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# CITY OF UPPER ARLINGTON

## Collective Bargaining Agreement

January 1, 2012 — December 31, 2014



City of Upper Arlington, Ohio  
**Communications Operators**  
&  
Fraternal Order of Police  
Ohio Labor Council, Inc.

2011-MED-10-1420

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## **ARTICLE 1** **AGREEMENT**

**Section 1.1. Agreement.** This Agreement is made between the City of Upper Arlington, Ohio, hereinafter referred to as the "City" and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the "FOP/OLC".

**Section 1.2. Purpose.** This Agreement is made for the purpose of promoting cooperation and harmonious relations among the City, the FOP/OLC, and the bargaining unit members represented by the FOP/OLC and to set forth the understanding and agreements between the parties governing wages, hours, terms, and conditions of employment for those employees included in the bargaining unit as defined herein in the spirit of good faith bargaining.

### **Section 1.3. Legal References.**

- A. This Agreement has been negotiated by the parties in accordance with, and is subject to, the specifications and requirements of Chapter 4117 of the Ohio Revised Code.
- B. Should any part of this Agreement be held invalid or temporarily restrained, such invalidation or temporary restraint shall not invalidate or affect the application of the remaining portions hereof, or the application of such portions to persons or circumstances other than those to whom or to which it has been held invalid or has been restrained. In the event of invalidation of any portions of this Agreement by a court of competent jurisdiction, and upon written request by either party, the parties to this Agreement shall meet at mutually agreeable times within fourteen (14) days of receipt of this written request in an attempt to modify the invalidated provisions by good faith negotiations. The failure of the parties to agree upon a substitute for the invalidated provisions shall not affect the remainder of this Agreement, which shall remain in full force and effect during the term hereof, but the parties shall enter into good faith collective bargaining concerning any invalidated portions of this Agreement.

**Section 1.4. Sanctity of Agreement.** Unless otherwise specifically provided in this Agreement, no changes in this Agreement shall be negotiated during its duration unless there is a written accord by and between the parties hereto to do so. Any negotiated changes, to be effective and incorporated in this Agreement, must be in writing and signed by the parties.

**Section 1.5. Enforceability of Agreement.** The City asserts and believes that the provisions of this Agreement are not violative of the City Charter, ordinances or resolutions, and are therefore enforceable in a court of law, and that the provisions contained herein do not represent any illegal delegation of power. Should the FOP/OLC or the City bring any legal action in any court regarding or concerning the terms of this Agreement or the enforcement of it or any of its terms, the FOP/OLC or the City will not raise as a defense or in any way challenge in such action, nor authorize or approve the FOP/OLC attorney nor the City Attorney raising as a defense or challenging in such action, the legal efficacy and enforceability of this Agreement as a whole.

**ARTICLE 2**  
**RECOGNITION**

**Section 2.1. Recognition.** The City recognizes the FOP/OLC as the sole and exclusive representative for all employees included in the Bargaining Unit described in Section 2.2 for the purpose of collective bargaining, relating to wages, hours, terms and conditions of employment and the continuation, modification, or deletion of existing provisions of this Agreement.

**Section 2.2. Bargaining Unit.** The bargaining unit consists of all full-time Communications Operators/Dispatchers of the Police Division of the City of Upper Arlington, as certified by the State Labor Relations Board (SERB) in Case No. 92-REP-06-0121.

**ARTICLE 3**  
**FOP/OLC SECURITY**

**Section 3.1. Dues Deduction and Fair Share Fee.**

- A. Pursuant to Section 4117.09(B)(2) of the Ohio Revised Code, the City agrees to deduct FOP/OLC membership dues, initiation fees, and assessments, in the amount certified by the FOP/OLC to the City. The deductions will be made the first pay period of each month from the pay of any FOP/OLC bargaining unit member, upon presentation to the appropriate payroll clerk of a written payroll deduction form signed by the member authorizing the deduction by the FOP/OLC member. The City shall transmit such dues deduction to the FOP/OLC at 222 East Town Street, Columbus, Ohio 43215 on a monthly basis. The City shall be relieved from making individual dues deduction payments to the FOP/OLC when a member: (1) resigns or is separated from City employment; (2) is laid-off from City employment; (3) provides written revocation of dues deduction authorization to both the City and the FOP/OLC; (4) is on unpaid leave of absence when the dues deduction would otherwise be due; or (5) at any time when dues are otherwise payable, fails to receive sufficient wages to make all legally required deductions in addition to the deduction of FOP/OLC dues, provided that the member's dues shall thereafter be deducted in the first available pay period in which the member has sufficient wages to make the dues deduction in addition to all legally required deductions.
- B. Each bargaining unit member who (1) has completed sixty (60) days of employment and (2) is not a member of the FOP/OLC shall pay a fair share fee by mandatory payroll deduction in accordance with the specifications of Section 4117.09(C) of the Ohio Revised Code and other applicable law. Such fair share fee payments shall be deducted by the City from the earnings of such non-FOP/OLC member employee(s) the first pay period each month, and paid to the FOP/OLC in accordance with this Article. The Financial Secretary of the FOP/OLC shall certify to the City the amount, which constitutes said fair share fee, which shall not exceed the dues and financial obligations uniformly required by members of the FOP/OLC.
- C. Except as provided in paragraphs (A) and (B) in this Section, the FOP/OLC agrees that the City assumes no obligation, financial or otherwise, arising out of the provisions of

this Agreement regarding the deduction of FOP/OLC dues. Once the City remits the dues deductions to the FOP/OLC each month, their disposition thereafter shall be the exclusive responsibility of the FOP/OLC.

- D. The FOP/OLC hereby agrees that it will indemnify and hold the City and its agents harmless from any claims, actions, or proceedings, including the defense thereof, by an employee arising out of any deductions made by the City pursuant to paragraph (B) of this Section where such indemnification is permitted by law. This indemnification shall not include payment for the City's legal representation. However, if requested, the FOP/OLC shall provide its legal counsel at no cost to the City and/or its agents to defend the City and/or its agents in any such claim, action, or proceeding.
- E. The provisions of this Section are not subject to the Grievance Procedure set forth in Article 6 of this Agreement.

**Section 3.2. Bulletin Boards.** The FOP/OLC shall be permitted to maintain an FOP/OLC bulletin board in the Police Division's Radio Room.

**Section 3.3. Ballot Boxes.** The FOP/OLC shall be permitted, with prior notification to the Police Chief, to place ballot boxes in the radio room for the purpose of collecting members' ballots on all FOP/OLC issues subjected to ballots except ballots regarding job actions. Such boxes shall be the property of the FOP/OLC and neither the ballot boxes nor the ballots shall be subjected to the City's review.

**Section 3.4. Use of Intra-Division Mail System.** The FOP/OLC shall be permitted reasonable use of the intra-divisional mail system for the direct distribution of information pertaining to collective bargaining, contract administration and other similar business germane to the FOP/OLC's role as exclusive representative of the bargaining unit, except that any materials relating to partisan political activity are excluded. The FOP/OLC shall observe the requirements for this provision and established divisional procedures for the distribution of all such material; however such material shall not be subject to the City's review.

#### **ARTICLE 4** **NON-DISCRIMINATION**

**Section 4.1. Joint Pledge.** Neither the City nor the FOP/OLC shall discriminate against any bargaining unit employee on the basis of age, sex, race, color, creed, religion, ancestry, national origin, handicap, disability, military status, or application for participation in the Ohio Worker's Compensation Program. No bargaining unit member shall be discriminated against because of marital status or political affiliations; however, the assignment of spouses to different shifts or an action taken to avoid an unlawful conflict of interest shall not constitute a violation of this provision.

**Section 4.2. Gender.** All references to employees in this Agreement designate both sexes, and wherever the male gender is used it shall be construed to include male and female employees.

**Section 4.3. City Pledge.** The City agrees not to unlawfully interfere with the rights of bargaining unit members of the FOP/OLC. The City shall not unlawfully discriminate, interfere with, or coerce any employee because of FOP/OLC membership or because of their activities as a Communications Operator or other representative of the FOP/OLC.

**Section 4.4. FOP/OLC Pledge.** The FOP/OLC agrees not to unlawfully interfere with the rights of a member to refrain from or resign from membership in the FOP/OLC. The FOP/OLC shall not unlawfully discriminate, interfere with, restrain, or coerce any member for exercising the right to abstain from membership in the FOP/OLC.

## **ARTICLE 5**

### **MANAGEMENT RIGHTS**

**Section 5.1. Management Rights.** The City retains the exclusive right to manage the operations, control the premises, direct the working force, and maintain efficiency of operations. The City specifically retains the rights and responsibilities set forth in Section 4117.08 (C) of the Ohio Revised Code to:

- A. Determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy such as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, and organizational structure;
- B. Direct, supervise, evaluate, or hire employees;
- C. Maintain and improve the efficiency and effectiveness of governmental operations;
- D. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- E. Suspend, discipline, demote, discharge for just cause, layoff, promote, or retain employees;
- F. Determine the adequacy of the work force;
- G. Determine the overall mission of the Employer as a unit of City government;
- H. Effectively manage the work force;
- I. Take action to carry out the mission of the public employer as a governmental unit.

**Section 5.2. Limitations.** The exercise of the foregoing powers, rights, authority, duties and responsibilities, the adoption of reasonable policies, rules and regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement. The City is not required to bargain with the FOP/OLC during the term of this Agreement on subjects reserved to its management and direction, except as it affects wages, hours, terms and conditions of

employment and the continuation, modification or deletion of a provision of this Agreement. A bargaining unit member or the FOP/OLC may file a grievance based upon a violation of this Agreement.

## **ARTICLE 6** **GRIEVANCE PROCEDURE**

### **Section 6.1. Grievance Defined.**

- A. A grievance is an allegation that a specific provision of this Agreement has been violated.
- B. "Grievance" shall not include the challenge of a discharge, reduction in rank or suspension. The sole disciplinary action which may be subjected to the grievance process is an oral or written reprimand.
- C. Appeal of suspension, reductions in rank and/or compensation, or removal actions are provided for in Section 7.3.

### **Section 6.2. Qualifications.**

- A. A grievance may be filed by a bargaining unit member or members, or by the FOP/OLC as exclusive representative, to enforce its rights under the Agreement or on behalf of a group of bargaining unit members who are affected by the act or condition, giving rise to the grievance in the same or similar manner.
- B. The FOP/OLC shall not process a grievance on behalf of any member without the member's knowledge and consent. A bargaining unit member has the right to present grievances and have them adjusted, without intervention of the FOP/OLC, as long as the adjustment is consistent with the terms of this Agreement and as long as the FOP/OLC is present at the adjustment.

**Section 6.3. Establishment of Grievance Chairman.** The FOP/OLC shall designate one (1) Grievance Chairman and one (1) alternate. The FOP/OLC shall notify the Police Chief, in writing, the names of the Grievance Chairman and alternate within thirty (30) days of appointment. The Grievance Chairman and alternate shall be bargaining unit members of the Communications Unit.

**Section 6.4. Duties of Grievance Chairman.** The authorized functions of the Grievance Chairman and named alternate who shall serve as Grievance Chairman in absence or unavailability of the Grievance Chairman, shall include the following:

- A. Represent the member in investigating and processing grievances beginning at Step 1 of this procedure.
- B. General coordination of grievances.

- C. Act as a liaison between the City and the FOP/OLC or bargaining unit members on matters concerning grievances and this Agreement.
- D. Assist the FOP/OLC officials and the City on matters concerning this Agreement, including appropriate attendance at meetings mutually scheduled by the City and the FOP/OLC.

The Grievance Chairman shall be released from normal duty hours, upon approval of the Chief of Police or the Support Services Bureau Lieutenant, to participate in the aforementioned duties without loss of pay or benefits. Such approval will not be unreasonably withheld, and the withholding of such approval shall result in an automatic, equivalent extension of time limits within which a grievant must appeal their grievance or have it heard. The Grievance Chairman shall be allowed sufficient time during their scheduled working hours to perform the aforementioned duties. The Grievance Chairman will be required to drop or forego any of the activities allowed by this Section for the purpose of assisting in emergency dispatching work. None of the duties of the Chairman, or those of their alternate herein described may be conducted on City paid overtime hours.

