

**HAND DELIVERED**

**AGREEMENT BETWEEN  
THE CITY OF KENTON  
AND  
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION  
(SERGEANTS UNIT)**

**CASE NO. 09-MED-09-0976**

**JANUARY 1, 2010 - DECEMBER 31, 2012**

2010 FEB -4 A 10:51

STATE EMPLOYMENT  
RELATIONS BOARD

1051-02  
K26110

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## **PREAMBLE**

This Agreement, entered into by the City of Kenton, Kenton, Ohio, hereinafter referred to as the "Employer", and the Ohio Patrolmen's Benevolent Association, hereinafter referred to as the "Union" or "OPBA", has as its purpose the following:

To comply with the requirements of Chapter 4117 of the Ohio Revised Code and to set forth the full and complete understandings and agreements between the parties governing the wages, hours, terms and other conditions of employment for those employees included in the bargaining unit as defined herein.

Wherever the term Employer is used herein, it shall include City Council, the Mayor, the Safety-Service Director, or such other persons as designated by the above.

## **ARTICLE 1** **RECOGNITION**

**Section 1.1.** The Employer recognizes the Union as the sole and exclusive bargaining representative for the purpose of establishing salaries, wages, benefits, and other conditions of employment for all employees employed full-time in the Kenton Police Department in the classification of "Police Sergeant."

**Section 1.2.** All classifications not specifically included in the bargaining unit shall be excluded from the bargaining unit.

**Section 1.3.** All positions within the Police Department other than Police Sergeant and all temporary and auxiliary employees shall not be included in the bargaining unit.

**Section 1.4.** In the event any new job class is established within the Police Department, or if any existing job class within the bargaining unit is reclassified, the Employer and/or Union may jointly or separately petition the State Employment Relations Board (SERB) to amend or clarify the bargaining unit.

**Section 1.5.** Newly hired probationary employees shall be eligible for the bargaining unit but shall have no appeal rights in the event of their removal during the probationary period.

## **ARTICLE 2** **DUES DEDUCTIONS**

**Section 2.1.** The Employer and the Union agree that membership in the Union is available to any employee occupying the classification determined by this Agreement to be appropriately within the bargaining unit. Dues authorization for all eligible employees who wish to join the Union will be executed and submitted to the City

payroll department. Union dues deductions shall begin with the first appropriate deduction period following receipt of the dues authorization.

**Section 2.2.** The Employer agrees to deduct regular Union membership dues each pay period from the pay of any employee eligible for membership in the bargaining unit upon receiving written authorization signed individually and voluntarily by the employee. The signed payroll deduction form must be presented to the City payroll department by the employee or an officer of the Union. The payroll deduction authorization shall be on a form approved by the City and the Union.

**Section 2.3.** It is specifically agreed that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article, and the Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions or proceedings by any employee arising from deductions made by the Employer hereunder. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

**Section 2.4.** The Employer shall be relieved from making dues deductions upon an employee's: (a) termination of employment; (b) transfer to a job other than one covered by the bargaining unit; (c) layoff from work; (d) approved leave of absence; or (e) upon the termination of this Agreement.

**Section 2.5.** The Employer shall not be obligated to make dues deductions of any kind from any employee who, during any dues month involved, shall have failed to receive sufficient wages to equal the dues deduction after all deductions required by law are made from the employee's earnings.

**Section 2.6.** It is agreed that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions unless a claim of error is made to the Employer, in writing, within sixty (60) days after the date such error is claimed to have occurred. If it is found an error was made, it will be corrected during the next pay period that Union dues are normally deducted, by deducting the proper amount from the employee's pay check. Payroll collection of dues shall be authorized for the exclusive bargaining agent only, and no other organization attempting to represent the employees within the bargaining unit as herein defined.

**Section 2.7.** The names of employees and the rate at which dues are to be deducted shall be certified in writing to the payroll clerk by the Union. Any changes in the rate of dues deductions shall be certified in writing to the payroll clerk by the Union not less than thirty (30) days prior to the effective date of the change.

**Section 2.8.** For the duration of this Agreement, the Employer agrees to remit, to the Union, once each month, all dues deducted 'from eligible bargaining unit employees' pay in accordance with this Article.

**Section 2.9.** Deductions provided for in this Article are subject to the rules and regulations of the City Auditor for payroll deductions.

**Section 2.10.** All dues deductions for any month in which bargaining unit employees collectively engage in a strike or walkout, may be cancelled at the Employer's option upon twenty-four (24) hours notice to the Union.

**ARTICLE 3**  
**MANAGEMENT RIGHTS**

**Section 3.1.** Nothing herein shall be construed to restrict any Constitutional, statutory, legal or inherent rights of the Employer with respect to matters of general legislative or managerial policy. The Employer shall retain the right and the authority to administer the business of its departments in addition to other functions and responsibilities which are not specifically modified by this Agreement. It shall be recognized that the Employer has and will retain the full right and responsibility to direct the operations of its departments, to promulgate rules and regulations and to otherwise exercise the prerogatives of management which more particularly, include but are not limited to, the following:

- A. To manage and direct employees, including the right to select; hire; promote; transfer; assign; evaluate; layoff; or recall employees;
- B. To reprimand, suspend, discharge, or discipline for cause in order to maintain discipline among employees;
- C. To manage and determine the location, type and number of physical facilities, equipment, programs and the work to be performed;
- D. To determine the City's goals, objectives, programs, and services, and to utilize personnel in a manner designed to effectively and efficiently meet these purposes;
- E. To determine the size and composition of the work force, staffing patterns, and each department's organizational structure, including the right to lay-off employees from duty due to lack of work, austerity programs, or other legitimate reasons;
- F. To determine the hours of work, work schedules and to establish the necessary work rules, policies and procedures for all employees;
- G. To determine when a job vacancy exists, the duties to be included in all job classifications, and the standards of quality and performance to be maintained;
- H. To determine the necessity to schedule overtime and the amount required thereof;
- I. To determine the City's budget and uses thereof;
- J. To maintain the security of records and other pertinent information;
- K. To determine and implement necessary actions in emergency situations;
- L. To maintain the efficiency of governmental operations;
- M. To exercise complete control and discretion over department organization and the technology of performing the work required;
- N. To set standards of services and determine the procedures and standards for selection for employment.

**ARTICLE 4**  
**PROBATIONARY PERIODS**

**Section 4.1.** Each employee upon entering a bargaining unit position shall serve a probationary period, which shall begin with the employee's first day of active service. Any leave of absence lasting more than ten (10) days shall automatically extend the employee's probationary period a proportionate amount of time. An employee may be removed at any time during the employee's probationary period at the discretion of the Employer.

**Section 4.2.** The probationary period for each newly hired employee shall be three hundred and sixty-five (365) calendar days.

**Section 4.3.** Any employee promoted to a higher classification outside the bargaining unit shall serve a promotional probationary period as established for such classification. No promotion shall be deemed final until the employee has satisfactorily served the employee's promotional probationary period. An employee may be reduced to the position held prior to promotion at any time during the promotional probationary period for unsatisfactory service.

## **ARTICLE 5**

### **PLEDGE AGAINST DISCRIMINATION AND COERCION**

**Section 5.1.** All references to employees in this Agreement designate both sexes. The Employer and the OPBA mutually agree this Agreement shall be written in a gender neutral format to avoid the use of male or female nouns or pronouns whenever possible. In the event a male or female noun or pronoun is inadvertently used anywhere in this Agreement, it shall be construed to include both male and female employees.

**Section 5.2.** The Employer agrees not to interfere with the rights of employees to become members of the Union, and there shall be no discrimination, interference, restraint, or coercion by the Employer or its representatives against any legal employee activity or employees acting legally in an official capacity on behalf of the Union.

**Section 5.3.** The Union agrees there shall be no discrimination, interference, restraint, or coercion by the Union or its representatives against any employee exercising the right to abstain from membership in the Union or participation in any Union activity.

## **ARTICLE 6**

### **HOURS OF WORK/OVERTIME**

**Section 6.1.** This Article is intended to define the normal hours of work per day or per week in effect at the time of execution of this Agreement. This Article is intended to be used as the basis of computing overtime and shall not be construed as a guarantee of work per day or per week.

**Section 6.2.** The standard work week for bargaining unit employees shall be forty (40) hours in a seven (7) day period. Bargaining unit employees shall normally be scheduled to work Monday through Friday, except when it is necessary to otherwise schedule such employees on a temporary basis to meet the operational demands of the Department.

**Section 6.3.** Any time worked in excess of the regular scheduled workday or in excess of forty (40) hours in the work week shall be considered overtime. The work week shall be computed between 11:01 p.m. on Friday of each calendar week and 11:00 p.m. the following Friday. Employees shall be compensated for each hour of overtime worked at the rate of one and one-half (1 1/2) times the employee's regular hourly rate of pay, except that employees required to work any hours during their regularly scheduled days off shall be compensated at two (2) times their regular hourly rate for each hour worked within twenty-four (24) hours of their next regularly scheduled shift.

The Employer reserves the right to require any employee to work overtime in order to meet the operational needs of the City.

