

**AGREEMENT**

**BY AND BETWEEN**

**CITY OF MERCER ISLAND, WASHINGTON**

**AND**

**MERCER ISLAND POLICE ASSOCIATION**

**(JANUARY 1, 2022 THROUGH DECEMBER 31, 2024)**

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**AGREEMENT**  
**By and Between**  
**CITY OF MERCER ISLAND, WASHINGTON**  
**and**  
**MERCER ISLAND POLICE ASSOCIATION**

This Agreement is by and between the City of Mercer Island, Washington, hereinafter, referred to as the "Employer" or "City" and the Mercer Island Police Association, hereinafter referred to as the "Association."

**ARTICLE 1 - RECOGNITION AND UNION MEMBERSHIP**

- 1.1 The City recognizes the Association as the sole and exclusive bargaining agent for the purpose of establishing wages, hours, and other conditions of employment for all of its full-time and regular part time commissioned law enforcement personnel.
- 1.2 The City recognizes that bargaining unit members may, at their discretion, become members of the Association. The Employer shall not discriminate against any employee because of their membership status or Association activity.
- 1.3 The City shall provide the Association with the name, address, and telephone number of all new bargaining unit members. As soon as practicable, the Employer shall provide an opportunity for the Association to meet with new bargaining unit members to discuss Association representation. When requested by the Association, the Employer shall provide the Association with a roster of employees covered by this Agreement.
- 1.4 Upon written authorization by an employee and approval by a representative of the Association, the City agrees to deduct from the wages of each employee the sum certified as initiation dues, assessments, and monthly Association dues, and forward the sum to the Association's Secretary or Treasurer. The Association agrees that it shall indemnify the City and save the City harmless from any and all claims, awards, judgments, attorney's fees, or other litigation costs which may be made by an employee or employees against the City by virtue of the application of this section.
- 1.5 An employee may revoke their authorization for payroll deduction of payments to the Association by written notice to the Employer and Association.
- 1.6 Designated representatives of the Association shall suffer no loss of pay while performing functions related to the administration of this Agreement, provided reasonable advance notification is given to the appropriate supervisor. Additionally, the City shall allow up to an aggregate of nine (9) workdays per year to allow delegates from the Mercer Island Police Guild to attend meetings of the Washington State Council of Police; provided that time spent in such endeavors shall not be considered compensable time within the meaning of the FLSA and provided further that such delegates pay all of their own expenses in attending the above meetings. The City retains the right to restrict such activities when an emergency exists or where

such activities would create a danger to public safety.

## ARTICLE 2 – DEFINITIONS

- 2.1 Probationary Employee. A probationary employee is an employee who:
- A. Has not completed six (6) months as a solo officer with the Mercer Island Police Department; or
  - B. Is an Experienced Officer or Lateral Transfer who is not required to complete the basic law enforcement academy and who has not completed the first twelve (12) month period of initial, continuous employment with the Mercer Island Police Department.

Probationary employees shall earn benefits and shall be eligible to use them as provided in this Agreement and may be discharged without cause.

- 2.2 Regular Employee. A regular employee is an employee who:
- A. Has successfully completed six (6) months as a solo officer with the Mercer Island Police Department; or
  - B. Is an Experienced Officer or Lateral Transfer who is not required to complete the basic law enforcement academy and who has successfully completed the first twelve (12) month period of initial, continuous employment with the Mercer Island Police Department.

Regular employees receive benefits as set forth in this Agreement.

- 2.3 Anniversary Date. An employee's anniversary date is exactly one year after their date of hire and that same month and day every year thereafter. In cases where an employee must leave the Department involuntarily, such as due to a disability retirement or layoff, and is subsequently rehired or reinstated, their anniversary date will be calculated from the employee's original date of hire for the purpose of computing longevity pay or vacation leave.
- 2.4 Basic Hourly Rate of Pay. Basic hourly rate of pay shall mean the hourly rate as shown in the column titled "Basic Hourly" of the pay scale in Appendix A, which includes any longevity and rank pays, but does not include any other additional pays.
- 2.5 Regular Hourly Rate of Pay. Regular hourly rate of pay shall mean the total non-overtime compensation inclusive of basic pay and all other pays, such as premium and/or incentive pay, received by an employee. For purposes of calculating the regular hourly rate of pay each additional pay will be calculated separately first and then added together with the basic pay to determine the regular rate. For example, if an employee's basic pay is \$45 and an employee has one additional pay of 2%, then you would take 2% of \$45 (\$0.90) and add it to \$45 for a total regular hourly rate of pay of \$45.90. If the employee received two additional pays at 2% each, their regular hourly rate of pay would be: \$45 + \$0.90 + \$0.90 (\$46.80). It would not be calculated by adding the additional pays of 2% and 2% together for 4% and then multiplying the 4% by \$45.

## ARTICLE 3 - HOURS OF WORK AND OVERTIME

### 3.1 Non-Patrol Employees.

- 3.1.1 Normal Workday. The normal workday for non-patrol employees shall consist of eight or ten consecutive hours. Other normal workdays may be approved by mutual agreement.
- 3.1.2 Normal Work Schedule. The normal work schedule for non-patrol employees shall be either five consecutive days worked followed by two consecutive days off or four consecutive days worked followed by three consecutive days off. Other normal work schedules may be approved by mutual agreement of the City and the Association. Employees may be scheduled by the City to work any of the shifts established by the City.
- 3.1.3 Section 7(k) Work Period. The Section 7(k) work period under the Fair Labor Standards Act (FLSA), 29 U.S.C., 207 (k), for non-patrol employees shall consist of twenty-eight consecutive days.

### 3.2 Patrol Employees.

- 3.2.1 Normal Workday. The normal workday for patrol employees shall consist of twelve consecutive hours.
- 3.2.2 Normal Work Schedule. Shifts/squads. The normal work schedule for patrol employees will vary depending on shift/squad assignment. The configuration of the twelve-hour shift schedule will be four shifts/squads. There will be two (2) day shifts and two (2) night shifts. The start time shall be 0600 for day shift and 1800 for night shift.

There will be two shift sequences:

Shift Sequence 1: Three (3) days on, followed by four (4) days off, followed by four (4) days on followed by three (3) days off, followed by three (3) days on, followed by four (4) days off followed by four (4) days on, followed by three (3) days off.

Shift Sequence 2: Three (3) days off, followed by four (4) days on, followed by four (4) days off, followed by three (3) days on, followed by three (3) days off, followed by four (4) days on, followed by four (4) days off, followed by three (3) days on.

The day shift squads will alternate working on Wednesdays, making Wednesday their "flip day." The night shift squads will alternate working on Saturdays, making Saturday their "flip day."

The twelve-hour shifts shall be bid annually by seniority. The shift bid shall commence at the beginning of September and be completed by October 15. There shall be no off-shift bid requirement. The City reserves the right to rearrange the work schedule for any employee in order to meet the operational needs of the Department. Operational changes shall be based upon objective facts and circumstances. Management shall notify the Association of the facts and circumstances of any schedule change prior to its

implementation.

On each of the four shifts/squads, a member shall be assigned as the "early car." The purpose of the early car is to provide overlapping coverage between shift changes. The start time for the early car shall be 0500 for the day shift and 1700 for the night shift. Assignment to the early car shall be filled on a voluntary basis based on seniority with the most senior employee assigned first; if no shift/squad member volunteers, assignment shall be based on seniority with the least senior employee assigned first.

