

STATE EMPLOYMENT  
RELATIONS BOARD

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**AN AGREEMENT**

**between**

**THE CITY OF KIRTLAND**

**and**

**THE OHIO PATROLMEN'S  
BENEVOLENT ASSOCIATION**

**EFFECTIVE: January 1, 2012**

**EXPIRES: December 31, 2014**

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ARTICLE I

PREAMBLE

1.01 This Agreement is hereby entered into by and between the City of Kirtland, hereinafter referred to as the "Employer" and the Ohio Patrolmen's Benevolent Association, hereinafter referred to as the "Union" on behalf of the members of the collective bargaining unit hereinafter referred to as employee(s).

ARTICLE II

PURPOSE AND INTENT

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

ARTICLE III

MANAGEMENT RIGHTS

3.01 Not by way of limitation of the following paragraph, but to only indicate the type of matters or rights which belong to and are inherent to the Employer, the Employer retains the right to: 1) hire, discharge, transfer, suspend and discipline employees; 2) determine the number of persons required to be employed, laid off or discharged; 3) determine the qualifications of employees covered by this Agreement; 4) determine the starting and quitting time and the number of hours to be worked by its employees; 5) make any and all rules and regulations; 6) determine the work assignments of its employees; 7) determine the basis for selection, retention and promotion of employees to or for positions not within the bargaining unit established by this Agreement; 8) determine the type of equipment used and the sequence of work processes; 9) determine the making of technological alterations by revising either process or equipment, or both; 10) determine work standards and the quality and quantity of work to be produced; 11) select and locate buildings and other facilities; 12) establish, expand, transfer and/or consolidate work processes and facilities; 13) transfer or subcontract work; 14) consolidate, merge, or otherwise transfer any or all of its facilities, property, processes or work with or to any other municipality or entity or effect or change in any respect the legal status, management or responsibility of such property, facilities, processes or work; 15) terminate or eliminate all or any part of its work or facilities.

3.02 In addition, the Union agrees that all of the functions, rights, powers, responsibilities and authority of the Employer in regard to the operation of its work and business and the direction of its workforce which the Employer has not specifically abridged, deleted, granted or modified by the express and specific written provisions of this Agreement are, and shall remain, exclusively those of the Employer and shall not be subject to the grievance procedure herein contained.

## ARTICLE IV

### RECOGNITION

4.01 The Employer hereby recognizes the Union as the sole and exclusive bargaining agent with respect to wages, hours and other terms and conditions of employment, as provided by the State Employment Relations Act, for all full-time employees employed and occupying the position of patrol officer and sergeant which shall constitute separate bargaining units, excluding all part-time, seasonal, and temporary employees. All other employees of the Employer are excluded from the bargaining unit. Said recognition shall continue for a term as provided by law. The parties agree that this Agreement is a multi-unit Agreement recognizing patrol officers and sergeants. Pursuant to O.R.C. 4117.01, the recognized full-time positions constitute separate bargaining units by law.

4.02 The Employer will furnish the OPBA with a list of all employees in the classifications covered by this Agreement indicating their starting date of employment. Such list will be furnished no less than annually and will be supplemented by the names of all new employees as hired.

## ARTICLE V

### NON-DISCRIMINATION

5.01 The Employer and the Union agree not to discriminate against any employee(s) on the basis of race, color, religion, creed, national origin, age, sex, handicap, or sexual orientation.

5.02 The Union expressly agrees that membership in the Union is at the option of the employee and that it will not discriminate with respect to representation between members and nonmembers.

## ARTICLE VI

### DUES DEDUCTIONS

6.01 During the term of this Agreement, the Employer shall deduct regular monthly Union dues from the wages of those employees who have voluntarily signed dues deductions authorization forms permitting said deductions. The dues deductions shall be made from the first pay check of each month. If the employee's pay for that period is insufficient to cover the amount to be deducted, the Employer will make the deduction from the next pay check, providing the employee's check is sufficient to cover the deduction.

6.02 The Employer agrees to supply the Union with a list of those employees for whom dues deductions have been made.

6.03 A check in the amount of the total dues withheld from those employees authorizing a dues deduction shall be tendered to the Treasurer of the Union within thirty (30) days from the date of making said deductions.

6.04 The Union hereby agrees to hold the Employer harmless from any and all liabilities or damages which may arise from the performance of its obligations under this Article and the Union shall indemnify the Employer for any such liabilities or damages that may arise.

ARTICLE VII

AGENCY SHOP

7.01 All members of the bargaining unit, as identified in Article IV of this Agreement, shall either (1) maintain their membership in the OPBA, (2) become members of the OPBA, or (3) pay a service fee to the OPBA in an amount equivalent to the annual dues for membership in the OPBA, as a condition of employment, all in accordance with Ohio Revised Code Section 4117.09.

7.02 In the event that a service fee is to be charged to a member of the bargaining unit, the Employer shall deduct such fee in the same manner as dues are deducted as specified in Article VI of this Agreement, entitled "Dues Deduction".

