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**Contract between  
City of Westerville  
and  
Fraternal Order of Police  
Capital City Lodge No.9**

**January 1, 2021 – December 31, 2023**

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# ARTICLE 1 CONTRACT

## Section 1.1 - Contract

This Contract is made and entered into by and between the City of Westerville, Ohio, (hereinafter referred to as the "City"), and the Fraternal Order of Police, Capital City Lodge No. 9, (hereinafter referred to as the "Lodge").

## Section 1.2 - Severability

If a court of competent jurisdiction finds any provision of the Contract to be contrary to law, or if the parties mutually agree that any provision is invalid by operation of law, such provision shall be of no further force and effect, but the remainder of the Contract shall remain in full force and effect. In the event of such invalidity, the parties will schedule a meeting at a mutually agreeable time, within thirty (30) days of one party's written request to the other, to discuss alternative language on the subject matter held to be or agreed to be invalid.

## Section 1.3 - Amendment of Contract

No changes in this Contract shall be negotiated during its duration unless the parties agree in writing to amend the Contract.

## Section 1.4 - Past Benefits and Practices

The City and the Lodge agree that any past benefit or practice which is not contained in the Contract shall not be altered or discontinued until the City has notified the Lodge of such intention and provided an opportunity for the Lodge to provide input through discussion at a Labor Relations meeting.

## Section 1.5 - Good Faith Bargaining

The parties are obligated to bargain collectively with one another in a good faith effort to reach agreement. Good faith means that each party will deal with the chosen representatives of the other; will deal with the other honestly and in a bona fide effort to reach agreement; will meet at reasonable times and places to facilitate negotiations; will have the necessary authority to make proposals and counter proposals, to compromise, and to make agreements subject to further negotiations. Such good faith bargaining does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

## Section 1.6 - Information Furnished

The parties are obligated to provide each other with relevant financial and other information, as requested, which is necessary for each party to develop proposals and counter-proposals and to negotiate in good faith.



### Section 1.7 - Private Meetings

The parties agree to negotiate in private meeting pursuant to Section 4117.21 of the Ohio Revised Code. These meetings will be held at mutually agreeable times, during the period beginning one hundred twenty (120) days before the expiration of this Contract.

### Section 1.8 - Spokesperson

The Negotiations Committees will formally communicate with each other through a spokesman named by each party.

### Section 1.9 - Informal Minutes

Each party may informally keep its own minutes or written records of the negotiations. No official transcript of the negotiations will be maintained.

### Section 1.10 - Caucus and Adjournment

Either party has the right to call a caucus at any time or to adjourn the negotiation session.

### Section 1.11 - Negotiations Committee

The City agrees to allow not more than six (6) Members and one alternate from the Bargaining Unit, to serve on the Lodge's Negotiations Committee. For the purpose of negotiations with the City, Members on duty will be permitted to attend negotiation sessions in an on-duty status. Members not regularly scheduled for duty will be compensated with release time to be used with approval of the Member's supervisor at a time mutually agreeable. In no case shall this time result in overtime. The Lodge will notify City of the names and normal shift of the Committee prior to the first scheduled negotiation's date.

The Lodge and the City have the right to select their own Negotiations Committee and to change Committee Members at will. The Lodge specifically reserves the right to have the Lodge President, and his designee, and one (1) other Lodge Representative selected by the Lodge, serve as Members of the Negotiations Committee.

### Section 1.12 - Ratification by Council

The City shall submit to the City Council a request for approval of funds and for approval of any other matter requiring the approval of the City Council, necessary to implement the Tentative Agreement reached by the Negotiations Committees within fourteen (14) days of the date upon which the parties finalize an agreement, unless another time frame is agreed between the City and Lodge. The City Council must approve or reject the submission as a whole.

### Section 1.13 - Entire Agreement

The City and the Lodge acknowledge that during negotiations which preceded this Contract, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter within the scope of collective bargaining negotiations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Contract.

Therefore, for the life of this contract, the City and the Lodge each voluntarily waives the right, and each agrees that the other shall not be obligated to negotiate collectively with respect to any subject matter not specifically referred to or covered in this Contract, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this Contract.

The provisions of this Contract shall constitute the entire agreement between the parties and all prior negotiated agreements not contained herein, and all rules, or regulations not contained herein shall not be binding upon the parties to the Contract. This Contract may be altered, changed, added to or deleted from or modified only through the voluntary consent of the parties in written and signed amendment.

### Section 1.14 - Contract Copies

As soon as possible, following the signing of this Contract, the City and the Lodge shall have printed one hundred and twenty (120) copies of this Contract. Fifteen (15) copies shall be provided to the City and the remainder shall be provided to the Lodge for distribution to Members. The cost of such printing will be shared equally by the parties.

### Section 1.15 - Duration

All of the provisions of this Contract shall become effective January 1, 2021, unless otherwise specified. This Contract shall continue in full force and effect until midnight December 31, 2023.

### Section 1.16 - Successor Negotiations

No earlier than one hundred twenty (120) days prior to the expiration date of the Contract, negotiations shall commence for a successor agreement. Each Member of the negotiating team will be granted up to sixteen (16) hours of release time to prepare for the successor agreement. Such time can only be used within six (6) months prior to the expiration date of the contract and only after the proper supervisory notification and approval has been made. Such time can only be used to attend FOP meetings for contract preparation.

### Section 1.17 - Dispute Resolution Procedure

The dispute resolution procedure set forth in Ohio Revised Code Chapter 4117, as amended or interpreted including final offer settlement, shall be applicable to successor negotiations.

## **ARTICLE 2 RECOGNITION**

### Section 2.1 - Recognition

The City recognizes the Lodge as the sole and exclusive representative of all employees included in the Bargaining Unit described in Section 2 in any and all matters relating to wages, hours, terms and other conditions of employment, and the continuation, modification, or deletion of an existing provision of the Contract and for the administration of the current Contract.

### Section 2.2 - Bargaining Unit

The first Bargaining Unit covered by this Contract consists of all sworn, full-time, regular Members of the Department in the rank of Police Officer. The second Bargaining Unit covered by this Contract consists of all sworn, full-time Members of the Department in the ranks of Sergeant and Lieutenant. Excluded from either Bargaining Unit, and thereby from coverage within this Contract, are all positions in the Department outside of the ranks of Police Officer, Sergeant, and Lieutenant, including but not limited to the Chief of Police, Assistant Police Chiefs and civilian employees (including Dispatchers). Reference throughout this Contract to Bargaining Members means employees within both Bargaining Units unless specified otherwise.

All provisions of this contract shall apply to Members in their initial probationary period, except that neither the Lodge nor a Member in his or her initial probationary period, shall have the right or the ability to proceed to arbitration challenging the decision of the City to terminate the Member's employment (within his or her initial probationary period). This would include any period of time by which an initial probationary period may be extended.

## **ARTICLE 3 LODGE SECURITY**

### Section 3.1 - Dues Deduction

The City agrees to deduct monthly Lodge Membership dues as certified to the City by the Lodge. Each Member shall present a written authorization on the appropriate form.

### Section 3.2 - Fair Share Fee

Only if the application of a "fair share fee" is permitted, then consistent with law, the following shall apply:

Members who are not Members of the Lodge shall as condition of employment pay to the Lodge a fair share fee. The amount of the fair share fee shall be determined by the Lodge, but shall not exceed the dues uniformly required of the Members of the Lodge who are in the Bargaining Unit. Such fair share fee shall be certified by the Lodge to the City as necessary. Such payment is subject to

internal Lodge rebate procedure and the Lodge hereby represents that its internal rebate procedure is in compliance with all requirements of State and Federal Law.

For the duration of this Contract, such fair share fee shall be automatically deducted by the City from the payroll check of each Member who is not a Member of the Lodge. The automatic deduction shall be made in the first pay period of each month. The City agrees to furnish the Financial Secretary of the Lodge once each calendar month, a warrant in the aggregate amount of the fair share fees deducted for that calendar month, together with a listing of the Members for whom said deductions are made. The automatic deduction shall be initiated by the City whenever a Member who is not a Member of the Lodge has completed his or her first sixty (60) days of employment.

### Section 3.3 - Lodge Responsibility

The parties agree that the City assumes no obligation, financial or otherwise, arising out of the provisions of the Contract regarding the deduction of Lodge dues or fair share fee, if applicable and consistent with law. The Lodge hereby agrees that it will indemnify and hold the City harmless from any claims, actions or proceedings including the defense thereof, by any Member arising from deductions made by the City pursuant to this Article. If requested, the Lodge shall provide its legal counsel (at no cost to the City) to defend the City in any claim, action or proceeding. Once the funds are remitted to the Lodge, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Lodge.

### Section 3.4 - City Responsibility

The City shall be relieved from making individual dues deduction payments to the Lodge when a Member: (1) resigns or is separated from City employment; (2) is laid off from City employment; (3) provides written revocation of dues deduction authorization to the City and the Lodge or resigns from the Lodge; (4) is on an unpaid leave of absence when the dues deduction would otherwise be due; or (5) at any time when dues are otherwise due, fails to receive sufficient wages to make all legally required deductions in addition to the deduction of Lodge dues. The City agrees to notify the Lodge why such deduction was not made, including if a Member resigns from the Lodge, and further agrees to make such deduction at a future date after notice from the Lodge of the amount of the deduction as applicable and consistent with law.

### Section 3.5 - Errors in Processing

It is agreed that neither the Members nor the Lodge shall have a claim against the City for errors in the processing of deductions unless a claim of error is made to the City in writing within sixty (60) days after the date such an error is claimed to have occurred. If it is found an error was made, it will be corrected at the next pay period that the Lodge dues or fee deduction will normally be made by deducting the proper amount. Payroll collection of dues shall be authorized for the Lodge only, and for no other organization attempting to represent the Members within the Bargaining Unit.

### Section 3.6 - Bulletin Board

The Lodge shall be permitted to continue to maintain a Lodge bulletin board at Department headquarters. Lodge bulletins, Lodge material, and communications of interest to Members only shall be permitted to be posted on this board. No derogatory material shall be posted on the Lodge bulletin board and the Lodge agrees to keep material neat and current.

### Section 3.7 - Ballot Boxes

The Lodge shall be permitted, upon prior notification to the Chief, to place a ballot box at Department Headquarters for the purpose of collecting Members ballots on all Lodge issues subject to ballot. Such box shall be the property of the Lodge and neither the ballot box nor its contents shall be subject to the Department's review.

### Section 3.8 - Use of Intra-Department Mail System and email system.

The Lodge shall be permitted reasonable use of the intra-department mail system, i.e. access to the Members' mail slots, for the direct distribution of materials pertaining to collective bargaining, contract administration, or other similar business germane to the Lodge's role as exclusive representative. The Lodge shall observe established departmental procedure for the distribution of all such materials; however, the material, when placed in a sealed envelope clearly marked as a Lodge communication, shall not be subject to review by the City and/or Department. The Lodge shall also be permitted reasonable access to and use of the City's email system for purposes of communication to Members pertaining to collective bargaining, contract administration, or other similar business germane to the Lodge's role as exclusive representative. The Lodge shall observe established departmental procedure for such communication. No expectation of privacy is extended to such email communication.

### Section 3.9 - Bargaining Unit Meeting at City Facilities

The Lodge and Members will be permitted access to any City facility for the conduct of business or meetings relating to issues of the bargaining unit and its Members. The Lodge agrees to provide notice and schedule its meetings within the City guidelines relating to obtaining such places for meetings.

## **ARTICLE 4 NONDISCRIMINATION**

### Section 4.1 - City Pledge

The City agrees not to interfere with the rights of Members to become Members of the Lodge, and the City shall not discriminate, interfere, or coerce any Member because of Lodge Membership or because of or regarding his activities as an officer or other representative of the Lodge.

### Section 4.2 - Lodge Pledge

The Lodge, within the terms of its Constitution and By-Laws, agrees not to interfere with the rights of a Member to refrain from or resign from Membership in the Lodge, and the Lodge shall not discriminate, interfere, restrain, or coerce any Member for exercising the right to abstain from Membership in the Lodge.

### Section 4.3 - Joint Pledge

The City and the Lodge shall comply with all applicable laws prohibiting discrimination against any Member of the Bargaining Unit on the basis of the Member's age, race, color, gender, creed, religion, ancestry, national origin, military status, political affiliation or disability.

## **ARTICLE 5 GRIEVANCE PROCEDURES**

### Section 5.1 - Grievance Defined

A grievance is defined as an allegation that there has been a breach, misinterpretation or improper application of any part or term of this Contract.

### Section 5.2 - Qualifications

A grievance may be filed by a Member(s) or by the Lodge to enforce its rights under the Contract or on behalf of a group of Members who are affected by the act or condition giving rise to the grievance in the same or similar manner. The Lodge shall not process a grievance on behalf of any Member without the Member's knowledge and consent. A Member has the right to present grievances and have them adjusted, without intervention of the Lodge, as long as the adjustment is consistent with the terms of this Contract and as long as the Lodge is present at the adjustment. When a grievance is filed and signed by two (2) or more Members, it shall begin with an Assistant Police Chief. Members who grieve a decision made by a supervisory officer do not need to begin the grievance process with a lower ranking supervisory officer. Additionally, a grievance may begin at whatever supervisory/command level is responsible for the grievance.

### Section 5.3 - Jurisdiction

Nothing in this Grievance Procedure shall deny Members and/or the Lodge the opportunity to appeal to and/or exercise their legal right to appear before any judicial or administrative forum. If a Member and/or the Lodge elects to pursue such a judicial or administrative remedy, and an administrative tribunal or court takes jurisdiction, a Member and/or the Lodge is thereafter precluded from seeking a remedy under the Grievance Procedure. Further, once a Member and/or the Lodge elects to pursue a remedy under the Grievance Procedure, he is precluded from seeking a remedy under an administrative tribunal or court. In that this Grievance Procedure culminates in final and binding arbitration, the City shall have no jurisdiction to receive and determine any appeals relating to matters that are a proper subject under this Grievance Procedure

except where otherwise provided by law.

If a Member independently exercises his/her right to pursue a judicial or administrative remedy and is thereby precluded from seeking a remedy under the Grievance Procedure, such action shall not preclude the Lodge from seeking a remedy under the Grievance Procedure for itself and/or other Members. As such, any Member who exercises his/her right to pursue a judicial or administrative remedy shall not participate in any remedy obtained by the Lodge and/or other Members under the Grievance Procedure.

#### Section 5.4 - Grievance Procedure

The following implementation steps and procedures apply in processing grievances:

##### A. Step One

1. A Bargaining Unit Member having an individual grievance first must attempt to resolve it informally with the Member's immediate Supervisor(s) with whom the grievance originates, which shall include the Member's Lieutenant (if the Member is below the rank of Lieutenant). Any attempt at informal resolution must be initiated by the grievant within seven (7) calendar days following the date the events or circumstances giving rise to the grievance occurred or would reasonably have been known to the grievant. Any grievance brought to the attention of the immediate Supervisor beyond the seven (7) calendar day time limit shall not be considered unless a time extension, as provided for in Section 5.6 applies. At this Step, there is no requirement that the grievance be submitted or responded to in writing. However, a grievance representative may accompany the grievant, if the grievant requests the representative's attendance. If the grievant is not satisfied with the oral response from the immediate Supervisor at this Step, the grievant may pursue the formal Steps, which follow.

