and the union representative, may submit the grievance to the head of the department within five (5) working days after the answer is given in the first step. The head of the department shall give his answer within five (5) working days after receiving the grievance.

Third Step: If the grievance is not settled in the Second Step, the employee alone, or the employee and the union representative may submit the grievance to the Director of the Human Resources within five (5) working days after the answer is given to the Second Step. The Director of the Human Resources shall give his answer within five (5) working days after receiving the grievance.

Fourth Step: There shall be a Joint Grievance Committee (JGC) comprised of two (2) union representatives to be appointed on a case-by-case basis by the Union, and two (2) City representatives to be appointed on a case-by-case basis by the City. No person shall participate as a JGC member in any case in which such person was a witness, served as a representative of any party in the grievance process, or has any personal interest in the matter. The JGC shall meet to hear grievances which have not been resolved in the above steps of the Grievance Procedure. The JGC shall have the power and authority to make a final and binding decision with respect to any matter properly brought before it, but has no power to alter the agreement, except when requested by both parties, to add the provisions of the agreement.

The City shall make its presentation first to the JGC in discharge and suspension cases, and the Union shall present first in all other cases, but the JGC may alter such procedures and make rules of procedure to ensure a fair hearing to all parties. The JGC shall render its decision in writing in cases involving suspensions of five (5) days or longer and involving discharges, and either party may request a written decision or a bench decision in any other case.

A majority decision by the JGC is final and binding upon the Union, City, grievant, and all affected employees. Unwritten decisions and noticed from the JGC that they are deadlocked normally shall be rendered within twenty-four (24) hours of the close of the hearing, and written decisions normally shall be rendered within seventy-two (72) hours of the close of the hearing, but the JGC has the right to take such time as is necessary (such as for research) in order to render a full and fair decision.

Fifth Step: If the grievance cannot be settled in the Fourth Step, the employee may submit a written request to the Department of Human Resources within 5 (five) days requesting the services of an arbitrator from the State of Indiana to decide the issue. Either party may send a letter to the Federal Mediation and Conciliation Service requesting the services of an arbitrator from the State of Indiana to decide the issue. As soon as

possible, a meeting shall be held with a mutually agreed upon arbitrator. Both parties may submit evidence and call witnesses to testify as to the facts concerning the grievance and the arbitrator shall make the decision on the evidence presented. The arbitrator shall have no authority to add to, detract from, or in any way modify the terms of this Agreement. Both parties agree to abide by the arbitrator's decision. The City and the Union shall share equally any fees charged by the State for arbitration service.

Section 2. The following provisions shall apply to the grievance procedure:

- A) Saturdays, Sundays and holidays shall not be used in determining days in reference to the grievance procedure.
- B) Failure of the Employer to give an answer to the grievance as of the last day to answer shall be considered a denial of the grievance and the employee shall have the right to then proceed to the next step of the grievance procedure.
- C) The Employer shall give the Union representative sufficient copies of the written answer in each step of the grievance procedure to distribute to each employee present at the grievance meeting.
- D) Unless consolidated by agreement of the Employer and the Union, each grievance shall be considered a separate case.
- E) If the Union does not appeal within five (5) days of each step, the grievance is considered to be void.
- F) The time for filing a grievance involving the rate of pay shall begin on the day the employee receives his paycheck containing the grieved pay rate, unless it is previously filed.

Section 3. Inasmuch as a grievance procedure has been agreed upon, there shall be no strikes, stoppages of work, slowdowns, sit downs, sympathy strikes or other forms of interference with normal work routines during the life of this agreement or extension thereof. Both parties recognizing the fact that service to the public is a mutual desire, they will cooperate in all matters relating to labor management.

Section 4. The Employer agrees that it will not cause or direct any lockout of the employees.

ARTICLE 20 **VALIDITY**

This Agreement shall be subject to all Federal, State and local laws, and in the event any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect.

It is further agreed that in the event any such provisions are finally held to be invalid, the parties hereto agree to meet within thirty (30) days thereof to negotiate the modifications of substitution of such clause or clauses so held to be invalid.

ARTICLE 21 **SUBCONTRACTING**

It is the intention of the Employer not to deprive the employees of work covered by this Agreement either by subcontracting or by hiring an outside agency. However, the parties hereto understand and agree that occasions will arise whether of an emergency nature or otherwise when it will be necessary for the Employer

to authorize outside manpower and/or equipment to properly perform its function.

ARTICLE 22
DISCHARGE OR SUSPENSION

A) (1) The Employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension the employer shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the Union and Steward affected; provided, however, the employee has not committed one of the following acts or omissions performed while on duty:

- (a) Dishonesty
- (b) Recklessness Misconduct
- (c) Carrying of unauthorized passengers
- (d) Fighting
- (e) Failure to perform first echelon maintenance

If the employee has committed any of the above mentioned acts or omissions, the employer does not need to provide the employee with said notice.

(2) The warning notice herein provided shall not remain in effect for a period of more than 6 months from date of said warning notice.

B) (1) Discharge must be by proper written notice to the employee and the Union. Any employee may have recourse to the grievance procedure upon his discharge or suspension. Should such procedure prove that an employee was discharged without cause, he shall be reinstated and compensated at his usual rate of pay while he has been out of work because of such discharge or suspension.

(2) The parties shall mutually agree to additional rules regarding just cause for discharge and disciplinary action.

C) No employee will be required to speed up work in violation of Minimum Safety Standards.

D) Uniform rules and regulations with respect to disciplinary action may be drafted and posted for seven (7) working days. Such approved uniform rules and regulations shall prevail in the application and interpretation of this Article.

ARTICLE 23
GENERAL PROVISIONS

Section 1. Uniforms –

A) The City shall provide a sufficient amount of rainwear and boots to employees for use during inclement weather. The City shall also furnish uniforms and gloves to be worn by the employees during all working hours. A total of eleven (11) uniforms will be furnished per year.

B) The City will provide an annual boot allowance of \$125.00 to be reimbursed to the employee upon redemption of the sales receipt and presentation of approved footwear to management.

C) The City will provide seasonal apparel (winter jacket, light weight jacket, hooded sweatshirt).

- D) The City will allow for the exchange and replacement or repair of apparel damaged in the line of duty with the approval of the Department Manager.
- E) Employees shall be held responsible for any damage they cause to their uniform as well as any uniforms they lose. However, no employee shall be required to pay for uniform damage caused by normal wear and tear, nor shall they be held responsible for damaged or missing uniforms the condition of which was created by forces outside of their control.

Section 2. Revoked or Suspended License - In the event an employee has his Commercial Driver's License revoked or suspended due to negligence, driving under the influence of alcohol or narcotics, or driving while intoxicated, he shall be placed in the lowest job classification and pay rate within that department for no more than one hundred twenty (120) days or until the Commercial Driver's License has been reinstated, whichever occurs first. Upon reinstatement of his Commercial Driver's License, the employee will be returned to his former job classification and pay rate. If the license is not reinstated within this time period, the employee shall be terminated.

Section 3. Training -

- A) A wastewater collection system operator certification program shall be established for the purpose of developing better-informed and qualified employees. Job related training must be available during non-working hours and approved by the Department Manager. Tuition, books and required materials shall be paid for by the department if the employee completes and passes the course of study; however, there shall be no wages nor compensation paid for the attendance at such course, whether passed or not. Upon satisfactory completion of each class level of the course, a certification bonus shall be added to the qualifying employee's base wage.
- B) Employees in a job classification which has more than one (1) grade level shall not be advanced to the next grade level until they have been evaluated. Such employees shall be evaluated at least as often as every 1,040 hours of work completed.

Section 4. Physicals - Employees holding a CDL will have the option of having their required physical examination arranged and paid for by the Employer at a facility of the Employer's choice and billed directly to the Employer, or arranging the physical examination at a facility or physician of the Employee's choice and at his own expense.

Section 5. CDL - For new employees and for current employees bidding into a job requiring a CDL, the city will pay for the required drug screen and may allow the employee to use a City vehicle to take the driver's test. In the event that the City decides not to allow the employee to use a City vehicle, the City shall reimburse a maximum of \$50 to the employee for the rental of a BMV vehicle for the test. This reimbursement may only be requested once during the tenure of the employee. If an employee moves into a new job that does not require a CDL, but wishes to maintain his CDL, the employer shall not be responsible for paying any associated costs.

Section 6. Cross-Training - The employer will provide cross-training for employees either during regular working hours or outside of regular working hours as the workload permits. Pay will not be upgraded in cross-training situations.

ARTICLE 24
WORKER'S COMPENSATION

Section 1. In the event an employee is absent due to an injury sustained on the premises which is determined to be compensable under Worker's Compensation laws, the employee will receive:

- A) Employees must bridge the first five (5) workdays with any leave time available to them at the time.
- B) The difference between the daily rate paid through Worker's Compensation and the employee's daily salary less the seven (7) days of absence. In the event the employee is absent twenty-two (22) or more days, the city's subsidy to the employee's Worker's Compensation pay will terminate until an amount equal to the Worker's Compensation check for the first seven (7) Worker's Compensation days of absence has been paid to the City. Upon receipt of such reimbursement the City's subsidy will be in accordance with Article 16 Flexible Time Off/Long Term Disability.
- C) The employer's physician must validate their employee's absence during any of the first seven (7) days. In the event that Worker's Compensation is to be used it shall be the responsibility of their employee to follow all of the established procedures for applying for Worker's Compensation.

Section 2. If an employee is absent due to a work-related injury or illness for more than twenty-one (21) days and uses paid time off for first five (5) working days, the City shall reinstate the employee's paid time off used for the first five (5) workdays.