**Section 6.5. Release for Grievants.** With the approval of the Chief of Police or the Support Services Bureau Lieutenant, a grievant shall be released from regular duties with pay for attendance at a scheduled grievance meeting and to meet with their Grievance Chairman for necessary grievance preparation. Grievants shall be required to drop or forego any of the activities allowed by this Section for the purpose of assisting in emergency dispatching work. The City shall not incur any overtime expense as a result of this provision.

**Section 6.6. Grievance Procedure.** It is the mutual desire of the City and the FOP/OLC to provide for prompt adjustment of grievances. Every reasonable effort shall be made by the City and the FOP/OLC to affect the resolution of grievances at the earliest possible step. In furtherance of this objective, the following procedures shall be followed:

- A. **Step 1. Informal.** Members having an individual grievance shall orally present the grievance to the Support Services Bureau Lieutenant. If the Lieutenant is not on-duty and the matter is of an immediate nature, then the informal grievance will be reported to the on-duty patrol supervisor. The on-duty supervisor, as soon as practical, will contact the Support Services Bureau Lieutenant to advise the Lieutenant of the matter and provide information as to the outcome, if any, or the continued need to address the grievance at Step 1.

All non-immediate grievances to be addressed informally at Step 1 will be discussed directly with the Support Services Bureau Lieutenant. Such attempt at informal resolution shall be made by the grievant within seven (7) of the member's working days after the event(s) occurred, or, in the exercise of due diligence, when first known by the Grievant.

Informal grievances brought to the attention of the Support Services Bureau Lieutenant or the on-duty patrol supervisor (except for automatic time limit extension as hereinafter-described in Section 6.7) beyond the seven (7) working day time limit shall not be

considered. The Support Services Bureau Lieutenant will respond informally within seven (7) of his/her workdays to the grievance that was initiated with the on-duty supervisor or directly with the Support Services Bureau Lieutenant. At this step, upon request of the grievant, the Grievance Chairman may represent the grievant and be present at the informal meeting. Before a grievance is placed in writing pursuant to Step 2, such grievance shall be screened by the Grievance Chairman or appropriate alternate.

**B. Step 2. Support Services Bureau Lieutenant.**

1. If the grievance is not resolved in Step 1 and the grievant wishes to proceed to Step 2, the grievant shall reduce the grievance to writing as prescribed in Section 6.9 and shall, within seven (7) of the grievant's working days of the oral response at Step 1, present the written grievance form to the Support Services Bureau Lieutenant. The Support Services Bureau Lieutenant shall date the form, investigate and respond in writing to the grievant within seven (7) of the Support Services Bureau Lieutenant's working days following the presentation of the grievance in Step 2.
2. When a grievance is directly between the FOP/OLC and the Division or the City, or when a grievant wishes not to file a grievance for fear of retribution, such grievance may be presented in writing by the Grievance Chairman or alternate to the Support Services Bureau Lieutenant. Said grievance should be filed with the approval of the grievant and the FOP/OLC non-employee Staff Representative, within seven (7) calendar days after the grievance is made known to the Grievance Chairman or alternate.

**C. Step 3. Police Chief.**

1. If the grievance is not resolved in Step 2 and the grievant wishes to proceed to Step 3, the grievant shall present the written grievance form, the Support Services Bureau Lieutenant's response and any other pertinent documents, to the Chief of Police within seven (7) of the grievant's working days from the receipt of the Step 2 response from the Support Services Bureau Commander. The Police Chief shall date the grievance form accurately showing the date the Chief's office received the form and investigate the grievance.
2. Within ten (10) working days of the Chief's receipt of the Grievance Form, the Police Chief shall schedule and conduct a meeting to discuss the grievance with the Grievance Chairman. The Police Chief may reconvene this meeting if the grievant needs additional information or documentation regarding the grievance.
3. The Grievance Chairman may bring to the meeting the grievant, and such others that are directly involved in the grievance or grievance procedure up to this Step. The City shall not incur any overtime expense as a result of this provision.

4. Within ten (10) of the Chief's working days from the date of the final meeting, the Police Chief shall submit to the Grievance Chairman the Chief's written response to the grievance.

D. **Step 4. City Manager.**

1. If the grievance is not resolved in Step 3 and the grievant wishes to proceed to Step 4, the grievant shall, with the approval of the Grievance Chairman, present the written grievance to the City Manager (or City Manager's designee) within seven (7) of the grievant's working days from the receipt of the Step 3 response and request the grievance to be heard before the City Manager.
2. Within fourteen (14) calendar days of receipt of the request, the City Manager shall schedule and conduct a meeting to discuss the grievance with the Police Chief, the Grievance Chairman, and/or FOP/OLC Representative and the grievant. Within seven (7) days of the meeting of this Step, the City Manager shall give the City Manager's written decision to the Police Chief and the Grievance Chairman. The City shall not incur any overtime expense as a result of this provision. If, at any step, the grievance is granted, it shall be immediately implemented by the City, in a manner mutually acceptable to the parties.

E. **Step 5. Binding Arbitration.**

1. If a grievance is not satisfactorily resolved at Step 4, it may be submitted to Arbitration upon request of the FOP/OLC in accordance with this Section of this Article.
2. The FOP/OLC based upon the facts presented, has the right to decide whether to arbitrate the grievance. Within fourteen (14) calendar days following the date of the final answer on such grievance under the response outlined in Step 4 in the Grievance Procedure, the FOP/OLC shall notify the City of its intent to seek arbitration over an unadjusted grievance. The FOP/OLC may withdraw its request to arbitrate at any time prior to the actual hearing. Any cancellation fee due the arbitrator shall be paid by the party or parties canceling the arbitration. Any grievance not submitted or processed within the calendar day periods described above shall be deemed settled on basis of the last answer given by the City. Failure to request arbitration in a timely manner shall render the grievance withdrawn.
3. After receipt of a request to arbitrate, a representative of each of the parties (the FOP/OLC and the City) shall attempt to agree on an arbitrator. Should the representatives fail to agree on an arbitrator, the arbitrator shall be selected in the following manner: The parties shall jointly request the Federal Mediation Conciliation Service (FMCS) to submit a panel of nine (9) arbitrators. The parties shall alternately strike the names of the arbitrators until only one (1) name remains with the party's right to strike the first name to be determined by the flip

of a coin. Either party may reject one (1) list and request from FMCS another list of nine (9) names until a mutually agreeable arbitrator is selected.

4. No arbitrator shall be an employee, official or member of any board or commission of the City, a member or representative of the FOP/OLC, or a member of the immediate family or household of any such persons. The parties shall establish a mutually agreeable date and time for the hearing.
5. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. The arbitrator shall only consider and make a decision with respect to the specific issue or issues of contract interpretation or application appealed to arbitration, and shall have no authority to make a decision on any other issues not so submitted. The question of arbitrability of a grievance may be first raised by either party before the arbitrator on the grounds that the matter is non-arbitrable or beyond the arbitrator's jurisdiction.
6. The arbitrator's decision shall be submitted in writing to the City Manager and the FOP/OLC Executive Director within thirty (30) days following the close of the hearing, unless the parties agree to an extension thereof.
7. The decision of the arbitrator shall be final and binding, subject only to appeal under Chapter 2711 of the Ohio Revised Code. The arbitrator shall not establish any new or different wage rates not negotiated as part of this Agreement.
8. Both the FOP/OLC and the City shall share equally in the cost of the arbitration proceedings. Each party shall be responsible for compensating its own witnesses. The cost of a transcript shall be shared if the necessity of a transcript is mutually agreed upon between the parties.
9. Employee witnesses shall be allowed release time with pay for the purpose of giving testimony if the hearing is held during an employee's work time and advance notice has been given to the City's Representative. Employee witnesses may be required to forego testifying for the purpose of assisting in emergency dispatching work.

**Section 6.7. Time Limits.** It is the City's and the FOP/OLC's intention that all time limits in the Grievance Procedure shall be met. To the end of encouraging thoughtful response at each Step, however, the FOP/OLC's and the City's designated representatives may mutually agree, at any Step, to shorten the time extensions for the City's answer, but any such agreement must be in writing and signed by both parties. In the absence of mutual extensions, the grievant may, at Step 1 where a response is not forthcoming within the specified time limits, advance the grievance to the next Step. Extensions shall not be unreasonably withheld. Any step in the Grievance Procedure may be stopped on any grievance by mutual consent. A grievance may be processed through the chain of command whose actions gave rise to the grievance, if different than that of the grievant.

**Section 6.8. Representative in Meetings.** In each step of the Grievance Procedure outlined in Section 6.6, certain specific representatives are given approval to attend the meetings therein prescribed. It is expected that, in the usual grievance, these will be the only representatives in attendance at such meetings. However, it is understood by the parties that, in the interest of resolving grievances at the earliest possible Step of the Grievance Procedure, it may be beneficial that other representatives, not specifically designated, be in attendance. Therefore, it is intended that either party may bring additional representatives to any meeting in the Grievance Procedure, but only upon advance mutual agreement among the parties specifically designated to attend, that such additional representative or representatives has input, which may be beneficial in attempting to bring resolution to the grievance.

**Section 6.9. Grievance Form.** The grievant shall use a written Grievance Form, as agreed to by the City and the FOP/OLC, which shall provide the following information:

- A. Grievant's name and signature;
- B. Date, time, and location of grievance;
- C. Description of incident giving rise to the grievance;
- D. Article or Section of the Agreement alleged to be violated;
- E. Date grievance was first discussed and with whom discussed;
- F. Name of supervisor with whom grievance was first discussed;
- G. Date grievance was filed in writing; and
- H. Desired remedy to address or resolve grievance.

Each bargaining unit shall have the responsibility for duplication and distribution of, and its own account for, the grievance forms. This form may be also used for official business of the Police Division.

**Section 6.10. Working Days.** For the purpose of counting time, "working days" as used in this Article will not include scheduled days off, approved leaves, or holidays.

## **ARTICLE 7** **CORRECTIVE ACTION AND RECORDS**

**Section 7.1. Just Cause for Discipline.**

- A. A bargaining unit member who has completed the initial probationary period shall be disciplined only for just cause. During the initial probationary period, bargaining unit members may be removed without a showing of cause. The initial probationary period shall be defined as an employee working a total of 2,080 hours within the Communications Center or at the Police Chief's discretion, an employee working 1,040 hours after the initial training period. (Hours worked for this Section mean actual hours worked performing the normal duties of a Communications Operator.)
- B. The City will ordinarily use the following system of progressive discipline for the same or related offenses: oral reprimand, followed by a written reprimand, followed by a suspension, followed by reduction in compensation or rank, or by removal. The City may determine to deviate from this progression for any serious job-related misconduct or

any criminal misconduct of such a nature that would reasonably warrant more severe disciplinary action.

- C. In all instances of discipline, the City shall only impose a disciplinary penalty, commensurate with the offense, which, where practicable, may assist the member in correcting whatever action or behavior is deemed inappropriate. Nothing herein precludes the City from utilizing positive steps, including counseling, to correct a member's inappropriate action or behavior.
- D. Progressive discipline shall take into account the nature of the violation, a member's record of discipline, if any, and the member's record of conduct and work performance.

