# AGREEMENT BETWEEN THE CITY OF DELAWARE

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02/28/2014

## AND THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

## ON BEHALF OF THE SUPERVISORS' BARGAINING UNIT OF THE POLICE DEPARTMENT OF THE CITY OF DELAWARE

## EFFECTIVE DATES
## JUNE 26, 2013 - JUNE 25, 2016

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# ARTICLE 1
# AGREEMENT

**Section 1. Agreement.**

This Agreement is made and entered into by and between the City of Delaware, (hereinafter referred to as the City) and the Fraternal Order of Police of Ohio-Labor Council, Inc. (hereinafter referred to as the F.O.P.), which represents Delaware County Lodge No. 56.

**Section 2. Purpose.**

This Agreement is made for the purpose of promoting cooperation, and orderly, constructive and harmonious relations between the City, its employees, and the F.O.P.

**Section 3. Legal References.**

A. Unless otherwise indicated, the terms used in this Agreement shall be interpreted in accordance with the provisions of Chapter 4117 of the Revised Code. Where this Agreement makes no specification about a matter, the City, its employees, and the F.O.P. are subject to all applicable State laws or local ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. Laws pertaining to civil rights, affirmative action, unemployment compensation, worker's compensation, and retirement of Police Officers are not superseded by this Agreement except where supplemental workers' compensation or supplemental unemployment compensation have been negotiated and included herein. The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations and the original appointments from the eligible lists are not subjects of bargaining under this Agreement.

B. Should any part of this Agreement be held invalid by operation of law or by any tribunal of competent jurisdiction, or should compliance with or enforcement of any part of this Agreement be restrained by any such tribunal pending a final determination as to its validity, such invalidation or temporary restraint shall be

limited to the circumstances which the law or tribunal has prescribed and shall not invalidate or affect the remaining portions hereof. In the event of invalidation of any portion of this Agreement by a tribunal of competent jurisdiction, and upon written request by either party, the parties to this Agreement shall meet as soon as practicable, but no later than thirty (30) days after receipt of the written request, in an attempt to modify the invalidated provisions by good faith negotiations.

C. All references in this Agreement to the male gender shall be equally applicable to the female gender.

D. The City agrees that no employee hereunder shall be asked to make any written or verbal Agreement which may in any way conflict with this Agreement.

**Section 4. Sanctity of Agreement.**

No changes in this Agreement shall be negotiated or effected during the duration of this Agreement 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 and accepted by City Council and by the Bargaining Unit.

**Section 5. Changes in Terms and Conditions of Employment.**

Subject to the specific rights retained by the City in this Agreement, the City recognizes its legal obligation under Ohio Revised Code Section 4117 to bargain with the F.O.P. prior to implementation of any changes in wages, hours or other terms and conditions of employment applicable to members of the Bargaining Unit.

**Section 6.**

Whenever practical, the City agrees to notify the union in advance of any changes in the employment relationship that may affect the F.O.P. or its members through the labor-management committee. This notification is not to constitute an abridgement of management's rights to make changes that it deems necessary. Decisions to change

policy and procedures that do not directly affect wages, hours and other terms and conditions of employment are not subject to the grievance procedure.

## ARTICLE 2

## RECOGNITION

**Section 1. Recognition.**

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

**Section 2. Bargaining Unit.**

The Bargaining Unit shall include full-time Sergeants and full-time Captains of the City of Delaware Police Department and shall not include the Chief of Police, Assistant Chief of Police, one Captain designated as Management Captain non-law enforcement personnel or any other employees of the Delaware Police Department.

## ARTICLE 3

## MANAGEMENT RIGHTS

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

A. The right to direct, supervise, evaluate, hire, promote, transfer, assign, schedule, layoff and retain employees, and also to suspend, discipline, demote and discharge for just cause.

B. The right to effectively manage the work force and to determine the number of personnel needed in any agency or department, or to perform any function; determine services to be rendered, operations to be performed, utilization of technology, organizational structure and overall budget.

C. The right to purchase equipment, materials, or services, or to subcontract for services, except that the City agrees that it will not subcontract under circumstances that will result in the layoff of members or continued layoff of members.

D. The right to determine the appropriate job classifications and personnel by which government operations are to be conducted; determine the overall mission of the unit of government; maintain and improve the efficiency and the effectiveness of government operations.

E. The right to make reasonable rules to regulate the work force and to establish and amend personnel policies and procedures relating to any matter which is not set forth in this Agreement.

F. The right to take any necessary actions to carry out the mission of the City.

## ARTICLE 4

## NO STRIKE/NO LOCKOUT

Inasmuch as this agreement provides machinery for the orderly resolution of grievances, the City and the FOP recognize their mutual responsibility to provide for uninterrupted services to the citizens of the City of Delaware. Therefore:

A. The FOP agrees that neither it, its officers, agents, representatives, or members will authorize, instigate, cause, aid, condone, or participate in any strike, work stoppage, or any other interruption of operations or services of the City by its members. When the City notifies the FOP by certified mail that any of its members are engaged in any such strike activity, as outlined above, the FOP shall immediately, conspicuously, post notice over the signature of an authorized representative of the FOP to the effect that a violation is in progress, and such notice shall instruct all employees to immediately return to work. Any employee failing to return to work after notification of the FOP, as provided herein, may be disciplined, and only the question of whether or not he/she did in fact participate in or promote such action shall be subject to appeal. This provision shall not negate any other legal recourse available to the City as provided by Chapter 4117 ORC.

B. The City agrees that neither it, its officers, agents, or representatives, individually or collectively, will authorize, instigate, cause, aid, or condone any lockout of members of the FOP.

## ARTICLE 5

## PROBATIONARY PERIOD

The probationary period for all newly promoted employees will be a period of six (6) months from the date of promotion. The City shall have the right to demote the employee during the six (6) month probationary period with no appeal rights through the grievance process.

## ARTICLE 6

## DUES

**Section 1. Labor Council Dues Deductions.**

The City agrees to deduct from the wages of any employee who is a member of the Labor Council, all Labor Council membership dues uniformly required. The Labor Council will notify the City from time to time of the dues it charges and its current membership. All members of the Bargaining Unit shall either become dues paying members of the F.O.P. Ohio Labor Council or, as a condition of continued employment, remit to the Labor Council a fair-share fee in amount set from time to time by the Labor Council in accordance with the provisions of O.R.C. 4117.09(C). Said amount shall be deducted from all wages of all such non-members on the same basis as the deductions made for dues from members of the Labor Council. Nothing in this section shall be construed to require any employee to become a member of the Labor Council. The Labor Council agrees to save the City harmless in the event of any legal controversy with regard to the application of this provision. All dues and fair-share fees collected shall be paid over by the employer once each month to the F.O.P. Ohio Labor Council at 222 E. Town Street, Columbus, Ohio 43215.

**Section 2. F.O.P. Dues Deductions.**

The City will deduct from the wages and turn over to the appropriate designated officer of the local Fraternal Order of Police, Delaware County Lodge, the regularly monthly F.O.P. dues of such member who shall individually and voluntarily certify in writing that they authorize such deduction. This authorization shall be specifically in writing and will require the employee and the F.O.P. to agree to hold the City harmless for any payment made to the F.O.P. by the City during the term of this voluntary assignment. The amount deducted from the employee's paycheck with regard to the local dues which are

voluntarily authorized shall be turned over to the F.O.P. Delaware County Lodge no later than thirty (30) days following such deduction.

**Section 3. Other Deductions.**

The City further agrees to deduct from the pay of those employees authorizing such deduction, and turn over to the appropriate party, monies designated for purposes such as credit union, savings bonds, United Appeal, and similar causes in accordance with the City's current policy on payroll deductions. These deductions shall be subject to the City's ability to maintain an efficient payroll procedure.

**Section 4. Bulletin Boards.**

The F.O.P. shall be provided an F.O.P. bulletin board at Police headquarters. F.O.P. bulletins and F.O.P. material only will be permitted to be posted on this board.

**Section 5. Ballot Boxes.**

The F.O.P. shall be permitted, upon prior notification to the Chief of Police, to place a ballot box at Police headquarters up to four times per calendar year for the purpose of collecting members' ballots on all F.O.P. issues subject to ballot. Such boxes shall be the property of the F.O.P. and neither the ballot boxes nor their contents shall be subject to the Department's review.

**Section 6. Bargaining Unit Meetings.**

The F.O.P. shall be permitted, upon prior written request to the Chief of Police, to hold meetings, for F.O.P. members employed by the City of Delaware, at Police Headquarters or City Council Chambers. The notification required under this Section shall be delivered to the Chief at least forty-eight (48) hours prior to the time for the requested meeting and shall state the date, time, and requested location of the meeting. The City agrees to allow the F.O.P. to use the requested location on the date and at the time specified in the F.O.P. request provided the location is not otherwise in use. However, under no circumstances will F.O.P. use of these facilities be permitted to interfere with

the business of the City. In the event that permission is granted at the time of the request and the requested facility, due to unexpected events arising during the 48-hour notice period, is needed for City business, then the permission will be revoked. In the event the permission must be revoked, the City will, if possible, give the F.O.P. at least twelve (12) hours notice of the revocation. If it is impossible to give twelve (12) hours notice, the City will give the F.O.P. as much notice as is possible.

**Section 7. Use of Intra-Departmental Mails.**

The F.O.P. shall be permitted to utilize the intra-departmental mail boxes and email for the purpose of providing information pertaining to F.O.P. business or Bargaining Unit representation, to Bargaining Unit members. The F.O.P. agrees that the use of the mail boxes and email will be reasonable and limited to providing information that is necessary for the normal conduct of F.O.P. business or Bargaining Unit representation. The City reserves the right to deny such access in the event that the use of such boxes or email interferes with the business of the City or the Police Department by restricting access to such boxes or email for City or Police Department business. All mail placed into the mail boxes by the F.O.P. shall be the property of the Bargaining Unit members to whom it is addressed, and such mail shall not be subjected to the City's review. Email will be subject to current City policy and procedures.

## ARTICLE 7

## NON-DISCRIMINATION

**Section 1.**

The City and the FOP recognize their respective rights and responsibilities under state and federal civil rights laws. The parties agree that, insofar as practicable, the provisions of this agreement shall be applied without regard to race, color, religion, national origin, age, sex, disability, or political affiliation.