##### B. Step Two – Assistant Police Chief

1. When a grievant determines that the immediate Supervisor's oral response in Step One is unsatisfactory, the grievant may then submit the grievance in writing to the next ranking supervisor. For purposes of Step Two the "next ranking supervisor" shall be their designated Assistant Police Chief. Such grievance shall be submitted on the Grievance Form agreed upon by the parties, with a copy to the Grievance Chairman. The Grievance Form must be submitted to the next ranking supervisor within seven (7) calendar days following the immediate Supervisor's oral response at Step One. This receiving supervisor shall date stamp the Grievance Form with the date of receipt. Any grievance submitted after the seven (7) calendar day time limit shall not be considered.
2. The receiving supervisory officer shall respond to the grievant in writing within seven (7) calendar days of receipt of the written Grievance Form

and shall date and sign the response, returning one copy of it to the grievant and one copy to the Grievance Chairman. If the grievant does not appeal the grievance to Step Three of the Grievance Procedure within seven (7) calendar days after receipt of the decision at this Step, the grievance is considered satisfactorily resolved.

C. Step Three - Police Chief

1. If the grievant is not satisfied with the answer in Step 2 the grievant, within seven (7) calendar days following the grievant's receipt of the response from the previous step, may appeal the grievance to Step 3 by submitting a copy of the Grievance Form, containing the written response at the prior Step and any other pertinent documents, to the Police Chief. The Police Chief or designee shall stamp the Form, to accurately reflect the date of receipt.
2. Within fourteen (14) calendar days of receipt of the grievance, the Police Chief or designee must conduct a meeting with the grievant and appropriate Lodge representatives. The Chief shall provide the grievant and the Grievance Chairman with a decision in writing within fourteen (14) calendar days after the meeting in this Step. If the grievant does not appeal the grievance to Step Four of the Grievance Procedure within seven (7) calendar days after receipt of the decision at this Step, the grievance shall be considered satisfactorily resolved.

D. Step Four - City Manager or Designee

1. When the Chain of Command in the Police Division has been exhausted, the grievant, within seven (7) calendar days following the grievant's receipt of the Step Three response, may appeal the grievance to Step Four by submitting a copy of the Grievance Form, containing the written response at the prior Steps and any other pertinent documents, to the Office of the City Manager. The City Manager or designee shall stamp the Grievance Form to accurately reflect the date of receipt.
2. The City Manager or designee shall schedule a meeting to be held within fourteen (14) calendar days of receipt of the Grievance Form to discuss the grievance with the grievant and appropriate representatives from the Lodge. The City Manager or designee may be joined in the meeting by the Chief or other representatives.
3. In the meeting called for at this Step, the grievant or appropriate Lodge representative may provide the City Manager or a designee a full explanation of the grievance and the material facts relating thereto. The City may also question the grievant in this meeting.
4. The City Manager or designee shall respond to the grievant and Lodge Grievance Chairman in writing within seven (7) calendar days of the meeting in this Step.



5. Should the grievant not be satisfied with the City Manager or his/her designee's response to his grievance at Step Four, the Grievant shall notify the Grievance Chairman of his desire to proceed to arbitration. The Grievance Chairman will present the grievant's request for arbitration to the Lodge President. Should the Lodge determine to proceed to arbitration with the grievance, the Lodge President shall so notify the City in writing. This written notification shall be delivered by hand or received by the City Manager within seven (7) calendar days after the grievant's receipt of the City Manager's written response.

- E. Any of the time limits established in this Section may be extended, at any time, by mutual agreement of the City and the Lodge.

#### Section 5.5 - Time Off for Presenting Grievances

A Member and Grievance Representative shall be allowed time off from regular duties with pay for attendance at scheduled meetings under the Grievance Procedure with prior approval of their respective supervisors. If approval is withheld, any applicable time limit shall thereby be extended for the period of time necessary to allow the grievant and/or representative time off to attend such meetings. When a grievance meeting is held on a shift other than the scheduled shift hours of the grievant and/or his/her Grievance Representative, the grievant shall not be compensated for the time spent in the grievance meeting. The Grievance Representative shall be compensated with release time. At no time shall attendance at a grievance meeting by a Grievance Representative result in overtime pay. Members who are requested by the City to testify at a grievance hearing shall be compensated.

#### Section 5.6 - Time Limits

It is the City's and the Lodge's intention that all time limits in the above Grievance Procedure shall be met. However, to the end of encouraging thoughtful responses at each Step, the parties' designated representatives may mutually agree, at any Step, to time extension, but any such agreement must be in writing and signed by the parties. In the absence of such mutual extensions, the grievant may, at any Step where a response is not forthcoming within the specified time limits, presume the grievance to have been advanced to the next Step in the Procedure on the day following the expiration of the time limit. Any Step in the Grievance Procedure may be waived by mutual consent. Day for purposes of this section shall mean a calendar day. Any grievance not filed or appealed within the time limits set forth in this section shall be waived and forfeited.

If an office specified for receipt of a grievance, grievance appeal, or grievance response is closed for an entire day, which day is the last day of the time period prescribed for the filing of or response to a grievance or grievance appeal, then a grievance, grievance appeal, or response may be filed on the next day of which such office is open.

### Section 5.7 - Representatives in Meetings

In each step of the Grievance Procedure certain specific representatives shall be given approval to attend the meetings therein prescribed. It is expected that, in the usual grievance, these will be the only representatives in attendance at such meetings. However, it is understood that, in the interest of resolving grievances at the earliest possible step, it may be beneficial that other representatives, not specifically designated, be in attendance. Therefore, the City and the Lodge may mutually agree to the attendance of other representatives.

### Section 5.8 - Grievance Forms

The City and the Lodge shall develop jointly a Grievance Form. Such forms will be supplied by the Lodge and made available to all Grievance Representatives. Forms will be maintained in a common, agreed upon location. The Grievance Form shall include sections for the listing of the specific Article and Section of the Contract at issue, the events and facts leading to the grievance, and the remedy sought.

### Section 5.9 - Appeal from City Manager's Disciplinary Decision

As provided at Section 11.4, a Member may appeal a disciplinary decision made by the City Manager or his/her designee directly to arbitration without resorting to the steps in the grievance procedure set forth in Section 5.4.

## **ARTICLE 6 ARBITRATION**

### Section 6.1 - Selection of Arbitrator

Following the receipt of the Lodge President's written notification of the Lodge's intention to proceed to arbitration, the City Manager or his/her designee and the Lodge President or his designee, 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 American Arbitration Association to submit a panel of nine (9) arbitrators with personal addresses or business addresses in Ohio from which the City and the Lodge shall select one by mutual agreement. If an agreement cannot be reached as to one mutually acceptable arbitrator from the panel, an arbitrator will then be selected by the representatives from the parties by alternatively striking names and selecting the final remaining name. Either party shall have the option to completely reject the list of names and request another list only once.

### Section 6.2 - Authority of Arbitrator

The arbitrator shall conduct a fair and impartial hearing on the grievance taking testimony and evidence from both parties unless the parties mutually agree to submit their dispute in written stipulations. The arbitrator shall not have authority to add to, subtract from, modify, change or alter any provision of this Contract. The arbitrator shall determine the precise issue(s) submitted for arbitration and shall, absent mutual agreement of the parties, have no authority to determine any other issue not so

submitted to him. The arbitrator shall not issue observations or declarations of opinion, which are not directly essential in reaching a decision on the issue(s) in question. The arbitrator shall not establish any new or different wage rates not negotiated as part of this Contract. In disciplinary cases, the arbitrator shall have the authority to affirm, disaffirm or modify said discipline. Members who are subpoenaed by the arbitrator to testify at an arbitration hearing shall be compensated.

The question of arbitrability of a grievance may be raised by either party before the arbitrator hears the merits of the grievance. If a question of arbitrability is raised, the arbitrator may either rule on this issue or reserve ruling on the same and hear the merits of the grievance before issuing a ruling on this question.

The decision of the arbitrator shall be final and binding upon the Lodge, the grievant, and the City.

### Section 6.3 - Arbitration Costs

The costs of any proof produced at the direction of the arbitrator, and the rent, if any, for the hearing room shall be borne equally by both the City and the Lodge. The expenses of any non-Member 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. Any affected Member in attendance for such hearing shall not lose pay or any benefits to the extent such hearing hours are during his normally scheduled working hours on the day of the hearing. All costs directly related to the services of the arbitrator shall be paid by the losing party.

If there is a dispute as to whom is the losing party, the arbitrator shall make such determination. If the arbitrator upholds the position of each party in part, the arbitrator shall allocate which fees shall be borne by each party. Nothing herein precludes the parties, ability to reach a settlement wherein the arbitrator's fees are allocated by mutual agreement of the parties.

### Section 6.4 - Arbitrator's Award

The arbitrator's decision will be in writing and should be mailed to the Lodge and the City within thirty (30) days from the date of the hearing record is closed.

## **ARTICLE 7 LODGE REPRESENTATION**

### Section 7.1 - Lodge Representatives

Representatives of the Lodge shall be admitted to the City's facilities for the purpose of processing grievances or attending meetings with prior notice given to the Chief or an Assistant Police Chief.

## Section 7.2 - Grievance Representatives

The Lodge shall designate one (1) Member per shift for the first Bargaining Unit representing the rank of Police Officer to serve as Grievance Representative, and one (1) Member for the second Bargaining Unit representing the ranks of Sergeant and Lieutenant to serve as the Supervisor Grievance Representative. In addition the Lodge shall designate one (1) Member for the first Bargaining Unit to serve as its Grievance Chairperson, and one (1) Member for the second Bargaining Unit to serve as the Supervisor Grievance Chairperson.

The designated Police Officer and Supervisor Grievance Representatives and Grievance Chairs shall be assumed to be the respective representative for their separate bargaining units unless the City is informed otherwise by the Lodge; this designation of representative shall also include representation during the Internal Review Process, if applicable.

## Section 7.3 - Grievance Chair Time Off

The Grievance Chairpersons, or designee, shall be given forty (40) hours per Chairperson per year to attend to Lodge business. In addition, the Chief may grant up to an additional combined total of forty (40) hours of release time to grievance representatives to attend training sessions related to FOP issues. The Chief has the ability to review the requested use of leave time under this Section and consistent with Section 7.5; it is not contemplated that political activity, lobbying or protesting will be approved use of leave time under this section. The Grievance Chairpersons will keep a log of hours used.

## Section 7.4 - Delegates

Two (2) Members who are duly elected or selected delegates or alternates to the State or National Conferences of the Fraternal Order of Police shall be allowed reasonable time to attend the State or National Conferences so long as the needs of the City in providing police protection to the community are not, in the opinion of the Chief and City Manager, adversely affected. Subject to the foregoing, to the extent any such time is during such delegates' scheduled work hours, they shall be given consideration to a schedule rearrangement, or shall be allowed to use their vacation time or compensatory time.

## Section 7.5 - Requesting and Reporting Release Time

As provided by the Contract, at certain defined times Members may be granted release time to address specific enumerated functions, duties and/or issues. It is expected that all Contractual requirements for proper supervisory notification and approval of release time shall be met. To the end of encouraging proper supervisory notification and approval, and to allow the City to keep an accurate record of release time, the City shall develop a Release Time Form which must be completed by the Member requesting release time. The Release Time Form shall be maintained in a common, agreed upon location. The Release Time Form shall be specific as to the Article and Section of the Contract providing for release time (i.e., Article 1.11, 1.16, 5.5, 7.3, etc.), who will be

using the release time, when such release time is anticipated to be or was used, the amount of release time requested, and once completed, the amount of release time actually used. The Form shall have a signature for proper supervisory approval as applicable under the Contract.

## **ARTICLE 8 MANAGEMENT RIGHTS**

### Section 8.1 - Management Rights and Responsibilities

To the extent provided by law, the City retains the exclusive right and authority to administer the business of the City of Westerville, and other functions and responsibilities which are required by law, and the full right and responsibility to direct the operations of the department, to promulgate rules and regulations and to otherwise exercise the prerogatives of management, which more particularly include but are not limited to the following:

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

### Section 8.2 - Matters Bargained and Not Bargained

The exercises of the foregoing powers, rights, authority, duties and responsibilities, the adoption of reasonable policies, rules and regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the express terms of this Contract. In the event the City takes action on a subject which is a mandatory subject of bargaining, the Labor Relations Committee shall be notified and shall have the right to discuss such action first with the Chief and, if

not satisfied, with the City Manager or designee.

### Section 8.3 - Promotions

The Chief of Police will follow promotional guidelines as outlined in the Division's general orders and in this Agreement for Members seeking promotion to the rank of Sergeant and Lieutenant.

### Section 8.4 - Voluntary Demotions

If a Member no longer wishes to serve as a supervisor, the Member may voluntarily request a demotion to a lower rank. The City will make all reasonable efforts to accommodate all such requests. Voluntary demotions are not to be viewed or recorded as any type of discipline. A Member taking a voluntary demotion will retain all seniority previously attained while working as a sworn full-time officer in the Police Division, and as defined in Section 16.2.

## **ARTICLE 9 NO STRIKE/NO LOCKOUT**

### Section 9.1 - No Strike

The Lodge recognizes that Members are prohibited by State Law from engaging in a strike. In recognition of this prohibition, the Lodge shall meet any obligation imposed upon it by the State law.

### Section 9.2 - No Lockout

The City recognizes that it is prohibited from instituting a lockout of Members. The City shall meet any obligation imposed upon it by State law.

## **ARTICLE 10 INTERNAL REVIEW PROCESS**

### Section 10.1 - Internal Investigations

- A. The parties recognize that the City has the right to expect that professional standards of conduct will be adhered to by all Members of the Police Division regardless of rank or assignment. Since internal investigations may be undertaken to inquire into complaints of misconduct by Police Division Members, the City reserves the right to conduct such investigations to uncover the facts while protecting the rights and dignity of accused personnel.
- B. At the time any bargaining Member is interviewed or interrogated within the chain of command and the investigator reasonably believes that departmental charges could result against the Member, that Member shall have the right to be represented by a Lodge Representative or attorney. The Lodge Representative or attorney will have no right to interfere with the interviewing; however, they may

consult with the Member, raise brief objections on the record and may provide a brief concluding statement. The Member shall be notified in writing of the specific nature of the investigation and the scheduled time of the Member's interview at least 72 hours before any interrogation. During this 72 hour period, the Member may obtain one of the aforementioned representatives. Requests for reasonable extensions to obtain one of the aforementioned representatives will not be unreasonably denied. The Members shall be given access to, and/or copies of, all documents and records in the possession of the City that comprise the current IA file or investigation file under review. A Member's failure to timely request these documents and records shall not be used to delay a scheduled interview.