**Section 7.2. Disciplinary Hearings.**

- A. Pending any disciplinary hearing by the City Manager, the member shall continue regular employment unless the Chief of Police either places the member on administrative leave with pay or suspends the member for a maximum of five (5) working days pending the City Manager's hearing. No suspension shall be imposed by the Police Chief under this paragraph unless the following conditions are met:
  - 1. The member has been given a written notice which contains the following information: a) the specific allegations made against the member; b) an explanation of the evidence; and c) written notice of the date and time of a hearing before the Police Chief;
  - 2. At the Police Chief's hearing, the member shall be given a reasonable opportunity to respond to the allegations either verbally or in writing. The member may be represented by an FOP/OLC representative or FOP/OLC attorney;
  - 3. The Police Chief has conducted the hearing, or the member has either waived an opportunity for the hearing or failed to appear at the hearing, and the Police Chief thereafter recommended that the member be removed and has issued a written suspension order wherein the member is advised of the removal recommendation and suspension and the Police Chief's reasons therefore; and
  - 4. The suspension is taken because the Police Chief finds that urgent reasons necessitate the member's absence from work in any capacity.
- B. Prior to any suspension other than a Chief's suspension under paragraph (A) of this Section, reduction in rank or compensation, or removal, a bargaining unit member shall be given a hearing before the City Manager. At least five (5) days in advance of the hearing, the Chief of Police will give the member: 1) written notice of the date and time of the City Manager's hearing; 2) written explanation of the reasons for the proposed disciplinary action; and 3) written explanation of the evidence which supports the proposed disciplinary action. Unless the hearing is waived in writing by the member, at the hearing the member shall have the right to be represented by an FOP/OLC representative or FOP/OLC attorney, to present evidence on the member's behalf and to

question adverse witnesses. The City shall record the hearing and provide, upon request, a copy of the recording to the member or the member's counsel at actual cost, unless a member and the City mutually agree that a recording is unnecessary.

- C. If a suspension is imposed under paragraph (A) of this Section, a City Manager's hearing shall be held within five (5) days of the notice to the member of said hearing. Any suspension without pay imposed under paragraph (A) of this Section shall not be extended beyond five (5) days unless an extension of time of the City Manager's hearing is requested solely by the member. In any other event, the suspension without pay shall terminate not later than five (5) days after its issuance and the member shall thereupon be placed on administrative leave with pay pending the City Manager's hearing and decision.
- D. Reasonably in advance of the City Manager's hearing, the member and the FOP/OLC Attorney or Representative shall be provided access to the internal investigation file and/or documents in the possession of the City, which are relevant to the charges. Likewise, the City shall be provided access to documents in the possession of the member, which are relevant to the charges. An attorney's work product is not subject to this discovery provision.

**Section 7.3. Appeal.** Suspensions, reductions in compensation and removals may be appealed directly to arbitration, with approval of the FOP/OLC, in accordance with Section 6.6(E). Oral or written reprimands may be appealed through the Grievance Procedure in this Agreement up to Step 4 (City Manager level).

**Section 7.4. Records.**

- A. **Coverage.** The provisions in this Section shall apply to the official personnel file maintained by the City for each member of the bargaining unit. Only one (1) official file shall be maintained. These provisions do not apply to Internal Affairs files or to any personnel files maintained by the Chief of Police.
- B. **Inspections and Complaints.**
  - 1. Records of formal disciplinary action shall be maintained in the member's personnel file in accordance with Chapter 1347 of the Ohio Revised Code. Any member or the member's authorized representative shall have the right to inspect the member's personnel file in accordance with Section 1347.08 of the Ohio Revised Code. A member may obtain copies of materials in the member's file. The City may establish a reasonable copying charge for such material.
    - a. Upon written request of the member and approval of the Chief of Police, oral reprimands shall be of no further force and effect after one (1) year.
    - b. Upon written request of the member and the approval of the Chief of Police, written reprimands shall be of no further force and effect after two (2) years.

- c. Upon written request of the member and the approval of the Chief of Police, suspensions under thirty (30) days shall be of no further force and effect after four (4) years.
  - d. Suspension of thirty (30) days or longer shall be of no further force and effect only if such disciplinary action is subsequently disaffirmed.
  - e. The retention guidelines in 7.4 (B) (1) (a) through 7.4 (B) (1) (c) shall not apply if the Chief of Police or City Manager has taken the same or similar corrective action against the member within the guideline periods. Furthermore, the Chief of Police or City Manager may determine that it is necessary to retain any disciplinary record(s) for a longer period of time based upon the facts and circumstances, including the nature of the offense and/or the member's overall work record since the member was disciplined.
  - f. Reductions in compensation and removals shall be of no further force and effect only if such action is subsequently disaffirmed.
  - g. Records that are of no further force and effect shall be treated in the manner provided by the rules of the City's Records Commission.
  - h. Records that are no further force and effect shall not be used for reference in any future disciplinary action, except that the information in the archive personnel file may be used to show notice.
2. A member may dispute any information in the member's file by placing a letter in the member's file setting forth the basis of the member's objection. Any complaint concerning the accuracy, timeliness, relevance or completeness of information in a member's file shall be processed in accordance with Section 1347.09 of the Ohio Revised Code and shall not be subject to the Grievance Procedure in this Agreement.
- C. Access to records. City supervisory and administrative personnel, City legal counsel, and their authorized clerical personnel shall have access to personnel files when necessary in the performance of their official duties. The Civil Service Commission, the Arbitration Panel, and courts of competent jurisdiction which have subpoenaed them shall also have access to personnel files. The City shall not release information from a member's personnel file where such release is prohibited by law. Where practicable to do so, the City shall inform a member that information from a member's file has been released. The City is not required to identify the person(s) requesting public information from a member's personnel file nor is the City required to determine the reason for the public information request.
- D. Entry of Performance Evaluation in File. A bargaining unit member shall sign a completed performance evaluation before it is placed in the member's personnel file.

The member's signature shall only acknowledge that the member has read the evaluation. This provision shall not make evaluations a negotiable subject.

- E. Placement of Material in Personnel File. A member shall be provided upon request, at no cost, a copy of any document or material placed in the member's personnel file at the time of placement therein, unless the document or material originates from the member.

## **ARTICLE 8**

### **WORK RULES AND REGULATIONS**

**Section 8.1. Work Rules and Directives.** The City retains the right to create, modify or delete Divisional General Orders, including but not limited to, all written rules and regulations and written work directives, except where such regulations and directives conflict with this Agreement. The City shall provide the Grievance Chairman with a copy of any change in the Divisional General Orders and any other existing written rules, regulations or directives pertaining to the Communications Center bargaining unit members at the time of issuance.

## **ARTICLE 9**

### **LABOR RELATIONS MEETINGS**

**Section 9.1. Purpose.** The parties recognize that certain subjects may be of concern either to the FOP/OLC or the City, even though such topics are not appropriate subjects of collective bargaining or are not resolvable through the Grievance Procedure or the Municipal Civil Service Commission. Therefore, a Labor Relations Committee is established for the purposes of full discussion, exploration and study of subjects referred to it by the FOP/OLC and the City.

**Section 9.2. Labor Relations Committee.** The Labor Relations Committee shall consist of the Police Chief (or designee), the FOP/OLC Representative, and two (2) members of the bargaining unit as designated by the FOP/OLC. The FOP/OLC may elect to send both or only one (1) member of the committee to a Labor Relations Committee meeting depending on availability of the members to attend. At the discretion of the FOP/OLC, new bargaining unit Committee Members may be selected each January. The FOP/OLC will forward to the Police Chief the names of unit members who will serve on the Committee for the year.

Labor Relations Committee meetings, if requested by the member(s), shall be scheduled at least quarterly by the Police Chief (or designee), at reasonable, mutually convenient times, and shall be closed to the public. Persons who are specialists in the subject matter under discussion, or other persons who may have valuable input toward the topics to be discussed, may be brought into Labor Relations Committee meetings by mutual agreement of the parties. It is not the intent of the parties that the Labor Relations Committee meetings be used to bypass the normal chain of command. The bargaining unit members are expected to attempt to work out matters with the Support Services Bureau Lieutenant before raising them at Labor Relations Committee meetings.

**Section 9.3. Agenda.** At least three (3) days in advance of such scheduled meetings, each party will submit to the other party any proposed items for the agenda. Except in response to a public records request, there shall be no publication of the committee agenda or release of the

information concerning the Labor Relations Committee's deliberations or recommendations without the advance approval of both the FOP/OLC and the Chief of Police, (or designee).

**Section 9.4. Authority.** The Labor Relations Committee shall have no authority to collectively bargain for either party to modify, add to or delete from the provisions of this Agreement.

## **ARTICLE 10** **LAYOFFS AND RECALL**

**Section 10.1. Layoffs and Recall.** Layoffs, job abolishment and recalls within the bargaining unit shall comply with the procedures and requirements of Section 124.37 of the Ohio Revised Code. Any appeal from a layoff or job abolishment shall be taken solely to the City of Upper Arlington Civil Service Commission, and is not a grievable matter under the Grievance Procedure of this Agreement.

## **ARTICLE 11** **MISCELLANEOUS PROVISIONS**

**Section 11.1. Safe Equipment.** The goal of this section is to provide a good and safe work environment for the members and to insure that the members report in a timely manner, conditions that create a viable safety and/or health concern.

The City will furnish and maintain in the best possible working conditions, the necessary tools, facilities, supplies, and equipment required for members to safely carry out their duties. The Chief of Police (or designee) and the Labor Relations Committee may develop a list of products to be maintained within the Communications Center to allow the employees to clean their immediate workstation. Immediate workstation is the area in, around and on the desktop that contains the CAD and radio system computer monitors and contains, but is not limited to, the countertop, keyboards, computer monitors, phones, and other tools used in this area.

A member is responsible for reporting unsafe or unhealthy conditions or practices to the Support Services Bureau Lieutenant, for avoiding negligence, and for properly using and caring for tools, facilities, supplies and equipment provided by the City. Any issue brought to the attention of the Support Services Bureau Lieutenant will be addressed within five (5) of the Lieutenant's working days.

**Section 11.2. Agreement Copies.** As soon as possible following the signing of this Agreement, the City and the FOP/OLC shall have printed enough copies of this Agreement for the members and one for the FOP/OLC non-employee Staff Representative. The FOP/OLC shall be responsible for distributing copies to bargaining unit members including copies to any new bargaining unit members who are hired during the life of this Agreement.

**Section 11.3. FOP/OLC Officials Roster.** The FOP/OLC shall provide to the City an official roster of its bargaining unit members who are or will become officers or representatives within thirty (30) days of the effective date of this Agreement and within thirty (30) days of any change, and will include the following:

Name  
Address  
Telephone  
Immediate Supervisor  
FOP/OLC Office Held

**Section 11.4. No Strike/No Lockout.** Neither the FOP/OLC nor any member of the bargaining unit shall at any time engage in, call, authorize or ratify any strike, as defined in Section 4117.01 (H) of the Ohio Revised Code. No member shall refuse to cross any picket line of any City employee union, or group of City employees when such action would prevent or impede the performance of the member's duties as a Communications Operator. The City shall not at any time engage in a lockout.

**Section 11.5. Promotions.** Promotion from within the current City employment shall be the preferred course of action. This action shall be contingent on availability of eligible candidates.

**Section 11.6. Terminal Agency Coordinator (TAC).** A member who is assigned by the Chief of Police and/or the Support Services Bureau Lieutenant as the Terminal Agency Coordinator (TAC) on LEADS related issues, with the approval of the Support Services Bureau Lieutenant, shall be released from regular duties with pay in order to prepare for and attend any LEADS audits or issues related to the duties of TAC.

The Chief of Police and/or the Support Services Bureau Lieutenant shall have the ability to determine the hours needed to fulfill the duties and may assign another member (on overtime if needed) to cover the TAC's regular duties or have the TAC work non-regular hours and pay overtime as appropriate to the TAC for the hours used in preparation of the audit.

## **ARTICLE 12**

### **EMPLOYEE ASSISTANCE PROGRAM**

**Section 12.1. Employee Assistance Program.** The City and the FOP/OLC agree that the employee assistance program shall be continued for the duration of this Agreement. The Labor Relations Committee shall be consulted in accordance with Article 9, Section 9.1 and 9.4 should the City substantively change the program. The City shall maintain administrative control of the program and shall have the authority to determine the provider of the program.

## **ARTICLE 13**

### **POLITICAL ACTIVITY**

**Section 13.1. Political Activity.**

- A. A member may participate in partisan political activity outside the City of Upper Arlington (unrelated to the City of Upper Arlington), provided that the member undertakes such participation while off-duty, while not in identifiable uniform, and does not represent that their participation is either undertaken in their official capacity as an employee of the City, or is sanctioned by the City.

