

# **AGREEMENT**

**BETWEEN**

**THE POLICE BENEVOLENT ASSOCIATION OF THE  
VILLAGE OF MAMARONECK**

**AND**

**THE VILLAGE OF MAMARONECK**

**JUNE 1, 2016 TO MAY 31, 2020**

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THIS AGREEMENT, made this 25th day of October, 2016, by and between the Village of Mamaroneck, New York, hereinafter referred to as the "Village", and the Police Benevolent Association of the Village of Mamaroneck, Inc., hereinafter referred to as the "Association".

WHEREAS, the members of the Association are employed by the Village as police officers in the Police Department of the Village of Mamaroneck, New York, and

WHEREAS, the parties hereto desire to cooperate to stabilize such labor relations by establishing general standards of wages, hours of service and other conditions of employment, and providing arbitral machinery whereby disputes and grievances between the members of the Association and the Village may be adjusted without resorts to strikes, lockouts or other interferences with the continued and smooth operation of the Police Department of the Village of Mamaroneck, New York.

NOW, THEREFORE, the parties hereto agree as follows:

The general purpose of the agreement is to set forth terms and conditions of employment and to promote orderly and peaceful labor relations for the mutual interest of the Village of Mamaroneck, New York, in its capacity as an employer, the employees, and Association and the people of the Village of Mamaroneck, New York in accord with the intent of the Public Employees Fair Employment Act of 1967, as amended.

The parties recognize that the interest of the community and job security for the employees depend upon the Village's success in establishing proper services to the community.

To these ends the Village and the Association encourage to the fullest degree friendly and cooperative relations between their respective representatives at all levels and among all employees.

#### ARTICLE I GOVERNING LAW

The law governing this contract shall be the Public Employees' Fair Employment Act, hereinafter called PEFEA and such provisions of the Civil Service Law and the Code of the Village of Mamaroneck, State of New York which are not inconsistent with the said Act and the Civil Service Law.

"IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFORE SHALL NOT BECOME EFFECTIVE UNTIL THE PROPER LEGISLATIVE BODY HAS GIVEN APPROVAL".

It is recognized that the management of the Village, the control of its properties and the maintenance of order and efficiency is solely a responsibility of the Village. Accordingly, the

Village retains, consistent with the provision of the Civil Service Law and any other State, Country or Village laws, the right to select and direct the working forces, the non-punitive assignment or transfer of employees from one assignment to another assignment and generally to take such action and adopt such procedures as may be necessary to promote the efficiency of the Village, provided such actions and procedures are not inconsistent with the terms of this agreement.

**ARTICLE II**  
**RECOGNITION OF NEGOTIATING UNIT AND REPRESENTATIVE**

The Village recognizes the Union as the exclusive collective negotiating agent for the full time, permanently appointed, sworn police officers employed in the Village Police Department, with the exception of the Chief of Police and the Executive Lieutenant. The Executive Lieutenant shall be excluded subject to the definitions included in Article III.

REPRESENTATION RIGHTS. The Village does extend to the Association representing such unit of employees the following rights:

- a) To represent the employees in negotiations and in the settlement of grievances;
- b) To unchallenged representation status.

**ARTICLE III**  
**DEFINITIONS**

- A. ***"Member"*** or ***"Employee"*** means a person employed as a police officer by the Village of Mamaroneck, New York.
- B. ***"Service"*** or ***"Length of service"*** shall include service with the Police Department of the Village of Mamaroneck, New York, or other police departments in the County of Westchester.
- C. ***"Department"*** means the Police Department of the Village of Mamaroneck, New York.
- D. ***"Employer"*** means the Village of Mamaroneck Police Department including the Mayor and Board of Trustees as Police Commissioners thereof.
- E. ***"Chief"*** means the Chief of Police.
- F. ***"Executive Lieutenant"*** The Executive Lieutenant will be designated by the Chief of Police to assist the Chief of Police in the daily operation of the Police Department and shall have assignments by and report directly to the Chief of Police. He/she shall be the Superior Officer in charge of the Police Department, when the Chief of Police is not present, except where the Chief of Police orders otherwise. The Executive Lieutenant's

duties and responsibilities are both managerial and policy making. Should the responsibilities of the Executive Lieutenant, as defined herein change per the direction of the Police Chief, the unit and the Village shall meet to determine whether the Executive Lieutenant meets the requirements, as set forth in Section 201.7 (a) of the Public Employee's Fair Employment Act, for exclusion from the bargaining unit.