- C. A Member who is to be questioned as a suspect in an investigation that may lead to criminal charges against him shall be advised of his Constitutional rights in accordance with law.
- D. When a Member is to be interviewed as a witness, they shall be entitled to have a Lodge Representative or attorney present. The Member will have no less than twenty-four (24) hours but no more than seventy-two (72) hours to obtain one of the aforementioned representatives.
- E. The City shall attempt to do any interrogating, questioning, or interviewing of a Member at hours reasonably related to his shift, preferably during his work hours. Interrogation sessions shall be for reasonable periods of time. Time shall be allowed during such questioning to attend to any normal physical necessities.
- F. Any interrogation or interview of Members shall be tape recorded by the department at the request of either party. The Member and/or his representative will be afforded the opportunity, upon written notice directly to the Chief of Police or designee, to listen to, copy and/or make personal notes of a tape made of his interview. If a transcript of the tape is made by the department, the Member will be provided a copy of such transcript. Any tape recorded conversation will take place with the recorder in plain view, and with notice to the Member that the conversation is being recorded.
- G. Before a Member may be charged with insubordination or like offense for refusing to answer questions or participate in an investigation, he shall be advised that such conduct, if continued, may be made the basis for such a charge.
- H. Any evidence obtained in the course of an internal review through the use of threats shall not be admissible in any subsequent criminal action or departmental hearing. However, explaining to a Member that potential corrective action could result if the Member continues to refuse to answer questions or participate in an investigation shall not be construed as a threat.
- I. In the course of an internal review, Members may not be given a truth detection examination, regardless of whether they are within the primary focus of the investigation or a known witness to the incident.
- J. When an anonymous complaint or a second or third party complaint is made

against a Member and no corroborative evidence is obtained the complaint shall not be used for any disciplinary purpose and shall only be retained consistent with the record retention policies of the City. This does not preclude constructive discussion between a Member and his/her supervisor or the Chief. However, the City may maintain a log of all citizen complaints. This log shall only include the date of the alleged incident, a brief description of the incident and the findings of the investigation.

- K. Any anonymous or second party complaint that is not made within sixty (60) calendar days from the date of the alleged incident shall not be continued unless corroborative evidence is obtained or the complaint could lead to criminal prosecution. If the complaint does not lead to corroborative evidence or criminal prosecution, the findings of the investigation shall not be used for departmental discipline, or any administrative process. This does not preclude constructive discussion between a Member and his/her supervisor or the Chief.
- L. Any Member who has been under internal investigation shall be informed of the status or outcome of the case no longer than thirty (30) calendar days after the Member has received the official written notice of the investigation. If, after thirty (30) calendar days, the investigation is not concluded at that time the Member may inquire to the Chief or Deputy Chief in writing (including e-mail) in thirty (30) day intervals as to the status of the investigation and shall be notified by the Chief or Deputy Chief in writing (including e-mail) of the status of the investigation within three (3) days of the inquiry.

## **ARTICLE 11 CORRECTIVE ACTION AND RECORDS**

### Section 11.1 - Corrective Action for Cause

No Member shall be reduced in pay or position, suspended, removed, or reprimanded, except for just cause.

### Section 11.2 - Progressive Corrective Action

The principles of progressive corrective action will be uniformly followed with respect to minor infractions, as determined by the Chief. The progression may include a written reprimand and a suspension for the same or related offenses prior to dismissal. The City may deviate from this progression for serious job related misconduct or for any serious criminal misconduct.

### Section 11.3 - Disciplinary Process

- A. During the Division's disciplinary review process, the Chief of Police may, depending upon the severity of charges, place the Member on a paid administrative leave or reassign the Member. Whenever the Member is reassigned or placed upon such a paid administrative leave, the Chief shall provide to the Member, in writing:



1. The specific allegations against the Member;
  2. A brief listing of the evidence.
- B. For allegations that could result in suspension, demotion, or termination, regardless of whether the Member has been reassigned or placed upon paid administrative leave, prior to the imposition of any discipline a Member shall be afforded the opportunity for a hearing before the Chief or designee. This hearing shall be held within thirty (30) days after the investigation of the member has been completed and submitted to the Chief. The Member shall receive, at least three (3) days prior to the date of the hearing, written notice of (1) the date, time and place of the hearing, and (2) the specific allegations against the Member which will be considered at the hearing.
- C. If requested, at least seventy-two (72) hours before the hearing with the Chief, the Member shall be given access to, and/or copies of, all documents and records in the possession of the City that comprise the current IA file or investigation file under review. At the hearing with the Chief or designee the Member shall have right to counsel and/or FOP representative but no right to call witnesses or cross-examine. The hearing may be recorded by either party with forty-eight (48) hours prior notice to the other party, and the Chief or designee shall again present the allegations being made against the Member and ask the Member to respond.
- D. Within 14 days of the hearing, the Chief shall decide what discipline, if any, is appropriate and notify the Member in writing of the same. A recommendation of demotion or termination shall be forwarded to the City Manager with a copy provided to the Member. Nothing shall preclude the Chief from continuing any investigation after the hearing with the Member. Any suspension imposed by the Chief will not take effect until any grievance filed by the Member is processed through Step 4 of the grievance procedure (the City Manager Step), but shall take effect before any appeal to arbitration.
- E. The City Manager, upon receiving a recommendation for demotion or termination of a Member from the Police Chief, shall conduct a hearing within 14 days from receipt of the Police Chief's recommendation. The City Manager shall appoint a hearing officer to conduct the hearing, to fully investigate the allegations and to provide a written report for the City Manager and the Member. If requested, at least seventy-two (72) hours before the hearing, the Member shall be given access to, and/or copies of, all documents and records in the possession of the City that comprise the current IA file or investigation file under review. At the hearing the Member shall have the right to counsel and/or a FOP representative and the right to call witnesses, but no right to call adverse witnesses or cross examine. The hearing may be recorded by either party with 48 hours prior notice to the other party. The City Manager shall render a decision within seven (7) days from the date of the final report.
- F. The City Manager, during the hearing process, shall continue any reassignment of the Member, or the paid administrative leave status of the Member if applicable. If the Member, for any reason, requests continuances beyond the

time frame outlined, the Member must then use vacation leave, personal leave, holiday leave, or comp time in lieu of paid administrative leave. The City may extend administrative leave if it is unable to complete the disciplinary process within the prescribed time frames.

#### Section 11.4 - Appeal from Disciplinary Decision

A Member may appeal a disciplinary decision made by the Chief directly to Step Four (City Manager) without resort to Steps One through Three in the grievance procedure set forth in Section 5.4. Such appeal must be made by the grievant within seven (7) calendar days of the grievant's receipt of the disciplinary decision of the Chief. A Member may appeal a disciplinary decision made by the City Manager directly to arbitration without resort to the steps in the grievance procedure set forth in Section 5.4. Such appeal must be made by the Lodge President within fourteen (14) calendar days of the Member's receipt of the disciplinary decision of the City Manager. In order to invoke the arbitration process, the appeal must be postmarked or hand-delivered to the City Manager within the fourteen (14) calendar day period.

#### Section 11.5 - Duration of Records

All actions of record, including counseling forms, written reprimands, demotions, suspensions, or dismissal, will be maintained in each Member's personnel file throughout his period of employment. The following retention schedule shall apply:

- A. Counseling forms will remain in an employee's file until his next performance review.
- B. Written reprimands will be removed upon a Member's request, from the file and will no longer be used for any purpose provided that no further discipline of the same or similar nature is imposed within two (2) years of the reprimand.
- C. For any suspension or demotion, the action of record shall be removed upon a Member's request, six (6) years after such was given provided that no further discipline resulting in a suspension or demotion has occurred. In any case when a suspension, reduction in pay or position, or dismissal is disaffirmed through the Grievance Procedure, or by the Personnel Review Board, or by a court of competent jurisdiction, the personnel record shall clearly indicate such disaffirmance.
- D. Copies of commendations, letters of appreciation and like matters concerning an individual Member shall also be maintained in his personnel file.

#### Section 11.6 - Review of Personnel Files

Files are maintained by the Chief of Police and the City Manager for each Member. For the purpose of promotions and discipline, the City Manager's file shall be considered the official City Personnel File. All requests to see the City Personnel File shall be made to the City Manager's office.

A Member will have the ability to simultaneously request to review both the Division and Personnel Files at the time of the Member's annual evaluation. Every Member shall be allowed to review and copy any of his or her Personnel File at any reasonable time upon written request permitted by law. A Member may also authorize his or her Lodge Representative or Lodge attorney to review the Personnel File.

If a request is made to inspect and/or copy records within the Member's Personnel File pursuant to Section 149.43 of the Ohio Revised Code, the City shall first provide written courtesy notification to the Member of the nature of the request. Notification shall be provided to the Member and a Lodge representative or Lodge attorney at least forty-eight (48) hours prior to the City's intended compliance with the request and one of the notified parties will provide written acknowledgement (which may be via email) of such notification. Within that period, the Member shall have the opportunity to take any one or more of the following actions:

- A. Insure that any material within the Member's personnel file which is subject to removal from the file under any provision of this Contract or by any other applicable law is removed prior to the City's compliance with the request;
- B. Protest the City's intended compliance with the request by filing a written letter of protest with the City Manager, which letter of protest shall be considered if received within forty-eight (48) hours of the request;
- C. Pursue any available remedy;
- D. A Member's Social Security Number and any other personal or family information, as provided by State law, shall be redacted from a Member's personnel file.

#### Section 11.7 - Inaccurate Documents

Should a Member have reason to believe there are improper or inappropriate documents in his file, the Member may notify the Chief of Police in writing of the alleged improper or inappropriate information. The Member shall have the right to submit a written statement detailing his objections to the materials in question.

#### Section 11.8 - Performance Evaluations

Any performance evaluation will be reviewed by the Member. The Member will be able to make written comments on or attached to the evaluation form. These comments will pertain to the evaluation and those comments will be maintained in any file in which the City uses for a performance evaluation.

If a Member disagrees with his performance evaluation, it will automatically be forwarded for review by the Chief. A hearing will be conducted within fourteen (14) working days with the Chief.

If, after the Chief's review, a Member still disagrees with his performance evaluation, it will automatically be forwarded for review to the City Manager or his/her designee. A

hearing will be conducted within fourteen (14) working days with the City Manager or his/her designee. There shall be no appeal to the decision of the City Manager or his/her designee.

Section 11.9 - Member Counseling

For minor infractions, a Member may be issued a counseling form as a training tool in lieu of progressive corrective action. Such counseling shall be recorded on a counseling form and shared with the Member.

Section 11.10 - Placement of Material in Personnel File

No document shall be placed in a Member's personnel file, which does not include as a part of its normal distribution a copy to the Member. Anonymous material shall never be placed in a Member's personnel file.

**ARTICLE 12  
WORK RULES AND DIRECTIVES**

Section 12.1 - New Work Rules

The City agrees that new or amended written departmental policies adopted after the effective date of this Contract shall be reduced to writing, provided to all Members in advance of its enforcement, and also discussed with the labor relations committee except in emergency situations.

Section 12.2 - Effect of Work Rules

Any charge by a Member that a work rule is in violation of this Contract shall be the proper subject of a grievance, as is a charge that a work rule had not been applied or interpreted uniformly to all affected Members. No Member shall be disciplined for an alleged violation of a work rule, which has not been promulgated as set forth in Section 12.1 of the Article.

The Westerville Division of Police will provide accurate rules for the Department. Work rules will remain in effect until formally revised. Any memos used to modify a policy will be good for a period of 90 days from the date of the memo, unless it is formally placed into a work rule as a revision.

**ARTICLE 13  
LABOR RELATIONS MEETINGS**

Section 13.1 - Informal Discussions

The City and the Lodge recognize the benefit of an exchange of ideas and information. For this reason the Chief welcomes the designated Lodge representatives to meet with him and informally discuss matters of mutual interest and concern to the Lodge and City. Permission to meet with the Chief will not be unreasonably withheld and shall not

require addressing the chain of command.

### Section 13.2 - Labor Relations Meetings

In the interest of sound labor/management relations, labor relations meetings may be held at least four (4) times each calendar year and when requested by either party. Such meetings shall be held on a mutually agreeable day and time. The purpose of such meetings is to discuss pending issues and/or problems and promote a more harmonious labor/management relationship.

Either the City or the Lodge may ask that a special separate labor relations meeting be held limited to attendance of the Lodge representative and Committee representatives who are only Members of either (a) the first Bargaining Unit covered by this Contract (an "Officers Labor Relations Meeting"), or (b) the second Bargaining Unit covered by this Contract (a "Supervisors Labor Relations Meeting"); upon discussion of the need for the special meeting, such request will not be unreasonably denied.

### Section 13.3 - Authority

Labor relations meetings shall not be collective bargaining negotiations. The Labor Relations Committee shall have no authority to collectively bargain for either party or to modify, add to or delete from the provisions of this Contract. Unless the parties mutually agree in advance, no issue which is the subject of a formal grievance will be discussed or decided in this forum; however, circumstances in the Division which could, if not addressed, give rise to grievances are proper subjects of discussion.

### Section 13.4 - Members

The City's Labor Relations Committee shall consist of the City Manager or his/her designee, the Chief of Police and not more than three other Members of management. For the Lodge, the Committee shall consist of the Contract Negotiation Committee and the Grievance Chairpersons, and one non-Member from the Lodge. Upon mutual agreement, non-participants may be included in meetings if they are thought to have information or resources which could be helpful. For the purpose of labor relations with the City, Members on duty will be permitted to attend labor relations meetings in an on-duty status. Members not regularly scheduled for duty will be compensated with release time to be used with approval of the Member's supervisor and an Assistant Police Chief at a time mutually agreeable. In no case shall this time result in overtime. Release time shall be requested and recorded in accordance with Section 7.5 of this Agreement.

## **ARTICLE 14 LAYOFFS/JOB ABOLISHMENT**

### Section 14.1 - Action

When the City determines that a layoff or job abolishment is necessary, the City shall notify the affected Members twenty eight (28) days in advance of the layoff or job abolishment. The least senior Member in point of service shall be first laid off and any

layoffs thereafter shall be in reverse seniority. The City agrees to discuss with the Lodge the impact of the layoff or job abolishments on Members prior to the City's notification to the affected Members, provided the City retains the right to determine all aspects of the layoff except as otherwise set forth in this Article.

#### Section 14.2 - Recall and Reinstatement

When Members are laid off the City shall create a recall list. The City shall recall Members from layoff as needed. The recall shall be according to seniority beginning with the most senior Member and progressing to the least senior Member. A Member shall be eligible for recall for a period of two (2) years after the effective date of the layoff.

Notice of recall from a layoff shall be sent to the Members by certified mail with copies to the Lodge. The mailing shall be to the last mailing address provided by the Member and the Member has an obligation to keep the City advised of his current mailing address.

The recalled Members shall have fourteen (14) calendar days following the receipt of the recall notice to notify the City of his intention to return to work and shall have fourteen (14) calendar days following the receipt of the recall notice in which to report to duty, unless a different date is otherwise specified.