- B. A member is permitted in the City of Upper Arlington to express freely their personal political opinions and to exercise their right to vote in political elections, except that a member shall not:
1. Be required to contribute to any political candidate, party, or activity;
  2. Be required to sign nominating petitions, campaign for, endorse or otherwise participate in political campaigns for any elected position within the City;
  3. Become actively involved in the management of any political campaign for elected position within the City, except as would be applicable under Section 13.1.
    - a. Any political participation by a member within the City shall be undertaken while off-duty, while not in identifiable uniform, and without any representation that such activity is either undertaken in their official capacity as an employee of the City, or sanctioned by the City.
    - b. No member shall violate ORC 3599.091 (A), (B) "Unfair political activities", and 3599.092 (A), (B) "Unfair activities in issue campaign". No person shall do any act that has the effect of precluding or discouraging any employee, officer, or member from exercising the rights described in 13.1 (B) above.

## **ARTICLE 14**

### **INTERNAL REVIEW PROCEDURES**

**Section 14.1. Recognition.** The parties recognize that the City has the right to expect that professional standards of conduct will be adhered to by all members of the Communications Unit. Since internal investigations may be undertaken to inquire into complaints of misconduct by Communications Unit employees, the City reserves the right to conduct such investigations to uncover the facts while protecting the rights and dignity of accused personnel. In the course of any internal investigation, all investigative methods employed shall be consistent with applicable laws.

**Section 14.2. Scope.** This Article is designed to address the procedures used for internal investigations of members of the Communications Unit. Internal investigations shall be conducted by the assigned company/bureau/section/unit supervisor or the Internal Affairs Officer (or designee), depending upon the nature of the complaint/allegation.

**Section 14.3. Complaints.** In order for a complaint from a known source to be investigated under this Section, the complaint must be in writing, signed and dated by the complaining party or the complaining party's attorney, parent, or legal guardian prior to the investigation. In order for a non-criminal complaint to be considered as possible grounds for discipline, the complaint must be filed in writing within sixty (60) calendar days after the alleged event occurred. A complaint that could be considered criminal in nature or a violation of the City's EEO policy

shall be investigated, either criminally or administratively or both, at all times and if the complaint is found to be grounds for discipline.

**Section 14.4. Polygraph Examinations or Voice Stress Analysis.** No member may be given a polygraph examination or voice stress analysis without their written consent. Polygraph examinations or voice stress analysis will be given only if a member is the primary focus of the investigation, a known witness to an incident, or if the member makes a written request directly to the Chief of Police that such an examination or analysis be given. The Police Chief must give advance approval for such an examination or analysis. Polygraph examinations, if administered, shall be given by an examiner certified by a school accredited by the American Polygraph Association. The examiner shall be determined by the Chief of Police, shall be from an outside agency, and shall have no interest in the proceedings. The polygraph examination shall be administered, and the results thereof used in conjunction with current applicable law.

**Section 14.5. Conduct of Questioning.**

- A. Prior to any internal investigation questioning, a member shall be informed, to the extent known at the time, of the nature of the investigation, administrative or criminal, and shall be provided a copy of any citizen complaint or a written summary of the basic facts on any complaint made against the member. If the complaint is criminal in nature, or if the investigator reasonably believes that criminal charges are contemplated, the member shall be informed of their constitutional rights in accordance with the law, in advance of any questioning.
- B. Any internal investigation questioning of a member shall be conducted at hours reasonably related to their shift, preferably during their working hours. Such sessions shall be for reasonable periods of time with sufficient allowances made during the questioning for a member's attendance to physical necessities. The member shall be permitted to attempt to obtain representation from the FOP/OLC. The FOP/OLC representative or attorney shall be permitted to be present during questioning at the member's request, and shall be afforded a reasonable opportunity to consult with the member during the questioning. The questioning shall not be delayed an unreasonable period of time awaiting the arrival of the FOP/OLC Representative or attorney.
- C. Before the member may be charged with insubordination for refusing to answer questions or participate in any investigation, the member shall be advised that such conduct, if continued, may be basis for the charge.
- D. A member who refuses to answer questions or participate in any investigation shall not be charged with insubordination when such refusal is based on an exercise of the member's constitutional rights when criminal charges are contemplated.
- E. Any statement or evidence obtained in the course of questioning through the use of administrative pressures, threats, coercion or promises shall not be admissible in any subsequent criminal action or administrative proceeding. However, explaining to the member that potential corrective action could result if the member continues to refuse to

answer questions or participate in an investigation shall not be considered as administrative pressures, threats, coercion or promises.

- F. Such questioning shall be recorded by the City at the request of either party. Recordings may also be made by the member and/or their FOP/OLC Representative or attorney at the request of the member.

The member and their FOP/OLC Representative or attorney shall be afforded the opportunity, upon written request to the Chief of Police (or designee), to listen to and make personal notes regarding a tape made of questioning by the Division if no recording has been made by the member of the FOP/OLC.

**Section 14.6. Application.** The provisions of this Article shall apply to any member who is a potential witness to an incident under investigation, except the potential witness shall be given only factual information as the investigator deems appropriate.

## **ARTICLE 15**

### **RATES OF PAY AND WAGES**

**Section 15.1. Wages.** The following regular wage rates shall be paid to members by classifications and grades beginning on the first day of the pay period that includes the date specified:

January 1, 2012

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Hourly	18.8813	19.9715	21.3686	22.8929	24.5240
Biweekly	1,510.51	1,597.72	1,709.49	1,831.43	1,961.92
Annual	39,273.20	41,540.66	44,446.70	47,617.18	51,009.84

Effective the date the fringe benefit PERS pickup being paid by the City to PERS for the bargaining unit employees is reduced from ten percent (10%) to six percent (6%) the pay scale shall be increased by four percent (4%). That date shall be July 26, 2012.

Effective the date the fringe benefit PERS pickup being paid by the City to PERS for the bargaining unit employees is reduced from six percent (6%) to three percent (3%), the pay scale shall be increased by three percent (3%). That date shall be the beginning of the pay period that includes January 1, 2013 (first payroll in 2013). See Section 15.9 herein.

Effective the date the fringe benefit PERS pickup being paid by the City to PERS for the bargaining unit employees is reduced from three percent (3%) to zero percent (0%) the pay scale shall be increased by three percent (3%). That date shall be the beginning of the pay period that includes January 1, 2014 (first payroll in 2014). See Section 15.9 herein.

If the Agreement provides for an annual increase due to a reduction in PERS fringe benefit pickup and another general increase in the pay scale for that year, they shall be added together, but not compounded on each other.

January 1, 2013 – Zero Wage Increase.

July 1, 2013 – The parties agree to reopen negotiations concerning the wage rates in Section 15.1 of this Agreement for the third year of the parties' Agreement.

**Section 15.2. Step Advancement.** Original appointments to the classification of Communications Operator shall be made at entrance Step 1, and advancement from Step 1 to Step 2 shall be made after twelve (12) months of continuous service. Advancement from Step 2 through Step 5 shall be made by successive one (1) year steps.

**Section 15.3. Application of Pay Rates.** The rates of pay set forth in Section 15.1 are based on full-time employment of forty (40) hours in a workweek and shall be used to calculate salaries for hours actually worked or in paid status of the appropriate pay range and pay step.

**Section 15.4. Pay Period.** All bargaining unit members shall be paid on a biweekly basis (or pay period).

**Section 15.5. Annual Service Credit.**

- A. Bargaining unit members shall receive, in addition to the pay called for herein, an annual service credit of \$500 upon the completion of five (5) years of full-time continuous service, with a \$50.00 increase each year up to a maximum of \$1,500 after 25 years or more of service.
- B. If a bargaining unit member resigns, other than for retirement, the member shall be paid a pro-rata share of the annual service credit for the year, if in good standing at the time of resignation. Good standing exists unless one or more of the following apply:
  - 1. The member is under criminal or administrative investigation and/or criminal or administrative charges are filed against the member.
  - 2. The member is resigning in lieu of or because of other disciplinary action.
  - 3. The member is giving less than two (2) weeks written notice prior to the effective date of the member's resignation.
  - 4. The member is terminated for just cause.
- C. The Chief of Police retains the authority to waive or reduce any of the above criteria. Payment of the service credit will be paid the last regular check in November of each calendar year. Payment shall be based upon completed years of service as a full-time member of the Division as of the end of the calendar year.

**Section 15.6. Shift Differential.** Shift differential pay shall be paid for any regular scheduled assigned eight (8) hour workday for which one-half or more of the work hours occurred between 3:00 p.m. and prior to 7:00 a.m., excluding hours in paid status while on approved holiday leave, vacation, sick leave, military leave, compensatory time-off and off-duty standby hours. Effective

January 1, 2011, that rate shall be increased to eighty-five cents (\$0.85) per hour. If authorized overtime occurs in conjunction with an eight (8) hour workday during the time period specified for the payment of the shift differential pay, the shift differential shall be added to the base hourly rate prior to computing overtime. Shift differential shall be paid on a biweekly basis and shall not be cumulative.

**Section 15.7. Trainers.** The City will designate one member on each shift as a communications operator/dispatcher trainer on the basis of experience, education, skills, work performance, and ability to train individuals to perform the unique duties of the members. The City reserves the right to designate additional trainers. The selection of such trainers shall not be grievable. Trainers so selected shall receive an additional fifty cents (\$0.50) per hour while training one or more communications operators/dispatchers who are within the period of employment designated by the City for initial training, for example six months for a full-time operator/dispatcher. A trainer that is training more than one person on a shift shall not receive a multiple rate, nor shall the rate be paid for hours during which the trainer is off duty or not training. The details of the training periods, assignments, etc. will be addressed by policy issued by the City.

**Section 15.8. TAC/Assistant TAC Officer(s) Stipend.** Any member assigned by the Police Chief or the Chief's designee as the TAC Officer or Assistant TAC Officer shall be paid an additional rate equal to an annualized stipend of \$400, pro-rated if that member is assigned for a portion of a year.

**Section 15.9. Pension Pick-Up.** The City's method of payment of salary and the provision of fringe benefits to the employees covered by this Agreement who are participants in the Ohio Public Employees Retirement System (OPERS) is as follows:

A. In addition to the total annual salary and salary per pay period which is otherwise payable to each full-time employee, the amount of the statutorily-required employee contributions to OPERS that shall be picked up and paid as a fringe benefit by the City is set forth in Subsection 15.9(B) below. The remaining amount of the statutorily-required employee contributions to OPERS shall be withheld from the employee's gross pay and picked up by the City, commonly referred to as a salary reduction pickup. Pension pickup is subject to Section 15.1 of this Article.

B.	<u>Effective Date of Revised Pickup:</u>	<u>% of Employee's "Salary" City Will Pay to PERS as Fringe Benefit:</u>
	Start of 1st full payroll following ratification of this CBA by the parties (July 26, 2012)	six percent (6%)
	Start of pay period that includes January 1, 2013	three percent (3%)
	Start of pay period that includes January 1, 2014	zero percent (0%)

C. The amount picked up by the City shall not be included in the employee's total annual salary for the purpose of computing daily rate of pay, for determining paid salary adjustments to be made due to absence, or for any similar purpose.

- D. The pickup shall be designated as public employee contributions and shall be in lieu of contributions to OPERS by each employee. No person subject to this pickup shall have the option of choosing to receive the statutorily-required contribution to OPERS directly instead of having it picked up by the City or of being excluded from the pickup. The City shall, in reporting and making remittance to OPERS, report that the public employee contribution for each person subject to the pickup has been made as provided in the statute. Therefore, contributions, although designated as employee contributions, are employer-paid, and employees do not have the option to receive the contributions directly. All contributions are paid by the employer directly to OPERS.
- E. If the pick-up of employee retirement contributions should no longer be permitted by the state and federal law or regulations, employees shall be paid cash for the amounts that otherwise would have been picked up under this provision.

**Section 15.10. Automatic Direct Deposit Program.** The City shall provide a direct deposit program. All bargaining unit employees shall be required to participate in the direct deposit program.

## **ARTICLE 16**

### **RATES FOR MEMBERS FOLLOWING CERTAIN PERSONNEL ACTIONS**

**Section 16.1. Starting Rate on Return to Duty.** When a bargaining unit member returns to duty in the same class after a separation from the City service of not more than one (1) year, which separation was not due to discreditable circumstances, the member may receive the step rate in the pay grade corresponding to the step rate received at the time of separation, subject to the approval of the appointing authority.

