STATE EMPLOYMENT RELATIONS BOARD

11-MED-09-1221
2041-02
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06/18/2013

# A COLLECTIVE BARGAINING AGREEMENT

# BETWEEN THE

# CITY OF SHELBY, OHIO, AND THE

# FRATERNAL ORDER OF POLICE
# LODGE #180

# (SERGEANTS AND CAPTAINS)

**November 8, 2011**
**November 7, 2014**

**Case No. 2011-MED-09-1221**

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## PREAMBLE

In an effort to continue harmonious and cooperative relationships with its employees, and to ensure the orderly and uninterrupted efficient operations of government, the Employer now desires to enter into an agreement reached through collective bargaining which will have for its purposes, among others, the following: (1) to recognize the legitimate interest of the employees of the Employer to participate through collective bargaining in the determination of the terms and conditions of their employment; (2) to promote fair and reasonable working conditions; (3) to promote individual efficiency and service to the citizens of the City of Shelby; (4) to avoid interruption or interference with the efficient operation of the Shelby Police Department; and (5) to provide a basis for the adjustment of matters of mutual interest by means of amicable discussion.

## ARTICLE 1
## RECOGNITION

**Section 1.01**. This agreement is hereby entered into by and between the City of Shelby, hereinafter referred to as the "Employer," and the Fraternal Order of Police, Lodge No. 180, hereinafter referred to as the "Union."

**Section 1.02**. The Employer hereby recognizes the Union as the sole and exclusive bargaining agent with respect to all matters pertaining to wages, hours, or terms and conditions of employment and the continuation, modification, or deletion of an existing provision of the collective bargaining agreement, as provided by R.C. § 4117.08(A), for all full-time employees employed and occupying the following positions:

1. Sergeants
2. Captains and Sr. Day Watch Captain

This bargaining unit shall exclude members of the other named bargaining units, and shall also exclude all part-time, seasonal, casual and temporary employees. All other employees of the Employer are excluded from the bargaining unit. Said recognition shall continue for a term as provided by law.

## ARTICLE 2
## DUES DEDUCTION

**Section 2.01**. Within thirty (30) days of the effective date of this agreement, all employees in the bargaining unit shall either become dues paying members of the Union, or as a condition of continued employment, remit to the Union a fair share fee in accord with the provisions of the Ohio Revised Code 4117.09 (C).

**Section 2.02**. Any newly hired employee(s) in the bargaining unit shall, within sixty (60) days of employment, either elect to become members of the Union or remit the fair share fee.

**Section 2.03**. As provided in the Ohio Revised Code 4117.09 (C), nothing in this article shall be deemed to require any employee to become a member of the Union.

**Section 2.04**. The Employer agrees to deduct Union dues from any member of the bargaining unit who provides written authorization for a payroll dues deduction. The Union shall indemnify the Employer and hold it harmless against any and all claims, demands, suits, or other liability that may arise by reason of any action of the Employer in complying with the provisions of this article. Dues shall be deducted by the Employer on a monthly basis and remitted to FOP Lodge #180.

## ARTICLE 3
## MANAGEMENT RIGHTS

**Section 3.01**. Not by way of limitation of the following paragraph, but to only indicate the type of matters or rights which belong to and are inherent to the Employer, the Employer retains the right to:

1. hire, discharge, transfer, suspend, and discipline employees;

2. determine the number of persons required to be employed, laid off, or discharged;

3. determine the qualifications of employees covered by this agreement;

4. determine the starting and quitting time and the number of hours to be worked by its employees;

5. make any and all reasonable rules and regulations;

6. determine the work assignments of its employees;

7. determine the basis for selection, retention, and promotion of employees to or for positions not within the bargaining unit established by this agreement;

8. determine the type of equipment used and the sequence of work processes;

9. determine the making of technological alterations by revising either process or equipment, or both;

10. determine work standards and the quality and quantity of work to be produced;

11. select and locate buildings and other facilities;

12. establish, expand, transfer, and/or consolidate work processes and facilities;

13. transfer or subcontract work;

14. consolidate, merge, or otherwise transfer any or all of its facilities, property, processes, or work with or to any other municipality or entity or effect or change in any respect the legal status, management, or responsibility of such property, facilities, processes, or work;

15. terminate or eliminate all or any part of its work or facilities.

**Section 3.02**. In addition, the Union agrees that all of the functions, rights, powers, responsibilities, and authority of the Employer in regard to the operation of its work and business and the direction of its work force which the Employer has not specifically abridged, deleted, granted, or modified by the express and specific written provisions of this agreement, including but not limited to those rights enumerated in Ohio Revised Code Section 4117.08 (C), are and shall remain exclusively those of the Employer.

**Section 3.03**. To the extent that decisions implemented pursuant to the management rights provision are violative of this agreement, they may be subject to the grievance procedure.

## ARTICLE 4
## NO STRIKE - NO LOCKOUT

**Section 4.01**. Neither the Union nor any member of the bargaining unit shall directly or indirectly call, sanction, encourage, finance, participate in, or assist in any way in any strike, slowdown, walkout, concerted "sick leave," or mass resignation, work stoppage, or slowdown, or other unlawful interference with the normal operations of the Employer during the term of this agreement. A breach of this section may be grounds for discipline.

**Section 4.02**. The Union shall, at all times, cooperate with the Employer in continuing operations in a normal manner and shall actively discourage and attempt to prevent any violation of the "no strike" clause.

**Section 4.03**. In the event of a violation of the "no strike" clause, the Union shall promptly notify all employees in a reasonable manner that the strike, work stoppage, or slowdown, or other unlawful interference with normal operations of the Employer, is in violation of this agreement, unlawful, and not sanctioned or approved by the Union. The Union shall advise the employees to return to work immediately.

**Section 4.04**. It is recognized by the parties that the Employer is responsible for and engaged in activities which are the basis of health and welfare of its citizens and that any violation of this article would give rise to irreparable damage to the Employer and the public at large. Accordingly, it is understood and agreed that in the event of any violation of this article, the Employer shall be entitled to seek and to obtain immediate injunctive relief, along with the Union indemnifying and holding the Employer harmless from any and all costs arising from the violation of this article.

**Section 4.05**. It is further agreed that any violation of the above shall be sufficient grounds for immediate discharge or other disciplinary action as determined by the Employer.

**Section 4.06**. The Employer, on the other hand, will not lock out any employee or otherwise intentionally interrupt or prevent the continuity of services in the Police Department insofar as such services are required in the normal and usual operation of the City.

## ARTICLE 5
## NON-DISCRIMINATION

**Section 5.01**. The parties agree that neither the Employer nor the Union shall discriminate against any individual on the basis of his membership or participation in Union matters or on the basis of race, color, age, sex, military status, religion, national origin or disability.

## ARTICLE 6
## BULLETIN BOARD

**Section 6.01**. The Employer shall furnish a wall space within the department for the sole purpose of erecting a bulletin board to be used by members of the Union.

A. Such bulletin board shall be used only for posting notices bearing the written approval of the Union, and shall be solely for Union business and recreational and social activities of the Union.

B. There shall be no notices or other writings posted which contain anything political, controversial, or critical of the Employer or any institutions or any employee or other persons.

**Section 6.02**. A copy of all items to be posted shall be provided to the Employer upon request.

## ARTICLE 7
## REPRESENTATIVES

**Section 7.01**. An employee has the right to the presence and advice of a Fraternal Order of Police (FOP) representative at all disciplinary interviews.

**Section 7.02**. The designated FOP representative on each shift shall suffer no loss in pay for necessary time spent in the good faith processing of grievances and at any meetings at which the employee requests a representative to be present. However, regularly scheduled work time shall not be used for the investigation of grievances by the representatives, without prior approval of the shift commander.

**Section 7.03**. The parties recognize that it may be necessary for an employee representative of the FOP to leave a normal work assignment while acting in the capacity of representative. he FOP recognizes the operational needs of the Employer and will cooperate to keep to a minimum the time lost from work by representatives. Before leaving an assignment, pursuant to this section, the representative must obtain approval from the officer in charge of the shift. If the representative is the officer in charge of the shift, he must obtain approval from the Chief of Police, or his designee.

**Section 7.04**. The Union President, or his designee, shall be entitled to six (6) days unpaid Union time annually, with two (2) weeks written notification to the Employer. The Union President, or his designee, shall be entitled to use vacation or other accumulated time, except sick leave, but consideration may be given to the trading of days off.

**Section 7.05**. Not more than two (2) employees on any one (1) shift may be able to attend bargaining sessions during that shift; however, such employees shall be subject to radio call when necessary.

## ARTICLE 8
## USE OF DEPARTMENT FOR FOP COMMITTEE MEETINGS

**Section 8.01**. Meetings of the committees of the FOP will be permitted on City property when and where work is not interrupted by such meetings and when such meetings are not held during the regularly scheduled duty hours of the participants on the day in question. Committees shall not consist of more than five (5) members and shall meet as necessary to administer this agreement.