## **ARTICLE 15 PROMOTIONS**

#### Section 15.1 - Promotions

This Article applies to promotional testing for Members seeking promotion to the rank of Sergeant and Lieutenant. The goal of the promotional process is to select the most qualified candidate in a valid and equitable manner.

#### Section 15.2 - Announcing Promotional Opportunities

If the City determines that it will make a promotion, a general written announcement concerning promotional opportunity(s) will be distributed within the City's email system, which includes:

1. A description of the positions or job classifications for which vacancies exist.
2. A schedule of dates, times, and locations of all elements of the process.
3. A description of eligibility requirements.
4. A description of the process to be used in selecting personnel for vacancies.
5. Necessary skills, knowledge, and abilities successful candidates would possess.

#### Section 15.3 - Development of an Eligibility List

To be eligible for a promotional exam, all candidates must meet the requirements of the

position. A high-to-low score eligibility list of those with qualifying scores will be established. Whenever identical scores are achieved, the more senior officer shall be ranked in front of those less senior. To qualify for the position of Sergeant, the candidate must not be currently serving a probationary period.

#### Section 15.4 - Eligibility List

If the City determines that it will make a promotion, the “Rule of Three” will be used to select a Member from the eligibility list. The City Manager, in consultation with the Chief, ultimately determines the minimum length an eligibility list remains active from the date of certification. Generally, the term an eligibility list remains active is not less than one (1) nor more than two (2) years.

Once a selection is made by the Chief using the Rule of Three, the Chief shall provide the recommendation of a candidate for promotion to the City Manager. The City Manager possesses the ultimate decision-making authority regarding the promotional process and appointments.

#### Section 15.5 - The Promotional Process

Any written or other test will relate to job responsibilities, behaviors, and duties likely to be assumed by the successful candidate upon promotion. During the promotional process, the City may seek input from the chain-of-command.

#### Section 15.6 – Promotional Probationary Period

Newly promoted officers will serve a 365-day probationary period beginning on the day of appointment. The probationary period will be used to closely observe and evaluate the employee’s performance and aptitude for the job. The City Manager or designee may extend the probationary period up to 180 days when the employee’s fitness for the position and/or quality of work is considered marginal. A Member may be reduced to their previous rank, without any loss of seniority in that rank, and to the same or similar classification held prior to the promotion by the City Manager at any time during the promotional probationary period, without appeal.

## **ARTICLE 16 MISCELLANEOUS NON ECONOMIC**

#### Section 16.1 - Mail

Mail which is addressed to a Member shall not be opened by anyone other than the Member to whom it is addressed, unless the Member has specifically provided written authorization to the contrary or it is reasonable to assume that the contents of the mail may relate to a work-related court appearance or deposition. If someone other than the Member to whom the mail is addressed opens the mail, they will sign their name, date and time on the outermost piece of that mail. Mail that is not work related shall not be sent to a Member at any public facility operated by the City. Members will not be responsible for any non-work related mail that they did not initiate.

### Section 16.2 - Seniority

Seniority will be based on time served with the Westerville Division of Police as a full-time sworn officer.

Time in grade will be determined from the time of appointment or time of promotion to any rank or position while working in a full-time paid status. Time in grade will be used for the purpose of vacation scheduling, shift bidding or any current practice based on seniority.

### Section 16.3 - Communicable Disease Testing

The City will pay for any testing for Bargaining Unit Members who may have been exposed to communicable diseases while in the performance of their duties.

### Section 16.4 - Health and Safety

It is agreed that safety is a prime concern and responsibility of the City, the Members, and the Lodge. In this regard:

- A. The City agrees to provide safe working conditions and equipment for Members.
- B. The Member accepts the responsibility to follow all safety rules and safe working methods of the City. All unsafe working conditions shall be reported by the Member to his supervisor as soon as any unsafe working condition is known.
- C. The City and the Lodge shall consider and discuss safety and health related matters and explore ideas for improving safety at the Labor Relations Committee meetings.

### Section 16.5 - Duty Weapon upon Retirement

Sworn officers who retire from the Westerville Division of Police with a minimum of 15 years' service credit, or a permanent disability, will be presented with (a) \$20 for each year of service to the City which may be used towards any of the following (up to the dollar limits set forth herein): a retirement party, the purchase of a ring, a watch, other retirement memorabilia, or a gift card to a retailer, and (b) their badge and service firearm for \$1.00. The retirement gift shall be subject to the Chief's approval, which shall not be unreasonably withheld.

### Section 16.6 – Probationary Period

For initial new hires, Members shall serve a twelve (12) month probationary period from their hire date unless the Member has been initially assigned to a training academy and/or field training program. Members so assigned shall have their probationary period extended twelve (12) months from the successful completion of the training academy and/or field training program, whichever is longer. Any Member off work on an approved leave longer than a thirty (30) day period shall have their probationary



period extended for the same time period they are away from work.

## **ARTICLE 17 SUBSTANCE ABUSE AND TESTING**

### Section 17.1 - Purpose

The City and the Lodge recognize that the ability of a Member to properly perform his or her duties depends, in part, on a workplace, which is free of substance abuse. The City and the Lodge shall work to promote such a workplace and to provide Members who may be drug or alcohol dependent with an opportunity for treatment and to remain productive Members of the Division of Police. It is the purpose of this article to provide a method for responding to the risks presented by the possible presence of substance abuse in the workplace by:

- A. Dealing with incidents of substance abuse which reasonably present a risk to Members, the general public, or other employees of the City;
- B. Providing assistance to Members with drug or alcohol dependency problems;
- C. Providing for the necessary corrective actions or discipline.
- D. Providing a policy in an effort to focus upon the rehabilitation goals of this substance abuse Article. This policy shall provide Members with the opportunity to enter and complete a rehabilitation program consistent with all sections of this Article.

Nothing in this Contract shall limit the right of the City to conduct any substance abuse tests it may deem appropriate for persons seeking employment prior to their date of hire. The parties agree that the Lodge has no role or responsibility with regard to any such pre-employment testing.

### Section 17.2 - Responsibility

Although it is the responsibility of every Member to be alert to potential incidents of substance abuse in the workplace, it is the primary responsibility of supervisors to initially respond to such incidents, particularly where circumstances are reasonably believed to pose a risk to the public safety. Supervisors shall take such action, not inconsistent with this article, as they deem appropriate to eliminate immediate risks associated with any incident of potential substance abuse.

### Section 17.3 - Definitions

The following definitions shall govern this article:

- A. "Under the Influence" means that the Member is using illegal drugs or misusing alcohol or legally prescribed drugs or the combination of any illegal drug, misused drug and/or alcohol.

- B. "Legal Drug" means prescribed drugs or over-the-counter drugs which have been legally obtained for the user and are used for the purpose for which they were prescribed and manufactured.
- C. "Illegal Drug" means any drug (1) which is not legally obtainable, or (2) which is legally obtainable but has not been legally obtained; and prescribed drugs not being used for prescribed purposes.
- D. "Reasonable Belief" is an articulated belief that a Member is using illegal drugs or misusing drugs or alcohol. This belief must be drawn from specific and particularized objective behavior and conduct exhibited by the Member and reasonable inferences there from. Reasonable belief may be based upon a Member's slurred speech, odor, disorientation, abnormal appearance, conduct or behavior, or other observable cause.
- E. "Supervisor" means a sworn supervisor of a higher rank. For purposes of this article, an "Officer in Charge" shall be treated as holding the rank of Sergeant.

#### Section 17.4 - Prohibited Conduct

For purposes of this Article, and in addition to the provision of any criminal law, a Member shall not, while performing his or her duties for the City, or while in a City facility or vehicle, or while in uniform:

- A. Report to duty, remain on duty, or perform his/her duties under the influence of alcohol or be under the influence of alcohol;
- B. Report to duty, remain on duty, or perform his/her duties while being under the influence of any illegal drug or be under the influence of any illegal drug, or while using any legal drug be impaired to the point that he or she cannot satisfactorily perform his or her assigned duties;
- C. Unlawfully use, sell, purchase, transfer or possess alcohol or an illegal drug;
- D. Fail to report immediately to their supervisor any duty-related restrictions imposed as a result of prescription or over-the-counter medications; or
- E. Consume or possess alcohol at any time while on duty or anywhere on City premises, except when authorized in the line of duty as designated by the General Orders.

Adulterating, attempting to adulterate, refusing to test or attempting to defraud a test will subject a Member to discharge.

#### Section 17.5 - Reasonable Belief Testing

- A. A Member shall be tested for alcohol or illegal drug use where a sworn supervisor has reasonable belief that the Member has violated any provision of Section 17.4, Prohibited Conduct, above. Such testing may also occur where a

supervisor has such reasonable belief arising out of a significant work-related traffic accident. Where a Member has been ordered to undergo reasonable belief testing, he or she shall be placed on paid administrative leave pending receipt of the test results. If the test results are negative, the Member shall be returned to assigned duties.

Prior to testing, the Member shall be advised of the reasons for the order requiring the test, and the basis for any "reasonable belief" shall be articulated. A Member's refusal or failure, when ordered, to timely submit to testing permitted under this article may subject a Member to discipline, including discharge. By taking a test, a Member does not waive any objection or challenge he or she may possess. Within forty-eight (48) hours after the time the Member is ordered to submit to a test, the City shall provide the Member with a written notice setting forth the information and observations, which form the basis of the order.

- B. Upon determining that a Member must submit to a reasonable belief test for alcohol or illegal drug usage, the supervisor shall give the Member the opportunity, prior to the test, to request the presence of, or to seek the advice from a Lodge representative. The Member and the Lodge representative, if available, shall be given an opportunity to communicate any information or other explanation relevant to the circumstances to the supervisor. The supervisor shall then determine, after considering all of the circumstances, whether the test shall be administered. If the supervisor determines that a test shall be given, testing shall be made immediately after discussion with the Member and the Lodge representative, if available, but no more than one hundred and twenty (120) minutes after the reasonable belief determination has been made, whichever is sooner. The Lodge representative, if available, may accompany the Member to and be present with the Member at the collection agency. Should a Lodge representative not be readily available and the supervisor believes time is critical in determining whether the Member is impaired, the supervisor may direct the Member to submit to testing immediately.

A Member who is subject to testing shall be placed on paid administrative leave pending completion of the testing process.

The fact that a Member may have been taking a legal drug shall not preclude the administration of a drug test if the supervisor has reasonable belief to believe that the Member's satisfactory work performance has been adversely affected by the presence of such a legal drug; provided, however, that the ultimate disposition of the matter shall take such fact into consideration.

#### Section 17.6 - Random Testing

Members shall be subject to random drug and alcohol testing. Testing will be done on a quarterly basis by an independent lab contracted by the City. The City will be responsible for providing the lab with current Member rosters on a quarterly basis prior to testing. The random testing selection method will be scientifically valid, for example a random number table or a computer based random number generation matched by a Member's Social Security number, payroll I.D. number, or other comparable identifying

numbers.

- A. The annual number of random tests performed shall total 10% of the total number of Members covered by this Contract. The 10% number shall be rounded upward as needed to determine the total tests to be performed.
- B. Members notified of their selection for random testing shall proceed immediately to the designated collection agency. Members who are on leave, vacation, or already absent from work at the time of their selection will be excused, but remain in all future testing pools. Any refusal when ordered to promptly submit to random testing shall subject the Member to disciplinary action up to and including discharge.

#### Section 17.7 - Collection Agency/Laboratory

- A. The testing agency performing under this Article shall be certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Program."
- B. The City and the testing agency shall have a clear and well-documented procedure for collection, shipment, and assessment of testing samples, which procedure shall be provided in writing to the Member subject to testing and, upon request, to the Lodge representative.
- C. For drug testing, the City and the testing agency shall follow the procedures set forth in 49 CFR Part 40, including an evidentiary chain of custody and control and split sample collection and testing. The testing agency is responsible for maintaining the integrity of any specimen collection and transfer. Alcohol breath testing shall be conducted at the collection agency and shall be conducted by a technician trained in such testing. Appropriate records of such testing shall be maintained by the collection agency for review by the Member and/or Lodge representative. The breath-testing device shall meet standards commonly used.
- D. The City shall pay all costs associated with testing, except that any cost for testing of a split sample is the responsibility of the Member.
- E. The City and the Lodge agree to follow the most current procedures for drug testing under 49 CFR Part 40. This Article does not need to be altered or amended if 49 CFR Part 40 is amended.

#### Section 17.8 - Testing Procedure

- A. For alcohol testing, the Member shall be first given a breath test followed by a confirmatory urine test only where the breath test reveals an initial positive alcohol level of .04 grams per 210 L. of breath or greater. If the initial breath test results are below this level, testing shall be discontinued; if confirmatory urine tests results are below a level equivalent to .04 grams to 210 L. of breath, the confirmatory test shall be considered negative. The breath test shall be performed at the collection agency. A supervisor may be present during the breath test at the City's option; the Member may also have a Lodge representative or co-worker present during the breath test.

The breath test may only be performed by a certified operator. If the results of the confirmatory urine test results are equal to or greater than a level equivalent to .04 grams per 210 L. of breath, rehabilitative or disciplinary action shall be taken.

- B. For drug testing, urine samples shall be provided by the Member without any chemical alteration. Such chemical alteration without authorized medical documentation will result in a positive test. Members refusing to provide an adequate specimen by leaving the workplace after they have been given notification to test shall be treated as having a positive test result.
- C. Individual privacy shall be afforded to a Member in the collection of urine samples, provided that the collection agency may impose stringent specimen alteration and/or substitution procedures.
- D. With regard to drug testing, where the Member provides a sufficient urine sample at the time of the original sample collection, this sample shall be split and placed in two (2) separate containers at the collection agency. In the presence of the Member at the testing site, and without ever leaving his or her sight, each urine sample taken shall be placed in two sterile screw-capped, self-sealed, tamper-resistant urine collection containers, which shall be each sealed and labeled and then initialed by the Member. The samples shall be sent, by the most expedient means available, to the testing laboratory as soon as practicable on the date of the test. The sample within the second container shall be stored at the test collection agency or certified laboratory.

The laboratory shall commence testing of the sample within the first container only if the sample is received in an undamaged condition, properly sealed and labeled, and properly initialed by the Member. The certified laboratory shall first conduct an initial screening of this sample. If the test results from the screening are negative the Chief will be so advised and the testing procedure will be concluded. If illegal drugs or alcohol are found in the sample as a result of the screening, then that sample shall be submitted for confirmatory testing. The initial screening shall be accomplished by means of Thin Layer Chromatography (TLC) or equally reliable testing methods and the confirmatory test shall be accomplished by means of Gas Chromatography/Mass Spectrometry (GS/MS). If the test results from the confirmatory test are negative, the City will be so advised and the testing procedure will be concluded. If, as a result of the initial screening and confirmatory test, the test result is positive, the Member will be contacted directly by a Medial Review Officer (M.R.O.) who has been assigned by the testing agency. The Member will be given the opportunity to explain to the M.R.O. any possible reasons for a positive test result. Should the Member offer an explanation that in the judgment of the M.R.O. sufficiently explains the positive test result, the M.R.O. will consider the results as negative and the City will be so advised and the testing procedure will be concluded.