For purposes of compliance with the Fair Labor Standards Act (FLSA) only, the parties agree overtime will be computed in accordance with Title 29 USC, Section 207(K).

Employees shall have the option to accrue compensatory time in lieu of overtime payment consistent with the computations contained in this Section. Employees shall be permitted to accrue up to a maximum of forty (40) hours of compensatory time on a revolving basis that may be replenished upon use. After the accrual of the forty (40) hour maximum the employee must accept overtime payment for any overtime worked. Employees may use compensatory leave in minimum one (1) hour blocks with approval of the Chief or his designee to be granted based upon the operational needs of the Department. Accrued but unused compensatory time shall be carried over to the next year. Compensatory time shall be cashed out and paid to the employee upon separation from employment. At the employee's request, such shall be paid to the employee upon layoff.

**Section 6.4.** Overtime shall be subject to the approval of the Employer. Scheduled overtime subsequently cancelled for any reason, does not entitle an employee to overtime compensation.

**Section 6.5.** Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement.

**Section 6.6.** Work schedules shall be posted at least seven (7) days in advance of the effective date of the schedule except when due to an emergency, such seven (7) day advance posting is not possible. The Employer shall notify affected employees in advance whenever it is necessary to change the posted schedule.

**Section 6.7.** Calamity Days. At any time the normal operations of the City are shutdown due to a declared state of emergency by the Mayor, such as excessive snowfall, fuel shortages, or other calamity, employees required to and working shall receive their regular rate of pay plus receive another day off with pay for each calamity day worked.

**ARTICLE 7**  
**CALL-IN PAY/COURT TIME**

**Section 7.1. Call-in Pay.** A call-in occurs whenever the Employer specifically requires an employee to return to work after the completion of the employee's regular shift and prior to the start of the employee's next regularly scheduled shift, thus necessitating an additional trip to and from work.

When an employee is called-in the employee shall be paid for the time worked but for not less than two (2) hours at the applicable hourly rate subject to the overtime provisions herein.

When the call-in is contiguous to the employee's regular work shift, the minimum call-in shall not apply but the employee shall be paid for the actual hours worked at the applicable rate subject to the overtime provisions herein.

**Section 7.2. Court Time.** Whenever an employee is required to appear during the employee's regular off-duty time before an official court or before the Prosecutor or Law Director for pretrial conference or for matters pertaining to or arising from the employee's official duties, the employee, with approval of the Employer or designee, shall be compensated for a minimum of two (2) hours for each such appearance, at the applicable rate subject to the overtime provisions herein. This provision shall not be applicable to appearances which are contiguous to the employee's regular work shift. In addition, an employee who appears at a time not contiguous to their regular work shift under this section may not be required to remain for any purpose other than the court related appearance, except in cases of emergency. The preceding language shall not be construed as to limit the Employer's ability to assign overtime.

## **ARTICLE 8** **SHIFT DIFFERENTIAL PAY**

**Section 8.1.** Bargaining unit employees who are regularly assigned to any work shift which begins at 2:00 p.m. or later but prior to 10:00 p.m. (second shift) shall receive shift differential pay of thirty-five cents (\$.35) per hour for each hour worked on such shift.

**Section 8.2.** Bargaining unit employees who are regularly assigned to any work shift which begins at 10:00 p.m. or later but prior to 6:00 a.m. (third shift) shall receive shift differential pay of forty-five cents (\$.45) per hour for each hour worked on such shift.

**Section 8.3.** Shift differential pay shall be included as part of the employee's regular hourly rate when calculating the employee's overtime rate of pay.

**Section 8.4.** Shift differential shall not be applicable to any non-working time for which the employee is paid.

## **ARTICLE 9** **SICK LEAVE**

**Section 9.1.** Crediting of Sick Leave. Employees covered by this Agreement shall earn 4.6 hours of sick leave for each eighty (80) hours in active pay status. Active pay status includes all times when the employee is being compensated directly by the City of Kenton, excluding any unpaid leaves of absence or layoffs. An employee may accumulate unused sick leave without limit.

**Section 9.2.** Retention of Sick Leave. All employees entering the bargaining unit prior to July 1, 1989 shall have their sick leave balance on that date, including any unused sick leave previously credited due to prior employment with the City, the State or any political subdivision of the State, accredited to their accounts and shall accrue additional sick leave thereafter in accordance with the provisions herein.

All employees entering the bargaining unit after July 1, 1989 shall earn sick leave in accordance with this article and shall not be entitled to any sick leave earned during previous periods of employment with the City, the State or any other political subdivision of the State. Notwithstanding the above, employees promoted into the bargaining unit shall be entitled to all accumulated but unused sick leave credited to their account as of the date of their promotion.

Once a year, the Employer will issue to each employee a statement indicating accumulated sick time and vacation leave. The statement will be issued at the end of January each year giving the total accumulation as of December 31 of the previous year. It is understood that employees, at any time, can check their accumulated sick leave and vacation time with the Department Head.

**Section 9.3.** Uses of Sick Leave. Employees may use sick leave, upon approval of the Employer, for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and for illness, injury, or death in the employee's immediate family. Payment shall be made upon recommendation of the supervisor and approval of the Safety-Service Director. In the case of a member of the immediate family not living in the same household, the City may credit sick leave when it is believed justified, but such cases will be carefully investigated. An employee shall be permitted to take a portion of a sick day for medical, dental, or optical examination which cannot be scheduled during non-working hours. A certificate from a licensed physician, dentist, or optometrist verifying the appointment shall be required.

For the purposes of this Section, "immediate family" shall be defined as the employee's father, mother, spouse, child, brother, sister, grandparents, grandchildren, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, spouse's grandparents or a person standing in place of the employee's or spouse's parents.

**Section 9.4.** Notification by Employee. When an employee is unable to report to work, the employee shall notify the dispatcher or other designated person, one-half (1/2) hour prior to the time the employee is scheduled to report to work on each day of absence, unless the employee makes other advance arrangements with the Lieutenant or Police Chief.

Notwithstanding the above, when an employee has any advance knowledge of an intended use of sick leave the employee shall notify the Police Chief or designee of such intended usage as soon as practical. Employees failing to report as outlined above shall be subject to disciplinary action, but shall still be eligible for sick leave benefits provided they report their absence no later than their scheduled starting time.

If an employee reports within thirty (30) minutes following the employee's scheduled starting time, the employee will be placed on an unpaid leave of absence for the day and will not be entitled to sick leave benefits.

Employees who fail to report their absence within thirty (30) minutes following their scheduled starting time or who continually fail to report their absence timely, shall be considered absent without leave, subject to disciplinary action and shall not be entitled to sick leave benefits.

**Section 9.5. Evidence Required for Sick Leave Usage.** Any employee requesting sick leave shall be required to furnish a standard written statement to justify the use of sick leave or, in accordance with Section 9.6, a certificate stating the nature of the illness from a licensed physician, dentist or optometrist. Falsification or failure to provide either the written and signed statement or a physician's certificate shall be grounds for disciplinary action including denial of sick leave payment.

The written and signed statement and physician's certificate, if required, must be submitted to the employee's Department Head by the end of the pay period in which sick leave is requested. The Department Head shall submit the request for sick leave, with the Department Head's recommendation, to the Safety-Service Director for the Director's approval or disapproval of the request. Employees shall not be paid sick leave until they have submitted the above statement and/or certificate, in accordance with this Section, and the request has been approved by the Safety-Service Director.

**Section 9.6. Physician Statement.** Anytime an employee requests sick leave exceeding two (2) days or anytime the employee requires medical attention while on sick leave, the employee shall obtain a certificate stating the nature of the illness or injury from a licensed physician and submit a copy of such certificate to the Police Chief.

Where sick leave exceeding two (2) days is requested to care for a member of the employee's immediate family, the City may require a physician's certificate to the effect that the presence of the employee is necessary to care for the ill person.

**Section 9.7. Charging of Sick Leave.** Sick leave shall be charged in minimum units of one (1) hour. An employee shall be charged for sick leave only for days on which the employee would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal scheduled work day or work week earnings.

**Section 9.8. Expiration of Sick Leave.** If illness or disability continues past the time covered by earned sick leave, an employee may request either an unpaid personal leave of absence or an unpaid disability leave in accordance with the appropriate Article and Sections of this Agreement.

Employees who have exhausted their accumulated sick leave and who have failed to have a leave of absence approved, shall be considered absent without leave and subject to disciplinary action.

**Section 9.9. Abuse of Sick Leave.** Employees failing to comply with sick leave rules and regulations shall not be paid and shall be subject to appropriate disciplinary action in accordance with this Agreement.

**Section 9.10. Excessive Use of Sick Leave.** If an employee uses sick leave on four (4) separate occasions of sixteen (16) hours or less per occasion during a calendar year (January 1st - December 31st), the employee shall receive a verbal counseling.

If an employee uses sick leave on five (5) separate occasions of sixteen (16) hours or less per occasion during a calendar year (January 1st - December 31st), the employee shall receive a written reprimand.