- G. **"Grievance"** shall mean a claimed violation, misinterpretation or inequitable application of the existing rules, procedures or regulations governing working conditions applicable to the members of the department and shall include all the provisions of the agreement.
- H. **"Representative"** means one officer or member of the Association authorized to represent its members in the adjustment of grievances or other matters affecting the employees.
- I. **"Village"** means the Village of Mamaroneck, New York.

**PROBATIONARY POLICE OFFICER** - A Probationary Police Officer is one hired with a view to filling a regular position, pursuant to the provisions of the Civil Service Law, and/or completion of Municipal Police Training School.

**PERMANENT POLICE OFFICER** - A Permanent Police Officer is one who is not classed as a probationary Police Officer and has received a permanent appointment.

**SENIORITY** - Seniority shall be defined as the total length of continuous service of a regular Police Officer (including time spent as a probationary and if transferred to a regular status).

**POLICE OFFICER** - The term Police Officer as defined herein shall, unless otherwise set forth, include probationary and permanent police officers.

#### ARTICLE IV PERIOD OF AGREEMENT

- A. This agreement shall become effective June 1, 2016, and shall terminate at the close of business on May 31, 2020, except as hereinafter set forth.
- B. In the event that a new agreement is not reached at or prior to May 31, 2015, then, and in such event, each and every term of this agreement shall continue in full force and effect until such time as such new contract is entered into between the parties. This clause shall in no way affect the retroactivity to June 1, 2008, of all agreements reached between the parties in connection with such new contract.

ARTICLE V  
UNION SECURITY

The Village shall deduct from the wages of police officers and remit to the Association regular membership dues for those members of the Association who have signed authorization permitting such payroll deductions.

ARTICLE VI  
COMPENSATION

- A. *Salaries.* The salaries for all members are set forth in Appendix A, attached to and made a part hereof.
- B. 1. *Overtime* – All members shall be entitled to overtime at time and one-half (1 ½) the member's normal rate of pay for all time worked in excess of the member's normally scheduled tour of duty.
2. *Minimum Call Back* –
- a) Members who are called in from normal off-duty time on department business and/or for duty shall be entitled to a minimum of Four (4) hours pay at time and one-half (1 ½) rate or time and one-half (1 ½) rate for the actual time, whichever is more. Members held over following their tour of duty shall be compensated at time and one-half (1 ½) their normal rate of pay.
3. In lieu of payment for items "1" and "2" above, members may elect to received compensatory time off, calculated at time and one-half (1 ½). Taking of such compensatory time off shall be upon request of the member, subject to the prior approval of the Chief of Police.
4. A member's "per diem rate of pay" shall be determined by dividing the member's annual salary by 248; a member's "hourly rate of pay" shall be determined by the member's annual salary divided by 1984.
5. *Out of Title Pay* - The senior Police Officer or the Police Officer designated by the Chief, who is working patrol duties when no one of the rank of Sergeant or higher is working during the same shift, shall be paid at the Sergeant's rate for the period of time the senior Police Officer or Chief's designee works without a Sergeant or higher ranking officer on duty. During this period of time, the Senior Police Officer or Chief's designee shall be designated as the "Acting Sergeant" and shall be responsible for the Sergeant's duties".
- C. *Longevity* – In addition to the salaries and compensation provided for in this article, for actual police service with the Village of Mamaroneck Police Force only, any

member covered by this agreement shall be entitled to a longevity payment upon the following basis:

	<u>6/1/2012</u>	<u>6/1/2013</u>	<u>6/1/2014</u>	<u>6/1/2015</u>
Upon completion of 5 years of service	\$1150	\$1200	\$1225	\$1275
Upon completion of 10 year of service	\$1325	\$1375	\$1450	\$1500
Upon completion of 15 years of service	\$1850	\$1900	\$1975	\$2050
Upon completion of 20 years of service	\$2150	\$2200	\$2275	\$2350
For each year over 20 years of service	Longevity for 20 years of service plus 2% of longevity pay for that year over 20 years			

1. For the purpose of facilitating accounting procedures with respect to anniversary dates evidencing accumulation of service period, anniversary date shall be the actual anniversary date of the member
2. Period of service shall be actual service and shall exclude periods of leaves of absences from any other times when any member is not being paid for police duties.
3. Longevity payments shall not be considered as base salary for any purposes including but not limited to any fringe benefits based upon base salary, except as otherwise provided herein. Payment to be made first pay period in May.

#### ARTICLE VII PROBATIONARY PERIODS

The probationary period shall be the maximum period permitted by State Civil Service laws.