ARTICLE VIII

NO-STRIKE

8.01 The Union hereby affirms and agrees that it will not, either directly or indirectly, call, sanction, encourage, finance or assist in any way, nor shall any employee instigate or participate, either directly or indirectly, in any strike, slowdown, walkout, work stoppage, or other concerted interference with or the withholding of services from the Employer.

8.02 In addition, the Union shall cooperate at all times with the Employer in the continuation of its operations and services and shall actively discourage and attempt to prevent any violation of this article. If any violation of this article occurs, the Union shall immediately notify all employees that the strike, slowdown, work stoppage, or other concerted interference with or the withholding of services from the Employer is prohibited, not sanctioned by the Union and order all employees to return to work immediately.

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

8.04 It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate discharge or other disciplinary action.

8.05 The Employer shall not lock out any employee for the duration of this Agreement.

ARTICLE IX

PROBATIONARY PERIOD

9.01 All newly hired members of the bargaining unit will be required to serve a probationary period of twelve (12) months. During such period, the Employer shall have the sole discretion to discipline or discharge such employee(s) and any such action shall not be

appealable through any grievance or appeal procedure contained herein, to the State Personnel Board of Review or to any Civil Service Commission.

9.02 All newly promoted employees will be required to serve a promotional probationary period of one (1) year. During such period, the Employer shall have the sole discretion to demote such employee(s) to his previous position and any such demotion shall not be appealable through any grievance or appeal procedure contained herein to the State Personnel Board of Review or to any Civil Service Commission.

9.03 If any employee is discharged or quits while on probation and is later rehired, he shall be considered a new employee and shall be subject to the provisions of paragraph .01, above.

## ARTICLE X ASSOCIATION REPRESENTATION

10.01 The parties recognize that it may be necessary for an employee representative of the OPBA to leave a normal work assignment while acting in the capacity of representative. The OPBA recognizes the operational needs of the Employer and will cooperate to keep to a minimum the time lost from work by representatives. Before leaving an assignment pursuant to this Section, the representative must obtain approval from the officer in charge of the shift. The Employer will compensate a representative at the normal rate for the time spent in the good faith processing of grievances, and at any meetings at which the employee requests a representative to be present. The processing of grievances shall not include investigation of grievances.

## ARTICLE XI EMPLOYEE RIGHTS

11.01 An employee has the right to the presence and advice of an OPBA representative at all disciplinary interrogations.

11.02 Before an employee may be charged with any violation of the Rules and regulations for a refusal to answer questions or participate in an investigation, he shall be advised that his refusal to answer such questions or participate in such investigation will be the basis of such a charge.

11.03 Questioning or interviewing of an employee in the course of an internal investigation will be conducted at hours reasonably related to the employee's shift, unless operational necessities require otherwise. Interrogation sessions shall be for reasonable periods of time and time shall be provided for rest periods and attendance to physical necessities.

11.04 An employee will be informed of the nature of any investigation of himself prior to any questioning. If the employee being questioned is, at that time, a witness and not under investigation, he shall be so advised.

11.05 An employee may request an opportunity to review his personnel file, add memoranda to the file clarifying any documents contained in the file and may have a representative of the OPBA present when reviewing his file. A one-time request for copies of

items included in the file shall be honored by the employee. All items in an employee's file with regard to complaints and investigations will be clearly marked with respect to final disposition.

11.06 All complaints by civilians against an employee of the City shall be reduced to writing by the person receiving such complaint, and signed by the complaining witness if possible and immediately transmitted to the Chief of Police or his designee.

Should the complaint be resolved, it shall be so noted on the complaint.

In the event a citizen complaint shall result in formal disciplinary action against an employee, said employee may, upon written request, be given a copy of the complaint, and the name of the complainant, if available. Employees shall have the right to respond to citizen complaints or adverse documents by placing a written response in the personnel file. Such responses must be made within ten (10) days of a document placed in the personnel file by the Employer.

11.07 Records of disciplinary action, not resulting in time off, which are two (2) years old, shall not be used against an employee in a future disciplinary action so long as there has been no occurrence of a similar type incident within the two (2) year period.

11.08 All newly hired employees must complete a structured training program and have written evaluations. Annually thereafter, each employee shall be paid to attend a minimum of twenty-four (24) hours of training.

11.09 The Employer will explain to all bargaining unit employees new policies, Procedures, rules or regulations prior to implementation.

## ARTICLE XII DISCIPLINE

12.01 A non-probationary employee who is suspended, demoted or discharged shall be given written notice regarding the reason(s) for the disciplinary action within a reasonable time after the Employer has knowledge of the conduct for which an employee is being disciplined. In the case of suspension or discharge, the employee has the right to confer with a representative of the OPBA.

12.02 Disciplinary action taken by the Employer shall only be for just cause.

12.03 Any disciplinary suspension may be grieved through arbitration as set forth in Article XXXIX. Reprimands are grievable only through the last step of the Grievance Procedure. The decision of the Mayor at that point shall be final and binding.