Section 3. In the event of an occupational injury, the employee will follow the treatment procedures as provided through the City's Occupational Health system. If an employee's occupational injury is determined as temporary partial disability (TPD), the employee, in consultation with the attending physician, may be released for modified duty performing tasks that would not likely aggravate or lead to further injury. Light duty opportunities may include but are not limited to, desk and clerical work, janitorial, grounds keeping and other non-bargaining unit jobs assigned by the Supervisor.

Section 4. If an employee sustains an on-the-job injury, the employee shall obtain a written medical release from the employee's treating health care provider before such employee can return to work.

ARTICLE 25
DRUG-FREE WORKPLACE

The Union and the employees agree that they shall comply with all reasonable drug and alcohol policies which may be established by the City for all City employees covered by and set forth in its Personnel Policies and Procedures.

ARTICLE 26
LONGEVITY BONUS PLAN

The following Longevity Bonus Plan will be provided to the Sewer Department employees according to the following terms. Said schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first pay day following each individual employee's anniversary date as part of his regular paycheck.

Payments shall be made according to the following schedule:

<u>Years of Service</u>	<u>Annual Increment</u>	<u>Bonus</u>
1	\$10.00	\$10.00
2	\$20.00	\$30.00
3	\$30.00	\$60.00
4	\$40.00	\$100.00
5	\$50.00	\$150.00
6	\$75.00	\$225.00
7	\$75.00	\$300.00
8	\$75.00	\$375.00
9	\$75.00	\$450.00
10	\$75.00	\$525.00

An additional \$75.00 will be added for each year of service after the tenth year.

ARTICLE 27
TEMPORARY JOB TRANSFERS

Temporary job transfers to another bargaining unit department shall be assigned from a group of employees which the employer determines is available and qualified. The group of employees will then have input into who is transferred. If the group of employees cannot resolve who will be transferred, the transfer will be at the Employer's sole discretion.

- A) When an employee is temporarily transferred to a job in a higher-paying classification, he shall be upgraded to the pay rate of that classification for time spent on that job.
- B) An employee temporarily assigned a job with a lower rate shall not be downgraded in pay.
- C) Should overtime be needed, the employer shall at all times offer the overtime to employees who work within the department requiring the overtime according to their specific overtime procedure. In the event that nobody accepts the overtime from within the department, the employer shall have the right to utilize employees outside of that department subject to all of the conditions contained in this Article.
- D) Should overtime be necessary for a temporarily transferred employee, the employee who has performed the work during regular hours will continue to work the overtime assignment if additional man power is needed after exhausting the overtime list/procedure in the affected department.

ARTICLE 28
JOB CLASSIFICATIONS

- (1) Advanced Operator – this classification includes:
 - (a) Vactor Combination Truck Operator
 - (b) Aquatech Combination Truck Operator
 - (c) Camera Truck Operator
- (2) GIS Coordinator
- (3) Repairman
- (4) Utility Operator
- (5) General Laborer I
- (6) General Laborer II

ARTICLE 29
TENURE OF AGREEMENT

Section 1. This Agreement shall be in full force and effect from January 1, 2015 to and including December 31, 2017.

Section 2. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2015 for the purpose of negotiating wages.

Section 3. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2017 for the purpose of negotiating a new labor agreement, including wages and benefits.

Approved this _____ Day of December, 2014.

BOARD OF PUBLIC WORKS AND SAFETY
for and on behalf of the
CITY OF MISHAWAKA, INDIANA

By _____
Gary West, President

By _____
Ronald Watson, Vice-President

By _____
Ken Prince, Member

ATTEST: _____
Kari Myers, Clerk, BPWS

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 364 affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

By _____
Robert R. Warnock, III, President

By _____
Jim Szucs, Business Agent

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2015 WAGES

<u>Classification</u>	<u>Wages</u>
Advanced Operator	\$21.56
GIS	20.86
Repairman	20.64
Utility Operator	20.19
General Laborer II	18.69
General Laborer I	14.50 (hire rate to 6 months)
	16.00 (6 months to 12 months)
	18.50 (12 months to 18 months)

1st Reading 12-15-14
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 11 2014

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2014-42

ORDINANCE NO. _____

**AN ORDINANCE APPROVING AN AMENDED AGREEMENT BETWEEN
THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE CENTRAL
SERVICES DEPARTMENT, REPRESENTED BY THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS LOCAL NO. 364**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2016; and

WHEREAS, the members of the International Brotherhood of Teamsters Local No. 364 have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the Agreement on their behalf; and

WHEREAS, on the 9th day of December, 2014, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the amended Collective Bargaining Agreement with the International Brotherhood of Teamsters Local No. 364, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The amended Collective Bargaining Agreement executed the 9th day of December, 2014, effective January 1, 2015, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 is hereby approved.

Section 2. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this 15th day of December, 2014, at _____ o'clock _____.M.

Matt Mammolenti
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of December, 2014, at
_____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of December, 2014, at _____ o'clock
_____.M.

David A. Wood, Mayor

RESOLUTION NO. 2014-11

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND EMPLOYEES OF THE MISHAWAKA CENTRAL SERVICES DEPARTMENT – REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 364

WHEREAS, the City of Mishawaka and the International Brotherhood of Teamsters, Local No. 364, representing member-employees of the Mishawaka Central Services Department, have agreed to amendments to the Collective Bargaining Agreement for the period of January 1, 2013 to December 31, 2016; and

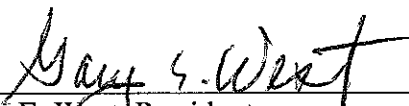
WHEREAS, such Agreement requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Mishawaka that:

Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Teamsters, Local No. 364 is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

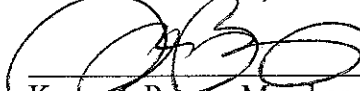
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 9th day of December, 2014.



Gary E. West, President

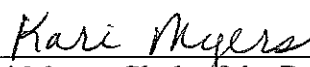


Ronald E. Watson, Vice President



Kenneth Prince, Member

ATTEST:



Kari Myers, Clerk of the Board

ARTICLE 29
TENURE OF AGREEMENT

Section 1. This Agreement shall be in full force and effect from January 1, 2013, to and including December 31, 2016.

Section 2. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2015 for the purpose of negotiating wages.

The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2016 for the purpose of negotiating a new labor agreement, including wages and benefits.

**LOCAL UNION NO. 364 affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

By Robert Warnock III
Robert R. Warnock, III, President

Date: 12-4-2014

CITY OF MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

By Gary E. West
Gary E. West, President

Date:

By Ronald E. Watson
Ronald E. Watson, Vice-President

Date: 12-8-14

By Ken Prince
Ken Prince, Member

Date: 12-9-14

ATTEST: Kari Myers
Kari Myers, Clerk, BPWS

**ARTICLES OF AGREEMENT
THE CITY OF MISHAWAKA CENTRAL SERVICES DEPARTMENT
AND TEAMSTERS LOCAL UNION NO. 364
1-1-13 through 12-31-16**

THIS AGREEMENT is between the CITY OF MISHAWAKA (the Employer) Teamsters Local No. 364 (the Union).

The Employer and the Union desire to establish and maintain sound labor relations, to facilitate the peaceful adjustment of grievances which may arise between the Employer and its employees, to promote safe and efficient operation of the department, and to strive for a high standard of workmanship in the Department.

**ARTICLE 1
RECOGNITION, UNION SHOP AND CHECK-OFF**

Section 1.

- A. No unit employee shall be required to become a member of the Union as a condition of employment or continued employment, and the parties agree that there shall be no discrimination by either the Employer or the Union against any unit employee because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of individual employee.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether the individual employees are Union members or not, owes the same duty of representation to all unit employees and agrees to provide such services to all unit employees; therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost incurred by the Union for its representation of all unit employees, but such amount shall not exceed the monthly dues assessed Union members. The Union further agrees that no portion of the employee union dues or service fee assessments shall be used or expended for the support of political campaigns of individual, local, state, or national political candidates for public office, nor shall any union dues be used for this purpose.
- D. The Employer shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10th) day of the following month; provided, however, the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the Employer of a written notice of revocation of such order by the employee.
- E. The Employer shall not be held liable for not collecting union dues or service fees for any month in which the employee receives (after deduction) pay less than the amount of such dues or service fees.
- F. In the event an employee is receiving advance pay, such employee's union dues or service fees shall be deducted from that pay.

- G. Union dues and service fees shall be authorized only during the existence of this Agreement.

ARTICLE 2

DEFINITIONS

The following definitions are a part of this Agreement:

- A) **Advance Pay** -- Any compensation earned by an employee that is paid one (1) to three (3) days before that employee's vacation leave period begins.
- B) **Bargaining Unit** -- All employees of the Mishawaka Central Services and Sewer Departments who are represented by the Union for collective bargaining purposes.
- C) **City** -- Shall mean the Civil City of Mishawaka.
- D) **Classification** -- Means any grouping of employees with similar job duties and with the same rate of pay.
- E) **Compensatory Time** -- Means paid time off, which is accrued for overtime hours actually worked at the rate consistent with overtime pay.
- F) **Employee** -- All persons employed full-time by the City of Mishawaka Central Services Department, except department heads, supervisors, professional people, general foremen, part-time employees, temporary employees, office manager, and clerical personnel.
- G) **Full-time Employee** -- An employee who works at least forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- H) **Immediate Family** -- Means father, mother, sister, brother, spouse, child, grandparents, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-father, step-mother, step-children, or other person residing in the same household of the affected employee.
- I) **Project Coordinator** -- a bargaining unit employee who will help plan and arrange the work flow of a specific project assigned to them. Acceptance of the Project Coordinator assignment is voluntary.
- J) **Holiday Rate** -- Employee's regular pay plus double time.
- K) **Overtime** -- Any hours worked beyond the eight (8) hour workday or beyond the forty (40) hour workweek.
- L) **Part-time Employee** -- An employee that works less than forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- M) **Probationary Employee** -- A newly hired full-time employee who has worked for less than 91 calendar days. Such employee will be on probation for a period of 90 calendar days from the date of hiring unless the parties mutually agree to extend the probationary period and may be laid off or discharged during this period without recourse to this Agreement. After an employee's probationary period ends, the employee shall become a regular full-time employee and shall be subject to all the terms and conditions of this Agreement. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.
- N) **Pyramid** -- Means compensating an employee twice for the same hours worked or compensating them at an amount equal to twice the permissible holiday or premium rates.