**Section 2.**

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 3.**

The City agrees not to interfere with the rights of the bargaining unit employees to become members of the FOP, and shall not discriminate, interfere, restrain or coerce any employee because of FOP membership or because of any employee activity in an official capacity on behalf of the FOP as long as that activity does not conflict with the terms of this agreement.

**Section 4.**

The FOP agrees not to interfere with the right of employees to refrain or resign from membership in the FOP, and shall not discriminate, interfere, restrain or coerce any employee exercising the right to abstain from membership in the FOP or involvement in FOP activities.

## ARTICLE 8

## F.O.P. RELEASE TIME

Elected officers of the F.O.P., or grievance representatives of the Labor Council, will have available a combined total bank of 80 hours of release time with pay during each calendar year to attend F.O.P. sponsored training programs relative to grievance representation, or matters relative to contract administration and/or labor relations. Such leave shall not be unreasonably denied, provided that:

1. The member officer gives at least two (2) weeks advance notice of the request for leave to the Chief of Police, or his designee, including the date, time, place, and use for the leave.
2. Such time off does not, in the opinion of the Chief, adversely affect departmental schedule and operational requirements.
3. Such time off shall not be devoted to collective bargaining on behalf of the lodge with the State, a county, or any political subdivision.

## ARTICLE 9

## INTERNAL REVIEW

A. Prior to a member being asked questions during an internal investigation which could lead to discipline of the member questioned, that member shall be informed of his right to have F.O.P. representation if he so desires and requests such representation. The F.O.P. representative shall be the grievance-liaison representative for that shift. If the grievance-liaison representative for that shift is not available, then one of the grievance-liaison representative for the other two shifts shall be contacted to represent the member. If no grievance-liaison representative is available within four (4) hours, then the investigation may be continued up to 72 hours later unless the Chief determines the delay would interfere with the ability of the Department to effectively conduct the investigation.

B. Subject to the provisions in Section A above, in the event F.O.P. representation is requested in such an investigatory interview, no questions shall be asked the member without the member's F.O.P. representative being present.

C. In the event F.O.P. representation is requested in such an investigatory interview, the member may consult with his F.O.P. representative at any time before the investigatory interview and the F.O.P. representative may act as a witness during the interview but the F.O.P. representative may not interfere with the member during the investigatory interview. This does not limit the right of the member to ask for a break during the interview to consult with his F.O.P. representative.

D. Except in circumstances requiring otherwise, members will usually be asked questions during duty hours; however, the Chief may determine that the operations of the Department require questioning after duty hours. In the event a

member is questioned during non-duty hours, the member will be compensated at his appropriate rate of pay for time spent being questioned.

E. A member who refuses to answer questions in an internal investigation of his conduct or the conduct of another person may be charged with insubordination or a like offense, if after being advised that such refusal to answer or refusal may, if continued, be the basis for such a charge. No member shall be charged with insubordination where such refusal is based on the Member's exercise of rights afforded the Member in regard to a criminal investigation. However, if a Member is provided "Garrity Rights" and is informed by the investigating officer that his or her responses to questions will not be the basis for criminal charges against the Member, and the Member is ordered to answer the questions, a Member's refusal to answer questions or refusal to participate in an investigation may form the basis for a charge of insubordination or like offense.

F. In the event a polygraph or other lie detection examination is used in an internal investigation, the City will not use the results of said examination as the sole basis for imposing discipline but only as a corroborative or investigative tool.

G. In evaluating the evidence regarding a complaint about a member's conduct, the City will take into account the length of time which has expired between the date of the alleged incident and the date the complaint is received as bearing on the credibility of the complaining party. The City will request that the complaining party write out a signed statement to assure the validity of the complaint. In the event a complaint is received from an anonymous source, or the complainant does not write out a signed statement, the City will not take action against the member complained about unless the complaint is supported by other corroborative evidence. This does not preclude constructive discussion between a Member and his supervisor.

H. Prior to any suspension without pay or termination of a member, the member will be afforded notice of the charges against him and an opportunity to review the evidence against him prior to responding in his own defense. For the purpose of this review, the City reserves the right to delete from the evidence the sources that provided evidence against the member. A member may request an F.O.P. representative and/or attorney to assist him in responding to the charges before a decision is made for a suspension without pay or termination. However, under no circumstances will the request to have an attorney present be permitted to unreasonably delay holding such a hearing.

I. Members shall be informed, in writing, if requested, of the results of any investigation in which the member is interviewed, at the conclusion of the investigation.

## ARTICLE 10

## CORRECTIVE ACTION AND RECORDS

A. No bargaining unit member shall be removed, reduced in pay or position, suspended or reprimanded except for just cause. Both parties further agree that records of Instruction and Cautioning and Written Reprimands are subject to the grievance process up to the City Manager level. All other grievances are subject to the full grievance process.

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

C. **Use of Prior Discipline.**

In assessing proper levels of discipline, the City will take into account the length of time since any previous discipline or offenses have occurred. Records of instruction and cautioning will not be used as a basis for further discipline one (1) year or more after issuance, if no further discipline has occurred. Records of written reprimand will not be used as a basis for further discipline two (2) years or more after issuance, if no further discipline has occurred. All other forms of discipline shall be removed from the personnel file upon a member's request three (3) years from the date of issuance if no further discipline has occurred. Providing there has been no intervening discipline, discipline records after the 1, 2 or 3 year period shall be removed from the file and disposed of or maintained in accordance with the City's public records retention schedule then in effect.

D. **Review of Personnel Files.**

Any member shall be allowed, upon request, to review his personnel file between 8:00 a.m. and 5:00 p.m., Monday through Friday. Such request shall be made to

the Chief of Police directly and review shall be made in the presence of the Chief or his designated representative. Upon a request for a police officer's file, the City will notify the Chief of Police or his/her designee, or the office of the Chief of Police, that such a request has been made. The City will use reasonable efforts to make this contact before such release of requested information, however, both parties recognize this may not always be possible. The City shall comply with all applicable laws on this subject. The parties recognize that the City may be required to disclose information from a member's personnel file pursuant to State or Federal laws and current court decisions, and that such disclosure made pursuant to such laws does not constitute a violation of any provision of this Agreement. The City also agrees that they will notify the member in writing of any such disclosures. Any member may copy documents in his/her file.

**E. Performance Evaluations.**

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

**F. Inaccurate Documents.**

Should any member have reason to believe that there are inaccuracies in documents contained in his file, he may write a memorandum to the Chief explaining the alleged inaccuracy. If the Chief concurs with the member's contention, he shall attach the member's memorandum to the document in the file and note thereon his concurrence with the memorandum's content and disposed in accordance with the City's public records retention schedule then in effect. A

member shall have the right to attach a rebuttal or explanation statement to any document in his personnel file. The official personnel file of all members is kept at the Department of Administrative Services.

## ARTICLE 11

## GRIEVANCE PROCEDURE

**Section 1.**

Should any difference or dispute arise between the City and any employee, or group of employees in the bargaining unit, or the FOP, with respect to the interpretation or application of a provision of this agreement, it will be considered a grievance and must be resolved in accordance with the provisions of this article. Prior to beginning the formal grievance resolution process identified in Section 7 of this Article, the member shall communicate to his immediate supervisor the issue or incident giving rise to the dispute.

**Section 2.**

The FOP will designate not more than three (3) grievance liaison representatives, one (1) from each shift. From among these three (3) grievance liaison representatives, the FOP may appoint a grievance liaison chairman.

**Section 3.**

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

**Section 4.**

A grievant shall be entitled to an FOP representative at Steps 2, 3, and 4 of this procedure. The grievant's FOP representative shall be entitled to present the grievance on behalf of the grievant if the grievant so desires, to ask questions, and to have full participation. The grievant's FOP representative will not suffer any loss of pay for time spent presenting his grievance in any of the steps in this grievance procedure. Grievants and grievance representatives should not use City paid time to reduce a grievance or an appeal to writing, to investigate the facts regarding a grievance or facts regarding other similar situations, to engage in discussions with others regarding a grievance, or to otherwise prepare to present a grievance at any of the steps in this procedure. However,

the City recognizes that members may have conversations regarding grievances during slow work hour periods and shall not discipline such members for such conversations as long as such activity does not interfere with the performance of job duties.

**Section 5.**

All meetings regarding presenting a member's grievance in any of the steps in this grievance procedure may occur during the grievant's duty hours and the grievant and his representative, if he desires one, shall be released from duty for purposes of attending such meetings provided that neither the grievant nor his representative, if one is desired, are needed to satisfy the City's manpower needs, determined in the sole discretion of the Chief.

**Section 6.**

For purposes of this article, the term "days" will mean calendar days.

**Section 7.**

All grievances shall be resolved in accordance with the following procedure:

**Step 1.**

If any employee or group of employees in the bargaining unit, or the FOP believes that he or they have a grievance (as defined above), he or they shall first discuss the grievance with the Patrol Captain, or the Chief's Designee, within fourteen (14) calendar days of the incident, or within fourteen (14) calendar days of the time the employee should have been aware of the incident. If the grievant is not satisfied with the Patrol Captain's proposed disposition of the grievance, then within seven (7) calendar days:

**Step 2.**

The grievance shall be reduced to writing and shall be signed by the aggrieved employee, employees, or the FOP, and presented to the Chief of Police. Such written grievance shall designate the relief or disposition sought. Written

grievances shall be filed by the employee or group of employees directly to the Chief or the acting Chief. Any grievance not reduced to writing and submitted to the Chief of Police shall be considered as abandoned. Within seven (7) calendar days after he receives the grievance, the Chief of Police will schedule a meeting with the grievant and his representative. (The day of submission is not counted as a day of this step or any succeeding step.) The Chief of Police shall answer the grievance in writing within seven (7) calendar days following the meeting. If the grievant is not satisfied with the proposed disposition, then within seven (7) calendar days:

**Step 3.**

The grievance shall be presented to the City Manager. Such written grievance shall designate the relief or disposition sought. Any grievance not reduced to writing and submitted to the City Manager shall be considered as abandoned. Within fourteen (14) calendar days after he receives the grievance, the City Manager will schedule a meeting with the grievant and his representative. The City Manager will answer the grievance in writing within fourteen (14) calendar days following the meeting.