## ARTICLE XIII DUTY HOURS

13.01 The regular, but not guaranteed, work period for all sworn police officers covered by this Agreement will be forty (40) hours per work week.

13.02 Employees may switch schedules or "swap" shifts with one another, with the advance written approval of the Chief of Police. The Chief or his designee must be notified not less than three (3) days prior to the proposed change. Switching or swapping of shifts shall not create or cause overtime.

13.03 An employee's work week shall normally consist of five consecutive days on duty and two consecutive days off duty, unless otherwise agreed by the employee. The Employer reserves the right upon exceptional or emergency situations to split employees days off.

ARTICLE XIV OVERTIME PAY

14.01 Overtime. All police officers, for work actually performed in excess of forty (40) hours in the employees' regular work period, when approved of by the Chief of Police or immediate supervisor, shall be compensated at the rate of one and one-half (1½) times the employee's regular hourly rate. For purposes of overtime, sick time shall not be construed as time worked, however, vacation leave, holiday and compensatory time shall count as time worked.

14.02 Compensatory Time. Members of the bargaining unit who have earned overtime or who have appeared in court shall have the option to take the time earned as paid overtime or as compensatory time. Compensatory time shall be paid at the rate of time and one half (1½) the base rate of pay. An employee shall not accumulate more than eighty (80) hours of compensatory time. At the end of the fiscal year, an employee may cash in his compensatory time for pay up to eighty (80) hours.

ARTICLE XV COURT TIME

15.01 Any employee who must appear in court in a capacity related to his official duties as an employee in the City of Kirtland, prior to or after leaving work, or on a day when he is not scheduled to work, shall be compensated at a minimum of four (4) hours, for such court appearance at the rate of one and one-half (1½) times his regular hourly rate.

15.02 In the event the court time precedes or abuts the employee's shift, he shall be paid the premium rate only up to the commencement of his shift. He shall then revert to his regular hourly rate.

15.03 Any employee who must appear in any court must use a City vehicle for transportation purposes to and from the court appearance to be eligible for Court time compensation as set forth in paragraph 14.01, above. Personal vehicles are not to be used by employees for court appearances. Only in the event that a City vehicle is not available, an employee may use his personal vehicle, with approval by the Police Chief or a designee, for court appearances. An employee who uses his personal vehicle shall be compensated a mileage allowance at the rate applicable to all City employees.

ARTICLE XVI HOLIDAYS

16.01 Each member of the bargaining unit shall be entitled to and may take off, as

scheduling permits, the following holidays on January 1<sup>st</sup> of each year. A member who wishes to use a holiday shall submit a written request to the Chief who shall respond within one (1) week. If an employee retires, quits, or is terminated during the year, he shall only be entitled to the holidays that have passed, prior to his last date of employment

16.02 Each employee shall be entitled to the following holidays:

- |                   |                               |
|-------------------|-------------------------------|
| New Year's Day    | Veteran' s Day                |
| Presidents' Day   | Thanksgiving Day              |
| Memorial Day      | Friday after Thanksgiving     |
| Independence Day  | Christmas Day                 |
| Labor Day         | Day before or after Christmas |
| Personal Days (2) |                               |

16.03 Employees have the responsibility of informing the City of a request for cash payment within thirty (30) days of the holiday. If such designation is not made, the employee will automatically be granted compensatory time.

16.04 Any employee who actually works on New Year's Day, President's Day, Memorial Day, Labor Day, Veteran's Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve or Christmas shall receive one and one-half (1 1/2) times his regular rate of pay for all hours worked on such holidays.

## ARTICLE XVII VACATIONS

17.01 Each full-time employee shall earn and be entitled to paid vacation in accordance with the following schedule:

| <u>Upon completion of</u> | <u>Days</u> |
|---------------------------|-------------|
| One (1) year              | 2 weeks     |
| Five (5) years            | 3 weeks     |
| Fifteen (15) years        | 4 weeks     |
| Twenty (20) years         | 5 weeks     |

17.02 Earned vacation shall be awarded on the employee's anniversary date in accordance with the above schedule, provided the employee is employed by the Employer at that time.

17.03 Employees will choose vacation dates by seniority.

17.04 An employee who has earned vacation time by reason of being employed in this department shall be able to transfer his vacation time to another department should he elect such a transfer.

17.05 Vacation time shall not be carried over from one year to another without express written authorization of the Employer. Any vacation time that is unused within the year granted,

shall be deemed forfeited unless authorized for approved carryover.

17.06 Any employee of the Employer who has accumulated and earned vacation time from being employed by the State of Ohio or any other political subdivision of the State of Ohio and who has become employed by the Employer within one (1) year from his termination from such other public employer shall be allowed to transfer said vacation time and credit to his accumulated vacation time with the Employer, not to exceed three (3) years.

ARTICLE XVIII SICK LEAVE

18.01 Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee; 2) exposure by the employee to a contagious disease communicable to other employees; and/or 3) serious illness, injury or death in the employee's immediate family.