Pyramiding does not include compensation for work performed on a holiday.

- O) **Reckless Misconduct** -- An employee engages in reckless misconduct when he intentionally does an act, or intentionally fails to do an act in violation of his duty that creates an unreasonable risk of danger to others.
- P) **Shift Differential** -- A certain hourly pay rate increase for employees who work the second or third shift.
- Q) **Supervisor** -- Any employee who is part of management and not a member of the bargaining unit.
- R) **Temporary Employee** -- An employee who works full-time or part-time but for less than five (5) consecutive months in a calendar year.
- S) **Minor Violations** -- those violations which are disciplinable with verbal or written warnings.
- T) **Major Violations** -- those violations which are disciplinable with time off.
- U) **Occurrence (attendance)** -- means a failure to punch in or out, a late arrival, an early leave, or an absence that is not paid or excused in accordance with the terms of the Collective Bargaining Agreement.
- V) **Occurrence (disciplinary)** -- means a verbal warning, written warning, suspension or discharge for a violation of the Department's policies, procedures, rules and regulations.

ARTICLE 3

RIGHTS OF MANAGEMENT

1. Nothing in this Agreement shall permit or authorize the Union or any of its members to officiate in management or in a supervisory capacity. It is agreed that the Employer will not use this prerogative for the purpose of discrimination against the Union.
2. Except where specifically restricted in this Agreement, the parties agree that the Employer shall possess all the customary prerogatives of management including, but not limited to, those enumerated below:
 - A) To hire, promote, suspend, discharge or otherwise discipline employees for violation of rules it deems necessary to impose for the overall benefit of the residents of the City of Mishawaka, its employees and/or its plant operations, or for other proper and just causes.
 - B) Nothing in this Article shall abrogate the employee's rights to the grievance procedure.
3. It is not the intent of Management to perform work that is normally performed by the bargaining unit employees except:
 - in emergency situations
 - at the golf course
 - at the pools
 - at the ice rink
 - when Management cannot find adequate coverage for work

ARTICLE 4

HOURS OF WORK

Section 1. Eight (8) consecutive working hours within a twenty-four (24) hour period will constitute a normal workday. Five (5) consecutive workdays, or forty (40) work hours shall constitute a normal workweek. An employee shall be paid time and one-half (1½) for all work done in excess of eight (8) consecutive hours per day and in excess of forty (40) work hours per workweek. Overtime, premium and holiday rates shall not be pyramided. The employer shall pay double time to an employee for working on his seventh day if that day normally would have been the employee's second consecutive day off within a particular shift schedule and for all hours worked in excess of twelve (12) hours per shift.

Employees working a four-day, ten-hour schedule will have the following conditions:

- A) All paid time off will be tracked in hours, not days. (Example: An employee who works a five-day, eight-hour schedule will be charged eight hours for a day off. An employee who works a four-day, ten-hour schedule will be charged ten (10) hours for a day off.)
- B) Overtime will be paid after ten (10) hours of work.
- C) Overtime after twelve (12) hours in a working day will be paid at double time.
- D) The Employer shall pay double time to an employee after working on his seventh day if that day would have been the employee's third consecutive day off within a workweek.
- E) The conditions outlined in Section 4 will apply.
- F) Holidays will be paid according to the schedule the employee is working at the time of the holiday.
- G) An FTO half-day increment will be five (5) hours.
- H) Shift differential pay will be provided to employees working the qualifying hours under the four-day, ten-hour schedule.

Section 2. Unless stated otherwise by the employer, the work hours for the employees shall be 7:00 a.m. to 3:00 p.m. If the employer chooses to deviate from this schedule, the employer shall provide the employees with at least ten (10) calendar days' notice of any new schedule changes prior to their implementation. If the employer gives less than ten (10) calendar days' notice, the parties must mutually agree to the schedule change. The employees shall be entitled to one work break per day of one-half (1/2) hour which shall be taken at the city garage (if worksite is within one mile of the garage) or place designated by the employer with a given notice.

Section 3. A) For the computation of overtime, an excused absence or an official holiday will be computed as a day worked.

B) Employees can accrue up to twenty-four (24) hours of compensatory time. Employees will be given the option of pay or comp time for hours earned up to twenty-four (24) hours. Any hours earned over twenty-four (24) will be paid out in overtime pay. Employees must make a good faith effort to use comp time in a timely fashion. Comp time may be requested at any time, and may be granted at the complete discretion of management. Employees must realize, however, that a comp time request is more likely to be granted the earlier it is requested.

Section 4. A) If a job cannot be completed during the regular shift and management decides that the job must be completed on that particular day, the employee who has been working on that job during his regular shift shall be entitled to the overtime prior to senior employees being asked for overtime.

B) If an employee works on a scheduled day off, that employee will be guaranteed four (4) hours of work the employee completes the work for which he was scheduled in less than the guaranteed work period, then, at the employee's option, he may elect to be paid for the time actually worked, or he may perform other work assigned by management until the guaranteed work has expired.

C) If an employee is recalled to work after their regular shift, that employee will be guaranteed four (4) hours of work; however, if that employee completes the work for which he was recalled in less time than the guaranteed four (4) hours of work and chooses to punch out instead of performing other work assigned by management, he shall only be paid for the time he actually works.

D) If an employee is held over to complete certain work, that employee shall be paid the standard overtime rate for the actual hours worked.

E) Employees will receive a sixty cent (\$.60) per hour shift differential for all work performed on regularly assigned shift which commences between the hours of 3:00 p.m. and 11:00 p.m. and fifty-five cents (\$.55) per hour shift differential for all work performed on regularly assigned shift which commences between the hours of 11:00 p.m. and 7:00 a.m.

F) **Fleet Maintenance Technicians Shift Differential** - If regularly scheduled hours in a pay period include a minimum of two different shifts, the shift differential pay will be applied to all hours.

Section 5. If, under normal operating conditions, management determines that additional employees are needed for work, management shall select employees for overtime work from the voluntary overtime list taking first those employees with the least amount of total accumulated overtime hours. Employees shall be responsible for signing the voluntary overtime list. Management shall update the total accumulated overtime hours of each listed employee by Thursday of each week. Separate overtime lists will be maintained for Central Services and Fleet Maintenance Technicians.

A) If the number of employees needed for overtime work exceeds the number of employees on the overtime list, management shall have the right to call any employees it needs for work; provided, however, it has posted 24 hours' notice before the need arises. Management shall also have the right to cancel operations due to inclement weather conditions; provided, however, it has posted 12 hours' notice prior to the cancellation.

B) If emergency conditions exist, as declared by the Mayor or the Central Services Director, or his designee in his absence, management shall not be required to post any notice.

Section 6. During the winter shift schedule, the employer will attempt to accommodate, as much as possible, the employees' shift preferences; however, departmental seniority shall prevail when needed to provide efficient department operation. Also, during the winter shift schedule, seniority shall prevail in determining shift preferences for Fleet Maintenance Technicians.

Section 7. Missed Overtime - Only in the event of a blatant overtime missed assignment, where management has not corrected a reported error, will pay be rewarded. All other overtime missed assignments will be corrected by the subsequent assignment of overtime work.

ARTICLE 5
TARDINESS/LEAVING EARLY

Section 1. The following disciplinary schedule shall be followed:

<u>Number of Tardiness/Leaving Early</u>		<u>Disciplinary Step</u>
One	(1)	Verbal Warning
Two	(2)	1 st Written Warning
Three	(3)	2 nd Written Warning
Four	(4)	1 Day off Without Pay
Five	(5)	2 Days off Without Pay
Six	(6)	3 Days off Without Pay
Seven	(7)	Discharge

Section 2. The number of occurrences accrued during the previous calendar year will be dropped to zero (0) on January 1st of the following year.

ARTICLE 6
HOLIDAYS

Section 1. Employees shall be granted ten (10) paid holidays each year in accordance with the City's holiday schedule. The City's holiday schedule will be posted by December 1st of the previous calendar year.

In addition, the employees shall have two (2) random holidays each year.

Section 2. Employee Pay On Regularly Scheduled Workday - If employees are scheduled to work on a holiday, they shall be paid their regular hourly rate plus time and one-half for the hours actually worked; provided, however, they have worked the regularly scheduled day before and after the holiday unless officially excused by the Department Head or his assistants. The hours worked on a holiday, which is an employee's regularly scheduled workday, shall not be charged toward the total accumulated overtime hours worked.

Section 3. Call-in - Any employees called to work on a scheduled holiday shall be paid the holiday rate plus a minimum of four (4) hours work at the double time rate. However, if that employee completes the work for which he was recalled in less time than the guaranteed four (4) hours of work and chooses to punch out instead of performing other work assigned by management, he shall only be paid for the time he actually works.

ARTICLE 7
VACATIONS

Section 1. A) Employees hired before January 1, 2011 with less than 25 years of service will retain their current vacation time off and thereafter earn vacation under the new schedule. Employees hired before January 1, 2011 with more than 25 year of service will retain 30 working days of vacation. Employees hired after January 1, 2011 will earn vacation in accordance with Section 2-598 of the Mishawaka Code of Ordinances. Vacation eligibility for City employees hiring into the Central Services Department/Fleet Maintenance Technicians work group from outside of the bargaining unit will be in accordance with the "me-too" agreement between the parties.