**Step 4.**

(1) Appeal to Arbitration. Should the FOP, after receiving the written answer to the grievance at Step 3 of the grievance procedure, still feel that the grievance has not been resolved to satisfaction, they may request it be heard before an arbitrator. The FOP, by the Grievance Chairman, must make application to the City Manager or his designee for arbitration within fourteen (14) calendar days of the grievant's receipt of the written answer from the City Manager at Step 3.

(2) Selection of Arbitrator. Within fourteen (14) calendar days following the receipt, by the City Manager or his designee, of the FOP's application for arbitration, the

City Manager, or his designee, and an FOP representative, will consult and attempt to select an impartial arbitrator by mutual agreement. In the event these representatives cannot reach agreement on an arbitrator, by joint letter the parties will request the Federal Mediation and Conciliation Service (FMCS)-to submit a panel of nine (9) arbitrators, who are National Academy Certified from which the City and the FOP shall select one (1) by mutual agreement. If agreement cannot be reached as to one mutually acceptable arbitrator from the panel, an arbitrator will then be selected by the representatives of the parties alternately striking names and selecting the final remaining name. Each party shall have the option to completely reject the list of names and request another list only once.

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

(3) Authority of Arbitrator. The arbitrator shall conduct a fair and impartial hearing on the grievance, hearing and recording testimony from both parties and applying the rules of the FMCS or AAA. The arbitrator shall not have the authority to add to, delete from, or modify any provisions of this agreement. It is expressly understood that the ruling and decision of the arbitrator, within his function as described herein, shall be final and binding.

(4) Arbitrator Costs. The costs of any proofs produced at the direction of the arbitrator, the fee of the arbitrator, and the rent, if any, for the hearing room shall be borne equally by both parties. The expenses of any witnesses shall be borne, if at all, by the party calling them. The fees of the court reporter shall be paid by the party asking for one; such fees shall be split equally if both parties desire a reporter or request a copy of any transcript. Grievants, or grievance representatives, and witnesses called by the City who appear at such a hearing

during their normally scheduled working hours shall not suffer any loss of pay. Member witnesses, other than the grievant or grievant representative, called by the FOP, will be afforded time off, without pay, or will be allowed to use accumulated leave time to attend the hearing, manpower needs permitting.

(5) Arbitrator's Findings. The arbitrator shall render in writing his findings as quickly as possible within thirty (30) calendar days after the hearing, or within thirty (30) days after submission of post-hearing briefs, if any, and shall forward such findings and all supporting data to the City and to the FOP.

**Section 8. Time Limits.**

It is the Administration's and the FOP's intention that all time limits in the above grievance procedure shall be met. To the end of encouraging thoughtful responses at each step, however, the FOP's and the Administration's designated representative may mutually agree, at any step, to short time extensions, but any such agreement must be in writing and signed by the parties. In the absence of such mutual extensions, any grievance not answered by the City within the stipulated time limits shall be considered to have been answered in the negative, and may be appealed to the next step of the grievance procedure. Any step in the grievance procedure may be skipped on any grievance by mutual consent.

**Section 9.**

In each step of the grievance procedure outlined in Section 7 above, certain specific representatives shall be given approval to attend the meetings therein prescribed. Upon prior notice, either party may bring additional representatives to any meeting in the grievance procedure.

## ARTICLE 12

## WORK RULES AND DIVISION DIRECTIVES

The Administration agrees that, to the extent possible, any work rules which the City may promulgate shall be reduced to writing and a copy provided to each of the covered members in advance of their enforcement. Any charge by a member that a work rule, or Department Directive is in violation of this Agreement or has not been applied or interpreted uniformly to all members, shall be a proper subject for a grievance. The Administration will provide the F.O.P. copies (electronically and one (1) hard copy in a location that is available to all employees) of any revised or new work rules, and Department Directives in advance of their intended effective dates. The City reserves the right to impose immediate rules or directions in the event of emergency conditions or situations. Pursuant to ORC 5502.21 to 5502.51.

## ARTICLE 13

## MISCELLANEOUS

**Section 1. F.O.P. Officials Roster.**

The F.O.P. shall provide the Administration an official roster of its officers and representatives within 30 days of the effective date of this Agreement. This roster will be updated within thirty (30) days of any change, and will include the following:

(A) Name

(B) F.O.P. Office Held

**Section 2. Purchase of Service Weapon.**

A member who honorably retires from active duty (normal retirement as defined by OP&F, and permanent or total disability retirement) may purchase his/her service weapon from the Police Department if the member has five or more years of continuous service with the Department. The cost of the service weapon shall be One Dollar ($1.00).

**Section 3. Agreement Copies.**

As soon as is possible following the signing of this Agreement, the Administration shall place on the intranet or "S" drive and the City's website a fully executed copy of the Agreement. No "hard copies" will be distributed by the City. One original signed Agreement will be given to the F.O.P. and to the City. The F.O.P. shall be responsible for distributing copies to its members, if such is desired by the F.O.P.

**Section 4. Special Duty.**

A. Members shall be permitted to work special duty assignments so long as any such duty does not conflict with the work schedule and is approved by the Chief. The rate of compensation shall be reviewed by the Union and the Chief annually and then a mutually agreed upon rate shall be set by the Chief. While working special duty assignments the member shall be considered to be acting under, and subject to, the terms of his employment with the City. Members will be permitted to

utilize City uniforms, clothing, and/or specific equipment issued to each officer. The use of departmental equipment shall not be allowed without prior approval of the chief of police.

B. Hours worked in a special duty capacity by a member shall be excluded from the calculation of hours for which such member may be entitled to receive overtime compensation.

C. While on special duty assignments members shall perform such assignments subject to the wishes of the special duty employer, except that the member is bound by the Delaware Police Department rules and regulations, policies, order and procedures governing the duties and responsibilities and good conduct of police service. Members shall be subject to departmental discipline for their actions while working in a special duty capacity.

## ARTICLE 14

## WAGES

**Section 1. Pay Ranges and Rates.** For the dates specified below, the new pay rates are effective for the pay period including the date. The following pay rates, reflecting a 1% increase for 2014, a 3% increase for 2015, and a 2% increase for 2016 will be paid members.

| Effective January 1, 2014 | | | |
|---|---|---|---|
| POSITION | STEP 1 | STEP 2 | STEP 3 |
| Sergeants ( Hourly) | 37.30 | 38.70 | 40.10 |
| Sergeants (Annually) | 77,584.00 | 80,496.00 | 83,408.00 |
| POSITION | STEP 1 | STEP 2 | STEP 3 |
| Captains ( Hourly) | 42.90 | 44.51 | 46.12 |
| Captains (Annually) | 89,232.00 | 92,580.80 | 95,929.60 |
| Effective January 1, 2015 | | | |
| POSITION | STEP 1 | STEP 2 | STEP 3 |
| Sergeants (Hourly) | 38.42 | 39.86 | 41.30 |
| Sergeants (Annually) | 79,913.60 | 82,908.80 | 85,904.00 |
| POSITION | STEP 1 | STEP 2 | STEP 3 |
| Captains (Hourly) | 44.19 | 45.85 | 47.50 |

| | | | |
|---|---|---|---|
| Captains (Annually) | 91,915.20 | 95,368.00 | 98,800.00 |
| Effective January 1, 2016 | | | |
| POSITION | STEP 1 | STEP 2 | STEP 3 |
| Sergeants (Hourly) | 39.19 | 40.66 | 42.13 |
| Sergeants (Annually) | 81,515.20 | 84,572.80 | 87,630.40 |
| POSITION | STEP 1 | STEP 2 | STEP 3 |
| Captains (Hourly) | 45.07 | 46.77 | 48.45 |
| Captains (Annually) | 93,745.60 | 97,281.60 | 100,776.00 |

**Section 2. Pension "Pick up"**

Effective on a date to be determined the City will **no longer** pick up (assume and pay) any portion of the employee contribution to the Police and Fire Pension Fund.

**Section 3. Application of Hourly Rates**

The hourly rates as set forth under this section are based on a 40-hour workweek and shall be used to calculate salaries for hours actually worked or in paid status for the appropriate pay range and pay step.

**Section 4.**

The wage differential for a Sergeant shall be at step 1, seven (7) percent above top patrol wage, at step 2, eleven percent above top patrol wage, and at step 3, fifteen (15) percent above the top patrol wage. The wage differential between the captain's wage and Sergeant's wage shall be retained at fifteen (15) percent in each respective step.

## ARTICLE 15

## PAY PLAN ADMINISTRATION

**Section 1.**

The pay plan for police department supervisors shall consist of three steps, the first taking effect at the initial date of promotion and the other two taking effect on the first pay period following and second anniversary dates, respectively, of the initial promotion. Advancement through steps is subject to the qualifications stated below.

A. Time off without pay shall delay any salary step increases by an equivalent amount of workdays involved. The effective date of such return to paid status shall serve as the new basis for any accrual of salary and/or benefits.

B. All salary rates provided by this Agreement are determined on the basis of regular full-time employment by the City. All such salary benefits shall be paid bi-weekly.

C. Salary step advancements prescribed in this article shall occur automatically with regard to supervisors.

**Section 2. Specifications of the Pay Plan.**

Notwithstanding the foregoing provisions of Section 1 above, the rate of pay for members affected by personnel actions listed below shall be as follows:

A. **Disciplinary Demotion.** Whenever a member is demoted for disciplinary reasons, he shall be paid at the top step in the lower pay grade.

B. **Voluntary or Disability Demotion.**

(1) Whenever a member with regular full-time status requests and is granted a voluntary demotion, he shall be paid at the top step in the lower pay grade.

(2) Whenever a member is laid-off due to either a lack of work and/or funds in one classification and is entitled to an automatic demotion to a lower classification where he previously held regular full-time status, the rate of pay of the member shall be established as provided in (1) above.

C. Any bargaining unit member assigned temporarily to perform all or substantially all of the duties of a position of higher classification job description shall receive the minimum of that class, for all hours worked at such higher classification. Such temporary assignment to a higher job classification duty shall be authorized in writing by the City Manager or his designee, and shall be for more than a continuous two week period in order for the member to be entitled to the added rate.

D. **Reappointment.** Whenever a member is reappointed to a position where he previously held regular full-time status, his rate of pay shall be at the step and grade at which he was being paid at the time of his separation from that class.

