



CITY OF KIRKLAND
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MEMORANDUM

To: Kurt Triplett, City Manager
From: James C. Lopez, Director of Human Resources & Performance Management
Date: October 24, 2012
Subject: Ratification of PSEU Local 519 Collective Bargaining Agreement - 2012 - 2013

RECOMMENDATION

Council adopts the 2012-2013 Collective Bargaining Agreement between the City of Kirkland and the PSEU Local 519, representing Kirkland Police Lieutenants Union. This is a two year contract to bring the schedule of the contract into alignment with the Commissioned Police Guild (Guild) contract.

BACKGROUND DISCUSSION:

On October 23, 2012, the City of Kirkland was advised that the members of the PSEU Local 519, voted for ratification of the 2012 – 2013 Collective Bargaining Agreement. This Agreement was the result of a collaborative negotiation process between the City and the Union.

Some highlights of the agreement are:

- Two year agreement (January 1, 2012 – December 31, 2013)
- Percentage based wage increases:
 - 2012 - 2.5 %
 - 2013 - 2.0%
- Longevity increase of 1% to employees with 20-24 years of service, and 1% increase for employees with 25+ years of service (commensurate with current Guild contract)
- Education Incentive increase of .5% for BA/BS degree, and .5% increase for Graduate degree (commensurate with current Guild contract)
- All of the above economic items are retroactive to January 1, 2012
- Physical Fitness Incentive of 1% for employees who pass the fitness test (same 1% incentive and schedule as current Guild contract, which is November to October, not Jan. to Dec.)
- Upon termination, employee's vacation leave balance may be directed to retiree medical account (benefit to employee – no cost to City)
- Life insurance language change to reflect a maximum guarantee of \$250K (current practice consistent with other bargaining units)
- Modification/clarification language regarding the use of take-home vehicle
- Collective Bargaining Agreement will now be aligned with Commissioned Police Guild contract.

Members of the Negotiation Teams warrant commendation for this collaborative negotiation process, which occurred during challenging economic times.

Staff is pleased to recommend to City Council the ratification and adoption of this Agreement (or a substantially similar version if minor corrections become necessary) with the PSEU Local 519.

Attachment: City of Kirkland and PSEU Local 519 Collective Bargaining Agreement, 2012 – 2013

2012 – 2013 Agreement

By and Between



CITY OF KIRKLAND

and

**PUBLIC SAFETY
EMPLOYEES UNION
#519**

**KIRKLAND POLICE
LIEUTENANTS UNION**



**2012 -2013 Agreement
By and Between
City of Kirkland
and
Kirkland Police Lieutenants Union
Public Safety Employees Union #519**

TABLE OF CONTENTS

PREAMBLE.....	6
ARTICLE 1 – DEFINITIONS.....	6
ARTICLE 2 – RECOGNITION.....	7
2.1 RECOGNITION	7
2.2 NEW CLASSIFICATIONS.....	7
2.3 CONTRACT PROPOSALS	7
ARTICLE 3 – UNION SECURITY	8
3.1 MEMBERSHIP.....	8
3.2 DUES DEDUCTION.....	8
3.3 BARGAINING UNIT ROSTER	9
3.4 NONDISCRIMINATION – UNION ACTIVITY	9
ARTICLE 4 – UNION/EMPLOYER RELATIONS	9
4.1 UNION ACCESS.....	9
4.2 FACILITY USE.....	9
4.3 STEWARDS	9
4.4 ORIENTATION	9
4.5 BULLETIN BOARDS.....	9
4.6 CONTRACT DISTRIBUTION	9
4.7 NEGOTIATIONS RELEASE TIME.....	10
4.8 GRIEVANCE RELEASE TIME	10
4.9 UNION BUSINESS.....	10
ARTICLE 5 – EMPLOYMENT.....	10
5.1 PROBATIONARY PERIODS.....	10
5.2 TYPES OF EMPLOYMENT	10
5.3 CONTRACTORS	10
5.4 STUDENTS/INTERNS/VOLUNTEERS.....	10
ARTICLE 6 – HOURS OF WORK AND OVERTIME.....	11
6.1 WORKDAY/WORKWEEK.....	11
6.2 REST/MEAL BREAKS.....	11
6.3 COMPENSATORY TIME / MANAGEMENT LEAVE	11

ARTICLE 7 – EMPLOYMENT PRACTICES.....	11
7.1 NONDISCRIMINATION.....	11
7.2 JOB POSTING.....	11
7.3 PROMOTIONS.....	12
7.4 SPECIAL ASSIGNMENTS	12
7.5 PERSONNEL FILES	12
7.6 EVALUATIONS	13
7.7 BILL OF RIGHTS	14
7.8 DISCIPLINE/CORRECTIVE ACTION	16
ARTICLE 8 – SENIORITY.....	17
8.1 DEFINITIONS.....	17
8.2 APPLICATION OF SENIORITY	18
8.3 PROBATIONARY PERIOD.....	18
8.4 LOSS OF SENIORITY.....	19
8.5 LAYOFFS.....	19
8.6 NOTICE.....	19
8.7 MEETING WITH UNION	20
8.8 AFFECTED GROUP.....	20
8.9 VACANT POSITIONS	21
8.10 SENIORITY LIST	21
8.11 ORDER OF LAYOFF	21
8.12 COMPARABLE EMPLOYMENT	21
8.13 LAYOFF OPTIONS	21
8.14 REDUCTION HOURS/FTE.....	22
8.15 RECALL.....	22
8.16 VACATION & LEAVE CASH OUTS/PAY	23
8.17 UNEMPLOYMENT CLAIMS.....	23
ARTICLE 9 – WAGES	23
9.1 WAGE SCHEDULE.....	23
9.2 HIRE-IN RATES	24
9.3 SPECIALTY PAY	24
9.4 LONGEVITY	24
9.5 OUT-OF-CLASS PAY	24
9.6 EDUCATION INCENTIVE.....	24
9.7 PHYSICAL FITNESS INCENTIVE.....	25
9.8 SHIFT DIFFERENTIAL	25
ARTICLE 10 – OTHER COMPENSATION.....	25
10.1 STANDBY PAY.....	25
10.2 CALL-BACK PAY.....	25
10.3 TAKE HOME VEHICLE/MILEAGE REIMBURSEMENT.....	25
10.4 CLOTHING AND EQUIPMENT	26
ARTICLE 11 – HOLIDAYS	26

11.1 HOLIDAYS	26
11.2 HOLIDAY ELIGIBILITY	27
11.3 HOLIDAY OBSERVANCE.....	27
11.4 HOLIDAY ON DAY OFF.....	27
11.5 HOLIDAY COMPENSATION	27
ARTICLE 12 – VACATION.....	27
12.1 VACATION ACCRUAL.....	27
12.2 VACATION UPON TERMINATION	28
ARTICLE 13 – SICK LEAVE.....	29
13.1 SICK LEAVE ACCRUAL	29
13.2 SICK LEAVE USAGE	29
13.3 SHARED LEAVE	30
13.4 COORDINATION – WORKERS’ COMPENSATION.....	30
13.5 FAMILY MEMBER.....	30
ARTICLE 14 – LEAVES OF ABSENCE.....	31
14.1 IN GENERAL.....	31
14.2 JURY DUTY/COURT	31
14.3 MILITARY LEAVE.....	31
14.4 BEREAVEMENT	31
14.5 MAINTENANCE OF SENIORITY	31
14.6 LEAVE WITHOUT PAY.....	31
14.7 FAMILY LEAVE FMLA	31
14.8 MATERNITY LEAVE.....	32
14.9 INCLEMENT WEATHER.....	32
ARTICLE 15 – HEALTH & WELFARE.....	33
15.1 MAINTENANCE OF BENEFITS	33
15.2 HEALTH AND LIFE INSURANCE.....	33
15.3 FLEXIBLE SPENDING ACCOUNT – FSA	34
15.4 RETIREMENT	34
ARTICLE 16 – TRAINING.....	34
16.1 TRAINING	34
ARTICLE 17 – LABOR/MANAGEMENT COMMITTEES.....	34
17.1 PURPOSE AND COMPOSITION OF COMMITTEES	34
17.2 COMPENSATION	34
ARTICLE 18 – HEALTH & SAFETY.....	35
18.1 SAFE WORKPLACE.....	35
18.2 HEALTH & SAFETY PLAN.....	35
18.3 DRUG FREE WORKPLACE.....	35
18.4 WORKPLACE VIOLENCE.....	35

ARTICLE 19 – GRIEVANCE PROCEDURE.....	35
19.1 GRIEVANCE DEFINED	35
19.2 GRIEVANCE PROCEDURE.....	36
19.3 UNION/EMPLOYER GRIEVANCE.....	37
19.4 SCHEDULE OF MEETINGS	37
ARTICLE 20 – NO STRIKE / NO LOCKOUT.....	37
20.1 NO STRIKE / NO LOCKOUT.....	37
ARTICLE 21 – MANAGEMENT RIGHTS AND RESPONSIBILITIES	37
21.1 MANAGEMENT RIGHTS AND RESPONSIBILITIES	37
21.2 INSURANCE.....	38
ARTICLE 22 – GENERAL PROVISIONS.....	38
22.1 SAVINGS CLAUSE.....	38
ARTICLE 23 – ENTIRE AGREEMENT.....	40
23.1 DURATION CLAUSE	40
23.2 ENTIRE AGREEMENT.....	40
Appendix “A”	41
Appendix “B”	63

**2012 – 2013 Agreement
By and Between
City of Kirkland
And
Kirkland Police Lieutenants Union
Public Safety Employees Union #519**

PREAMBLE

This agreement, made by and between the City of Kirkland, hereinafter referred to as the “Employer” and the Kirkland Police Lieutenants Union, PSEU #519 hereinafter referred to as the “Union.”

The purpose of the Employer and the Union in entering into this Agreement is to set forth their entire agreement with regard to wages, hours, and working conditions so as to promote uninterrupted public service, efficient operations, and harmonious relations, giving full recognition to the rights and responsibilities of the Employer and the Employees.

ARTICLE 1 – DEFINITIONS

As used herein, the following terms shall be defined as follows:

“Bargaining Unit” shall include all commissioned employees bearing the rank of Lieutenant within the City of Kirkland Police Department.

“Employee” shall mean regular and temporary, employees in the bargaining unit (as defined in Article 2, 3 and 5) covered by this agreement.

“Employer” shall mean the City of Kirkland, Washington.

“Health Care Provider’s Statement” shall mean a written statement from a professional health care provider certifying an illness or injury, the date an Employee is anticipated as able to return to full duty or a recommendation of temporary duty with reasonable accommodation, and the Employee’s ability to perform the required duties.

“Immediate family” shall be defined as persons related by blood, marriage, or legal adoption in the degree of relationship of grandparent, parent, wife, husband, brother, sister, child, grandchild, or domestic partner (as defined by Employer Policy), and other persons with the approval of the City Manager or designee.

ARTICLE 2 – RECOGNITION

2.1 RECOGNITION

The Employer recognizes the Union as the sole and exclusive bargaining representative for all regular or temporary commissioned employees bearing the rank of Lieutenant for the purpose of representation and collective bargaining with regard to matters pertaining to wages, hours, and conditions of employment.

2.2 NEW CLASSIFICATIONS

The Employer may create new positions or classifications; such may be designated as non-represented and excluded from the Bargaining Unit. The parties agree that the positions designated and approved by the Civil Service Commission to be within the non-represented pay plans shall be excluded from the bargaining unit.

If the Union disagrees with the non-represented designation for a new or reclassified position, the parties recognize the determination of whether the position is included within the bargaining unit may be reviewed by Public Employment Relations Commission (PERC) upon petition by the Union.

If new classifications are established by the Employer and appropriately added to the bargaining unit, if the duties of existing classifications are substantially changed, or if an employee is appointed to a position substantially different than the employee's classification, a proposed wage scale shall be assigned thereto, and the Employer shall forward the new or changed class and proposed wage to the Union for review. The contract will then be subject to reopening for the sole purpose of negotiating a wage for the class, and only if so requested by the Union. If the parties cannot agree to the pay range after negotiations and mediation, the matter shall be submitted to binding arbitration. The arbitrator shall establish a fair and equitable pay scale for the new or changed classification.

2.3 CONTRACT PROPOSALS

The Employer recognizes the Union's negotiation team as the exclusive contract negotiator. The Employer agrees to discuss contract proposals with the members of the Union's negotiation team only. The Union recognizes the City as the representative of the people of the City of Kirkland and agrees to negotiate only with the City through the negotiating agent or agents officially designated by the City Manager to act on its behalf.

The Union will notify the Human Resources Director and the Chief of Police in writing of their designated representatives.

ARTICLE 3 – UNION SECURITY

3.1 MEMBERSHIP

The Employer recognizes that Police Lieutenants may, become members of the Union. The Union accepts its responsibility to fairly represent all employees in the bargaining unit regardless of membership status.

All employees shall become members of the Union within thirty (30) days of their date of employment under this agreement or pay a service fee as provided below.

3.2 DUES DEDUCTION

The Employer, when authorized and directed by a member of the Union in writing upon an authorization form provided by the employer to do so, shall deduct Union dues from the wages of an employee.

An authorization for payroll deduction may be canceled upon written notice to the Employer and the Union before the 15th day of the month in which the cancellation is to become effective, subject to the provisions of this article.

Payroll Deduction – Upon written authorization from an employee within the bargaining unit, the Employer shall deduct from the wages of that employee the sum certified as assessments and monthly dues of the Union and shall forward such sum to the Union. Should any employee not have any monies due him, or the amount of such monies is not sufficient to satisfy the assessments, no deduction shall be made for that employee for that month.

The Union shall indemnify, defend, and hold the Employer harmless against claims made and against any suit instituted against the Employer on account of any check-off of dues for the Union. The Union shall refund to the employer any amounts paid to it in error on account of the check-off provision upon presentation of proper evidence thereof.