Verbal counselings and written reprimands issued to employees pursuant to this section, shall cease to have force and effect at the end of the calendar year in which they are issued provided there is no pattern of abuse. If such pattern of abuse is relevant, the effectiveness, of verbal counselings and written reprimands issued pursuant this section shall be in accordance with Article 30, contained herein.

If an employee uses sick leave on six (6) or more separate occasions in a calendar year (January 1st - December 31st), the employee's use of sick leave benefits thereafter shall be limited as follows:

The first two (2) consecutive work days of any sick leave occasion will be without pay; however, the employee may utilize vacation time for such absence. If an employee's sick leave is for three (3) or more consecutive work days, sick leave will be paid starting on the third day. If an employee utilizes vacation time to supplement the two (2) consecutive work days without pay, as described above, the Employer shall record the two (2) consecutive work days as a two (2) day working suspension for purposes of progressive discipline.

The reduction of sick leave for the first two (2) consecutive days under this provision does not preclude the right of the Employer to take further disciplinary action for excessive or unexcused absenteeism.

An occasion of sick leave usage as used in this Article shall mean each time sick leave is used for other than a regularly scheduled course of medical treatment of an employee as directed and verified by the employee's physician and pre-approved by the Employer. Any usage of sick leave by an employee where FMLA has been approved, in accordance with Article 11, Family and Medical Leave/Disability Leave contained herein, shall not be counted as an occasion against such employee.

**Section 9.11. Physical Examination.** The City may require an employee to take an examination, conducted by a licensed physician, to determine the employee's physical or mental capability to perform the duties of the employee's position; the cost of the above examination shall be paid by the City.

**Section 9.12. Severance Pay.** Each employee who retires from employment with the City of Kenton shall be paid for the employee's accumulated but unused sick leave in accordance with the following schedule:

<b><u>Years of Service With the City of Kenton</u></b>	<b><u>Percentage of Days Paid</u></b>	<b><u>Maximum Payment Allowable</u></b>
10 years but less than 15 years	50%	336 hours
15 years but less than 20 years	75%	532 hours
20 years or more	100%	700 hours

In order to qualify for the above payment, the employee must be eligible for retirement in accordance with the applicable State retirement plan at the time of the employee's separation from City employment. Employees

who otherwise separate their employment with the City, other than for disciplinary reasons, shall be paid for twenty-five percent (25%) of their accumulated but unused sick leave up to a maximum payment as follows:

<b>Years of Service</b>	<b>Maximum Payment</b>
<b><u>With the City of Kenton</u></b>	<b><u>Allowable</u></b>
10 years but less than 15 years	240 hours
15 years but less than 20 years	380 hours
20 years or more	500 hours

The above payments shall be made at the employee's regular rate of pay at the time of separation from employment; shall be paid at the time of the next regular wage payment to City Employees; and shall be subject to all lawful deductions. Employees shall only be eligible for payment in accordance with this section for sick leave accumulated while employed by the City of Kenton.

Any employee who has or reaches an accumulated but unused sick leave balance of 1,000 hours or more during the duration of the Agreement, effective 2/1/01 to 12/31/03, shall qualify to participate in the following sick leave cash-in program. Qualified employees must maintain at least 500 hours of accumulated but unused sick leave in order to continue participation.

Qualified employees may choose to cash-in up to 100 hours of accumulated but unused sick leave in each year of the Agreement, effective 2/1/01 to 12/31/03. Such payment shall be at the regular hourly rate of the employee at the time of the request. The cash-in must be requested in writing no later than the last pay period in January and the last pay period in August. The maximum amount to be requested during either requesting period shall be 50 hours, except for August 2001 at which time a qualified employee may request up to 100 hours.

## **ARTICLE 10** **INJURY LEAVE**

**Section 10.1.** Any employee of the bargaining unit who becomes unable to perform duties as assigned by the Employer due to a physical injury and/or a communicable disease suffered in the discharge or performance of the employee's official law enforcement duties, as an employee of the Employer, shall receive the employee's regular straight time daily rate of pay provided the employee complies with the provisions contained in this Article. Upon the onset of the recognized condition, or as soon as possible thereafter, the employee shall file an injury/accident report with the Employer in accordance with the Employer's policies. The employee must also cooperate in filing a claim for workers compensation, medical coverage only. If the injury and/or communicable disease sustained by the employee is determined to be work-related as defined herein, then injury leave shall be granted for an initial duration of ninety (90) days. The ninety (90) day period may be extended on a period by period basis, not to exceed twelve (12) months, at the discretion of the Employer and with certification by a physician that the employee is still unable to perform the essential functions of the position and the recognized condition was sustained in the regular performance of activities for the Employer. Any employee who files a claim with workers compensation for lost time wages shall not be eligible for injury leave as provided for in this Article, however, nothing contained in this section may be construed as a waiver by the employee of any benefits to which the employee is entitled under the worker's compensation act.

**Section 10.2.** The employee shall return to work in a transitional work assignment, if available and able, during such period of disability. Said assignment shall be at the sole discretion of the Employer, with the concurrence of a physician. If a transitional work assignment is not applicable due to the employee's injury or as determined by the Employer, the employee shall, at the request of the Employer, submit to a physical exam by a licensed physician of the Employer's choice to determine if physical therapy may aid in the recuperation and return to work of the employee. Physical examinations required pursuant to this Article shall be at the Employer's expense.

Section 10.3. Any employee suffering an injury that is determined to be a non-work related injury by the Bureau of Worker's Compensation shall not be eligible for injury leave as provided for in this Article.

## **ARTICLE 11** **FAMILY AND MEDICAL LEAVE/DISABILITY LEAVE**

**Section 11.1. Family and Medical Leave.** Pursuant to the Family and Medical Leave Act of 1993, FMLA leave may be granted to an employee who has been employed for at least twelve (12) months by the City and who has provided at least 1,250 hours of service during the twelve (12) month before the leave is requested. Eligible employees shall be entitled to a total of twelve (12) workweeks of leave during a rolling twelve (12) month period measured backward from the date on which an employee uses FMLA leave. FMLA leave will be granted for the following reasons:

- A. Because of the birth of a child or placement for adoption or foster care of a child;
- B. In order to care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent, or one who stood in place of a parent of the employee, if such spouse, son, daughter, parent, or "in loco parentis" has a serious health condition;
- C. Because of a serious health condition that makes the employee unable to perform the employee's employment functions.

**Section 11.2.** The employee must provide the Employer with thirty (30) days advance notice of the leave, or such notice as is practicable, if thirty (30) days notice is not possible. The employee must provide the Employer with certification of the condition from a health care provider. The Employer, at Employer expense, may require a second opinion on the validity of the certification. Should a conflict arise between health providers, a third and binding opinion, at Employer expense will be sought.

**Section 11.3.** An employee seeking FMLA leave must first use paid sick time (if applicable pursuant to Article 9 of this Agreement), vacation or other available paid leave before going on unpaid leave. The period of FMLA leave shall include any period of sick leave, vacation, other paid leave, or unpaid leave of absence taken due to the above qualifying events. The total amount of FMLA leave paid and unpaid will not exceed a total of twelve (12) weeks.

**Section 11.4.** In any case in which a husband and wife entitled to family leave are both employed by the City, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve (12)

weeks during any twelve (12) month period if such leave is taken because of the birth of a child or placement for adoption or foster care of a child.

**Section 11.5.** The employee will be responsible for the employee's share of the health insurance cost during the leave. If the employee does not return from the leave, the employee is responsible for the total insurance premium paid by the City.

**Section 11.6.** Any eligible employee granted a FMLA leave shall be entitled, on return from such leave, to be restored to the position held by the employee when the leave commenced or a similar position or equivalent pay and benefits. In those situations where the Employer is permitted to require a physician's certification before granting a FMLA leave, the Employer may require that health care provider certify that the employee is sufficiently recovered to return to work and perform the essential functions of the employee's position before reinstating the employee. Should the Employer require such certification, the Employer shall make its request for the certification at least fifteen (15) calendar days prior to the expected return of the employee.

**Section 11.7.** It is intended that this Article comply with the Family and Medical Leave Act of 1993 and the Employer may promulgate policies in furtherance of the Family and Medical Leave Act that are not inconsistent with this Agreement.

**Section 11.8. Disability Leave.** Any bargaining unit employee who has exhausted Family and Medical leave, accumulated sick leave and other available paid leave to which the employee is entitled, may request a Disability Leave of Absence without pay. The Disability Leave of Absence shall be for a period of up to six (6) months, but may be extended for an additional six (6) month period upon written request by the employee to the Safety-Service Director accompanied by supporting medical evidence from a licensed physician indicating the employee's probability of return to work immediately following the extended leave period. The cost of any medical statements required by this section shall be the responsibility of the employee.

Any employee unable to return to work after exhaustion of the paid and unpaid leave provided in accordance with this Article, shall be separated from employment with the City for disability. Such employee may apply for disability or service retirement, as applicable, in accordance with the retirement system regulations.

**ARTICLE 12**  
**FUNERAL LEAVE**

**Section 12.1.** Any bargaining unit employee who has a death in the employee's immediate family, as defined below, shall be entitled to funeral leave with pay as provided in this article to make household adjustments, arrange for funeral services and to attend the funeral services, with prior approval by the Employer.