18.02 All employees shall earn sick leave at the rate of four and six-tenths (4.6) hours for every eighty (80) hours in a paid status and may accumulate such sick leave to an unlimited amount, provided no employee can earn or accrue more than one-hundred twenty (120) hours in any calendar year.

18.03 An employee who is to be absent on sick leave shall notify the Employer of such absence and the reason therefore at least two (2) hours before the start of his work shift each day he is to be absent.

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

18.05 Before an absence may be charged against accumulated sick leave, the Employer may require such proof of illness, injury or death as may be satisfactory to him, or may require the employee to be examined by a physician designated by the Employer and paid by the Employer. In any event, an employee absent for more than three (3) consecutive days may be required to supply a physician's report to be eligible for paid sick leave.

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

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

18.08 The Employer may require an employee who has been absent due to personal illness or injury, prior to and as a condition of his return to duty, to be examined by a physician designated and paid by the Employer, to establish that he is not disabled from the performance of his duties and that his return to duty will not jeopardize the health and safety of other employees.

18.09 When the use of sick leave is due to illness or injury in the immediate family,

"immediate family" shall be defined to only include the employee's spouse, children and parents residing with the employee. When the use of sick leave is due to death in the immediate family, "immediate family" shall be defined to only include the employee's parents or parents-in-law, spouse, child, grandchild, brother and sister, or person residing in the household to whom the employee is in loco parentis.

18.10 Upon the retirement of an employee who has not less than ten (10) years of continuous employment with the Employer and who has qualified for retirement benefits from a State of Ohio public employee retirement system, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-third (1/3) the total number of accumulated but unused sick hours earned by the employee, as certified by the Employer, providing that such resulting number of hours to be paid shall not exceed three hundred and twenty (320) hours. Any remaining sick hours after the 320 hour conversion payout shall be paid to the retiring officer at the rate of Twenty Dollars (\$20.00) per each additional eight hours (1 day) of sick time.

18.11 Any employee who utilizes eight (8) hours or less of sick leave in a calendar year shall receive an additional personal day in the subsequent calendar year. Such personal day must be utilized by the employee with the approval of the Employer.

#### ARTICLE XIX FUNERAL LEAVE

19.01 All full-time employees shall be entitled to funeral leave, not deducted from sick leave, of three (3) days, for each death in the employee's immediate family.

19.02 Immediate family shall be defined to the same parameters as in Sick Leave, Article 18.09.

#### ARTICLE XX PERSONAL SICK DAY

20.01 All full-time employees shall be entitled to one (1) personal sick day in addition to the two (2) personal days provided for in Article 16.02, per calendar year, to be deducted from the employee's accumulated sick leave. This personal sick day shall count and be deducted as sick leave used for purposes of the bonus provision set forth in Section 18.11. Personal days shall not, if not used, carry over in to the succeeding year.

#### ARTICLE XXI INJURY LEAVE

21.01 When an employee is injured in the line of duty while actually working for the Employer, he shall be eligible for paid leave, not to exceed sixty (60) calendar days from the injury date, providing that he files for Workers' Compensation and signs a waiver assigning to the Employer those sums of money he would ordinarily receive as weekly compensation as determined by law for that number of weeks he receives benefits under this Article. Such leave shall commence after the employee utilizes his sick leave for the first five (5) work days. Sick leave will be reimbursed to the extent of the Workers' Compensation benefits received by the Employer.

21.02 If at the end of this sixty (60) calendar day period, the employee is still disabled, the leave may, at the Employer's sole discretion, be extended for an additional sixty (60) calendar day period.

21.03 The Employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the Employer, resulting in the physician's certification that the employee is unable to return to work due to the injury as a condition precedent to the employee receiving benefits under this Article. The designated physician's opinion shall govern whether the employee is actually disabled or not, but shall not govern whether the Employer shall extend the period of leave.

ARTICLE XXII JURY DUTY

22.01 Any employee who is called for jury duty, either Federal, County or Municipal, shall be paid his or her regular salary provided the employee signs over to the City any fees received for such jury duty.

ARTICLE XXIII INSURANCE

23.01 Effective January 1, 2012, the Employer shall continue to provide employee health insurance through the Lake County consortium of participating public entities. The Employer shall be subject to the health insurance plan(s) and plan documents as determined by Lake County. The Employer shall have the right to change insurance carriers or coverage so long as employees retain comparable coverage of the Lake County Plan(s) at the time the Employer opts out of the Lake County consortium.

Spousal surcharge (if qualifying) will be paid by the employee at a rate of \$25 per month in 2009, \$50 per month in 2010 and \$75 per month in 2012.

23.02 Effective January 1, 2012, employees shall pay ten percent (10%) of the health care premium up to a maximum of one hundred forty (\$140.00) dollars per month through payroll deduction.

ARTICLE XXIV LONGEVITY

24.01 All employees shall receive longevity payments after completion of the required length of continuous full-time service, pursuant to the following schedule:

| <u>After completion of</u> |            |
|----------------------------|------------|
| 5 years                    | \$ 550.00  |
| 10 years                   | \$1,100.00 |
| 15 years                   | \$1,650.00 |
| 20 years                   | \$2,100.00 |

24.02 Longevity payments shall be made in lump sum on the basis of completion of the

appropriate full year of service in the first full pay period in January of each year.