- E. With regard to drug tests, if the test results are positive, and the Member has not offered an explanation to the M.R.O. sufficient to cause the M.R.O. to consider the results negative, the Assistant City Manager shall be notified and the Assistant City Manager shall in turn contact the Member and the Chief. The City will provide

Members who test positive for drugs with an opportunity to have the split urine specimen tested by a clinical laboratory or hospital facility of the Member's choosing, at the Member's own expense, providing the Member notifies the City within seventy-two (72) hours of receiving the positive results and provided further that the laboratory or clinic and the testing procedures, including chain of custody, meets or exceeds the standards established in this Contract. If the Member does not request the testing of the sample within the second container after the sample within the first container tests positive, or if the Member requests the testing of the sample within the second container, and it also tests positive for an illegal drug or alcohol levels in excess of those defined in Section 17.10, rehabilitative and/or disciplinary action shall be taken.

- F. The City shall provide each Member tested with a copy of all of their own information and reports from the collection agency and laboratory in connection with the testing and results upon request.

#### Section 17.9 - Voluntary Request for Assistance

A Member may voluntarily enter treatment without a requirement of prior testing. A Member who voluntarily seeks assistance for a substance abuse problem before being required to submit to a reasonable belief test may be tested pursuant to Section 17.5, but shall not be subject to discipline if the Member successfully completes the recommended course of treatment if required by the counseling agency or physician and always shall be required to comply with Section 17.11. A Member who has requested assistance prior to a requirement for testing shall be placed on paid leave of the Member's choosing pending completion of the prescribed course of treatment if required by the substance abuse professional. If paid leave is exhausted, the City shall grant an unpaid leave of absence or family medical leave pending completion of the prescribed course of treatment.

#### Section 17.10 - Disciplinary Action

Members who have violated this Article shall be subject to discipline up to and including discharge. The City may also offer or refer a Member to treatment along with discipline.

A Member who tests positive for the first time for alcohol and who cooperates in fulfilling the obligations set forth in Section 17.11 below may be disciplined up to a written reprimand. A Member who tests positive for alcohol for a second time may be suspended. The length of such suspension shall be determined on a case-by-case basis, but shall not exceed three (3) days, not to exceed twenty-four (24) duty hours. The limitation on discipline shall not limit the City in imposing discipline up to and including termination for gross misconduct, which may be coincident with a Member's improper alcohol use.

#### Section 17.11 - Referral to Treatment

Where the Member seeks under Section 17.9 or is otherwise offered or referred to the option for treatment herein, the Member must:

- A. Agree to cooperate in and successfully complete appropriate treatment as determined by the substance abuse professional(s) or physician(s) involved;
- B. Discontinue and not resume at any point the use of illegal drugs or abuse of legal drugs or alcohol;
- C. Agree to authorize persons involved in counseling, diagnosis and treating the Member to disclose to the City the Member's progress, cooperation, drug and alcohol use, completion or non-completion of counseling and treatment, and any threat to property or safety perceived in connection with the Member's performance of his or her job duties;
- D. Complete any course of counseling or treatment prescribed, including an "after care" group for a period of up to twelve (12) months;
- E. Agree to submit to follow-up testing during treatment and agree to submit to follow-up testing, at times determined by the City, up to eight (8) times in a twenty-four (24) month period for violations involving illegal drugs or the misuse of legal drugs, and up to four (4) times in a twelve (12) month period for violations involving alcohol (said 24 or 12 month period beginning after the Member's completion of counseling, treatment and/or aftercare); and
- F. Agree that during or after this follow-up testing period in (E) above, if the Member tests positive again or otherwise violates this Article, the Member may be properly terminated.

Members who do not agree to act or who do not act in accordance with the foregoing shall be subject to discipline, up to and including discharge.

#### Section 17.12 - Right of Appeal

The Member has the right to utilize the grievance and arbitration procedures set forth in Articles 5 and 6 of this Agreement if he or she wishes to challenge the results of the drug or alcohol tests and any discipline imposed. Any evidence concerning test results, which is obtained either in violation of the standards contained in this article or in violation of the procedures required by this Article, shall not be used to support disciplinary action involving the Member. Minor violations that do not affect the integrity or reliability of the testing process shall not invalidate the testing results.

#### Section 17.13 - Treatment Costs

Treatment costs arising out of the Member's use of such services shall be paid for by the Member's insurance program, subject to any deductible, co-payment and coverage limits under the Member's insurance program. Except for any period of time during which a Member is serving a disciplinary suspension, Members will be allowed to use any paid leave (including vacation, sick leave or holiday leave) or take an unpaid leave of absence for the necessary time off involved in a treatment program. Other than as specified in this Section or required by law, the City shall have no obligation to pay for or insure treatment or rehabilitation.

### Section 17.14 - Confidentiality

All testing and actions taken under or pursuant to the Article shall be kept confidential to the extent permitted by federal and state law, except where disclosure is warranted to comply with the provisions of this Agreement relative to disciplinary action taken against a Member.

### Section 17.15 - Other Laws

This Article is in no way intended to supersede or waive any rights that a Member may be entitled to under federal or state constitutions any applicable law. Any action taken pursuant to this Article shall not be used as evidence or otherwise in any criminal proceeding against a Member.

## **ARTICLE 18 RATES OF PAY/WAGES**

### Section 18.1 - Wages

The following straight time annual wage rates reflect a 1.5% increase and shall be effective on the first full pay period after ratification of the successor agreement for 2021.

<b>TITLE</b>	<b>PAY PERIOD</b>	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>
Police Officer						
	Hourly	\$30.18	\$35.63	\$38.84	\$42.74	\$47.40
	Annually	\$62,765.98	\$74,103.12	\$80,795.62	\$88,902.63	\$98,593.04
Sergeant						
	Hourly	\$50.24	\$53.08			
	Annually	\$104,504.40	\$110,415.76			
Lieutenant						
	Hourly	\$55.47	\$57.87			
	Annually	\$115,377.08	\$120,359.51			

In lieu of any retroactivity payments, a one-time non-pensionable lump sum ratification payment, not related to wages or hours of work, will be made for those members covered by this agreement and employed by the City on May 6, 2021 in the amount of \$600 per member, minus applicable withholdings. This lump sum payment shall not be calculated or considered in or with any overtime or other payments.

Also, a one-time non-pensionable lump sum contract bonus payment, not related to wages or hours of work, will be made for those members covered by this agreement



and employed by the City on January 1, 2021 in the amount of \$1,250 per member, minus applicable withholdings. This lump sum payment shall not be calculated or considered in or with any overtime or other payments.

There will be no “retroactive” payments under this contract.

The following straight time annual wage rates reflect a 3.0% increase and shall be effective January 1, 2022.

TITLE	PAY PERIOD	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
Police Officer						
	Hourly	\$31.08	\$36.70	\$40.01	\$44.02	\$48.82
	Annually	\$64,648.96	\$76,326.21	\$83,219.49	\$91,569.71	\$101,550.83
Sergeant						
	Hourly	\$51.75	\$54.68			
	Annually	\$107,639.53	\$113,728.23			
Lieutenant						
	Hourly	\$57.13	\$59.60			
	Annually	\$118,838.39	\$123,970.30			

The following straight time annual wage rates reflect a 3.0% increase and shall be effective January 1, 2023.

TITLE	PAY PERIOD	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
Police Officer						
	Hourly	\$32.01	\$37.80	\$41.21	\$45.34	\$50.29
	Annually	\$66,588.42	\$78,616.00	\$85,716.08	\$94,316.80	\$104,597.36
Sergeant						
	Hourly	\$53.30	\$56.32			
	Annually	\$110,868.72	\$117,140.08			
Lieutenant						
	Hourly	\$58.85	\$61.39			
	Annually	\$122,403.54	\$127,689.41			

Section 18.2 - Pay Plan Administration

The following shall apply to advancement from Step 1 to Step 5 in rank of Police Officer:

- A. Step 1 shall be a training rate and shall be the hiring rate except that the City

may start a new hire at a higher step if he/she is currently certified as having completed the Ohio Peace Officers Training Program and has 2 years minimum full-time sworn law enforcement experience with a public safety organization.

- B. A Member becomes eligible and shall be advanced by the Appointing Authority to Step 2 on the first day following satisfactory completion of six (6) months of continuous service in his/her class at Step 1.
- C. A Member becomes eligible and shall be advanced by the Appointing Authority to Step 3 on the first day following satisfactory completion of one (1) year of continuous service or after six (6) months if the Member started at Step 2.
- D. A Member becomes eligible and shall be advanced by the Appointing Authority to Step 4 on the first day following satisfactory completion of two (2) years of continuous service or after one (1) year if the Member originally started at Step 2.
- E. A Member becomes eligible and shall be advanced by the appointing authority to Step 5 on the first day following satisfactory completion of three (3) years of continuous service or after two (2) years if the Member originally started at Step 2.
- F. The salary Step advancements as prescribed in this Article shall be mandatory upon the Appointing Authority with regard to Bargaining Unit Members. However, a Member shall not have attained "satisfactory completion" of any Step if, during the relevant time period as prescribed in each respective Step, he or she is placed on a Performance Improvement Plan or receives a disciplinary suspension. If a Member fails to satisfactorily complete a Step, he or she shall remain in the Step for no more than one additional period in that Step.
- G. A Member promoted to Sergeant or Lieutenant shall be placed in Step 1 of the pay rate for the respective rank. A Member becomes eligible and shall be advanced by the appointing authority to Step 2 on the first day following satisfactory completion of the promotional probationary period for that rank.

### Section 18.3 - Method of Pay

All Members shall be paid biweekly.

### Section 18.4 - Application of Pay Rates

The rates of pay set forth in Section 18.1 are based on full-time employment of forty (40) hours in a workweek, eighty (80) hours in a biweekly period, and two thousand eighty (2,080) hours annually.

### Section 18.5 - Rank Differential

The wage rates set forth in this Article represent the following rank differential percentages for the following classifications:

<u>Ranks</u>	<u>Percentage</u>
Sergeant (Step 1)	6% above Police Officer (Step 5)
Sergeant (Step 2)	12% above Police Officer (Step 5)
Lieutenant (Step 1)	4.5% above Sergeant (Step 2)
Lieutenant (Step 2)	9% above Sergeant (Step 2)

## **ARTICLE 19 REGULAR WORK PERIODS AND OVERTIME**

### Section 19.1 - Definition

The workweek shall consist of forty (40) hours based on five (5) consecutive eight (8) hour workdays and two (2) consecutive days off. Workday is understood to mean the day on which the shift begins. "Paid Status" shall include work hours as well as all hours in paid status while on any approved leave, including holiday, vacation, injury, military, sick and bereavement leave.

### Section 19.2 - Overtime

All hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be compensated at the overtime rate of one and one-half (1½) times the Member's straight time hourly rate of pay, twice the Member's straight time hourly rate for hours worked on a Member's second day off. The second day off for 1<sup>st</sup> and 2<sup>nd</sup> shift shall begin at 12 a.m. on the Member's second day off and concludes at the end of the Member's actual second day off at 11:59 p.m. The second day off for 3<sup>rd</sup> shift shall begin at the Member's normal start time and continuing twenty-four (24) hours until the Member is regularly scheduled to return to work. (e.g., The second day off for a 2<sup>nd</sup> shift officer who has Saturday and Sunday off will begin at 12 a.m. on Sunday and end at 11:59 p.m. on Sunday. The second day off for a 3<sup>rd</sup> shift officer is the 24 hours immediately preceding the start time for his/her return to duty from his/her days off.) No Member shall be paid for overtime work, which has not been authorized by a supervisor.

Members shall be permitted to elect compensatory time off in lieu of cash payment for overtime hours in accordance with the provisions of Section 19.3.

Changes from/or to Daylight Savings will not result in overtime.

### Section 19.3 - Compensatory Time

Compensatory time shall be earned or granted to Members, at the election of the Member, in lieu of payment for overtime worked, and shall be earned at a rate consistent with this Article. The amount of compensatory time a Member may accrue is eighty (80) hours per year. Compensatory time is to be taken in a minimum of one (1) hour increments and shall be taken at times mutually convenient to the Member and the City. Members may elect to receive payment during the months of April, July, and October for compensatory time not yet used (to be paid during those months at times determined in advance by the City). Members will receive payment for compensatory

time not used by the end of the calendar year. Compensatory time cannot be carried over from one calendar year to the next calendar year.

#### Section 19.4 - Court Pay

In the case of City required court appearances during off duty hours, a minimum of three (3) hours overtime shall be paid at one and one-half ( $\frac{1}{2}$ ) times his regular pay. In the case of court occurring on a Member's second day off, or while on vacation, holiday, or personal leave the Member will be paid a minimum of three (3) hours at two (2) times his hourly rate of pay. The three (3) hour minimum pay will not apply in situations where the court time overlaps the beginning or ending of a scheduled work period. Actual time spent in excess of the work period will be used to calculate overtime in these cases. Members will not be placed on stand-by for court. Members do have an option of choosing to be on stand-by with the court, but this will be a nonpaid status. If a Member is scheduled for court on his regularly scheduled day off and his appearance becomes unnecessary, the City may cancel without penalty at least four (4) hours prior to his scheduled appearance. If the Member is canceled less than four (4) hours before the court time, he will be paid a minimum of three (3) hours.

#### Section 19.5 - Substitution (Trading) of Time

If a Member, with the approval of a supervisor, and solely at the Member's option, agrees to substitute during scheduled work hours for another Member, the hours the Member works as a substitute shall be excluded in the calculation of hours for which a Member is entitled to overtime. The department is permitted, but not required, to keep a record of the hours of substitute work.

#### Section 19.6 - Call in Pay

When a Member is ordered to report to work at a time which is not overlapping his regularly scheduled shift, he shall be paid for a minimum of three (3) hours pay at the rate of one and one-half ( $1\frac{1}{2}$ ) times the Member's straight time hourly rate of pay. When a Member is ordered to work on his second day off or on approved leave he shall be paid a minimum of three (3) hours at two (2) times the Members straight time hourly rate of pay. The three (3) hour minimum pay will not apply in situations where the call-out time overlaps the beginning or ending of a scheduled work period. Actual time spent in excess of the work period will be used to calculate overtime in these cases.

#### Section 19.7 - Variable Work Hours

Members may alter their daily work schedule under unusual circumstances with the approval of their immediate supervisors (flex time). If such a request is approved, the Member shall be compensated at his/her regular rate of pay for the first eight hours worked. Hours worked beyond eight hours will be compensated as overtime. Members who are required to report to work prior to their normal starting time may, with supervisory approval, leave after 8 hours of service (regular pay) or complete his/her regular shift (overtime pay for hours beyond 8 hrs.)

### Section 19.8 – Overtime Sign-up

Where overtime assignments are posted, these assignments shall be filled by seniority, provided that a more senior Member may not dislodge a less senior Member from an overtime assignment within forty-eight (48) hours prior to the start of the overtime assignment. A Member cannot withdraw his name from the overtime sign up within (48) hours prior to the assignment. If a Member is unable to work the assignment, it is the Member's responsibility to obtain a replacement.