#### ARTICLE VIII SICK LEAVE

- A. Essential and necessary absences from work for illnesses or injuries not incurred in the line of duty shall be allowed subject to the following controls:

1. An employee absent for more than three (3) working days under this provision shall present, upon return to duty, a statement as to the medical cause of his absence from his attending doctor.

2. The Village of Mamaroneck may, in the case of extended absence, cause an examination to be made of the employee by a duly licensed doctor designated by the Village and the Village may be guided by said doctor's finding in determining the continuance of benefits under this provision, and the refusal of the employee to submit to said examination shall be cause for suspension of benefits under this section.

B. Anything contained herein to the contrary notwithstanding, the Village shall in no way be relieved of paying a member on sick leave under this article, his full salary and further is not intended to limit in any way the sick leave now afforded to the members. The foregoing sentence is expressly modified by the sick incentive policy set forth in Appendix B, attached to and made a part hereof.

#### ARTICLE IX VACATIONS

A. Members shall be entitled to an annual paid work day vacation accruing to their years of service as set forth in the following schedule:

1. During first (1) year of service: one (1) work day per month of service, however, such vacation shall not be granted until the successful completion of probationary period or MPTC basic schooling, whichever is greater.

After one (1) year of service: eleven (11) work days

After two (2) years of service: sixteen (16) work days

After five (5) years of service: twenty (20) work days

After ten (10) years of service: twenty-seven (27) work days.

B. Vacations shall be spread from January 1 through December 31.

C. During the first year of service: members shall accrue one (1) work day per month of service, however, such vacation shall not be granted until the successful completion of MPTC basic schooling and in-service training with Field Training Officer (FTO).

D. Any officer/employer that cannot utilize his/her vacation time within a calendar year as a result of being sick or injured, including worker's compensation and 207-c, shall not accumulate, carry or be compensated for said unused time, except if the officer/employee becomes sick or injured during the last two months of the calendar year (November and December), in which case the officer shall be entitled to carry over any unused vacation time to the first three months of the following calendar year (January, February, March) and shall be required to use such unused vacation time within the first three months of the following calendar year. If said officer fails to utilize said unused vacation time within the first three months of the following calendar year for any reason (including being out sick or injured, whether or not such injury occurred in the line of duty), said accrued vacation time will be forfeited and



such officer shall not be entitled to compensation for any such unused accrued vacation time.

ARTICLE X  
HOLIDAYS

- A. In addition to member's salary he shall receive thirteen (13) holidays per year, worked or not. For the purpose of this agreement, paid holidays shall be:

New Year's Day	Independence Day
Lincoln's Birthday	Labor Day
Washington's Birthday	Columbus Day
Martin Luther King's Birthday	Election Day
Easter Sunday	Veteran's Day
Memorial Day	Thanksgiving Day
	Christmas Day

- B. Members who work on Thanksgiving Day, Christmas Day, Easter Sunday, New Year's Day and/or Independence Day shall be entitled to an additional one-half (1/2) hour straight-time pay for every one (1) hour worked, on each aforesaid holiday worked. Such additional compensation shall be received in the paycheck following the holiday worked.
- C. Upon approval of the Chief of Police, Member may elect to receive compensatory time off in lieu of payment for all or any portion of paid holiday entitlement.
- D. On or about December 1<sup>st</sup> of each year, Members shall receive a lump sum payment for seven (7) paid holidays, and on or about May 1<sup>st</sup> of each year, Members shall receive a lump sum payment for six (6) paid holidays, less any holidays taken by the member in the form of compensatory time off.

ARTICLE XI  
RETIREMENT

A. The Village shall participate in the retirement plan provided by RSSL Section 375-I and the optional "final average salary" benefit provided by RSSL Section 302-9(d), i.e. that the term "Final Average Salary" as used in connection with the retirement of any member shall mean the regular compensation including longevity earned from such participating member during the twelve (12) months of actual service immediately preceding the date of such employee's retirement. The Village's participation shall be subject to the conditions required by law and the New York State and Local Police and Fire Retirement System.

B. All officers are required to provide the the police department with a copy of any disability retirement application filed by the officer and/or their agent within seven (7) days of mailing (US or Express Mail) or delivery by other means to the NYS Employees

Retirement System. This shall include a copy of any documents filed with the application and any other documents filed with the Retirement system related to the officer's disability retirement application as well as a copy of any documents received by the officer or his/her related to disability retirement application. All officers are required to obtain any papers and the execution of any form that may be requested in connection with disability retirement application, including documents in the custody of any provider of service and the signature of a provider of service, paid in whole or in part by the village pursuant to GML 207-c and/or Workers Compensation.