Any regular, non-probationary employee who is represented by the bargaining unit and elects to not join the Union within 30 days shall complete an authorization form and have deducted from their pay by the Employer, as a condition of employment, a monthly service fee in the amount of monthly dues to the Union. This service fee shall be segregated by the Union and used on a pro-rata basis solely to defray the cost for its services in negotiating and administering this agreement. A service fee deduction for an employee may be made only if the accrued earnings of the employee are sufficient to cover the service fee after all other authorized payroll deductions for the employee have been made. The Union shall assume the liability for all check-off matters beyond the Employer responsibility to make deductions in accordance with this Article.

An employee who objects to membership in the Union on the basis of religious tenets or teachings of a church or religious body of which such employee is a member shall inform the Employer and the Union of the objection. The employee shall establish with the

representatives of the Union an arrangement for contributing to a non-religious charity an amount of money equivalent to regular Union membership dues.

3.3 BARGAINING UNIT ROSTER

The Employer shall provide the Union with a roster of employees covered by this Agreement on a monthly basis.

The Union agrees to supply both the Chief and Human Resources with a current list of officers. The Employer will recognize the officers as soon as the list is received, in writing, by the Department and Human Resources.

3.4 NONDISCRIMINATION – UNION ACTIVITY

Neither party shall discriminate against any employee or applicant for employment because of membership in or non-membership in or activity on behalf of the Union.

ARTICLE 4 – UNION/EMPLOYER RELATIONS

4.1 UNION ACCESS

The Union's authorized staff representatives shall have access to the Employer's premises where employees covered by this Agreement are working for the purpose of investigating grievances and contract compliance, after notifying the Employer. Access for other purposes shall not be unreasonably denied by the Employer. Such visits shall not interfere with or disturb employees in the performance of their work during working hours.

4.2 FACILITY USE

Union meetings may be scheduled and held on City premises with the Chief's or Captain's permission, which shall not be unreasonably withheld.

4.3 STEWARDS

The Executive Board of the Union, or other designee, represents the members as stewards.

4.4 ORIENTATION

During the new employee orientation process, the Employer will notify the employee of the requirements of Article 3.1 and Union contact information.

4.5 BULLETIN BOARDS

The City shall permit the reasonable and lawful use of bulletin boards by the Union for the posting of notices relating to official Union business.

4.6 CONTRACT DISTRIBUTION

The Union will provide access to a copy of this Agreement to each new and current employee in the unit.

4.7 NEGOTIATIONS RELEASE TIME

The Employer shall endeavor to allow a minimum of two (2) members of the Union's negotiation committee to attend negotiation sessions during on-duty time, giving full consideration to operational needs. Such members shall be designated by the Union at least one (1) week in advance.

4.8 GRIEVANCE RELEASE TIME

Prior to any proposed investigation of a grievance requiring any substantial use of on-duty time, stewards or officers shall provide notice to the Chief or designee.

4.9 UNION BUSINESS

A Union official who is an employee in the bargaining unit (Union Executive Board and/or a member of the Negotiation committee) may, at the discretion of the Chief or his/her designee, be granted time off while conducting contract negotiations or grievance resolution, including arbitration proceedings, on behalf of the employees in the bargaining unit provided:

- They notify the Employer at least forty-eight (48) hours prior to the time off, unless such notice is not reasonably possible;
- The Employer is able to properly staff the employees' job duties during the time off;
- The wage cost to the Employer is no greater than the cost that would have been incurred had the Union Official not taken time off (i.e., no overtime expenditures)

ARTICLE 5 – EMPLOYMENT

5.1 PROBATIONARY PERIODS

The probationary period for new Lieutenants will be a total of twelve (12) months from the date of promotion.

5.2 TYPES OF EMPLOYMENT

The employment positions of this bargaining unit are covered by Civil Service regulations. Regular and temporary position appointments are described therein. The establishment and appointment to other types of employment would require agreement by the Employer, Union and Civil Service Commission.

5.3 CONTRACTORS

Not applicable to this unit.

5.4 STUDENTS/INTERNS/VOLUNTEERS

Student, volunteers and Internship programs may be created by the Employer provided such programs do not involve bargaining unit work. In the event the Employer seeks to have volunteers conduct bargaining unit work, it will provide notice to the Union and negotiate any such change.

ARTICLE 6 – HOURS OF WORK AND OVERTIME

6.1 WORKDAY/WORKWEEK

Hours of Work and Work Week: Recognizing that flexibility is required in the scheduling of assignments for command personnel, the normal work week shall be the equivalent of forty (40) hours per week on an annualized basis. Scheduling changes may be made by the Police Chief or Captain(s) when there is an operating need requiring a different schedule than that assigned to the employee. Schedules may also be adjusted by mutual agreement of the Employee and the Employer.

6.2 REST/MEAL BREAKS

For employees on eight (8) and ten (10) hour shifts, a workday shall include at least a thirty (30) minute lunch break.

6.3 COMPENSATORY TIME / MANAGEMENT LEAVE

It is recognized that employees may be required to spend additional time over and above their regular work week engaged in activities for the City. The parties agree that each member of the bargaining unit shall receive management leave each calendar year in the amount of forty (40) hours, which shall be pro-rated for new and separated members. Unused management leave will be cashed out once a year by the City, at the end of November. There shall be no carry-over of management leave hours from year to year. It is understood that this Agreement shall be interpreted and applied in a manner which will ensure, to the fullest extent possible, the continued exempt status of Lieutenants. The parties shall continue current practice concerning flex-time off for hours above and beyond this agreement.

ARTICLE 7 – EMPLOYMENT PRACTICES

7.1 NONDISCRIMINATION

The Union and the Employer agree to provide equal opportunity as to the provisions of this Agreement to all their members and employees. Neither the Employer nor the Union shall discriminate against any person on the basis of such person's race, sex, marital status, color, creed or religion, national origin, age, veteran status, sexual orientation or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification.

Wherever words denoting a specific gender are used in this Agreement, they are intended and shall be construed so as to apply equally to either gender.

7.2 JOB POSTING

When any position becomes vacant, the Employer will make every reasonable effort to fill it as soon as possible.

7.3 PROMOTIONS

The employment positions of this bargaining unit and respective promotional processes are covered by Civil Service regulations.

7.4 SPECIAL ASSIGNMENTS

Lieutenants shall manage an operational unit consistent with the Kirkland Police Organizational chart and/or giving full consideration to operational needs. Notwithstanding that assignment, other duties may be performed as described in the classification description for this position.

7.5 PERSONNEL FILES

The City Human Resources Division will retain the permanent personnel file. The Police Department shall maintain only one working personnel file for each employee.

Supervisory notes - This does not preclude a supervisor from maintaining notes regarding an employee's performance for purposes of formulating evaluation and performance appraisal or the department from maintaining separate computerized records relating to training, promotion, assignment, or similar data.

Information related to medical, psychological, background check information and grievance records shall be maintained in separate files.

Employees shall have access to their personnel file with reasonable frequency. Upon request, access shall be provided within a maximum of four (4) working days. Conditions of hiring, termination, change in status, shift, evaluations, commendations and disciplinary actions shall be in writing with a copy to the Employee prior to placement in their personnel file.

Upon receiving a request for all or part of a personnel file from any third party, the affected employee shall be notified of the request, and the information shall not be released for a period of three (3) business days from the time of said notification, except as part of an investigation being conducted by another law enforcement agency, the disclosure of which is necessary for effective law enforcement. Upon service of a court order or subpoena properly recorded and signed by a judge or magistrate demanding immediate release or as otherwise required by law, the employee shall be notified of the request and release will be made as required by law or as above. The City Attorney will advise the department in all matters pertaining to the release of information contained in a personnel file.

Employees shall have the right to provide a written response to any written evaluations or disciplinary actions to be included in the personnel file, which, together with the action, will be retained with the action in the personnel file.

Personnel Records Retention:

Records of disciplinary action may be retained in an employee's personnel file for a period of not more than five (5) years. After five years has elapsed, the employee may request in writing the removal of such records which shall be granted unless the employee's personnel record indicates a pattern of similar types of discipline, in which case, all such records may be retained until an additional period of two (2) years has elapsed, during which there has been no further disciplinary action for the same or similar behavior. After two (2) years has elapsed, the employee may request in writing removal of the record of disciplinary action.

Records retained in an employee's department personnel file longer than provided in this section shall not be admissible in any proceedings concerning disciplinary action, provided that the parties retain the right to introduce evidence regarding prior discipline of other employees for the purpose of establishing the consistency or non-consistency of discipline imposed in a case subject to a disciplinary appeal.

7.6 EVALUATIONS

The purpose of evaluation is to help an employee to be successful in performance and to understand the standards and goals of their position and their department. The evaluation will assess and focus on the employee's accomplishment of their job functions and the goals and standards of the position. Where the employee does not meet the above, a plan for correction, training or support should be developed with the employee.

Evaluation may occur in two forms:

7.6.1 All regular employees should be formally evaluated in writing by their immediate supervisor and/or department head or designee during the probationary or trial service period and at least annually (at date of hire or a common date) thereafter.

7.6.2 Additionally, evaluation of job performance may occur at any time and on an ongoing basis. Evaluation may occur in various ways and may include coaching, counseling or written assessment.

The evaluation process shall also include a review of the current job description.

Evaluation shall not, by itself, constitute disciplinary action – disciplinary action must be specifically identified as such, in writing, consistent with Article 7.8.

Employees will be given a copy of the evaluation. Employees will be required to sign the evaluation, acknowledging its receipt. Evaluations are not grievable, however, employees may elect to provide a written response to the evaluation, which will be retained with the evaluation in the employee's personnel file.

7.7 BILL OF RIGHTS

All employees within the bargaining unit shall be entitled to the protection of what shall hereafter be termed as the "Police Officers Bill of Rights." The wide-ranging powers and duties given to the department and its members involve them in all manner of contacts and relationships with the public. Of these contacts come many questions concerning the actions of members of the force. These questions often require an immediate investigation by superior officers designated by the Chief of Police. In an effort to ensure that these investigations are conducted in a manner, which is conducive to good order and discipline, the following guidelines are promulgated:

7.7.1 Employees shall be informed in writing, of the nature of the investigation, the right to request Union representation, and whether they are a witness or a subject, before any interview of the employee commences. In investigations other than criminal, this will include the name, address, and other information necessary to reasonably apprise them of the allegations of such complaint.

An employee who is identified as a subject, shall be advised in writing a minimum of forty-eight (48) hours prior to the time of the interview, if the interviewer either knows or reasonably should know that the questioning concerns a matter that could lead to criminal charges or misconduct that could be grounds for termination. Employees who are given a forty-eight (48) hour notification may waive that delay by signing a written waiver form, provided that the employee either has Union representation or waives the right to such representation in writing.

7.7.2 Any interview of an employee shall be at a reasonable hour, preferably when the employee is on duty unless the exigencies of the investigation dictate otherwise. Where practicable, interviews shall be scheduled for the daytime.

7.7.3 The interview, which shall not violate the employee's constitutional rights, shall take place at the Kirkland Police Station facility, except where impractical. The employee shall be afforded the opportunity and facilities to contact and consult privately with an attorney of the employee's own choosing and/or a representative of the Union. Said attorney and/or representative of the Union may be present during the interview but shall not participate in the interview except to counsel the employee, provided that the Union representative or attorney may participate to the extent permitted by law.

7.7.4 The questioning shall not be overly long, and the employee shall be entitled to such reasonable intermissions as they shall request for personal necessities, meals, telephone calls, and rest periods.

7.7.5 The employee shall not be subjected to any offensive language, nor shall he be threatened with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his resignation, nor shall they be intimidated in any

other manner. No promises or rewards shall be made as an inducement to answer questions.

7.7.6 It shall be unlawful for the City to require any employee covered by this agreement to take or be subjected to any polygraph or any polygraph type of examination as the condition of continued or continuous employment or to avoid any threatened disciplinary action.

7.7.7 At the employee's request, the interview shall be recorded on tape. One copy shall be provided to the Union representative or employee. There shall be no "off-the record" questions. Within three (3) calendar days of the completion of the investigation, and no later than three (3) calendar days prior to a pre-disciplinary hearing, the employee shall be advised of the results of the investigation and the recommended disposition and shall be furnished a complete copy of the investigation report, provided that the Employer is not required to release statements made by persons requesting confidentiality where the request was initiated by such persons and provided further that such confidential statements may not be relied upon to form the basis of discipline. All interviews shall be limited in scope to activities, circumstances, events, conduct or actions which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the employee about information which is developed during the course of the interview.

7.7.8 Use of Deadly Force Situations: When an employee, whether on or off duty, uses deadly force which results in the injury or death of a person, or discharges a firearm in which no injury occurs, the employee shall not be required to make a written or recorded statement for twenty-four (24) hours after the incident except that immediately following the incident the employee shall verbally report to a superior a brief summary of the incident and any information necessary to secure evidence, identify witnesses, or apprehend suspects. The affected employee may waive the requirement to wait twenty-four (24) hours. The department and the Union shall mutually agree on designated peer support counselors.

7.7.9 Medical or Psychological Examinations: When there is probable cause to believe that an employee is medically or psychologically unfit to perform his/her duties, the employer may require the employee to undergo a medical or psychological examination in accordance with current standards established by the Washington Association of Sheriffs and Police Chiefs, the International Association of Chiefs of Police, the Americans with Disabilities Act, and other applicable State or Federal laws. Consultations with the City's Employee Assistance Program are not considered medical or psychological examinations.

7.8 DISCIPLINE/CORRECTIVE ACTION

No employee shall, by reason of his employment, be deprived of any rights or freedoms, which are afforded to other citizens of the United States by the State and Federal Constitutions and Washington law.

No employee shall be compelled by the City to give self-incriminating information, either verbal or written, during any criminal investigation when such investigation involves allegations against the employee nor in any internal investigation which could lead to a criminal charge against the employee. Any refusal by an employee to give self-incriminating information under these conditions will not result in the employee's termination, suspension, reprimand, transfer, or any other form of disciplinary action by the City.

The Employer agrees to act in good faith in the discipline, dismissal or demotion of any regular employee and any such discipline, dismissal or demotion shall be made only for just cause.