3.2.3 Breaks. Patrol employees are entitled to two thirty-minute lunch periods and two fifteen-minute breaks during their twelve-hour shift or as much time as may be required by law. Employees shall take these breaks at the discretion of their supervisors or as may be required by law.

3.2.4 Section 7(k) Work Period. The Section 7(k) work period under the Fair Labor Standards Act, 29 U.S.C., 207 (k), for patrol employees shall consist of fourteen consecutive days.

3.2.5 Kelly Days.

3.2.5.1 Compensation for Extra Hours Worked. In order to compensate patrol employees for the extra hours worked resulting from the fourteen day/twelve-hour shift schedule, each bargaining unit employee working the twelve-hour shift shall receive a twelve-hour Kelly day each month the employee works the twelve-hour shift for a maximum total of twelve (12) Kelly days (or 144 hours) per year.

Kelly days shall be front loaded into patrol employees' leave bank every six months. In January, patrol employees shall receive a bank of six Kelly days (72 hours). In July, patrol employees shall receive an additional six Kelly days in their bank. If an employee only works part of the year in Patrol, their leave bank will be pro-rated for the months the employee actually works the twelve-hour shift schedule. In the event the employee terminates employment with the City, the City shall deduct the actual cost of any prospective payments made from any final compensation due to the employee or take other steps to recover such payments.

3.2.5.2 Kelly Days. Use/Forfeit. Kelly days may be taken at any time; however, the use of a Kelly day cannot result in overtime on the employee's shift, and Kelly days may not be taken during traditional black-out days.

Kelly days received in the first half of the year must be used by July 1 of each year or be *forfeited*. Kelly days received in the second half of the year must be used by December 31 of each year or be *forfeited*, unless cashed out in accordance with Article 3.2.5.3.

3.2.5.3 Annual Cash Out of Kelly Days. Kelly days can be cashed out per Section 10.5.

3.2.6 Training. The City shall not modify the normal work schedule for a training that is one week or less in duration; for such training, if the training does not last for twelve hours,

the patrol employee is required to report to work and/or account for the remaining hours in the employee's twelve-hour workday.

In the event attending a training requires an employee to travel a significant distance on a day that the employee is scheduled to work, the employee may request prior approval from the Chief to leave his or her shift early to account for travel time. The decision whether to allow for an early shift departure to travel to training shall be made in the Chief's sole discretion.

For training that lasts more than one week, all of the training hours shall be worked on the modified schedule.

- 3.3 Overtime. All hours worked under the following conditions shall be considered overtime and paid at one and one-half times the employee's regular hourly rate of pay:
- 3.3.1 All hours worked, including court time, before or after the employee's normal workday;
  - 3.3.2 All hours worked in excess of one hundred seventy-one hours in the FLSA Section 7(k) of the work period for non-patrol employees and all hours worked in excess of eighty-six hours in the FLSA Section 7(k) work period for patrol employees; and
  - 3.3.3 All hours worked on a scheduled off duty day. Overtime must be authorized by the Police Chief (or designee). Time paid for but not worked shall not count as hours worked for purposes of computing overtime under Subsection 3.3.2. Hours paid at the overtime rate are not hours worked or paid hours for the purposes of computing longevity increments or retirement benefits.
- 3.4 Call Back. Any employee called in to work or required to appear in court after having completed the employee's normal workday or normal work schedule shall be paid a minimum of three hours at one and one-half times their regular hourly rate of pay provided that such time is not a shift extension before or after a scheduled shift. Additionally, with regarding to court appearances, employees who are not notified by 5:00 P.M. on the day prior to a scheduled court appearance that their testimony is not necessary, shall receive the minimum call back pay provided herein, whether or not they ultimately appear. Notice may be achieved by voice mail, provided that such system electronically time/date stamps messages.
- 3.5 Shift Trades. Employees may trade shifts within their normal work schedule and between their normal work periods. Employees who trade shifts must notify their Division Commander (or designee) of the trade and receive their approval. A record will be maintained of all shift trades by employees. Any shift which is voluntarily traded by an employee must be paid back within twelve months. If a voluntary shift trade causes an employee to work overtime as defined in Section 3.3, such employee will be compensated only for any overtime the employee would have worked in the absence of the voluntary shift trade.
- 3.6 Standby. Employees placed on standby by the City shall be paid one-half their applicable hourly rate of pay as set forth in Appendix A for each hour such employee is required to be on standby. Standby hours do not count as hours worked for purposes of computing overtime. If the employee



is called back to work while on standby, standby pay shall cease as soon as the employee is called back to work.

- 3.7 Double Time for Civil Disturbance, Tactical Response, and Dive Team Missions. When members of these teams respond to an actual mission (call-out), such responding members shall receive a rate of pay that is double their regular hourly rate of pay. The standard three-hour minimum at the double time rate of pay shall apply to all members who respond to such missions (including the on-duty members of the team). This double-time rate shall not apply to regularly planned training sessions, including but not limited to Dive swim beach clean-up operations and firing range drills.
- 3.8 Voluntary Overtime. The City shall attempt to meet its overtime requirements on a voluntary basis prior to assigning mandatory overtime.
- 3.9 Compensatory Time. Nothing in this Article shall be construed as to prohibit the employee the option of taking compensatory time off in lieu of paid overtime, provided that the accumulation and use of such time is approved by the Police Chief (or designee), and the compensatory time is compensated at time and one-half rate. Compensatory time may be used in one-half hour increments.

Maximum compensatory time accrual shall be 240 hours.

Employees who were employed prior to January 1, 2005, with 240 or more hours of accrued and unused compensatory time, may continue to carry such accrual; provided, however, that an employee with 240 or more hours of accrued and unused compensatory time:

- (i) may be paid, upon request, all accrued and unused compensatory time in excess of 240 hours which is not scheduled to be used,
- (ii) shall have their accrual reduced by the number of hours of accrued compensatory time that the employee uses or cashes out, and
- (iii) is prohibited from accruing new compensatory time unless and until such employee's balance falls below 240 hours and then to a maximum amount of 240 hours.

Employees with less than 240 accrued and unused compensatory time may accrue new compensatory time consistent with the foregoing provisions up to a maximum accrual of 240 hours. On or before July 1 of each year, employees may be paid, upon request, for up to eighty (80) hours of any accrued and unused compensatory time which is not scheduled to be used. A request for payment shall be paid within thirty (30) days. Employees will be paid for such hours by a separate direct deposit on the next scheduled pay date.

Upon leaving employment, employees shall be entitled to payment for all accrued and unused compensatory time up to their accrual limit.

- 3.10 Rest Period. In the event a bargaining unit employee working graveyard shift is required by the City to perform work or attend training during their regularly scheduled time off that lasts six hours or more, resulting in the employee having less than an eight-hour rest period before the commencement of their next regularly scheduled graveyard work shift, the employee will be provided at least an eight hour rest period before beginning their next regularly scheduled work

shift. The employee will be paid, at the regular hourly rate of pay, for all hours they were scheduled on their next regularly scheduled work shift but did not work because of the rest period and the employee will report to work for the remainder of the shift following the rest period. The employee will not have their shift extended as a result of the operation of this paragraph.