ARTICLE XII  
POLICE CARS

All police cars furnished to the Police Department during the term of the agreement shall be equipped with air conditioning.

ARTICLE XIII  
BENEFIT PLAN

A. 1. Effective January 1, 2003, the Village shall participate in and make available to members of the PBA bargaining unit the New York State Health Insurance Program, Empire Plan with CORE Plus Medical and Psychiatric Enhancements ("Empire Plan"). The Village shall maintain the plan at its sole cost and expense. It is, however, agreed, that if the Association can produce a medical plan, which would cost the Village no more than the present plan, the Village of Mamaroneck would adopt same, but at no time would the Village be required to pay any more per member than it pays for regular employees, and further it is understood that the Village will pay said premiums directly to the insurance company selected by the Association.

2. Notwithstanding the terms stated above, an employee hired on or after March 14, 1994 will contribute thirty percent (30%) toward the cost of individual or family coverage, as chosen by the employee, of the medical and hospitalization plan in effect, for five full years after the employee's commencement of employment in the Village Police Department. After the employee has worked five full years in the Village Police Department, the Village will assume the total cost of medical and hospitalization coverage.

a. Employees hired after June 1, 2008 will contribute toward the premium of their health insurance as follows:

Years 1-5: 25%  
Years 6-10: 20%

After the completion of ten (10) full years of working in the Village Police Department, the Village shall assume the total cost of coverage.

b. Employees hired after June 1, 2012 will contribute toward the premium cost of their health insurance plans as follows (excluding Nadolske and DeCunzo, who shall be treated as though they were hired after June 1, 2008):

Years 1-6: 25%  
Years 7-15: 20%

After the completion of fifteen (15) full years of service working in the Village Police Department, the Village shall assume the total cost of coverage.

3. The Village reserves the right to seek alternative means of providing health insurance so long as the proposed plan is equal to or better than the plan presently in effect and with the agreement of the PBA.

4. Bonus Payment for Non-Participation in Health Insurance Coverage: If an employee chooses not to participate in the health insurance coverage and provides proof of alternative health insurance coverage, the Village will pay the employee the following bonus payments annually:

All employees hired before March 14, 1994, and employees hired after March 14, 1994 after the fifth year of employment who choose not to participate in the health insurance coverage shall receive the following annual payments in-lieu of health insurance:

Those eligible for Individual Coverage:	\$2,628.90
Those eligible for Family Coverage:	\$5,548.44
Those employees eligible for family coverage who opt out for individual coverage:	\$2,919.54

Employees hired after March 14, 1994 during their first five (5) years of employment, who choose not to participate in the health insurance coverage, shall receive the following annual payments in-lieu of health insurance coverage:

Those eligible for Individual Coverage:	\$1,840.23
Those eligible for Family Coverage:	\$3,883.91
Those employees eligible for family coverage who opt out for individual coverage:	\$2,043.68

The above amounts are payable in two equal payments in July and January, provided the employee did not participate in the Village's health plan for the immediately preceding six (6) months. These rates will take effect July 1, 2004, for payments beginning January 2005.

New employees are eligible to receive a pro-rated payment for non-participation in the health insurance plan assuming that the new employee chooses not to participate in the health insurance coverage from the first date that he/she is eligible for health insurance coverage and provided the new employee does not participate in the Village's health insurance plan for the immediately proceeding successive months until either June 30<sup>th</sup> or December 31<sup>st</sup> of their first year of employment. The payment will be pro-rated on a monthly basis, based on each complete calendar month that the employee does not participate in the Village's health insurance plan at an amount as follows:

Those eligible for Individual Coverage:	\$153.35
Those eligible for Family Coverage:	\$323.66
Those employees eligible for family coverage who opt out for individual coverage:	\$170.31

Nothing contained herein shall preclude a member from re-entering within the six (6) month period, subject to the health plan requirements. The non-participation bonus payment shall not be considered or included in an employee's annual salary or salary rate for any purpose under the collective bargaining agreement.