The parties recognize that just cause requires progressive discipline. Progressive discipline may include:

- oral reprimands, which will be documented;
- written reprimands;
- disciplinary transfer;
- suspension with or without pay;
- demotion; or
- discharge.

The intent of progressive discipline is to assist the employee with performance improvement or to correct misconduct. Progressive discipline shall not apply where the offense requires more serious discipline in the first instance. Both the sequencing and the steps of progressive discipline are determined on a case-by-case basis, given the nature of the problem.

All disciplinary actions shall be clearly identified as such in writing. The employee will be requested to sign the disciplinary action. The employee's signature thereon shall not be construed as admission of guilt or concurrence with the discipline. Employees shall have the right to provide a written response to any written disciplinary action to be included in the personnel file, which, together with the action, will be retained in the personnel file, for so long as the disciplinary action is retained.

A copy of all disciplinary notices shall be provided to the employee before such material is placed in their personnel file. Employees disciplined or discharged shall be entitled to utilize the grievance procedure. If, as a result of the grievance procedure utilization, just cause is not shown, personnel records shall be cleared of reference to the incident, which gave rise to the grievance.

The Employer will notify the Union in writing within three (3) working days after any notice of discharge. The failure to provide such notice shall not affect such discharge but will extend the period within which the affected employee may file a grievance.

The Employer recognizes the right of an employee who reasonably believes that an investigatory interview with a supervisor may result in discipline to request the presence of a Union representative at such an interview. Upon request, the employee shall be afforded a Union representative. The Employer will delay the interview for a reasonable period of time in order to allow a Union representative an opportunity to attend. If a Union representative is not available or delay is not reasonable, the employee may request the presence of a bargaining unit witness. (Weingarten rights)

Employees shall also have a right to a notice and a determination meeting prior to any disciplinary action (except oral reprimands). The Employer must provide a notice and statement in writing to the employee identifying the performance violations or misconduct alleged, a copy of the investigative file as per Article 7.7.7, and a finding of fact and the reasons for the proposed action. The employee shall be given an opportunity to respond to the charges in a meeting with the Employer, and shall have the right to Union representation during that meeting, upon request. (Loudermill rights)

The Employer shall endeavor to correct employee errors or misjudgments in private, with appropriate Union representation if requested by the employee.

Discipline shall be subject to the grievance procedure in this Agreement as to whether or not such action as to any post-probationary employee was for just cause.

ARTICLE 8 – SENIORITY

8.1 DEFINITIONS

Seniority shall be established upon appointment to a regular full-time budgeted position within the bargaining unit.

Bargaining Unit Seniority: the total length of continuous calendar-based service with the Employer and in the bargaining unit.

Employer Seniority: the total length of continuous calendar-based service with the Employer.

Classification Seniority: the total length of continuous calendar-based service within a position and employment type represented by the bargaining unit. Classification seniority shall include all time at a higher ranked classification, for which the employee does not have continuing job rights.

Consistent with Article 14.5, the Employer shall adjust the employee's anniversary date to reflect any period of unpaid leave of thirty (30) continuous days or more. Seniority

shall continue to accrue and the employee's anniversary date shall not be adjusted for periods of legally protected leave, such as FMLA, L&I or military leave adjusted for periods of up to six (6) months (or as otherwise required by USERRA).

8.2 APPLICATION OF SENIORITY

In the event of reassignment, transfer, layoff, or recall, seniority shall be the determining factor where employees are equally qualified to do the job.

Seniority shall be applied in the following manner:

8.2.1 Postings / promotions

In regard to job postings, promotion and reassignment, "qualifications" and/or "ability" will be the primary consideration, with seniority determinative where employees are equally qualified. Qualifications will include the minimum qualifications of education, training and experience as set forth in the job description, as well as the job performance, ability, employment record and contribution to the needs of the department.

When a position becomes vacant, the Employer will make a reasonable effort to fill it.

8.2.2 Layoffs

Total classification seniority shall determine who is to be laid off within the selected classification (affected group). The least senior regular employee(s) within the classification shall be the affected employee(s). In the event of two employees having the same classification seniority, bargaining unit seniority shall be determinative. In the event of two employees having the same bargaining unit seniority, Department seniority shall be determinative.

8.2.3 Bumping

An employee shall be allowed to bump less senior employees (by Department seniority) within the department in lower classifications, in accordance with Article 8.13.2, provided that the employee is "competent" and has the ability to adequately perform the essential functions of the job assignment.

8.2.4 Recall

Seniority shall be determinative in the identification of which employee is to be recalled, when there is more than one on the recall list who is qualified and/or have previously performed a position.

8.3 PROBATIONARY PERIOD

The probationary period for new Lieutenants will be a total of twelve (12) months from the date of promotion, per Article 5.1.

8.4 LOSS OF SENIORITY

An employee will lose seniority rights by and/or upon:

8.4.1 Resignation.

8.4.2 Discharge.

8.4.3 Retirement.

8.4.4 Layoff / Recall list of more than fourteen (14) consecutive months, consistent with Article 8.15.

8.4.5 Medical Reinstatement / Recall list of more than twenty-four (24) consecutive months, consistent with Article 8.15.

8.4.6 Failure to respond to an offer of recall to former or comparable employment.

Employees who are re-employed following the loss of their seniority, shall be deemed a newly-hired employee for all purposes under this Agreement, except if an employee is recalled consistent with Article 8.15 and the time-lines therein, they shall regain the seniority that they had as of their last date of employment.

8.5 LAYOFFS

A layoff is identified as the anticipated and on-going or prolonged reduction in the number of full-time equivalent (FTE) positions within the department or within a job classification covered by this Agreement. A reduction in force in classification may occur for reasons of lack of funds, lack of work, efficiency or reorganization. Reductions in force are identified by classification within the department.

8.6 NOTICE

The Union shall be notified of all proposed layoffs and of positions to which laid off employees may be eligible to bump through the attachment of a current seniority list.

Employees affected / being laid off shall be given written notice of such layoff thirty (30) calendar days prior to the layoff if possible. In no event shall written notice of layoff be less than fourteen (14) calendar days. If the Employer does not provide fourteen (14) calendar days written notice, the employer shall compensate the employee at his or her normal rate of pay for the time between the last day of work and fourteen (14) calendar from the date the employee receives the notice of layoff, in addition to any other compensation due the employee.

The employee shall inform the Employer within five (5) working days of the receipt of the notice of layoff of their intention to exercise bumping rights. When all bumping rights have been acted upon, or when someone has chosen not to act on their bumping right, the employee least senior or the employee choosing not to bump shall be the person

laid off. Only one thirty (30) day notice of layoff is required, irrespective of the number of bumps.

An employee desiring to exercise bumping rights must do so by delivering written notice to the Employer within five (5) working days of receipt of notice of layoff. The written notice must state the proposed position to be bumped.

8.7 MEETING WITH UNION

The Union shall also be notified in writing of any reduction in hours proposed by the Employer, including the purpose, scope, and duration of the proposed reduction.

Upon the Union's request, the Employer and the Union shall meet promptly during the first two (2) weeks of the notice period identified in Article 8.6 to discuss the reasons and the time-lines for the layoff and to review any suggestions concerning possible alternatives to layoff. Union concerns shall be considered by the Employer prior to implementation of any reduction in hours. This procedure shall not preclude the Employer from providing notice to employees or requesting volunteers to take leaves of absence without pay, provided the Employer notifies the Union of the proposed request.

8.8 AFFECTED GROUP

The following procedure shall apply to any layoff:

8.8.1 Affected employees

The Employer shall first determine by job classification the number of employees or FTEs to be affected by the layoff. The employee(s) holding such FTEs, which are subject to layoff, shall be the "affected employee(s)."

The least senior employee within the affected job classification shall be selected for layoff, consistent with Article 8.2.2.

In cases where seniority within a job classification is equal, bargaining unit seniority will be the determining factor. In the event this is also equal, Employer seniority will control. If all of the seniorities are equal, then Management shall make the final decision based on performance and job skills.

8.8.2 Volunteers

Simultaneous with implementing the provisions of the layoff procedure, the Employer may first seek, by a five (5) working day posting process, volunteers for layoff or voluntary resignation from among those employees who work within the same job classification as the affected employees. If there are more volunteers than affected employees, volunteers will be chosen by bargaining unit seniority. Employees who volunteer for layoff may opt for recall rights as described in this article at the time of layoff.

If there are no or insufficient volunteers within the affected job classification, the remaining affected employees who have received notice must choose promptly

(within five (5) full working days of receipt of the Notice) among the layoff options set forth in Article 8.13.

8.8.3 Probationary Employees

If the number of volunteers is not sufficient to meet the announced number of necessary layoffs, and if the affected employee is an initial probationary employee, then that employee shall be laid off and is ineligible to select among layoff options.

8.9 VACANT POSITIONS

Positions will be filled in accordance with Article 8.2 and other sections of this Article.

Within the bargaining unit and the department, affected employees and employees on the recall list shall be given first opportunity for vacant bargaining unit comparable positions prior to outside hiring by the Employer, consistent with Article 8.13.1.

8.10 SENIORITY LIST

The Employer shall update the seniority list and provide it to the Union monthly, consistent with Article 3.3. If a layoff is announced, a current ranked seniority list including job classifications, names, job locations, and FTE or hours per week shall be provided to the Union and posted in the affected department.

8.11 ORDER OF LAYOFF

The least senior employee (by classification seniority) within the affected job classification shall be selected for layoff. No regular employee shall be laid off while another employee in the same classification within the department is employed on a probationary basis.

8.12 COMPARABLE EMPLOYMENT

For purposes of this Article, “comparable employment,” “comparable position” or vacancy shall be defined to include a position which has the same salary pay range and the educational and experience qualifications.

8.13 LAYOFF OPTIONS

Affected employees who have completed their probationary period shall have the following options:

8.13.1 Assume a Vacant Position

On a bargaining unit seniority basis, to assume a vacant position of equal or lesser rank.

8.13.2 Bump

Consistent with Article 8.2.3, laid off employees, including bumped employees, shall be allowed to bump less senior employees (by bargaining unit seniority) within the department in lower classifications.

An employee who has bumped shall move to the highest step of the new range that does not exceed their current salary.

If there is no employee in the next lower classification who is less senior than the person scheduled for layoff, that person may look progressively to the next lower classification for such bumping rights.

The employee who is bumped by the affected employee shall have the same rights under this Article.

8.13.3 Recall

If the affected employee elects not to take a vacant position or elects not to bump, then that employee will be placed on the recall list and will be eligible for recall under Article 8.15.

Nothing contained in this layoff section shall be construed as requiring the Employer to modify its position and classification structure in order to accommodate bumping or other re-employment rights.

Employees bumping to another position shall retain their old anniversary date for purposes of step increases. Persons recalled to the same salary range shall be placed in their former step and time in step.

8.14 REDUCTION HOURS/FTE

An employee will not be subject to an involuntary reduction in their FTE (i.e. less than full-time) absent notice and negotiation of the matter with the Union. If the reduction results in hours less than their budgeted FTE, it will be considered a layoff and the affected employee shall have either the right to bump or go onto the recall list.

8.15 RECALL

Any reference to recall rights and recall lists pertains to both those employees who are laid off or on medical reinstatement, as below:

An employee who has been laid off shall be entitled to recall rights for a period of fourteen (14) months from the effective date of their layoff.

An employee who is placed on the medical reinstatement list shall be entitled to recall rights for a period of twenty-four (24) months from the employee's last date of employment. Recall under this provision requires that the individual has been certified as fit for duty or fit for duty with reasonable accommodation by a medical health care provider statement. The department may, at its own expense, request a second opinion by another health care provider(s) or panel. Should the employee be certified as fit for duty, that employee shall then be considered as laid-off and the provisions of Article 8.17 shall apply. Should that certification occur during the last six (6) months of the twenty-four (24) month period, that employee shall be entitled to recall for a period of six (6) months from the date of that certification.

Employees recalled after the initial fourteen (14) month period shall be subject to the background check process.

If a vacancy occurs in a position, employees on the recall list shall be notified of such vacancies at the employee's address on file with the Human Resources Department. The vacancy will be filled, in accordance with seniority, among current employees and those on the recall list. If employees on the recall list elect not to accept an offer to return to work in the former or a comparable position or fail to respond within seven (7) consecutive days of the offer of recall, they shall be considered to have terminated or abandoned their right to re-employment and relinquished all recall rights. If employees on the recall list elect not to accept an offer of a non-comparable position, they may retain their recall rights for the balance of their recall period.

As long as any employee remains on the recall list, the Employer shall not newly employ by hiring persons into the affected bargaining unit classification(s), within their department, until all qualified employees holding recall rights to that affected classification have been offered recall.

8.16 VACATION & LEAVE CASH OUTS/PAY

Upon separation of employment, an Employee shall be paid for all unused, earned vacation leave, holiday leave and compensatory time, to the extent of established maximums. Sick leave balances at the date of layoff shall be restored upon re-employment with the Employer from the recall list. No sick leave shall accrue during the period of time on the recall list / layoff.

8.17 UNEMPLOYMENT CLAIMS

If laid off employees apply for unemployment compensation benefits, the Employer will not contest the claim and will confirm that the employee was laid off.

ARTICLE 9 – WAGES

9.1 WAGE SCHEDULE

The monthly rate of pay (base wage) is reflected in the following salary schedule chart.

PSEU

Salary Schedule: January 1, 2012 (2.5% Wage Adjustment)

Police Lieutenant	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
Monthly	7,397	7,636	7,875	8,113	8,352	8,591	8,829	9,068	9,306	9,545

9.1.1 Wage Adjustments

9.1.1.a Effective January 01, 2012, the monthly rate of pay shall be increased by two and one half percent (2.5%) through December 31st, 2012.

9.1.1.b Effective January 01, 2013, the monthly rate of pay shall be increased by two percent (2.0%) through December 31st, 2013.

An accreditation premium of 1% shall be applied to the monthly basic wage rate for the duration of the contract.