E. **Re-employment.** Whenever a member is reemployed by the City, his rate of pay shall be at the step and grade at which he was being paid at the time of his separation from city employment.

## ARTICLE 16

## HOURS OF WORK AND OVERTIME

**Section 1. Definition.**

The workweek shall consist of 40 hours per week (five 8-hour work days or four 10-hour work days) or a section 207(k) system authorized by the Fair Labor Standards Act. While the current (4-2) 207(k) system is in effect, two scheduled days off a year will be rescheduled as work days with the intent that these will be used by the City as training days. In lieu of using two scheduled days off per year for training purposes, a member may be required to forfeit up to 16 hours of banked time on the last pay period of the year. The City may change to a work week of five 8-hour work days or four 10-hour work days at its sole discretion. If the City contemplates a change to a different 207(k) system, the City will meet and confer with the F.O.P. in an effort to reach agreement on the schedule. Any change in the schedule will be made with three (3) months notice to members.

Absent emergency conditions requiring otherwise, days off shall always be consecutive days, though not necessarily in the same workweek. The City will make every effort to insure each Member is able to take a thirty (30) minute lunch period while on duty, as calls for services and usual and emergency duties allow. The City retains full discretion in this matter. The salary and wage ranges prescribed in the pay plan for the respective positions are based upon a workweek of 40 hours and a work year of 2,080 hours

**Section 2. Work Schedule.**

The City recognizes the benefit to be achieved from advanced notice of scheduling and, accordingly, agrees that, unless unusual circumstances prohibit, the work schedule for the bargaining unit members will be posted at least six (6) weeks prior to the implementation

of the schedule. Also, if changes in the posted work schedule become necessary, the effected members will be notified of such changes as far in advance as possible.

**Section 3. Overtime.**

Members shall be compensated at straight-time rates for all hours in paid status, except that all hours in paid status in excess of the hours of their regularly scheduled work day in any day shall be compensated for at a rate of time and one-half. Payment shall be made for any overtime due at the time of separation from City service.

**Section 4. Overtime Policy.**

It shall be the policy of the Administration to avoid overtime work except when absolutely necessary. If overtime is worked without the advance authorization of the appropriate supervisor, except that in an emergency or an ongoing incident that extends past a Member's shift such authorization may be granted subsequently, the member shall be subject to discipline up to and including termination.

**Section 5. Report in Pay/Call in Pay/Court Pay.**

1. When a member is ordered or called to report for work outside of a regular scheduled shift, he shall be paid three (3) times his base hourly rate for the first hour and one and one-half (1 ½) times his base hourly rate for all other hours worked for which he is ordered or called to work (including off-duty court appearances).
2. When a member is ordered or called to report for work, two (2) hours or less prior to the start of a regular scheduled shift, or within one-half (1/2) hour from the time he reports off duty he shall be paid one and one-half (1 ½) times his base hourly rate for all hours worked for which he is ordered or called to work (including off-duty court appearances): however only for off-duty court appearances prior to the start of a regularly scheduled

shift, the member will be paid from when he reports to court up to and through the beginning of the start of his regularly scheduled shift.

**Section 6. Compensatory Time Off or Cash Payments.**

All overtime earned shall be compensated for by cash payments unless the member elects to receive compensatory time off. Such compensatory time off shall equal one and one-half hours for each hour of overtime compensation to which the member is entitled. No member may accumulate more than two hundred (200) hours of compensatory time. Any member who reaches the maximum hourly limit shall thereafter be paid overtime compensation for overtime hours worked.

**Section 7. Separation Payment for Compensatory Time.**

A. A member who is to be separated from the service through discharge, resignation, retirement, or layoff, and who has unused compensatory time to his credit, shall be paid the cash value for such accrued compensatory time.

B. When a member dies while in paid status, the cash value of any unused compensatory time, in addition to vacation leave pay to his credit, shall be paid to the surviving spouse or to the estate of the deceased member.

C. A member may elect to cash in up to two (2) weeks of compensatory time and receive equivalent pay during any calendar year. A member must inform the Chief of Police prior to August 1 of the year preceding the calendar year in which he intends to make the trade.

**Section 8. Exchange of Shifts/Duty Days.**

Members shall be permitted, with the approval of their immediate supervisors, to exchange a work day or shift assignment. However, exchanges of workdays or shift assignments lasting two or more consecutive days shall require the approval of the Chief of Police or his designee.

**Section 9. On-Call Pay.**

Effective January 1, 2005, all permanently assigned detectives shall receive an annual stipend of five hundred dollars ($500) for being subjected to the "on-call rotation." Said stipend shall be paid in two annual installments in the same manner as longevity pay.

**Section 10. Yearly Time Change.**

A member shall be paid at overtime rate for the one extra hour actually worked on the hour of the fall time change to Eastern Standard Time. The officer shall have one hour of straight time pay or other accumulated time subtracted from his/her leave balance if scheduled to work on the hour in spring when Daylight Savings Time takes effect.

## ARTICLE 17

## SHIFT DIFFERENTIAL

**Section 1. Shift Differential Pay Rates.**

Shift differential pay is as follows:

Sixty-five cents ($0.65) per hour for any shift during which a majority of the scheduled hours occur between 3:00 p.m. and 11:00 p.m., and;

Seventy-five cents ($0.75) per hour for any shift during which a majority of the scheduled hours occur between 11:00 p.m. and 7:00 a.m.

If exactly half of the scheduled hours occur between 3:00 p.m. and 11:00 p.m. and half between 11:00 p.m. and 7:00 a.m., then shift differential will be seventy cents ($.70) per hour.

**Section 2. Eligibility.**

Shift differential pay shall be provided all members whose permanently assigned shift includes hours a majority of which occur between 3:00 p.m. and 7:00 a.m. regardless of the hours they actually work. However, in the event of a change in permanent schedule or in the event of a temporary change in schedule of ten (10) or more consecutive scheduled shifts resulting in less than a majority of the members scheduled work hours occurring between 3:00 p.m. and 7:00 a.m., shift differential pay will not be provided.

**Section 3. Method of Payment.**

Shift differential pay shall be paid for hours in paid status. Shift differential shall be paid in addition to regular pay for any hours of leave with pay. If shift differential pay is applicable, under the terms of this article, to a regularly scheduled work day, the shift differential shall be paid for each hour of overtime worked. The shift differential pay shall be added to the base hourly rate prior to computing the overtime rate. Shift differential pay is applicable to court appearance time and is applicable to hours worked when called back to duty, if the member otherwise qualifies for the shift differential pay.

Shift differential pay will be paid on a bi-weekly basis and will not be cumulative under circumstances.

## ARTICLE 18

## LONGEVITY COMPENSATION

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

| | | |
|---|---|---|
| a) | After five (5) years of continuous service | $600/year |
| b) | After ten (10) years of continuous service | $800/year |
| c) | After fifteen (15) years of continuous service | $1,000/year |
| d) | After twenty (20) years of continuous service | $1,200/year |
| e) | After twenty-five (25) years of continuous service | $1,400/year |

The Longevity Compensation shall be paid, in accordance with the above schedule, in two (2) separate lump sum payments during the first pay periods of June and December of each year. Payment shall be based upon continuous years of service as an officer in the Delaware Police Department as of the first day of the first pay period in June.

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

For the purpose of this section, continuous years of service shall include approved military leave.

## ARTICLE 19

## CLOTHING AND EQUIPMENT ALLOWANCE

**Section 1. Initial Issue.**

Upon appointment, each recruit shall receive a full issue of uniforms and equipment from the City. All such purchases shall be made by the Delaware Police Department.

**Section 2. Annual Allowance.**

All bargaining Unit members shall receive an annual uniform allowance in the amount of Six Hundred Dollars ($600.00) per year. All such uniform purchases shall be made by the Delaware Police Department.

**Section 3. Maintenance Allowance.**

All bargaining Unit members shall receive a maintenance allowance of four hundred dollars ($400.00) in January of each year.

**Section 4. Lost or Damaged Uniforms and Equipment.**

The City will replace or repair any lost or damaged department property or equipment, including members' uniforms, provided the loss or damage is not the result of the members' intentional abuse or gross negligence.

**Section 5. Damaged Eyeglasses.**

Eyeglasses which are lost or damaged while the bargaining unit member is engaged in the performance of their duties, not resulting from negligent action, shall be compensated for by the City at the current rate of replacement up to a limit of four hundred ($400) dollars. For an affected employee to afford themselves the benefit of this reimbursement, the employee shall provide the employer a written explanation of the incident that gave cause for such loss or damage. Upon receiving such signed report, the employer shall include the proper amount of funds to comply with the requested reimbursement in the employee's next pay. Such reimbursement shall be made no more than once in any twelve (12) month period.

## ARTICLE 20

## HOLIDAY PAY

**Section 1. Holidays.** The following are designated as paid holidays for members:

New Year's Day
Martin Luther King Day
Lincoln's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Little Brown Jug Day, ½ day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Day before Christmas, ½ day
Christmas Day

**Section 2. Holiday Time Off.**

For each holiday observed on a member's workday, said member shall work that holiday unless the member requests and is granted the day off by the Chief of Police through the use of vacation leave or holiday leave.

**Section 3. Holiday Payment.**

For each of the holidays specified in Section 1 of this article on which a member works, he shall be entitled to holiday compensation equal to double the member's regular rate of pay, except that members shall be entitled to holiday compensation at two and one-half times the member's rate of pay if they work on any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Members who do not work on a designated holiday, either because they are not scheduled to work that day or because they request and are granted vacation leave or holiday leave, will receive holiday compensation of eight (8) hours pay at the member's regular hourly rate.

Holiday compensation will be a combination of cash payment and compensatory time off in accordance with the City's current practice on holiday compensation.

**Section 4. Celebration Day for Holidays.**

For purposes of holidays, holiday time shall apply to the tour of duty beginning on the day which is celebrated as a holiday, except that for third shift personnel who work the night before the holiday, the tour of duty beginning the night before the holiday shall be considered the holiday tour.

**Section 5. Holiday Time.**

Use of holiday time or personal days shall be at the member's discretion with the approval of the Chief of Police or designee. In the event requests to use holiday or personal time off are submitted by more than one member for the same time period and otherwise approved by the Chief of Police or designee, then the member with most seniority will be given priority if his request was submitted no less than twenty-eight (28) days before the requested time off. Otherwise, conflicting requests will be prioritized for consideration on a first-come, first-served basis.