B) Employees with the most department seniority shall have priority in the selection of their vacation periods. Seniority will prevail for any vacation time selected for the year, as long as the vacation selection was made prior to March 1st. After March 1st, any vacation requests shall be granted on a first come, first granted basis. All vacation periods selected by employees are subject to prior approval by the employer.

It shall be the employee's responsibility to make a good faith effort to request all vacation leave available to them in the year it is accrued. Management shall make an effort to allow employees to take their vacation within the year it is accrued, but retains the right to deny vacation requests in the interest of efficiency.

If, at the end of a calendar year, an employee has not been able to use all of his vacation days as a result of a repeated denial by management, the employee shall have the right, by way of grievance, to request that the unused vacation days be paid out as regular paid time.

C) An employee shall not take more than two (2) weeks of vacation (10 working days) at one time unless otherwise permitted by the Department Head.

D) Vacations may be taken in one-half day or full-day increments. Granting an employee's vacation time is subject to Management's approval.

E) Employees must give twenty-four (24) hours' notice during the winter shift schedule and twenty-four hours' notice during any other time.

Section 2. When a paid holiday occurs during an employee's vacation, he shall receive an additional day of paid vacation.

Section 3. Bonus Days - A maximum of four (4) bonus days will be awarded on January 1. One (1) bonus day will be earned every three (3) months if an employee has received no more than one occurrence (attendance or disciplinary) in a three-month period. A newly hired employee may earn Bonus Days prorated from the date of hire to the next December 31st calculated on the basis of one Bonus Day for each full three (3) month period of employment. Such days shall be awarded the next year. An occurrence is defined as anytime an employee is in violation of departmental rules, fails to punch in or out, leaves before completion of shift without supervisor's approval or is late.

Bonus Days may be taken in one-half (½) day increments. Bonus days may be requested at any time and are granted at the complete discretion of management. Employees must realize, however, that a bonus day request is more likely to be granted the earlier it is requested.

ARTICLE 8 **GROUP INSURANCE**

(A) The City will continue to provide health insurance to employees and their families at the same cost to the employee as other City departments.

(B) Employees under the age of sixty-five (65) shall receive Fifteen Thousand Dollars (\$ 15,000) life insurance.

ARTICLE 9
RETIREMENT PROGRAM

Section 1. PERF - The employer agrees to continue the regular Public Employee's Retirement Fund.

Section 2. Retiree Health Insurance - The retiree health insurance plan shall be consistent with the policy established in Section 2-610 of the Mishawaka Code of Ordinances.

ARTICLE 10
STEWARDS

Section 1. The Employer recognizes the right of the Union to designate a steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement or any action in violation of law, except as authorized by official action of the Union.

Section 2. The Union shall be allowed space for a Union bulletin board on which to post notices. Only notices concerning Union business shall be posted.

Section 3. Employees who are representatives of the Union shall not leave jobs or work areas for the purpose of assisting in the settlement of grievances or attending meetings with management representatives until prior permission has been obtained from their immediate supervisors, which permission shall not be unreasonably withheld. Meetings shall be held after regular working hours unless determined otherwise by mutual agreement. Grievances, however, shall be processed during working hours.

ARTICLE 11
SENIORITY

Section 1. Types of Seniority - City employees within the bargaining unit shall obtain seniority on their 91st day of continuous, full-time employment, and such seniority shall be calculated to include the prior 90-day probationary period when successfully completed. There shall be two types of seniority for the Mishawaka Central Services Department and Fleet Maintenance Technicians work group.

A) Bargaining Unit Seniority

Bargaining unit seniority shall be computed from the employee's most recent date of hire in the bargaining unit.

B) Departmental Seniority

Departmental seniority shall be computed from the employee's previous date of hire in the Parks and Recreation, Street, or Central Motor Pool Departments.

For newly-hired employees, seniority shall begin with their date of hire into the Central Services Department or Fleet Maintenance Technicians work group.

In the event two or more employees are hired into the Central Services Department or Fleet Maintenance Technicians work group on the same day, seniority status shall be determined alphabetically by the first letter of the employee's last name at the time of hire.

Section 2. Computation of Seniority - Any time spent by an employee on sick leave, vacation and military leave shall be included within the computation for seniority.

Section 3. Seniority Loss - The seniority of an employee shall terminate under any of the following conditions.

- A) When a laid-off employee fails to give notice of his intention to return to work within three (3) working days after the city has sent a certified letter to his last known address requesting his return to work.
- B) When a laid-off employee gives timely notice of his intention to return to work after the City has requested his return but fails to return to work on the specified date and time of recall.
- C) When an employee resigns his employment with the City.
- D) When an employee is discharged for just cause.
- E) When an employee is laid off for more than twelve (12) months.
- F) When an employee receives total permanent disability compensation.
- G) When an employee retires.

ARTICLE 12 **LAYOFF PROCEDURES**

Section 1. If it becomes necessary for the employer to lay-off employees, the employer shall follow departmental seniority in determining which employees to lay-off. Employees with the least amount of departmental seniority shall be the first employees laid off.

Section 2. Any laid off employee shall be placed on a Central Services Department/Fleet Maintenance Technicians work group call-back roster and a bargaining unit call-back roster.

ARTICLE 13 **CALL-BACK**

Section 1. Call-back Roster - In the event that an employee is laid off, the name of that employee will be placed on a Central Services Department/Fleet Maintenance Technicians work group call-back roster and a bargaining unit call-back roster.

Section 2. Call-back Procedure - When a job becomes available in the Central Services Department/Fleet Maintenance Technicians work group covered by this agreement and there are employees whose names are on the appropriate departmental call-back roster, the employee with the most departmental seniority who is qualified for the job shall be offered the job. Once the departmental seniority list is exhausted the bargaining unit seniority list will be used. If there are employees whose names are on the bargaining unit call-back roster, the employee with the most bargaining unit seniority who is qualified for the job shall be offered the job.

Section 3. Employee Call-back Rights and Obligations - If an employee accepts a recall to another bargaining unit department other than the one from which they were laid off they will be allowed recall to

their original department for a period of 12 months before their recalled position becomes permanent.

Section 4. Notice of Recall - In the event of a recall, an employee shall be given one (1) week's notice of recall by certified mail to his last known address, in the event that the recalled employee fails to make it known within three (3) working days of the receipt of the letter to the City Personnel Department of his intent to accept or reject the recall offer (as provided in paragraphs entitled, Call-back Procedure and Employee Call-back Rights and Obligations) that employee shall lose his bargaining unit seniority and shall be terminated from employment.

Section 5. City Records It is the responsibility of all laid-off employees to furnish the Personnel office with a current mailing address and telephone number. Any laid off employee not doing so shall be terminated.

ARTICLE 14 **JOB VACANCIES**

Section 1. All vacant and newly created jobs in the Central Services Department/Fleet Maintenance Technicians work group will be posted for bid for a period of three (3) working days. If no employee from the Central Services Department/Fleet Maintenance Technicians work group bids and qualifies for the vacant or newly created job, then the bid shall be posted for a period of three (3) working days at other bargaining unit work sites and the Personnel office.

Section 2. Bidding Priorities - Provided the employee who bids for the vacant or newly created job is qualified for the job, current employees will be given priority to fill the job opening as follows:

A) First priority will be given to bidders from the Central Services Department/Fleet Maintenance Technicians work group with the greatest departmental seniority.

B) Second priority will be given to senior employees in other bargaining unit departments.

Note: Departmental seniority is not transferable from bargaining unit department to bargaining unit department.

Section 3. Successful Bidders – Successful bidders shall be allowed no more than thirty (30) calendar days to accept or be accepted into the vacant or newly created job. If an employee is disqualified or disqualifies himself, he shall be returned to his original job classification. Management will give specific reasons for disqualifying an employee.

Section 4. Promotion within Central Services Classifications – An employee of the Central Services Department may appeal to the Central Services Director to advance to a higher classification in the department based on his skills acquired through cross-training. The Central Services Director will respond to the request for promotion within three (3) working days of the request. Additional time for evaluation may be granted with mutual agreement of the Director and the representing steward. One appeal for promotion may be made in a three-month period commencing with the Director's response to a request.

Section 5. Promotion to a Non-Bargaining Unit Position - Any unit employee who accepts a non-bargaining unit position within the bargaining unit will have a thirty (30) day tryout period before being removed from the Union seniority list. After thirty (30) days of employment such employee's bargaining unit seniority will be frozen for the duration of his service in a non-bargaining unit job. If said employee is permitted by the Employer to return to the bargaining unit in an open job, he will carry his frozen bargaining unit

seniority into the new position, the individual will have no departmental seniority.

ARTICLE 15

PAYDAY

Pay will be distributed as prescribed by the City Controller.

ARTICLE 16

FLEXIBLE TIME OFF/LONG TERM DISABILITY

Section 1. Flexible Time Off (FTO)

(A) In recognition of the need for its employees to be away from work, employer agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5) day waiting period for Long Term Disability Leave (LTD) described in Section 2. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.

(B) FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (1/2) day per month and continue at the same rate for each month of credited service.

(C) FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in (G) of this section.

(D) FTO days may be taken in full or half day increments. If becoming ill at work and leaving early, employees will be charged with one-half (1/2) FTO day if leaving after mid-shift and a full FTO day if leaving before mid-shift.

(E) Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness or for the required five (5) day LTD waiting period described in Section 2. If all FTO days or any other paid leave time is not available, any short-term illness will be an excused unauthorized absence, but without pay. Likewise, any long-term illness will result in a loss of pay for the five (5) day waiting period. The city retains the right to limit the number of excused absence occurrences as described in this subsection.

(F) Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The city recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his/her supervisor as soon as possible prior to the beginning of a workday or shift of such absence and when the employee expects to be able to return to work.

(G) Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.