9.2 HIRE-IN RATES

Due to the unique prerequisite requirements in promotion to the rank of Lieutenant, a successful candidate will start off at Step 9. At the Chief’s discretion, they may advance to Step 10 at a point no later than the completion of the probationary period.

9.3 SPECIALTY PAY

Not applicable to this unit.

9.4 LONGEVITY

Employees shall receive, in addition to their monthly base wage, the following longevity incentive pay based upon their years of service for the Kirkland Police Department:

<u>Years of Service</u>	<u>Monthly Premium</u>
5-10 years	1.5%
11-15 years	3%
16-19 years	5%
20- 24 years	7%
25 years or more	8%

9.5 OUT-OF-CLASS PAY

Assignment to “acting” Chief or “acting” Captain will be made at the sole discretion of the Police Chief. Any work performed out of classification for longer than 30 days will be paid at the higher classification pay rate during the period of assignment, once all prerequisites have been met per the City Administrative Policy 4-33.

9.6 EDUCATION INCENTIVE

Employees with a BA/BS degree and higher from an accredited institution will be eligible for an educational/performance incentive, as set forth below:

Education / Performance Premium

BA/BS Degree	2.5%
Graduate Degree	3.5%

It is the employee's responsibility to have their diploma or transcripts provided from an accredited institution to the department time-keeper in order to be eligible for the Incentive. The Education Incentive shall be added to the monthly rate of pay of the

employee's current classification and paid in the same manner, but on alternate pay periods, as the Longevity pay described in Article 9.4.

A "Command School" premium of 3.0% shall be applied to the monthly basic wage rate. The premium will be awarded for each employee upon completion of a command level certification program which is approved by the Chief.

9.7 PHYSICAL FITNESS INCENTIVE

Employees shall be eligible for physical fitness incentives as provided in Appendix B.

9.8 SHIFT DIFFERENTIAL

Not applicable to this unit.

ARTICLE 10 – OTHER COMPENSATION

10.1 STANDBY PAY

Not applicable to this unit.

10.2 CALL-BACK PAY

All employees will respond to call-outs unless extenuating circumstances such as illness or other incapacitation prevent the employee from responding.

10.3 TAKE HOME VEHICLE/MILEAGE REIMBURSEMENT

An essential function of a Lieutenant is to respond to emergencies on a 24/7 basis to critical incidents and assume command as necessary. In order to facilitate this essential function, the Employer agrees to provide each Lieutenant a take home City vehicle. Collisions resulting from the authorized use of a City vehicle by a Lieutenant while responding to an official call of duty will be considered "on duty" for the purposes of L&I and state collision reports.

Lieutenants are allowed use of their take home vehicle during their days off to facilitate a quick response as needed. Unless specifically authorized by the Chief, or if being used on official business, take home vehicles are not allowed outside a thirty (30) mile radius from the City.

Lieutenants may use their take home vehicles to pick up family members while on the way to or from work as long as the stops do not deviate significantly from the normal route or distance to and from work or take them outside of a thirty (30) mile radius.

Lieutenants attending work related training, conferences, ceremonies, memorials, or other work related travel are allowed to have family members accompany them in their take home vehicles.

Examples of prohibited use of a take home vehicle include:

- a. Family outings;
- b. Loans to immediate family, friends, relatives, or any other non-Departmental person;
- c. Any form of illegal activity;
- d. Political campaigns, including use of the vehicle in parades or any other form of political sponsorship of a candidate.
- e. Personal use, as defined by the federal tax code.

Care, maintenance, insurance, and fuel for take home vehicles will be the responsibility of the Employer.

All bargaining unit employees who are required to use their own vehicles for Employer business shall be reimbursed at the mileage rate set by the current policy for all miles driven on such business.

10.4 CLOTHING AND EQUIPMENT

The Employer shall provide necessary uniforms and equipment. Lieutenants are required to perform both uniform and non-uniform work. Lieutenants shall be provided an annual allowance for clothing of not less than three hundred dollars (\$300) every six months. The clothing allowance shall be reflected as taxable income.

The Employer shall provide for the cleaning of uniforms and non-uniform work wear for Lieutenants. The provisions for the cleaning of street clothing and/or clothing excluding uniforms, shall be taxable to the employee in accordance with IRS rules.

In addition, the Employer agrees to replace or repair equipment or clothing belonging to the employee, which is damaged in the line of duty. Equipment or clothing shall be construed to mean items owned by the employee, which are required to perform their duties. To be considered for repair or replacement, equipment or clothing damaged in the line of duty must be submitted to the employee’s supervisor no later than the end of the Employee’s next regular duty day, along with a written report and documentation to support the cost of the damaged item.

No Lieutenant shall be required to work without a firearm unless mutually agreed to the contrary.

ARTICLE 11 – HOLIDAYS

11.1 HOLIDAYS

Lieutenants shall receive the following holidays:

New Year’s Day	January 1
Martin Luther King Day	Third Monday in January
President’s Day	Third Monday in February
Memorial Day	Last Monday in May

Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
½ Day Christmas Eve	Last working day before December 2
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25
½ Day New Year's Eve	Last working day before January 1
One Floating Holiday	At employee's choice
Community Service Day	At employee's choice

11.2 HOLIDAY ELIGIBILITY

An employee must be employed for six (6) consecutive months in order to be eligible for their floating holiday. In selecting the Floating Holiday, the employee's choice will be granted, provided that prior approval is given by the immediate supervisor or the Division Commander. The Floating Holiday must be taken during the calendar year, or entitlement to the day will be forfeited.

Utilization of the Community Service Day shall be for purposes of participation and volunteering for legitimate non-profit organizations, community service organizations or public agencies. Authorization and scheduling shall be in accordance with the same procedures as a Floating Holiday.

11.3 HOLIDAY OBSERVANCE

Employees will observe the Holiday on the day the City observes the respective Holiday.

11.4 HOLIDAY ON DAY OFF

An employee who does not work on a holiday which occurs on a scheduled day off, or is unable to utilize holiday hours due to the necessity of having to work on a holiday, shall receive the holiday leave time in their leave bank. Such holiday hours / leave banks may be carried over to the following calendar year, not to exceed one hundred twenty (120) hours.

11.5 HOLIDAY COMPENSATION

Lieutenants who are assigned by a superior ranking officer to work on a holiday shall be eligible for compensatory time-off at one and one-half (1 ½) times the employee's hourly rate for the number of hours actually worked on the specified holiday. The Holiday leave will be replaced in the Employee's bank.

ARTICLE 12 – VACATION

12.1 VACATION ACCRUAL

Each regular full-time employee shall accrue vacation leave at the rate of one-half (1/12) of annual vacation per month of service, based on the following schedule:

<u>Years of Employment</u>	<u>Annual Vacation (Working Hours)</u>
1st year of employment	104 hours
2 – 3 – 4 years	104 hours
5 – 6 – 7 years	128 hours
8 – 9 – 10 years	136 hours
11 – 12 – 13 years	144 hours
14 – 15 – 16 years	160 hours
17 – 18 – 19 years	176 hours
20th year and beyond	192 hours

Vacation leave cannot be accrued during any leave without pay, but such leave shall not be considered an interruption of consecutive years of employment for the purpose of determining entitlement to additional vacation days under the foregoing schedule.

Vacation leave shall not be accumulated in excess of two hundred eighty-eight (288) hours within a calendar year without the express prior written authorization of the City Manager or his/her or her designee. No more than two hundred eighty-eight (288) hours may be carried over from one calendar year to the next except as provided in Section 11.4.

Requests to the City Manager or designee for exceptions shall be for a specific number of hours to be used for a specific purpose and to be taken by a specific date. Accrued unused vacation leave shall not, under any circumstance, exceed three hundred twenty (320) hours.

Employees are encouraged to utilize Vacation for appropriate time off and manage vacation requests throughout the year. Any vacation leave accrued in excess of the maximums shall be forfeited and shall not form the basis for any additional compensation. Upon termination of employment for any reason, no payment for vacation accumulation shall exceed two hundred forty (240) hours.

Earned vacation leave may be taken at any time during a period of illness after expiration of sick leave. Taking leave without pay in any month shall result in pro-ration of vacation accruals for that month, calculated upon actual hours worked as a percentage of the total hours of the pay period.

Vacations will be scheduled with review and approval by the Chief or Captain at a time that will cause minimum interference with the operations of the City and Department.

12.2 VACATION UPON TERMINATION

Upon separation of employment, an Employee shall be paid for all unused, earned vacation leave up to established maximums. As an option, the Union may annually elect to have the vacation leave cash-out contributed on behalf of the employee to the Retiree Medical Account as set forth in Article 13.2.

In no case will an employee be paid for accrued vacation upon separation if he/she has been employed by the City for less than twelve (12) consecutive months.

ARTICLE 13 – SICK LEAVE

13.1 SICK LEAVE ACCRUAL

After completion of the one-year probationary period, new employee's sick leave with pay shall accrue at the rate of eight (8) hours of leave for each full calendar month of the employee's service, and any such leave accrued in any year shall be accumulative for succeeding years to a maximum of 960 hours.

13.2 SICK LEAVE USAGE

Sick leave shall be available to employees after they have worked for a minimum of thirty (30) consecutive calendar days after the most recent date of hire.

Consistent with the confidentiality provisions of the Americans with Disabilities Act, and upon good cause, a doctor's report may be required for such leaves of three (3) shifts or more and may be required for shorter periods.

Contributions on behalf of each eligible employee shall be based on sick leave cash-outs upon retirement. Eligibility is limited to employees who retire from service with leave cash-out rights during the term of the collective bargaining agreement. Employer contributions shall include the cash-out value of the employee's sick leave balance as described below.

Conversion of Accrued Sick Leave cash out to Retiree Medical Account: Upon normal or disability retirement from the City, the employer shall make contributions into an Employee Benefit Trust, to be established, in an amount equal to fifty percent (50%) of the cash value of employee's accrued sick leave balance at the time of retirement (accrued sick leave hours x regular rate of pay x fifty percent (50%) and shall not exceed Ten Thousand and Five Hundred Dollars (\$10,500). The trust fund will be established in accordance with applicable federal and state laws, and the City shall contribute the monies on a pre-tax basis. The monies contributed to the trust fund shall only be used for retiree insurance premiums or health service expenses. The City will also contribute \$75.00 per month to each individual member's Retiree Medical Account.

Contributions on behalf of each eligible employee may also be based upon vacation leave cash-outs upon retirement. Eligibility is limited to employees who retire from service with leave cash-out rights. The Union shall inform the Employer no later than November 1st of each year if vacation leave cash-outs are to be contributed on behalf of the employee to the Retiree Medical Account, or will be included as a cash-out on their final paycheck from the Employer. The Union election is binding for all employees within the bargaining unit who retire during that calendar year.

For the purpose of this Article, retirement shall be defined as either normal service retirement or voluntary termination in good standing after twenty (20) years of continuous service with the Kirkland Police Department.

13.3 SHARED LEAVE

The Employer may permit an employee to receive vacation consistent with the current Shared Leave policy.

13.4 COORDINATION – WORKERS’ COMPENSATION

Workers’ Compensation Supplement (LEOFF II). The City will provide a disability leave supplement for LEOFF II employees injured in the line of duty when such injury is directly related to the inherent dangers associated with employment in law enforcement. The supplement shall go into effect when an employee becomes eligible for State workers’ compensation benefits and shall equal the difference between the State workers’ compensation monthly payment and the employee's base monthly salary. This pay supplement shall continue as long as the employee is off work and receiving workers’ compensation benefits.

In no event, shall the combination of Workers’ Compensation, long term disability benefit, and this Workers’ Compensation supplement exceed one hundred percent (100%) of the employee's regular salary.

While the Workers’ Comp Supplement is governed by rules established and administered by DRS, employees are advised of the following current DRS practices, which are subject to change by DRS:

During the first 48 hours of disability leave, the wages are reported as L & I sixty percent (60%) and Sick Leave forty percent (40%). The remainder of the disability time is reported as L & I (60%), Sick Leave twenty percent (20%) and Supplementary Disability twenty percent (20%) as per RCW 41.04.510.

Time-loss payment from L & I are not subject to federal income or Social Security taxes. The Department of Retirement Systems considers eighty percent 80% (L & I payment and supplemental disability) of your time not reportable hours for service credits. Employees have the option to request the reestablishment of these service credits by submitting a written request to DRS.

13.5 FAMILY MEMBER

Sick leave may be utilized as above for illness in the immediate family requiring the employee’s attendance.

Immediate family shall be defined as persons related by blood, marriage, or legal adoption in the degree of relationship of grandparent, parent, wife, husband, brother, sister, child, grandchild, or domestic partner (as defined by Employer Policy), and other persons with the approval of the City Manager or designee.

ARTICLE 14 – LEAVES OF ABSENCE

14.1 IN GENERAL

Leave of absence requests shall not be unreasonably denied. All leaves are to be requested in writing as far in advance as possible.

Leave of Absence shall be governed by existing City policies.

As appropriate for the type of leave requested, paid leave accruals will be utilized prior to unpaid leave, unless otherwise provided for in this Agreement.

Leave does not accrue nor may it be used until the first day of the pay period in which it is earned (no “negative” leave use during the period in which it is earned).

14.2 JURY DUTY/COURT

An employee who is required to serve on Jury duty shall be authorized leave with pay. Any amount received from the court for such service shall be re-paid to the employer.

14.3 MILITARY LEAVE

All regular employees shall be allowed military leave as required by RCW 38.40.060 and as interpreted by the Court. This provides for twenty-one (21) working days of military leave per year (October 1 through September 30).

14.4 BEREAVEMENT

Employees shall be entitled to five (5) days Bereavement Leave without loss of compensation upon the death of a member of the Employee’s immediate family. For the purposes of this contract, immediate family shall be defined as stipulated in Article 13.5. Additional time off as may be required for travel or other circumstances may be granted if approved in advance by the employer. Such additional time shall be deducted from an accrued leave of the employee’s choice.