## **ARTICLE 20 EQUIPMENT AND ALLOWANCE**

### Section 20.1 - Clothing Allowance

Each Member will receive \$1,000 to purchase the necessary uniform parts and equipment. Each Member shall receive this allowance per calendar year beginning January 1 to purchase the necessary uniform parts and equipment. Such payment and credit will be made in January of each year.

During the Member's first year of employment, such Member shall be entitled to the initial issue of uniforms provided by the Division of Police, and a prorated amount of the uniform allowance, based on the number of months of active duty during the year of hire.

A Member who is transferred from patrol duty to the Detective Bureau shall be entitled to an additional four hundred dollars (\$400.00) clothing allowance upon his initial transfer to the Detective Bureau.

### Section 20.2 - Dry Cleaning

The City will maintain dry cleaning with a private contractor for the maintenance and cleaning of uniforms and clothing used by the Division, to include suits, shirts, ties and outer clothing worn by detectives. Each Member shall receive each week the complete cleaning of six (6) items for patrol officers and seven (7) items in the case of detective bureau personnel. At the time of implementation of a new contract with the dry cleaner, it will be agreed that the City's contractor is responsible for damage to uniforms and lost uniforms while in their possession.

Items are defined as shirts, pants, jackets, ties, sweaters or any other division approved garment.

### Section 20.3 - Annual Inspection of Duty Weapon

Each year, every Member's duty weapon will be cleaned and inspected by a current certified division armorer.

### Section 20.4 - Changes in Uniform/Equipment Requirements

Whenever the Division of Police changes the uniform and equipment requirement, the Division of Police shall furnish the initial issue of said new or changed clothing and

equipment at no cost to the Bargaining Unit Member.

The City shall provide a ballistic vest (minimum of Level 1 or 2) every five years or prior to the vest expiration, whichever comes first. If a grant or reimbursement is available for such vest purchase, the Member shall participate in the program (as is practicable) and cooperate with the City to receive any such grant or reimbursement and provide such applicable payments to the City to apply to or off-set the cost of the vest. The City will determine the vest procurement and process, but will meet and confer with the Lodge as to vest selection options in the labor relations setting.

#### Section 20.5 - Damaged Personal Property

Personal property, which is damaged in the line of duty, performing a police function, will be repaired or replaced by the City at no cost to the Member, except where such damage or loss was caused by the officer's negligence. Such personal property shall include, but not be limited to, prescription spectacles, contact lenses, dentures, and wristwatches. Damaged items shall be turned in to the City. The following rules will apply: \$150 maximum per personal item damaged (excluding personal weapon); \$300 maximum per incident; and total actual cost of repair or replacement of personal weapon. A report will accompany all requests for reimbursements under this Section.

#### Section 20.6 - Range Ammunition

Each Bargaining Unit Member, upon request, shall receive quarterly, at no cost to the Member, one hundred (100) rounds of ammunition for the officer's issued duty weapon and up to ten (10) rounds of 12 gauge practice shotgun ammunition to be issued upon an officer's request, or as otherwise agreed per an in-effect Memorandum of Agreement. Each Member shall sign for ammunition received.

## **ARTICLE 21 VACATION AND PERSONAL LEAVE**

#### Section 21.1 - Vacation Time

The following shall be the vacation accrual rate for Members.

<u>Years of Service</u>	<u>Hours Per Year</u>	<u>Weeks Per Year</u>
after 1 year	80 hours	2 weeks vacation
after 6 years	120 hours	3 weeks vacation
after 10 years	160 hours	4 weeks vacation
after 16 years	200 hours	5 weeks vacation
after 22 years	240 hours	6 weeks vacation

#### Section 21.2 - Personal Days

In addition to any vacation days accrued, each Member will receive six (6) personal

days off per calendar year. These days cannot be accrued, but must be used in the calendar year earned. If they are not used in the calendar year earned, they will be lost, as there shall be no payment for unused personal days. Personal time may be taken in a minimum of one-half (1/2) hour increments. New probationary employees may use only 3 days during their first six (6) months of employment. Employees who resign or are terminated for cause during the calendar year may only use a pro-rated number of personal leave days (one personal day for every two calendar months). Any personal leave used in excess of this amount will be deducted from vacation leave or regular pay on the employee's final paycheck.

### Section 21.3 - Vacation Accrual

Vacation leave accrues on a pro-rated basis. For Members hired after January 1, 1990, "years of service" for vacation accrual will be based on full-time employment with the City and/or all other prior certified law enforcement employment. A law enforcement officer is defined as an officer, agent, or employee of any federal, state, county, municipal, township or any of its agencies, instrumentalities, or political subdivision upon whom, by statute, a duty to preserve the peace or to enforce all or certain laws as imposed and the authority to arrest violators is conferred within the limits of that statutory duty and authority. Vacation time/hours may not be "carried in" to the City from prior public service.

### Section 21.4 - Vacation Scheduling

Vacation leave is to be taken in minimum units of one-half (1/2) hour and requests for the use of such leave shall be made in writing. Vacations shall be subject to the staffing requirements of the City, but shall not be unreasonably denied. Members must take a minimum of five (5) consecutive days off at least once each year. The five (5) consecutive days off shall consist of vacation, personal, holiday or compensatory time.

### Section 21.5 - Vacation Carry-Over

Members may carry vacation time over from one calendar year to the next. In no event can an employee carry over more than two (2) times his/her annual accumulation rate.

### Section 21.6 - Pay In Lieu of Vacation

Members who have completed 6 years of service may request pay in lieu of vacation. Members must first take 2 weeks of vacation, one week of which must be five consecutive days off, in a calendar year prior to submitting such a request. Members may receive payment for up to 2 weeks of their accumulated balances. This provision is subject to the availability of appropriated funds.

### Section 21.7 - No Additional Accrual

Additional vacation leave is not accrued through the accumulation of paid overtime.

### Section 21.8 - Vacation at Separation

Members who resign, retire or die after one year of service are entitled to compensation, at their current rate of pay, for any earned but unused vacation leave to his or her credit at the time of separation, providing that the Members give at least two (2) weeks advance written notice for a resignation or retirement.

### Section 21.9 - No-Pay Status

Vacation credits are not earned while a Member is in No-Pay status (leave of absence, disciplinary suspension, etc.) or paid administrative leave that has resulted from a disciplinary action of the City Manager or is connected directly to a Member's resignation. Any disciplinary action, which is overturned, shall result in the Member receiving prior vacation credits for the period they were on paid administrative leave.

## **ARTICLE 22 HOLIDAYS**

### Section 22.1 - Holidays

The following shall be considered legal holidays for Members:

New Year's Day  
Martin Luther King Day (Beginning in 2022)  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Day after Thanksgiving  
Christmas Day

### Section 22.2 - Regular Work Day Holiday

Whenever one of the recognized holidays set forth in Section 22.1 falls on a Member's regularly scheduled workday, that Member shall be compensated at the rate of one and one half (1½) their regular rate of pay for all regular hours worked during the holiday. Overtime hours worked on a recognized holiday shall be compensated at twice their regular rate of pay.

For purposes of calculating holiday pay under this section, Members shall receive holiday pay for all time worked from 12:00 a.m. through 11:59 p.m. on the day of the recognized holiday. (e.g., holiday pay shall apply for the period from 12:00 a.m. through 11:59 p.m. on December 25.)

### Section 22.3 - Payment for Holidays

Members shall be credited with 56 hours of holiday time each January 1. Members can receive payment for holiday time not used each year. In no case can it be carried over to the next year. The payment/reimbursement of holiday time shall be prorated for Members who terminate during the calendar year. Members may elect to receive



payment for holidays as they occur. A Member may take holiday leave in one (1) hour increments.

Section 22.4 - Special Holidays

For any event/holiday, whereby City offices are closed, proclaimed in writing by the City Manager or City Council, Members shall be compensated for that special holiday. This does not include closures due to weather or other natural disasters.

**ARTICLE 23  
INSURANCE**

For 2018:

Section 23.1 - Insurance

The City shall provide life, accidental death and dismemberment, medical health care, dental, and vision insurance coverage for all Members who wish to participate. The City shall provide life insurance in the amount of \$100,000 per year. The City shall pay 85% of the medical health care premiums and each enrolled Member shall pay 15% of the medical health care premiums.

Section 23.2 - Health Savings Plan

The City will provide health insurance coverage to Members through a high deductible, health savings account (HSA). Yearly deductibles shall be \$2,000 for single coverage in network and \$4,000 for family coverage in network.

In addition to the premium share for such policy, as set forth in Section 23.1, the City will make the following contributions to each enrolled and participating Member's health savings account.

Family Coverage                      \$3,400 payable in 2018

Single Coverage                        \$1,700 payable in 2018

Schedule: The above amounts will be made by the City in one annual payment to be deposited within seven (7) business days of January 1.

Members who are newly hired during the year shall have the City's contribution to their HSA prorated based upon the number of full months to be potentially employed by the City in the initial year of hire.

Members shall pay to the City the prorated amount of the City's annual HSA contribution, based upon the number of full months remaining in the calendar year, when they are no longer enrolled and participating as current City employees in the high deductible health insurance plan by reason of separation from employment (for any reason other than the Member's death, or service or disability retirement from City employment) or as a result of a Member's election not to participate in the City's health

insurance plan coverage. The City is authorized to collect the above payments through payroll deduction from the Member's wages, year-end or terminal pays.

It is recognized that, in order to comply with the terms of the Affordable Care Act and/or to avoid imposition of any excise tax thereunder during the term of this Agreement, the City may make modifications to medical, dental, vision and prescription insurance coverage for Members and their families to ensure such compliance and/or to avoid the imposition of such tax; provided that prior to making such modifications, the City shall notify the Lodge of the coverage it intends to modify, and provide the Lodge with a meaningful opportunity to discuss and provide input regarding the modification being considered. Such modifications shall not in any way deprive Members of their right under this Agreement to receive medical, dental, vision and prescription insurance coverage for themselves and their families. Such modifications shall be applicable to all other employees of the City not covered by another collective bargaining agreement.

### Section 23.3 - Long Term Disability Insurance

The City shall select the provider and provide payroll deduction for long term disability insurance, paid for by the employee.

### Section 23.4 - Liability Insurance

The City shall maintain at least a \$1,000,000 limit for law enforcement liability.

### Section 23.5 – Members Electing Not to Participate in HSA

Members electing not to participate in the City's Health Saving Plan coverage for the entire year will receive an incentive payment in December for forgoing such coverage during the prior year based upon the following schedule:

1. Members eligible for family coverage but selecting no coverage, \$2,000.
2. Members eligible for family coverage but selecting single coverage, \$1,000.
3. Members eligible only for single coverage, \$1,000.

### Section 23.6 – Limitation

Members eligible for family coverage who have a spouse also employed by the City and eligible for family coverage may only elect coverage under one of the spouse's family coverage options and may not hold two separate single coverage plans; further, neither spouse is eligible for an incentive payment under 23.5 for foregoing coverage if covered by the City under the spouse's family coverage plan.

### Beginning 2019:

#### Section 23.1 - Insurances

The City shall provide Members with insurance benefits under the group health benefit plan (including medical, dental and vision insurance coverage) generally provided to the employees of the City, and on the same terms and conditions on which those benefits are generally provided to employees of the City.

The City, in its sole discretion, may modify such benefits, the City's and Members' share of the cost of such benefits, the terms and conditions on which such benefits are provided, and/or the means by which such benefits are provided, so long as any such modifications are also applicable generally to employees of the City other than those covered by other labor contracts. Provided however, notwithstanding this Section 23.1, enrolled and participating Members shall not pay greater than 15% of the amount of the respective insurance premiums.

The City shall also provide life insurance in the amount of \$100,000 per year.

#### Section 23.2 - Changes to Insurances

If the City decides to change the group health benefit plan (medical, dental and/or vision insurance coverage) consistent with Section 23.1 above, the City will inform the Lodge representative 30 days prior to the effective date of the new benefits.

#### Section 23.3 – High Deductible Plan and Health Savings Account

As long as the City provides health insurance coverage to Members through a high deductible plan and a health savings account (HSA):

- A. Notwithstanding Section 23.1 above, the City will contribute 85% of the amount of the respective yearly health insurance deductible to each enrolled and participating Member's HSA.
- B. Members who are newly hired during the year shall have the City's contribution to their HSA prorated based upon the number of full months to be potentially employed by the City in the initial year of hire.
- C. Members shall pay to the City the prorated amount of the City's annual HSA contribution, based upon the number of full months remaining in the calendar year, when they are no longer enrolled and participating as current City employees in the high deductible health insurance plan by reason of separation from employment (for any reason other than the Member's death, or service or disability retirement from City employment) or as a result of a Member's election not to participate in the City's health insurance plan coverage. The City is authorized to collect the above payments through payroll deduction from the Member's wages, year-end or terminal pays.
- D. Schedule: Any City contribution amounts will be made by the City in one annual payment to be deposited within seven (7) business days of January 1.

#### Section 23.4 - Long Term Disability Insurance

The City shall select the provider and provide payroll deduction for long term disability insurance, paid for by the employee.

### Section 23.5 - Liability Insurance

The City shall maintain at least a \$1,000,000 limit for law enforcement liability.

### Section 23.6 – Members Electing Not to Participate

Members electing not to participate in the City’s medical health care insurance coverage for the entire year will receive an incentive payment in December for forgoing such coverage during the prior year based upon the following schedule:

1. Members eligible for family coverage but selecting no coverage, \$2,000.
2. Members eligible only for single coverage, \$1,000.

For example, if a Member elects not to be covered under the City’s medical health care insurance coverage for the entire year, he or she will receive the above applicable incentive payment in December for forgoing such coverage.

The decision to enroll in the City’s program shall be made during the City’s open enrollment period for current employees. Members shall retain coverage(s) until the next open enrollment period unless a qualifying event makes them eligible for other coverage.

### Section 23.7 – Limitation

Members eligible for family coverage who have a spouse also employed by the City and eligible for family coverage may only elect coverage under one of the spouse’s family coverage options and may not hold two separate single coverage plans; further, neither spouse is eligible for an incentive payment for foregoing coverage if covered by the City under the spouse’s family coverage plan.

## **ARTICLE 24 SICK LEAVE**

### Section 24.1 - Sick Leave

A Member may request sick leave for absences resulting from illness or injury as described below, provided that the Member follows the proper notification policy as set forth by the Contract and Division. Sick leave may be requested for the following reasons:

- A. Illness or injury of the Member, or illness or injury of the Member’s immediate family\* reasonably requiring the presence of the Member.
- B. Exposure of a Member, or exposure of the Member’s immediate family residing in the Member’s household, to a contagious disease which would have the potential of jeopardizing the health of the Member or the health of others.

- C. Medical, dental or optical examinations or treatment of a Member or a Member's immediate family residing in the Member's household or where the Member shares custody of such immediate family member. Members shall make every attempt to schedule routine examinations, counseling sessions and dental appointments during off-duty time. This also includes appointments for such family members who require a Member's attendance or assistance at such appointments, as well as pre-natal, childbirth and/or post-natal care.