Employees hired on or after June 1, 2004 shall be subject to the following:

1. If an employee and his/her spouse are both employed by the Village, then they shall choose which employee shall be entitled to family health insurance coverage.
  2. An employee who does not participate in health insurance coverage as described in 1 above shall not be entitled to the non-participation bonus payment.
  3. Should an employee described in 1 above no longer be eligible for health insurance/coverage under the spouse's coverage, the employee may re-enter the plan and thereafter be provided health insurance coverage based on the employee's date of appointment.
- B. The Village shall provide the medical and hospitalization benefit plans set forth in Sub. A of this article for the spouse and eligible dependents in the event of the death of an active member who dies as a direct result of a provable line of duty illness or injury. Said coverage shall continue until the death or remarriage of the spouse of the said deceased member, whichever sooner occurs. In the event that there is a dispute as the death being the result of a line of duty illness or injury, the issue shall be submitted to a mutual arbitrator pursuant to Article XXII, Sub. 4, of this agreement for determination. At any such arbitration, the grievant shall bear the burden of going forward and the burden of proving the issues in dispute beyond a reasonable doubt.
- C. In the event that a member is killed in the line of duty, the Village shall pay burial expenses to a maximum of \$10,000.00.
- D. The Village agrees to maintain for retired members and family as defined in the policy, medical insurance coverage as presently maintained for members of the Police Department.
- E. Employee and Retiree health insurance coverage shall be subject to such laws, rules, regulations and other terms as may be provided by the group health insurance plan pursuant to which coverage is provided.
- F. As soon as practicable after the effective date of this Agreement, the Village may offer members of the PBA bargaining unit the opportunity to participate on a voluntary basis in

a flexible spending account arrangement that will allow employees to make pre-tax contributions to be used for health insurance premium contribution payments, dependent care expense and un-reimbursed medical expenses, and such other expenses as permitted by applicable Internal Revenue Code provisions. The design and implementation of the terms of the flexible spending account shall be determined by the Village in consultation with the PBA.

ARTICLE XIV  
WELFARE FUND

A. The Village shall contribute to a Welfare Fund to be administrated by the Police Benevolent Association of the Village of Mamaroneck, Inc. Said Fund shall be used to provide dental, life insurance and optical plans for the Members and their eligible dependents.

B. The Village shall contribute according to the following schedule:

	6/12/12	6/1/13	6/1/14	6/1/15
Members with eligible dependents	\$1825	\$1850	\$1875	\$1900
Members without eligible dependents	\$1475	\$1525	\$1550	\$1575

Payment shall be made by the Village to the PBA on a monthly basis. Payment due on the first day of each month at the rate of one twelfth (1/12) of annual entitlement. Adjustment caused by Members terminating and/or being hired shall be made each month. The Village shall only be required to provide the amount noted herein or an amount necessary to fund the Welfare Fund, whichever is less.

C. Upon reasonable notice to the Village of Mamaroneck Police Benevolent Association, the Village may demand an accounting of the Village contribution to said Welfare Fund. Should the demand extend beyond the copying of existing documents, the Village shall assume the cost of the accounting.

D. The Village shall continue to permit Members, by payroll deduction, upon receipt of authorization cards signed by the member, to have deducted payment for additional benefits available through the Village of Mamaroneck Police Benevolent Association.

ARTICLE XV  
WORKING CONDITIONS

The work schedule for uniformed personnel shall be divided into two categories.

1. Night Shift – The night shift shall mean working hours between 00:00 HRS and 08:00 HRS.

2. Day Shift – The day shift shall mean working hours between 08:00 HRS and 23:59 HRS

Each schedule shall be composed of three (3) squads, with the number of officers and Superior Officers assigned to each squad to be determined by the Chief of Police.

**Night Shift**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Squad1	12	12	12	12	12	00	00	12	12	12	12	12	00	00	00
Squad2	12	12	00	00	00	12	12	12	12	12	00	00	12	12	12
Squad3	00	00	12	12	12	12	12	00	00	00	12	12	12	12	12

**Day Shift**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Squad1	88	88	88	88	88	00	00	44	44	44	44	44	00	00	00
Squad2	44	44	00	00	00	88	88	88	88	88	00	00	44	44	44
Squad3	00	00	44	44	44	44	44	00	00	00	88	88	88	88	88

\*Excluded from this schedule, at the discretion of the Chief of Police, shall be those members who hold special assignment, as designated by the Chief of Police. Any such excluded employee who works in excess of this work schedule shall be entitled to equivalent time off for days worked over 248 days, as approved by the Chief of Police.

**General Provisions**

- I.) Assignment to a shift shall be for a full Calendar Year.
- II.) Requests for reassignment to a different shift for the next calendar year MUST be made in writing between September 1 and October 1.
- III.) A request to be removed from a shift during the calendar year may be granted by the Chief of Police for good cause.
- IV.) Vacancies in the night shift will be filled based upon the following criteria.

**FIRST:** Volunteers in order of seniority, THEN by,

**SECOND:** Any officer with less than five years of service, not having served at least one year in the night shift, THEN by,

**THIRD:** Any other officer in order of seniority, not having served at least one year in the night shift (least senior to most senior).