#### ARTICLE 4 - PROMOTIONS

The following are the requirements to be eligible for promotions within the bargaining unit:

- 4.1 Corporal. To be eligible for promotion to Corporal, a candidate shall have a minimum of three (3) years full time experience as a commissioned police officer with the City of Mercer Island. A candidate with less than three (3) years may petition the Civil Service Commission for a waiver of this requirement.
- 4.2 Sergeant. To be eligible for promotion to Sergeant, a candidate shall hold the rank of Corporal, or have a minimum of three (3) years full time experience as a commissioned police officer with the City of Mercer Island. A candidate with less than three (3) years may petition the Civil Service Commission for a waiver of this requirement.

#### ARTICLE 5 – WAGES

- 5.1 Employees covered by this Agreement shall be compensated in accordance with the pay scale attached hereto as Appendix "A" effective January 1, 2022. This pay scale reflects an across-the-board cost of living adjustment in the amount of 100% of the percentage increase in the Seattle-Tacoma-Bellevue CPI-W (first half index released in July 2021) plus 1%, which shall be paid retroactively for all pay periods between January 1, 2022 and the date the contract is ratified.
- 5.2 Effective January 1, 2023, the pay scale rates will be increased by an amount that reflects 100% of the percentage increase in the Seattle-Tacoma-Bellevue CPI-W (first half index released in July 2022) plus 0.5%.
- 5.3 Effective January 1, 2024, the pay scale rates will be increased by an amount that reflects 100% of the percentage increase in the Seattle-Tacoma-Bellevue CPI-W (first half index released in July 2023).
- 5.4 Employees with no prior police officer experience will normally start at Step A of the pay scale schedule. Employees with prior police officer experience will be hired at an appropriate pay step to be determined by the Police Chief.
- 5.5 Detective Sergeant, Lead Detective, Detective, and School Resource Officer. Any employee who is assigned duties as a Detective Sergeant, Detective, or School Resource Officer shall receive a three and one-half percent (3.5%) increase in their basic hourly rate of pay while acting in such capacity. Any employee assigned duties as the Lead Detective shall receive the equivalent rate of pay to a Corporal's basic hourly rate of pay.
- 5.6 Personnel & Training Sergeant and Marine Patrol Sergeant. Any employee who is designated as the Marine Patrol Sergeant and the Personnel & Training Sergeant shall receive a three percent

(3%) increase in their basic hourly rate of pay while acting in such capacity.

- 5.7 Field Training Officer. A Field Training Officer (“FTO”) assigned to coach a probationary employee shall receive a three percent (3%) increase in their basic hourly rate of pay for each month that the FTO holds that assignment, with a three month minimum. Whenever practical, there shall be a limit of three (3) FTOs per trainee for this purpose. Any officer filling in for less than 2 weeks for the assigned FTO will receive a day-by-day three percent (3%) increase in their basic hourly rate of pay.
- 5.8 Emergency Manager / Crime Prevention Officer. Any employee who is assigned as the Emergency Manager / Crime Prevention Officer shall receive the equivalent rate of pay to a Sergeant’s basic hourly rate of pay and shall be based on the pay scale (Appendix “A”) as utilized by those employees assigned to Squads One or Two in the Patrol section in the same pay step and at the same longevity rate. Upon the retirement of the employee currently serving in this position, the Emergency Manager position will become a non-represented position within the City. The Crime Prevention duties will be distributed to other positions within the bargaining unit by the Police Chief.
- 5.9 Special Operations and Dive Teams Leaders and Range Master. Employees appointed by the Police Chief to serve as the leader of the Special Operations Team, Dive Team, or as Range Master, shall receive a 1% increase in their basic hourly rate of pay during their appointment period.
- 5.10 Night Shift Patrol Employees. Patrol employees assigned to Squad Three or Squad Four shall receive a two percent (2%) increase to their basic hourly rate of pay. Squad Three and Squad Four are night shift squads with the majority of shift hours between 1800 hours and 0600 hours.
- 5.11 Temporary Assignment to Higher Position.
- 5.11.1. A police officer who is temporarily assigned to fill a corporal’s position shall be paid at the higher position basic hourly rate of pay corresponding to the officer’s current level of longevity.
- 5.11.2. A corporal who is temporarily assigned to fill a sergeant’s position shall not receive the higher basic hourly rate of pay unless they fill the sergeant’s position for a consecutive period of time in excess of 21 working days. Upon the 22<sup>nd</sup> day, the corporal serving in the temporary assignment as a sergeant shall begin to receive the higher basic hourly rate of pay corresponding to the Corporal’s current level of longevity.
- 5.11.3. A sergeant who is temporarily assigned to fill a lieutenant’s position shall be paid at the higher position basic hourly rate of pay corresponding to the sergeant’s current level of longevity. This shall apply to those hours actually worked in this position.
- Should the officer, corporal, or sergeant work overtime in the higher position, they shall receive the higher overtime rate for all hours actually worked during the temporary assignment.
- 5.12 Pay Periods and Pay Days. Employees shall be paid one twenty-sixth of their annual salary every fourteen days for all non-overtime hours worked during the work period until the City switches

to a bi-monthly payroll schedule. The City will provide the Association six months' advance notice of the payroll change and will bargain the impacts prior to implementation.

- 5.13 Lead Detective / Corporal Differential. The differential percentage between police officer Step F (scale) and corporal / lead detective (scale) shall reflect an 8% differential.
- 5.14 Sergeant and Lieutenant Differential. The differential percentage between police officer Step F (scale) and sergeant (scale) shall reflect a 18% differential. The differential between sergeant (scale) and lieutenant (scale) shall reflect a 15% differential.
- 5.15 Deferred Compensation. The City shall make participation in the City's deferred compensation program available to employees, provided however, the City shall have no obligation to match any part of an employee's contribution to the Plan.
- 5.16 Education Incentive Pay.
  - 5.16.1 An employee who holds or obtains an A.A. Degree from an accredited college or university or who can document ninety credit hours toward a bachelor's degree in actual college course work, shall receive a two percent (2%) increase in their basic hourly rate of pay; or
  - 5.16.2 An employee who holds or obtains a B.S. or B.A. Degree from an accredited college or university shall receive a five percent (5%) increase in their basic hourly rate of pay.
- 5.17 Foreign Language Incentive Pay. Any employee a who passes a City-approved foreign language examination shall receive a one percent (1%) increase in their basic hourly rate of pay. Employees who successfully pass the initial examination will be required to recertify every three years. The employee shall pay for their own certification test. If the employee passes the certification, the City shall reimburse the employee for the expenses of the test. Further, the employee shall demonstrate proficient use of American sign language or fluently speak one or more of the following languages: Spanish, Chinese, Russian, Japanese, Korean, German, French, Ukrainian, Arabic, Farsi, Vietnamese, Laotian.

#### ARTICLE 6 - LONGEVITY PAY

- 6.1 Employees shall receive longevity pay in accordance with the following schedule:

<u>Upon Completion of</u>	<u>Pay Increase % (rounded to nearest whole cent)</u>	
Five years' continuous service	Three percent	(3%)
Ten years' continuous service	Four and one half percent	(4.5%)
Fifteen years' continuous service	Six percent	(6%)
Eighteen years' continuous service	Eight percent	(8%)
Twenty-one years' continuous service	Ten percent	(10%)
Twenty-four years' continuous service	Twelve percent	(12%)

- 6.2 Longevity pay shall be due and payable beginning on the next regular pay day following the eligible employee's anniversary date and thereafter each consecutive pay period.