**Section 12.2.** An employee shall be entitled to a maximum of three (3) working days of funeral leave within a five (5) calendar day period in the event of the death of the employee's:

- |                |               |
|----------------|---------------|
| Current Spouse | Mother-in-law |
| Child          | Father-in-law |

Mother	Person standing in place of employee's or
Father	spouse's parent (loco parentis)
Brother	Son-in-law
Sister	Daughter-in-law
Grandchild	Grandparent

**Section 12.3.** Employees shall not be entitled to funeral leave for any days following the date of the funeral unless approved in advance by the Safety-Service Director. Any additional days granted by the Director shall be charged against the employee's accumulated sick leave.

**Section 12.4.** An employee shall be entitled to one (1) work day of funeral leave in the event of the death of the employee's:

Aunt	Brother-in-law
Uncle	Sister-in-law
Nephew	Grandparent-in-law
Niece	

### **ARTICLE 13** **MILITARY LEAVE**

**Section 13.1.** All officers and employees of the City of Kenton who are members of Ohio National Guard, the Ohio Defense Corps, the Ohio Naval Militia, or members of other reserve components of the armed forces of the United States are entitled to leave of absence from their respective duties without loss of pay for such time as they are in the military service on field training or active duty for periods not to exceed twenty-two (22) eight (8) hour work days (maximum one hundred seventy-six [176] work hours) in any one (1) calendar year.

**Section 13.2.** The employee must submit a request for leave to the Employer and a copy of the military order to duty or statement from the appropriate military commander, as evidence of such duty, to qualify for paid Military Leave. Employees shall notify their Department Head at least ten (10) days in advance of the date requested for Military Leave to begin or within twenty-four (24) hours after the employee receives notice.

**Section 13.3.** Long-Term Military Service Leave. Employees who are called or ordered to uniformed services for more that twenty-two (22), eight (8) hour work days or one hundred seventy-six (176) hours within one (1) calendar year because of an executive order issued by the President of the United States or an act of Congress, shall be entitled during the period designated in such order or act to a leave of absence and pay in accordance with the lesser of the difference between the employee's gross monthly wage or salary and the gross uniformed services pay and allowance for the same month or five hundred dollars (\$500.00) for each month of uniformed service.

**Section 13.4.** The Employer may adjust the employee's normal work schedule to better accommodate periods of military leave.

**ARTICLE 14**  
**UNION LEAVE**

**Section 14.1. Leaves for Union Officials or Union Delegates.** The Employer, shall grant a total of three (3) days of leave of absence, without loss of regular pay or regular benefits, for each calendar year for the bargaining unit. These absences shall be used to attend training sessions, safety seminars, legislative conferences, and State and National conventions sponsored by the OPBA.

**Section 14.2.** The OPBA agrees to give ten (10) days advance notice, in writing, when possible and to provide payment for other cost incurred by the employees' attendance at these training sessions.

**Section 14.3.** Leaves of absence for OPBA officials or delegates shall not be accumulative from year to year.

**Section 14.4.** The OPBA agrees to cooperate with the Employer to minimize the impact on the work force.

**ARTICLE 15**  
**VACATIONS**

**Section 15.1.** Full-time employees covered by this Agreement, shall be entitled to annual vacations according to the following schedule:

<u>Years of Service With The City of Kenton Completed</u>	<u>Hours of Vacation Entitled</u>
1 year but less than 8 years	80 hours
8 years but less than 15 years	120 hours
15 years but less than 25 years	160 hours
25 years or more	200 hours

**Section 15.2.** Vacation shall be accrued each bi-weekly pay period at the following rates:

<u>Annual Vacation Entitlement</u>	<u>Bi-Weekly Accrual Rate</u>
80 hours	3.1 hours
120 hours	4.6 hours
160 hours	6.2 hours
200 hours	7.7 hours

Employees will begin accruing vacation from their date of hire, however, no vacation shall be credited to employees, until they have completed their first year of service with the City of Kenton.

**Section 15.3.** Vacation shall be accredited to each employee on the employee's anniversary date of employment and must be used by the employee prior to the employee's next anniversary date unless otherwise agreed in accordance with Departmental policy. If an employee has requested vacation time off and had the vacation request refused, the employee may, with the prior approval of the Safety-Service Director, carry-over the unused vacation into the employee's next anniversary year for a period not to exceed six (6) months or, with the approval of the Safety-Service Director, be paid for the unused portion of the vacation at the employee's regular rate of pay. In order to be eligible to carry-over or be paid for unused vacation, the employee must submit a written request to the Safety-Service Director and must have demonstrated a willingness to reschedule the vacation time originally requested.

Any employee failing to request to use vacation or the right to carry-over or be paid for the employee's vacation, within the twelve (12) month period following eligibility or during the carry-over period, shall lose that portion of the employee's vacation which the employee has had accumulated for more than twelve (12) months. An employee shall be provided not less than thirty (30) days advance notice before any vacation may be eliminated in accordance with this Section.

**Section 15.4.** Holidays shall not be charged to an employee's vacation leave.

**Section 15.5.** Upon separation from employment with the City, employees shall be entitled to payment for the prorated portion of all vacation accrued but unused as of the date of separation. The payment shall be calculated based upon the employee's regular hourly rate at the time of separation.

**Section 15.6.** Vacations within each department shall be granted, subject to the vacation sign-up process, outlined below, the operational needs of the department and approval of the Department Head. Vacation time shall be taken in not less than eight (8) hour intervals.

By March 1 of each calendar year employees shall submit their requests for vacation, in increments of no less than one (1) week, to the Chief or designee. These requests shall be approved or denied based upon seniority and the operational needs of the department. After March 1 of each calendar year all vacation requests- shall be approved or denied on a first-come, first-served basis, subject to the operational needs of the department. Insofar as practical, every effort will be made to schedule the vacation time most preferable to each employee. However, the final decision with respect to the scheduling of vacation shall rest with the Safety-Service Director or designee and must be geared to the City's need for the employee's services.

Not more than three (3) consecutive weeks of vacation may be scheduled without prior written approval of the Safety-Service Director.

**Section 15.7. Bonus Leave.** Each employee who has accumulated and maintains, in the applicable bonus year, seven hundred (700) hours of sick leave, shall receive eight (8) hours of paid bonus vacation leave for each twenty-four (24) hours of unused sick leave accumulated during the preceding year. This bonus vacation leave shall not exceed forty (40) hours per year and shall not be deducted from the employee's sick leave. Following are some examples of such bonus leave calculation:

**Bonus Year X  
January 1 - December 31**

**Employee A**

Accumulated but unused sick leave as of January 1:	920 hours	
Sick leave balance as of December 31:	1040 hours	
$1040 - 920 = 120$	$120 \div 24 = 5$	$55 \times 8 = 40$ hours bonus leave

**Employee B**

Accumulated but unused sick leave as of January 1:	700 hours	
Sick leave balance as of December 31:	745 hours	
$745 - 700 = 45$	$45 \div 24 = 1.9$	$1.9 \times 8 = 15$ hours bonus leave

**Employee C**

Accumulated but unused sick leave as of January 1:	720 hours
Sick leave balance as of December 31:	680 hours
$680 - 720 = -40$	0 bonus leave hours

**ARTICLE 16  
HOLIDAYS/PERSONAL LEAVE DAYS**

**Section 16.1. Holiday Schedule.** All full-time employees of the bargaining unit shall be entitled to the following paid holidays:

New Year's Day (Jan. 1)	Veterans Day (Nov. 11)
President's Day (3rd Mon. Feb.)	Thanksgiving Day
Memorial Day (Last Mon. May)	(4 <sup>th</sup> Thurs. Nov.)
Independence Day (July 4)	Friday after Thanksgiving
Labor Day (1st Mon. Sept.)	Christmas Eve Day (Dec. 24)
	Christmas Day (Dec. 25)

**Section 16.2.** The Employer shall determine which holidays bargaining unit employees shall be scheduled to work.

**Section 16.3.** Ten (10), eight (8) hour holidays, listed in Section 16.1 above, shall be credited to each employee on January 1 of each year. These holidays may be scheduled as time off by each employee in eight (8) hour increments subject to the approval of the Police Chief and the operational needs of the Department. A full-time employee who works on a recognized holiday shall receive time and one-half (1 1/2) the employee's regular rate of pay for all hours worked on the holiday. An employee may request pay for any unused holidays no later than November 15 of each year. Such payment shall be made at the employee's regular hourly rate at the time of the request.

**Section 16.4. Personal Leave Day.** In addition to the above listed holidays, each full-time bargaining unit employee shall be entitled to two (2) personal leave days per year after the first year of service with the City of Kenton. Personal leave days shall not be accumulative from year to year and shall not be compensated if they are not utilized.

An employee shall give advance notice as soon as possible and must receive approval from the Chief before using the employee's personal leave day.