## ARTICLE 9
## BALLOT BOX

**Section 9.01**. The Fraternal Order of Police shall be permitted, upon prior written notification to the Chief of Police, to place ballot boxes at department headquarters for the purpose of collecting members' ballots on all Union issues subject to ballot. Such box shall be the property of the FOP and neither the ballot box nor its contents shall be subject to City review. Such balloting shall be limited to no more than six (6) times per year. Such balloting shall not interfere with the work activities and the ballot box shall be removed as soon as practicable after the issue has been determined.

## ARTICLE 10
## HEALTH AND SAFETY

**Section 10.01**. Safety must be a prime concern of both parties. Therefore, the Employer accepts the responsibility to attempt to provide safe working conditions and working methods for its employees. The employee(s) accepts the responsibility to maintain his tools, equipment, and work area in a safe and proper manner, and accepts the responsibility to follow all safety rules and safe working methods of the Employer. All working conditions believed to be unsafe must be reported to the employee's supervisor as such as said working conditions are known. The supervisor will investigate all reports of unsafe working conditions and will attempt to correct any which are found and see that the safety and working methods are followed by his employees.

## ARTICLE 11
## TRAINING

**Section 11.1**. All requests for training shall be made in writing and submitted to the Chief.

**Section 11.2**. The Employer will give a written response within ten (10) working days whether a school/training request is conditionally approved or denied. If denied, the written response shall state the reason(s) for denial. Final approval shall be given after certification of availability of funds by the Finance Director.

## ARTICLE 12
## LABOR MANAGEMENT MEETINGS

**Section 12.01**. The Employer and the Union agree that certain subjects are not appropriate subjects for formal negotiations, but may need to be discussed for reasons of morale, safety, and efficiency. For this purpose the parties may engage in labor management meetings.

**Section 12.02**. The bargaining unit may have up to two (2) employee representatives and one (1) non-employee representative attend the meeting on its behalf. The City may have up to three (3) employee representatives and one (1) non-employee representative attend the meetings on its behalf. Either side may request a labor management meeting upon written notice to the other.

**Section 12.03**. Individual grievances will not be a subject matter for discussion at these meetings.

**Section 12.04**. The labor-management meeting shall not be used to bypass the normal chain of command.

**Section 12.05**. At least one (1) week prior to the meeting, the party requesting the meeting shall submit an agenda in writing containing specific discussion items.

## ARTICLE 13
## SICK LEAVE

**Section 13.01**. Sick leave shall be defined as an absence with pay necessitated by: (1) illness or injury to the employee; (2) exposure by the employee to a contagious disease communicable to other employees; and/or (3) illness, injury, or death in the employee's immediate family. Any employee on an unpaid leave of absence not approved by the Employer shall not accrue sick leave during his absence and shall have his sick leave accrual prorated accordingly.

**Section 13.02**. All employees shall earn leave at the rate of ten (10) hours per month and may accumulate such sick leave to an unlimited amount, provided no employee can earn or accrue more than one hundred twenty (120) hours in any calendar year.

**Section 13.03**. An employee who is to be absent on sick leave shall notify the Employer, in a manner designated by the Employer, of such absence and the reason therefore at least one (1) hour before the start of his work shift each day he is to be absent. Failure to notify the Employer at least one (1) hour prior to the start of his shift shall result in denial of sick leave pay for that day. Upon return to work, an employee shall complete a sick leave form and submit it to the Chief for approval.

**Section 13.04**. Sick leave may be used in segments of not less than one (1) hour.

**Section 13.05**. Before an absence may be charged against accumulated sick leave, the Employer may require such proof of illness, injury, or death as may be satisfactory to him, or may require

the employee to be examined by a physician designated by the Employer and paid by the Employer. In any event, an employee absent for more than two (2) consecutive tours of duty must supply a physician's report to be eligible for paid sick leave.

**Section 13.06**. If an employee fails to submit adequate proof of illness, injury, or death, upon request, or in the event that upon such proof as is submitted, or upon the report of medical examination, the Employer, at his sole discretion, finds there is not satisfactory evidence of illness, injury, or death, sufficient to justify the employee's absence, such leave may, at the Employer's sole discretion, be considered an unauthorized leave and shall be without pay.

**Section 13.07**. Any abuse or patterned use of sick leave shall be just and sufficient cause for disciplinary action.

**Section 13.08**. The Employer may require an employee who has been absent due to personal illness or injury, prior to and as a condition of his return to duty, to be examined by a physician designated and paid by the Employer, to establish that he is capable of performing the essential functions of the position, and that his return to duty will not jeopardize the health and safety of himself or other employees.

**Sections 13.09**. When the use of sick leave is due to illness or injury in the immediate family, "immediate family" shall be defined to only include the employee's spouse, children, parents, and dependents living with the employee.

**Section 13.10**. Upon the retirement of an employee, hired after January 1, 1987, who has not less than ten (10) years of continuous employment with the Employer and who has qualified for retirement benefits from a State of Ohio public employee retirement system, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-third (1/3) the total number of accumulated but unused sick hours, providing that such resulting number of hours to be paid shall not exceed seven hundred twenty (720) hours.

**Section 13.11**. Upon the retirement or death of an employee hired prior to January 1, 1987, who has not less than ten (10) years of continuous employment with the Employer, or who is disabled and who has qualified for retirement benefits from a State of Ohio public employee retirement system, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by the total number of accumulated but unused sick hours earned by the employee, as certified by the Employer, providing that such resulting number of hours to be paid shall not exceed seven hundred twenty (720) hours.

**Section 13.12**. Each employee who has accumulated sick leave in excess of two hundred forty (240) hours can forfeit his accumulated sick leave for additional vacation. Each employee with such excess of sick leave can forfeit two (2) hours of sick leave in exchange for one (1) additional hour of vacation. No employee shall be entitled to more than forty (40) additional hours of vacation in any year. Further, no employee shall be permitted to forfeit his/her sick leave total below two hundred forty (240) hours. Only sick leave which has accrued can be forfeited in exchange for additional vacation.

## ARTICLE 14
## INJURY LEAVE

**Section 14.01**. When an employee is injured in the line of duty while actually working for the Employer, he shall be eligible for paid leave in the amount of his regular hourly wage, not to exceed one hundred twenty (120) days from the injury date, providing that he files for workers' compensation and signs a waiver assigning to the Employer those sums of money he would ordinarily receive as weekly compensation as determined by law for that number of weeks he receives benefits under this article. Such leave shall commence after the employee utilizes his sick leave for the first five (5) work days. Sick leave will be reimbursed to the extent of the workers' compensation benefits received by the Employer.

**Section 14.02**. Any employee who is unable to perform the duties of his position as the result of a work related injury, following the exhaustion of injury leave, shall be required to use available accrued but unused paid leave for the absence in the following order: sick leave, compensatory time, personal leave, vacation leave, and any other paid leave.

**Section 14.03**. An employee who is unable to perform the duties of his position and is absent from work may be required to provide a certificate from his physician attesting to his ability to return to work and perform the duties of his position without restriction. The Employer retains the right to require the employee to be examined by a physician chosen by the Employer before the employee may be permitted to return to work; said examination shall be at the expense of the Employer, and the results of said examination shall supersede any conflicting opinions of other physicians provided that the physician chosen by the Employer is Board certified in the same or similar discipline, or is a physician of Occupational Medicine or similar discipline. Refusal by an employee to submit to an examination ordered by the Employer shall be just cause for termination.

## ARTICLE 15
## FUNERAL LEAVE

**Section 15.01**. Any employee shall be granted time off with pay for the purpose of attending the funeral upon the death of a member of employee's immediate family. The employee shall be entitled to a maximum of three (3) scheduled work days off for each death in his immediate family. For purposes of this article, "immediate family" shall be defined as to only include the employee's: spouse, parents, father-in-law, mother-in-law, step-parents, children, step-children, brother, sister, brother-in-law, sister-in-law, grandparents, grandparents-in-law, grandchildren, and step-grandchildren.

**Section 15.02**. If an employee requires more time than contained in the above paragraph, he may utilize vacation time, sick leave, or leave without pay, with the approval of the Police Chief.

## ARTICLE 16
## MILITARY LEAVE

**Section 16.1**. The Employer and the Union agree that military leave shall be provided consistent with applicable Federal and State statutes.

## ARTICLE 17
## VACATIONS

**Section 17.01**. Each full-time employee, upon completion of the appropriate amount of continuous full-time service with the Employer, shall be entitled to a paid vacation in accordance with the following schedule:

| Upon Completion Of | Hours |
|---|---|
| 1 year | 80 hours |
| 5 years | 120 hours |
| 14 years | 160 hours |
| 20 years | 200 hours |

**Section 17.02**. Earned vacation shall accrue on the employee's anniversary date in accordance with the above schedule, providing the employee is employed by the Employer at that time. There shall be no proration of vacation time except that no vacation leave shall accrue if an employee is on an unpaid leave of absence not approved by the Employer and vacation accrual shall be prorated for any unpaid leave of absence not approved by the Employer.