**Section 6. Accumulation of Holiday Time.**

All members will be permitted to accumulate three (3) year's worth of holiday time. A member's current accumulation of personal days will not count towards this maximum accumulation level. A member may elect to cash in up to one year's worth of holiday time each year. If a member accumulates the maximum amount of time off allowable under this section, then future holiday will be paid in cash at the time it is earned. The Department Head will post a notice in June informing members of the required deadline for selling holiday time and personal leave. A member must inform the Department Head prior to August 1 of the year preceding the calendar year in which the member intends to make the trade.

**Section 7. Separation for Holiday and Overtime Accumulation.**

A member who is owed compensation for overtime worked and for work on a holiday shall be compensated at the time of separation.

## ARTICLE 21

## VACATION TIME

**Section 1. Vacation Year.**

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

**Section 2. Conditions for Accrual.**

Each full-time status member shall accrue vacation leave by pay period at the annual rate of work hours based on years of total service which is established in the schedules contained in Section 3 of this article. Years of total service is defined to be the total of all periods of employment for the City of Delaware Police Department. Any periods of interruption of service due to resignation, layoff, disciplinary suspension, or discharge for cause, will not be included in the computation of total service. Time not in paid status, excepting military leave, shall also be excluded in computing total service. In computing years of service, the higher rate of accrual will begin on the first day of the first pay period following the pay period in which the anniversary date falls.

**Section 3. Accrual Schedule for Vacation.**

The following vacation accrual schedules are established:

| YEARS OF TOTAL SERVICE | VACATION HRS/YEAR | VACATION HRS/PAY |
|---|---|---|
| Less than 5 years | 80.6 | 3.1 |
| 5 years but less than 10 years | 119.6 | 4.6 |
| 10 years but less than 15 years | 161.2 | 6.2 |
| 15 or more years | 200.2 | 7.7 |

**Section 4. Maximum Accrual of Vacation.**

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

| YEARS OF TOTAL SERVICE | MAXIMUM ACCRUAL OF VACATION HOURS |
|---|---|
| Less than 5 years | 320 |
| 5 years but less than 10 years | 480 |
| 10 years but less than 15 years | 640 |
| 15 or more years | 800 |

**Section 5. Additional Considerations.**

A. To be eligible for bi-weekly (pay period) vacation accumulation, a member must be in paid status for a minimum of 72 hours within that pay period; except that when a member is required to report for work and does so report and is denied work because of circumstances beyond his control, absence from work for the balance of that day shall not be construed as unpaid work status.

B. A member in full-time status who is to be separated from the City service through discharge, resignation, retirement or layoff, and who has unused vacation leave to his credit, shall be paid in a lump sum for such unused vacation leave in lieu of granting a vacation leave after his last day of active service with the City. Such payment shall be paid at the member's hourly rate of pay at time of separation. Vacation leave shall not be used as a "bridge" into retirement or separation. "Bridge" is defined in this section as a vacation of more than two work weeks.

C. When a member dies while in paid status in the City service, any unused vacation leave to his credit shall be paid in a lump sum to the designated beneficiary or to the estate of the deceased.

D. Supervisors will make their vacation requests first based on seniority in rank and then officers by seniority. Exceptions may be made by the Chief of Police if the circumstances warrant it.

E. A member may be ordered to work on a previously approved vacation day(s) if the City Manager declares an emergency exists in the City.

F. Vacation requests of less than a scheduled work day may be made in multiples of one hour and will only be approved within twenty-four (24) hours of the requested time. Officers may request additional vacation requests in minimum increments of one day (after prime time vacation requests) when the schedule is posted.

G. Vacation requests shall be granted or denied in a timely manner by management. A member may submit any unanswered vacation requests to the next superior officer in their chain of command, if a request is not answered in seven days. If a request is made at least 30 days in advance and the request proceeds up the chain of command to the Chief or acting Chief then the request shall be responded to within ten (10) calendar days by the Chief or Acting Chief and, if there is a failure to respond member will have such leave request granted.

H. Prime vacation requests can only be made for same year that the shift bids are in effect. Only one prime vacation request that has been granted will be ensured per shift/per day. Prime Vacation requests will be will be completed as soon as possible once shift selections are complete. Prime Vacation requests must be complete before December of each year. Prime vacation will not be granted for members for the All-Horse Parade and the Brown Jug Day without special permission of the Chief of Police.

I. Members are responsible for monitoring their accrual and usage of vacation time. The use of anticipated vacation time beyond that which has been earned will not be

allowed. No other type of leave may be substituted for vacation time after a vacation request is made.

J. Members may make prime vacation requests in minimum increments of four consecutive vacation days of up to twenty-four consecutive vacation days during the first sign up period, except selections for June, July and August, which are limited to a maximum of twelve consecutive vacation days. Members may request a second or third prime vacation request in minimum increments of four consecutive vacation days of up to twenty-four consecutive vacation days during the second and third rounds, respectively. A member shall have 24 hours to schedule prime vacation leave after being informed by a supervisor that it is their time to select. Only one prime vacation will be guaranteed per day/per shift. The City may approve some overlapping of prime vacation at their discretion.

K. Supervisors will request vacation first based on seniority in rank and then officers by seniority. The swing sergeant will request according to seniority on the shifts affected by his assignment. Exceptions may be made by the Chief of Police if the circumstances warrant it.

L. Vacation days can only be cancelled by a member with the approval of the Chief of Police or the Chief's designee. If a request to cancel Vacation time off is approved, that time will become available to other members as staffing allows. Cancellation requests must be made seventy-two (72) hours prior to the start of the vacation and must include reasons for the cancellation. Special circumstances may be addressed by the Chief of Police.

M. The schedules for the calendar year will be posted and the vacation selections will be posted as they are made. Up to the first six days of the new calendar year can be included in the previous year's prime vacation selection if it completes a calendar week (Sunday to Saturday). Additional time off requests on the posted schedule may be made only once all three rounds of prime vacation request are

complete. Additional vacations may be granted on a first-come first served basis depending on staffing levels.

**Section 6.**

A member may elect to trade three (3) weeks of vacation time for equivalent pay during any calendar year. A member must inform the Chief of Police prior to August 1 of the year preceding the calendar year in which he intends to make the trade and must maintain at least forty (40) hours of vacation time in the employee's account after said trade takes place.

## ARTICLE 22

## SICK LEAVE

**Section 1.**

Each City employee shall be entitled to sick leave with pay for four and six-tenths (4.6) hours for each completed eighty (80) hours of service up to a maximum of fifteen (15) days per year. An employee may use sick leave, upon approval of his department or division head, for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and to illness, injury or death in the employee's immediate family. Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one half (½) hour for every one half (½) hour of absence from previously scheduled work.

Each employee may be required to furnish a satisfactory affidavit to the effect that his absence was caused by illness due to any of the foregoing causes, in addition to any other rule or regulation as may be prescribed by the City Manager. The Director of Finance has authority to pay such sick leave allowances pursuant to this section.

If medical attention is required, a certificate from a licensed physician stating the nature of the illness shall be required to justify the use of sick leave. Also, for any sick leave absence of five or more consecutive days, an employee will be required to provide a certificate from a licensed physician stating the nature of the illness and stating the date that the employee will be physically able to return to work. The City retains the right to insist that the employee, before returning to work from a sickness leave, be examined, at the City's expense, by a licensed physician designated by the City to verify that the employee can safely return to work. The affected employee shall be assigned to light duty pending the City physician's final determination of fitness. Falsification of a physician's certificate shall be grounds for disciplinary action including dismissal.

**Section 2.**

Any person who has been previously employed by any public agency within the State and has accumulated any unused sick leave under the provisions of Ohio R.C. Chapter 124 shall, if his employment by the City in any of its various departments takes place within six (6) months of the termination of his service in any of the other public service agencies within the State, have his accumulated unused sick leave time credited to his sick leave account with the City. Any sick leave time transferred shall have been accumulated at the rate of one and one-fourth (1-1/4) days per month of employment with the public agency and a total of not more than seven hundred and twenty (720) hours may be transferred.

**Section 3.**

Any City employee who has accumulated at least 100 days of sick leave credit may, during any calendar year, convert any excess thereof up to a maximum of fifteen (15) days of sick leave to vacation leave on the basis of two (2) sick leave days for one day's vacation leave.

**Section 4.**

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

**Section 5.**

If a member uses no sick leave in any one calendar year, that member shall be credited with an additional 24 hours of vacation leave the following year. If a member uses up to one scheduled work day of sick leave in any one calendar year, that member shall be credited with an additional 16 hours of vacation the following year. If a member uses more than one and up to two scheduled work days of sick leave in any one calendar year, that member shall be credited with 8 additional hours of vacation leave the following

year. At the employee's option, any additional vacation leave earned can be taken in the form of vacation leave or compensation in cash.

**Section 6.**

Any member separated from City service for other than just cause shall be paid all accumulated and unused sick leave on the following basis:

| Unused Sick Leave | Pay-Out |
|---|---|
| 0 - 650 hours | One hour pay for every three hours unused sick leave. |
| Over 650 hours | 217 hours plus one hour for every two (2) hours of unused sick leave in excess of 650 hours. Total compensation shall not exceed 640 hours pay. |

Any member separated from City service for other than just cause who has completed a minimum of fifteen years of service with the City, shall be paid all accumulated and unused sick leave on the basis of one (1) hour of pay for every two (2) hours of unused sick leave up to a maximum of six hundred forty (640) hours pay.

## ARTICLE 23

## INJURY LEAVE

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

A. In all cases of personal injury to any regular full-time City employee as a result of the performance of employment duties, the employee shall complete an accident/injury investigation form and in conjunction with his/her respective department head shall report such injury to the Department of Administrative Services immediately and insure that a claim is filed with the OIC.

B. In the event that time off from work is required by the injured employee, they will be granted injury leave from the first day of injury, if the proper documentation is submitted to the City of Delaware. This documentation will include, but not be limited to, a statement from the employee's physician, an Agreement covering Compensation Reimbursement, any necessary OIC forms and other documents as may be required by the City. In the event that the OIC determines that the injury is NOT employment related, any time the employee is, or has been, absent from work shall be deducted from the accrued sick leave. If the deduction of said time eliminates all of the employees accrued sick time, the remaining time owed may be deducted from the employee's accrued vacation, holiday compensatory time, or other accrued compensatory time.