A request for using sick leave exceeding three consecutive days to care for or provide assistance to a Member's immediate family member consistent with the above requires notification to the Chief or his designee.

A Member granted sick leave for an illness or injury of the Member where the condition prevents the performance of their duty may not engage in activities during their sick time away from work inconsistent with their need for leave or their inability to perform job duties.

Where a Member establishes a pattern of sick leave use on a day immediately preceding or following a holiday or day for which overtime rates are paid may be required to verify the need for such sick leave with the Chief, or designee, or Human Resources with a signed certificate from a licensed practitioner or other information acceptable to the City verifying his or her use of such sick leave.

A Member using sick leave for his or her own care may not work special duty within eight (8) hours after the end of the shift in which sick leave was used.

Sick leave shall not be used as a "bridge" into separation from employment when a Member is no longer medically able to perform the functions of his or her job as sick leave is intended to provide paid leave for a Member who is recovering from an approved illness or injury as described herein and recuperating to return to his or her normal job duties.

\*For purposes of this policy, the "immediate family" is defined as only: mother, father, child, step-child, spouse, or other relative residing in the Member's household.

#### Section 24.2 - Proof of Illness

The City maintains the right to investigate any Member's absence. Members may be required to furnish proof of illness or injury as evidenced by a physician's statement, or other satisfactory written statements of the Member, as required by the Chief or his designee.

#### Section 24.3 - Sick Leave Accrual

Members hired prior to January 1, 1997 shall accrue sick leave at the rate of ten (10) hours per month. Members hired after January 1, 1997 shall accrue sick leave at the rate of eight (8) hours per month. Sick leave shall not be advanced. The amount of sick leave time any one Member may accrue is unlimited. Sick leave shall be charged in

minimum amounts of one (1) hour increments. Members absent on sick leave shall be paid at the same basic hourly, daily or biweekly rate as when they are working.

Effective January 1, 2004, newly hired probationary Members shall be awarded three (3) days of sick leave upon their initial hire date. No further sick leave will be accrued by the Member until the Member's fourth month of service.

#### Section 24.4 - Notification

Any Member requesting sick leave must notify the City as reasonably required by the Contract and Division. The Member must give the reason for his/her sick leave (this does not require a "diagnosis" of the member's condition), and provide a way for the City to make contact with the Member while on sick leave. Failure to do so may result in denial of sick leave for the period of absence. The Member will submit to such medical examination, nursing visit or other inquiry, which the City deems necessary. If a Member is sick or injured for an extended period of time, the City may reasonably require the Member to furnish periodic medical updates (usually not more often than thirty (30) day intervals) on his or her condition and anticipated return date to Human Resources.

#### Section 24.5 - Extended Illness

Vacation leave may be used for sick leave purposes, at the Member's request and the approval of the City, after sick leave is exhausted. Members who have exhausted all sick leave and vacation leave credits may, at the discretion of the Appointing Authority, be granted a personal leave of absence without pay for a period not to exceed ninety (90) days. Illnesses exceeding ninety (90) days will be considered Disability Leave.

#### Section 24.6 - Falsifying Sick Leave

A Member who fraudulently uses sick leave, or anyone found falsifying sick leave records, shall be subject to disciplinary action. Altering a physician's certificate or falsification of a written, signed statement shall be grounds for immediate dismissal.

#### Section 24.7 - Prior Public Service

Members who have prior service with another public agency in Ohio or who are reappointed or reinstated, and who have not converted their sick leave balance, will be credited with the unused balance of accumulated sick leave, provided the time between separation or reappointment does not exceed ten (10) years. The words "public agency" as used above includes the State, counties, municipalities, all boards of education, libraries, townships, etc. within the State. Sick leave credited from another public agency shall be used prior to any sick leave earned at the City of Westerville.

#### Section 24.8 - Sick Leave for Pre/Post Natal Care

Sick leave used for pre/post natal care shall adhere to the provisions of the Family and Medical Leave Act. Sick leave may not be used for Paternity Leave to bond with newborn child or newly adopted child unless the need for leave also independently

meets the requirements for the use of sick leave (i.e., an illness or injury, exposure or medical appointment as set forth herein). If a Member desires paid Paternity Leave to bond with a child (Family Leave) where there is no underlying serious medical condition, then he may request to use paid vacation leave, compensatory time, or unpaid leave consistent with the Family and Medical Leave Act.

#### Section 24.9 - Sick Leave Conversion

After a minimum of 10 years of continuous employment with the City of Westerville and upon termination, a Member may convert up to 1350 hours of unused Westerville sick leave on the basis of one (1) hour cash payment for every two (2) hours of sick Westerville leave accumulated; a maximum of 675 hours converted. Payments for sick leave conversion shall be based on the Step 5 hourly rate for a patrol officer in effect at that time. Eligible Members shall request such payments in writing, prior to the effective date of their separation from employment. When sick leave conversion is initiated, it shall be deducted from the Member's sick leave balance. For purposes of this policy, termination shall include all separations, with the exception of disciplinary separations or resignations where the Member has not given a minimum of two (2) weeks written notice. In such instances, the Member will not be eligible to convert sick leave. Upon death, a Member's accrued sick leave balance will be paid to the Member's estate consistent with this section. Members, who are within three (3) years of retirement eligibility as defined by PFDPF, may elect to receive payment for accumulated sick leave. Payments may be made over a period of time not to exceed three years. Members desiring such shall have provided written notice to the City Manager. Payment for sick leave shall be based on the Step 5 hourly rate as a patrol officer as it exists at the time each payment is made. Payment may not exceed one-third of 675 hours per year, nor 675 hours in total. Prior to receiving payment, Members shall sign an agreement agreeing to return the funds, with interest at the rate of ten percent per annum, in the event that a Member is terminated for cause prior to the expiration of their employment. Each payment shall result in a deduction from the Member's sick leave balance.

Any sick leave balance remaining after conversion has been initiated cannot be transferred as part of the shared leave policy. Members, still employed as full-time sworn officers, who have converted all or part of their sick leave balances prior to January 1, 2006, shall be eligible to convert in total up to the cash equivalent of 675 hours at the Step 5 hourly rate for a patrol officer for that year. Payments made prior to January 1, 2006 will be counted towards the maximum conversion.

## **ARTICLE 25 INJURY LEAVE**

#### Section 25.1 - Injury Leave

Members who sustain injuries while performing City functions in the line of duty may be granted up to twenty-six (26) work week's injury leave per injury. Injury leave may be granted to Members subject to the limitations of this section. Members are eligible for injury pay, only for those hours that they would have normally been scheduled to work during the 26-week period. Members who have been injured on the job may make

application for injury leave by making a written request through the Chief. The request for injury leave must outline the circumstances of the injury and include a physician's report indicating the physical condition, which necessitates the injury leave and the length of time necessary for recovery. The City retains the right to have a Member examined by a physician acceptable to or appointed by the City Manager. When a request for injury leave is received by the Chief, he shall process the request to the City Manager and recommend approval or denial based on the circumstances of the injury and the attached physician's report.

While on injury leave, a Member shall not engage in any activities inconsistent with any restrictions which gave rise to the injury leave preventing the Member from working. While on injury leave, a Member may not work special duty.

The City may reasonably require the Member to furnish periodic medical updates (usually not more often than thirty (30) day intervals) on his or her condition and anticipated return date to Human Resources.

A Member who fraudulently uses injury leave, or anyone found falsifying injury leave records, shall be subject to disciplinary action. Altering a physician's certificate or falsification of a written, signed statement shall be grounds for immediate dismissal.

#### Section 25.2 - Injury Leave Approval

All requests for injury leave require the City Manager's approval before they are implemented. In order to be eligible for injury leave, the following conditions must be met:

- A. The injury must have been immediately reported to the Member's supervisor.
- B. The injury report form must have been completed and placed in the Member's personnel file.
- C. The Chief recommends the injury leave and the non-negligent aspects of the injury are recorded for the City Manager's approval.

#### Section 25.3 - Reimbursement

During the injury leave period, all wage or salary benefits resulting from Worker's Compensation must be reimbursed to the City. Members on injury leave are prohibited from working at other jobs without the expressed written permission from the City Manager.

#### Section 25.4 - Injury Defined

For the purposes of this policy, injury is defined as a physical or traumatic harm or mishap, which damages the health of a Member, causing the Member to be unable to perform the substantial and material responsibilities of his/her position. Aggravated or reoccurring injuries, which are not a result of the Member's job responsibilities, are not covered under this policy.



## **ARTICLE 26 SPECIAL LEAVES**

### Section 26.1 - Bereavement Leave

In the event of the death of a Member's mother, father, sibling, spouse, child, mother-in-law, father-in-law, step child, daughter-in-law, son-in-law, stepmother, stepfather, grandmother, or grandfather, sister-in-law, brother-in-law, grandchild, spouse's grandparent, or other relative residing in the employee's household, the Member shall be granted five (5) working days off with regular pay to attend the funeral or to attend to any other necessary business. Additional days may be approved by the City Manager on a case-by-case basis.

### Section 26.2 - Military Leave

All Members who are Members of the Ohio National Guard, the Ohio Defense Corps., the State and Federal Militia, or Members of other reserve components of the Armed Forces of the United States are entitled to leave of absence from their respective duties without loss of pay, and without any offset for receipt of military pay, for the time they are performing service in the uniformed services, as defined in Section 5903.01 of the O.R.C., for periods of up to one hundred and seventy-six (176) hours within one (1) calendar year.

Members are required to submit to the City an Order or statement from the appropriate military commander as evidence of such duty. There is not a requirement that the service be in one continuous period of time. The maximum number of hours for which payment will be made in any one (1) calendar year under this provision is one hundred seventy-six (176) hours. Members of those components listed in paragraph one above will be granted emergency leave for mob, riot, civil defense, or similar duties when so ordered by the Governor to assist civil authorities. Such emergency leave will be without pay if it exceeds authorized military leave for the year. Members who are called or ordered to service by the President of the United States or an act of Congress for periods beyond the authorized military leave for the calendar year shall be compensated consistent with the Ohio Revised Code.

The leave will cover the official period of the emergency.

Members hired prior to January 1, 2000 and who utilized military leave during 1999, may utilize up to 248 hours per year of required military leave.

Members called to Active Duty by an order of the Governor or President shall be paid the difference of the military wage and their City wages for active duty military leave beyond the one hundred & seventy-six (176) hours or two hundred & forty-eight (248) hours for those hired prior to January 1, 2000 granted each calendar year. If the military wage is higher than the City wage, no difference will be paid. Members will be responsible for all regular deducted benefit segments.

### Section 26.3 - Jury Duty and Court Leave

The City shall grant full pay where a Member is summoned for any jury duty, or subpoenaed as a witness by any court or other judicial body for City related business, or when subpoenaed as a witness by any court or other judicial body in direct relation to performing law enforcement duties as a City police officer. All compensation for such duty must be reimbursed to the City unless such duty is performed totally outside of normal working cases, when the case is being heard in connection with the Member's personal matters, such as traffic court, divorce proceedings, custody, appearing as directed with juvenile, etc. Absences for personal matters or for non City related business would be leave without pay or vacation, personal or holiday time at the discretion of the Member and approved by a supervisor. A Member shall request prior approval for court leave, in order for such leave to be granted.

### Section 26.4 - Short Term Disability Benefit

Effective upon the ratification of this Contract in 2021, the City shall provide Members with short term disability benefits under the short term disability program generally provided to the employees of the City, and on the same terms and conditions on which those benefits are generally provided to employees of the City. If the City decides to change the short term disability program, the City will inform, meet and confer with the Lodge representative at least 30 days prior to the effective date of the changes.

(The prior "shared leave" provisions in Section 26.4, and any references to shared leave, are hereby deemed eliminated from the Contract and null and void as of the ratification of this Contract in 2021 and no City shared leave program will be available for use by Members.)

## **ARTICLE 27 MISCELLANEOUS ECONOMIC**

### Section 27.1 - Reimbursement for Expenses and Travel

A Member, whenever authorized to engage in or to undertake business for the City shall be reimbursed for reasonable and necessary expenses and travel. If practicable, the Member shall be allowed the use of a City vehicle for travel. If not practicable, reimbursement for authorized use of a personal automobile will be at the rate currently approved by the Internal Revenue Service. It is recognized that the City has the right to promulgate reasonable regulation pertaining to reimbursement for expenses and travel. Where overnight lodging is provided at the City's expense, the Member will only be reimbursed for mileage to and from the training facility on one occasion each way unless otherwise approved or directed by the Chief. All other travel is considered to be non-work related and non-reimbursable.

### Section 27.2 - Field Training Officer

Any Member who serves as a field training officer will receive an additional \$2.00 for each hour he serves as an FTO.

### Section 27.3 - Shift Differential

Members assigned to 2<sup>nd</sup> and 3<sup>rd</sup> shift hours will be paid a shift differential of \$1.15 per hour. The rate shall be increased to \$1.40 per hour effective on the first full pay period after ratification of the successor agreement for 2021. Members not assigned to first shift, but whose hours may overlap first, shall receive shift differential if four (4) or more of their regularly scheduled hours are beyond or outside of first shift hours.

### Section 27.4 - Wellness Payment

Qualified employees may convert sick leave to a cash payment based upon the following policy:

- A. Full-time employees must have a minimum sick leave balance of 250 hours.
- B. Only sick leave earned while employed by the City of Westerville is counted towards the 250-hour minimum balance.
- C. Sick leave usage from January 1 through December 31 will be counted.
- D. Payment requests must be submitted each December for sick leave used the previous 12 months (the current calendar year). Payment will be by the end of January for the rate of pay in effect December 31 of the preceding year.
- E. Sick leave hours converted will be deducted from the employee's sick leave balance, one hour for one hour.
- F. Sick leave may be converted based upon the following schedule:

<u>Sick Leave Used</u>	<u>Conversion</u>
0 - 16 hours	48 hours
More than 16 - 32 hours	40 hours
More than 32 - 40 hours	32 hours
More than 40 hours	0 hours

- G. Sick leave donated through Shared Leave will not count against an employee's sick leave use for this program. (The prior shared leave provisions in Section 26.4, and any references to shared leave, are hereby deemed eliminated from the Contract and null and void as of the ratification of this Contract in 2021 and no City shared leave program will be available for use by Members.)

### Section 27.5 - Educational Incentive

After three years of employment with the Division, a Member who has an Associate's, Bachelor's or Master's degree from an accredited College/University, shall be entitled to a yearly educational incentive as follows: \$250 for an Associate's Degree, \$425 for a Bachelor's Degree or \$625 for a Master's Degree.

Payment of the education incentive shall be due during the pay period immediately

following the Member's anniversary date. Payment for the highest degree earned shall be considered compensation for all preceding degrees.

Section 27.6 - Longevity Pay

Longevity will be calculated on continuous full-time service with the City. Longevity payment for each Member shall be determined by full years of service completed as of a Member's anniversary date. Payment for longevity shall be made to the Member during the pay period immediately following the Member's anniversary date. Members will receive longevity pay based on the following schedule:

Length of Service	
5 - 9 years	\$950
10 -14 years	\$1,175
15 -19 years	\$1,550
20 or more years	\$1,725

Current total unpaid longevity pay shall be paid to a Member upon the Member's retirement, either voluntarily or by disability, or upon a Member's death. Such payment shall be pro-rated from the beginning of the calendar year to the date on which the separation occurs. In the event of a Member's death, the payment shall be made to the Member's estate.