**Section 17.03**. Employees shall select vacation time off, by seniority, not later than March 1 of each year. In the event an employee has not selected vacation pursuant to this article, his vacation time off shall be subject to the approval of the Chief.

**Section 17.04**. Vacation time shall not be carried over from one (1) year to another without the express written authorization of the Chief. Any vacation time that is unused within the year granted, unless canceled by the Employer due to staffing needs, shall be paid by the Employer in the first pay period in December. An employee may cash in up to forty (40) hours of vacation per year provided that the employee notifies the Employer in writing at least sixty (60) days prior to December 1 each year. Payment for vacation converted to pay shall be made the first week in December.

**Section 17.05**. Vacation time shall be taken in segments of not less than one (1) scheduled work day, up to forty (40) hours, per year and all employees shall be able to take vacation on a one (1) scheduled work day basis as set forth herein. Any time remaining that would be less than a scheduled work day shall be taken as one block of time.

**Section 17.06**. Prior service with the county or any political subdivision of the state shall not be used in determining service credit for purposes of vacation accumulation for all employees hired after January 1, 1987.

**Section 17.07**. A bargaining unit employee who retires or voluntarily leaves employment shall be paid at his current rate of pay for any earned but unused vacation leave at the time of leaving the employ of the City, provided fourteen (14) days written notice is given the City.

**Section 17.08**. If any employee dies while in the employ of the City, the employee's spouse shall be paid the current rate of pay for any earned but unused vacation leave to that employee's

credit. If no spouse survives, earned but unused vacation leave shall be paid to the employee's estate.

**Section 17.09**. In the event that a holiday, as defined herein, falls within an employee's paid vacation period, such employee shall receive holiday pay in addition to vacation pay. Such vacation shall not, however, be extended because of such holiday.

## ARTICLE 18
## PERSONAL LEAVE

**Section 18.01**. Each employee, in the first full year after completion of his probationary period, shall be entitled to thirty-six (36) hours personal time per year, to be taken in not less than one (1) hour increments.

**Section 18.02**. The use of personal leave shall be granted by the Chief of Police or his designee provided such request is made at least one (1) hour before the intended use of the leave. No more than one (1) employee may be granted the use of personal leave on either Christmas Eve or New Year's Eve. The use of personal leave may be denied in the event a State of Emergency is declared by the Mayor of the City of Shelby, the Governor of the State of Ohio, or the President of the United States, but only for the period of the declared emergency.

## ARTICLE 19
## HOLIDAYS

**Section 19.1**. All employees, after one (1) year of continuous service, shall receive the following paid holidays:

New Year's Day
Martin Luther King Day (third Monday of January)
President's Day
Memorial Day
Independence Day
Labor Day
Veterans' Day
Thanksgiving Day
Christmas Day

**Section 19.02**. In order to be eligible for the above paid holidays, the employee must report to work and actually work his last scheduled work day before the holiday, the first scheduled work day after the holiday, or the holiday if the employee is scheduled to work such holiday, unless specifically excused from work by the Chief or the employee is on any type of paid leave, excluding sick leave, unless the employee provides a doctor's excuse. Employees scheduled off shall receive eight (8) hours holiday pay except that any employee on an unpaid leave of absence not approved by the Employer shall not receive this holiday pay.

**Section 19.03**. Employees scheduled to work on the holiday may request to take the day off with pay for their regularly scheduled shift. Alternatively, the employee may elect to work and

receive pay for his regularly scheduled shift in the amount of three (3) times his hourly rate of pay. Requests to take the actual holiday off shall be submitted in advance to the Chief for approval. All days not taken off shall be paid for in the first pay period in December in 2011 and 2012; however, beginning January 1, 2013 and continuing thereafter all holidays not taken off shall be paid for in the pay period in which they occur.

## ARTICLE 20
## HOURS OF WORK - PAY DAY

**Section 20.01**. The normal work period for all Captains shall be a forty (40) hour work week. The work week shall normally be five (5), eight (8) hour days of work with two (2) consecutive days off. The work week shall start on Sunday at 0600 and end on the seventh ($7^{th}$) day following (Sunday) at 0600. The normal work period for all Sergeants shall consist of eighty (80) hours in a fourteen (14) day work period. The work period shall normally consist of six (6) twelve (12) hour shifts and one (1) eight (8) hour shift. The work period shall start on Sunday at 0600 and end on the fourteenth (14th) day following (Sunday) at 0600.

**Section 20.02**. In the event it is necessary to modify the hours of work, the Employer will notify the Union in writing, and meet with the Union to discuss the situation, seven (7) days prior to implementing such change. Changes in hours of work due to unusual operational situations shall only require notification to the Union.

**Section 20.03**. The Employer will continue to pay employees on a bi-weekly basis. Checks will be enclosed in envelopes individually. If the Employer adopts a direct deposit payroll system, employees will be issued a non-negotiable memorandum of their bi-weekly payroll payment.

## ARTICLE 21
## OVERTIME

**Section 21.01**. Captains required to work overtime shall be paid one and one-half (1 1/2) times their regular hourly rate for all hours in excess of forty (40) hours in a work week. Sergeants required to work overtime shall be paid one and one-half (1 1/2) times their regular hourly rate for all hours in excess of eighty (80) hours in fourteen (14) day work period. All paid leave to include compensatory time, personal days, and vacation shall be construed as hours worked, with the exception of sick leave, injury leave, and military leave. Sick leave shall not be construed as hours worked during the same calendar week (Sunday 0600 to the following Sunday 0600) in which the sick leave is taken.

**Section 21.02**. A seniority list shall be maintained within the department, and when overtime is available, the senior most officer qualified to perform the work shall be contacted and asked if he would wish to work overtime. If the senior most officer refuses the overtime, then the next officer in seniority shall be contacted, and so on down the list. When the overtime again becomes available, the senior most man under the last to work shall be notified to work. If an error is made on the overtime list, any employee affected by the error may file a grievance; however, if more than one affected employee files a grievance, only the grievance of the employee who is highest on the overtime list shall go forward and all others shall be withdrawn. The sole remedy available shall be that the affected employee shall be called for the next

overtime opportunity occurring when the employee is not scheduled to work. If the employee elects to work the overtime, he shall become the "last worked" on the overtime list. If the employee elects not to work the overtime opportunity, then the filling of the overtime opportunity shall revert back to the list.

**Section 21.03**. In the event overtime should become available within the Police Department or extra officers are needed in the case of parades, emergencies, or any other reason police personnel may be in demand, regular full-time police officers shall be contacted and given the option to work through the seniority process.

**Section 21.04**. In no case shall auxiliary police be called upon to work in the position of any regular full-time officer or dispatcher, but only to augment the department after all full-time officers have been notified or have refused.

**Section 21.05**. Throughout this agreement there shall be no pyramiding of time or compounding of overtime or premium payments except as specifically provided herein. Overtime shall be calculated in one-quarter (.25) hour increments.

## ARTICLE 22
## OVERTIME BANK/COMPENSATORY TIME

**Section 22.01**. A Captain who works in excess of forty (40) hours in a work week (i.e., seven [7] day work period), or a Sergeant who works in excess of eighty (80) hours in a fourteen (14) day work period, may elect to receive pay or compensatory time in the amount of one and one-half (1 1/2) times his regular hourly rate. If an employee elects to receive compensatory time, it shall be placed in a "comp bank" for use as future time off. In the event an employee reaches the three hundred (300) hour maximum, any overtime earned thereafter shall be paid. For the purposes of this article, "hours worked" shall include only the following paid leaves: compensatory leave, personal leave, and vacation leave.

**Section 22.02**. If an employee works overtime hours in a work-period as a result of a grant for special or target enforcement, he shall be paid in the amount of one and one-half (1 1/2) times his regular hourly rate and he shall not be able to elect compensatory time for such work.

**Section 22.03**. Each employee shall be responsible for designating, in writing to the Employer, his election of pay or compensatory time for overtime at the conclusion of the time worked.

**Section 22.04**. Compensatory time off may be granted with prior written notice to and approval of the Chief of Police as follows: (1) written requests submitted at least seventy-two (72) hours prior to the commencement of the requested leave shall be granted. If the approval reduces staffing below minimum manning standards, as established by the Chief of Police, the approval shall be deemed conditionally granted. The request shall only be finally approved if the overtime vacancy caused is voluntarily filled; (2) if prior to the seventy-two (72) hour notice period another employee requests a vacation day or a personal day off the affected comp time request shall be changed to conditionally granted and shall only be finally approved if the overtime vacancy caused is voluntarily filled; (3) written requests submitted on less than seventy-two

hours written notice may be granted provided no overtime pay is incurred to replace the absent employee.