- V.) The Chief of Police may, for good cause, temporarily reassign officers to different shifts. Any officer so affected would not forfeit any vacation picks.

ARTICLE XVI  
CLOTHING ALLOWANCE

- A. For the term of this agreement, officers not working in the uniform of the Department shall receive an annual clothing allowance as set forth below:

Effective:	6/1/12	6/1/13	6/1/14	6/1/15
Clothing:	\$980.00	\$1020.00	\$1060.00	\$1100.00

All other personnel shall be provided uniforms, as required. In addition, uniformed personnel shall be allowed expenses for repairing uniforms damaged as a result of the officer's carrying out his duties. In addition, if an employee sustains damage to personal property or other personal effects in the performance of his duties, then, said officer shall either be reimbursed for the costs of repair thereof or same shall be replaced at the Village's expense. The cost of repairing personal property shall be limited to \$250 per year per officer.

- B. For the term of this agreement, members shall be entitled to an annual uniform cleaning allowance as set forth below:

Effective	6/1/12	6/1/13	6/1/14	6/1/15
Cleaning:	\$495.00	\$520.00	\$560.00	\$590.00

Payments made pursuant to this Article, Sections A and B shall be considered reimbursement for the fiscal year in which it is paid. Commencing June 1, 2003, equal payments shall be made in November and at the end of the fiscal year. Thereafter payments shall be made by separate check at the end of the fiscal year. An employee who leaves the service of the Village shall receive a prorated payment made pursuant to Sections A and B, the calculation of which shall be based upon 365 days.

- C. Each employee is entitled to reimbursement for work shoes, on an annual basis, as set forth below:

Effective:	6/1/12	6/1/13	6/1/14	6/1/15
Shoes:	\$210.00	\$225.00	\$250.00	\$275.00

ARTICLE XVII  
PROFESSIONAL DEVELOPMENT

The Association and the Village recognize that the furtherance of police service is enhanced by the training and education of employees, and to that end the Village agrees to continue the "In-Service Training Program".

Notwithstanding any other provision of this argument, effective June 1, 1994, the Police Department may require an employee to attend training outside the employee's regular work schedule for which training time the employee shall be compensated at the applicable straight time rate of pay. This additional training time shall not exceed sixteen (16) hours per year and shall be scheduled at the discretion of the Department in increments of one eight (8) hour training unit and two four (4) hour training units. This sixteen hours of training time shall be in addition to training practices and schedules heretofore provided in the Department.

The sixteen hours of training time provided herein may be used for purposes of training designated by the Chief of Police. The sixteen hours of training time provided herein shall not be used for purposes of the employee performing in the regular duties of the employee's position.

Officers who fail to meet certification requirements will be granted one (1) opportunity to recertify, with the exception of officers who are subject to department certification for the first time, who will be granted two (2) opportunities to recertify. The opportunities shall be in-lieu of the officer's tour of duty. The scheduling of the recertification shall be subject to the discretion of the Chief of Police. Should the officer not recertify during the opportunities provided, the officer must, on his/her own time, report for remedial training and certification. Officers will not be paid for this remedial training.

ARTICLE XVIII  
PERSONAL LEAVE OF ABSENCE

Not more than five (5) days' leave of absence with pay will be granted each police officer, upon application to the Chief of Police at least Twenty-four (24) hours in advance of such leave, which request shall be granted by the Chief of Police unless it shall be determined that such absence materially interferes with the effectiveness of the force; provided, however, that if the Chief of Police does find material interference as a basis for refusal, the Chief shall establish with the applicant an alternate date within two (2) working days from the date requested; and further provided that personal leave of absence shall be used singly, shall not be used for vacation, nor for sick leave and shall not accrue from year to year.

With respect to five (5) day leave of absence in the case of death, same shall be deemed to include the death of the following: Spouse, children of either spouse, parent of the unit member, mother-in-law, father-in-law and grandparents of either spouse.

In the case of death of Siblings of either spouse, a member shall be entitled to three (3) days leave of absence.



The Chief of Police in his discretion may for good cause grant additional time off.

ARTICLE XIX  
RECIPROCAL RIGHTS

A. The Village recognizes the right of the Police Officer to designate representatives of its Association to appear on their behalf to discuss salaries, working conditions, grievances and disputes as to the terms and conditions of the contract and to visit Police Officers during working hours.

B. The Association shall have the right to post notices and communication on the bulletin boards maintained on the premises and facilities of the Village. The Officers and Agents of the Association shall have the right to visit the Employer's facilities for the purpose of adjusting grievances and administering the terms and conditions of this agreement.