## **ARTICLE 17** **UNPAID LEAVES**

**Section 17.1. Application and Authorization For Leave of Absence.** Any request for a leave of absence shall be submitted in writing by the employee to the Employer at least ten (10) working days in advance of the date on which the leave is requested to begin. The request shall state the reason the leave of absence is being requested and the approximate length, of time off the employee desires. The authorization of a leave of absence is a matter of administrative discretion.

Authorization or denial of a leave of absence shall be furnished to the employee in writing. Any request for a leave of absence shall be answered promptly. If the request for leave is denied, the reason for such denial shall be stated in writing.

**Section 17.2. Reinstatement From a Leave of Absence.** An employee may return to work prior to the expiration date of any approved leave of absence if requested by the employee and approved by the Safety-Service Director. Upon completion of a leave of absence, the employee shall be returned to the position formerly occupied, or to a similar position if the employee's former position no longer exists.

**Section 17.3. Seniority While on Leave of Absence.** An employee on a leave of absence without pay does not earn sick leave or vacation or other leave credit. However, the time spent on an authorized leave of absence is counted in determining length of service for purposes of extended vacation eligibility or other purposes where tenure or seniority is a factor.

**Section 17.4. Absent Without Leave.** Any employee who fails to return to duty after a leave of absence or who is absent from duty without prior approval of the Employer, shall be considered absent without leave and subject to disciplinary action including dismissal.

**Section 17.5. Abuse of Leave of Absence.** If a leave of absence is granted for a specific purpose and it is found that the leave is not actually being used for such purpose, the Safety-Service Director may cancel the leave and direct the employee to return to work immediately. Any employee found guilty of abuse of a leave of absence shall be subject to disciplinary action for falsification of the employee's request for such leave.

**Section 17.6. Personal Leave of Absence.** A personal leave of absence, for a period not to exceed thirty (30) days, may be granted for any reasonable purpose, and such leaves may be extended or renewed for any reasonable period. Reasonable purpose, in each case, shall be determined by the Employer.

**Section 17.7. Educational Leave of Absence.** After completing one (1) year of service, any employee may request and may be granted a leave of absence without pay for purposes of education or specialized training which would be of benefit to the operations of the City through unproved performance. The period of the leave of absence shall not exceed thirty (30) days, but it may be extended or renewed if requested by the employee and approved by the Safety-Service Director.

## **ARTICLE 18** **INSURANCE**

**Section 18.1.** The Employer agrees to contribute ninety (90%) percent of the cost of hospitalization and medical insurance coverage for each bargaining unit employee. The employees agree to contribute ten (10%) of the cost of hospitalization and medical insurance for the applicable coverage.

**Section 18.2. Liability Coverage.** The Employer shall provide personal liability and false arrest insurance for each bargaining unit employee at no cost to the employee.

**Section 18.3. Death Benefits, Wages and Vacation.** The Employer will pay all wages or personal earnings due to the deceased employee to: (A) the surviving spouse; (B) any one or more of the children, eighteen (18) years of age or older; or (C) the father or mother of the deceased employee, preference being given in the order named, without requiring letters of testamentary or letters of administration to be issued upon the estate of the deceased employee, and without requiring an Ohio Estate Tax Release where the wages or personal earnings do not exceed one thousand dollars (\$1,000), Included in personal earnings shall be an amount equivalent to the value of earned but unused vacation.

This Article shall be administered as to comply with the Ohio Revised Code and all other applicable law(s).

**Section 18.4. Life Insurance.** The Employer shall provide a fifty thousand dollar (\$50,000) group term life insurance policy covering all bargaining unit employees.

**Section 18.5. Union Participation.** The Employer recognizes the need for adequate insurance coverage and the Union and employees recognize the ever increasing cost of insurance. Therefore, the parties agree to work cooperatively in seeking a benefits package which can provide adequate coverage at a reasonable cost. The Employer agrees to meet with a joint committee including one representative of each bargaining unit and a

representative of the non-bargaining unit employees to discuss and review any proposed changes in the health insurance coverage.

**ARTICLE 19**  
**WAGES**

**Section 19.1.** Bargaining unit employees shall be compensated in accordance with the following wage scales:

**SERGEANTS**

<b>Effective</b>	<b>STEP A</b>	<b>STEP B</b>	<b>STEP C</b>	<b>STEP D</b>	<b>STEP E</b>	<b>STEP F</b>
1/1/2010	\$18.52	\$19.08	\$19.76	\$20.43	\$21.07	\$21.65

**SERGEANTS WITH DEGREE IN LAW ENFORCEMENT**

<b>Effective</b>	<b>STEP A</b>	<b>STEP B</b>	<b>STEP C</b>	<b>STEP D</b>	<b>STEP E</b>	<b>STEP F</b>
1/1/2010	\$19.08	\$19.76	\$20.43	\$21.07	\$21.80	\$22.39

The above pay scale represents a 0% wage increase for 2010. For the year 2010, employees shall not be eligible for step increases. Wages for 2011 and 2012 shall be determined pursuant to a wage re-opener for those years. This Agreement shall not be re-opened for any other matter. On or after September 1, 2010, either party may re-open the agreement for purposes of negotiating wages for 2011 and 2012. The negotiations shall be commenced by either party filing a notice to negotiate with the State Employment Relations Board on or after September 1, 2010. These negotiations shall be conducted in accordance with Chapter 4117 of the Revised Code except that Section 4117.14(G)(11) of the Ohio Revised Code shall not apply and is expressly waived.

**Section 19.2.** Upon entering the bargaining unit due to a promotion, the employee shall be assigned to the lowest rate in the pay scale listed in the above section which provides an increase in the employee's previous rate of pay. New employees shall enter the bargaining unit at Step A of the above pay scale.

**Section 19.3.** Employees shall receive a performance evaluation after each year of service in the above pay ranges. If it is determined that the employee's performance has been satisfactory or above satisfactory, the employee shall receive a step increase. Employees shall be eligible for step increases until they reach the final step of the applicable pay range.

**Section 19.4. Pay Period.** The salaries and wages of employees shall be paid bi-weekly, on Friday of the appropriate week. In the event this day is a holiday, the preceding day shall be the payday.

**Section 19.5. Pay For Training.** A bargaining unit member who is assigned to training of other employees shall receive an additional fifty cents (\$.50) per hour for the period of the training assignment. This provision regarding pay for training shall apply specifically and only to the following training assignments:

1. Firearms Instructor
2. BATON/ASP Instructor
3. TAG (Terminal Agency Coordinator)

All training assignments shall be made solely by and at the discretion of the Chief, with the advance approval of the Safety-Service Director.

**ARTICLE 20**  
**CONFORMANCE TO CLASSIFICATION DUTIES**

**Section 20.1.** Employees shall work within their respective classifications and shall not be required to work outside their classification except in cases where the normal operations of the department would be impaired, and no one else is available to perform the work.

**Section 20.2.** If employees are assigned to work outside their classification, the following shall apply:

- A. If employees are required to work below their classification, they shall receive their regular rate of pay;
- B. Bargaining Unit employees assigned by the Employer to accept the responsibilities and carry out the duties of a position or rank above that in which they are regularly employed. for a period of four (4) hours or more, shall receive the higher rate of pay as if temporarily promoted to the position.

**Section 20.3.** The Employer agrees to furnish a copy of the classification specification to each bargaining unit employee.

**Section 20.4.** Overtime opportunities due to the absence of the regularly assigned Sergeant, shall be offered to a bargaining unit employee before it is offered to employees outside the bargaining unit.

**ARTICLE 21**  
**MILEAGE REIMBURSEMENT**

**Section 21.1.** Employees required to use their personal automobile in the performance of their duties for the City of Kenton shall be compensated for each mile driven in this capacity at the Internal Revenue Service "Standard Mileage Rate" in effect at the time of such automobile usage.

**ARTICLE 22**  
**UNIFORM ALLOWANCE**

**Section 22.1.** Five hundred seventy-five (\$575.00) shall be placed in a uniform replacement fund for each bargaining unit employee in 2010 and each year of the Agreement thereafter. Said fund shall be for the purpose of replacing worn and aging uniform and equipment items.

**Section 22.2.** The Safety-Service Director and the Police Chief shall establish a standard uniform code for the uniforms provided for under this Article. Any employee reporting for duty not in proper uniform, shall be subject to disciplinary action including being sent home until properly uniformed. Cleaning and proper maintenance of uniforms shall be the employee's responsibility, however, items damaged while in the line of duty shall be replaced without deduction in the employee's uniform account.

### **ARTICLE 23 ADDITIONAL EQUIPMENT**

**Section 23.1.** The Employer agrees to provide the bargaining unit, employees with appropriate leather gear to carry their service weapon when responding to a call while off duty or while working in plain clothes. The Employer agrees to provide the bargaining unit employees with a bullet-proof vest. These vests will be replaced in accordance with the manufacturer's specifications concerning replacement. The vests shall be worn at appropriate times as determined by the Chief of Police or other supervisors.

This additional equipment shall not be charged against the employees' annual uniform allowance.

### **ARTICLE 24 PRACTICE AMMUNITION**

**Section 24.1.** Each Bargaining Unit employee shall be entitled to receive fifty (50) rounds of Police Department issued ammunition per month to be used for target practice, as long as empty cartridges are returned each month to the appropriate authority.