- 6.3 Longevity pay shall be included in the employee's basic hourly rate of pay.

ARTICLE 7 – UNIFORM, CLEANING, AND BOOT ALLOWANCE

- 7.1 Uniforms and safety equipment shall be furnished by the City.
- 7.2 The City will provide dry cleaning services for each officer at the rate of four (4) clothing items per week. During this contract, the maximum rate the City shall be required to pay per month shall be \$60.00. This amount shall be multiplied by the number of eligible employees in the bargaining unit on an annual basis to establish the actual cap. This means, for example, if 30 employees were eligible for dry cleaning services in the actual annual cap for the City's contribution would be \$21,600. The City shall provide additional dry-cleaning services if clothing is unusually soiled in the course of duty.
- 7.3 Detectives and the School Resource Officer shall receive a clothing allowance of 1.02% of Step F of patrol officer on the pay scale (Appendix A).
- 7.4 The City shall provide a boot allowance equal to \$100 per year to each bargaining unit employee.

ARTICLE 8 - BENEFIT PLANS

- 8.1 Medical, Dental and Vision Insurance.
- 8.1.1 The City shall offer medical, dental, and vision insurance benefits through the LEOFF Health & Welfare Trust ("LEOFF Trust"). If desired, an employee may choose the Association of Washington Cities ("AWC") Benefits Trust Kaiser 200 Plan for medical insurance and the AWC Vision Services Plan in lieu of the LEOFF Trust Medical Plan F. Coverage shall not be reduced during the life of this Agreement.
- 8.1.2 Insurance premiums to provide employees and their dependents medical, dental, and vision benefits shall be paid by the City. The City shall pay 100% premium cost for medical, dental and vision insurance for all employees, and ninety percent (90%) of premium costs for dependent coverage, for the period of this Agreement. The employer's contribution shall be based on the LEOFF Trust Medical Plan F and LEOFF Trust Dental Plan 2A.
- 8.1.3 Opt-Out of Medical Coverage. An employee who waives the right to obtain medical insurance coverage through the City and who provides proof of credible coverage through their spouse or other source, shall be entitled to receive 50% of the total premiums that would be paid by the City, contributed to their Retirement Health Savings (RHS) account. Examples: An employee with a spouse would receive the amount equal to 50% of the premiums for themselves and their spouse, minus the 10% employee contribution for the spouse. An employee with two children and spouse would receive the 50% of the equivalent of those premiums, minus the 10% employee contribution for the spouse and dependents.
- 8.2 HRA VEBA. The City shall provide yearly contributions of \$1,200 to the Health Reimbursement

Account (HRA VEBA) of each employee. One-half of the contributions shall be deposited by the second week of January of each year and one-half of the contribution shall be deposited by the second week of July of each year. Any funds not utilized by an employee in a calendar year remain available in subsequent years. The funds accumulated during employment shall be available for qualified expenses after an employee leaves employment with the City. New employees shall receive a pro-rated amount based on their date of hire.

- 8.3 Retirement Plan. Employees covered by this Agreement shall participate in the Washington State Law Enforcement Officers' and Firefighter's Retirement System (LEOFF Plan 2) to the extent permitted by current state law. City contributions on behalf of covered employees shall be governed by the terms of the current state statute and as hereinafter amended.
- 8.4 Service Benefit Plan. All qualified bargaining unit employees shall be entitled to the benefits of this Service Benefit Plan as set forth in Appendix "B". Qualified employees are those employees who are eligible to claim benefits by age and length of service in their respective retirement system.
- 8.5 Worker's Compensation. Worker's compensation shall be provided by the City as provided by law.
- 8.6 Unemployment Compensation. Unemployment compensation shall be provided by the City as provided by law.
- 8.7 Long-Term Disability Insurance. Benefits shall be provided through AWC's Standard Insurance Plan. Insurance premiums to provide qualified employees long-term disability benefits equal to sixty percent (60%) of an employee's salary after a ninety (90) day waiting period shall be paid by the City.
- 8.8 Life Insurance. The City shall provide each bargaining unit employee with a \$50,000.00 term life insurance policy at no cost to the employee.
- 8.9 Retiree Medical Insurance. Any employee retiring from the service of the City, including any disability retirement shall be permitted to participate in the LEOFF Trust medical and dental plans, provided such coverage is available, and further provided that the employee pays the premiums for such coverage (including any additional premium required for dependent coverage).

#### ARTICLE 9 - HOLIDAYS

9.1 The following thirteen (13) days are recognized by the City as holidays:

- |    |                            |                           |
|----|----------------------------|---------------------------|
| 1. | New Year's Day             | January 1                 |
| 2. | Martin Luther King Jr. Day | Third Monday in January   |
| 3. | President's Day            | Third Monday in February  |
| 4. | Memorial Day               | Last Monday in May        |
| 5. | Juneteenth                 | June 19                   |
| 6. | Independence Day           | July 4                    |
| 7. | Labor Day                  | First Monday in September |
| 8. | Veteran's Day              | November 11               |



9.	Thanksgiving Day	Fourth Thursday in November
10.	Day after Thanksgiving	Fourth Friday in November
11.	Christmas Day	December 25
12.	Floating Holiday	Designated by Employee
13.	Floating Holiday	Designated by Employee

Employees are eligible to take the floating holidays off after January 1 of each calendar year. When the floating holidays are taken as days off, they must be scheduled with the employee's supervisor far enough in advance, so no overtime is required to cover the shift.

9.2 Working on Holidays. Any employee required to work on a non-floating holiday shall be paid one and one-half (1 ½) times the employee's regular hourly rate of pay, including longevity pay, for all hours worked on the holiday; provided, however, that an employee required to work on Thanksgiving, Christmas, or New Year's Day shall be paid two (2) times the employee's regular hourly rate of pay, including longevity pay, for all hours worked on such holidays. Employees required to work on a recognized non-floating holiday shall also receive a subsequent scheduled normal workday off with pay.

9.3 Holiday Leave. If a holiday falls on an employee's scheduled day off and the employee is not required to work the holiday, as a benefit, the employee shall receive another subsequent, scheduled day off with pay, as follows:

9.3.1 Accrual. Per Section 9.1, the City recognizes thirteen (13) paid holidays per calendar year, and each holiday is equal to ten (10) hours for a total of 130 holiday leave hours (13 holidays x 10 hours each = 130 holiday hours per calendar year). Holiday leave shall be front loaded into employees' leave banks every six months. In January of each year, employees shall receive a bank of 65 hours. In July, employees shall receive an additional bank of 65 hours. In the event an employee terminates employment with the City, the City shall deduct the actual cost of any prospective payments made from any final wages due to the employee or take other steps to recover such payment on a pro-rata basis.

9.3.2 Use. Employees may use accrued holiday leave in one-half hour increments. When an employee uses a whole day of holiday leave, the employee uses the amount of leave hours equal to the number of hours in the employee's normal workday.