ARTICLE XXV

WAGES

25.01 Effective at the beginning of the first full payroll period, as listed herein of each year of the Agreement, all full-time Patrol Officers shall receive wages according to the following schedule:

|                         | <u>Year</u>   | <u>January 2012</u> |
|-------------------------|---------------|---------------------|
| (4 <sup>th</sup> Class) | Start         | \$50,029            |
| (3 <sup>rd</sup> Class) | After 1 year  | \$50,525            |
| (2 <sup>nd</sup> Class) | After 2 years | \$53,316            |
| (1 <sup>st</sup> Class) | After 3 years | \$57,130            |

25.02 Effective at the beginning of the first full payroll period, as listed herein of each year of the Agreement, all full-time Sergeants shall receive wages in accordance with the following schedule:

|                                | <u>January 2012</u> |
|--------------------------------|---------------------|
| 2 <sup>nd</sup> Class Sergeant | \$63,415            |
| 1 <sup>st</sup> Class Sergeant | \$64,556            |

Sergeants shall progress from 2<sup>nd</sup> Class to 1<sup>st</sup> Class in accordance with the attached Professional Pay Policy.

25.03 Any employee who is assigned to the second or third shifts and actually works such shifts shall receive the following shift differentials in addition to the base wage:

|                       |   |        |
|-----------------------|---|--------|
| 2 <sup>nd</sup> shift | - | \$0.35 |
| 3 <sup>rd</sup> shift | - | \$0.60 |

25.04 Any bargaining unit employee assigned by the Employer as a Field Training Officer (FTO) and who actually performs such duties shall receive an additional one dollar (\$1.00) per hour while serving as a FTO. Training will be conducted by certified FTOs.

25.05 Any 3<sup>rd</sup> Class Officer who receives enough professional points in accordance with the attached policy shall receive one thousand dollars (\$1,000.00) annually as professional pay.

25.06 Any 2<sup>nd</sup> Class Officer or 2<sup>nd</sup> Class Sergeant who receives enough professional points in accordance with the attached policy shall receive two thousand dollars (\$2,000.00) annually as professional pay.

25.07 Any 1<sup>st</sup> Class Officer or 1<sup>st</sup> Class Sergeant who receives enough professional points in accordance with the attached policy shall receive three thousand dollars (\$3,000.00)

annually as professional pay.

ARTICLE XXVI PENSION "PICK-UP"

26.01 As permitted by the Internal Revenue Service and Police and Fire Disability and Pension Fund, the Employer agrees to implement the "salary reduction" method for pension "pick-up." Such plan will take effect upon approval of the Pension Board.

ARTICLE XXVII UNIFORM ALLOWANCE

27.01 All full-time employees shall receive an annual uniform allowance in the amount of one thousand seventy five dollars (\$1,075.00) each year of the Agreement. Uniform allowance shall continue to be through a voucher/purchase order system. The Employer shall select the store(s) at which employees may purchase such uniforms. Uniform allowances for newly hired employees shall be pro-rated.

27.02 The Employer agrees to reimburse any employee a maximum of fifty dollars (\$50.00) per year, for replacement of glasses or protective eye-wear, watches or dentures which are broken in the line of duty excluding employee negligence. Employees must provide sufficient and adequate receipts for such reimbursement. Further, the City is entitled to any and all reimbursement, up to fifty dollars (\$50.00) for workers compensation payments to employees for replacement items. The Union agrees that employees will sign an appropriate waiver form.

27.03 The Employer will purchase body armor (ballistic vests) for each full-time employee once every five years or the manufacturer's recommendation for replacement, whichever occurs first.

ARTICLE XXVII VACANCIES AND PROMOTIONS

28.01 Vacancies in all positions above patrol officer, except the Chief, shall be filled if practicable, by promotions. No member of the bargaining unit shall be eligible to take the written examination without having been a full-time patrol officer for at least three (3) years for the City of Kirtland, or the member must have at least two (2) years as a full-time patrol officer in the City of Kirtland and has had five years continuous full-time employment in the position of patrol officer prior to being hired as a patrol officer for the City of Kirtland.

28.02 All promotional job vacancies, except any position of Detective, shall be filled according to merit and fitness ascertained through an objective, written, open-competitive examination, administered by the Civil Service Commission, oral interviews, and other selection criteria (seniority, assessment center, etc.) established by the Employer. The score attained on the written examination shall account for not greater than fifty (50%) percent of the total cumulative score from which the appointee shall be selected.

28.03 The appointee shall be selected from the top three (3) cumulative passing scores, and for more than one vacancy from groups of three passing scores thereafter. Once a person has been passed over twice for the vacancy, his name shall be removed from the eligibility list.