### **ARTICLE 25 POLICE OFFICER TRAINING**

**Section 25.1.** Each Bargaining Unit employee shall be required to attend such training as required to obtain or maintain state certification as a law enforcement officer.

**Section 25.2.** Police officers shall be compensated for actual classroom time and travel time necessary to attend any Employer required training course.

**Section 25.3.** The Employer agrees to pay the cost for non-required training courses which officers request to attend provided the course is approved in advance by the Employer and the officer's work schedule can be adjusted to accommodate the employee's attendance to the training program.

**ARTICLE 26**  
**DISCIPLINARY PROCEDURES**

**Section 26.1.** The Employer shall have the authority to discipline bargaining unit employees for just cause. The following shall be the exclusive procedures in regards to discipline of bargaining unit employees.

**Section 26.2.** The following procedure shall be followed before an employee is suspended, reduced in rank for disciplinary reasons or dismissed from public service:

- (1) A disciplinary hearing shall be scheduled;
- (2) A written notice shall be given to the employee not less than twenty-four (24) hours prior to the hearing containing the date, time and location of the hearing and the suspected charges; and
- (3) The employee shall be given a hearing by the Employer and shall have the right to be accompanied and represented by a union representative of the employee's choice.

This section shall not be interpreted as prohibiting the Employer from removing the employee from the job site pending a disciplinary hearing.

**Section 26.3.** Verbal and written reprimands may be issued by the Employer or designated representatives without having to follow the procedure outlined in Section 26.2 above.

**Section 26.4.** The Employee may appeal any suspension, removal, or reduction for disciplinary purposes through the grievance procedures contained herein.

The parties agree that the grievance procedure shall be the exclusive appeal procedure available to bargaining unit employees and any other appeal procedures otherwise available to employees are hereby waived.

**Section 26.5.** Notwithstanding the other sections of this Article, any employee charged with or under indictment for a felony or first degree misdemeanor may be suspended without pay pending exoneration of all charges following a meeting between the Employer and the Union to examine the gravity of such charges. If the employee is freed from all charges or pleads to less than a first degree misdemeanor, the employee shall be reinstated with full back-pay and no loss of seniority. The employee may, however, still be subject to disciplinary action for any employment misconduct associated with the felony charge.

**ARTICLE 27**  
**DRUG/ALCOHOL TESTING**

**Section 27.1.** Drug/alcohol testing may be conducted on employees post-accident and/or upon reasonable suspicion that the employee is under the influence or is abusing drugs or alcohol.

Reasonable suspicion that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner may be based upon, but not limited to:

- A. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
- B. A pattern of abnormal conduct or erratic behavior, including abnormal leave patterns;
- C. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use or trafficking;
- D. Information provided either by reliable and credible sources or independently corroborated;
- E. Evidence that an employee has tampered with a previous drug test; and
- F. Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practice.

A bargaining unit employee may of his own volition, even if not ordered to do so, undergo a drug and/or alcohol screening test if the employee is involved in an on duty incident or accident involving bodily injury, extensive property damage or death. Testing done under these circumstances will be treated in the same manner as if the employee had been ordered to undergo screening.

**Section 27.2.** All drug screening tests shall be conducted by medical laboratories certified by the Department of Health and Human Services or certified by a DHHS recognized certification program. No test shall be considered positive until it has been confirmed by a gas Chromatography/Mass Spectrometry full scan test. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody control. All procedures shall be outlined in writing and this outline shall be followed in all situations arising under this Article. The split sample method of collection shall be used following prescribed testing procedures.

**Section 27.3.** Alcohol testing shall be done in the same manner used to detect drivers operating a motor vehicle under the influence. Any detectable level of blood alcohol concentration shall entitle the Employer to proceed with sanctions as set forth in this Article.

**Section 27.4.**

- A. The results of the testing shall be delivered to the employee tested. The employee shall be contacted by the medical review officer prior to the test results being delivered to the Employer. An employee whose confirmatory test result is positive shall have the right to request a certified copy of the testing results in which the vendor shall affirm that the test results were obtained using the approved protocol methods. The employee shall provide a signed release for disclosure of the testing results. Refusal to submit to the testing provided for under this Agreement may be grounds for discipline. Refusal to submit to post

accident testing provided for under this Agreement will also presumptively disqualify an employee from worker's compensation benefits in accordance with O.R.C. 4121.

- B. The Employer may suspend the employee without loss of pay before the time the confirmatory test results are complete. If the screening test and confirmatory test are positive, the Employer may discipline the employee. The use of illicit substances, on or off duty, will ordinarily result in termination. The improper use of prescription drugs and/or alcohol may result in a lesser discipline, depending upon the relevant circumstances. Such discipline must be uniform in its application.

**Section 27.5.**

- A. If a drug screening test is positive, the employee may, upon written request and at the employee's expense, have the split sample retested by a DHHS certified laboratory of the employee's choice. This request shall be presented within seventy-two (72) hours upon being notified of a positive result.
- B. In the event the split sample test confirms the results of the first test, the Employer may proceed with the sanctions as set forth in this Article.
- C. In the event that the split sample test contradicts the result of the first test, the split sample result is determined to be the final result. The results of this test, if positive, shall allow the Employer to proceed with sanctions as set forth in this Article. If the results are negative, the employee shall be given the benefit of the doubt and no sanctions shall be imposed.

**Section 27.6.** The name of the testing laboratory shall be maintained by the Employer. This laboratory shall conduct any testing directed by the Employer.

**Section 27.7.** If the testing required above has produced a positive result, the Employer may take disciplinary action and/or require the employee to participate in any rehabilitation or detoxification program that is covered by the employee's health insurance. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, vacation leave, and other accumulated paid leave days for a period of the rehabilitation or detoxification program. If no such leave credits are available, the employee shall be placed on medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program, and upon receiving results from a retest demonstrating that the employee is no longer abusing a controlled substance, the employee may be returned to the employee's former position. Such employee may be subject to periodic retesting upon return to the employee's position for a period of one (1) year from the date of the employee's return to work. Any employee in a rehabilitation or detoxification program in accordance with this Article will not lose any seniority or benefits, should it be necessary for the employee to be placed on medical leave of absence without pay for a period not to exceed ninety (90) days.

**Section 27.8.** If the employee refuses to undergo rehabilitation or detoxification, or if the employee tests positive during a retesting within one (1) year after the employee's return to work from such a program, the employee shall be subject to disciplinary action up to and including termination of employment.

**Section 27.9.** Costs of all drug screening tests and confirmatory tests shall be borne by the Employer except that any test initiated at the request of the employee shall be at the employee's expense.

The cost of periodic retesting after return to work after rehabilitation will be at the Employer's expense. Such periodic retesting shall be limited to four (4) times during the one (1) year period following return to work.

## **ARTICLE 28** **GRIEVANCE PROCEDURE**

**Section 28.1.** The term "grievance" shall mean an allegation by a bargaining unit employee or the Union that there has been a breach, misinterpretation, or improper application of this Agreement. It is not intended that the grievance procedure be used to effect changes in the Articles of this Agreement nor those matters covered by applicable provisions of Federal or State Laws. It is the intent of the Union and the Employer that this grievance procedure be the sole and exclusive appeal procedure for employees within the bargaining unit and any other appeal procedures which previously existed under Civil Service or other laws are hereby waived.

**Section 28.2.** In order for an alleged grievance to receive consideration under this procedure, the grievant must identify and process the alleged grievance as outlined in Step 1, below, within ten (10) days of the occurrence of the event giving rise to the grievance.

It is not intended that the grievance procedure should eliminate informal discussions between employees and management for resolution of complaints or problems before they reach the formal grievance procedure. However, if the employee and management are unable to resolve any grievance as defined in Section 28.1 above, the employee may file a formal grievance in the following manner:

**STEP 1:** The employee, and/or the Union representative must file a written grievance with the Police Chief within the ten (10) day time limit specified above. The Chief shall investigate the matter and respond to the Union representative or employee in writing within ten (10) days.

**STEP 2:** If the grievance has not been settled satisfactory to both parties in Step 1, it must be presented in writing by the employee and union representative, if the employee desires, to the Safety-Service Director within ten (10) days after the Police Chiefs response was due. The Safety-Service Director shall investigate the matter and respond to the Union representative or employee in writing within ten (10) days.

**STEP 3:** Should any grievance remain unsettled after exhausting the aforementioned procedure, the Union shall, if it desires, demand arbitration within ten (10) days after failing to settle the grievance as outlined in Step 2.

In the event the parties are unable to agree upon an arbitrator within ten (10) days after arbitration is invoked, they shall jointly petition the American Arbitration Association (AAA) and request a panel of qualified arbitrators. The parties shall utilize the AAA list only services in order to obtain a list of qualified Arbitrators pursuant to this Article. Any list of Arbitrators provided by AAA shall consist of Arbitrators from Ohio only and shall be members of the National Academy of Arbitrators. Any costs associated with obtaining the lists of

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arbitrators shall be paid by the party requesting arbitration. The parties shall select a single arbitrator from such panel. Each party may one (1) time reject the list of arbitrators and request a new list prior to beginning the selection process. An arbitrator shall be selected by the parties alternately striking names from the list of arbitrators. The party initiating the grievance shall be the first to strike a name from the panel of arbitrators. The last remaining name on the list shall be selected as the arbitrator.