C. During the period of time an injured employee is being paid under this policy, all normal benefits given to regular full-time City employees shall remain in force with no deductions to earned sick leave and/or vacation time.

D. In all cases where more than 120 consecutive working days for employees working a 40-hour workweek, the City Manager may extend such leave by an additional 120 consecutive working days for employees working a 40-hour workweek, if such necessity is determined to his satisfaction. Each employee requesting such an extension under this policy may be required to furnish a current affidavit from a licensed physician setting forth the need for the extension.

E. Both parties agree that during the life of this agreement, the City may implement a Transitional Work Program in accordance with the Bureau of Workers Compensation guidelines. Also, in cases where a member is on injury leave or in instances where the City sees fit in its sole discretion, when a Member has received medical certification to return to restricted (light) duty, the City may require, or the member may request, to be placed in a restricted (light) duty assignment. If the Member makes such a request, the award or denial of such assignment shall be in the City's sole discretion. The City may also seek a second medical certification under this provision. The City retains the sole discretion in all aspects of this provision governing restricted (light) duty, and grievances may not be filed against any aspect of this provision, including but not limited in any way to the City's exercise of discretion of the award or denial of such restricted (light) duty assignment, to be broadly construed.

## ARTICLE 24

## SPECIAL LEAVES

**Section 1. Special Leave.**

In addition to other leaves authorized herein, the Chief of Police in his sole discretion may authorize special leave of absence with or without pay for purposes beneficial to the member and the City, such a decision is not subject to appeal. Members requesting special leave shall submit, in writing, notice of the requested leave at least 2 weeks in advance, unless an emergency situation exists. Return to duty after such leave shall be without loss of rank, grade or seniority.

**Section 2. Jury Duty Leave.**

A member, while serving upon a jury, in any court of record in Delaware County or any adjoining county will be paid his regular salary for each of his workdays during the period of time so served. Time so served shall be deemed active and continuous service for all purposes. All jury fees received from the court of record shall be assigned to the City of Delaware. When a member has been released from Jury Duty, the member shall report back to work if more than two (2) hours are left on the regular shift.

**Section 3. Examination Leave.**

Time off with pay shall be allowed members to participate in Civil Service tests or to take a required examination, pertinent to their City employment before a State or Federal licensing board with the approval of the Chief of Police.

**Section 4. Court Leave.**

Time off with pay shall be allowed members who are subpoenaed to attend any court of record in Delaware County, Ohio, or any adjoining County, as a witness in civil matters that are directly related to a Member's job duties or required by the City. All witness fees shall be assigned to the City of Delaware. Members shall submit a copy of the court summons in order to receive compensation.

**Section 5. Funeral Leave.**

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

| | DAYS/HOURS OF LEAVE | |
|---|---|---|
| **Leave for Death of:** | **Local Funeral** | **Other Funeral** |
| Immediate Family Member | 1-3 days* | 1-5 days* |
| Other Relative | Up to 1 scheduled work day** | 1-3 days** |

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

** All leave time with approval of the Chief of Police.

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

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

## ARTICLE 25

## TUITION REIMBURSEMENT

**Section 1. Reimbursement Program.**

Each member who is subject to the provisions of this Agreement and who has completed his probationary period shall be eligible for a reimbursement of tuition in courses of instruction voluntarily undertaken by him and subject to the following conditions:

A. There must be a correlation between the member's duties and responsibilities and the courses taken or the degree program pursued. All courses must be taken during other than scheduled working hours. All scheduled hours for courses of instruction must be filed with the Chief of Police or his designee. All courses and scheduled times of courses must be approved by the Chief of Police. Any situation which, in the discretion of the Chief of Police, would require a member's presence on the job shall take complete and final precedence over any time scheduled for courses.

B. Any financial assistance from any governmental or private agency available to a member, whether or not applied for and regardless of when such assistance may have been received, shall be deducted in the entire amount from the tuition reimbursement the member is eligible for under this section. If a member's tuition is fully covered by another governmental or private agency, then the member is not entitled to any payment from the City.

C. Employees will be eligible for tuition reimbursement for properly approved and completed course work up to $3,500 for each calendar year (January 1 to December 31). Courses may be taken at any accredited college, university, community college, or other institution of higher learning. The employee will be responsible for any tuition charges in excess of $3,500 for the calendar year. An

application for tuition reimbursement must be completed by the member prior to enrolling in the class work for which reimbursement will be requested.

D. Reimbursement for tuition will be made when the member satisfactorily completes (attains at least a grade of "C" or its equivalent for undergraduate work and a grade of at least "B" or its equivalent for graduate work) a course and presents an official certificate or its equivalent and a receipt of payment or copy of the unpaid bill from the institution confirming completion of the approved course.

E. No reimbursement will be granted for, paper, supplies of whatever nature, transportation, meals, or any other expense connected with any course, except the cost of tuition and fees as outlined in Paragraph D.

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

## ARTICLE 26

## MILITARY LEAVE

**Section 1. Military Leave.**

A. **Paid Leave.**

Sworn officers of the Police Department who are members of the Ohio National Guard, U.S. Air Force Reserves, or the U.S. Army Reserves, U.S. Marine Corps Reserves, U.S. Coast Guard Reserves, or the U.S. Naval Reserves shall be granted military leave of absence with pay and shall not be required to use vacation leave when ordered to temporary active duty or when ordered to military training exercises conducted in the field for a period not to exceed twenty-one (21) calendar days in any one calendar year. Excepting and providing that when the Chief Executive Officer of the State of Ohio or the Chief Executive Officer of the United States declares that a state of emergency exists, then in that event the member, if ordered to active duty for purposes of that emergency, shall be paid pursuant to this section for a period or periods, whether or not consecutive, not to exceed twenty-one (21) days in any one calendar year. A member shall be paid his regular salary for the period of time so served less whatever amount such member may receive as his military base pay. Where it is to the advantage of the City and on the approval of the Chief of Police, military leave of up to fifteen (15) additional days may be granted.

B. **Military Leave Without Pay.**

A member shall be granted a leave of absence without pay to serve in the Armed Forces of the United States of America or any branch thereof. Members in a probationary period shall not be granted such leave. Such leave of absence shall be governed by the following principles:

(1) No eligible member shall lose his rank, grade, or seniority enjoyed at the time of his enlistment, induction, or call into the active services (other than for military training leave) of the Armed Forces of the United States of America or any branch thereof, except that a provisional member at the time of entering active military service shall not be entitled to restoration to his position if an eligible list from which appointments to such positions may be made has been established prior to his application for restoration to such position.

(2) Any member who has entered the service as stated above, upon his Honorable Discharge or a Discharge with Honorable Conditions from the service and establishment of the fact that his physical and mental condition has not been impaired to the extent of rendering him incapable to perform the duties of the position, shall be returned to the position he held immediately prior to his enlistment or induction into the service or to a position of equal rank and grade. Such member must request restoration to his position within ninety (90) days of receiving an Honorable Discharge or a Discharge with Honorable Conditions from the Armed Forces or his position will be declared vacant. Nothing contained in this section shall obligate the City to pay a member who is on military leave of absence.

(3) Any member serving in a position vacated temporarily due to the previous incumbent being in the military service shall be determined to have been given a permanent appointment, if the

returnee fails to exercise his restoration rights within the prescribed time.

(4) The term "Armed Forces of the United States" as used in this section shall be deemed to include such services as designated by the Congress of the United States.

(5) Any member transferred or advanced to a position by reason of vacancy caused by a member serving in the Armed Forces shall be returned to the position he held before said transfer or advancement, or to a position of equal rank or grade upon the return of the member from the service.

(6) A member who achieves permanent status while filling a vacancy resulting from the enlistment or induction of a member into military service, upon the return of that member from the service, shall be placed on an eligible list in the order of his original position.

(7) In any case where two or more members who are enlisted to be restored to a position left the same position in order to enter the Armed Forces, the member with the greatest seniority in that classification shall have the prior restoration right without prejudice to the reemployment rights of the other member or members to be restored.

(8) Where service in the Armed Forces results from induction or call to active duty, leave shall be granted for the duration of such call.

## ARTICLE 27
## INSURANCE

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

The City will continue to provide comprehensive hospitalization, surgical and major medical coverage for all full-time members and their dependents. Beginning January 1, 1999, or at some date thereafter, the City may implement a Preferred Provider Organization (PPO). The Plan if implemented will provide for deductibles and co-payments as follows:

| | | NETWORKS PROVIDERS | NON-NETWORK PROVIDERS |
|---|---|---|---|
| Annual Deductible | Single | None | $500.00 |
| | Family | None | $1,000.00 |
| Office Visit Co-pay | | $10.00 | N/A |
| ER Visit Co-Pay | | $50.00 unless admitted into the hospital, otherwise co-insurance will apply in excess of the deductible | N/A |
| Co-insurance | Single | 90/10% of first $1,000<br>80/20% of next $3,000 | 50/50% of first $5,000 |
| | Family | 90/10% of first $2,000<br>80/20% of next $5,000 | 50/50% of first $10,000 |

The parties acknowledge that all of the "wellness benefits" added to the plan effective January 1, 1992 are subject to all of the generally applicable plan limits, such as deductibles and co-payments. Contributions will be deducted from the member's gross income prior to taxes, subject to compliance with all applicable federal tax regulations. Employees will contribute to the cost of the health benefit plan in an amount equal to 8% of the established monthly COBRA rate utilized by the City until the first pay period in April 2014, at which time the contribution rate will be 11%. Starting with the first pay period in April 2015, the contribution rate will be 15% of the COBRA rate. Annually, on

April of the following years, the percentage of COBRA will be established. Annual changes to the calculated COBRA rate will be applied to the monthly employee contributions on the first full pay period in April of each year.

Contributions will be deducted from all members in a paid status based on twelve (12) months times the monthly rate, divided by the number of pay periods per year (26). An example would be $68.33/mo. x 12 = $819.96, $819.96/26 pay periods = $31.53 per pay period. In the event federal tax regulations are changed so that medical benefit plans are no longer tax exempt, the City will not be responsible to pick up the member's tax burden.