**Section 16.2. Starting Rate on Return from Military Service.** A bargaining unit member who is called to active duty of the Armed Forces of the United States, and who subsequently is reinstated to a position previously held by the member shall be entitled to receive compensation at the step rate to which the member would have been entitled to had their service with the City not been interrupted by service in the Armed Forces.

**Section 16.3. Recall from Layoff.** A bargaining unit member who is called from layoff shall be reinstated at the same step as of the date of layoff and shall advance therefrom suffering no loss of seniority or break in service for the time during such layoff, but shall receive no credit for time spent in layoff.

**Section 16.4. Reinstatement from Authorized Leave.** Time spent on authorized leave shall be credited for purposes of step advancement and shall not constitute a break in service.

**Section 16.5. Seniority.** Seniority for members of the bargaining unit is established by the date of full-time, uninterrupted and continuous employment as a member of the Communications Unit covered under this Agreement.

Interrupted service would include resignation, transfer, retirement or discharge for cause or any other separation from the bargaining unit no matter what the length of time. In the case of a

disciplinary suspension, such suspension would not be considered a separation. However, any suspension that is issued, whether actually served or not, will cause the member to have their date of full-time employment reduced by the amount of suspension time.

Any leave as described in and approved under Article 22. Special Leave, with or without pay, will not be considered as separation from the bargaining unit.

Seniority for members of the bargaining unit as determined by this Section, is used exclusively as an internal method to determine the selection of members' shift assignments and weekly days off, as determined through the annual shift bid or bids following a change in shift structure, and scheduled vacations, all within the Communications Unit as established or approved by the Police Chief.

As a matter of clarification, weekly days off and shift assignments are not selected separately; rather, the Chief will determine or approve the days off that correspond to shift assignments, and if an employee bids on a particular assignment, the employee is also bidding on the days off that correspond to that assignment. Also, the City reserves the right to make exceptions to bidding placement to accommodate operational needs, such as avoiding having too many junior employees on the same shift.

The City shall advise the FOP/OLC of the change of seniority status of any member within thirty (30) days of the status change, and prior to the annual shift bid. If a member does not receive the benefit of seniority under this Article due to a mistake in giving notice or a mistake in the seniority roster, the remedy shall be to immediately correct the seniority roster, and give the affected employee(s) the opportunity to rebid for future shifts, etc.

All benefits or seniority that the City of Upper Arlington may provide to an employee based on length of current or prior service that may be determined by Civil Service Rule, Codified Ordinance, Personnel Rules, or elsewhere in this contract, are not subject to any reduction based on this section. This section will not affect any rate of pay as determined in Article 16, Section 16.1.

It is agreed that the determination of seniority pursuant to this section applies to person(s) hired after January 1, 1997. The seniority ranking of those bargaining unit members employed prior to January 1, 1997, shall remain unchanged.

## **ARTICLE 17**

### **HOURS OF WORK AND OVERTIME**

**Section 17.0. Application.** This Article is intended to define the normal hours of work per day or per week in effect at the time of execution of this Agreement. Nothing contained herein shall be construed as preventing the City from restructuring the normal workday or workweek for the purpose of promoting the efficiency of municipal government; from establishing the work schedules of employees; and establishing part-time positions.

**Section 17.1. Definition.** The workweek shall consist of forty (40) hours based on five (5) consecutive eight (8) hour workdays and two (2) consecutive days off, which workdays and

hours shall be scheduled and assigned by the Police Chief. Regular work time is the first eight (8) hours worked in any twenty-four (24) hour period. The workday shall be considered the calendar day in which the member's shift begins. There shall be a sixteen (16) hour period of time-off on normal workdays, except as provided for overtime, for external training sessions, in-service training sessions, for voluntary emergency assignments, and for assignment changes requested by or accepted by the member. If the sixteen (16) hour period of time is utilized for the above purposes, the City shall preserve at least an eight (8) hour period of time-off on normal workdays. This exception shall not be used to vary shift assignments for purposes of court appearances. Scheduling assignments for external training, in-service training sessions, and for assignment changes requested by or accepted by the member shall not constitute a violation of the "two (2) consecutive days off" requirement as defined above.

**Section 17.2. Overtime.** Bargaining unit members shall be compensated at straight time rates for all hours in paid status, except that any time actually worked in excess of eight (8) hours in any workday or forty (40) hours in any workweek shall be compensated at a rate of one and one-half (1½) times the regular hourly rate. All overtime shall be authorized by an appropriate supervisor at the direction of the Police Chief. The City may defer the changes in overtime calculation until a date after the Agreement takes effect that coincides with the beginning of a pay period.

**Section 17.3. Overtime Compensation.** All overtime compensation shall be paid biweekly unless the member elects to receive compensatory time-off. No member shall accrue more than two hundred forty (240) hours of compensatory time. Any member who reaches the two hundred forty (240)-hour limit shall thereafter be paid overtime compensation for overtime hours worked. The use of compensatory time shall be approved in advance by the Police Chief (or designee). All compensatory time which is not used in the calendar year it is accrued shall be paid to the member at the rate of accrual in the first December pay. Any overtime earned for the balance of the year shall be paid (not accumulated as compensatory time). A member separated from employment for any reason shall be paid for accrued and unused compensatory time at the rate of accrual.

**Section 17.4. Call In Pay.** When a bargaining unit member is called back by a supervisor for hours not abutting the member's regular shift hours, the member shall be paid a minimum of three (3) hours at the appropriate rate of pay. This provision shall also apply to members called in for divisional meetings or those instances where job-related court duty might be required. This minimum call-in guarantee shall be paid at one and one-half (1½) times the member's regular rate of pay when the member is thereby placed in overtime status.

**Section 17.5. Substitution of Time (Trade Time).**

- A. In the case of either (B) and/or (C) below, the Division is permitted but not required to, keep a record of the hours of the substitute work. The hours the member works, as a substitute shall be excluded in the calculation of hours for which the member is entitled to overtime. If the substitution of time now permits a member to receive shift differential as defined in Section 15.6, the member so entitled to the shift differential will be paid as outlined in the Contract. A member, who works hours where shift differential is not

entitled, will not receive any shift differential compensation. Police Officers may not be considered for substitution under this section.

- B. If bargaining unit members, with approval of their supervisor, and solely at the member's option, agree to substitute working hours (hour-for-hour) within the current fourteen (14) day pay period, they may do so without the need to take any time from any time banks. The members are required to complete the necessary "trade time" form as supplied by the Division.
- C. If bargaining unit members, with the approval of their supervisor, and solely at the member's option, agree to substitute working hours that are outside the fourteen (14) day pay period, or an agreement is reached where one person will work for the other but no arrangements are made for an hour-for-hour exchange that occurs within the fourteen (14) day pay period, then the member taking the time off must take from either their holiday, compensatory time, or vacation time banks. The member who actually works for the other member can choose to be paid for the shift or may receive the hours of work in compensatory time at the member's straight time rate.

## **ARTICLE 18** **HOLIDAYS**

**Section 18.1. Paid Holidays and Personal Days.** The following days are declared paid holidays from which the member shall be excused from work at the regular rate of pay:

- New Years Day, January 1
- Martin Luther King Day, Third Monday in January
- President's Day, Third Monday in February
- Memorial Day, Last Monday in May
- Independence Day, July 4
- Labor Day, First Monday in September
- Veteran's Day, November 11
- Thanksgiving, Fourth Thursday in November
- Christmas Day, December 25
- 5 Personal Holidays, Member selected, approved by the Chief of Police

**Section 18.2. Regular Paid Holidays/Personal Day Compensation.** The regular holidays and personal days are listed in Section 18.1 will be compensated by crediting each member with one hundred twelve (112) hours of holiday leave and personal leave [seventy-two (72) hours for holidays and forty (40) hours of personal leave] as of January 1 of each calendar year. A member who works a holiday shall have the option of being paid at the rate of one and one-half (1½) hours for each hour worked or having those hours added to the member's bank. Unused holiday/personal time may be taken as time-off with the approval of the Police Chief at any time during the calendar year in which it is credited. Any balance of unused time remaining at the end of the calendar year shall be paid at the rate of one and one-half (1½) hours for each hour worked or having those hours added to the member's bank. Any balance of unused time remaining at the end of the calendar year which is not needed to cover payment for the remaining time off in that calendar year under this Article shall be paid in the first regular pay in December.

**ARTICLE 19**  
**VACATION LEAVE**

**Section 19.1. Vacation.**

- A. Each member shall accrue vacation based on the following schedule:
  - 1. At the rate of 3.077 hours per pay period after one (1) year of continuous service for an annual rate of eighty (80) hours;
  - 2. At the rate of 4.615 hours per pay period after five (5) years of continuous service for an annual rate of one hundred twenty (120) hours;
  - 3. At the rate of 5.385 hours per pay period after ten (10) years of continuous service for an annual rate of one hundred forty (140) hours;
  - 4. At the rate of 6.154 hours per pay period after thirteen (13) years of continuous service for an annual rate of one hundred sixty (160) hours;
  - 5. At the rate of an additional .308 hours per pay period for each additional three (3) years of continuous service for an annual rate of an additional eight (8) hours.
- B. Vacations shall be at full pay at the current salary rate.
- C. All members shall begin accrual of vacation upon completion of two (2) full weeks of regular work. The accrual balance will appear to the credit of the member but will not be available for use as approved vacation leave until the member has served for a period of thirteen (13) pay periods. Upon completion of the thirteenth (13th) pay period, the member is eligible to utilize the accrued vacation balance.
- D. Each member shall be permitted an annual standard maximum carryover of up to three (3) years of accrued vacation time. Any accrued vacation in excess of the appropriate above stated annual standard maximum carryover limits standing to the credit of the member after the last day of the last full payroll period of the calendar year shall become void unless carried over to the subsequent calendar year following the submission to and approval of such request by the City Manager on December 1. Approval of such requests will be limited to instances where factors beyond the member's control or directly related to the operational needs of the City prevented the member from using the accrued vacation.
- E. Only requests for vacation less than or equal to the accrued balance will be approved.
- F. Compensation for vacation leave in lieu of time-off shall not be granted.
- G. Vacation leave shall be scheduled as far in advance as possible but no less than an equal number of days or hours as taken at the direction of the supervisor. In the event of

conflicting requests, the Police Chief shall resolve the conflict based on the operating needs of the Department/Division.

- H. Where a member becomes deceased while in paid status in City employment, any accrued vacation leave to their credit shall be paid in a lump sum first to the surviving spouse, then to the deceased's estate.
- I. Any member leaving the City shall be paid a lump sum amount for any accrued vacation leave to their credit.
- J. A member is entitled to have prior service with the City of Upper Arlington counted for purposes of computing vacation leave. The anniversary date of employment is the anniversary date of such prior service. This means, for example, that a re-hired City member with seven (7) years and three (3) months of prior service would be considered an eight (8) year after nine (9) months of continuous service with Upper Arlington. That member would then accrue vacation leave based on the eight (8) year formula.

## **ARTICLE 20**

### **SICK LEAVE WITH PAY**

**Section 20.1. Accrual.** All members shall accrue sick leave with pay at a rate of 4.616 hours for each completed pay period in which a member is in paid status. Paid sick leave shall be charged at the rate of one (1) hour for each work hour absent. Sick leave shall accrue without limitation.

**Section 20.2. Sick Leave Usage.** Sick leave may be granted only upon the approval of the Chief of Police for the following reasons:

- A. Sickness of the member.
- B. Injury to the member.
- C. Sick leave may be used to keep medical, dental and optical appointments, limited to reasonable travel time and appointment time.
- D. Sickness or injury to the immediate family, as defined for purposes of this Section, as spouse, children, parents, brother, sister, grandparents, parents-in-law, and legal guardian requiring the presence of the member. A member who uses more than three (3) calendar days shall submit a medical certificate before sick leave is paid. No more than five (5) days of sick leave shall be paid under this provision in a calendar year, except upon the recommendation of the Police Chief and approval of the City Manager.
- E. Quarantine of a member because of exposure to contagious disease, provided that a medical certificate is obtained prior to payment.
- F. Any member scheduled to work on a holiday who reports sick or injured shall be charged sick leave with pay.