14.5 MAINTENANCE OF SENIORITY

The Employer shall adjust the employee’s anniversary date to reflect any period of unpaid leave of thirty (30) continuous days or more. Seniority shall continue to accrue and the employee’s anniversary date shall not be adjusted for periods of legally protected leave, such as FMLA or military leave.

14.6 LEAVE WITHOUT PAY

Unpaid Leave of Absence shall be governed by existing City policies.

14.7 FAMILY LEAVE FMLA

Family Medical leave will be allowed consistent with State and Federal law and with existing City policies.

Under the terms of the Family and Medical Leave Act of 1993 (FMLA) and the state law, upon the completion of one (1) year of employment, any employee who has worked at

least one thousand two hundred and fifty (1250) hours during the prior twelve (12) months shall be entitled to up to twelve (12) weeks of leave per rolling year for the birth, adoption or placement of a foster child; to care for a spouse or immediate family member with a serious health condition; or when the employee is unable to work due to a serious health condition. For purposes of this Article, the definition of “immediate family” will be found in Article 13.5.

The Employer shall maintain the employee’s health benefits during this leave. If the employee fails to return from leave for any reason other than the medical condition initially qualifying for the FMLA absence, the Employer may recover from the employee the insurance premiums paid during any period of unpaid leave.

If a leave qualifies under both federal and state law, the leave shall run concurrently. Ordinarily, the employee must provide thirty (30) days written advance notice to the Employer when the leave is foreseeable. The employee should report qualifying events as soon as known and practicable.

The combination of FMLA and other types of leave(s) is not precluded and, in fact, leave utilizations are to be concurrent, with the intent that appropriate paid accruals are to be utilized first, consistent with other Articles of this Agreement. The Employee may elect to retain up to forty (40) hours of sick leave and up to forty (40) hours of vacation (prorated by their FTE) for use upon return to work, consistent with the process identified in the personnel policy. Upon the employee’s election, any accrued comp time may be utilized prior to any period of unpaid leave.

14.8 MATERNITY LEAVE

Consistent with WAC 162-30-020, the Employer will grant a leave of absence for a period of temporary disability because of pregnancy or childbirth. This may be in addition to the leave entitlements of FMLA. This leave provides female employees with the right to a leave of absence equivalent to the disability phase of pregnancy and childbirth. There is no eligibility requirement, however the Employer has no obligation to pay for health insurance benefits while on this leave (unless utilized concurrent with FMLA).

Leave for temporary disability due to pregnancy or childbirth will be medically verifiable. There is no limit to the length of the disability phase, except for the right for medical verification and the right of second opinion at the employer’s expense. At the end of the disability leave, the employee is entitled to return to the same job or a similar job of at least the same pay. Employees must use their accrued vacation and sick leave, if any, during the leave period and, at their election, any accrued comp time, consistent with the retention provision as provided in Article 14.7. Once this paid leave is exhausted, the employee’s leave may be switched over to unpaid leave.

14.9 INCLEMENT WEATHER

Employee rights and responsibilities during severe weather and emergency or disaster conditions are covered by the current Inclement Weather Policy of the Employer. The

goal shall be to continue to provide essential Employer services, consistent with public and employee safety and emergency operations priorities. Law enforcement is critical to these essential services and the expectation is that employees will report to duty as scheduled.

ARTICLE 15 – HEALTH & WELFARE

15.1 MAINTENANCE OF BENEFITS

Medical Insurance - The Employer shall self-insure medical benefits. The Employer will offer the Prime Medical plan and shall make every effort to maintain substantially equivalent benefits.

PSEU shall take part in and have an appointed representative on the Health and Welfare Benefits Committee. The purpose of the Committee is to monitor and evaluate the benefits costs and the plan designs. Among the items to be considered would be identification of options for retiree medical participation.

The Benefits Committee representative shall have no authority to negotiate on behalf of PSEU any changes to be scheduled or content of benefit plans. The Employer shall continue with collective bargaining obligations with PSEU, as currently exist under law for any such changes.

Participation in benefits shall be consistent with Article 15.2 of this Agreement and as established January 1, 2011.

15.2 HEALTH AND LIFE INSURANCE

Medical Insurance - The Employer shall pay each month one hundred percent (100%) of the premium necessary for the purchase of Employee coverage and one hundred percent (100%) of the premium necessary for the purchase of dependent coverage under the City of Kirkland Prime Plan, Group Health Plan, or their equivalent for each Employee of the bargaining unit.

Dental and Vision - The Employer shall pay each month one hundred percent (100%) of the premium necessary for the purchase of Employee coverage and one hundred percent (100%) of the premium necessary for the purchase of dependent coverage under Washington Dental Services, Willamette Dental, and Vision Service Plan or their equivalent.

The Employer shall pay each month one hundred percent (100%) of the premium necessary for the purchase of Employee term life insurance coverage that has a policy value of two (2) times the annual base rate of pay of the Employee, up to a guaranteed issue amount of two hundred and fifty thousand (\$250,000). The Employee is responsible for any taxes associated with this benefit.

In the event an Employee is killed in the course of his/her official duty, the City agrees to continue to provide existing medical and dental coverage to the surviving dependents for a period of one (1) year or until re-marriage of the surviving spouse occurs, whichever occurs first.

15.3 FLEXIBLE SPENDING ACCOUNT – FSA

The Employer makes no assurance of ongoing participation and assumes no liability for claims or benefits.

The employer shall make a contribution in the amount of three hundred dollars (\$300) for health care expenses for any qualifying employee electing to participate. For purpose of encouraging employee health and early identification of health issues and opportunities, upon presentation of an affirmation by the employee of an annual physical by a health care provider to the department time-keeper by November 1st of the year, the employee's FSA account shall be funded for the following year in the amount of three hundred dollars (\$300).

Additional contributions to the flexible spending account can be made by the employee as a payroll deduction subject to the rules and limitations contained within the Internal Revenue Code.

15.4 RETIREMENT

Pensions for employees and contributions to pension funds will be governed by the Washington State Statutes in relation thereto in existence at the time.

ARTICLE 16 – TRAINING

16.1 TRAINING

Compensation associated with training or representation of the Employer on official business shall be consistent with the current policy and the Fair Labor Standards Act (FLSA) and WAC 296-128-500. Reimbursement of associated costs shall be consistent with City Policy.

ARTICLE 17 – LABOR/MANAGEMENT COMMITTEES

17.1 PURPOSE AND COMPOSITION OF COMMITTEES

The Executive Employee Relations Committee shall meet as needed at the request of either party, provided that five (5) working days notice of the meeting is given to discuss and resolve issues of continuing importance to the Union and/or Employer.

17.2 COMPENSATION

All meeting time spent by members of the joint Labor-Management Committee will be considered time worked if during duty hours and will be paid at the appropriate regular rate of pay.

ARTICLE 18 – HEALTH & SAFETY

18.1 SAFE WORKPLACE

The Employer is responsible for maintaining a safe and healthful workplace. The Employer shall comply with all federal, state, and local laws applicable to the safety and health of its employees.

Recognizing that danger is an inherent aspect of law enforcement work, Employees who have a reasonable basis for believing the assignment would constitute a danger to their health and safety, should report the concern. The employee shall immediately contact a supervisor who shall make a final determination with regard to safety. No directive shall be delayed pending such determination.

All on-the-job injuries, no matter how slight, must be reported. Employees must immediately notify their supervisor if they are unable to work because of a work-related injury or illness.

18.2 HEALTH & SAFETY PLAN

The Employer shall develop and follow written policies and procedures to deal with on-the-job safety and shall have effective safety and accident prevention plans in conformance with state (WAC 296-800) and federal laws.

18.3 DRUG FREE WORKPLACE

The City and the Union agree to abide by the City of Kirkland Police Department Substance Abuse Policy that is attached as Appendix A.

18.4 WORKPLACE VIOLENCE

The employer is committed to employee health and safety. Workplace violence, including threats of violence by or against a City employee, will not be tolerated and should be immediately reported whether or not physical injury occurs, except those in the course and performance of law enforcement duties.

ARTICLE 19 – GRIEVANCE PROCEDURE

19.1 GRIEVANCE DEFINED

A grievance means a claim or dispute by a grieved employee, group of grieved employees, or the Union Executive Board with respect to the interpretation or application of the provisions of this agreement.

19.1.1 Reference to days in this Article shall refer to calendar days.

A grievance means a claim or dispute by an employee, the Union, or the Employer with respect to the interpretation or application of the provisions of this agreement.

19.2 GRIEVANCE PROCEDURE

In the event that an employee believes that the City is operating in violation of this agreement, the employee shall notify his/her immediate supervisor in writing within fourteen (14) business days after the employee first becomes aware or reasonably should have become aware of the violation. This notification must be signed by the employee and must state the issue, section of the agreement violated, facts giving rise to the grievance and remedy sought. This notification will be forwarded through the chain of command to the level of authority capable of addressing and correcting the violation. An Employer grievance may be initiated at this step and follows the same timelines.

It is agreed that filing with a court of law or taking a matter to a hearing before the Civil Service Commission constitutes an election of remedies and a waiver of any duty arising under this agreement to enter into binding arbitration. Similarly, upon the subsequent filing of an action as described above, a grievance, previously filed, shall be deemed withdrawn.

Step 1: The City shall respond in writing within fourteen (14) business days advising the employee what action, if any, will be taken to correct the alleged violation. If the action taken by the City corrects the alleged violation to the satisfaction of the presenting party, the grievance shall be deemed resolved. In the event the employee does not feel the alleged violation has been corrected to their satisfaction, the employee shall proceed to the next step within seven (7) business days.

Step 2: Upon receiving a written grievance from an employee or the Union, the Chief of Police shall attempt to resolve the grievance within fourteen (14) days. If the Chief of Police is unable to resolve the grievance to the satisfaction of the presenting party(s), the presenting party shall be notified in writing. In the event the presenting party(s) does not feel the alleged violation has been corrected to their satisfaction, notice may be given and the grievance shall proceed to Step 3 within seven (7) days.

Step 3: Upon receiving a written grievance, the City Manager or designee shall attempt to resolve it within thirty (30) days. If the grievance is not resolved by the City Manager or designee, the presenting party(s) will be notified in writing. In the event the Union, does not feel the alleged violation has been corrected to their satisfaction, the grievance may, within thirty (30) calendar days, be referred to arbitration.

Binding Arbitration: If agreement cannot be reached as to the arbitrator within fourteen (14) days of notice of the desire to proceed, the parties shall jointly request the American Arbitration Association to provide a panel of eleven (11) arbitrators from which the parties may select one. The representatives of the Employer and the Union shall alternately eliminate the name of one person from the list until only one name remains. The person whose name was not eliminated shall be the arbitrator. It shall be the function of the arbitrator to hold a hearing at

which the parties may submit their cases concerning the grievance. The arbitrator shall render their decision based on the interpretation and application of the provisions of this agreement within thirty (30) days after such hearing. The decision shall not add to, modify, or delete any provision of the agreement; and it shall be final and binding upon both parties to the grievance provided the decision does not involve action by the Employer, which is beyond its jurisdiction. The expenses of the arbitration hearing shall be borne equally by the Employer and the Union. Each party shall be completely responsible for all costs of preparing and presenting its own case, including compensating its own representatives and witnesses. If either party desires a record of the proceedings, it shall solely bear the cost of producing such a record.

19.3 UNION/EMPLOYER GRIEVANCE

Either the Union or the Employer may initiate a grievance.

The Employer may not grieve the acts of individual employees, but rather, only orchestrated acts or actions of authorized representatives believed to be in conflict with this Agreement. An Employer grievance will not be subject to Arbitration and may only go to mediation upon mutual agreement.

Such grievances may be referred to mediation services by mutual agreement prior to Arbitration.

19.4 SCHEDULE OF MEETINGS

Consistent with Article 4.8, grievance investigations and meetings on duty time shall be subject to prior notice and approval. If authorization cannot be immediately granted, the Employer will arrange to allow investigation of the grievance at the earliest possible time.

ARTICLE 20 – NO STRIKE / NO LOCKOUT

20.1 NO STRIKE / NO LOCKOUT

It is understood and agreed that the services performed by City employees included in this Agreement are essential to the public health, safety, and welfare. Therefore, the employees agree that there shall be no strikes, slowdowns, or stoppage of work, or any interference with the efficient operation of the Police Department. Violation of this Article shall subject the employee to disciplinary action or discharge.

The Employer shall not lockout any employee during the life of this Agreement.

ARTICLE 21 – MANAGEMENT RIGHTS AND RESPONSIBILITIES

21.1 MANAGEMENT RIGHTS AND RESPONSIBILITIES

The Union recognizes that the Employer retains the exclusive rights and responsibilities to operate and manage the business of the City, to direct, control and schedule its

operations and workforce and to make any decisions affecting the City. Such prerogatives shall include, but not be limited to, the sole and exclusive rights and responsibilities to: recruit; hire; promote, lay-off, assign, classify, reclassify, evaluate, transfer; discharge and discipline employees; select and determine the number of its employees, including the number assigned to any particular work; increase or decrease that number; direct and schedule the work-force; determine the location and type of operations; determine and schedule when reasonable overtime shall be worked (schedule and require reasonable overtime work); install or move equipment; determine the work duties of employees; promulgate, modify, post and enforce policies, procedures, rules and regulations governing the conduct and acts of employees during working hours; select supervisory and managerial employees; train employees; create or eliminate jobs; relieve employees because of lack of work, retirement, or for other legitimate reasons; discontinue or reorganize or combine any department or branch of operations with any consequent reduction or other change in the working force; or relocate bargaining unit work; introduce new and improved methods of operation or facilities, regardless of whether or not such may cause a reduction in the working force; establish work performance levels and standards of performance for the employees; and in all respects carry out, in addition, the ordinary and customary functions of management, except as specifically expressed in the terms of this Agreement.

21.2 INSURANCE

Consistent with existing Kirkland Municipal Code provisions, the City shall secure and maintain with responsible insurers such false arrest, malicious prosecution and liability insurance as is customarily maintained by public bodies with respect to the operation of police departments, all to the extent that such insurance can be secured and maintained at reasonable costs. The coverage to be so provided shall, to the extent available, be substantially equal to such coverage provided by the City immediately prior to the effective date of this agreement.