The City will permit employees who have alternate health options through a spouse to opt out of the City plan in return for a payment of $100.00 per month. Families who have both spouses employed full time by the City of Delaware will not be eligible to opt out of the plan. Likewise, these employees will not be subject to monthly payroll contributions. The employee will provide proof that they do in fact have other coverage before the City will drop that employee's current coverage. The City will continue to provide dental coverage if it is not provided under the employee's spouse's insurance. A member may elect to return to coverage under the City's insurance plan by notifying the City in writing of any substantial changes in circumstances which the member determines justifies such decision. The member must give thirty (30) days notice of his or her election to return to the City's plan, except in the case of an emergency, such as sudden loss of spouse's coverage, significant cost increase of spouse's coverage, divorce or other change in family status. The plan will comply with Internal Revenue Code Section 125 which governs this matter.

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

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

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

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

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

**Section 2. Prescription Card.**

The City will provide a prescription card plan for members and their dependents. The prescription benefits will be the following, with the City paying the higher amount and the employee paying the lesser amount of prescription coinsurance:

| Drug | Retail Benefits | Mail Order Benefits |
|---|---|---|
| Generic Drugs | 80/20% | 90/10% |
| Name Brand Drugs | 50/50% with $25 co-pay for each disbursement | 75/25% for name brand drugs with no co-pay |

The maximum expense a member will pay for coinsurance is $500 for Family coverage and $250 for Single coverage annually for prescription benefits, however the $25 co-pay for retail, name brand drugs will not count towards the calculation of the $500 or the $250 coinsurance maximum and will always apply even after a member reaches the $500 or $250 coinsurance maximum expenditure.

**Section 3. Dental Care Plan.**

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

**Section 4. Life Insurance.**

The City will maintain life insurance for all members at a face value of $50,000.

**Section 5.**

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

**Section 6.**

The City shall provide police-professional liability coverage for each member.

**Section 7.**

The City and the F.O.P. agree to participate in a city-wide employee-management insurance review committee for the purpose of mutually monitoring the status of the health plan. This review committee shall meet at least annually. The City reserves the right to change providers of health benefits including the PPO Plan, the prescription card plan and the dental plan.

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

**Section 8.**

The City will provide physical examinations for new Patrolmen at the time of hiring, but is not obligated to provide physical examinations for current employees.

**Section 9.**

The City reserves the right to change providers of health benefits including the PPO Plan, the prescription card plan and the dental plan, provided the benefits are substantially the same and further provided there are no additional premiums or deductibles beyond those provided for in the current contract. This section is subject to the grievance procedure.

## ARTICLE 28

## HEALTH AND SAFETY

**Section 1. Safe Equipment.**

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

**Section 2. Compliance.**

The City and employees shall comply with applicable federal, state and local safety laws, rules and regulations and departmental safety rules and regulations.

**Section 3. Unsafe Conditions or Equipment.**

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

**Section 4. Patrol Vehicles.**

Patrol vehicles will be equipped with two (2) pairs of rubber, surgical-type gloves and one (1) pair of heavy-duty, fire-resistant type gloves.

**Section 5. Infectious Diseases.**

The City will provide each member an inoculation to protect against hepatitis "B" at the request of the member.

**Section 6. Body Armor.**

The City will replace a unit member's body armor that is older than five years.

**Section 7. Communicable Disease Testing.**

The City will pay for any testing that is not covered by the Bureau of Workers Compensation (per O.R.C. 4123.026) for Bargaining Unit Members, according to AMA accepted testing standards, who may have been exposed to communicable diseases while in the performance of their duties.

## ARTICLE 29

## SHIFT PREFERENCE

In September of each year, members shall select their shift assignment by seniority. The Chief may veto a member's shift selection provided the decision to do so is not arbitrary, capricious or without just cause. Shift selections shall go into effect on January 1. When a member is hired or promoted after the yearly shift bid, they shall be scheduled based on the needs of the department until the next yearly shift bid.

## ARTICLE 30

## LABOR RELATIONS MEETINGS

**Section 1.**

In the interest of sound labor/management relations, unless mutually agreed otherwise, once each quarter on a mutually agreeable day and time, the Employer and/or his designee(s) shall meet with not more than three (3) representatives of the F.O.P. to discuss pending problems and to promote a more harmonious labor/management relationship.

**Section 2.**

An agenda will be exchanged by the parties at least seven (7) calendar days in advance of the scheduled meeting with a list of matters to be taken up in the meeting and the names of those representatives who will be attending. The purpose of such meeting shall be to:

A. Discuss the administration of this Agreement.

B. Notify the Union of changes made by the Employer which affect bargaining unit members of the F.O.P.

C. Discuss grievances which have not been processed beyond the final step of the grievance procedure when such discussions are mutually agreed to by the parties.

D. Disseminate general information of interest to parties.

E. Discuss ways to increase productivity and improve effectiveness.

F. Consider and discuss health and safety matters relating to employees.

**Section 3.**

It is further agreed that if special labor/management meetings have been requested, and mutually agreed upon, they shall be convened as soon as possible.

**Section 4.**

Although questions of contract interpretation are appropriate for discussion in these meetings, it is not intended that the meetings replace the collective bargaining process or

be used as a forum for trying to alter this Agreement. Although it is intended that the parties can suggest any topic for discussion that relates to terms and conditions of employment, no discussion constitutes a waiver of any of the Chief's or the City's management rights.

## ARTICLE 31

## CANINE OFFICER

**Section 1.**

The Chief of Police reserves the right, at his or her sole discretion, to select, assign and remove a Member from the Canine Officer assignment, which may not be grieved or arbitrated by the Member or FOP.

**Section 2.**

The canine will be the property of the City. The City will provide all food, equipment (including the dog house and kennel facilities), insurance, necessary licenses and veterinarian services for the canine.

**Section 3.**

The Chief of Police reserves the right to require schedule changes to accommodate activities such as, but not limited to, the following: public relation engagements (e.g., school programs, civic group appearances, City Council demonstrations, etc.) and training sessions.

**Section 4.**

The workweek for the Canine Officer shall consist of forty (40) hours based on five (5) workdays and two (2) days off. The Canine Officer will receive four (4) hours of overtime pay for each workweek worked to compensate for the weekly off-duty care and maintenance of the canine in the Member's custody. It is the intent of this provision to provide full compensation as required by the Fair Labor Standards Act to the Member who is responsible for the weekly care, feeding, exercising and boarding of a City-owned canine for all on-duty and off-duty hours worked so engaged. There will be no additional pay for care and maintenance on the Member's regular days off, approved leave or when the canine is not boarded at the Canine Officer's residence. This represents a reasonable agreement and full payment to the Canine Officer pursuant to the Fair Labor Standards

Act and associated Regulations. This arrangement shall not affect the normal accrual rate for holiday time, sick leave or vacation time under the collective bargaining agreement.

**Section 5.**

The Canine Officer must receive prior written approval from an appropriate supervisor before engaging in activity that is beneficial for the City beyond the authorized duties, training and care for the canine.

**Section 6.**

The Canine Officer is subject to callout twenty-four (24) hours a day. In the event the Canine Officer is called out, he or she shall receive compensation according to the terms of the then-current collective bargaining agreement addressing callout.

**Section 7.**

The Chief of Police reserves the right, at his or her sole discretion, to further issue a policy and procedure relative to the implementation and administration of a Canine Officer

## ARTICLE 32

## RESIDENCY

As a condition of continued employment, members must reside within Delaware County or any county adjacent to Delaware County.

## ARTICLE 33

## SUBSTANCE ABUSE TESTING

**Section 1. Purpose Statement.**

The F.O.P. and its members agree that illegal drug / alcohol use in the workplace, presents a danger to employees and citizens. The bargaining unit agrees to reasonable, random drug testing, under the guidelines of Article 33, to promote a drug free environment. The City agrees that it shall conduct all such testing with dignity and respect for the individual bargaining unit member's right to personal and medical privacy.

**Section 2. Definitions.**

The following definitions shall be used for Article 33 in this contract.

A. "Legal Drug" means any drug prescribed by a physician or over the counter medication that can be legally purchased in the State of Ohio. Alcohol is considered a legal drug for this section.

B. "Illegal Drug" means any substance that cannot be legally purchased in the State of Ohio or a legal drug that is used in a manner not intended by a physician or a legal drug that is prescribed for a person other than the bargaining unit member.

C. "Medical Review Officer" is a state certified physician in good standing, contracted by the City to review and certify positive test results.

D. "Incidental Exposure" means any exposure to any legal or illegal drug that is not intentional or is required through the performance of a member's job. Members assigned to drug enforcement or undercover who, in the result of a member's job, are exposed to a legal or illegal substance, shall notify, in a written format, their supervisor of exposure prior to the announcement of any drug / alcohol testing.

E. "Probable Cause" means any collection of facts and circumstances that would lead a prudent person to believe that a member's work is being influenced by any legal or illegal drug.

F. "Post Accident / Post Incident" means an automobile accident involving the member's negligence. Any injury to one's self or other person, caused by a secondary weapon, which resulted in known medical outpatient treatment.

G. "Reasonable Suspicion" means alcohol or controlled substance testing based on a belief that an employee is under the influence of, or is using, possessing, or distributing controlled substances or alcohol, or is otherwise in violation of the City's policy. Such a belief may be drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things.

1. Observable phenomena, such as direct observation of drug use and/or the appearance, behavior, speech, body odor or physical symptoms or manifestations of using or being under the influence of a drug or alcohol;
2. Evidence that an individual has tampered with a drug or alcohol test during his/her employment;
3. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of alcohol and/or other drugs while working, or while on the employer's premises or operating the employer's vehicle, machinery, or equipment;
4. The occurrence of an incident involving an employee's on the job actions which has resulted in the personal injury of any person, or in which property damage has occurred, and any of one (1) through five (5) above apply.

**Section 3. Random Testing.**

The City shall conduct a random drawing of names, shall test no more than 50% of member's in a calendar year, for the purposes of random drug / alcohol testing. An on-duty bargaining unit member, designated by the F.O.P., shall be present during all phases of the drawing. The bargaining unit member shall have the right to inspect and observe all portions of the drawing. This City will agree to have no more than two representatives present during the drawing. OnSite, LLC or another similar agency will conduct the random drawing. The City shall notify an employee when that employee is selected. Once notified, every work-related action the employee takes must lead to a collection. If the employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered a refusal to test and will subject the employee to the disciplinary consequences set forth in this Article.