- G. No continuous sick leave in excess of four (4) working days shall be allowed except upon submission of a medical certificate to the Chief of Police no later than five (5) days after the commencement of the use of sick leave, which certificate shall state the nature of the illness and probable length of the sick leave use. Additional certificates may be required by the Chief of Police in cases of prolonged illness.
- H. In unusual and specific circumstances, the City Manager may grant additional sick leave with pay to members. In each case, the City Manager shall make a complete investigation, review and consult with the Police Chief on the member's service, work, and sick leave record, and the nature or seriousness of the sickness or physical disability. A report shall be made and filed together with a medical certificate. This extension of sick leave may be made on any basis that the particular case warrants, in the opinion of the City manager, but the additional sick leave with pay for members who have one (1) year or more of continuous employment with the City, shall not exceed thirty (30) calendar days. For members who have less than one (1) year of continuous employment with the City, the additional sick leave with pay shall not exceed fourteen (14) calendar days. Any member who does not return to work physically fit within the designated time provisions shall be removed from the payroll and marked on "Leave of Absence". If such member reports to work physically fit within fifteen (15) days following the date of the leave of absence, the member shall be restored to that member's former status at the member's former rate of compensation. If any member does not report to work within this fifteen (15) day period, the member's service with the City shall be considered terminated. Further extensions of sick leave for members may be granted as the City directs.
- I. Any member who has been granted additional sick leave under the provision of Section 20.2 H above shall have granted sick leave deducted from any sick leave earned, as provided in Section 20.1 above.
- J. In a calendar year during which a member has more than four (4) separate occurrences of sick leave use of a single day or more, for which no medical certificate is obtained, the member may be required to present a medical certificate to receive pay for each subsequent absence due to sick leave in the remainder of the calendar year. Notification of this requirement will be made in writing to the member by the Police Chief. The member may utilize the Grievance Procedure to dispute the Police Chief's notification.
- K. As used in this section, "medical certificate" means a certificate from the attending, licensed medical practitioner.
- L. Beginning with the fifth (5th) occurrence in a calendar year, and with each occurrence thereafter, a member who is granted sick leave shall not be paid for the first (1<sup>st</sup>) day. Those absences for the same illness or injury certified by a physician shall be counted as one (1) occurrence if they take place during a period not to exceed thirty (30) calendar days from the date the member returns to work. For purposes of Section 20.2.L an absence of four (4) hours or less shall not be counted as an occurrence. Section 20.2.L shall not apply to sickness of a dependent child or family member living within the member's household. At the member's option, the member may use time from another

bank in lieu of leave without pay after the fourth (4th) occurrence by submitting a leave slip through the member's supervisor. The leave slip should designate that in lieu of leave without pay, appropriate hours should be deducted from a designated time bank.

**Section 20.3. Wellness Payments.** A member who does not use any sick leave (with the exception of sick leave used pursuant to 20.2.C) in a calendar year shall be compensated with twenty-four (24) hours of pay. A member who uses eight (8) hours or less of sick leave during a calendar year shall be compensated with sixteen (16) hours of pay. A member who uses more than eight (8) hours but no more than sixteen (16) hours of sick leave during a calendar year shall be compensated with eight (8) hours of pay. Members who are eligible for a wellness payment shall be paid no later than January 31 of the following year at the member's rate as of December 15.

**Section 20.4. Payment Upon Retirement.** All members shall at the time of their retirement, receive payment in a lump sum of one (1) hour of pay for each four (4) hours accumulated unused sick leave to the member's credit for accruals up to and including one thousand nine-hundred and twenty (1,920) hours.

**Section 20.5. Payment Upon Death.** When a member dies while on paid status, all unused sick leave to the member's credit shall be paid in a lump sum to the member's surviving spouse, or secondarily to the member's estate, at the rate set forth above. The parties acknowledge, however, that if that method of payment does not comply with federal tax laws, the payment will be made in accordance with such laws. If the member was killed in the line of duty, all unused sick leave to the member's credit shall be paid at the rate of one (1) hour of pay for every hour of accumulated and unused sick leave, at the rate in effect at the time of the member's death.

## **ARTICLE 21** **OCCUPATIONAL INJURY AND DISABILITY**

- A. Any full-time bargaining unit employee of the City will be eligible to receive injury leave at the normal level of pay in an amount not to exceed two hundred forty (240) hours per injury for an illness/accident received in the course of, and arising out of, the injured employee's employment and verified by a competent physician as a disabling illness or injury.
- B. Injury leave may be granted by the City Manager only upon the recommendation of the employee's department head and/or supervisor.
- C. The City reserves the right, at its cost, to require the employee to see a physician of its choice before injury leave may be granted.
- D. To receive injury leave with pay, the employee must:
  - 1. notify the member's on duty supervisor when an incident or accident occurs as soon as practicable;

2. complete an Accident Report to be forwarded to the City Manager's office within twenty-four (24) hours of the incident or accident;
  3. complete a request for Injury Leave form;
- E. Injury leave shall not be cumulative, i.e., an employee may only receive injury leave once for each work-related illness/accident.
- F. An employee who consistently is injured due to unsafe work habits (e.g., not wearing safety equipment supplied by the City), may be denied injury leave and will be subjected to progressive discipline. The employee is still eligible, however, to receive Worker's Compensation payments (or their equivalent under the City's self-insured WC program) in compliance with the regulations of the Ohio Bureau of Workers' Compensation to the extent they apply to the City's self-insured Workers' Compensation program.
- G. When an employee requests injury leave for a disputable illness/accident, other than mentioned in (F) above, and is denied such leave, the employee may be subsequently credited with such leave upon a favorable decision by the Bureau of Workers' Compensation System, provided the City may appeal or otherwise contest a decision; in which case, injury leave will be credited only when the City either exhausts its remedies or accepts the judgment rendered by the BWC.
- H. An employee may be offered transitional or modified duty work by the City, with the approval of the employee's physician, when the following requirements are met:
1. The assignment must be medically suitable. The employee must be capable of performing the work without violating a medical restriction;
  2. The assignment must fulfill a necessary job function or functions; and
  3. The assignment is anticipated to be temporary.
- I. An injured employee forfeits all rights to any salary continuation payments to which the employee would normally be entitled, if the employee:
1. engages in work, whether part-time or full-time, for pay or as a volunteer, or for the member or for any other person, firm or corporation, while receiving salary continuation payments;
  2. terminates employment for any reason while receiving salary continuation payments;
  3. fails or refuses to comply with the treating physician's instructions or advice regarding treatment of the injured condition;
  4. fails to act in a manner which is conducive to being off work convalescing from a job-related injury;

5. refuses to perform light, modified, or transitional duty when authorized by the treating physician;
  6. represents the member's injured condition, physical incapacity, or disability as worse than it is while receiving salary continuation payments; or
  7. refuses to return to regular duty after being released for regular duty by the treating physician.
- J. An employee may return to full duty provided a full release is authorized by the member's attending physician. A full release includes the physician's review of the employee's position description and a certification that the employee is fit to perform all essential duties described therein. The City reserves the right to have the employee examined and a full release issued, at its cost, by a physician of its choice before returning the employee to full duty. If the physicians do not agree, the City and employee will select a third physician who may be a specialist in the area at issue.
- K. The employee is required to report to work as stated by the attending physician. Note that injury leave will only be extended to the date of the physician's release. At such time, the employee will be reinstated to the member's former position at the current rate of compensation.
- L. If the employee does not report as stated in (K) above, the employee will be considered to have resigned the employee's position with the City.
- M. When an employee has been in a light duty status for over sixty (60) days, a review will be conducted to determine the appropriateness of continuing the employee in the light duty assignment. An employee may be retained in a light duty status when:
1. the employee's medical condition or extent of disability is uncertain or in dispute;
  2. the employee is actively participating in a vocational rehabilitation program; or
  3. the employee has a disability retirement application pending.

The City cannot always place an employee on light duty, and may restrict the number or duration of light duty assignments based on its operational needs.

- N. Wage Continuation. When, by nature of a disability, a member becomes entitled to benefits under the Worker's Compensation law, the member may be granted a leave of absence without compensation from the City and receive Worker's Compensation benefits.

In the event a member, who is entitled to injury leave, uses the maximum allowable injury leave per injury, and is still unable to return to active duty, an assessment of the status of the injury will be made by the City Manager. If the City determines that within six (6) months from the date of injury (a) the employee will not be able to return to work

and perform the essential functions of the member's position, (b) the employee is not making consistent progress toward recovery, (c) the employee is not cooperating with the City in the employee's recovery and return to work, or (d) a disability retirement is not pending, then the employee may be terminated. Every attempt will be made (e.g., through physical therapy and work hardening programs) to return the member to the member's former position.

## **ARTICLE 22** **SPECIAL LEAVE**

### **Section 22.1. Jury Duty.**

- A. A member, while serving upon a jury in any court of record, shall be paid the member's regular salary for each of the member's workdays during the time so served. Jury duty fees paid to the member by the court shall be returned to the City.
- B. The member, upon notice of jury duty, shall present such to the member's immediate supervisor. A copy of such notice shall be filed in the member's personnel file.
- C. Jury duty requiring less than four (4) hours of member's regular workday as verified by the time report, shall require the member to report to the member's supervisor for completion of the member's regular workday with the City.

### **Section 22.2. Bereavement Leave.**

- A. A member may be granted up to three (3) regular scheduled workdays without loss of pay in case of death in the immediate family.
- B. Sick leave, vacation, personal days, or compensatory time may be used for bereavement leave up to an additional two (2) days for immediate family.
- C. Three (3) days of leave is permissible for deaths other than the immediate family, but such leave shall be charged to vacation, personal days or compensatory time.
- D. Immediate family is defined for purposes of this section as parents, parents-in-law, brothers-in-law, sisters-in-law, spouse, children, adoptive children, sons-in-law, daughters-in-law, brothers, sisters, grandchildren, grandparents, grandparents-in-law, step-children, step-son, step-daughter, legal guardian or other person who stands in the place of a parent, unless otherwise specified.

### **Section 22.3. Leaves of Absence.**

- A. In an effort on the behalf of the City to be flexible and provide latitude to members in unique or special circumstances, leaves of absence may be granted under special circumstances. Eligibility for a leave of absence will be reviewed on a case-by-case basis and will be limited to members with at least two (2) consecutive years of service.

- B. Leaves of absence for the following situations or emergencies will be considered:
1. To allow members to attend courses in training at recognized colleges or universities.
  2. Personal leave of absence may be granted to a member to attend to personal matters in cases in which the City determines that an extended period of time-off would be in the best interest of the member and the City including, but not limited to, in-patient substance abuse treatment.
  3. For purposes deemed beneficial to the City and the member.
- C. Leaves of absence are granted without pay except in special and unusual circumstances. Insurance benefits are continued during leaves of absence.
- D. Requests for a leave of absence must be made in writing by the member. All leaves must be approved by the Chief of Police and the City Manager. Permitted leaves are limited to six (6) weeks at which time any request for additional leave must be made.
- E. A member returning to work from leave shall be reinstated to the member's former position or a comparable position.
- F. If a member fails to return to work at the conclusion of a permitted leave, the member will be terminated from employment, unless the Chief of Police and the City Manager grant an extension.

**Section 22.4. Military Leave.** Any member who is a member of the Ohio Organized Militia, Ohio National Guard, U.S. Air Force Reserves, U.S. Army Reserves, U.S. Marine Corps Reserves, Naval Reserves, U.S. Coast Guard Reserves, or other Reserve Components of the Armed Forces of the United States shall be granted military leave of absence with pay, for the purpose of performing service in the uniform service for a period of time not to exceed one hundred and seventy-six (176) hours during a calendar year. In order to receive such reimbursement, the employee shall be required to produce an order or statement from the appropriate military commander as evidence of duty and such military service pay records as may be deemed necessary by the Finance Director. With the approval of the Chief of Police and the City Manager, up to ninety (90) hours of military leave may be granted to attend military schools or training directly related to law enforcement. Approval or disapproval of additional leave shall not be grievable. Excused absence without pay may also be granted a member for attendance at reserve functions where paid military leave is not available.