9.3.3 Maximum Accumulation. Employees shall not accumulate in excess of 80 hours of holiday leave as a result of the operation of Section 3.1, 3.2 or 3.3, unless scheduling difficulties or staffing requirements cause the City to request that an employee not schedule or use an accumulated holiday. Employees who accumulate more than 80 hours of holiday leave will schedule a holiday as soon as practical in order to reduce the number to 80 hours or fewer, or the holidays will be scheduled by the City.

Non-Patrol employees should maintain a minimum number of holiday leave hours to cover the holidays that fall within the front-load time period. If non-patrol employees fail to do so, holidays shall be covered by other accrued leave.

9.3.4 Cash Out Upon Termination. Upon leaving employment, employees shall be entitled to payment

for all unused and accrued holiday leave, up to 80 hours at their regular hourly rate of pay in effect at the time the employment ends. An employee will be paid for accrued hours over the 80-hour maximum at their regular hourly rate of pay in effect at the time the employment ends, if the employee has made a good faith effort to use the hours but was unable to do so because of the City's needs.

**ARTICLE 10 – VACATION LEAVE**

10.1 **Accrual.** Vacation leave is a benefit accrued by all employees as follows:

<u>MONTHS OF CONTINUOUS SERVICE</u>	<u>HOURS ACCRUED PER MONTH</u>
1st month through 59th month	8 hours per month
60th month through 119th month	10 hours per month
120th month through 179th month	12 hours per month
180th month through 239th month	14 hours per month
240th month or more	16 hours per month

Vacation leave is accrued on a monthly basis and may be used in the month it will be accrued or during the subsequent months.

10.2 **Use.** Vacation leave may be used in one-half hour increments. When an employee uses a whole day of vacation leave, the employee uses the number of hours of accrued leave equal to the number of hours in the employee's normal workday.

10.3 **Maximum Accrual.** Vacation leave may be accrued up to 280 hours. No additional accruals shall be credited to an employee who accrued the maximum, unless there are circumstances beyond the employee's control which preclude the employee from utilizing accrued vacation leave. Such circumstances include, but are not limited to, disability leave, sick leave, or cancellation of scheduled vacation by the City. Employees who accumulate more than 280 hours of vacation will work with their supervisor as soon as practical to schedule vacation leave in order to reduce the number to 280 hours or fewer. Any vacation leave over 280 hours will be forfeited December 31 of each year excess hours are accrued, unless approved by the Police Chief for carryover; however the Police Chief will always approve carryovers in scenarios where the employee has made a good faith effort to use the hours but was unable to do so because of the City's needs.

10.4 **Scheduling.** The Police Chief (or designee) will circulate a vacation sign-up sheet before November 1 of each year, provided that the shift bid has been completed, to allow employees to request their preferred vacation times. The City retains the right to schedule vacations in such a way as to minimize interference with functions and workloads in particular sections. The selection for vacation will be made by seniority within the ranks beginning with sergeants, followed by corporals, then officers.

In the Patrol Section, no more than three fully commissioned employees will be authorized vacation at the same time. Of these three employees, no more than two will be patrol supervisors (sergeants and corporals are considered supervisors). All vacations will be scheduled to avoid overlap as much as possible. If two or more employees request the same vacation dates, the decision may be made on the basis of individual employee seniority within the ranks.



The primary vacation leave is defined as one set of continuous dates that the employee intends on using for vacation leave, and the employee has or will have accumulated enough vacation leave to account for the requested time. Once the primary vacation sign-up sheet has been completed and the selected vacations have been inserted into the schedule, the vacation sign-up sheet will be circulated for a second time. This secondary vacation leave request will follow the same rules as the primary sign-up list (including the consecutive day requirement) but will include the additional restriction that this secondary leave request may not cause the shift to fall under the minimum staffing level.

An employee may request an exception to the vacation rule, but the decision is at the discretion of the Operations Commander.

- 10.5 Annual Cash Out of Vacation Leave. Employees may be paid upon request for up to forty (40) hours of any accrued vacation leave or Kelly day which is not scheduled to be used before December 31 of a given year. Employees will be paid for such hours by separate check before December 10 of each year. (Maximum cash out limit is forty hours of either Kelly days, vacation leave, or a combination of both).
- 10.6 Cash Out Upon Termination. Upon leaving employment, employees shall be entitled to payment for all accrued and unused vacation leave, up to 280 hours. This maximum accrual may be raised if the vacation accrual goes beyond 280 hours because of disability, sick leave, or cancellation of scheduled vacation by the City as determined by the Police Chief. Payment shall be at the employee's regular hourly rate of pay in effect at the time their employment ends.

#### ARTICLE 11 - SICK LEAVE

- 11.1 Accrual. As a benefit, employees shall earn 16 hours of paid sick leave per month of employment, up to a maximum of 1040 hours; provided, however, that hours in excess of 1040 may accrue during the year and will be reset to 1040 at the end of the year. In no case may each period of consecutive absence under Section 11.2 or Sections 11.3 through Section 11.4 exceed six months.
- 11.2 Use. Accrued sick leave may be used by an employee to avoid loss of pay if the employee is unable to work due to personal illness or injury, enforced quarantine in accordance with community health regulations, or the serious injury or illness of a family member as defined in RCW 49.46.210, necessitating the employee's presence. Sick leave may be used in one-half hour increments. When an employee uses a whole day of sick leave, the employee uses the number of hours of accrued leave equal to the number of hours in the employee's normal workday.
- 11.3 Notification. When an employee is unable to report for work, the employee must notify their supervisor as soon as reasonably prudent. Failure to do so may result in denial of the use of sick leave for such absence. If the employee is absent from work for more than three consecutive days, the City may require verification from a physician that the sick leave use was for an authorized purpose.
- 11.4 LEOFF Plan 2 Disability Leave. LEOFF Plan 2 employees are covered by the state workers' compensation law, Title 51 of the Revised Code of Washington. Such employees will make timely application for workers' compensation benefits following any on-the-job injury or illness. While a

LEOFF Plan 2 employee is off work due to such an injury or illness, their regular pay, including longevity, shall be continued for up to six months following the date of such illness or injury. The continuation of the LEOFF Plan 2 employee's regular pay for this six-month period shall be funded as follows:

11.4.1 For the first five days, any difference between the employee's regular pay and the value of workers' compensation time loss benefits later received shall be funded out of the employee's accrued sick leave.

11.4.2 For the sixth day through the end of the six-month period, any difference between the employee's regular pay and the value of worker's compensation time loss benefits, currently or later received, shall be funded one-half out of the employee's accrued sick leave and one-half by the City.

11.4.3 Should the employee have no accrued sick leave available or exhaust all their accrued sick leave during the time periods referenced in Subsections 11.4.1 or 11.4.2, the City shall fund the portion of the differentials that would have been funded out of the employee's accrued sick leave.

11.4.4 During any portion of the six-month period when the employee will be eligible to receive or is currently receiving worker's compensation time loss benefits, the City shall continue to pay the employee their regular salary. Provided, however, that when the employee receives worker's compensation time loss benefits representing compensation for lost income during such six-month period, the employee will reimburse the City for the value of such worker's compensation benefits received. Provided, further, however, if the employee chooses not to sign an agreement to reimburse the City for the value of the worker's compensation time loss benefits received, the City will continue the employee's salary in an amount equal to the difference between the regular salary and the benefits received.

11.4.5 If an employee uses accrued sick leave to fund the differentials described in Subsections 11.4.1 and 11.4.2, and later receives worker's compensation time loss benefits for such absences, the employee's sick leave will be restored in an amount equal to the value of the worker's compensation benefits received for such absences.