**Section 22.05**. The Employer shall provide an annual accounting of each employee's accumulated time in this program.

## ARTICLE 23
## COURT TIME

**Section 23.01**. An employee required to testify in common pleas court shall receive a minimum of four (4) hours, or actual time spent, including travel time if such occurs on his off duty hours and does not abut his scheduled shift. All attempts must be made to use a department vehicle. Travel time shall only be paid in a personal vehicle if the use of a department vehicle is refused by the Officer-in-Charge.

**Section 23.02**. An employee required to testify in Shelby Municipal Court, or file or begin charges at the Richland County Prosecutor's Office or the Shelby Law Director's office, shall receive a minimum of two (2) hours, or actual time spent, including travel time if such occurs on his off-duty hours and does not abut his regular shift. The employee shall receive approval from his supervisor prior to any off-duty meeting with the Richland County Prosecutor's Office or the Shelby Law Director. All attempts must be made to use a department vehicle. Travel time shall only be paid in a personal vehicle if the use of a department vehicle is refused by the Officer-in-Charge.

**Section 23.03.** If a court appearance time or a meeting with the Prosecutor or the Law Director is scheduled to begin within one (1) hour after the conclusion of a previous Court appearance or meeting time, the subsequent Court appearance or meeting with the Prosecutor or Law Director shall be considered a continuation of the initial Court appearance(s) or meeting time.

**Section 23.04.** Call in work is defined as work assigned by the Chief of Police or his designee and performed by an employee at a time that does not abut or overlap the employee's normal work schedule. An employee who performs call in work shall be compensated at a minimum of two (2) hours.

**Section 23.05.** Any employee that is called in to work any parade detail shall receive a minimum of two (2) hours of pay. The employee shall be entitled to this minimum even if the time abuts his scheduled shift.

**Section 23.06.** The term "abut or overlap the employee's normal work schedule" shall be defined as:

A. Court time or call in that occurs within one (1) hour of the end of a shift or overtime assignment.

B. Court time or call-in that begins one (1) hour or less prior to the beginning of an employee's regular work shift.

## ARTICLE 24
## SENIORITY

**Section 24.01**. Seniority shall be defined as an employee's uninterrupted length of continuous full-time employment with the Employer in the Police Department. A probationary employee shall have no seniority until he satisfactorily completes the probationary period, when at such time said probationary period will be added to his total length of continuous service.

**Section 24.02**. All newly hired employees will be required to serve a probationary period of one (1) year. During such period, the Employer shall have the sole discretion to discipline or discharge such employees, and any such action shall not be appealable through any grievance or appeal procedure contained herein.

**Section 24.03**. An employee's seniority shall be terminated when one (1) or more of the following occurs:

A. he resigns;

B. he is discharged for just cause;

C. he is laid off for a period exceeding twenty-four (24) months;

D. he retires;

E. he fails to report for work for more than four (4) working days without having given the Employer advance notice of his pending absence;

F. he becomes unable to perform the material and substantial duties of his job due to illness or injury and is unable to return to work upon the expiration of any leave applicable to him;

G. he refuses to acknowledge a recall or fails to report to work within five (5) working days from the date the employee receives the recall notice by certified mail.

Approved leaves of absence shall not constitute a break in seniority.

**Section 24.04**. If two (2) or more employees are hired or appointed on the same date, their relative seniority shall be determined by the order in which their names appear on the certified eligibility list.

**Section 24.05**. The Employer shall provide up-to-date seniority lists of all employees in the bargaining unit to the Union representative upon written request.

**Section 24.06**. Permanent shift selections and vacation election shall be governed by seniority.

**Section 24.07.** Classification seniority, where applicable in this Agreement, shall be defined as an employee's uninterrupted length of service in his current classification and any uninterrupted service in a higher classification. Classifications in descending order shall be Captain, Sergeant, Patrol Officer, and Dispatcher. An "interruption" in length of service shall occur only upon an event described in Section 24.03 above; however, no service in a lower classification shall count toward an employee's classification seniority.

## ARTICLE 25
## LAYOFF AND RECALL

**Section 25.01**. Where, because of economy, consolidation, or abolishment of functions, curtailment of activities or otherwise, the Employer determines it necessary to reduce the size of its work force, such reduction shall be made in accordance with the provisions set forth.

**Section 25.02**. Employees within the affected job classifications shall be laid off according to their classification seniority as defined in Article 24, Section 24.07, with the least senior being laid off first, providing that all students, temporary, part-time, seasonal, and probationary employees within the effected job classifications, within the effected department, are laid off first in the above respective order.

**Section 25.03**. Employees who are laid off from one (1) job classification may displace (bump) another employee(s) with lesser seniority in an equal or lower-rated job classification within the department. For purposes of this article the job classifications within the Police Department in descending order are: Captain, Sergeant, Patrol Officer, Dispatcher.

**Section 25.04**. Employees who are displaced (bumped) by a more senior employee shall be able to displace (bump) another employee with lesser seniority in an equal or lower-rated job classification pursuant to the provisions of Section 03 above.

**Section 25.05**. In all cases where one (1) employee is exercising his seniority to displace (bump) another employee, his right to displace (bump) is subject to the conditions that he is qualified for the position and able to perform the functions and duties of the position into which he is attempting to displace (bump).

**Section 25.06**. At the end of the displacing (bumping) process, the employee who is displaced (bumped) and unable or chooses not to displace another employee pursuant to the above provisions shall be laid off.

**Section 25.07**. Recalls shall be in the inverse order of layoff and a laid off employee shall retain his right to recall for twenty-four (24) months from the date of his layoff. Notice of recall shall be sent to the employee's address listed on the Employer's records and shall be sent by certified mail, return receipt. Prior to layoff it shall be the responsibility of the employee to confirm that the Employer has his current mailing address on record. It shall further be the responsibility of any employee on layoff to notify the Employer in writing if there is a change in his mailing address. Failure of an employee to comply with either, or both, of the aforementioned requirements shall constitute a waiver of any appeal the employee may have in the event a recall notice is sent to the wrong address. An employee who refuses recall or does not report to work

within ten (10) calendar days from the date the employee receives the recall notice or within fifteen (15) calendar days of the date the notice is sent by the Employer shall be considered to have resigned his position and forfeits all right to employment with the Employer.

**Section 25.08**. Employees scheduled for layoff and the Union shall be given a minimum of fourteen (14) calendar days advance notice of layoff.

**Section 25.09**. Upon written request of the Union, the parties, within five (5) calendar days, agree to discuss the rationale for each layoff pursuant to the provisions of Article 12. Upon the written request of either party, the parties shall meet within five (5) calendar days to discuss possible alternatives to layoffs.

**Section 25.10.** The Employer and the Union acknowledge that it is their intent that this article specifically and expressly supersede ORC §§ 124.321 through 124.328, and 124.37 and Shelby Civil Service Rules.

## ARTICLE 26
## INSURANCE

**Section 26.01**. Beginning January 1, 2006, employees shall be eligible for health insurance under the City's PPO health insurance plan.

**Section 26.02**. The Employer will provide and pay the full premium for all full-time employees for a life insurance policy with face value of fifty thousand dollars ($50,000).

**Section 26.03**. Copies of policies will be provided to employees upon request.

**Section 26.04**. Employees shall also be eligible to participate in the City's vision care program.

***Section 26.05***. The Employer retains sole discretion to change insurance carriers or alter the provisions of any health insurance plan(s) offered to employees.

***Section 26.06***. In the event an employee's spouse is employed full-time as "full-time" is defined by his employer, and the spouse's employer makes health insurance available to that spouse, said spouse shall not be eligible for primary coverage under the City's health insurance plan(s). The City shall make its health insurance available to the employee's spouse as a secondary health insurance as needed.

## ARTICLE 27
## EMPLOYEE LIABILITY

**Section 27.01**. Consistent with Ohio Revised Code, Chapter 2744.07, the Employer shall provide for the defense of an employee in any civil action brought against him by reason of his employment with the City of Shelby.

## ARTICLE 28
## LONGEVITY PAY

**Section 28.01**. Longevity will be paid to all sworn members at the rate set forth below for each full and consecutive year of service up to a maximum of twenty-five (25) years. Said longevity pay will be paid to the employee on the first pay in December along with accumulated holiday pay.

| | |
|---|---|
| 5 – 11 years | $40.00 |
| 12 – 18 years | $45.00 |
| 19 – 25 years | $50.00 |

Any officer currently employed as of January 1, 2003, with less than five (5) years of service shall continue to receive longevity pay at the rate of three dollars ($3.00) per month for each full and consecutive year of service, until reaching five (5) years of service, at which time the employee shall be covered by the longevity schedule set forth above.

## ARTICLE 29
## CLOTHING ALLOWANCE

**Section 29.01**. All employees covered by this agreement shall receive an annual clothing allowance in the amount of eight hundred twenty-five dollars ($825.00) payable in the first pay period in January.

**Section 29.02**. The Employer shall continue to issue the items listed below on a replacement basis and upon approval of the Safety Director. The replacement of items shall be accomplished by approved requisition form, with payment made directly to the vendor.