**Section 22.5. Family Medical Leave Policy.** The Family and Medical Leave Policy as established in the City's Administrative Code and amended from time to time shall be adopted herein for all members of the bargaining unit. The City's policy is intended to comply with the federal Family Medical Leave Act as amended.

## **ARTICLE 23** **INSURANCE**

**Section 23.1. Life Insurance.** The City shall provide Life Insurance and pay the premiums for coverage with a death benefit of fifty thousand dollars (\$50,000) of group term life insurance for all full-time bargaining unit members less than sixty-five (65) years of age. Full-time bargaining unit members sixty-five (65) to seventy (70) years of age shall receive term life insurance in the amount of sixty-five percent (65%) of the bargaining unit member's annual salary in effect at the time of death. Full-time bargaining unit members seventy (70) years of age and over shall receive term life insurance in the amount of thirty-nine percent (39%) of the bargaining unit member's annual salary in effect at the time of death. Such coverage shall include double indemnity for accidental death and disability.

**Section 23.2. Liability Insurance.** The City shall provide professional liability coverage at the present level of coverage at no cost to the member. The City may provide such coverage by purchasing liability insurance, self-insuring, or a combination thereof.

**Section 23.3. Coverage.** The City shall make available health and dental insurance coverage for a bargaining unit member and any eligible members of the member's immediate family, as defined by the City's health and dental insurance programs. The election of such insurance coverage shall be at the option of the bargaining unit member, but the City and the member shall pay the premium costs for health insurance as follows:

The member contribution shall be determined by the amount of contribution required of eligible non-contract employees of the City covered by insurance. Such amount shall not exceed a total of nine percent (9%) or \$105.00 per month, for family coverage, provided that the City may modify that amount so that on or after January 1, 2013 the amount shall not exceed ten percent (10%) or \$120.00 per month. No cap shall apply effective January 1, 2014 except and unless another group of represented employees have secured for themselves, effective January 1, 2014, a cap on an employee's share of premium costs for health and dental insurance coverage, in which case the bargaining unit covered by this Agreement shall have attached to it the lowest cap secured by another City of Upper Arlington, Ohio bargaining unit.

### **Section 23.4. Administration.**

- A. The Health, Dental, Life and Benefits Programs shall be administered by the City Manager or the City Manager's designee, who is authorized to make such reasonable rules and regulations as may be found necessary, from time to time, for its proper administration.
- B. The City, at its discretion, may designate an insurance agent, administrator, carrier, consultant, or third party administrator for the purposes of administering and/or obtaining life, health, dental, and liability insurance programs.
- C. It is understood by the parties that the City will provide the bargaining unit employees with substantially the same level of benefits (e.g., eligibility requirements, spousal exclusions, covered procedures, pharmaceutical schedules, charges, fees, deductibles, co-

payments, etc.) applicable to non-represented employees by Ordinance. However, the City is not financially obligated to absorb any costs resulting from administrative program changes, cost containment measures, or other uniform changes approved by the Ohio Department of Insurance and made by the insurance carriers or their agents, or mandated through the passage of a State or National Health Care Program. However, the City will enter into discussions with the FOP/OLC, or a subcommittee, mutually agreed upon, to discuss any changes, which substantially impact the cost of providing health and dental coverage to a majority of the members.

- D. The City may, at its discretion, change insurance carriers, administrators, or self-fund for the purpose of providing health and dental coverage to its employees, or to effect cost-containment measures which permit the continuation of such level of benefits; except that the provisions of Section 23.3 shall define the City and member's costs. The City shall provide thirty (30) days written notice to the FOP/OLC prior to any changes in insurance carriers or administrators.
- E. The City shall not be liable for premiums or other charges for the benefit of a member removed for disciplinary reasons.

#### **ARTICLE 24** **MISCELLANEOUS ECONOMIC PROVISIONS**

**Section 24.1. Personal Expenses.** A bargaining unit member, whenever authorized by the Chief of Police and the City Manager to engage in official City business, may be reimbursed for all or part of such necessary incurred expenses as set forth in the Personnel Rules Governing City of Upper Arlington Employees as hereinafter amended.

#### **ARTICLE 25** **DRUG AND ALCOHOL TESTING**

- A. No employee shall use, possess, distribute, manufacture, or sell controlled substance or drug of abuse as defined in Ohio Revised Code 3719.01 and 3719.011 (hereafter referred to as drug or drugs); prescription medications taken pursuant to the instructions of a valid prescription are not drugs of abuse.
- B. No employee shall use, possess, distribute, manufacture or sell alcohol while on the job.
- C. No employee shall under the influence of drugs and/or alcohol or a combination thereof while on the job, on City premises, or on or while using City equipment.
- D. Any employee convicted of an offense under a criminal drug statute for an offense occurring within the workplace must report the conviction to the City Manager no later than five (5) working days after the conviction.
- E. A violation of these rules is cause for disciplinary action up to and including termination of employment.

- F. Recognizing that drug and alcohol abuse are treatable illnesses, which should be dealt with initially by treatment and education, it is the City's policy to prevent and rehabilitate rather than terminate the employment of workers who are alcohol and/or drug dependent. No employee will be discharged for voluntarily seeking assistance for a substance abuse problem; however, co-occurring performance, attendance or behavioral problems may result in disciplinary action up to and including termination of employment. Employees are encouraged to use the Employee Assistance Program (EAP), but involvement in that program does not prevent the City from disciplining an employee if there are co-occurring performance, attendance or behavioral problems. Furthermore, involvement in the EAP does not preclude the City from discharging a probationary employee during the employee's original period of probation.
- G. In furtherance of goals set forth above, the City adopts the alcohol and drug testing policy and procedures which follow. The testing policy shall be implemented in a consistent, nondiscriminatory manner. All employees will be provided with a copy of the testing policy prior to its implementation and will be provided information concerning the impact of the use of alcohol and drugs on job performance. Employees and supervisors will be trained to recognize the symptoms of alcohol and drug abuse, impairment and intoxication.

Applicants for employment with the City who have been conditionally offered a position with the City shall be required to submit to testing to determine the presence of alcohol and/or drugs. Pre-employment testing protocol shall be determined by the Civil Service Commission. Standards for the administration of the tests set forth in (J) of this policy are not applicable to pre-employment testing. An employee, during the employee's original period of probation, who tests positive or otherwise violates this policy may be terminated.

- H. All new employees will receive the policy and procedure information on their initial hire date. No employee shall be tested until this information is provided to the employee. A signed log sheet shall be filed in new and existing employee's personnel file indicating receipt of the policy and procedure.
- I. Random drug testing will not be permitted under any circumstances. Drug and alcohol testing of employee may be administered only where there is a reasonable suspicion to believe that the employee to be tested is impaired by the use of an alcoholic beverage and/or drugs, or in the event of a vehicular accident involving bodily injury or serious property damage as determined by a supervisor based upon standards established by the City.

This policy is not to be utilized for criminal law enforcement purposes. However, this policy does not prevent criminal law enforcement investigation of illegal activity. For example, an employee charged with operating a motor vehicle under the influence of alcohol and/or drugs of abuse (OVI) may be required to submit to testing as part of the criminal investigation and the procedures of this policy would not be applicable to that investigation. Furthermore, evidence derived in a criminal investigation, including drug and alcohol testing, may be used as evidence in a disciplinary proceeding.

The term "reasonable suspicion" shall for the purposes of this policy be defined as follows:

Aberrant or unusual on-duty behavior of an employee which:

1. Is observed on duty by another City employee, confirmed in writing by the observing employee, and whenever reasonably possible corroborated by the observation of a witness other than the person alleging the impairment. If a citizen complaint is brought, the complaint must be in writing, signed by the citizen and verified by the employee's supervisor. The employee suspected of impairment shall be permitted to contact a person of the employee's choosing by telephone, however, the inability of the employee to reach that person will not delay testing.
2. Is the type of behavior which is recognized and accepted as symptomatic of intoxication or impairment caused by drugs and/or alcohol.
3. To the satisfaction of the employee's supervisor and the City Manager, is not reasonably explained by other factors than impairment by drugs and/or alcohol. The term "City Manager" shall mean either the City Manager, Assistant City Manager, person(s) designated by the City Manager to act on the City Manager's behalf or authorized by law in the absence or disability of the City Manager.
4. Reports of drug abuse or abnormal behavior shall be forwarded immediately to the employee's supervisor. The supervisor shall investigate the report and document his or her findings. Reports which are not documented in writing by the employee's supervisor shall not constitute reasonable suspicion. No alcohol or drug testing may be conducted without authorization of the City Manager. The City Manager must document in writing who is to be tested and why the test is ordered including the specific objective facts constituting reasonable suspicion and the names of any witness or sources of information. A copy of this documentation shall be given to the employee. The employee must have the reasons for testing referral explained by a member of the City management prior to referral for testing. As used in the previous sentence, a member of the City management is a supervisor in the employee's division or a member of the City Manager's Office.

If the City Manager, after a review of the facts, also has a reasonable suspicion that the employee may be intoxicated or impaired, then by written order signed by the City Manager, the employee may be ordered to submit to a urine and/or blood test designed to detect the presence of alcohol and/or drugs. A verbal order may be issued by the City Manager with a written order to follow within 24-hours.

Failure to follow any of the above steps shall result in the invalidation of the test results as if no tests were administered, and the test results will not be used for disciplinary purposes. However, failure to follow the above steps does not prevent disciplinary action based upon other evidence.

Refusal to submit to testing after being properly ordered to do so may result in disciplinary action up to and including termination. As the employee is not under arrest during the testing process, an employee subject to testing should not be restrained or prevented from leaving during any part of the test process. However, an employee who fails to properly complete the test process is subject to disciplinary action up to and including termination.

Except as provided herein, testing shall be done in accordance with 49 CFR Part 40 as amended from time to time by a facility which is certified under Department of Health and Human Services (DHHS) standards and shall consist of tests which detect the presence of the following: Alcohol, Amphetamines, Cannabinoid (Marijuana) Metabolites, Cocaine Metabolites, PCP, Benzodiazepine, Barbiturates, Opiates, Methadone, and Propoxyphene.

The employee shall be transported to the drug testing site by a member of the City Manager's office or a person designated by the City Manager. After sample collection, the employee shall be transported home by a member of City management or designee. The employee shall be relieved of duty without pay from the time of arrival home. The employee remains on a paid status until the employee's arrival at home. If drug testing results are negative, the employee shall be compensated for the period of leave of absence without pay unless other work rule violations are proven to have occurred.

Referral for drug testing, if approved, should normally occur within two (2) hours of the supervisor's observation. In no case will more than four (4) hours elapse from the time of supervisor's observation to the time of sample collection; unavailability of a person whom the employee wishes to consult with prior to testing will not delay testing. Where more than four hours have elapsed, test results will be declared invalid and documentation shall be so noted by the City Manager. Invalidation of the test results does not prevent disciplinary action based on other evidence. Testing may be requested and performed during all shifts (24 hours a day; 7 days/week).

J. The following test procedure shall apply to tests administered to employees.

The City will request urine and blood samples for testing for controlled substances. Both samples shall be collected at the laboratory or health care facility specified by the City. Chain of custody standards as specified in the DHHS standards shall be followed. The City may request a blood test, urine test or breathe test for alcohol testing. If a breath test is requested, only breath testing instruments approved in Ohio Administrative Code (OAC) 3701-53-02 may be used. Breath testing will not be conducted by the Upper Arlington Police to protect the privacy of the employee.

In the event that a urine sample cannot be produced, or that a sufficient quantity cannot be produced, then the blood sample above shall be analyzed for all other drugs specified in this procedure.

The employee shall not be observed when the urine specimen is given, unless the person conducting the collection has reason to believe that the donor may be attempting to compromise the integrity of the test. Stringent specimen alteration and/or substitution procedures shall be followed by the sample collection site staff. Sample specimen containers shall be in sealed containers prior to use and after collection of specimen shall be sealed with evidence tape and labeled in the presence of the employee and person transporting the employee on behalf of the City.