C. An Employee designated or elected for the purpose of adjusting grievances or assisting in the administration of this Agreement shall be permitted a reasonable amount of time free from their regular duties to fulfill these obligations, which have as their purpose the maintenance of harmonious and cooperative relations between the employer and its Police Officers and the uninterrupted operation of the Police Department. Such time off from regular duties shall be taken only with prior knowledge of the Police Chief.

D. The President and four (4) delegates designated to represent the Police Officers shall have the right to attend state-wide conventions and meetings of the Police Conference of New York and Affiliated Police Associations., with the consent of the Chief of Police, pursuant to their obligations as officers or delegates of the bargaining unit herein, and shall be limited to a total of 20 delegate days per year free from their regular duties to exercise this right.

ARTICLE XX  
REIMBURSEMENT FOR VARIOUS EXPENSES

It is specifically understood and agreed that all members of the Police Department shall be reimbursed for traveling and parking expenses incurred while on duty outside of the Village of Mamaroneck.

ARTICLE XXI  
AMENDMENT TO VILLAGE OF MAMARONECK  
POLICE DEPARTMENT RULES AND REGULATIONS

The parties hereto specifically agree that the rules and regulations of the Police Department with the Village will be revised and amended to include a "Bill of Rights" of all Police Officers.

The said "Bill of Rights" will be reviewed, and such review will be conducted by the President of the Police Benevolent Association of the Village of Mamaroneck, Inc., together with

his staff and the Chief of Police of the Village of Mamaroneck with the approval of the Board and said "Bill of Rights" shall include among other things the following:

1. Any interrogation of a member of the Police Force shall be performed at a reasonable hour during the time when a member of the Force is on duty, unless, in the discretion of the Chief or those in authority, the exigencies of the situation dictate otherwise, in which event, reassignment of the member of the force is to be employed. In the event any time is lost by such member, that member shall be duly compensated in pay.

2. The interrogation will take place at a location designated by the Chief of Police.

3. Any member being charged shall be informed of the nature of the charge before any interrogation commences, including the name of the complainant and/or complainants. Any and all information required by the charged member shall be furnished to such member in order to reasonably enable him to prepare his defense.

4. If a member of the force is being interrogated as a witness only, this fact should be made known to him immediately.

5. No questioning shall be unreasonable in length of time and any member so charged shall be afforded reasonable respites, time for personal necessities, meals, telephone calls, and rest periods.

6. No member so charged shall be subjected to any offensive language, nor shall any threats of dismissal or disciplinary punishment be made.

7. All interrogations shall be recorded by a tape recorded or another form of audio recording shall be used to record the interrogation., The officer interrogated shall be provided with a copy of the recording.

8. In addition to the rights of a member herein set forth, any member charged in connection with a criminal investigation, etc., shall be given all of his rights pursuant to all the current decisions of the U.S. Supreme Court and further, pursuant to all laws and statutes in such case made and provided.

9. In all cases, at every state of the proceedings, any charged member, if he so requests, may be afforded an opportunity to consult with counsel of his choosing and/or his association representative and such opportunity shall be granted him before any interrogation of said member. In no event will the Department be required to delay more than twenty-four (24) hours the questioning of an employee for the purposes of waiting for the employee's representative to be available for consultation.

ARTICLE XXII  
DISPUTES

Any dispute arising concerning the interpretation or application of the terms of this contract or the rights claimed to exist hereunder shall be processed in accordance with the following procedure:

1. Such dispute by a Police Officer or Police Officers shall be presented by them or by the Association representative to his/her or their superior officer within Twenty-five (25) days.
2. In the event such disputes are not resolved within Ten (10) days from such presentation, it shall, within Ten (10) days, then be presented by the Association to the Police Chief.
3. In the event the Police Chief does not satisfactorily resolve or adjust such disputes within Ten (10) days, then the Association shall, within Ten (10) days, present the same to the Village Manager for settlement.
4. In the event that such disputes are not then disposed of, within Ten (10) days, it shall be referred by either party to arbitration before an impartial arbitrator, to be mutually agreed upon by the parties. In the event the parties are unable to agree upon an impartial arbitrator within Ten (10) days after the referral of such matter to arbitration, then an appointment shall be made in accordance with the Public Employees' Relation Board Rules.
5. It is further agreed by and between the parties that the forgoing article pertaining to grievance procedures and disputes shall be re-reviewed by the Village and the Association and that same shall be at any time revised in accordance with the agreement of said parties.
6. It is the function of the arbitrator/hearing officer to interpret this Agreement. He/she shall make and issue decisions only regarding matters expressly submitted to him/her within the written terms of this Agreement. His/her decision or award, provided consistent with the terms of this Agreement, shall be final and binding upon the parties hereto. The arbitrator/hearing officer has no authority or power to add to, subtract from, disregard, or alter any of the written terms of this Agreement. The arbitrator's/hearing officer's power and authority shall be limited to the application and interpretation of this Agreement as applied to the subject of the particular matter involved.
7. The cost of the arbitration/hearing, which shall include the fees and expenses of the arbitration/hearing officer, the PERB charges (if any), and the cost of the transcript, if the parties mutually agree to order one, shall be borne equally by the parties, unless provided otherwise in this Agreement. Each party shall pay any fees and wages of its own representatives and witnesses for time lost, and the cost of the transcript where there is no mutual agreement to order it.