11.5 Continuation of Benefits. Employees shall continue to receive all benefits while on sick leave or disability leave; provided, however, employees shall be required to continue to pay any portion of the costs of benefits not otherwise paid for by the City.

11.6 Cash Out Upon Retirement. All employees who are eligible for a service retirement under state guidelines for the LEOFF Retirement System shall be eligible to cash out 33% of their accrued sick leave, up to 1040 hours, at their regular hourly rate of pay in effect at the time their employment ends, up to a maximum of \$15,000 in 2022. The maximum cash out amount shall be increased annually by an amount that reflects 100% of the percentage increase in the Seattle/Tacoma CPI-W (semi-annual index released in July. This section shall further include separations due to death or disability retirement of the employee.

#### ARTICLE 12 - JURY DUTY AND WITNESS LEAVE

- 12.1 An employee serving on a jury will be excused from work and will be paid the amount the employee would have earned had the employee worked their normal work schedule. The employee will reimburse the City for any compensation received for jury duty.
- 12.2 Any employee who, as a result of their department duties, is required to appear before a court shall be paid for such court appearances at their regular rate of pay. The employee will reimburse the City for any subpoena or witness compensation received.
- 12.3 Any employee who is required to appear before a court, legislative committee, or quasi-judicial body as a witness in response to a subpoena or other directive for other than department duties, shall be allowed to use any accrued holiday leave, vacation leave, or compensatory time to offset any loss of pay for such periods.

#### ARTICLE 13 - BEREAVEMENT LEAVE

- 13.1 When death occurs in the immediate family of an employee, they shall be allowed up to three (3) working days off duty with pay so long as the Police Chief finds that the public peace, health, safety, and welfare will not be seriously impaired as a result of the leave granted.
- 13.2 "Immediate family" shall mean the employee's spouse or domestic partner, children, mother and father, the mother and father of the employee's spouse, siblings, grandchildren, grandparents (or employee's spouse's grandparents), son-in-law or daughter-in-law. However, under unusual circumstances, the Police Chief may more broadly construe this term to apply to other persons living within the employee's household, others related to the employee by blood or marriage, or to established foster relationships having attributes of familial ties.

#### ARTICLE 14 - PERSONNEL FILES/LAYOFF NOTICE/DISCIPLINE

- 14.1 Employees having completed their probationary period but having less than thirty (30) months in the Department, shall be entitled to fifteen (15) days' notice prior to being laid off due to a reduction in force.
- 14.2 Employees having thirty (30) months or more service in the department shall be entitled to thirty (30) days' notice prior to being laid off due to a reduction in force.
- 14.3 Just Cause for Discipline. The City shall not discipline or discharge any employee unless just cause for such discipline exists.
- 14.4 Personnel Files. Written warnings and internal investigation files pertaining to such written warnings shall not be considered in future disciplinary purposes after a maximum period of two years, provided there is no reoccurrence of similar misconduct for which the employee was disciplined during that two-year period. Any record of more serious discipline, including any related internal investigation files, shall not be considered for disciplinary purposes after a maximum period of five years if there is no recurrence of similar misconduct for which the employee was disciplined during that five-year period.

## ARTICLE 20 – DRUG AND ALCOHOL TESTING POLICY

- 20.1 The parties agree to follow the Drug and Alcohol Testing Policy attached to this agreement as Appendix “C”.

## ARTICLE 21 - BILL OF RIGHTS

- 21.1 When any employee of the Department is under investigation for an act that could lead to punitive action, including dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer, for purpose of punishment, and because of such investigation they are being interrogated, such interrogation shall be conducted under the following terms and conditions:
- 21.1.1 All interrogations shall be at a reasonable hour;
  - 21.1.2 The employee under investigation shall be informed of the nature of the investigation and the person in charge of the investigation and will be allowed to bring an attorney or Association Representative to represent him in the matter;
  - 21.1.3 The length of time of the interrogation shall be reasonable, and the employee being interrogated shall have the right to attend to their own personal physical necessities;
  - 21.1.4 There shall be no threats, abusive language or promises made during the interrogation; however, the employee may be informed that if he is given immunity from criminal action that their refusal to truthfully answer questions concerning their official duties may be subject to dismissal or other punitive actions;
  - 21.1.5 If the investigation may lead to criminal charges, the employee must be informed of their constitutional rights;
  - 21.1.6 No employee shall be required to take a polygraph test and no adverse comment may be included in their personnel file or disciplinary hearing for their failure to take such polygraph test (RCW 49.44.120); and
  - 21.1.7 No locker or other space assigned to an employee under investigation shall be searched, without their consent, except as a result of a search warrant.

## ARTICLE 22 - PHYSICAL FITNESS

- 22.1 The Association and the City agree that the physical fitness of Association members is important to their health and safety. Physical fitness is the personal responsibility of each Association member. The City and the Association will both support and encourage officers to be physically active and to be involved in a personal program of regular exercise.
- 22.2 Voluntary Physical Fitness Incentive Pay. An employee who passes a physical fitness test shall be eligible to receive a two percent (2%) increase to their basic hourly rate of pay (“Physical Fitness Incentive Pay”).

The physical fitness test is voluntary and will be modeled after the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy (BLEA) Physical Ability Test (PAT). The Police Chief will appoint an employee to proctor the test which will take place while employees are on-duty and will be coordinated to minimize overtime. The test will be administered in the first quarter (January-March) of each year.

Physical Fitness Incentive Pay will be paid to employees who pass the annual physical fitness test starting April 1 of each year through March 31 of the following year.

22.3 Smoking is not permitted within the police building or in any of the Department vehicles.

ARTICLE 23 – PUBLIC RECORDS DISCLOSURE

23.1 The City shall not publicly disclose public records pertaining to individual Association members, except as required by statute or policy. If a request for such records has been made in accordance with applicable state and City legal requirements, and the City determines that the records must be disclosed according to law, the City shall notify the Association and individual Association member ten (10) days prior to the release of public records. The 10-day notice may be waived by mutual agreement of the parties.

ARTICLE 24 - TERM OF AGREEMENT

24.1 This Agreement shall be effective January 1, 2022, and it shall remain in full force and effect until December 31, 2024.

DATED AND SIGNED THIS 16 day of December, 2021.