The City shall choose the sample collection site and laboratory to be utilized for testing.

The following standards shall be used to determine what levels of detected substance shall be considered positive.

<u>DRUG</u>	<u>SCREENING TEST</u>	<u>CONFIRMATION</u>	<u>CONFIRMATION</u>
Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA <sup>1</sup>	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL
Opiate metabolites			
Codeine/Morphine <sup>2</sup>	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines <sup>3</sup>			
AMP/MAMP <sup>4</sup>	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine <sup>5</sup>	250 ng/mL
MDMA <sup>6</sup>	500 ng/mL	MDMA	250 ng/mL
		MDA <sup>7</sup>	250 ng/mL
		MDEA <sup>8</sup>	250 ng/mL
PCP	25 ng/ml		25 ng/ml GC-MS
Barbiturates	300 ng/ml		300 ng/ml
Benzodiazepine	300 ng/ml		300 ng/ml
Methadone	300 ng/ml		300 ng/ml

<sup>1</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

<sup>2</sup>Morphine is the target analyte for codeine/morphine testing.

<sup>3</sup>Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

<sup>4</sup>Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

<sup>5</sup>To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

<sup>6</sup>Methylenedioxyamphetamine (MDMA).

<sup>7</sup>Methylenedioxyamphetamine (MDA).

<sup>8</sup> Methylenedioxyethylamphetamine (MDEA).

Propoxyphene

300 ng/ml

300 ng/ml

*Alcohol*

.02 of 1% or more by weight of alcohol in the subject's blood – blood test no confirmatory test necessary; or  
.02 grams or more by weight of alcohol per 210 liters of the subject breath – breath test no confirmatory test necessary; or  
.028 of 1 gram or more by weight of alcohol per one hundred milliliters of the subject's urine – urine test no confirmatory test necessary.

Alcohol

For City employees that are required to have a commercial driver's license, the following levels constitute a positive test: .02 of 1% or more by weight of alcohol in the subject's blood – blood test no confirmatory test required; or .02 grams or more by weight of alcohol per 210 liters of the subject's breath – breath test no confirmatory test necessary; or .028 of 1 gram or more by weight of alcohol per one hundred milliliters of the subject's urine – urine test no confirmatory test necessary.

A test of .04 (blood alcohol level) or more is considered to be impairment in all cases; the impairment of employees registering below .04 is to be determined by an analysis of all relevant factors (ex. blood alcohol level, physical signs displayed by the employee, what the employee is required to do on the job, etc.).

Tests which are below the levels set forth above, with the exception of alcohol tests, shall be determined as negative.

At the time the urine specimen is collected, sufficient quantity for two (2) samples will be taken. The two (2) samples will be sent to the laboratory to be tested at the employer's expense. In order to be considered positive, both samples must be tested separately, in separate batches and show positive results. The initial screening shall be done using RIA/EMIT Methodology and the confirmatory test shall be done using mass spectrograph gas chromatography methodology. All test results are to be reviewed by a toxicologist or physician before being released. No confirmatory test is necessary for alcohol screening.

A portion of the second sample will be stored in a separate container and shall be sealed in the presence of employer's representative and employee. The Employer's representative and the employee will sign the evidence tape. This sample shall be made available to the employee for testing by a laboratory chosen by the employee. The employee's option of requesting an independent test by another laboratory must be exercised within ten (10) days of the employee's notification of positive test results and the laboratory selected must be DHHS certified with chain of custody standards followed. The sample shall be stored at the laboratory testing site until notified by the employee of testing instructions or for one year whichever is longer. The cost of testing this sample shall be borne by the employee.

All test results shall be treated as confidential to the extent allowed by law. All test results must be retained in a secure file separate and apart from the employee's personnel file. The City Manager, or designee shall communicate drug testing results to the employee and employee's supervisor and department head. For a first time positive test, results will be disclosed to the employee, employee's supervisor and department head, and the City's Employee Assistance Program, with a provision for monitoring compliance through the City Manager's Office. In the case of a second positive drug test, results will be disclosed to the employee, employee's supervisor and department head, and only those additional people with a specific need to know because of subsequent disciplinary action which may be taken.

If the results of the tests administered by the employer on the two samples show that the employee while on duty was positive: (a) The employee shall be given a copy of the laboratory report by the City Manager, or designee before discipline is imposed. (b) The employee shall have the right to present the employer with different results from the test of the third sample conducted by a DHHS certified laboratory chosen by the employee. Failure of the employee to have a third test performed shall not be used against the employee as a basis for discipline. (c) The employer may discipline the employee after consideration of all tests presented provided: that any discipline imposed for the first offense in any 36 month period shall be held in abeyance pending completion by the employee of an approved substance abuse treatment program. In the event an employee enters a treatment program as a result of a positive drug test, a release of information authorization is to be completed by the employee so that the employer can monitor compliance. If the employee successfully completes such a program and is not disciplined for substance abuse for 36 months following the initial charge, the discipline shall be revoked, and shall not be used as a basis for any other disciplinary action in the future.

Notwithstanding the foregoing, an employee may be disciplined for the first positive drug test, if there are co-occurring work rule(s) violation(s) sufficiently serious to warrant action. The second positive drug test shall result in disciplinary action up to and including job termination. Probationary employees may be discharged for any violation of this drug and alcohol policy and need not be offered rehabilitation in lieu of discipline.

- K. Employees who seek voluntary assistance for drug or alcohol abuse prior to an incident resulting in a reasonable suspicion test may not be disciplined for seeking such assistance. All requests from employees for assistance shall remain confidential. Employees shall be entitled to take accrued sick leave, vacation, compensatory time or leave without pay during absence required as part of the rehabilitation process. Any leave of absence is governed by C.O. 155.10.
- L. Unless the City has complied substantially with all safeguards and procedures specified herein are followed, test results may not be relied upon or serve as a basis of any discipline or referral to rehabilitation. Minor or trivial deviations that do not affect the integrity and reliability of testing process shall not invalidate the test results.

- M. This drug and alcohol testing program was initiated at the request of the City. The City assumes sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this Collective Bargaining Agreement relating to drug and alcohol testing. The FOP/OLC shall be held harmless for the violation or alleged violation of any employee rights arising from the administration of the drug and alcohol testing program.
- N. The parties recognize that during the life of this Contract, there may be improvements in the technology of testing procedures, which provide more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree, the procedure shall remain unchanged.
- O. This policy is in no way intended to supersede or waive any Constitutional rights the employee may be entitled to under the Federal or State Constitutions.
- P. For the purpose of any disciplinary process Article 8 of the Collective Bargaining Agreement shall be followed.

**ARTICLE 26**  
**ATTENDANCE**

**Section 26.1. Absence Without Leave.** A bargaining unit member who intends to be absent from duty without pay shall report the reason therefore to the member's supervisor prior to the day of absence, when possible, and in no case later than two (2) hours prior to the member's scheduled time to report for duty. All unauthorized and unreported absences shall be considered absence without leave. Such unauthorized absence may be grounds for disciplinary action.

**Section 26.2. Loss of Compensation for Absence.** No member shall be paid for any period of absence without leave. Further, the member shall not accrue sick leave or vacation leave for the period of absence.

**Section 26.3. Attendance Record.** The Chief of Police shall keep an attendance record of members of the bargaining unit. Member attendance records shall be filed with the Finance Director.

**ARTICLE 27**  
**UNIFORMS**

**Section 27.1. Initial Issue.** The City of Upper Arlington will provide uniforms to bargaining unit members as specified by the Chief of Police or designee. After the initial uniform supply is issued, pursuant to Upper Arlington Police General Orders 22.2.8.C., the City of Upper Arlington will annually replace uniforms and equipment pursuant to Article 27.3.

**Section 27.2. Care and Cleaning.** The care and cleaning of the uniforms, and all associated costs, shall be the sole responsibility of the members.

**Section 27.3. Replacement.** The uniforms will be replaced at no cost to the bargaining unit members when the Chief of Police or designee deems it necessary. This shall be based on normal wear and tear.

**Section 27.4. Uniform Return.** Uniforms are the property of the City of Upper Arlington and will be returned upon separation, resignation, or termination.

**ARTICLE 28**  
**ENTIRE AGREEMENT**

**Section 28.1. Provisions.** This Contract contains the entire agreement between the parties hereto and neither party shall be bound by any statement, representation, agreement, stipulation or provisions made prior to the execution hereof and not set forth herein.

**ARTICLE 29**  
**DURATION**

This Agreement shall become effective January 1, 2012 and shall continue in full force and effect until December 31, 2014.

**APPENDIX A**  
**Wage Scales**

The wage scales anticipated by Article 15, after accounting for adjustments related to the members' paying their share of pension contributions are as follows:

7/26/2012	Step 1	Step 2	Step 3	Step 4	Step 5
Hourly	\$ 19.6366	\$ 20.7704	\$ 22.2233	\$ 23.8080	\$ 25.5050
Biweekly	\$ 1,570.93	\$ 1,661.63	\$ 1,777.86	\$ 1,904.64	\$ 2,040.40
Annual	\$ 40,844.13	\$ 43,202.43	\$ 46,224.46	\$ 49,520.64	\$ 53,050.40
1 <sup>st</sup> Payroll 2013	Step 1	Step 2	Step 3	Step 4	Step 5
Hourly	\$ 20.2257	\$ 21.3935	\$ 22.8900	\$ 24.5222	\$ 26.2702
Biweekly	\$ 1,618.06	\$ 1,711.48	\$ 1,831.20	\$ 1,961.78	\$ 2,101.61
Annual	\$ 42,069.45	\$ 44,498.50	\$ 47,611.20	\$ 51,006.26	\$ 54,641.91
1 <sup>st</sup> Payroll 2014*	Step 1	Step 2	Step 3	Step 4	Step 5
Hourly	\$ 20.8325	\$ 22.0353	\$ 23.5767	\$ 25.2579	\$ 27.0583
Biweekly	\$ 1,666.60	\$ 1,762.83	\$ 1,886.14	\$ 2,020.63	\$ 2,164.66
Annual	\$ 43,331.54	\$ 45,833.46	\$ 49,039.53	\$ 52,536.45	\$ 56,281.17

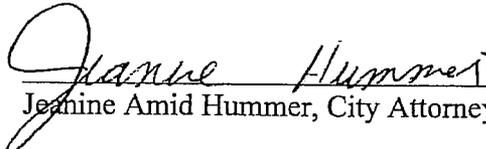
\* Pursuant to the Factfinder's Report and Recommendations, this year (2014) will have a wage reopener.

**SIGNATURE PAGE**

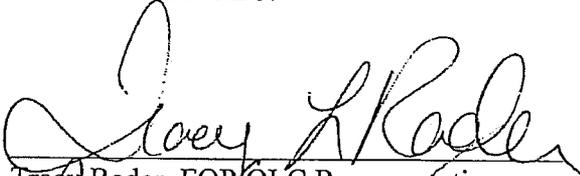
IN WITNESS WHEREOF, the authorized representatives of the parties have signed this Agreement as of the 13 day of August 2012.

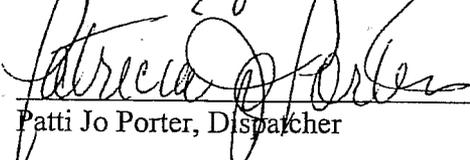
FOR THE CITY:

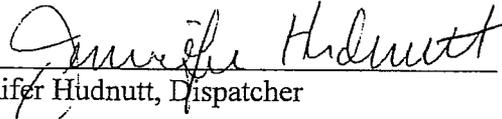
  
\_\_\_\_\_  
Theodore J. Staton, City Manager

  
\_\_\_\_\_  
Jeanine Amid Hummer, City Attorney

FOR THE FOP/OLC:

  
\_\_\_\_\_  
Tracy Rader, FOP/OLC Representative

  
\_\_\_\_\_  
Patti Jo Porter, Dispatcher

  
\_\_\_\_\_  
Jennifer Hudnutt, Dispatcher