**Section 4. Probable Cause and Reasonable Suspicion.**

Any member, who is on duty and is believed to be under the influence of any substance, may be subjected to testing. The member must be advised by the supervisor of the alleged probable cause or reasonable suspicion leading to the decision to require a test. Tests will be collected in the same manner as a random test except that an F.O.P. representative is not required to be present. A member may request that an F.O.P. representative observe the testing and give counsel to the member. The City must allow F.O.P. representation, if requested by a member. The City will allow a reasonable delay to obtain F.O.P. representation. All testing (urine and breath) will be administered within 1 hour of the allegation, regardless of the availability of representation.

**Section 5. Post Accident / Post Incident / Use of Deadly Force.**

Members involved in post accident, post incident, and/or use of deadly force may be subject to drug / alcohol testing.

**Section 6. Sample Drug Collection.**

The City shall provide a suitable place for the collection of urine samples. All bargaining unit members shall be compensated, at rate consistent with the other sections of this contract, for any time spent providing a urine sample or in conference with a medical review officer.

A bargaining unit member, designated by the F.O.P. and one representative from the City shall be present during the collection of all samples.

After a member has provided a urine sample. The sample shall be split and placed in two sealed tamper resistant urine collection containers. Both samples will remain in the constant view of the member providing the sample until they are sealed, dated, identified and initialed by the member and the City representative.

**Section 7. Sample Alcohol Collection.**

If a member has been alleged to have been consuming alcohol on duty or under the influence of alcohol, the member shall submit to breath test. The test will be performed by a state certified operator on a state certified breath testing instrument. Only instruments certified by the Ohio Department of Health will be considered state certified. All rules for the operation of the instrument will be followed. The results of such test will be considered a certified positive result if a reading greater than .04 grams of alcohol by weight per 210 liters of breath is obtained.

**Section 8. Testing Procedure.**

The certified laboratory shall inspect the sample and proceed with further screening only if the container sample is properly sealed and labeled. The laboratory shall follow all commonly acceptable testing methodology and comply with all Federal and State regulations and guidelines. The laboratory shall notify the City of all results.

**Section 9. Positive Results.**

The MRO shall immediately notify the member of any positive results received from the laboratory. The member, at their expense, shall then have the right to have the sample in the second container analyzed by a by second certified laboratory contracted by the City. If results from the second laboratory are not similar, the process is halted and no discipline can be imposed on any member for use of illegal drugs.

The City shall contract with a medical review officer and forward the envelope and written test results to the City. The medical review officer will contact and confer with all members who test positive. The medical review officer will evaluate the member's circumstances, including incidental exposure, and determine if the positive laboratory test indicates the use of illegal drugs. The medical review officer will then certify the results as positive or negative and notify the City. The City will not be permitted to use any non-certified or negative results for disciplinary reasons. The City will also make recommendations for treatment for members testing positive for the first time.

**Section 10. Discipline.**

Members who have received a certified positive result from the medical review officer will enter a treatment program recommended by the Department of Administrative Services. The City will pay for this treatment if the member uses a covered health network provider. Co-pays are to be paid by the member. The member shall be placed on a leave status, for at least 30 days, during the attendance of treatment. If the leave is deemed a qualified event under the City's Family and Medical Leave Policy available paid leave shall be used in accordance with the policy. If the leave is deemed a non-qualified event under the City's Family and Medical Leave Policy then the employee may use any vacation, compensatory or holiday time available to the member. A letter of force and effect, equivalent to a 30-day suspension shall be issued. Failure to successfully complete the treatment program shall result in disciplinary action up to and including termination.

A second certified positive test result shall result in termination.

A member who refuses or fails to submit to a drug / alcohol test shall be deemed as having a confirmed positive test result. Refusal or failure to submit to a test will be grounds for discipline set forth in Section 9.

No member will be disciplined solely for being under the influence of alcohol on his or her own time. This does not excuse conduct attributed to a member being under the influence of alcohol.

## ARTICLE 34

## MID-TERM BARGAINING

(A) If, during the term of the Contract, mid-term bargaining is required under Ohio Revised Code Section 4117, the parties shall meet and bargain, except where immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations, or (2) legislative action taken by a higher level legislative body after the agreement became effective and requires a change to conform to the statute. If the City takes immediate action due to "exigent circumstances" or "legislative action" as noted above, this Article does not limit the Union's rights before the State Employment Relations Board.

In the event the City finds it necessary to implement change(s) during the term of this Contract to a mandatory subject of bargaining, and such changes are not otherwise specifically addressed in a provision of this Contract, the City shall notify the Union of the proposed change(s). The Union may, within ten (10) calendar days of such notice, submit a written demand to bargain the effects of the implementation of the changes affecting members of the bargaining unit unless such changes are specifically addressed in a provision of this Contract.

(B) Should the Union request negotiations, the parties shall engage in good faith bargaining for a period of not less than five (5) days and not more than ten (10) days. Bargaining shall be conducted by teams consisting of not more than four (4) persons, unless a larger number is mutually agreed to by the City and the Union.

(C) If the bargaining teams have not reached agreement by the end of the bargaining period, the parties will engage in mediation for a period of not more than ten (10) days, or until a resolution is reached or impasse is declared by either party,

whichever first occurs. The mediator shall be assigned by the State Employment Relations Board, unless the parties mutually agree on a mediator.

(D) If the parties have not reached agreement by the end of the mediation period or upon declaration of impasse by either party, the City may implement its last offer to the Union. If the City elects to so implement, the City shall submit the unresolved issue(s) to arbitration. In the alternative, the City may elect to submit the unresolved issue(s) to arbitration and maintain the status quo until the arbitration award is issued. The arbitrator shall be selected and the hearing conducted in accordance with the provisions outlined below. If the City elects to maintain the status quo pending arbitration and the Union then elects to decline arbitration of the dispute, the City may implement its last offer to the Union.

(E) If the City does not refer the unresolved issue(s) to arbitration, the City shall maintain the status quo and shall have no authority to implement the changes which were the subject of negotiations.

(F) Once the City elects to submit the unresolved issues to binding arbitration, the parties shall be confined to a choice of the last offer of each party on each issue submitted.

1. **Arbitrator.** An arbitrator may be chosen by mutual agreement, or absent mutual agreement, by soliciting a list of five (5) arbitrators from the State Employment Relations Board. The Union and the City will select an arbitrator from the list by alternate striking of names, and the arbitrator will be notified of his or her selection within five (5) days of the receipt of the list. A flip of a coin shall determine who will strike the first name.

2. **Arbitration Guidelines.** The following guidelines shall apply to arbitration proceedings under this Article:

a. The parties shall arrange for an arbitration hearing to be held not later than twenty (20) days after the selection of the arbitrator. Not later than five (5) days before the arbitration hearing, each of the parties shall submit to the arbitrator and the opposing party a written report summarizing the unresolved issue(s), each party's final offer as to the issue(s), and the rationale for their position(s).

b. At the arbitration hearing, the arbitrator may hear testimony from the parties and accept other evidence relevant to the issues in dispute.

c. After the hearing, the arbitrator shall resolve the dispute between the City and the Union by selecting, on an issue-by-issue basis, from between each of the party's final offers, taking into consideration the following:

(i) Past Agreements between the parties;

(ii) Comparison of the issues submitted to arbitration and each party's final offer as to each issue with the wages, hours, and terms and conditions of employment generally prevailing in police departments of similar size operating under similar circumstances;

(iii) The interests and welfare of the public, the ability of the City to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(iv) The lawful authority of the City;

(v) The stipulation of the parties;

(vi) Such other factors as may be relevant to the arbitrator's decision.

d. Within thirty (30) calendar days of receipt of the arbitrator's decision, the City shall either: (a) implement the modifications in the conditions of employment in accordance with the arbitrator's decision, or (b) abandon the proposed changes in the conditions of employment and maintain or revert to the status quo.

3. **Arbitration Costs – "Loser Pays."** The cost of the arbitration procedure shall be paid by the losing party ("losing party" to be determined by the arbitrator), however, each party to be responsible for its own attorney's and/or consultant's fees.

## ARTICLE 35

## DURATION OF AGREEMENT

**Section 1. Duration.** All of the provisions of this Agreement become effective June 26, 2013 unless otherwise specified. This Agreement shall continue in force and effect until 11:59 p.m., June 25, 2016. Either party shall give timely written notice in accordance with law of an intent to modify or alter any or all of the provisions of this Agreement upon expiration of the Agreement.

**Section 2. Signatures.** Signed and dated at Delaware, Ohio on this ____ day of _____, 2013.

For the City:

R. Thomas Homan
City Manager

Chief Bruce Pijanowski
Police Department

Jessica Feller
Dept. of Admin Services

Darren Shulman
City Attorney

For the Fraternal Order of Police
Ohio Labor Council, Inc.:

Robert Goheen
FOP, O.L.C., Staff Representative

John Radabaugh
Bargaining Committee Member

Shawn Snead
Bargaining Committee Member

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

| | | |
|---|---|---|
| FRATERNAL ORDER OF POLICE, | } | |
| OHIO LABOR COUNCIL, INC., | } | Case No(s): 13-MED-03-0256 |
| EMPLOYEE ORGANIZATION, | } | (Sergeants & Captains) |
| | } | |
| and, | } | |
| | } | |
| CITY OF DELAWARE, | } | |
| EMPLOYER. | } | |
| | } | |

## FILING OF THE COLLECTIVE BARGAINING AGREEMENT

Pursuant to Board Rule 4117-09-07, the F.O.P. Ohio Labor Council Inc. hereby files the Collective Bargaining Agreement executed between the parties in the above captioned case(s). The Contract Data Summary Sheet will be forthcoming.

Respectfully Submitted,

Tara M Crawford

Tara M. Crawford
Paralegal
F.O.P., O.L.C.I.
222 East Town Street
Columbus, Ohio 43215
614-224-5700

cc: Mr. Tom Homan, rthoman@delawareohio.net
Mr. Darren Shulman, dshulman@delawareohio.net