(H) All FTO days shall be on the basis of the employee's regular base day's salary.

(I) Employer will buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application prior to this buy-back arrangement if so desired. In any event, employer will not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in paragraph (J) of this section.

(J) In the event a regular, full-time employee's service to the employer is terminated, including termination due to death or retirement, he/she shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

Section 2: Long Term Disability (LTD) – The long-term disability plan shall be consistent with the policy established in Section 2-596 of the Mishawaka Code of Ordinances.

ARTICLE 17

FUNERAL LEAVE AND LEAVE OF ABSENCE

Section 1. An Employee will be eligible for paid funeral leave for three (3) working days to make preparations for and attend the funeral and burial of a member of the employee's immediate family and to attend to any necessary legal matters of the decedent or his estate. An Employee will be eligible for paid funeral leave for one (1) working day to make preparations for and attend the funeral and burial of an Employee's aunt or uncle.

Section 2. Employees may be granted leave of absence without pay and without discrimination or loss of seniority rights for justifiable reasons agreed upon by both the Department Head and representatives of the Union. The maximum leave of absence, except in cases of compulsory military service, shall be for no more than twelve weeks; in the event such a leave is requested, the procedures outlined in the Family Medical Leave Act will be followed. Failure to comply with this provision shall result in the complete loss of rights for the employee involved. Seniority will be frozen during leaves of absence, except in cases involving military service and on-the-job injury.

ARTICLE 18

JURY DUTY

The Employer agrees to pay an employee who is called and serves as a juror in a legally constituted court the difference between his earnings as a juror and the straight time earnings he would have realized had he worked his scheduled shift. In order to be eligible for payment, employees must notify their supervisor within twenty-four (24) hours after receipt of notice of selection for jury duty, and must furnish a written statement from the appropriate public official showing the date and time served and the amount of pay received. An employee required to report at a specific time for examination as a prospective juror shall be compensated as provided above to the extent he is required to lose time from work for such examination. The examination notice is to be shown to the employee's supervisor as soon as practicable.

ARTICLE 19

GRIEVANCE PROCEDURE AND ARBITRATION

Section 1. Procedure to be followed:

The employer and the Union recognize that, from time to time, grievances, disputes and complaints may arise

over matters within the purview of this Agreement. Therefore, whenever the Union or any employee feels that the Employer has acted erroneously or improperly in interpreting and applying any of the provisions of this Agreement, then the Union or the employee may invoke the provisions of Article 19. Except in the first step, all grievances and answers shall be in writing.

First Step: The aggrieved employee shall present his grievance individually, or with the union representative, to his immediate supervisor within five (5) working days of the occurrence of the grievance. The immediate supervisor shall respond to the grievance within five (5) working days after it is presented to him.

Second Step: If the grievance is not settled in the First Step, the employee alone, or the employee and the union representative, may submit the grievance to the head of the department within five (5) working days after the answer is given in the first step. The head of the department shall give his answer within five (5) working days after receiving the grievance.

Third Step: If the grievance is not settled in the Second Step, the employee alone, or the employee and the union representative may submit the grievance to the Director of the Human Resources within five (5) working days after the answer is given to the Second Step. The Director of the Human Resources shall give his answer within five (5) working days after receiving the grievance.

Fourth Step: There shall be a Joint Grievance Committee (JGC) comprised of two (2) union representatives to be appointed on a case-by-case basis by the Union, and two (2) City representatives to be appointed on a case-by-case basis by the City. No person shall participate as a JGC member in any case in which such person was a witness, served as a representative of any party in the grievance process, or has any personal interest in the matter. The JGC shall meet to hear grievances which have not been resolved in the above steps of the Grievance Procedure. The JGC shall have the power and authority to make a final and binding decision with respect to any matter properly brought before it, but has no power to alter the agreement, except when requested by both parties, to add the provisions of the agreement.

The City shall make its presentation first to the JGC in discharge and suspension cases, and the Union shall present first in all other cases, but the JGC may alter such procedures and make rules of procedure to ensure a fair hearing to all parties. The JGC shall render its decision in writing in cases involving suspensions of five (5) days or longer and involving discharges, and either party may request a written decision or a bench decision in any other case.

A majority decision by the JGC is final and binding upon the Union, City, grievant, and all affected employees. Unwritten decisions and noticed from the JGC that they are deadlocked normally shall be rendered within twenty-four (24) hours of the close of the hearing, and written decisions normally shall be rendered within seventy-two (72) hours of the close of the hearing, but the JGC has the right to take such time as is necessary (such as for research) in order to render a full and fair decision.

Fifth Step: If the grievance cannot be settled in the Fourth Step, the employee may submit a written request to the Department of Human Resources within 5 (five) days requesting the services of an arbitrator from the State of Indiana to decide the issue. Either party may send a letter to the Federal Mediation and Conciliation Service requesting the services of an arbitrator from the State of Indiana to decide the issue. As soon as possible, a meeting shall be held with a mutually agreed upon arbitrator. Both parties may submit evidence and call witnesses to testify as to the facts concerning the grievance and the arbitrator shall make the decision on the evidence presented. The arbitrator shall have no authority to add to, detract from, or in any way modify the terms of this Agreement. Both parties agree to abide by the arbitrator's decision. The City and the Union shall share equally any fees charged by the State for arbitration service.

Section 2. The following provisions shall apply to the grievance procedure:

- A) Saturdays, Sundays and holidays shall not be used in determining days in reference to the grievance procedure.
- B) Failure of the Employer to give an answer to the grievance as of the last day to answer shall be considered a denial of the grievance and the employee shall have the right to then proceed to the next step of the grievance procedure.
- C) The Employer shall give the Union representative sufficient copies of the written answer in each step of the grievance procedure to distribute to each employee present at the grievance meeting.
- D) Unless consolidated by agreement of the Employer and the Union, each grievance shall be considered a separate case.
- E) If the Union does not appeal within five (5) working days of each step, the grievance is considered to be void.
- F) The time for filing a grievance involving the rate of pay shall begin on the day the employee receives his paycheck containing the grieved pay rate, unless it is previously filed.

Section 3. Inasmuch as a grievance procedure has been agreed upon, there shall be no strikes, stoppages of work, slowdowns, sit downs, sympathy strikes or other forms of interference with normal work routines during the life of this agreement or extension thereof. Both parties recognizing the fact that service to the public is a mutual desire, they will cooperate in all matters relating to labor management.

Section 4. The Employer agrees that it will not cause or direct any lockout of the employees.

ARTICLE 20 **VALIDITY**

This Agreement shall be subject to all Federal, State and local laws, and in the event any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect.

It is further agreed that in the event any such provisions are finally held to be invalid, the parties hereto agree to meet within thirty (30) days thereof to negotiate the modifications of substitution of such clause or clauses so held to be invalid.

ARTICLE 21 **SUBCONTRACTING**

It is the intention of the Employer not to deprive the employees of work covered by this Agreement either by subcontracting or by hiring an outside agency. However, the parties hereto understand and agree that occasions will arise whether of an emergency nature or otherwise when it will be necessary for the Employer to authorize outside manpower and/or equipment to properly perform its function.

ARTICLE 22

DISCHARGE OR SUSPENSION

Section 1. The Employer shall not discharge, suspend or discipline any employee without just cause, but in respect to discharge or suspension the employer shall give at least one warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the Union and Steward affected; provided, however, the employee has not committed one of the following acts or omissions while on duty.

- a) dishonesty
- b) reckless misconduct
- c) carrying of unauthorized passengers
- d) fighting

If the employee has committed any of the above mentioned acts or omissions, the employer does not need to provide the employee with said notice.

An employee who is discharged, suspended or disciplined may have recourse through the grievance procedure. If through the grievance procedure, it is determined that an injustice has been done to the employee, he shall be reinstated and compensated at his usual rate of pay while he has been out of work because of such discharge or suspension.

Section 2. Discipline as provided for in the work rules shall not remain in effect for a period of more than 6 months from the date of said discipline.

Section 3. Notice of discipline for a minor violation shall be given within three (3) working days from the date Management became aware of the violation. Notice of discipline for a major violation shall be given within thirty (30) working days from the date Management became aware of the violation.

Section 4. The parties shall discuss additional rules regarding just cause for discharge and disciplinary action. Such new rules and regulations shall be posted for ten (10) working days before they go into effect. All such rules and regulations shall prevail in the application and interpretation of this article.

Section 5. No employee will be required to speed up work in violation of Minimum Safety Standards.

ARTICLE 23

GENERAL PROVISIONS

Section 1. Uniforms – The City shall have a sufficient amount of rainwear, boots and gloves as needed for use during inclement weather. The City shall provide one pair of insulated pants and a jacket, and the City will allow for the exchange and replacement or repair of apparel damaged in the line of duty with the approval of the Central Services Director. Each employee shall receive a boot allowance of one hundred dollars (\$100.00) per calendar year.

The City shall also furnish uniforms and gloves to be worn by the employees during all working hours. If the uniforms and gloves are damaged by normal wear and tear due to daily working conditions, the employer shall provide replacement uniforms and gloves. A total of eleven (11) uniforms will be furnished per year.

Section 2. Revoked or Suspended License - In the event an employee has his Commercial Driver's License revoked or suspended due to negligence, driving under the influence of alcohol or narcotics, or driving while intoxicated, he

shall be placed in the lowest job classification and pay rate within that department for sixty (60) calendar days or until the Commercial Driver's License has been reinstated, whichever occurs first. Upon reinstatement of his Commercial Driver's License, the employee will be returned to his former job classification and pay rate. If the license is not reinstated within the sixty (60) calendar day time period, the employee shall be terminated. If an employee is disqualified from driving under DOT requirements for more than sixty (60) calendar days he shall be terminated immediately without suspension.