CITY OF MERCER ISLAND

MERCER ISLAND POLICE ASSOCIATION

  
\_\_\_\_\_  
Jessi Bon, City Manager

  
\_\_\_\_\_  
Scott Schroeder, Association President

Attest:

  
\_\_\_\_\_  
Andrea Larson, City Clerk

Approved as to Form:

/s/ Bio Park, December 16, 2021  
\_\_\_\_\_  
Bio Park, City Attorney



**APPENDIX "A" – Pay Scale**

<b>MERCER ISLAND POLICE</b>								
<b>January 1, 2022 Pay Scale</b>								
<b>4.3% COLA Increase Over December 31, 2021</b>								
<b>STEP %</b>	<b>Basic Hourly 2022</b>	<b>Basic BI-WEEKLY</b>	<b>Basic MONTHLY</b>	<b>Basic ANNUAL</b>	<b>O.T.</b>	<b>ACTING</b>	<b>NIGHT SHIFT PREMIUM</b>	<b>FTO</b>
A	36.61	2,929	6,346	76,157	54.92	16.24	0.73	1.10
B (Month 7)	38.53	3,082	6,678	80,136	57.79	14.33	0.77	1.16
C (Month 19)	40.81	3,265	7,074	84,889	61.22	12.05	0.82	1.22
D (Month 31)	42.96	3,436	7,444	89,333	64.42	9.91	0.86	1.29
E (Month 43)	45.10	3,608	7,817	93,798	67.64	7.76	0.90	1.35
F (Month 55)	48.94	3,915	8,483	101,801	73.41	3.92	0.98	1.47
3% (5 Years)	50.41	4,033	8,738	104,855	75.62	4.03	1.01	1.51
4.5% (10 Years)	51.15	4,092	8,865	106,382	76.72	4.09	1.02	1.53
6% (15 Years)	51.88	4,150	8,992	107,909	77.82	4.15	1.04	1.56
8% (18 Years)	52.86	4,229	9,162	109,945	79.29	4.23	1.06	1.59
10% (21 Years)	53.84	4,307	9,332	111,981	80.76	4.31	1.08	1.62
12% (24 Years)	54.82	4,385	9,501	114,017	82.22	4.39	1.10	1.64
<b>CORPORAL = 8% OVER POLICE OFFICER</b>								
CORPORAL	52.86	4,229	9,162	109,945	79.29	4.89	1.06	1.59
3% (5 Years)	54.44	4,356	9,437	113,243	81.67	5.04	1.09	1.63
4.5% (10 Years)	55.24	4,419	9,574	114,892	82.86	5.11	1.10	1.66
6% (15 Years)	56.03	4,482	9,712	116,542	84.04	5.19	1.12	1.68
8% (18 Years)	57.09	4,567	9,895	118,741	85.63	5.29	1.14	1.71
10% (21 Years)	58.14	4,652	10,078	120,939	87.22	5.38	1.16	1.74
12% (24 Years)	59.20	4,736	10,262	123,138	88.80	5.48	1.18	1.78
<b>SGT / EMERGENCY MGR BASE = TOP PATROL OFFICER + 18%</b>								
SGT/Emergency Mgr	57.75	4,620	10,010	120,125	86.63	8.66	1.16	
3% (5 Years)	59.48	4,759	10,311	123,729	89.23	8.92	1.19	
4.5% (10 Years)	60.35	4,828	10,461	125,531	90.53	9.05	1.21	
6% (15 Years)	61.22	4,897	10,611	127,333	91.83	9.18	1.22	
8% (18 Years)	62.37	4,990	10,811	129,735	93.56	9.36	1.25	
10% (21 Years)	63.53	5,082	11,011	132,138	95.29	9.53	1.27	
12% (24 Years)	64.68	5,175	11,212	134,540	97.02	9.70	1.29	
<b>LT BASE = SGT BASE + 15%</b>								
LT	66.42	5,313	11,512	138,144	99.62		1.33	
3% (5 Years)	68.41	5,473	11,857	142,288	102.61		1.37	
4.5% (10 Years)	69.40	5,552	12,030	144,360	104.11		1.39	
6% (15 Years)	70.40	5,632	12,203	146,432	105.60		1.41	
8% (18 Years)	71.73	5,738	12,433	149,195	107.59		1.43	
10% (21 Years)	73.06	5,845	12,663	151,958	109.59		1.46	
12% (24 Years)	74.39	5,951	12,893	154,721	111.58		1.49	

**APPENDIX "B"**  
**SERVICE BENEFIT PLAN**

This Service Benefit Plan is attached to and a part of the Collective Bargaining Agreement (Agreement) between the City of Mercer Island (Employer) and the Mercer Island Police Association (Association). Association members (Employees) shall be entitled to the benefits of this Service Benefit Plan as set forth in the following paragraphs.

1. Qualification. Employees shall be qualified to participate in this Service Benefit Plan upon (a) completion of a minimum of ten (10) years of service with the City, and (b) eligibility to retire as required in Article 8.3 of the Agreement. Employees shall not be qualified to participate in this Service Benefit Plan if terminated for disciplinary reasons and such discipline is sustained upon final appeal.
2. Service Benefit. Upon qualified separation from employment with the City, employees shall be paid the sum of the following in recognition of years of service to the City of Mercer Island:
  - A. \$13,789.17 plus;
  - B. The applicable amount from the following table:

<u>Years of Service</u>	<u>Amount for 2021</u>
Up through 14 years	\$0
15 - 19 years	\$3,553.93
20 - 24 years	\$5,334.12
25 - 29 years	\$8,002.27
30 years and above	\$9,778.15

The amounts set forth in Parts A and B shall be adjusted upwards annually in an amount equal to 100% of the cost of living. The cost-of-living index in Article 5.1 of the Agreement shall be used.

3. Payment. Payment of amounts due under this Service Benefit Plan shall be made to an eligible Employee in the Employee's final check from the City.



**APPENDIX "C"**  
**DRUG AND ALCOHOL TESTING POLICY**

**I. POLICY**

- A. Reporting to work under the influence of alcohol and /or illegal drugs, or the use, sale, or possession by an employee of illegal drugs is strictly prohibited and may result in disciplinary action, including immediate termination. Each employee must inform the City if they are using prescription or over-the-counter drugs they know or reasonably should know may impair their ability to perform job functions and/or operate machinery such as automobiles. Under appropriate circumstances the City may require the employee to provide written medical authorization from a physician to perform various essential job functions while using such drugs.
  
- B. A voluntary request by an employee for assistance with their own alcohol or drug abuse problem will remain confidential and such abuse, request and treatment/rehabilitation for alcohol or drug abuse shall not be used as the basis for any disciplinary action provided that the request for assistance is initiated prior to commencement of any internal investigation or other related disciplinary action.
  
- C. Treatment/rehabilitation for alcohol or drug abuse undertaken by an employee following commencement of any internal investigation or other disciplinary action shall be considered by the City in administering discipline to the employee.

**II. DEFINITION**

- A. For the purpose of administering this Policy the following definition of terms is provided:
  - 1. Alcohol - means the intoxicating agent in alcoholic beverages, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
  
  - 2. Drug - means any substance (other than alcohol) capable of altering the mood, perception, pain level, or judgment of the individual consuming it.
  
  - 3. Illegal Drug – means any drug for which sale, purchase, transfer, or unauthorized use or possession is prohibited or restricted by federal or state law or the intentional misuse of a prescription or over-the-counter drug.
  
  - 4. Over-the-counter Drug – means those drugs that are generally available without a prescription and are limited to those drugs that are capable of impairing the judgment of an employee to safely perform the employee’s duties.
  
  - 5. Prescription – means any drug used in the course of medical treatment and that has been prescribed and authorized for use by a licensed health care professional.
  
  - 6. Reasonable Suspicion – Reasonable suspicion is based on specific, reliable, credible objective facts and reasonable inferences from those facts, that discovery testing will produce evidence of a violation of this policy.

7. Under the Influence – means having alcohol or illegal drugs in the body in excess of the concentration cutoff levels established in this Policy.