28.04 An employee who is promoted shall be required to satisfactorily complete the applicable probationary period. He will be considered to have qualified on the new job when he satisfactorily performs the required duties with no more supervision than is required of other employees on the same or similar jobs and when his record as to quality and quantity of work meets the standards applicable to the job. If, during the probationary period or at the end of the probationary period, it is determined, at the Employer's sole discretion, that the employee cannot satisfactorily perform the new job, he may be returned to his previously held position. Such reversion to an employee's prior position, during the probationary period, shall not be appealable to any grievance/arbitration procedure, civil service procedure, or any other forum, legal or administrative.

28.05 Effective upon the execution of this Agreement, any presently existing promotional list shall be voided and a new promotional list will be developed pursuant to this Article.

#### ARTICLE XXIX LAY-OFF AND RECALL

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

29.02 Employees within the effected job classification shall be laid off according to their departmental seniority with the least senior being laid off first.

29.03 Employees who are laid off from one job classification may displace (bump) another employee with lesser departmental seniority in an equal or lower rated job classification within the department.

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

29.05 Recalls shall be in the inverse order of lay-off and a laid-off employee shall retain his right to recall for eighteen (18) months from the date of his lay-off. Notice of recall shall be sent to the employee's address listed on the Employer's records and shall be sent via certified mail, return receipt requested. An employee who refuses recall or does not report to work within five (5) calendar days from the date the employee receives the recall notice, shall be considered to have resigned his position and forfeits all right to employment with the Employer.

#### ARTICLE XXX MISCELLANEOUS

30.01 In any instance where the Employer sends an employee for a medical examination, the Employer shall pay the cost of the examination and shall pay the employee for

the time expended taking such examination to the extent that such time is beyond the employee's shift.

30.02 The OPBA will be allowed one (1) locked bulletin board for official OPBA notices, to be located in the locker room. The OPBA will be the sole holders of the keys to the board. Any materials placed on the bulletin board shall be signed by a representative of the OPBA and a copy provided to the Employer at the time of posting. There shall be no posting of inflammatory material or material which may be defamatory in nature.

30.03 Employees shall be permitted to work off duty assignments subject to approval, and scheduling requirements as established by the Employer. This shall not be construed as preventing the Employer from assigning responsibility for scheduling to a bargaining unit member.

30.04 The Employer agrees, to the extent possible, to give employees reasonable notice of any departmental meetings or mandatory special details. In the event an employee is subpoenaed to appear in court, the Employer agrees to notify said employee as soon as is reasonably possible after receipt of the subpoena by the City.

30.05 The Employer agrees that personal or confidential mail of the employee delivered to the Police Department, and designated or denominated as such, shall not be opened by the Employer or its agents.

30.06 The City agrees that in the event it is required to make deductions for child support payments the City shall not charge a poundage payment or service fee to the employee for such deduction or service.

ARTICLE XXXI FIREARM TRAINING

31.01 The Employer agrees to provide employees in the bargaining unit with, at minimum, adequate firearm training under the Ohio Revised Code. The Employer also agrees to provide employee's ammunition to the caliber of firearm the employee uses and which has been approved by the Employer. The Employer shall provide a copy of the designated range shoot program to the Union upon request

ARTICLE XXXII DRUG TESTING

32.01 Drug screening/testing shall be conducted at times of pre-employment, annual physical if instituted, randomly and upon reasonable suspicion. Drug screening/testing shall be conducted solely for administrative purposes and the results obtained shall not be used in any criminal proceeding. Under no circumstances may the results of drug screening or testing be released to a third party. The following procedure shall not preclude the Employer from other administrative action but such actions shall not be based solely upon the test results.

32.02 All drug screening tests shall be conducted by medical laboratories licensed by the State of Ohio. The procedure utilized by the test lab shall include a chain of custody

procedure and mass spectroscopy confirmation of any positive initial screening.

32.03 Drug screening tests shall be given to employees to detect the illegal use of a controlled substances as defined in the Ohio Revised Code. If the screening is positive, the employee shall be ordered to undergo a confirmatory test of blood by the gas chromatography-mass spectrophotometry method which shall be administered by a medical laboratory licensed by the State of Ohio. The employee may have a second confirmatory test done at a medical laboratory licensed by the State of Ohio of his choosing, at his expense. This test shall be given the same evidentiary value as the two previous tests.

32.04 Upon the findings of positive test results for an illegal controlled substance by the chemical tests, the Employer shall conduct an internal investigation to determine if facts exist to support the conclusion that the employee knowingly used an illegal controlled substance. Upon the conclusion of such investigation, the Employer shall have the right to disciplinary action. The Employer may require the employee to participate in a rehabilitation or detoxification program, as determined by appropriate medical personnel. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick leave, vacation leave, and personal days for the period of the detoxification program. If no such leave credits are available, such employee shall be placed on a medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program and a retest that demonstrates the employee is no longer illegally using a controlled substance, the employee shall be returned to his position. Such employee may be subject to periodic retesting at the discretion of the employer upon his return to his position. Any employee in the above-mentioned rehabilitation or detoxification programs will not lose any seniority or benefits should it be necessary that he be required to take a medical leave of absence without pay for a period not to exceed 90 days.