Section 3. Training - The City shall provide the opportunity for employees to attend and/or participate in training, seminars, or other forms of instruction necessary to perform the duties of the job classifications. However, the City reserves the right to approve classes and instructors.

The Employer shall pay in advance the cost for all approved training and seminar courses. The Employees shall pay in advance the cost of all other approved forms of instruction with the Employer reimbursing the Employee for the cost of such instruction upon successful completion of the course.

Section 4. Physicals - Employees holding a CDL will have the option of having their required physical examination arranged and paid for by the Employer at a facility of the Employer's choice and billed directly to the Employer, or arranging the physical examination at a facility or physician of the Employee's choice and at the Employee's expense.

Section 5. Commercial Driver's License - For new employees and for current employees bidding into a job requiring a CDL, the City will pay for the required drug screen and shall not pay for any other costs associated with the CDL. If an employee moves into a new job that does not require a CDL, but wishes to maintain his CDL, the employer shall not be responsible for paying any associated costs.

Section 6. Cross-Training - To accommodate mobility between classifications, the employer will provide cross-training for employees either during regular working hours or outside of regular working hours as the workload permits. Management and/or bargaining unit employees will conduct training.

Section 7. Tool Allowance - Fleet Maintenance Technicians with more than one year of service may combine their annual boot allowance (\$100.00) and their annual tool allowance (\$50.00) to purchase boots or tools totaling \$150.00 annually. Proper receipt of purchase will be required. Loaned tools that are damaged or broken during repair work to City owned fleet will be repaired or replaced by the Employer.

ARTICLE 24 **WORKER'S COMPENSATION**

Section 1. In the event an employee is absent due to an injury sustained on the premises that is determined to be compensable under Worker's Compensation laws, the employee will receive:

A) Full salary for the first five (5) workdays or the first seven (7) Worker's Compensation days of absence.

B) The difference between the daily rate paid through Worker's Compensation and the employee's daily salary less the seven-(7) days of absence. In the event the employee is absent twenty-two (22) or more days, the city's subsidy to the employee's Worker's Compensation pay will terminate until an amount equal to the Worker's Compensation check for the first seven (7) Worker's Compensation days of absence has been paid to the City. Upon receipt of such reimbursement the City's subsidy will resume until the employee returns to work or is absent for a total of sixty (60) days, whichever first occurs.

C) The employer's physician must validate the employee's absence during any of the first seven (7) days. In the event that Worker's Compensation is to be used it shall be the responsibility of the employee to follow all of the established procedures for applying for Worker's Compensation.

Section 2. If an employee is absent due to a work-related injury or illness for more than twenty-one (21) days and uses sick leave or other paid time off for the first five (5) working days, the City shall reinstate the employee's sick leave or other paid time off used for the first five (5) workdays.

Section 3. In the event of an occupational injury, the employee will follow the treatment procedures as provided through the City's Occupational Health system. If an employee's occupational injury is determined as temporary partial disability (TPD), the employee, in consultation with the attending physician, may be released for modified duty performing tasks that would not likely aggravate or lead to further injury. Light duty opportunities may include but are not limited to, desk and clerical work, janitorial, grounds keeping and other non-bargaining unit jobs assigned by the Supervisor.

Section 4. If an employee sustains an on-the-job injury, the employee shall obtain a written medical release from the employer's treating health care provider before such employee can return to work.

ARTICLE 25

DRUG-FREE WORKPLACE

The Union and the employees agree that they shall comply with all reasonable drug and alcohol policies, which may be established by the City for all City employees covered by and set forth in its Personnel Policies and Procedures.

ARTICLE 26

LONGEVITY BONUS PLAN

The following Longevity Bonus Plan will be provided to the Central Services/Fleet Maintenance Technicians work group employees according to the following terms. Said schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first pay day following each individual employee's anniversary date as part of his regular paycheck.

Payments shall be made according to the following schedule:

Years of Service	Annual Increment	Bonus
5	\$0.00	\$150.00
6	\$75.00	\$225.00
7	\$75.00	\$300.00
8	\$75.00	\$375.00
9	\$75.00	\$450.00
10	\$75.00	\$525.00

An additional \$80.00 will be added for each year of service after the tenth year.

ARTICLE 27
TEMPORARY JOB TRANSFERS

Section 1. Temporary job transfers to another bargaining unit department shall be assigned from a group of employees which the employer determines is available and qualified. The group of employees will then have input into who is transferred. If the group of employees cannot resolve who will be transferred, the transfer will be at the employer's sole discretion.

A) When an employee is temporarily transferred to a job in a higher-paying classification, he shall be upgraded to the pay rate of that classification for time spent on that job.

B) An employee temporarily assigned a job with a lower rate shall not be downgraded in pay.

C) Should overtime be needed, the employer shall at all times offer the overtime to employees who work within the department requiring the overtime according to their specific overtime procedure. In the event that nobody accepts the overtime from within the department, the employer shall have the right to utilize employees outside of that department subject to all of the conditions contained in this Article.

D) Should overtime be necessary for a temporarily transferred employee, the employee who has performed the work during regular hours will continue to work the overtime assignment if additional manpower is needed after exhausting the overtime list/procedure in the affected department.

Section 2. Employees temporarily transferred to a higher paying classification or job within the Central Services Department/Fleet Maintenance work group will be upgraded to the pay rate of that classification or job for time spent on the temporary transfer.

Section 3. Pay will not be upgraded in cross-training situations.

ARTICLE 28
JOB CLASSIFICATIONS

The following list of job classifications in the Central Services Department/Fleet Maintenance Technicians work group:

- Group 3 Operator
- Group 2 Operator
- Group 1 Operator
- Fleet Maintenance Technician

Additional classifications established during the term of the Agreement will be reviewed with the Union Steward and Business Agent prior to being implemented.

Changes in job descriptions will be reviewed with the Union Steward and Business Agent prior to being implemented.

ARTICLE 29
TENURE OF AGREEMENT

Section 1. This Agreement shall be in full force and effect from January 1, 2013, to and including December 31, 2016.

Section 2. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2015 for the purpose of negotiating wages.

The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2016 for the purpose of negotiating a new labor agreement, including wages and benefits.

**LOCAL UNION NO. 364 affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

By _____ Date:
Robert R. Warnock, III, President

CITY OF MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

By _____ Date:
Gary E. West, President

By _____ Date:
Ronald E. Watson, Vice-President

By _____ Date:
Ken Prince, Member

ATTEST: _____
Kari Myers, Clerk, BPWS

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DEC 11 2014

APPEAL #14-26

RESOLUTION NO. 2014- 23

CITY CLERK
MISHAWAKA, IN

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1915 North Cedar Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made no recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **1915 North Cedar Street, Mishawaka, Indiana**, more particularly known and described as follows:

The Northwest Quarter of Section 10, Township 37 North, Range 3 East, in the City of Mishawaka, Indiana. Commencing at the Northeast Corner of the NW Quarter of said Section 10; Thence South 1 degree-23'-35" East 670.38 feet along the center line of Merrifield Street; thence South 88 degrees-36'-25" West 20 feet to the intersection of the West right of the way line of Merrifield Street and the Northwestern right-of-way line of Cedar Street; thence along said right-of-way line of Cedar Street 391.00 feet and subtended by a long chord 381.59 feet in length and having a bearing of South 49 degrees-14'-16" West to the point of beginning; thence South 27 degrees-22'-47" West 134.08 feet along the Northwestern right of the way line of Cedar Street; thence North 62 degrees-37'-13" West 210.54 feet to the Easterly right of way line of the Grand Trunk and Western Railroad; thence North 27 degrees-20'-41" East 156.55 feet along said Easterly right of way line; thence South 60 degrees-50'-25" East 210.98 feet to the Northwestern right of way line of Cedar Street; thence along said right of way line 15.92 feet along a curve to the left having a radius of 512.46 feet and subtended by a long chord 15.92 feet in length and having a bearing of South 28 degrees-16'-11" West to the point of beginning.

The Use Variance will allow an auto body shop, auto repair, and detailing on I-1 Light Industrial zoned property subject to the following conditions, if approved:

1. The Use Variance shall be limited to automotive body shop, auto shop, and auto detailing and shall be limited to indoors. No outside storage of inoperable vehicles, materials, and/or vehicle parts will be permitted.
2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards to provided parking spaces per use.
3. Temporary signage is prohibited.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because of the industrial nature of the area along Cedar Street.
3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use and also protecting the residential users to the north and south.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-1 light Industrial zoning would not allow for the proposed automobile oriented commercial uses.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan given the existing auto commercial uses that are located to the south of this property along Cedar Street.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2014, at _____ o'clock _____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2014, at _____ o'clock _____ m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2014, at _____ o'clock _____ .m.

David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

OCT 30 2014

10/20/2014

OCT 22 2014

To: Board of Zoning Appeals
City of Mishawaka

CITY CLERK
MISHAWAKA, IN

The undersigned appellant respectfully shows the Board:

1. 1. We, Lincoln and Susan Le-Hue are the owners of the following described real estate located within the City of Mishawaka, Township, St. Joseph County, State of Indiana, to-wit:
Northwest Quarter of Section 10, Township 37 North, Range 3 East, in the City of Mishawaka, Indiana. *1915 N Cedar St Mishawaka IN 46547*
SEE LEGAL ATTACHED
2. The above-described real estate presently has a zoning classification of manufacturing I District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above -described property in the following manner:
Auto shop and detail shop.
4. Appellant desires to be able to rent to body shop, auto shop, and auto detailers which violate the ordinance.
5. The zoning Ordinance of the City of Mishawaka, Sec. 137-586 lists uses that allowed To be done in this area, auto shop and detailing are not on the list. Detailing cars is Just washing them inside and out. The auto shop does various repairs such as brakes And oil changes.
6. We have had trouble renting out bays to renters that fall within the guidelines and Have had several empty bays for months at a time.
7. A. Approval will not be injurious to public health, safety, morals or general welfare of the community because the renters wouldn't be any different than the other renters We have.
B. The use and value of the area adjacent to the property included in the variance will Not be affected in a substantially adverse manner. Recently vacant buildings in our Area have been broken into, having more traffic and people around will actually Improve the area.
C. I don't know if I would say that the variance arises from some condition peculiar to The property involved, it's a sign of the times. Le-Hue Machine was in business For almost 30 years and took up half of the buildings, now its down to one bay And will likely close completely.
D. Strict application of the terms of this chapter will constitute unnecessary hardship If applied to the property for which the variance is sought because it significantly Cuts the amount of renters that qualify to use the space, thereby causing a Financial hardship for the owners.