Such insurance shall include coverage for punitive damage awards made against an officer resulting from conduct found to be within his or her scope of duty or, the City may self-insure. Should a damage award result from conduct found to be outside the officer's scope of duty, including but not limited to punitive damages, the City and its insurer will not be responsible for payment of that award. Each allegation or cause of action for conduct complained of will be analyzed separately in determining whether the conduct was within or outside the officer's scope of duty for the purposes of this Article. A determination by the City Manager that conduct was outside of the officer's scope of duties is final but may be reviewed only by an action in King County Superior Court.

ARTICLE 22 – GENERAL PROVISIONS

22.1 SAVINGS CLAUSE

Nothing in this agreement is intended to, nor shall be deemed to be in conflict with RCW 41.12 (Civil Service for City Police), and the Kirkland Civil Service Commission Rules and Regulations. Nothing herein shall be construed to be a waiver of the Union's right to

engage in collective bargaining or to affect the enforceability of any provisions of this contract. In prescribing policies and procedures relating to personnel and practices, and to the conditions of employment, the Employer will comply with State law to negotiate over mandatory subjects of bargaining.

If any provision of this agreement shall be held invalid by operation of law, or any tribunal of competent jurisdiction, or if compliance or enforcement of any provision should be restrained by such tribunal pending final determination as to its validity, the remainder of this agreement shall not be invalid and will remain in full force and effect. Provided that should either party so request, the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement of such invalid provision.

ARTICLE 23 – ENTIRE AGREEMENT

23.1 DURATION CLAUSE

Except as otherwise stated herein, this agreement shall become effective on signature by both parties but not earlier than January 1, 2012 and will carry through December 31, 2013. In the event negotiations for a new agreement have not been completed by the termination date of this agreement, the provisions contained in this agreement shall remain in effect until the conclusion of the negotiations for a new agreement.

23.2 ENTIRE AGREEMENT

This agreement expressed herein in writing constitutes the entire agreement between the parties, and there shall be no amendments, except in writing and with the agreement of both parties.

SIGNATURES

Dated this _____ day of _____, 2012

CITY OF KIRKLAND;

PSEU #519;

By _____
Kurt Triplett, City Manager

By _____
PSEU Representative

Date _____

Date _____

APPROVED AS TO FORM:

William Evans, Assistant City Attorney

Date _____

**Appendix “A”
to the
AGREEMENT
by and between**

**City of Kirkland
and
PUBLIC SAFETY
EMPLOYEES UNION
519
KIRKLAND POLICE
LIEUTENANTS UNION**

SUBSTANCE ABUSE POLICY

Table of Contents

A.	PURPOSE	42
B.	POLICY	42
C.	APPLICABILITY	42
D.	DEFINITIONS.....	42
E.	EDUCATION	44
F.	EMPLOYEE RIGHTS AND RESPONSIBILITIES	45
G.	DETECTION	46
H.	TESTING PROCEDURES.....	47
I.	REPORTING OF RESULTS.....	50
J.	REHABILITATION AND RETURN TO DUTY.....	51
K.	RANGE OF CONSEQUENCES	53
L.	OTHER	55
M.	SUPPORTIVE DOCUMENTS:	55
	SUPERVISOR’S GUIDELINES.....	56
	CONSENT/RELEASE FORM	58
	REPORT FORM.....	59
	INTERVIEW FORM.....	60
	EXHIBIT 1.....	61

POLICIES AND PROCEDURES FOR DRUG/ALCOHOL TESTING AND TREATMENT

These policies and procedures have been agreed to by the parties and shall become a part of the current labor agreement between the City of Kirkland and PSEU # 519. All applicable articles of the contract shall apply to these policies and procedures.

A. PURPOSE

The City of Kirkland recognizes that employees are our most valued resource. The goal of this policy is to ensure a substance abuse free workplace providing prevention, training and rehabilitation for employees. In order to protect the health, welfare, and safety of its employees, and the citizens whom they serve, the following policy regarding substance abuse in the work place is adopted.

B. POLICY

1. It is the policy of the City of Kirkland to provide an alcohol and drug-free workplace for its employees.
2. The City's philosophy on substance abuse is to emphasize prevention, training, rehabilitation, and recovery from substance abuse. Counseling and support will be made available through an Employee Assistance Program, and the employees' right to privacy will be respected at all times.
3. It is the responsibility of the City and the Union to preserve and protect public trust, public safety, and fitness for duty.
4. It is the responsibility of all employees to report for duty and be able to perform their jobs safely and effectively, unimpaired by drugs, alcohol, or any other intoxicating substance.
5. The possession, manufacture, use, distribution, or sale of alcohol, unlawful drugs or drug paraphernalia on City premises or while on duty is prohibited.

C. APPLICABILITY

This policy applies to all bargaining unit employees through the rank of Sergeant.

D. DEFINITIONS

For purposes of this policy, the following terms have the meanings indicated:

1. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

2. Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of Federal, State, or City drug laws.
3. Counseling means participation in a substance abuse treatment or rehabilitation program provided through the City of Kirkland's Employee Assistance Program (EAP).
4. Criminal drug statute means a criminal law involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.
5. Medical Review Officer (MRO) is a licensed physician selected by joint agreement between the parties to receive positive drug test results from the laboratory, analyze and interpret the results, and report to the employer those results as outlined in Section I of this policy.
6. Prohibited Substances are those substances, whose dissemination is regulated by law, including, but not limited to narcotics, depressants, stimulants, hallucinogens, cannabis, and alcohol. For the purpose of this policy, substances that require a prescription or other written approval from a licensed health care provider or dentist for their use shall also be included when used other than as prescribed. The drugs and/or their metabolites that are included in these categories are as follows:
 - a) marijuana
 - b) cocaine
 - c) opium or opiates
 - d) phencyclidine (PCP)
 - e) amphetamines
 - f) or methamphetamines
7. Reasonable suspicion means facts and circumstances sufficiently strong to lead a reasonable person to suspect that the employee is under the influence of drugs and/or alcohol which is corroborated by a second individual other than the designated Union representative.
8. Representation mean Employee's right to Union or legal representation at testing sites and at any subsequent disciplinary action related to implementation of substance abuse procedures.
9. Substance abuse means the use of a substance, including medically authorized drugs other than as prescribed for the user, which impairs job performance or poses a hazard to the safety and welfare of the employee, the public or other employees.

10. Substance Abuse Professional (SAP) is a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.
11. Unreasonable delay means a delay of the testing procedure for a period of time, as defined by the collection site or laboratory personnel, which would render the test useless or inaccurate.

E. EDUCATION

Pursuant to the provisions of the Drug-Free Workplace Act of 1988, the City will establish an education and training program to assist employees to understand and avoid the perils of drug and alcohol abuse. The City will use this program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace.

The City's program will inform employees about:

- a) The dangers of drug and alcohol abuse in the workplace;
- b) The City's policy of maintaining a drug- and alcohol-free workplace;
- c) The availability of drug and alcohol treatment, counseling and rehabilitation programs; and
- d) The penalties that may be imposed upon employees for drug and alcohol abuse violations.

As part of its program, the City shall provide educational materials that explain the City's philosophy regarding drug and alcohol use, requirements of applicable regulations, and the City's Substance Abuse policy and procedures. Employees shall be provided with information concerning:

- a) The effects of alcohol and drug use on an individual's health, work and personal life;
- b) Signs and symptoms of an alcohol or drug problem; and
- c) Available methods of intervening when an alcohol or drug problem is suspected, including confrontation and/or referral to management.

In addition to the training above, the City shall provide training to supervisors who may be asked to determine whether reasonable suspicion exists to require an employee to undergo drug and/or alcohol testing. The supervisory training shall include training on alcohol abuse and drug use. This training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol abuse and drug use. Supervisors who have not received the initial training described above will not be asked to determine whether reasonable suspicion exists to initiate drug/alcohol testing. However, these supervisors

may request another supervisor who has undergone this training to make the determination

F. EMPLOYEE RIGHTS AND RESPONSIBILITIES

1. The City shall not require an employee to undergo a drug and/or alcohol test unless there is reasonable suspicion to indicate the employee is under the influence of a substance which causes the employee to pose a hazard to the safety of the employee, the public, or other employees. However, an employee may be required to undergo a re-examination drug and/or alcohol test as provided in Section J.2. of this policy.
2. It is the employee's responsibility to report for duty, able to perform his/her job safely and effectively, unimpaired by drugs, alcohol, or any other intoxicating substance.
3. Employees are responsible for:
 - a) Obtaining from their health care provider adequate information about the effects of prescription medication on job performance; and
 - b) Promptly notifying his/her supervisor of same; OR
 - c) Promptly notifying his/her supervisor of the effects on job performance of over-the-counter medication being taken.
4. Employees are prohibited from possessing, manufacturing, using, distributing, or selling alcohol, controlled substances or drug paraphernalia on City premises or while on duty. For purposes of this policy, "on duty" time includes meal and break periods during the work day.
5. Employees are encouraged to request assistance with drug use and/or alcohol abuse problem(s), with the understanding that a voluntary request for assistance will not be used as the basis for disciplinary action. However, a request for assistance shall not be used to exempt employees from job performance requirements.
6. In accordance with the Drug-Free Workplace Act of 1988, an employee who is convicted of a violation of a criminal drug statute shall notify the City's Human Resources Director no later than five (5) days after such conviction. For purposes of this policy, a criminal drug statute means a criminal law involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.
7. Employees have the right to challenge the results of any tests and any discipline imposed in accordance with the Grievance procedure of their labor contract. Employees who dispute the results of a drug test may have their split sample tested at their cost at another DHHS-certified laboratory. This request must be made within seventy-two (72) hours of notification of a positive drug test result by the MRO.

8. Employees having knowledge of another employee's condition/behavior that poses a potential threat to the safety of employees and/or the public are to notify their immediate supervisor.
9. Employees who are required to undergo a drug and/or alcohol test will be provided transportation to the collection facility and shall also be offered transportation home by a Department representative. If suspected of being impaired, the employee will be advised against driving him/herself home or otherwise operating a motor vehicle.
10. Employees may have a Union representative present at the collection facility. However, the lack of Union representation shall not cause unreasonable delays in the collection process.
11. Employees shall fully cooperate in the collection process.

G. DETECTION

1. Reasonable Suspicion. Once the steps outlined in the attached "Supervisor's Guidelines" are followed, an employee may be required to undergo a drug and/or alcohol test when reasonable suspicion exists to indicate that the employee is under the influence of a prohibited substance.
2. The decision to conduct a drug and/or alcohol test shall be made by the reporting supervisor and the highest-ranking supervisor on duty. For purposes of this policy, acting officers are considered supervisors. The higher of the two supervisors will make timely notification of the situation to the department head or the department head's management level designee, and the Human Resources Director his/her designee. Refusal to submit to a drug and/or alcohol test authorized by this policy shall be grounds for discipline, up to and including discharge.
3. Searches
 - a) The Department has the right to search, without employee consent, City-owned property to which the employee has no reasonable expectation of privacy. These areas may include office space, desks, file cabinets and the like, that several different individuals may use or access. A reasonable expectation of privacy shall exist in personal containers marked and locked inside an Officer's desk drawer.
 - b) If the employee's consent to search is first obtained, the Department shall have the right to search (1) City-owned property to which the employee has a reasonable expectation of privacy, and (2) private property belonging to the employee, such as a personal equipment bag, brief case, or private vehicle. If such consent is given, the

employee shall have the right to Union representation during the search. City-owned areas where the employee has a reasonable expectation of privacy are the employee's personal lockers.

- c) If the Department requests the employee's consent to search, the Department shall first inform the employee that:
 - (1) The Department has reasonable suspicion to suspect that evidence exists within the area or item to be searched which could be used in disciplinary and/or legal proceedings against the employee; and
 - (2) The employee has the right to Union representation during the search if consent is given; and
 - (3) Refusal to give consent to search will not be considered by the Department to be an admission of guilt or cause for disciplinary or retaliatory action.
 - d) An employee's refusal to give consent to search shall not preclude the Department from contacting the police authority having jurisdiction to conduct a search according to and in the manner authorized by law.
4. Possession, manufacture, distribution or sale of alcohol, drugs, or drug paraphernalia on City property or during work time is expressly prohibited and may provide a basis for discipline under department rules and regulations, but shall not in and of itself constitute cause for drug and/or alcohol testing under this policy. For purposes of this policy, work time includes meal and break periods or any other time when the employee is on paid status. Alcoholic beverages that are properly stored, unopened, in the trunk of an employee's vehicle will not be considered a violation of this policy. Any illegal drugs and/or drug paraphernalia coming into the City's possession will be turned over to the police authority having jurisdiction.

H. TESTING PROCEDURES

- 1. Drug and alcohol testing shall be conducted in a manner designed to protect employees, protect the integrity of the testing process, safeguard the validity of test results, and ensure that those results are attributed to the correct employee. The City and Union agree that if the security of the urine or blood sample is compromised in any way, any positive test shall be invalid and may not be used for any purpose.
- 2. Employees who are required to undergo a drug and/or alcohol test will be provided transportation to the collection facility and shall also be offered transportation home by a Department representative.