The award of the arbitrator shall be reduced to writing by the arbitrator. The arbitrator shall not be empowered to rule contrary to, to amend, add to, to modify, to change, or to eliminate any of the provisions of this Agreement in arriving at its award. The arbitrator shall expressly confine the award to the precise issue submitted for arbitration and shall have no authority to make an award on any other issue not submitted. The decision of the arbitrator shall be final and binding on the Employer, the Union and the grievant(s) and shall, as circumstances permit, be implemented within fifteen (15) calendar days after the award has been delivered.

Expenses attendant to the services of the arbitrator shall be borne by the party against whose position the arbitrator rules. In the event the arbitrator's award does not support either party's position in its entirety, the arbitrator's expenses shall be shared equally.

**Section 28.3.** All grievances must be processed at the proper step in the progression in order to be considered at any subsequent step, using the grievance form which has been agreed upon by both parties. All written grievances must contain the following information to be considered at any step of the procedure.

- (1) Aggrieved employee's name and signature
- (2) Aggrieved employee's classification
- (3) Date grievance was filed
- (4) Date and time grievance occurred
- (5) Where grievance occurred
- (6) Description of incident giving rise to the grievance
- (7) Articles and Sections of Agreement violated
- (8) Remedy requested.

**Section 28.4.** At each Step of the grievance procedure the original grievance shall be presented to the Employer representative along with all accompanying data and answers given at any previous Step of the procedure. The Employer representative shall return the original grievance, accompanying data and previous grievance answers to the grievant with the Employer's answer attached within the time limit established.

**Section 28.5.** An employee may withdraw a grievance at any point by submitting a written statement to that effect or by permitting the time requirements at any Step to lapse without further appeal.

Either party may request a meeting with the other party at any Step of the grievance procedure to discuss the grievance in further detail.

Time limits may be extended by mutual consent in writing. Steps of the grievance procedure may be waived by mutual consent in writing.

**Section 28.6.** If the Employer does not answer the grievance at any Step of the grievance procedure within the designated time limits as set forth above, and has not had an extension approved by the Union, the grievance shall be deemed to have been answered by the Employer in the negative and the grievance may be advanced to the next step of the grievance procedure by the Employee or the Union.

**Section 28.7.** When an employee covered by this Agreement utilizes self-representation in a grievance, the Employer will advise the Union of its disposition. No settlement shall be in conflict with any provisions of this Agreement. The employee shall present a written statement expressing the employee's intent of utilizing self-representation.

## **ARTICLE 29** **UNION ACTIVITIES**

**Section 29.1.** The Employer agrees that during working hours, on the Employer's premises, and without loss of pay, OPBA representatives shall be allowed to do the following, subject to the prior approval of the employee's Department Head:

- (A) Attend negotiating meetings with management when such meetings are scheduled during working hours;
- (B) Transmit communications, authorized by the local Union or its officers to the Employer or the Employer's representatives;
- (C) Consult with the Employer or the Employer's representatives concerning the enforcement of any provision of this Agreement when the OPBA representative has had an appointment approved by the Employer in advance;
- (D) The Employer agrees that the OPBA representatives may post Union notices on bulletin boards, distribute Union literature and solicit Union membership in work areas, before the start of and at the completion of the day's work, during work breaks, and during lunch time;
- (E) Attend grievance meetings with the Employer;
- (F) Consult with Union staff representatives, members and stewards.

**Section 29.2.** In no case shall any OPBA representative be entitled to overtime pay while conducting Union activities.

**Section 29.3.** The OPBA agrees that its representatives shall receive approval of their immediate supervisor before leaving the job site to perform any of the activities listed in this Section.

**Section 29.4.** Employees selected by the Union to act as Local Union representatives, shall be certified in writing to the Employer by the Union.

No employee shall be recognized by the Employer to act as a Union representative until the Union has presented to the Safety-Service Director, written certification of that person's selection.

**Section 29.5.** The investigation and writing of grievances shall be conducted during involved employees' non-working hours. If a grievance meeting is scheduled by the Employer during an employee's regular working hours, the employee shall not suffer any loss in regular pay while attending such meeting.

### **ARTICLE 30** **EMPLOYEE PERSONNEL FILES**

**Section 30.1.** Employees, with or without a Union representative, may inspect their personnel file maintained by the Employer upon reasonable advance notice to the Employer.

**Section 30.2.** All records of verbal or written reprimands contained in an employee's file which are more than twelve (12) months old shall cease to have any force and effect or be considered in future disciplinary matters, providing there has been no intervening disciplinary action taken during such twelve (12) month period.

Records of disciplinary suspensions contained in an employee's file which are more than twenty-four (24) months old shall cease to have any force and effect or be considered in future disciplinary matters, providing there has been no intervening disciplinary action taken . during such twenty-four (24) month period.

**Section 30.3.** The employee shall receive a copy, without charge, of any item before it is placed in the employee's personnel file.

Employees shall pay the actual cost for an additional copy of any item placed in their files in accordance with the current agreement with the copier vendor. Should the Employer change vendor(s) during the term of this Agreement, the actual cost shall reflect the terms of the new agreement with the vendor(s).

**Section 30.4.** Copies of all medical or accident reports necessary for the filing of claims shall be provided to the employees without charge.

### **ARTICLE 31** **SAFETY**

**Section 31.1.** The Employer shall provide a safe and healthful work place and shall maintain all equipment used by the employees in a safe operating condition.

**Section 31.2.** The Union and employees agree to share the responsibility for developing and maintaining a safe work place for all employees in compliance with applicable laws and regulations relating to the safety and health of city employees.

**Section 31.3.** The employees agree to provide proper care, security and maintenance of all equipment issued for their use. Equipment defects and/or safety problems shall be reported by the employees to the Supervisor or Chief of Police as soon as possible.

**Section 31.4.** The parties agree that the following items shall be appropriate subjects for discussion between the Employer and the Union:

- (A) Recommendations for safety and health programs;
- (B) Review of and discussions concerning various safety items, procedures, and activities;
- (C) Review of problems concerning health and safety and formulation of recommendations regarding any protective equipment, devices, clothing, examinations or other related items found necessary.

**Section 31.5.** The parties agree that any grievance involving a safety issue shall be expedited through the grievance procedure contained herein. If the employee is unable to resolve the safety concern through a verbal discussion with the Chief of Police, a written grievance may be submitted immediately to the Safety-Service Director. If the issue cannot be resolved by the Safety-Service Director, the parties agree to expedite the issue through the grievance process.

## **ARTICLE 32** **SENIORITY**

**Section 32.1.** Seniority, except where specifically defined otherwise in this Agreement, shall be based on an employee's uninterrupted length of continuous service with the Employer in the Kenton Police Department.

**Section 32.2.** Seniority shall be broken when an employee:

- (A) Quits or resigns;
- (B) Is discharged for just and proper cause;
- (C) Fails to report for work when recalled from layoff within ten (10) calendar days from the date on which the Employer sends the employee notice by registered mail to the employee's last known address as shown in the City's records, unless satisfactory excuse is shown as to why the employee is unable to report within the ten (10) calendar day period;
- (D) Is laid off for more than twenty-four (24) months;
- (E) Is absent without approved leave for five (5) consecutive days;

- (G) Fails to return from an approved leave of absence at the expiration of the leave period.

**ARTICLE 33**  
**LAYOFF & RECALL PROCEDURES**

**Section 33.1.** Whenever the Employer determines a reduction in the number of employees is necessary due to a shortage of funds, lack of work, or job abolishment, employees shall be laid off and recalled in accordance with the provisions herein. Nothing within this Article shall restrict the Employer's management rights as specified in Article 3 of this Agreement.

**Section 33.2.** When any employee is laid off, the Employer shall give fourteen (14) days advance written notice to such employee and also to the Union. Such notice to the Union shall contain the following information:

- (A) The name of the person or persons laid off;
- (B) Classification of the person or persons laid off;
- (C) Their date of employment;
- (D) The effective date of the layoff; and
- (E) The reason for such layoff.

Any anticipated layoffs will be discussed with the Union upon the Union's request.

**Section 33.3.** The Employer shall select the classification(s) in which the layoffs will occur. The least senior employee within the classification, as defined under Article 32, shall be laid off first.

**Section 33.4.** No new employees shall be placed/hired in a classification while any employee in the same classification is on layoff, unless such laid off employee refuses the position to be filled or fails to respond to the recall notice in a timely manner.

**Section 33.5.** Employees who are laid off shall be placed on a recall list for a period of twenty-four (24) months. If there is a recall during this period, employees who are still on the recall list shall be recalled in the inverse order of their layoff, provided they are presently qualified to perform the work in the job classification to which they are recalled without further training.

**Section 33.6.** Notice of recall shall be sent to the employee by certified mail return receipt requested with a copy to the Union. The Employer shall be deemed to have fulfilled its obligations by mailing the recall notice to the last mailing address provided by the employee.