A. leather goods, except shoes;

B. raincoat;

C. rubber boots;

D. ballistic vest;

E. duty weapon;

F. official Shelby Police patches;

G. badge, nameplate, brass;

These items shall be returned to the Employer upon separation from employment.

**Section 29.03. Personal Property Reimbursement.**

A. Employees shall be entitled to reimbursement for the repair or replacement of prescription eyewear, watches, shirts, pants and coats that are damaged during the course of performing their assigned duties with due caution and without negligence. Upon presentation to the Employer of evidence of damage to the employee's personal property, the Employer agrees to repair or replace the personal property up to a maximum cost amount as set forth below. The replacement of items shall be accomplished by approved requisition form, with payment made directly to the vendor.

| Personal Property | Maximum Amount of Reimbursement |
|---|---|
| Time Piece | $50.00 |
| Prescription Eyewear | 100% of amount not covered by Eye Care Insurance up to a maximum of $120.00 once per year |
| Shirts, pants, and coats | Replacement of same item |

B. Employees shall request repair or replacement in writing and shall provide written explanation as to how the item was damaged. The Chief shall have the right to examine any item damaged, and may deny reimbursement for the item for just cause.

C. Employees agree to cooperate fully with the Employer in any efforts made to obtain reimbursement from the party originally responsible for any damage to an employee's personal property.

## ARTICLE 30
## MISCELLANEOUS POLICE DEPARTMENT PAY

**Section 30.01**. Upon completion of the initial hire probationary period, each bargaining unit member who is presently certified, or subsequently becomes certified, in the certification categories listed below shall be entitled to receive an additional three (3) hours of pay commensurate with his rank biweekly in addition to his regular rate of pay commensurate with his rank upon assignment by the Employer. Employees who are assigned to duties receiving certification pay must be willing and able to use their training and certification as part of their assigned duties. The Employer shall not withhold assignment of the certification if the officer qualifies and the maximum number of employees in the police department that are assigned to the certification would not be exceeded.

| Maximum Number of Employees Assigned | Certification |
|---|---|
| No cap | Identification Technician (Requires completion of the Institute of Applied Science coursework) |

| | |
|---|---|
| 4 | Firearms Instructor |
| 2 | DARE Officers, one of which will be the immediate past DARE instructor, as long as that officer is certified to instruct. |
| 3 | SWAT Officer |
| 2 | Computer Administrators |
| No maximum | Associate or Bachelor's degree in a field related to law enforcement from an accredited college or university. |

No officer who holds a certification as of January 1, 2003, and who maintains that certification shall lose certification pay as a result of the maximum assignments listed above.

**Section 30.02**. Each sworn member is entitled to a maximum of three (3) miscellaneous certification pays as set forth in Section 30.01.

**Section 30.03**. However, if any employee entitled to the above compensation refuses to perform the duties for which he is being compensated, except when on approved paid leave, he shall lose entitlement to the succeeding biweekly installation of three (3) hours pay, stated above, and may be subject to disciplinary action for refusal to work an assignment.

**Section 30.04**. The Union and the Employer agree, not withstanding other provisions in this section, that an officer assigned to be a K-9 officer shall work as his regular hours a seven (7) hour shift, as assigned by the Chief of Police or his designee, for which the K-9 officer shall be entitled to eight (8) hours of regular pay as compensation for those duties required outside regular work hours in the care and maintenance of his dog(s), including but not limited to, time spent feeding, cleaning, exercising, playing, grooming, transporting, providing health care, and for related time and extraordinary expense incurred in the other activities related to the maintaining of a dog at his residence.

**Section 30.05.** The K-9 handler shall receive one (1) hour's pay per day on all days the handler is not scheduled to work for K-9 maintenance as described in Section 30.04.

**Section 30.06**. For the purposes of vacation, compensatory time, sick time, personal days, the K-9 officer shall only be charged for seven (7) hours per day when the K-9 officer uses any of this accrued time off. The eighth ($8^{th}$) hour shall be paid as though the K-9 officer worked for the purposes of K-9 maintenance as described in Section 30.05.

**Section 30.07**. Shelby Police Department K-9 teams must be OPOTA certified every two (2) years and strive to maintain United States Police Canine Association Certification (USPCA) certified every year. If for any reason the K-9 team fails OPOTA certification, it will be immediately placed on inactive status. As soon as possible the team will again attempt to pass certification. If the K-9 fails to be certified on its second attempt, it is the decision of the Chief

of Police whether to allow the K-9 a third attempt or to permanently remove the dog from service.

## ARTICLE 31
## SHIFT DIFFERENTIAL

**Section 31.01**. Any employee covered by this contract who actually works between the hours of 2:00 p.m. and 6:00 a.m. shall receive a shift differential payment in the amount of fifty cents ($0.50) per hour for those hours actually worked within the designated time period.

## ARTICLE 32
## ISSUED DUTY SERVICE FIREARM

**Section 32.01**. An officer upon retirement shall be able to purchase his City issued duty service firearm for a fee of one dollar ($1.00), provided he has used his issued duty service firearm for at least five (5) years. If he has not used his issued duty service firearm for at least five (5) years, he shall be able to purchase a previously issued duty service firearm with more than five (5) years of use.

## ARTICLE 33
## WAGES

**Section 33.01**. Effective with the-pay period that includes January 1 of each year, the base wage of Sergeants shall be twelve percent (12%) over and above the base wage of the most senior patrolman and the base wage for Captain shall be twelve percent (12%) over and above the base wage of Sergeant as set forth below.

| SERGEANTS | 1/1/2012 | 1/1/2013 | 1/1/2014 |
|---|---|---|---|
| Hourly | 24.56 | | |
| Yearly | 51,092.00 | | |

| CAPTAINS | 1/1/2012 |
|---|---|
| Hourly | 27.51 |
| Yearly | 57,223.04 |

The Sergeants and Captains shall receive a zero percent (0%) wage increase effective January 1, 2012. If any other Union representing City employees negotiates a wage increase in 2013 or 2014 for its bargaining unit members, FOP Lodge 180 may, upon written notice to the City, reopen this article for the purpose of negotiating for a wage increase.

## ARTICLE 34
## SHIFT SELECTION

**Section 34.01.** Shift bidding shall occur two (2) times per year. During the first week in February and August of each year, the Chief of Police shall provide notice of the available shifts and days off for the following six (6) month period. During the second week in February and

August of each year, employees shall bid according to their classification seniority as defined in Article 24, Section 24.07, on the available shifts for their respective classifications. No later than February 21 and August 21 of each year, the Chief of Police shall provide notice of shift assignments resulting from the bidding process to become effective in the first full pay period beginning after the last day of February and August each year.

**Section 34.02**. The Employer reserves the right to reassign an employee to another shift during the calendar year for reasons of economy or efficiency.

## ARTICLE 35
## PROMOTIONS

**Section 35.01**. All promotions shall be in accordance with applicable State Law and Civil Service Rules.

## ARTICLE 36
## CONTRACTING OUT/SUBCONTRACTING

**Section 36.01**. The Employer reserves the right to contract out or subcontract work which requires a degree of specialization not present in the bargaining unit, or is of such a sensitive nature that, in the Employer's sole discretion, performance by bargaining unit members is impractical.

**Section 36.02**. Such contracting out or subcontracting shall not reduce that employees' work week, or hourly rates of pay, or erosion of job classifications.

**Section 36.03**. The Employer agrees to notify the Union in the event this article is to be utilized.

## ARTICLE 37
## PERSONNEL FILES AND POLICY

**Section 37.01**. Understanding that in the administration of the department the Employer maintains individual personnel files, the employee may be permitted to review his personnel files within a reasonable amount of time upon written request. In addition, a department member may inspect his file once in direct response to a pending grievance or official matter.

**Section 37.02**. Should an employee, upon review of his file, come across material of a negative or derogatory nature, said employee may provide a written and signed comment in rebuttal, mitigation, or explanation of said material, which comment shall remain in the employee's file so long as the negative material remains.

**Section 37.03**. When a department member is charged with or is under investigation for contended violations of departmental rules and regulations, reasonable efforts consistent with applicable law shall be made to withhold publication of the officer's name and the extent of disciplinary action taken or contemplated until such time as final interdepartmental ruling has been made and served upon the officer.

**Section 37.04**. The Employer shall identify which file will be considered the official personnel file for the duration of this agreement.

## ARTICLE 38
## DISCIPLINARY PROCEDURE

**Section 38.01.** This procedure shall apply to all non-probationary employees covered by this agreement.

**Section 38.02**. All employees shall have the following rights:

A. An employee shall be entitled to representation by a Union representative (attorney) at each step of the disciplinary procedure. However, no disciplinary meeting shall be unreasonably delayed as a result of the unavailability of the Union attorney.