AP 14-26

E. no

WHEREFORE, appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Lincoln P. Latta
Print Name Here
Lincoln P. Latta

Susan M. Le-Hue
Print Name Here
Susan M. Le-Hue

CONTACT PERSON:

Name: Susan Le-Hue

Address: 55981 Wynnewood Dr.

Day Phone Number: 574-329-3811

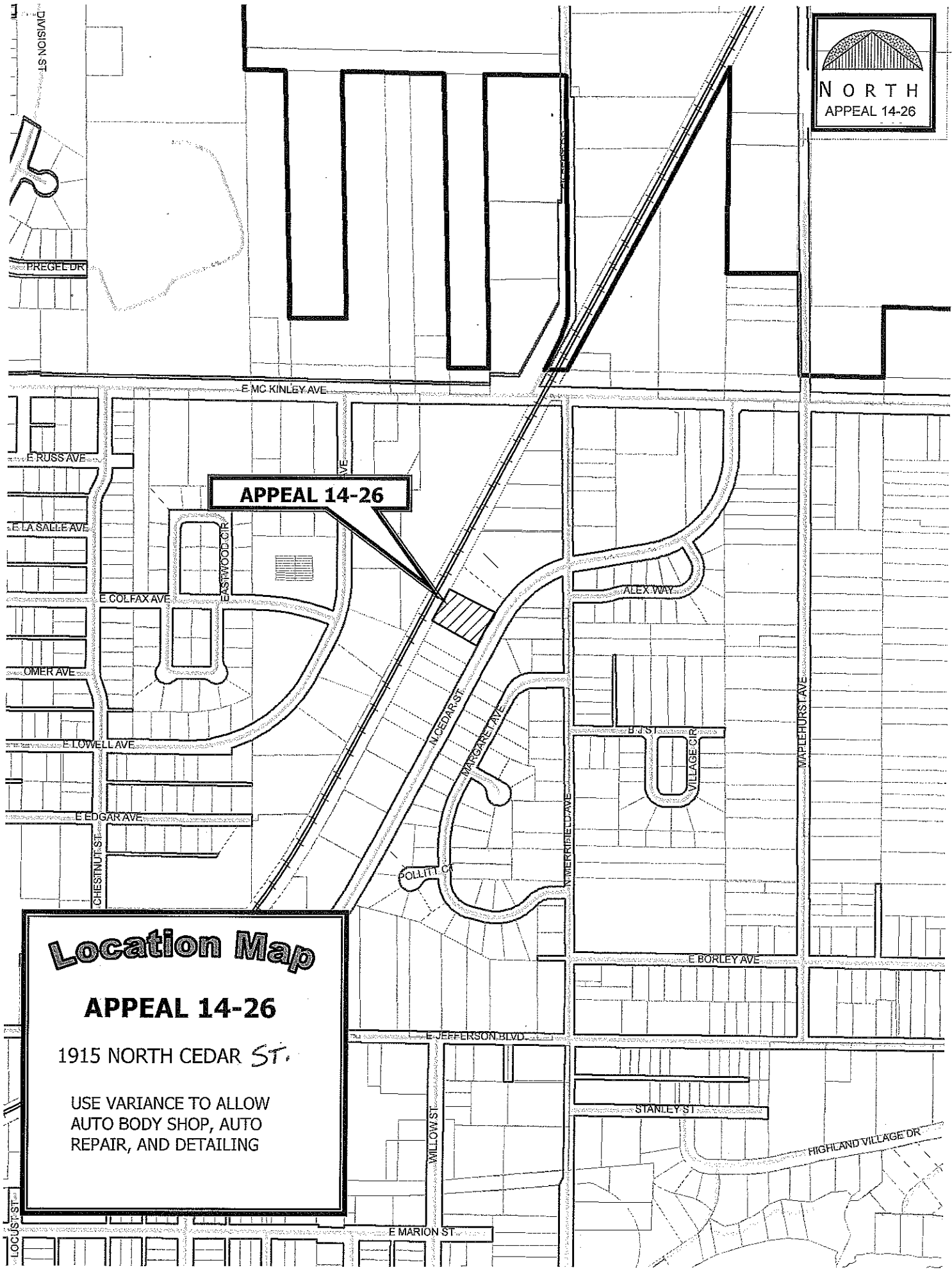
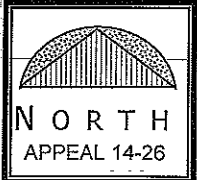
Fax Number:

Email: lehuemachine@comcast.net

LEGAL

1. 1. ~~W.E. Lincoln and Susan Le Rue~~ are the owners of the following described real estate located within the City of Mishawaka, Township, St. Joseph County, State of Indiana, to-wit:
Northwest Quarter of Section 10, Township 37 North, Range 3 East, in the City of Mishawaka, Indiana.
Commencing at the Northeast Corner of the NW Quarter of said Section 10;
Thence South 1 degree-23'-35" East 670.38 feet along the center line of Merrifield Street; thence South 88 degrees-36'-25" West 20 feet to the intersection of the West right of the way line of Merrifield Street and the Northwestern right-of-way line of Cedar Street; thence along said right of way line of Cedar Street 391.00 feet and subtended by a long chord 381.59 feet in Length and having a bearing of South 49 degree-14'-16" West to the point of Beginning; thence South 27 degree-22'-47" West 134.08 feet along the Northwestern right of the way line of Cedar Street ; thence North 62 degree-37'-13" West 210.54 feet to the Easterly right of way line of the Grand Trunk and Western Railroad; thence North 27 degree-20'-41" East 156.55 feet along Said Easterly right of way line; thence South 60 degree-50'-25" East 210.98 feet To the Northwestern right of way line of Cedar Street; thence along said right of Way line 15.92 feet along a curve to the left having a radius of 512.46 feet and Subtended by a long chord 15.92 feet in length and having a bearing of South 28 degree-16'-11" West to the point of beginning.
1915 N. Cedar Street Mishawaka, Indiana

2. The above-described real estate presently has a zoning classification of



Location Map

APPEAL 14-26

1915 NORTH CEDAR ST.

USE VARIANCE TO ALLOW
AUTO BODY SHOP, AUTO
REPAIR, AND DETAILING

DEC 11 2014

APPEAL #14-27

CITY CLERK
MISHAWAKA, IN

RESOLUTION NO. 2014- 24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

428 South Byrkit Avenue, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **428 South Byrkit Avenue, Mishawaka, Indiana**, more particularly known and described as follows:

Lot 2, JRC Corp. Sub, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

The Use Variance will allow an auto body and auto paint shop on I-2 Heavy Industrial zoned property subject to the following conditions:

1. The Use Variance shall be limited to automotive body shop and auto painting uses and shall be limited to indoors. No outside storage of inoperable vehicles, materials/or vehicles parts shall be permitted.
2. A site plan shall be submitted to the Department of City Planning showing proposed parking layout in regards to provided parking space per use.
3. Temporary signage is prohibited.
4. The paint booth shall meet all requirements of the Fire Department for such a use.

5. The Engineering Department requires an oil/grit interceptor for all floor drains or hand wash basins due to the automotive use.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because of the industrial nature of the area along Byrkit Street.
3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-2 Heavy Industrial zoning would not allow for the proposed automobile oriented commercial uses.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2014, at _____ o'clock _____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2014,
at _____ o'clock ____m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2014, at
_____ o'clock ____m.

David A. Wood, Mayor

NOV 24 2014

Date: November 17th, 2014
To: Board of Zoning Appeals City Of Mishawaka , Indiana
From: Raymundo Lopez
Subject: Use Variance Change

CITY CLERK
MISHAWAKA, IN

The undersigned appellant respectfully shows to the Board:

1. JRC Corporation is the owner of the following described real estate located within the City Of Mishawaka , Penn Township, St. Joseph County, State of Indiana, to wit:

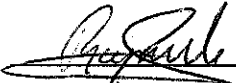
The property commonly known as: 428 S Byrkit St. Mishawaka, Indiana. And the legal description is 428 Byrkit St. City of Mishawaka. District Penn. Property Class 340. Industrial Lt mfg. & assembly. **Parcel Number 71-09-14-301-018-000-023.**

2. The above described real estate presently has a zoning classification of **I-2** District under the Zoning Ordinance of the City Of Mishawaka.
3. Appellant presently occupies (or proposes to occupy) the described property in the following manner: Establish an Auto Body and Paint Shop.
4. Appellant desires to propose a change in the **Zoning classification from I-2 to C-4** since that is the type of Zoning required for a business of auto body and paint shop.
5. The Zoning Ordinance of the City Of Mishawaka requires that a change of **USE VARIANCE** be propose in order to establish a business of auto shop and paint that I want to establish.
6. The adherence of the Ordinance requirements will create a hardship because the zoning
 - i) Will the approval be injurious to the public health, safety, morals or general welfare of the community?
No, because safe and proper equipment will be in place at the shop to avoid any problems for the community
 - ii) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?
No, because there are other industrial type businesses in the surrounding areas already established. It could help appreciate more the value of the properties for the type of demand.
 - iii) Does the need of the variance arise from some condition peculiar to the property involved?
Yes, because when I started doing the legal paperwork for the business, I came across the variance type of the zone, in which my line of work was not included.
 - iv) Does the strict application of the terms of this chapter constitute and unnecessary hardship if applied to the property for which the variance is sought?
No. The requirement for the zoning Use Variance in the City of Mishawaka are to be in followed.