32.05 If the employee refuses to undergo rehabilitation or detoxification, or if he fails to complete a program of rehabilitation, or if he tests positive at any time within two (2) years after his return to work upon completion of the program of rehabilitation, such employee shall be subject to disciplinary action. Except as otherwise provided herein, costs of all drug screening tests and confirmatory tests shall be borne by the City. For the purpose of this article, "periodic" shall mean not more than six (6) times per year, except that drug tests may be performed at any time upon "reasonable suspicion" of drug use.

32.06 No drug testing shall be conducted without the authorization of the Department Head. If the Department Head orders, the employee shall submit to a toxicology test in accordance with the procedure set forth below. Refusal to submit to toxicology testing after being ordered to do so may result in disciplinary action.

32.07 The employee and the Union shall be given a copy of the laboratory report of both specimens before any discipline is imposed.

ARTICLE XXXIII CONFORMITY TO LAW

33.01 This Agreement shall be subject to and subordinated to any applicable present and

future Federal and State laws, the invalidity of any provision(s) of this Agreement by reason of any such existing or future law shall not affect the validity of the surviving provisions.

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

ARTICLE XXXIV TOTAL AGREEMENT

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

ARTICLE XXXV OBLIGATION TO NEGOTIATE

35.01 The Employer and the Union acknowledge that during negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

35.02 Therefore, for the life of this Agreement, the Employer and the Union each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain/negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, 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 bargained/negotiated and signed this Agreement.

ARTICLE XXXVI GENDER AND PLURAL

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

ARTICLE XXXVII HEADINGS

37.01 It is understood and agreed that the use of headings before articles or sections is

for convenience only and that no heading shall be used in the interpretation of said article or section nor effect any interpretation of any article or section.

ARTICLE XXXVIII            LEGISLATIVE APPROVAL

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

ARTICLE XXXIX            MILITARY LEAVE

39.01            Any employee who is a member of a reserve force of the United States, or the State of Ohio and who is ordered by the appropriate authorities to attend a training program or perform other duties under the supervision of the United States, or the State of Ohio, shall be granted leave of absence during the period of such activity.

39.02            Such leave shall not reduce the employee's seniority status, vacation, sick leave or other benefits.

39.03            Employees will be paid the difference between their normal weekly wage and military pay, providing the military pay is less than their normal weekly wage and such payments do not continue for a period of greater than thirty-one (31) days.

ARTICLE XL                DURATION

40.01            This Agreement shall become effective at 12:01 a.m. on January 1, 2012 and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2014.

ARTICLE XLI                GRIEVANCE PROCEDURE

41.01            Every employee shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal and shall have the right to be represented by a person of his own choosing at all stages of the Grievance Procedure. It is the intent and purpose of the parties to this Agreement that grievances shall be settled, if possible, at the lowest step of this procedure.

41.02            For the purposes of this procedure, the below listed terms are defined as follows:

- a)            Grievance - A "grievance" shall be defined as a dispute or controversy arising from the alleged misapplication or misinterpretation of only the specific and express written provision of this Agreement.
- b)            Aggrieved party - The "aggrieved party" shall be defined as only any employee or group of employees within the bargaining unit actually filing

a grievance.

- c) Party in Interest - A "party in interest" shall be defined as any employee of the Employer named in the grievance who is not the aggrieved party.
- d) Days - A "day" as used in this procedure shall mean calendar days, excluding Saturdays, Sundays or Holidays as provided for in this Agreement.

41.03 The following procedures shall apply to the administration of all grievances filed under this procedure.

- a) Except at Step 1, all grievances shall include: 1) the name and position of the aggrieved party; 2) the identity of the provisions of this Agreement involved in the grievance; 3) the time and place where the alleged events or conditions constituting the grievance took place; 4) the identity of the party responsible for causing the said grievance, if known to the aggrieved party; and 5) a general statement of the nature of the grievance and the redress sought by the aggrieved party.
- b) Except at Step 1, all decisions shall be rendered in writing at each step of the grievance procedure. Each decision shall be transmitted to the aggrieved party and his representative, if any.
- c) If a grievance affects a group of employees working in different locations, with different principals, or associated with an employer-wide controversy, it may be submitted at Step 3.
- d) The preparation and processing of grievances shall be conducted only during non-working hours.
- e) Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the administration and having said matter informally adjusted without the intervention of the Union, provided that the adjustment is not inconsistent with the terms of this Agreement and the employee shall follow the chain of command for purposes of notification only. Such notification shall not be construed as request to go further. In the event that any grievance is adjusted without a formal determination, pursuant to this procedure, while such adjustment shall be binding upon the aggrieved party and shall, in all respects, be final, said adjustment shall not create a precedent or ruling binding upon the Employer in future proceedings.
- f) The grievant may choose whomever he wishes to represent him at any step of the grievance procedure.