**Section 33.7.** The recalled employee shall have five (5) calendar days following the date of mailing of the recall notice to notify the Employer of the employee's intention to return to work and shall have ten (10) calendar days following the mailing date of the recall notice in which to report for duty, unless a different date for returning to work is otherwise specified in the notice.

**Section 33.8.** The Union shall have the right to appeal any layoff or job abolishment implemented in violation of this Article, in accordance with the grievance procedures contained herein.

#### **ARTICLE 34** **WORK RULES**

**Section 34.1.** The Employer agrees to the following procedures when establishing new work rules or policies or amending current work rules or policies:

- A. Proposed new work rules or policies or changes in existing work rules or policies shall be posted for ten (10) days in advance of their effective date except in an emergency or when such rule or policy change is mandated by law or other legal requirement;
- B. Upon request from the Union, the Employer agrees to discuss any proposed work rule or policy with the Union during the ten (10) day posting period. If the union requests to bargain over such a change within that posting period, the Employer and the union will negotiate in good faith. If the union does not request to bargain, or if the Employer and the union bargain to impasse, the Employer may implement a proposed change, but the union may exercise its negotiating rights regarding that matter in the normal course of bargaining as provided for in Article 40, Duration/Negotiations for any applicable succeeding Agreement.

Notwithstanding the previous paragraph, if the change is not a mandatory topic of bargaining under R.C. Chapter 4117, or in any case if the change is necessary due to exigent circumstances or a state or federal directive or regulation, the Employer is not required to comply with the ten (10) day posting period or to bargain over it; unless time permits, in which case the Employer will bargain and give as much notice as possible without waiving his or her rights;

- D. Work rules or policies established by the Employer shall not violate any provisions of this Agreement.

**Section 34.2.** The Employer agrees to furnish each employee in the Bargaining Unit with a copy of new or amended work rules when they become effective. New employees shall be provided with a copy of existing work rules at their time of employment.

**Section 34.3.** This Article shall not be interpreted in any manner to relieve an employee of the employee's responsibilities to follow normal rules and procedures of good conduct which can reasonably be expected of any public employee regardless of whether such rules and procedures have been reduced to writing.

**ARTICLE 35**  
**WAIVER IN CASE OF EMERGENCY**

**Section 35.1.** In cases of emergency declared by the President of the United States, the Governor of the State of Ohio, the Kenton City Council, the Mayor of Kenton, or the Federal or State Legislature, such as acts of God or civil disorder, the following conditions of this Agreement may automatically be suspended by the City:

- (A) Time limits for Management replies on grievances.
- (B) Work rules and/or agreements and practices relating to the assignment of City employees as specified by the Employer.

**Section 35.2.** Upon the termination of the emergency should valid grievances exist, they shall be processed in accordance with the provisions outlined in the grievance procedure of this Agreement and shall proceed from the point in the grievance procedure to which they (the grievance(s)) had properly progressed.

**Section 35.3.** Upon the termination of the emergency, all work rules and/or agreements and practices relating to the assignment of City employees, shall be re-instituted immediately.

**ARTICLE 36**  
**NO STRIKE**

**Section 36.1.** The Employer and the Union recognize that a work stoppage of any kind would create a clear and present danger to the health and safety of the public, and that this Agreement provides machinery for the orderly resolution of grievances. Therefore, the parties agree that:

- A. The Union shall not, for any reason, authorize, cause, engage in, sanction, or assist in any sick call, work stoppage, strike, sympathy strike, work slowdown, or any other concerted activity which would interrupt the operations or services of the Employer during the life of this Agreement.
- B. In the event of any violation of this Article, the Union shall promptly do whatever it can to prevent or stop such unauthorized acts including the presentation of a typewritten letter to the employees notifying them that they are in violation of the Agreement and must immediately return to work.

**Section 36.2.** Nothing in this Article shall be construed to limit or abridge the Employer's right to seek other available remedies provided by law to deal with any unauthorized or unlawful strikes.

**ARTICLE 37**  
**SEVERABILITY**

**Section 37.1.** This Agreement supersedes and replaces all pertinent statutes, rules and regulations over which it has authority to supersede and replace. If a court of competent jurisdiction finds any provision of this Agreement to be contrary to any applicable statute, such provision shall be of no further force and effect, but the remainder of the Agreement shall remain in full force and effect. The City and the Union shall meet within ten (10) days for the purpose of negotiating a lawful alternative provision, if possible on the same subject matter.

**Section 37.2.** Except for the continued applicability of those subjects prohibited from negotiations by the provisions of O.R.C. Chapter 4117, no section of the Civil Service Laws contained in Ohio Revised Code Sections 124.01 through 124.56 shall apply to bargaining unit employees. It is expressly understood that the Kenton Civil Service Commission shall have no authority or jurisdiction as it relates to employees in the bargaining unit except as required by O.R.C. 4117. The parties further declare it is their intent to waive the applicability of the Ohio Revised Code sections, 9.44, 737.12, 4111.03 and the Ohio Administrative Code Chapter 123 to this Agreement.

**ARTICLE 38**  
**COMPENSATION FOR CARE OF CANINE**

**Section 38.1.** In order to comply with the Fair Labor Standards Act (FLSA) regarding the care, maintenance, and training of a canine assigned by the Employer to an employee in the Police Department, the parties hereby mutually agree to the following:

1. The canine shall remain the property of the Employer. All canines will be licensed in accordance with all state and local laws. The Employer shall provide all food, insurance, veterinary service and all necessary equipment for the canine as approved by the Chief of Police. The canine officer shall be responsible for the care and maintenance of the canine, and the canine shall reside inside the canine officer's home.
2. The canine officer shall be assigned normal duty shifts consisting of four (4) seven (7) hour shifts and one (1) eight (8) hour shift, unless the officer is required by the Employer to work overtime. The canine officer shall receive his normal rate of pay for eight (8) hours on those days he is normally assigned to a seven (7) hour shift as the canine officer. The one (1) hour not actually worked when assigned to a seven (7) hour shift shall be used by the canine officer to maintain and care for the canine as well as to continue canine training.
3. The canine officer shall normally report to duty with the canine, unless otherwise ordered by the Chief of Police. When permitted in relation to the operational procedures of the Police Department, the canine officer will normally be assigned a City vehicle. Travel time to and from work shall not constitute any part of the canine officer's work shift.
4. Work performed by the canine officer on a regularly scheduled day off, other than necessary care and maintenance of the canine, shall be paid at the applicable overtime rate. Since training sessions may

occur on a day the canine officer has already worked his normal shift, it is agreed that overtime shall be paid for work performed in excess of forty (40) hours in a week and not for work performed in excess of eight (8) hours in a day. Overtime worked on a double time day must be approved in advance by the Chief of Police.

**Section 38.2.** Upon the disbanding of the canine unit, or retirement, or disability of the canine, the canine officer to whom the canine is assigned will be given the first chance to purchase the canine for one (\$1.00) dollar. An officer who purchases the animal shall assume all responsibility for the animal thereafter.

### **ARTICLE 39** **DURATION/NEGOTIATIONS**

**Section 39.1.** The Mayor shall select the person or persons authorized to negotiate on behalf of the City, who will have the power to negotiate on all matters subject to collective bargaining.

**Section 39.2.** The Union shall select the person or persons to negotiate on its behalf.

**Section 39.3.** This Agreement shall be effective January 1, 2010 and shall remain in full force and effect until 12:00 midnight on December 31, 2012.

**Section 39.4.** If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

**Section 39.5.** In the event either party desires to terminate this Agreement, written notice must be given to the other party not less than ten (10) days prior to the desired termination date which shall not be before the last effective date of the Agreement as set forth in Section 40.3.

**Section 39.6.** The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and the proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union for the life of this Agreement, each voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated, to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.

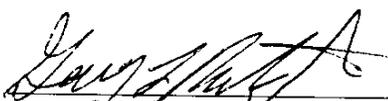
**Section 39.7.** This Agreement shall be subject to the wage re-opener described in Article 19, Section 19.1.

**SIGNATURE PAGE**

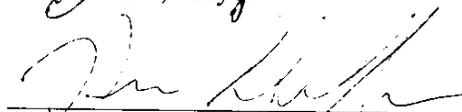
IN WITNESS WHEREOF, the parties have agreed hereto and have set their hand this 28th day of January, 2010.

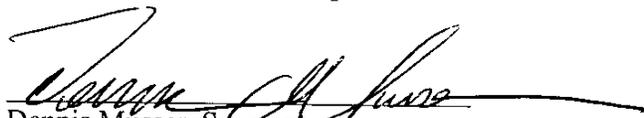
FOR THE CITY OF KENTON, OHIO:

FOR THE UNION, OPBA:

  
\_\_\_\_\_  
Gary Ritzler, Mayor

  
\_\_\_\_\_  
Mark Volcheck, OPBA Representative

  
\_\_\_\_\_  
Ron Shaffer, Safety Service Director

  
\_\_\_\_\_  
Dennis Musser, Sergeant

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John A. Schwemer, Law Director