3. Employees may have a Union representative present at the collection facility. However, the lack of Union representation shall not unreasonably delay the collection process.
4. Employees required to undergo a drug and/or alcohol test shall cooperate fully in the collection process and complete all required forms and documents. These forms may include a Consent/Release form and an Interview form.
5. Urine samples for drug testing shall be collected at a collection site designated by the City and Union using the split sample collection method. The split sample is made available if re-testing becomes necessary. Any specimen that tests positive for drugs shall be retained in long-term frozen storage by the laboratory conducting the analysis for a minimum of one year.
6. If medical personnel at the collection site have reason to believe that an adulterated or substituted sample has been provided (or that the employee may alter or substitute the sample), the employee will be required to submit a second sample (or the original sample). This collection shall be under the direct observation of a same gender collection site staff person. The employee will be required to provide the additional or original sample during an observed collection prior to leaving the collection site.
7. An approved chain of custody procedure shall be followed in the administration of all drug tests. Urine samples shall be sealed and initialed by the employee and a witness.
8. Urine samples shall be promptly sent to and tested by a laboratory that is certified to perform drug tests by the Department of Health and Human Services (DHHS). Initial drug screening shall be conducted using an accepted immunoassay method. All positive tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MS) drug testing method. The laboratory shall test for only the substances and within the limits as follows for the initial and confirmation tests, as provided within NIDA standards, unless this section is modified by amended agreements provided for in Section L.3.:
 - a) Initial Tests

(1) Alcohol	.02 g/210 ml expired air
(2) Marijuana metabolites	50 ng/ml
(3) Cocaine metabolites	300 ng/ml
(4) Opiate metabolites (1)	300 ng/ml
(5) Phencyclidine	25 ng/ml
(6) Amphetamines	1000 ng/ml

(7) If immunoassay is specific for free morphine the initial test level is 25 ng/ml.

b) Confirmatory Test

(1) Alcohol	.02 g/210 ml expired air
(2) Marijuana metabolites	15 ng/ml
(3) Cocaine metabolites	150 ng/ml
(4) Opiates	
(a) Morphine	300 ng/ml
(b) Codeine	300 ng/ml
(c) Phencyclidine	25 ng/ml
(d) Amphetamine	500 ng/ml
(e) Methamphetamine	500 ng/ml

9. Alcohol shall be tested by means of Breathalyzer machine currently in use (B.A.C.) or future equipment which may supersede the B.A.C. machine (but excludes the P.B.T. device). Breathalyzer alcohol tests shall be conducted in private at the collection site designated by the City and the Union. The testing shall follow the protocols established for criminal investigations, including the requirement of two breath samples within the proper variance. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test shall be performed to confirm the results of the initial test at the election of the employee. The confirmatory test shall also use a 0.02 blood alcohol concentration level to measure a positive test. If the Employee refuses to take the second confirmatory test, the first test will be used to determine alcohol concentration.
10. Upon written request by the employee, the City shall make one legible copy of the results of his/her drug and/or alcohol tests available to the employee.
11. All information collected in the process of conducting a drug and/or alcohol test shall be treated as confidential information. These files shall be separate from the personnel file and sealed and maintained in a secure medical file.
12. Employees who refuse or fail to fully cooperate in the collection process may be subject to discipline up to and including discharge. Examples of a failure to fully cooperate include such actions as, refusing to sign the necessary consent/release forms; delaying and/or obstructing the collection process; failing to provide the specimen for testing; and attempting to substitute or adulterate a specimen. The foregoing list is not intended to be an all-inclusive list. City management shall, in all circumstances, have the final right to determine the appropriate level of discipline depending on the specific circumstances, the employee's performance record, and any other pertinent facts.

I. REPORTING OF RESULTS

1. The City shall have a designated Medical Review Officer (MRO) who must be a licensed physician with knowledge of substance abuse disorders and familiar with the characteristics of the laboratory tests (sensitivity, specificity, and predictive value). The role of the MRO will be to review and interpret the positive drug test results.
2. Alcohol Test Results. Laboratory or collection site personnel will report the test results to the City's Human Resources Manager, or his/her designee. The Human Resources Director will promptly advise the appropriate Department Head of these test results. If the confirmation test meets or exceeds 0.02 g/210 ml expired air, the laboratory or collection site personnel shall report to the Human Resources that the employee tested positive for alcohol. If the test result is below 0.02 g/210 ml expired air, the laboratory or collection site personnel will report to the Human Resources Director that the employee tested negative for alcohol.
3. Drug Test Results. Laboratory personnel will advise the Human Resources Director, or his/her designee directly of all negative drug test results. The Human Resources Director will promptly advise the appropriate Department Head of these test results.

The laboratory will advise only the MRO of any positive drug test results. The MRO must examine alternate medical explanations for any positive test results. This process shall include an interview with the affected employee and a review of the incident file, employee's medical history and any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Employees involved in this step of the examination shall make themselves and any relevant records they wish to present available to the MRO within forty-eight (48) hours after request.

After reviewing the incident file and interviewing the employee, the MRO shall report to the City's Human Resources Director or his/her designee the name of the employee, and whether a positive test of a prohibited substance has been verified. The Human Resources Director shall promptly notify the appropriate Department Head of the test result.

4. Rehabilitation Program. If the tested employee is referred on to rehabilitation or treatment, the MRO is authorized to communicate specific results to the Substance Abuse Professional (SAP) or counselor overseeing the employee's treatment program.

5. Grievance. The laboratory and/or the MRO will be authorized to release specific test results to the City and the Union in cases of a grievance and/or a legal challenge.

J. REHABILITATION AND RETURN TO DUTY

1. The City recognizes that substance abuse can be successfully treated, enabling an employee to return to satisfactory job performance. Employees who are concerned about their own drug use and/or alcohol abuse are encouraged to voluntarily seek assistance through the City's EAP. All such voluntary requests for assistance will remain confidential.
2. Any employee who tests positive for a prohibited substance or is otherwise required to submit to a drug and/or alcohol test by this policy shall be medically evaluated, counseled, and treated for rehabilitation as recommended by the SAP. If the employee is required to participate in such a program, his/her reinstatement or continued employment shall be contingent upon:
 - a) Successful completion of the program and remaining drug- and/or alcohol-free for its duration; and
 - b) Passing a return to duty drug and/or alcohol test as recommended by the SAP; and
 - c) Obtaining a final release for duty by the SAP (the final release for duty may be preceded by a temporary release for duty).
3. Employees who successfully complete a rehabilitation program and are released for duty, in addition to being subject to reasonable suspicion testing at any time, will be subject to follow up testing, which involves unannounced drug and/or alcohol testing at least six (6) times during the following twenty-four (24) months. The SAP will determine the dates for these drug and/or alcohol tests. These test dates will be communicated to the Human Resources Director who will inform the employee of those dates. The appointment for the collection will be made in advance and maintained in a confidential manner by the Human Resources Director until the day of the collection. The Human Resources Director shall provide the supervisor with adequate notice of the test dates. The employee will not be notified until just prior to the testing. The employee may request a Union representative to accompany him/her to the collection site, provided the sample is collected within two (2) hours following notification.
4. Upon notification of selection for the follow up tests, the employee must proceed directly to the collection site for testing. At this time, the employee will receive an Employee Notification of Scheduled Drug/Alcohol Test letter from the designated contact. The employee will be required to sign this letter and a Consent/Release form. The employee

must present photo identification to collection site personnel. The Human Resources Director or his/her designee will retain a copy of all the forms.

5. Refusing to submit to a return to duty or a follow up test will be considered grounds for discharge. If the selected employee fails to report to the collection site within two (2) hours of notification of testing, this will also be considered grounds for disciplinary action up to and including discharge.
6. If an employee voluntarily enters a drug/alcohol rehabilitation program, it shall not be considered an offense under this policy. Such employees are, however, still subject to this policy and may be required to undergo a drug and/or alcohol test if reasonable suspicion exists.
7. All appointments with the SAP may be scheduled as vacation, or leave without pay with prior approval of the supervisor, Department Head, or management designee. The SAP will contact the Department Head or his/her designee to make a recommendation as to the need for further treatment. Once vacation leave is exhausted, the employee will be placed on leave without pay. The Department Head or his/her management level designee shall maintain confidentiality regarding the reason for the leave.
8. The employee will be responsible for all costs, not covered by insurance, which arise from such treatment.
9. Once an employee has tested positive for substance abuse and the MRO has notified the City, the employee will be placed on leave status (vacation, holiday leave bank, compensatory time or leave without pay). The employee will remain on leave until s/he has a release for duty from the SAP and has passed a return to duty drug and/or alcohol test as recommended by the SAP. The release for duty may be a temporary or final release as described below depending on the circumstances.
10. Temporary Release for Duty. The SAP shall sign a temporary release for duty indicating that the employee can satisfactorily return to regular work assignment and continue treatment on an outpatient basis. The temporary release for duty shall indicate the length of time such release is valid not to exceed four (4) months. The employee must present a final release for duty on or before the expiration date of the temporary release. A temporary release shall include follow up testing. The employee must present both the temporary and final release for duty to his/her supervisor.
11. Final Release for Duty. A final release for duty shall be signed by the SAP indicating that the employee has:
 - a) Satisfactorily completed treatment and follow up testing; or

- b) Does not require treatment at this time, and the employee may return to regular work assignment without restrictions. Failure to provide a final release for duty to the supervisor may result in disciplinary action up to and including discharge.
12. Once an employee provides the supervisor with the final release for duty the employee shall be returned to his/her regular duty assignment. After three years of no further violation of this policy, the employee's personnel file shall be purged of any reference to the incident, including any disciplinary actions taken, provided, however, records may be retained beyond three (3) years when retention is required by applicable law. Should applicable law require retention of records past three (3) years, and if allowed by such law, such records shall be sealed and may not be opened without consent of the employee.
 13. If an employee tests positive during the twenty-four (24) -month period following rehabilitation on a reasonable suspicion drug or alcohol test, the employee will be subject to discipline, up to and including discharge.
 14. If an employee tests positive during the twenty-four (24)-month period following rehabilitation on a random drug or alcohol test, the employee will be placed on leave without pay during the period the SAP makes a decision on the need for further treatment. The employee will remain on leave without pay during any treatment period and until they have provided the employer with a return to duty form signed by the SAP. If such an employee completes the return to duty process and again tests positive on either a reasonable suspicion or random drug or alcohol test, they shall be subject to discharge.

K. RANGE OF CONSEQUENCES

1. Employees who violate this policy will be subject to a range of disciplinary consequences depending upon the severity of the infraction and/or the employee's past performance record. In all cases, the City reserves the right to determine the appropriate disciplinary measures, which may be more or less severe than those included in this guideline. The following list of actions and the related consequences is intended as a guideline only, and further, is not intended to be an all-inclusive list of possible disciplinary consequences.
2. If an employee has an alcohol concentration of 0.02 or greater in any authorized alcohol test, and/or tests positive for drugs and/or their metabolites in any authorized drug test and it is the employee's *first offense*, then s/he shall be referred to the EAP for counseling and/or completion of a substance abuse treatment or rehabilitation program. However, if an employee violates a work rule in conjunction with failing a drug and/or alcohol test, then s/he may be subject to disciplinary action.

The City shall have the right to take disciplinary action, up to and including discharge, based on the severity of the incident and/or the employee's past record.

3. Employees will be subject to disciplinary action, up to and including discharge, for any of the following infractions:
 - a) Refusal to submit to an authorized drug and/or alcohol test. Refusal to submit to testing means that the employee fails to provide an adequate urine or breath sample for testing without a valid medical explanation after s/he has received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process. Refusal to submit to testing includes, but is not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, refusal or failure to provide necessary documentation to the MRO when requested, and/or submission or attempted submission of an adulterated or substituted urine sample.
 - b) Drinking alcoholic beverages or using drugs while on duty, on City property, in City vehicles, or during breaks and/or meal periods during work hours.
 - c) Unlawful manufacture, distribution, dispensation, possession, concealment or sale of any controlled substance, including an alcoholic beverage, while on duty, on City property, in City vehicles, or during breaks and/or meal periods during work hours.
 - d) Any criminal drug statute conviction and/or failure to notify the City of such conviction within 5 days.
 - e) Failure to complete a counseling, treatment, or rehabilitation program as prescribed by the SAP.
 - f) Testing positive on a return to duty.
 - g) Any two failures on follow up drug and/or alcohol testing during the 24 month following rehabilitation.
 - h) Failure to report to a collection site within two (2) hours of notification for return to duty or follow up testing.
 - i) Second offense – alcohol concentration of 0.02 or greater in any reasonable suspicion authorized alcohol test, and/or testing positive for drugs and/or their metabolites in any authorized reasonable suspicion drug test.

- j) Employee's failure to participate in the temporary and/or final releases for duty testing in a timely manner.
- 4. Although the foregoing infractions will ordinarily result in discharge regardless of the employee's position, the City reserves the right to consider extenuating circumstances and to impose lesser discipline when such action is deemed appropriate.

L. OTHER

- 1. The City shall pay for initial costs of the substance abuse examination including the expenses of the Medical Review Officer.
- 2. This policy was initiated at the request of the City and the Employer shall assume sole responsibility for the administration of this policy. The City agrees to indemnify and hold the Union and its officers harmless from any and all claims of any nature (except those arising from the negligence of the Union and/or its officers) arising from the Employer's, laboratories', or Medical Review Officer's implementation of this policy.
- 3. The parties recognize that during the life of this agreement there may be improvements in the technology of testing procedures which provide more accurate testing for on-the-job impairment or which constitute less invasive procedures for the employees. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree, the issue will be submitted to impasse procedures under RCW 41.56.
- 4. If any provision of this Agreement shall be held invalid by operation of law, or any Tribunal of competent jurisdiction, or if compliance or enforcement of any provision should be restrained by such Tribunal pending final determination as to its validity, the remainder of this Agreement shall not be held to be invalid, and will remain in full force and effect, and the parties, upon request of one to the other shall initiate immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such provision.
- 5. The following attachments shall be a part of this Policy: Supervisor's Guidelines, Report Form, Interview Form, Consent/Release Form.

M. SUPPORTIVE DOCUMENTS:

**POLICIES AND PROCEDURES FOR
DRUG/ALCOHOL TESTING AND TREATMENT SUPERVISOR'S
GUIDELINES**

The primary goal of the Substance Abuse Policy is to provide a working and service delivery environment free from the effects of alcohol/drug abuse. The supervisor's role is to identify employees who may be a threat to the safety and welfare of the employee, other employees, and the public by being under the influence of drugs and/or alcohol while on-duty. Such employees *must* be removed from the workplace.

Follow the steps below to ensure that you are proceeding correctly. It is important that proper procedures are followed to preserve the privacy of the individual and to comply with legal and contractual requirements.