- g) The existence of this Grievance Procedure, hereby established, shall not be deemed to require any employee to pursue the remedies herein provided and shall not impair or limit the right of any employee to pursue any other remedies available under law, except that any employee who pursues any other available remedy other than provided by this procedure, shall automatically have waived and forfeited any remedies provided by this procedure.
- h) This procedure shall not be available for disputes concerning any type of discipline or discharge actions.
- i) The time limits provided herein will be strictly adhered to and any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the Employer fails to reply within the specified time limit, the grievance shall automatically move to the next step. The time limits specified for either party may be extended only by written mutual agreement.
- j) This procedure shall not be used for the purpose of adding to, subtracting from, or altering in any way, any of the provisions of this Agreement

41.04 All grievances shall be administered in accordance with the following steps of the grievance procedure.

Step 1:

An employee who believes he may have a grievance shall notify his immediate supervisor of the possible grievance within five (5) days of the occurrence of the facts giving rise to the grievance. The supervisor will schedule an informal meeting with the employee and his representative, if the representative's presence is requested by the employee, within five (5) days of the date of the notice by the employee. The supervisor and the employee, along with the employee's representative, if his presence is requested by the employee, will discuss the issues in dispute with the objective of resolving the matter informally.

Step 2:

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

Step 3:

If the aggrieved party is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Mayor within five (5) days from the date of

the rendering of the decision in Step 2. Copies of the written decisions shall be submitted with the appeal. The Mayor or his designee shall convene a meeting within ten (10) days of the receipt of the appeal. The meeting will be held with the aggrieved party, his representative, if any, and any other party necessary to provide the required information for the rendering of a proper decision. The Mayor or his designee shall issue a written decision to the employee, with a copy to the employee's representative, if any, within fifteen (15) days from the date of the meeting. If the aggrieved party is not satisfied with the decision at Step 3, he may proceed to arbitration pursuant to the Arbitration Procedure herein contained.

## ARTICLE XLII

## ARBITRATION PROCEDURE

42.01 In the event a grievance is unresolved after being processed through all of the steps of the Grievance Procedure, unless mutually waived or having passed through the various steps by time limit default(s) of the Employer, then within ten (10) days after the rendering of the decision at Step 4, or a time limit default by the Employer at Step 4, the aggrieved party may submit the grievance to arbitration. Within this ten (10) day period, the parties will meet to attempt to mutually agree upon an arbitrator. If such agreement is not reached, the arbitrator shall be selected in accordance with the rules and regulations of the Federal Mediation and Conciliation Service (FMCS), and the arbitrator ultimately designated shall hear the grievance in question.

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

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

42.04 The hearing(s) shall be conducted pursuant to the Rules and Regulations of the FMCS.

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

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

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

ARTICLE XLIII

REOPENNER

43.01 The Employer or the Union agrees that either may reopen negotiations, in the third year of the contract, exclusively for Wages (ARTICLE XXV) and Insurance (ARTICLE XXIII) portions of this contract. No other facets of the contract shall be opened unless mutually agreed upon by both parties.

ARTICLE XLIV

EXECUTION

44.01 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed this 24<sup>TH</sup> day of AUGUST, 2012.

FOR THE OPBA:



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FOR THE EMPLOYER:



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MARK TYLER, MAYOR

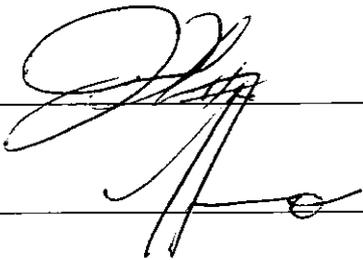
MEMORANDUM OF UNDERSTANDING  
BETWEEN CITY OF KIRTLAND  
AND OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

The parties mutually agree that in accordance with O.R.C. Chapter 4117 and Article IV (Recognition) of the parties' Collective Bargaining Agreement to define a Supervisor who, in absence of the Chief, is authorized to exercise the authority and perform the duties of the Chief of the Department as follows:

Executive Officer - The Chief of Police shall, at his discretion, select up to one (1) Sergeant to fill the position/assignment of "Second In Command" or officer who is authorized to perform the duties of the Chief of Police in the Chief's absence. The Sergeant serving in this capacity will act as the Executive Officer of the agency and shall be exempt from the bargaining unit. Assignment to the position of Executive Officer is revocable at the discretion of the Chief of Police or upon request of the appointed Sergeant. This assignment shall not be deemed a vacancy or promotion pursuant to Article XXIX (Vacancies and Promotions). Should the Sergeant be removed, or request removal, from the assignment to the position of Executive Officer, he will return to the Sergeants bargaining unit with no loss of seniority or rank. The City further agrees that in the event it appoints an Executive Officer, it shall retain two (2) Sergeants and implement any necessary promotions to mandate that there be two (2) Sergeants as a result of an appointment of an Executive Officer.

Dated this 24<sup>TH</sup> day of AUGUST, 2012.

FOR THE OPBA:



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FOR THE EMPLOYER:



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MARK TYLER, MAYOR