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

**Section 38.03**. The City shall have the right to discharge, suspend, or otherwise discipline any employee for just cause. The specific acts for which discipline is being imposed and the penalty proposed shall be specified in the Notice of Discipline. The Notice served on the employee shall contain a reference to dates, times, and places, if possible. The principles of progressive disciplinary action will be followed with respect to minor offenses. It shall be corrective and applied in a uniform manner. Normal progressive discipline shall consist of written warning, short-term suspension, and either a long-term suspension, demotion, or discharge. City shall take corrective action deemed necessary by the circumstances on a case-by-case basis.

**Section 38.04. Disciplinary Conference**.

A. Whenever the City determines that an employee may be suspended, reduced, or terminated, a predisciplinary conference will be scheduled to give the employee an opportunity to offer an explanation of the alleged conduct.

B. Prior to the scheduled starting time of the conference, the City will provide to the employee a written outline of the charges which may be the basis for disciplinary action. The employee must choose to:

1. appear at the conference to present an oral or written statement in his defense; or

2. elect in writing to waive the opportunity to have a predisciplinary conference; or

3. have a representative appear at the conference to present an oral or written statement on the employee's behalf.

If the employee fails to elect one of the above options and notify the Employer, or fails to appear or have a representative appear at the hearing on his behalf, the employee will be deemed to have waived the opportunity to have a predisciplinary conference.

C. At the predisciplinary conference, the City will ask the employee to respond to the allegations of misconduct which were outlined to the employee. The employee may present any testimony, witnesses, or documents which explain whether or not the alleged conduct occurred. A Union representative may appear at the conference as a witness.+

D. The employee shall receive written notice of the disciplinary action to be taken, if any, within five (5) days of the disciplinary conference.

**Section 38.05**. An employee may resign following the service of a Notice of Discipline. Any such resignation will be processed in accordance with the policies of the Employer.

**Section 38.06**. Upon receipt of the Notice of Discipline, the employee may choose to accept the discipline or to appeal by filing a grievance at Step 2 of the grievance procedure within five (5) calendar days from receipt of the Notice of Discipline. Oral or written reprimands are grievable only through the Mayor's level of the grievance procedure, but are not arbitrable.

**Section 38.07**. A failure to submit an appeal within the above time limits shall be construed as an agreement to the disciplinary action by the affected employee and Union. All subsequent appeal rights shall be deemed waived.

**Section 38.08**. A disciplinary matter may be settled at any time. The terms of the settlement shall be agreed to in writing. An employee executing a settlement shall be notified of the right to have a Union representative as a representative or to decline any such representation. A settlement entered into by an employee shall be final and binding on all parties. The Union shall be notified of all settlements.

**Section 38.09**. An employee may be suspended with pay at any time during the process if the appointing authority, at its sole discretion, determines the employee's continued presence on the job represents a potential danger to persons or property, or would interfere with the Employer's operations.

**Section 38.10**. Records of disciplinary action, not resulting in time off, which are more than two (2) years old shall not be used in a subsequent disciplinary action providing there has been no occurrence of similar type incident within the two (2) year period.

## ARTICLE 39
## GRIEVANCE AND ARBITRATION PROCEDURE

**Section 39.01**. Every employee shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination, or reprisal and shall have the right to be represented by a Union representative at all stages of the grievance procedure. It is the intent and purpose of the parties to this agreement that all grievances shall be settled, if possible, at the lowest step of this procedure.

**Section 39.02**. For the purposes of this procedure, the below-listed terms are defined as follows:

A. Grievance - A "grievance" shall be defined as a dispute or controversy arising from the alleged misapplication or misinterpretation of only the specific and express written provisions of this agreement.

B. Aggrieved Party - The "aggrieved party" shall be defined as only any employee or group of employees within the bargaining unit actually filing a grievance.

C. Party In Interest - A "party in interest" shall be defined as any employee of the Employer named in the grievance who is not the aggrieved party.

D. Days - A "day" as used in this procedure shall mean calendar days, excluding Saturdays, Sundays, or holidays as provided for in this agreement.

**Section 39.03**. The following procedures shall apply to the administration of all grievances filed under this procedure:

A. Except at Step 1, all grievances shall include:

1. the name and position of the aggrieved party;

2. the identity of the provisions of this agreement involved in the grievance;

3. the time and place where the alleged events or conditions constituting the grievance took place;

4. the identity of the party responsible for causing the said grievance, if known to the aggrieved party; and

5. a general statement of the facts giving rise to the grievance and the redress sought by the aggrieved party.

B. Except at Step 1, all decisions shall be rendered in writing at each step of the grievance procedure. Each decision shall be transmitted to the aggrieved party and his representative, if any.

C. If a grievance affects a group of employees working in different locations, with different principals, or associated with an Employer-wide controversy, it may be submitted at Step 3.

D. The preparation of grievances may be conducted during working hours, to the extent that it does not interfere with the employee's duties.

E. Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the administration and having said matter informally adjusted without the intervention of the

Union, provided that the adjustment is not inconsistent with the terms of this agreement. In the event that any grievance is adjusted without a formal determination pursuant to this procedure, while such adjustment shall be binding upon the aggrieved party and shall in all respects be final, said adjustment shall not create a precedent or ruling binding upon the Employer in future proceedings.

F. The time limits provided herein will be strictly adhered to and any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the Employer fails to reply within the specified time limit, the grievance shall automatically move to the next step. The time limits specified for either party may be extended only by written mutual agreement.

G. This procedure shall not be used for the purpose of adding to, subtracting from, or altering in any way any of the provisions of this agreement.

**Section 39.04**. All grievances shall be administered in accordance with the following steps of the grievance procedure:

Step 1
An employee who believes he may have a grievance shall notify the Chief of Police of the possible grievance within seven (7) days of the occurrence of the facts, or when the employee should have reasonably known of the facts, giving rise to the grievance. The Chief of Police will schedule an informal meeting with the employee and his Union representative, if the Union representative's presence is requested by the employee, within seven (7) days of the date of the notice by the employee. The Chief of Police and the employee, along with the Union representative, if his presence is requested by the employee, will discuss the issues in dispute with the objective of resolving the matter informally.

Step 2
If the dispute is not resolved informally at Step 1, it shall be reduced to writing by the aggrieved party and/or the Union and presented as a grievance to the Chief of Police within five (5) days of the informal meeting or notification of the Chief's decision at Step 1, whichever is later; but not later than seven (7) days from the date of the meeting if the Chief fails to give his answer directly to the aggrieved party. The Chief shall issue a written decision to the aggrieved party, with a copy to the Union representative, if any, within five (5) days of the receipt of the written grievance.

Step 3
If the aggrieved party initiating the grievance is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Mayor within five (5) days from the date of the rendering of the decision in Step 2. Copies of the shift commander's written decision shall be submitted with the appeal. The Mayor or his designee shall convene a meeting within ten (10) days of the receipt of the appeal. The meeting will be held with the aggrieved party, his Union representative, if any, and any other party necessary to provide the required information for the rendering of a proper decision. The Mayor or his designee shall issue a written decision to the employee, with a copy to the Union representative within ten (10)

days from the date of the meeting. If the Union is not satisfied with the decision at Step 3, it may proceed to arbitration pursuant to the arbitration procedure herein contained.

**Section 39.05**. In the event a grievance is unresolved after being processed through all of the steps of the grievance procedure, unless mutually waived or having passed through the various steps by time limit default(s) of the Employer, then within ten (10) days after the rendering of the decision at Step 3, or a time limit default by the Employer at Step 4, the Union may provide notice to the Employer of its intent to submit the grievance to arbitration. Such notice of intent shall be submitted in writing by the Union President to the Employer. Within ten (10) days from the date a notice of intent to arbitrate is provided to the Employer, the parties will attempt to mutually agree upon an arbitrator. If such agreement is not reached, the parties shall jointly request a list of arbitrators from the American Arbitration Association (AAA).

The arbitrator shall be selected in accordance with the rules of the American Arbitration Association.

**Section 39.06**. The arbitrator shall have no power of authority to add to, subtract from, or in any manner alter the specific terms of this agreement, or to make any award requiring the commission of any act prohibited by law, or to make any award that itself is contrary to law or violates any of the terms and conditions of this agreement.

**Section 39.07**. The arbitrator shall not decide more than one (1) grievance on the same hearing day or series of hearing days, except by the mutual written agreement of the parties.

**Section 39.08**. The hearing(s) shall be conducted pursuant to the Rules of Voluntary Arbitration of the American Arbitration Association.

**Section 39.09**. The fees and expenses of the arbitrator and the cost of the hearing room, if any, shall be borne by the party losing the grievance. All other expenses shall be borne by the party incurring them. Neither party shall be responsible for any of the expenses incurred by the other party.

**Section 39.10**. The arbitrator's decision and award will be in writing and delivered within thirty (30) days from the date the record is closed. The decision of the arbitrator shall be final and binding upon the parties.

**Section 39.11**. The Union agrees to indemnify and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability that may arise out of any determination that the Union failed to fairly represent a member of the bargaining unit during the exercise of his rights as provided by the grievance and arbitration procedures herein contained.