Section 27.7- Health/Wellness Fitness Incentive

In order to promote the physical fitness and well being of Members, the following voluntary Health/Wellness Fitness program has been developed. The following standards apply to any Member that chooses to participate in the program.

- A. Members shall participate in all five (5) test phases as outlined by the Division Manual.
- B. Participants will be able to test three (3) times each year.
- C. Incentives will be paid to participants based on each phase of the test completed, and the average of their scores for that year. The Members shall receive incentive amounts based on the following:

Good	\$30.00 per testing phase
Excellent	\$40.00 per testing phase
Superior	\$50.00 per testing phase

- D. The City will issue one (1) fitness incentive check per year in November.
- E. Medical waivers will exclude a participant from applicable test phases, and no incentive will be paid on those tests.

### Section 27.8 - Working Out of Classification

Sergeants shall be temporarily assigned to work out of classification. Such an assignment shall be at least three (3) consecutive days. For all such hours worked, Sergeants shall receive a premium of \$2.00 per hour. Such premium pay is only for hours actually worked and for this section, hours worked excludes all paid leave.

## **ARTICLE 28 TUITION REIMBURSEMENT PROGRAM**

### Section 28.1 - Participation

Members with one year of continuous employment who have successfully completed their initial probationary period are eligible to participate in the following exclusionary tuition program that allows for non-taxable reimbursements under the then current IRS regulations as offered by the City.

Participation is voluntary and available to those who elect job-related self-development courses, during non-working hours. Job relatedness will be determined first by the Chief and finally by the City Manager. No reimbursement shall be provided for attendance in an academic program leading to a degree above the level of a "Masters." All course work must be taken in accordance with a planned program of professional improvement approved in advance by the Chief. The class must be provided at or through a state accredited institution of higher education or be otherwise approved by the City Manager.

### Section 28.2 - Reimbursement

For approved courses, a Member shall be reimbursed one hundred percent (100%) of the tuition expense, including textbooks and lab fees to a maximum of \$4,000 per calendar year. Regardless of the scheduling or completion of classes, in no event shall a Member be reimbursed for more than \$4,000 in any calendar year.

The Member must satisfactorily complete the approved course by attaining a grade of "C" or better, or receive a passing mark if the class is pass/fail. No reimbursement is available for any other expense related to course attendance. Reimbursement shall be made to a Member upon submission of official transcripts, tuition statements and receipts for textbooks and lab fees. Any financial assistance (excluding loans) available to a Member shall be deducted from the amount of reimbursement that would otherwise be available - a Member may not receive reimbursement for costs he or she did not actually incur (i.e., no "double dipping"). Members shall not be reimbursed for incidental expenses such as paper or supplies, mileage, parking, meals, miscellaneous fees (non-lab) or other expenses other than tuition, textbooks and lab fees. The City will only honor reimbursement requests submitted within thirty (30) days after the receipt of the Member's final grade.

Should a Member voluntarily resign employment within two (2) years of receipt of any tuition reimbursement hereunder, the Member shall reimburse the City for all tuition

reimbursement he or she received within the two (2) year period prior to separation from service. Such reimbursement may be deducted by the City from any terminal leave pay due to the Member. If a member resigns due to disability or retirement, such reimbursement shall be waived.

## **ARTICLE 29 FAMILY AND MEDICAL LEAVE**

### Section 29.1 - Family and Medical Leave Act Leave

Pursuant to the Family and Medical Leave Act of 1993, ("FMLA") up to twelve (12) weeks of FMLA leave may be granted to a Member who has been employed for at least twelve (12) months by the City and who has provided at least 1,250 hours of service during the twelve (12) months before the leave is requested for the following reasons:

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

### Section 29.2 - Definitions

For the purposes of this Article:

- A. "Child" means a child either under eighteen (18) years of age, or eighteen (18) years or older who is incapable of self-care because of mental or physical disability. A Member's "child" is one for whom the Member has actual day-to-day responsibility for care and includes a biological, adopted, foster or stepchild or the child of one standing in loco parentis.
- B. "Parent" means a biological parent or an individual who stands or stood in loco parentis to a member when the member was a child. This term does not include parents "in law".
- C. Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child, or in the case of a member, who had such responsibility for the member when the member was a child. A biological or legal relationship is not necessary.
- D. "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves:
  - 1. In-patient care (i.e., overnight stay in a hospital, hospice or residential medical care facility);

2. Any period of incapacity requiring absence from work, school, or other regular daily activities of more than three (3) calendar days and that involves 2 or more times of treatment by a health care provider, or treatment on one occasion resulting in continuing treatment under the supervision of a health care provider;
  3. Any period of incapacity due to a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than continuing periods of incapacity, i.e., asthma, diabetes, epilepsy;
  4. Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, i.e., Alzheimer's, severe stroke, terminal illness, so long as the employee or family member is under the continuing supervision of a health care provider;
  5. Any period of absence to receive multiple treatments by a health care provider either for restorative surgery after accident or surgery, or for a condition that would likely result in a period of incapacity of more than three days in the absence of medical intervention, i.e., cancer (Chemotherapy, radiation), severe arthritis (physical therapy) or kidney disease (dialysis); or
  6. Prenatal care by a health care provider.
- E. "Spouse" means a husband or wife as defined or recognized under Ohio law for purposes of marriage, including common law marriage. This definition does not include unmarried domestic partners. If both spouses are working for the City, their total leave in any twelve (12) month period may be limited to an aggregate of twelve (12) weeks if the leave is taken for either the birth or adoption of a child or to care for a sick parent.

#### Section 29.3 - 12-Month Leave Period

The City will compute the twelve (12) month period using a rolling twelve (12) month period measured backward from the date leave is used. In any case in which a husband and wife entitled to family leave are both employed by the City, the aggregate number of work weeks of leave to which both may be entitled shall be limited to twelve (12) weeks taken because of the birth of a child or placement for adoption or foster care of a child.

#### Section 29.4 - Substituting Paid Leave

A Member seeking FMLA leave must first use paid sick leave, vacation and holidays before going on unpaid leave. The total amount of family leave paid and unpaid will not exceed a total of twelve (12) weeks. A Member's use of paid leave must also comply with the terms and conditions of the underlying leave policy (e.g., a Member may substitute paid sick leave only if the reason for leave would also and otherwise qualify for sick leave pay as defined in this Agreement).

### Section 29.5 - Notice Requirements

A Member shall provide the City at least thirty (30) days advance notice before FMLA leave is to begin if the need for the leave is foreseeable. If thirty (30) days notice is not practicable, notice must be given as soon as practicable. This notice may either be verbal or in writing and shall include the anticipated timing and duration of the leave. When planning medical treatment, the Member should consult with the City and make a reasonable effort to schedule the leave as to not unduly disrupt the City's operations, subject to the approval of the health care provider. In the case of a request for intermittent leave or leave on a reduced leave schedule which meets the Member's needs without unduly disrupting the City's operations, subject to the approval of the health care provider, the City may waive these FMLA notice requirements. Should the Member fail to give thirty (30) days notice for foreseeable leave with no reasonable excuse for the delay, the City may deny the taking of FMLA leave until at least thirty (30) days after the date the Member provides notice to the City for the requirements. Where the Member uses substituted paid leave, the notice requirements applicable to such leave shall apply.

### Section 29.6 - Seniority

During an FMLA leave, a Member will continue to accrue seniority if in a paid FMLA status.

### Section 29.7 - Insurance Benefits

During any FMLA leave, the City shall maintain all insurance benefits to which a Member was entitled prior to FMLA leave. Any share of health premiums, which had been paid by the Member prior to FMLA leave shall continue to be paid by the Member during the FMLA leave period. If the FMLA leave is substituted paid leave, the Member's share of health premiums shall be due at the same time as it would be made if by payroll deduction. If the Member fails to timely make required health care premium payments, the City shall pay the Member's share of the Member's health care premium payment. As provided by law, the City may recover its share of health plan premiums for the Member if the Member fails to timely make such payments during the unpaid FMLA leave.

### Section 29.8 - Medical Certification Requirement

The following certification requirements shall apply to FMLA leave requests:

- A. Members who request leave because of their own serious health condition or the serious health condition of a covered family member may be required to provide a certification issued by the health care provider of the Member or the Member's family member. The City shall give the Member written notice of the requirement for medical certification in a particular case.
- B. Members must provide the requested certification to the City within the time frame requested by the City, unless it is not practicable under the particular circumstances to do so despite the Member's diligent, good faith efforts. The



City must allow at least fifteen (15) calendar days after the City's request for certification.

- C. In most cases where the City requests certification, the Member will be requested to furnish certification at the time the Member requests FMLA leave or soon after the leave is requested, or in the case of unforeseen leave, soon after the leave commences. The City may request certification at some later date if the City has reason to question the appropriateness of the leave or its duration.
- D. In its discretion, the City may require a second medical opinion and periodic recertification at its own expense. If the first and second opinions differ, the City, at its own expense, may obtain the binding opinion of a third health care provider, approved jointly by the Member and the City.
- E. The City reserves the right to designate all FMLA qualifying leave as FMLA leave.

#### Section 29.9 - Periodic Report

The City may require a Member on FMLA leave to report periodically on the Member's status and intent to return to work. Such reporting periods shall be reasonable. If a Member gives notice of intent not to return to work, this notice shall be considered a resignation, and the City's obligations under FMLA to maintain health care/insurance benefits (subject to COBRA requirements) and to return the Member to work ceases.

#### Section 29.10 - Fitness For-Duty Report

A Member who takes FMLA leave because of the Member's own serious health condition may be required to obtain and present certification from a licensed physician or other appropriate medical professional that the Member is fit to return to work. The City may seek fitness-for-duty certification only with regard to the particular health condition that caused the Member's need for the FMLA leave. If a Member fails to provide such a fitness-for-duty certification to return to work, the City may deny restoration to work until the Member submits the certification.

## **ARTICLE 30 WAIVER IN CASE OF EMERGENCY**

#### Section 30.1 – Waiver

In case of a publicly declared emergency affecting the City of Westerville, defined as Acts of God or Civil Disorder declared by the President of the United States, the Governor of the State of Ohio, the City Manager of the City of Westerville, the Federal or State Legislature, the following conditions of this Contract may be suspended by the Employer:

- A. Time limits for replies on grievances; and,
- B. All work rules and/or agreements and practices relating to the assignment of all Members.

**ARTICLE 31**  
**PHYSICAL FITNESS PROGRAM**  
**(Effective July 1, 2021)**

31.1 Overview.

The City will establish a Fitness Program intended to encourage Members to adopt and maintain higher levels of physical fitness.

31.2 Voluntary for Members Hired Before July 1, 2021.

The Fitness Program is voluntary for Members hired before July 1, 2021. Although all Members are encouraged to participate and are eligible for the incentives offered to those who achieve the established fitness goals, Members hired before July 1, 2021, are not required to participate and will not suffer any adverse employment action for refusing to participate or for participating but not achieving passing fitness levels.

31.3 Mandatory for Members Hired After July 1, 2021.

Members hired on or after July 1, 2021 are required to maintain a passing fitness level as described below. If a Member fails to successfully test at the passing fitness level, the Member will be given six (6) months to test again at his or her option. If a Member fails to retest, or fails to test at or above the passing fitness level, the following discipline will apply for each calendar year:

- 1st occurrence (within 0 – 12 months of available testing)
  - written reprimand
- 2nd occurrence (13 – months and thereafter)
  - 1-day unpaid suspension (may be served as time off without pay or as a working suspension with one day pay docking in Chief’s discretion as staffing needs dictate.)

Progressive discipline under this Article shall not be considered / or used to advance progressive discipline under this Contract.

The progressive discipline under this Article may be grieved up to the City Manager Step, but may not be advanced to arbitration. Further, the progressive discipline under this Article will not result in a loss in seniority.

Members who are physically unable to participate in the test will be deferred until the following testing period offered, provided the parties will explore alternative test components that would fit with the Member’s restrictions.

31.4 Test Schedule and Components.

The City shall offer the fitness test once in Fall 2021 on a date or dates of the Chief’s choosing. Beginning in 2022, the fitness test will be administered at least two times a

year on dates of the Chief's choosing. The fitness test will consist of the components set forth in the Physical Ability Test Administration Guide. (To Be Set Forth and Updated as an Attachment A). Members will be paid at their straight-time hourly rate for the time necessary to complete the test. The fitness program shall not be considered a fit for duty test; further, a Member's failure to test at or above the passing fitness level may not be the basis for the City seeking a fitness for duty certification.

### 31.5 Individual Incentive.

Members who successfully complete all components of the Fitness Program at the passing fitness level will receive a lump sum payment of \$375. Members will be eligible to receive this incentive once every calendar year.

### 31.6 Group Incentive.

For any calendar year in which seventy-five percent (75%) of the number of Members employed as of January 1 participate in the program, all participating Members will receive a one-time lump sum payment of \$125.

### 31.7 Payment Method.

Applicable incentives above may be combined into one check or deposit.

## ARTICLE 32 SIGNATURES

### Section 32.1 - Signatures

Signed in Westerville, Ohio, October 2021.

FOR THE CITY OF WESTERVILLE:

*Monica Irelan*

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Monica Irelan, City Manager

*Adam Maxwell*

\_\_\_\_\_  
Adam Maxwell, Dir. of Admin. Services

*Charles Chandler*

\_\_\_\_\_  
Charles Chandler, Chief of Police

*Lynn Miller*

\_\_\_\_\_  
Lynn Miller, H.R. Manager

*Holly Murchland*

\_\_\_\_\_  
Holly Murchland, Team Member

*Ronald McMillin*

\_\_\_\_\_  
Ronald McMillin, Team Member

*Colleen Lemmon*

\_\_\_\_\_  
Colleen Lemmon, Team Member

*Dan Guttman*

\_\_\_\_\_  
Dan Guttman, Labor Counsel

FOR THE FRATERNAL ORDER OF  
POLICE CAPITAL CITY LODGE NO.9:

*Keith Ferrell*

\_\_\_\_\_  
Keith Ferrell, President

*Jeff Simpson*

\_\_\_\_\_  
Jeff Simpson, Executive Vice-President

*Larry French*

\_\_\_\_\_  
Larry French, Grievance Chairman

*Justin Alloway*

\_\_\_\_\_  
Justin Alloway, Team Member

*Dan Betts*

\_\_\_\_\_  
Dan Betts, Team Member

*Steven Grubbs*

\_\_\_\_\_  
Steven Grubbs, Team Member

*David Leighty*

\_\_\_\_\_  
David Leighty, Team Member

*Wayne Valentine*

\_\_\_\_\_  
Wayne Valentine, Team Member

*Cathrine Harshman*

\_\_\_\_\_  
Cathrine Harshman, Legal Counsel