AP 14-27

- v) Will the approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
No, it will not interfere with the Comprehensive plan because the type of business is not to affect it surrounding area, instead is to support the economy of the City of Mishawaka.

WHEREFORE, Appellant prays and respectfully request a hearing on this appeal and that after such hearing, the Board grant the request variance.


Raymundo Lopez

CONTACT PERSON:

Name: Raymundo Lopez

Address: 428 Byrkit St. Mishawaka, IN 46545

Phone Number: 574-387-0687 / 574-210-5424

Fax Number: 574-234-6440

email: cotaxallc@hotmail.com

JRC Corporation
127 E Battell St
Mishawaka, IN 46545-6748
November 20, 2014

City Of Mishawaka
Board Of Zoning Appeals
Department Of City Planning, City Hall
600 East Third St.
Mishawaka, IN. 46545

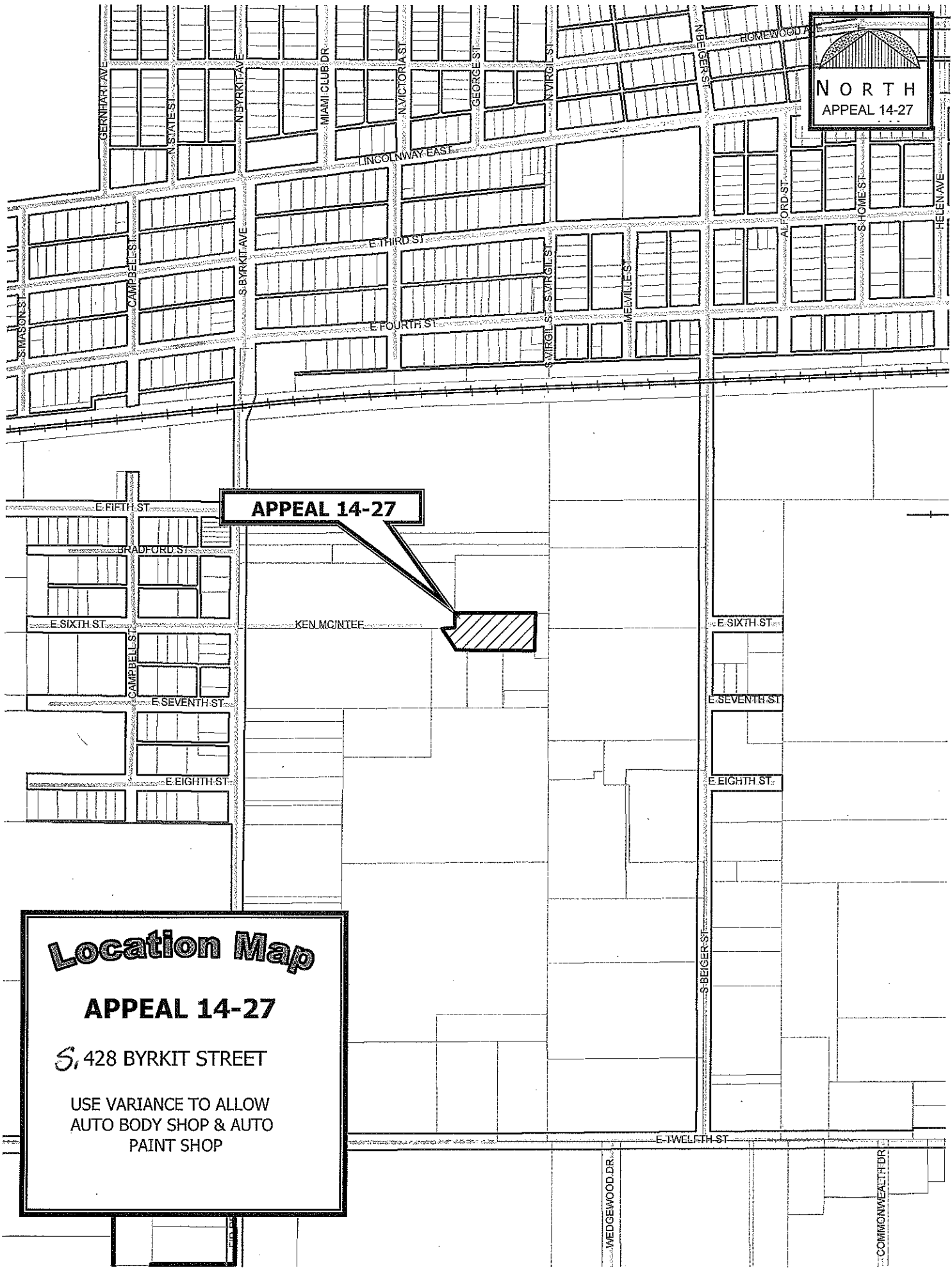
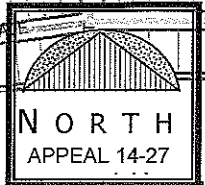
City Of Mishawaka :

This letter is to inform you that I give permission to Raymundo Lopez of 'Rays Body Shop' to authorize decision done in my name for the change of Use Variance, and anything related to that purpose, for the Building located at 428 Byrkit St. Mishawaka, IN. 46545.

Please contact me directly at 574-360-4592 if I can be of further assistance.

Sincerely,

 Secretary 11-20-14
JRC Corporation Title Date



APPEAL 14-27

Location Map

APPEAL 14-27

S, 428 BYRKIT STREET

USE VARIANCE TO ALLOW
AUTO BODY SHOP & AUTO
PAINT SHOP

NOV 25 2014

CITY CLERK
MISHAWAKA, IN

1st Reading 12-1-14

PROPOSED ORDINANCE NO. 2014-36

2nd Reading

ORDINANCE NO. _____

Passed

Failed

Continued To

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2014

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Park and Recreation Department budget in the Park and Recreation Fund adopted for the fiscal year ending December 31, 2014

Section 2. There is hereby transferred and reappropriated the sum of \$34,000.00 as follows:

Park and Recreation Fund

From: Park and Recreation Department

Services Personal

204-50-411-02 Regular Employees 16,000.00

Supplies

204-50-429-14 Maintenance Supplies 8,000.00

204-50-429-15 Program Supplies 6,000.00

Other Services and Charges

204-50-435-02 NIPSCO 4,000.00

Total \$34,000.00

To: Park and Recreation Department

Supplies

204-50-422-02 Gas, Oil, Parts, Etc 14,000.00

Other Services and Charges

204-50-435-01 Utilities-MU 20,000.00

Total \$34,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

~~PASSED BY THE COMMON COUNCIL~~ of the City of Mishawaka, Indiana, on

This _____ day of _____, 2014 at _____ o'clock, _____.M.

Presiding Officer

ATTEST;

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of
_____, 2014 at _____ o'clock, _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2014
at _____ o'clock, _____.M.

David A. Wood, Mayor



CITY OF MISHAWAKA



DAVID A. WOOD, MAYOR

DEPARTMENT OF PARKS & RECREATION

TERRY ZELLER
Superintendent

Date: November 24, 2014
To: Mishawaka Common Council
From: Terry Zeller, Superintendent of Parks
Re: Transfer of Park Department Funds

Mr. President and Honorable Council Members:

This letter will provide background information for our request to transfer funds within the Parks and Recreation operating budget.

After examining the operating budget and estimated expenditures for through the end of the year for the Parks and Recreation Department, a total of **\$34,000.00** will need to be transferred into four specific lines. See below.

422.02	Gas, Oil, Parts, etc		\$14,000.00
435.01	MU Utility Charges		\$20,000.00
	TOTAL		\$34,000.00

In order to accommodate the transfer of additional funds into the above accounts, we have scrutinized our general fund accounts and determined the transfers can come from five accounts. See Below:

411.02	Regular		\$16,000.00
429.14	Maintenance Supplies		\$8,000.00
429.15	Program Supplies		\$6,000.00
435.02	NIPSCO		\$4,000.00
	TOTAL		\$34,000.00

Thank you for your consideration of this matter. Your approval will continue to allow the Parks and Recreation Department to operate efficiently and professionally to serve our customers and the City of Mishawaka. Should you have any questions, please do not hesitate to contact me either at the office (258-1664) or at home (259-8169).

Respectfully submitted,

Terry Zeller
Superintendent

cc: Honorable Mayor Dave Wood
Rebecca Miller, City Controller

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 25 2014

CITY CLERK
MISHAWAKA, IN

**TRANSFER OF PARK DEPARTMENT FUNDS
SUPPORTING DOCUMENTATION**

During our examination of the departmental expenditures, we estimate that **\$14,000.00** in additional funds will be needed in "**Gas, Oil, Parts, etc**" **204.50.422.02** to account for an increase in gasoline use for mowers and vehicles.

There is also a need to increase our line item in "**Utilities-MU**" **204.50.435.01** by **\$20,000** to proactively account for anticipated rate increases.

With respect to the requested transfer, listed *below* are the account lines from which monies will be **dispersed**.

411.02	Regular		\$16,000.00
429.14	Maintenance Supplies		\$8,000.00
429.15	Program Supplies		\$6,000.00
435.02	NIPSCO		\$8,000.00
	TOTAL		\$34,000.00

With respect to the requested transfer of funds, listed *below* are the account lines into which monies will be **transferred**.

422.02	Gas, Oil, Parts, etc		\$14,000.00
436.01	MU Utility Charges		\$20,000.00
	TOTAL		\$34,000.00