## ARTICLE 40
## SUBSTANCE ABUSE TESTING AND ASSISTANCE

**Section 40.01**. Drug and alcohol screening/testing shall be conducted upon reasonable suspicion which means that the Employer possesses facts that give rise to reasonable suspicion that an employee is currently or had recently been engaging in the use of illegal drugs or improper use

of alcohol. Drug and alcohol screening/testing may also be conducted post-accident and post-injury. The Employer also retains the right to conduct random drug/alcohol testing upon employees (by the lottery system) not to exceed two (2) tests per calendar year. Drug screening/testing shall be conducted solely for administrative purposes and the results obtained shall not be used in any criminal proceedings. Under no circumstances may the results of drug screening or testing be released to a third party except as necessary to substantiate any discipline imposed should the employee appeal the imposition of such discipline. The following procedure shall not preclude the Employer from other administrative action.

**Section 40.02**. All drug tests shall be conducted by laboratories certified by a department of health and human services (DHHS) recognized certification program. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody and control and split sample collection and testing. All alcohol breath tests shall be administered by a trained breath alcohol technician or a law enforcement officer certified to conduct such tests. An alcohol concentration of 0.04 or greater shall be considered a positive result.

**Section 40.03.** The results of the testing shall be delivered to the Employer and the employee tested. An employee whose confirmatory drug test result is positive shall have the right to request a certified copy of the testing results in which the laboratory shall affirm that the test results were obtained using professionally recognized testing methods. The employee shall provide a signed release for disclosure of any and all testing results to the Employer. The Employer shall not disclose the testing results without the consent of the employee, except as otherwise required by a court order. However, the test results, if used as a basis for the imposition of discipline, may be disclosed to substantiate any discipline imposed in the event the employee appeals the imposition of discipline.

**Section 40.04. Testing Procedure**:

A. All specimens identified as positive on the initial drug test (screen) shall be confirmed through the use of the gas chromatography/mass spectrometry method of detection, and any other method that is professionally recognized as being as or more accurate than the gas chromatography/mass spectrometry method.

B. In the event the confirmatory test confirms the results of the first, the Employer will proceed with sanctions as set forth in this article.

C. In the event the initial and confirmatory test results are positive, the employee is entitled to have the split sample tested in the manner prescribed above at the employee's expense. The results of this test shall be determinative.

**Section 40.05.** If the above alcohol and/or drug testing produces a positive result, the employee will be disciplined pursuant to the progressive disciplinary procedure. The Employer shall, on a first offense (positive test result), offer the employee the option of participating in a rehabilitation or detoxification program in lieu of discipline. If the employee accepts the offer of participating in a rehabilitation or detoxification program in lieu of discipline, the discipline shall be held in abeyance pending the employee's attendance and successful completion of the rehabilitation or detoxification program whereupon the discipline shall be removed from the

employee's records. A failure to attend and successfully complete the rehabilitation or detoxification program shall result in the immediate imposition of the discipline. The cost of any rehabilitation or detoxification program shall be borne by the employee, unless otherwise covered by the employee's health care insurance.

**Section 40.06**. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, compensatory time, and vacation leave for the period of the rehabilitation or detoxification program. If no such leave time is available, the employee shall be placed on leave without pay for the period of the rehabilitation or detoxification program. Upon completion of such program, as certified by a substance abuse professional, and upon receiving results from a return-to-duty test demonstrating that the employee is no longer under the influence of alcohol and/or controlled substances, the employee will be returned to his former position. Such employee may be subject to up to six (6) random follow-up tests during the first twelve (12) months following his return to work.

A second positive drug and/or alcohol test result will result in termination of any employee not terminated due to the first positive drug and/or alcohol result.

**Section 40.07.** The cost of alcohol breath tests and drug screening and confirmatory tests shall be borne by the Employer, except any test initiated at the request of the employee shall be at the expense of such employee. The cost of any return-to-duty and follow-up tests shall also be at the expense of the employee. Any record of disciplinary action, as a result of a positive drug and/or alcohol test, shall cease to have force and effect sixty (60) months after the discipline is imposed, provided there has been no intervening disciplinary action taken during this time period. All records pertaining to drug/alcohol test results shall be kept in a confidential manner, except as otherwise required by law.

**Section 40.08**. No drug testing shall be conducted without the authorization of the Chief of Police. If the Chief orders, the employee shall submit to a toxicology test in accordance with the procedure set forth above. Refusal to submit to toxicology testing after being ordered to do so may result in disciplinary action. Records of drug and alcohol testing shall be kept in the office of the Chief of Police and shall be kept confidential except as provided herein and by the Ohio Public Records law; however, test results and records may be used in future disciplinary actions as set forth herein.

**Section 40.09**. The employee shall be given a copy of the laboratory report of both specimens before any discipline is imposed.

**Section 40.10**. Nothing contained in this section shall be construed as a waiver of the Union's right to appeal any disciplinary action, pursuant to the collective bargaining Agreement between the Union and the City.

**Section 40.11**. Employees that purposely make false accusations pursuant to this section shall be subject to discipline including but not limited to discharge. Records of disciplinary action or rehabilitation resulting from positive test results may be used in subsequent disciplinary actions for a period of five (5) years.

**Section 40.12**. For purposes of this article "Accident" and "Injury" shall be defined as follows:

"Accident" shall be defined as an unplanned, unexpected, or unintended event that occurs on the Employer's property and/or during the conduct of Employer's business, or during working hours, or that involves a City-owned vehicle or vehicles.

"Injury" shall be defined as any physical harm that occurs to an employee in the course and scope of his employment and that requires subsequent medical attention.

## ARTICLE 41
## PHYSICAL ABILITIES TESTING

**Section 41.01.** Beginning in calendar year 2003, bargaining unit members shall be given the opportunity to participate in a Physical Abilities Testing program. The Physical Abilities Test shall measure whether employees are physically able to perform the essential functions of their positions. The program may be subject to change for valid reasons following official notification to the Union. Employees who successfully complete the Physical Abilities Test in 2003 shall receive an incentive bonus in the amount of five hundred dollars ($500.00).

**Section 41.02.** Beginning in calendar year 2004, all bargaining unit members shall be required to participate in the Physical Abilities Testing program, unless exempted for a medical reason. Employees who successfully complete the Physical Abilities Test in 2004 shall receive an incentive bonus in the amount of five hundred dollars ($500.00). Employees who refuse to participate in any part of the Physical Abilities Testing program (other than due to a medical exemption) may be subject to disciplinary action. Employees who are unsuccessful in their attempts to complete the Physical Abilities Test in 2004 shall not be subject to the retest or administrative sanctions set forth herein.

**Section 41.03.** Beginning in calendar year 2005, all bargaining unit members shall be required to participate in the Physical Abilities Testing program, unless exempted for a medical reason. Employees who successfully complete the Physical Abilities Test in 2005 shall receive an incentive bonus in the amount of five hundred dollars ($500.00). Employees who refuse to participate in any part of the Physical Abilities Testing program (other than due to a medical exemption) may be subject to disciplinary action. Employees who are unsuccessful in their attempts to complete the Physical Abilities Test in 2005 shall be subject to the retest or administrative sanctions set forth herein.

**Section 41.04.** The Employer shall comply with the Americans With Disabilities Act (ADA), and shall defend, indemnify, and hold harmless the Union, and its agents, officers, representatives, and members against any and all claims and/or costs arising from or in any way related to the implementation and enforcement of Physical Abilities Testing, specifically including, but not limited to, any cost arising from an action in any court or administrative agency. This section shall not apply to any action brought by the Union.

**Section 41.05.** Employees shall be notified in writing of their Physical Abilities Test score upon completion of the test or as soon thereafter as is practical.

**Section 41.06.** An employee who is exempt under Section 42.09 below, or for any other reason set forth in this article, shall be required to engage in a fitness program, provided such program is approved by the employee's physician.

**Section 41.07.** All employees shall be tested once each year. This does not include any retests that an employee shall be required to complete in accordance with this article.

**Section 41.08.** Physical Abilities Test performance scores shall not be used as a criteria for promotions or special assignments, except in cases where it is reasonably determined that the candidate must possess a unique physical standard that is germane to that position.

**Section 41.09.** An employee may provide the Employer with a written statement from a licensed physician stating that participation in all or any part of the Physical Abilities Test will be detrimental to the employee's health. In such cases, the employee shall not be required to participate in the prohibited part(s) of the Physical Abilities Testing procedures except as hereinafter provided.

**Section 41.10.** An employee who requests an exemption from all or any part of the Physical Abilities Test by providing a written statement from a licensed physician may, at the sole discretion of the Employer, be required to submit to a physical examination by a licensed physician selected by the Employer, at the Employer's expense. In the event that there is disagreement between the physician selected by the employee and the physician selected by the Employer as to whether participation by the employee in all or any part of the Physical Abilities Test will be detrimental to the employee's health, at the option of the Employer, another licensed physician shall be selected by agreement of the Employer and the employee to make a determination as to whether participation by the employee in all or any part of the Physical Abilities Test will be detrimental to the employee's health. The cost of this determination shall be paid by the Employer. The decision of the physician so selected by the Employer and the employee shall be binding upon the parties as to whether the employee shall be required to participate in the Physical Abilities Test.