### **III. WHEN TESTING IS REQUIRED**

- A. An employee may be required to submit to drug or alcohol testing only when there is reasonable suspicion to believe that the employee is in violation of this policy. Reasonable suspicion will not be used to harass or intimidate any employee.
  1. The basis for the reasonable suspicion shall be documented in writing prior to or at the time the employee is requested to submit to testing.
  2. An Association representative shall be summoned before the employee is approached and the Association representative shall be present when the employee is first told of the reasonable suspicion, unless obtaining an Association representative will delay the notification required by this section for more than two (2) hours.
  3. The employee shall be given an opportunity to confer with the Association representative (if readily available), and the employee shall be given an opportunity to explain the reasons for the employee's condition, such as reaction to prescription or over-the-counter drugs, fatigue, exposure to toxic substances, or any other reasons known to the employee, to the City representative telling the employee the basis for reasonable suspicion. The Association representative may be present during this discussion.
- B. An employee who refuses to submit to testing for alcohol and/or drugs shall be conclusively presumed to be under the influence of alcohol or an illegal drug for the purpose of administering this Policy, and therefore will be subject to discipline, up to and including immediate discharge.

### **IV. COLLECTION/TESTING PROCEDURES**

- A. The Association representative shall be allowed to accompany the employee to the collection site.
- B. Alcohol Testing
  1. Alcohol testing will be conducted by a trained Breath Alcohol Technician ("BAT") using an Evidential Breath Testing Device ("EBT") which the BAT has been trained to operate in conformance with Department of Transportation's Procedures for Transportation Workplace Alcohol Testing, 49 CFR 40.221, et. seq. ("DOT Procedures")
  2. Alcohol testing shall take place at a facility that meets the requirements of the DOT Procedures.
  3. The procedures used for conducting all screening and confirmation alcohol tests shall be in conformance DOT Procedures.
  4. The cutoff levels for screening and confirmation alcohol tests shall be .02 breath alcohol.

5. The procedures used for reporting the results of alcohol tests shall be in conformance with DOT Procedures.

C. Drug Testing

1. All specimens for drug testing shall be obtained at a collection site that shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing in accordance with the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Mandatory Guidelines for Federal Work Place Testing Programs (“Mandatory Guidelines”).
2. All specimens shall be collected in conformance with the specimen collection procedures set forth in the Mandatory Guidelines. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures.
3. A split specimen method of collection shall be used, and the split specimen method of collection shall be in conformance with the Mandatory Guidelines.
4. All testing shall be done at a Department of Health and Human Services, Substance Abuse and Mental Health Services Administration certified laboratory and transportation of the specimen to the laboratory shall be in conformance with the Mandatory Guidelines.
5. Laboratory security, chain of custody, and analysis procedures shall be in conformance with the Mandatory Guidelines.
6. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used:

Initial Test Level (ng/mL)

<u>(Nanograms per milliliter)</u>	<u>(ng/ml) Test Level</u>
Amphetamines	1000
Cannabinoids	50
Cocaine metabolites	300
Opiates (codeine / morphine)	300
Phencyclidine	25
Level of the positive result for alcohol	0.02 Breath alcohol

7. Specimens that test negative on all initial immunoassay tests will be reported negative. No further testing of these negative specimens for drugs is permitted.
8. All specimens identified as positive on the initial test shall be confirmed for the class(es) of drugs screened positive on the initial test using gas chromatography/mass

spectrometry (GC/MS) in conformance with the Mandatory Guidelines at the following cutoff values:

<b>Confirmatory Test Level</b>	<b>(ng/mL)</b>
Amphetamines	500
Cannabinoids (1)	15
Cocaine metabolites (2)	150
Opiates (codeine / morphine)	2000
Phencyclidine	25
1 Delta-9-tetrahydrocannabinol-9-carboxylic acid	
2 Benzoylecgonine	

9. Specimens that test negative on confirmatory tests shall be reported negative and no further testing of these specimens for drugs is permitted.
10. An essential part of this drug testing program is the final review and reporting of results. The final review and reporting of the results of such drug testing shall be in conformance with the Mandatory Guidelines.
  - a. This review shall be performed by the Medical Review Officer ("MRO") prior to the transmission of results to the City. A positive test result does not automatically identify an employee as being in violation of this Policy. The MRO will consider alternate medical explanations in conjunction with their review.
  - b. The qualifications and responsibilities of the MRO shall be in conformance with the Mandatory Guidelines.
  - c. Prior to making a final decision to verify a positive test result, the MRO shall give the employee an opportunity to discuss the test result with him or her in conformance with the Mandatory Guidelines.
  - d. Upon notification by the MRO that an employee has a verified positive drug test or refusal to test because of adulteration or substitution, the employee shall have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing.
  - e. When an employee makes a timely request for a test of the split specimen the MRO shall immediately provide written notice to the laboratory that tested the primary specimen directing the laboratory to forward the split specimen to a second HHS certified laboratory for confirmation testing in accordance with this Policy.

Following verification of a positive test result, the MRO shall report the result to the City's official designated to receive results.

In the future, the City may add to the list of prohibited drugs any drug which the federal government adds to their list as prohibited for DOT workers. The City will follow the same cutoff

levels and screening procedures used by the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Mandatory Guidelines for Federal Work Place Testing Programs ("Mandatory Guidelines").

#### **V. CONSEQUENCE OF A NEGATIVE TEST**

- A. In the event the test results are reported as negative, such test results shall be destroyed, the employee shall be paid for lost work time due to the testing, and no discipline shall be levied against the employee based upon the testing process and/or the result of the testing process.

#### **VI. CONSEQUENCES OF A POSITIVE TEST**

- A. In the event the MRO reports the test results positive, an employee who tests positive for any of the drugs or alcohol referred to in this Policy may be subject to discipline, up to and including termination.
- B. Nothing in this Policy shall be construed to limit the City's right to discipline/discharge a bargaining unit employee for violations of this or any other City / Department policy.
- C. Nothing in this Policy shall be construed to limit or abridge any of the rights set forth in the collective bargaining agreement between the Association and the City and/or any rights provided by federal and state law.

#### **VII. RECORDKEEPING**

- A. All records related to the alcohol or drug testing of an employee shall be treated as confidential medical records.
- B. Any employee who is the subject of an alcohol or drug test shall, upon written request, have access to any and all records relating to their drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings. Such access shall not include communications protected by attorney-client privilege.

#### **VIII. RIGHT OF APPEAL**

- A. Employees and the Association have the right to challenge an alleged violation of this Policy and/or the results of alcohol and drug testing through the grievance procedure set forth in the collective bargaining agreement between the Association and the City.

#### **IX. RIGHT OF ASSOCIATION PARTICIPATION**

- A. At any time, the Association, upon request, will have the right to inspect and observe any aspect of the drug testing program with the exception of individual test results, provided that such inspection does not delay any testing procedure. The Association may inspect individual test results if the release of this information is authorized by the employee involved.

#### **X. ASSOCIATION HELD HARMLESS**

- A. The City shall be solely liable for any legal obligations and costs arising out of the provisions of this Policy and/or application of this Policy, except as otherwise provided herein.
- B. The Association shall be held harmless for all claims arising out of errors, omissions or negligent acts by the third-party contractors hired by the City to conduct the drug testing under this Policy, including failure to abide by the protocol established by this Policy; and for all claims arising out of the implementation/administration of this Drug Policy, except for a failure of the Association to file a timely grievance based on known violations of Article III(A) of this policy.