1. Contact your appropriate command staff and explain the situation.
2. Your supervisor will:
 - a) Advise you of what appropriate action to take regarding your status as the shift supervisor.
 - b) Notify the Chief of Police and the Human Resources Director (or their designees) in a timely manner, then join you at your location to assist you and corroborate your observations during the interview.
3. Prepare yourself for an interview with the employee by completing the Report Form. Refer to Attachment 1 for descriptions of physical and behavioral signs which may indicate substance abuse.
4. After your supervisor has arrived, advise the employee you wish to interview him/her and provide a private location to conduct the interview.
 - a) Be sure to advise the employee that you suspect him/her of being under the influence of a prohibited substance (defined in the policy) and that s/he may have a Union representative present during the interview.
 - b) Do not argue with a belligerent or threatening employee. Advise him/her that his/her cooperation during the interview and testing procedure (if warranted) are direct orders and that continued disruptive behavior, preventing completion of the interview, shall be the same as refusal to submit to testing and shall be cause for discipline (cooperation *does not* mean that any employee must give facts or evidence which may incriminate himself/herself).
 - c) Complete the Interview Form with your supervisor.

5. Review the relevant information with your supervisor. If your supervisor decides that the test is required, relieve the employee of duty, with pay, during the course of the exam and MRO review.
6. Have the employee sign a Consent/Release Form.
 - a) Read the form to the employee and direct him/her to sign it. Do not alter the form in any way.
 - b) Be sure, if the employee has declined Union representation, that s/he understands that s/he may choose to have a Union representative accompany him/her to the testing facility.
 - c) If the employee refuses to sign the form, advise him/her that this is a direct order and that failure to comply shall be cause for discipline.
 - d) Issue a second order for the employee to sign the consent form. If s/he still refuses, relieve the employee of duty, with pay, explain that disciplinary action may follow. You or your supervisor will transport the employee home. (No employee suspected of impairment from alcohol/drug abuse shall be allowed to drive.)
7. Your supervisor shall transport the employee to the testing facility, and wait at the testing facility until the testing is completed.
8. When the exam is completed, your supervisor will:
 - a) Reconfirm with the employee that s/he has been relieved of duty, with pay, and
 - b) Advise the employee that s/he will be contacted by the MRO to review the results (if positive), and
 - c) Advise the employee that s/he will be contacted by the department advising him/her how to return to duty, and
 - d) Drive or arrange transportation for the employee home. Do not return the employee to a City facility.
9. Once the employee has been sent home, your supervisor will:
 - a) Gather copies or originals of the Report Form, Interview Form, Consent/Release Form, and any other written notes or reports and forward them to the Police Chief and Human Resources Manager.

City of Kirkland Police Department
Substance Abuse Policy
CONSENT/RELEASE FORM

I consent to the collection of urine, a blood and/or expired air sample by _____ and its analysis by _____ for those drugs, alcohol, and or controlled substances specified in the Collective Bargaining Agreement pursuant to the Substance Abuse Policy agreed to between the City of Kirkland and the Union.

The laboratory administering the tests may release the results to the Medical Review Officer (MRO), who shall release his/her conclusions to the employer after review and interpretation. If I test positive, I agree to make any requested records and myself available to the MRO within 48 hours of such request. The information provided to the employer from the MRO shall be limited to whether the tests were confirmed positive or negative, and no other test results will be released, except as provided herein, without my written consent. The laboratory will advise the employer's representative whether the initial alcohol screen is positive or negative.

I understand that I have the right to my complete test results and that the laboratory will preserve the sample for at least one year. If I test positive, I have the right to have the split sample tested at my expense at a second DHHS-certified laboratory of my choice. I understand that I must request such test of the split sample within 72 hours of notification of a positive test result by the MRO.

I understand that the Employer is requiring me to submit to this testing as a condition of my employment and that if I tamper with, alter, substitute, or otherwise obstruct or fail to cooperate with the testing process, I will be subject to disciplinary action up to and including termination.

I further understand that a confirmed positive test will result in actions taken by the employer and for the employee which are consistent with the City's policies and procedures for substance abuse testing and treatment.

I understand that the employer will administer the Policy consistent with federal and state constitutional and statutory requirements. Also, by signing this consent form, I am not waiving the right to challenge any confirmed positive test result and any Employer action based thereon. In order to pursue any challenge related to this test, I will, however, be required to authorize the laboratory and MRO to release to my Employer and the Union any information relating to the test or test results. Further, I understand that my employer may require that I participate in a treatment or rehabilitation program. If required to do so, I authorize the laboratory and MRO to release any information relating to the test or test results to the Substance Abuse Professional (SAP) or treatment counselor. My signature below indicates my consent for release of this information.

Employee Signature _____ **Date** _____

**City of Kirkland Police Department
Substance Abuse Policy
REPORT FORM**

This form must be filled out prior to any drug/alcohol testing. Review Supervisor's Guidelines before completing this form. The information contained on this form is confidential and shall be viewed only by necessary supervisory/managerial employees, the testing facility, MRO, and the employee being interviewed/tested. When this form is completed and signed, make one copy of the form and distribute as follows: Original to Police Chief, Copy attached to consent form.

Employee Name: _____

Speech: _____

Dexterity: _____

Standing: _____

Walking: _____

Judgment: _____

Decision-making: _____

Appearance (eyes, clothing, etc.): _____

Odor: _____

Other: _____

Location where these were observed: _____

Time of observation: _____

Witnesses: _____

Supervisor's Signature _____ Date / Time: _____

**City of Kirkland Police Department
Substance Abuse Policy
INTERVIEW FORM**

Name of Employee _____

I understand that I am entitled to Union representation during this meeting and during any subsequent meetings or at testing facilities. I understand that I am being ordered to answer these questions and that if I refuse to answer these questions I am subject to discipline up to and including termination. I do or do not (please circle one) want a representative at this time. I understand that I am entitled to Union representation at any time whether I choose to have one now or not.

Employee signature: _____

1. I (we) have noticed (describe behavior/evidence) _____

2. Do you have any explanation? _____

3. Are you using any type of illicit drug or alcohol? _____

If yes, what? _____

When did you take it? _____

Where did you take it? _____

How much did you take? _____

Do you have any drugs/alcohol in your possession at work? _____

(if yes, get agreement to confiscate)

Based on the interview and the completed Report Form, I believe the employee should be tested for drugs and/or alcohol.

Dated _____

Supervisor (position) _____ _____ Agree _____ Don't Agree

Witness* (position) _____ _____ Agree _____ Don't Agree

*Witness is an individual other than the designated Union representative

City of Kirkland Police Department
Substance Abuse Policy
Exhibit 1

Listed below are some behavioral descriptions which may guide the supervisor in determining whether an employee is “under the influence” of a prohibited substance. There is no one behavior which is unique to drugs/alcohol. Almost every behavior/sign can also be associated with medical or emotional problems such as high blood pressure, diabetes, thyroid disease, psychiatric disorders, epilepsy, head injury, emotional problems, stress, etc. Even so, a supervisor usually knows the employees “normal” behavior and must try and distinguish alcohol and/or drug abuse from other problems.

Supervisors should be aware that the following physical, behavioral, or performance symptoms may indicate drug/alcohol abuse:

- a) Either very dilated or constricted pupils
- b) Hyperactivity
- c) Unsteady gait
- d) Irritability
- e) Slurred speech
- f) Anxiousness
- g) Wide mood swings
- h) Odor of alcohol
- i) Overreaction to criticism
- j) Staggering
- k) Listlessness
- l) Illogical speech and thought process
- m) Unusual/abnormal behavior
- n) Poor judgment
- o) Avoiding others/withdrawal
- p) Sudden increase in absenteeism

**Appendix “B”
to the
AGREEMENT
by and between
City of Kirkland
and
Public Safety Employees Union #519
(Representing the Kirkland Police Lieutenants Union)**

PHYSICAL FITNESS INCENTIVE PROGRAM

This Appendix is supplemental to the AGREEMENT by and between the CITY OF KIRKLAND, WASHINGTON, hereinafter referred to as the “Employer”, and the Kirkland Police Lieutenants Union, hereinafter referred to as “Union.”

B.1 A mutual goal of the Employer and the Guild is to encourage good physical fitness. The parties agree that an acceptable level of physical fitness is an essential function of the job of a Police Lieutenant. The purpose of this program is to promote the physical capability of the commissioned members of the Kirkland Police Department and to enhance the members’ general physical fitness level.

B.2 Pursuant to Article 9.7 of the Collective Bargaining Agreement between the parties, the information contained in this appendix shall serve as the rules and regulations of a physical fitness program and the procedures by which the program shall be administered.

B.3 Both parties agree that participation in the physical fitness program is voluntary. The Employer and the Union encourage participation in the fitness program by members. Training, exercising, and general conditioning in preparation to take the physical fitness test shall be on an individual and voluntary basis without compensation. The Employer agrees to offer the fitness test in the fall of 2012 and twice per year in 2013. The test will be conducted during work hours in conjunction with the spring and fall KPD in-service training block. This on-duty status during the testing process shall protect members against loss of pay for time off work due to any injury sustained while participating in the fitness test. Members who wish to participate in the fitness test shall be required to sign the general liability waiver set forth in B.8.

B.4 The fitness test shall be comprised of three core components: push-ups, sit-ups, and 1.5 mile run. Based on medical necessity, as an alternative to the 1.5 mile run, an employee may do the Three (3) Mile Walk Test. To be eligible for such an exemption, an employee must submit to the Employer a written statement from the employee’s physician establishing the condition or disability which prevents the employee from participation in the 1.5 mile run. This “Cooper” test is modified for age/gender and is set

forth in Section B.7 of this Appendix. The components are generally designed to measure aerobic/cardiovascular endurance, and upper/lower body muscular strength. A member must satisfy the standards of each test component in order to qualify for the monetary incentive; i.e., failing one component of the test constitutes overall failure. A member shall be allowed one opportunity to pass the various fitness test components during the test.

B.5 The cycle year for the physical fitness incentive program is November 1st – October 31st.

B.6 Members who successfully pass-the fitness test receive an incentive pay of one percent (1%) of the monthly rate of base pay for the following cycle year. The test will be offered twice each cycle year and it is the individual employee’s responsibility to be trained and available for one of the scheduled opportunities. Individual tests will not be arranged. For 2012, the employee will have one opportunity in the fall to take the test. A passing score qualifies the employee to receive retro one percent (1%) incentive pay for the November 1, 2011 – October 31, 2012 cycle, as well as qualify for the November 1, 2012 – October 31, 2013 cycle. In this manner, a Lieutenant would have two opportunities (spring and fall) to successfully pass the test, which would ensure the one percent (1%) fitness incentive for the following cycle year. An employee who fails to pass either test offered shall be eligible to receive the one percent (1%) up until October 31st. He/she may take the test, but upon passing, the one percent (1%) incentive pay shall be effective at the commencement of the next cycle year, November 1st. The same cycle structure shall apply for 2013.

B.7 Physical Fitness Test Description

The physical fitness test shall be comprised of the following components. The results of these tests shall be made available to the Employer.

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
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<i>1.5 mile run</i>				
Male	12:51	13:36	14:29	15:26
Female	15:26	15:57	16:58	17:54

An employee who performs the alternative Three (3) Mile Walk Test must satisfactorily complete the test within the times listed below in order to qualify for the incentive pay. Walking is defined as one foot on the ground at all times. No running is allowed. The passing times are in accordance with standards set forth by the Cooper Institute for the Three (3) Mile Walk Test.

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
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<i>Three (3)Mile Walk Test</i>				
Male	38:31	40:01	42:01	45:01
Female	40:31	42:01	44:01	47:01

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
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<i>Push-ups (1 minute)</i>				
Male	29	24	18	13
Female	15	11	9	5
Female (modified)	23	19	13	12

- The body should be straight and the hands about shoulder width apart
- The body should remain rigid throughout the down phase; with the chest coming to within three (3) inches of the floor. (The tester can place a foam block on the floor beneath the participant's chest)
- From the down phase, the participant must return to the up position with the arms straight
- The participant is only permitted to rest in the up position
- The total number of push-ups which the participant performs in 1 minute are counted
- Females may choose to use the modified push-up (knees on ground with feet up in the air)

Employee Age:	20 – 29	30 – 39	40 – 49	50 – 59
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<i>Sit-ups (1 minute)</i>				
Male	38	35	29	24
Female	32	25	20	14

- The participant lies on the back with the knees flexed at a right angle. The hands, with fingers interlocked, are placed at the back of the neck.
- A partner sits on the participant's insteps with his/her hands placed behind the subject's calf muscles to keep the heels in contact with the floor.
- The participant sits up to touch the knees with the elbows.
- Without pause, the participant returns to the starting position just long enough for his/her head (not just shoulder blades) to touch the mat and immediately sits up again.

B.8 Physical Fitness Test General Liability Waiver Form:

City of Kirkland

Kirkland Police Department—Fitness Ability Test

I hereby acknowledge that the format of the City of Kirkland Fitness Ability Test has been explained to me and I understand that the purpose of this test is to measure my fitness ability in my current position as a Police Lieutenant for the City of Kirkland.

I also acknowledge that participation in the Fitness Ability Test is totally voluntary and, while I may be permitted to participate in the test on compensable duty time, I am under no compulsion or directive to do so.

I certify that to the best of my knowledge, I am fit to undertake the activities involved in the test and have no physical impairment or medical condition which would preclude my completion of the test. I have had the opportunity to consult my personal physician and have done so or chosen not to. I understand that the tests are strenuous and hold the potential for serious injury or death. I understand that I may stop the test at any time and that the persons administering the test may discontinue it at any time they have a reasonable basis for belief that continuation of the test could be detrimental to my health. Discontinuance may prevent successfully passing the test, consistent with Section B.4.

I assume full and complete responsibility for undertaking the test and I hereby release the City of Kirkland, its officers, employees, and agents from any responsibility or liability for any loss or damage arising from the bodily injury relating to my participation in the test, except for any loss or damage arising solely from the negligence of the City of Kirkland, its officers, employees, or agents.

Name (print)

Signature

Date