**Section 41.11.** An employee who is temporarily unable to perform the essential functions of the position with a reasonable accommodation may be placed on leave.

**Section 41.12.** An employee who is exempted from all or any part of the Physical Abilities Test shall, upon request from the Employer, give the Employer a medical information release authorization which will allow the Employer to obtain information from the licensed physician issuing the written statement describing the medical or physical condition of the employee, and how such condition relates to the Physical Abilities Test, or any particular part of the test, in such a way as to make participation in the test, or any part thereof, detrimental to the employee's health. All information received by the Employer shall be confidential and maintained separately from the employee's personnel file.

**Section 41.13.** Each employee shall provide the Employer a medical clearance from the employee's physician on a form provided by the Employer. The form shall be updated not less than every two (2) years. The form shall describe the tests the employee will be required to undergo.

**Section 41.14.** During the testing process, any employee who exhibits or complains of any condition which suggests that further participation in the testing process may be detrimental to the employee's health shall not be required or permitted to continue in the testing process. The Employer, at the Employer's sole discretion, or at the request of the employee, may transport the employee to a licensed physician or emergency care facility for immediate attention, or if immediate attention is not deemed necessary, the Employer may require the employee to provide a new medical clearance. The cost of any emergency or immediate medical attention shall be paid by the Employer.

**Section 41.15.** An employee who fails to achieve a satisfactory level of physical fitness may be subject to administrative action. An employee shall be deemed physically fit for his position if the employee achieves the minimum passing score on the test adopted by the Employer as part of the Physical Abilities Testing program. The Employer may deem an employee unfit for duty for physical reasons if the employee does not achieve the minimum passing score on the test at the conclusion of the retest periods set forth below.

**Section 41.16.** After the first failure to achieve a minimum passing score on the Physical Abilities Test, an employee shall be retested again after ninety (90) days. However, an employee may, fifteen (15) or more days after the first failure, submit to the Employer a written request to be retested. An employee who makes such request shall be retested within fourteen (14) days after the written request is submitted to the Employer. An employee passing a mandatory or requested retest shall not be tested again until the next regularly scheduled test for that employee. An employee who fails a retest which the employee requested shall not be subject to administrative action because of such failure.

**Section 41.17.** An employee who fails the first required retest shall be issued a counseling letter suggesting how the employee could improve test performance, and shall be retested again after sixty (60) days. An employee failing a second retest shall be issued a warning letter advising the employee that, should the employee fail the next scheduled retest, the employee may be deemed unfit for duty for physical reasons and may be separated from service. The separation of any employee for physical ability reasons shall not be subject to the grievance and arbitration procedure set forth in this agreement.

**Section 41.18.** Counseling letters and written warnings received for a failed Physical Abilities Test shall not be recorded as disciplinary action.

**Section 41.19.** An employee receiving a written warning after failing the second retest shall be retested not less than thirty (30) days later. If the employee fails to pass the Physical Abilities Test after the thirty (30) day period, the employee may be deemed by the Employer to be physically unfit to perform the duties of his position and may be separated from service for physical ability reasons.

**Section 41.20.** Notwithstanding any other provision of this article, nothing shall restrict the right of the Employer to remove an employee from employment if the employee is unable to perform the essential functions of the position, with or without reasonable accommodation. The separation of any employee for physical ability reasons shall not be subject to the grievance and arbitration procedure set forth in this agreement.

## ARTICLE 42
## SEPARATION BENEFITS

**Section 42.01.** The below items shall be a complete listing of all entitlements due to any member of the bargaining unit at the time of his retirement, death, or disability retirement. Upon fourteen (14) days written notice, any member that retires or is disabled, or the surviving spouse or estate of any member that passes away, shall be entitled to the following listed items:

A. Accumulated sick leave in accordance with Article 13.

B. All vacation time that is accrued and all unused vacation time for that year.

C. Floating holidays and personal days that are accrued but unused, not to exceed two (2) floating holidays, to be paid in cash at the rate of pay at the time of separation.

D. Longevity for all full and consecutive months for the year in which the member is separated from City employment and that has not been paid by the City.

E. All accrued and unpaid compensatory time.

**Section 42.02.** An employee who voluntarily terminates employment with a two (2) week written notice shall receive the following:

A. All vacation time that is accrued and all unused vacation time for that year.

B. Floating holidays and personal days that are accrued but unused, not to exceed two (2) floating holidays, to be paid in cash at the rate of pay at the time of separation.

C. Longevity for all full and consecutive months for the year in which the member is separated from City employment and that has not been paid by the City.

D. All accrued and unpaid compensatory time.

**Section 42.03.** The Employer reserves the right to immediately accept the voluntary resignation of any employee offering a two (2) week written notice of resignation. Such immediate acceptance will not deprive the employee of the benefits set forth in this article.

**Section 42.04**. An employee whose employment is terminated for reasons other than death, disability, or voluntary retirement (Police and Fire Pension Fund or equivalent) or does not submit a two (2) week written notice shall forfeit any and all accumulated pays, except payment for accumulated compensatory time and accrued vacation.

## ARTICLE 43
## CONFORMITY TO LAW

**Section 43.01**. This agreement shall be subject to and subordinated to any applicable present and future federal and state law; the invalidity of any provision(s) of this agreement by reason of any such existing or future law shall not effect the validity of the surviving provisions.

**Section 43.02**. If the enactment of federal or state legislation, or a determination by a court of final and competent jurisdiction (whether in a proceeding between the parties or in one not between the parties but controlling by reason of the facts) renders any portion of this agreement invalid or unenforceable, such legislation or decision shall not effect the validity of the surviving provisions of this agreement, which shall remain in full force and effect as if such invalid provision(s) thereof had not been included herein.

**Section 43.03**. Should any provision of this agreement be invalidated as outlined above, upon written request by either party, the parties shall meet within thirty (30) days to discuss the impact of such invalidation and to consider modification of the invalidated provisions or provision, prior to its implementation.

**Section 43.04**. This agreement may not be amended during its term except by mutual agreement, in writing.

**Section 43.05**. The Director of Finance and Public Record is hereby authorized and directed to provide for the following checkoff from employees' salaries: Union dues, bonds, approved group insurance premium, disability insurance premium, and court-ordered child support. No processing fees shall be charged by the Employer for the provision of this checkoff service.

## ARTICLE 44
## TOTAL AGREEMENT

**Section 44.01**. This agreement represents the entire agreement between the Employer and the Union, and unless specifically and expressly set forth in the express written provisions of this agreement, all rules, regulations, benefits, and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer, without any such modification(s) or discontinuance(s) being subject to any grievance or appeal procedure herein contained.

**Section 44.02**. The Employer agrees to attempt to give reasonable notice to the Union in the event a past practice is to be affected, and that such may be the subject of discussion pursuant to Labor-Management Committee meetings.

## ARTICLE 45
## OBLIGATION TO NEGOTIATE

**Section 45.01**. The Employer and the Union acknowledge that during negotiations which preceded this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective

bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement.

**Section 45.02**. Therefore, for the life of this agreement, the Employer and the Union each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain/negotiate collectively with respect to any subject or matter referred to or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this article.

## ARTICLE 46
## GENDER AND PLURAL

**Section 46.01**. Whenever the context so requires, the use of words herein in the singular shall be construed to include the plural, and words in the plural, the singular, and words whether in the masculine, feminine, or neuter gender shall be construed to include all of said genders. By the use of either the masculine or feminine genders, it is understood that said use is for convenience purposes only and is not to be interpreted to be discriminatory by reason of sex.

## ARTICLE 47
## HEADINGS

**Section 47.01**. It is understood and agreed that the use of headings before articles or sections is for convenience only and that no heading shall be used in the interpretation of said article or section, nor effect any interpretation of any article or section.

## ARTICLE 48
## LEGISLATIVE APPROVAL

**Section 48.01**. It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefore shall not become effective until the appropriate legislative body has given its approval.

## ARTICLE 49
## DURATION

**Section 49.01**. This agreement shall become effective November 8, 2011, at 12:01 a.m. and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight November 7, 2014.

**Section 49.02**. Negotiations on a successor agreement shall be in conformity with ORC 4117, et seq.

## EXECUTION

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the _____ day of December 2011.

Effective 11-8-11

**FOR THE CITY OF SHELBY, OHIO**

Marilyn S. John, Mayor

Bob Lafferty, Finance Director

Matthew B. Baker, Consultant

**FOR THE LODGE NO. 180**

Sergeant David A. Mack

**Approved as to Form**

Gordon M. Eyster, Law Director

**Approved as to Form and Content**

Robert M. Phillips