ARTICLE XXIII  
RULES AND REGULATIONS

An employee shall be required to comply with all rules and regulations, policies and procedures of the Department assuming the rules and regulations are not inconsistent or in conflict with the terms of this agreement.

ARTICLE XXIV  
STRIKES

The Association agrees that it shall not engage in a strike, nor shall any of its members do so. Furthermore, the Association agrees for itself and for its officers and members that neither it nor they nor any of them shall cause, instigate, encourage or condone a strike.

ARTICLE XXV  
PROTECTIVE VESTS

Protective vests shall be provided to each member of the department as needed and/or according to the manufacturer's specification. Members shall be responsible for maintaining the vests in accordance with the manufacturer's specification. Should the member fail to maintain the vest per the manufacturer's specification, that member shall be responsible for the cost to replace the vest.

ARTICLE XXVI  
DISCIPLINARY PROCEDURE

A. Disciplinary action shall be governed by New York Unconsolidated Law Section 5711-q, as modified by this agreement.

B. The Village Board may appoint a representative for the purposes of developing a transcribed record of testimony and evidence concerning disciplinary charge(s) preferred against a police officer, and making a report and recommendation to the Village Board for disposition of the charge(s). The Village and the Union shall establish a list of three (3) hearing officers acceptable to the parties. The representative appointed for the purpose of this article shall be selected from this list.

C. Upon receipt of the report and recommendation by the appointed representative, the members of the Village Board participating in the determination of the charge(s) shall obtain and independently review the record of the proceeding. In this connection, the Village Board in its discretion may permit the parties to submit written argument, addressed to the report and recommendations and the record, for consideration by the Village Board. Upon completion of the independent review by the Village Board members of the record, the report and recommendation, and any written submission by the parties, the Board by affirmative vote shall

decide whether or not the employee is guilty on the charge(s) or specification(s) preferred against the employee.

ARTICLE XXVII  
SEPARABILITY

Should any part hereof or any provision herein contained be rendered or declared illegal or an unfair labor practice by reason of an existing or subsequently enacted legislation or by any decree of a court of competent jurisdiction or by the decision of any authorized government agency, such invalidations of such part or portion of this Agreement shall not invalidate the remaining portions thereof, provided, however, upon such invalidation, the parties agree immediately to meet and negotiate substitute provisions for such parts or provisions rendered or declared illegal or an unfair labor practice. The remaining parts or provisions shall remain in full force and effect.

ARTICLE XXVIII  
NON-DISCRIMINATION

Neither the Village nor the PBA shall discriminate against, or in favor of, any officer or applicant on account of race, religion/creed, gender and gender identity, age, physical or mental disability, military or veteran status, ancestry, ethnicity, familial status, genetic information and predisposition, citizenship, marital status, sexual orientation, color, national origin, sex, status as a victim of domestic violence, or any other legally protected classification. Alleged violations of the Article shall not be subject to the Dispute Article within this Agreement.

ARTICLE XXIX  
CANINE (K-9) UNIT

The Chief of Police or his/her designee shall have the authority to assign an officer to Canine Detail. Officers assigned to Canine Detail shall receive, in addition to their regular salary, supplemental pay for the care and maintenance of the canine during their off-duty hours. Such payment shall equate to ten (10) hours a week at the New York State minimum wage per each hour (i.e., for 2013 it would be 10 hrs. x 52 weeks x \$8.00/per hour equaling \$4,160.00 for the year). The amount of time per week/year shall not fluctuate.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first written above

Approved as to form and content:

\_\_\_\_\_  
Robert Yamuder  
Village of Mamaroneck  
Village Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles Deshensky  
President  
Village of Mamaroneck PBA

\_\_\_\_\_  
Date

# APPENDIX

## A

**Appendix A**

**Salary schedule June 1, 2016 – May 31, 2020**

The salaries for all members are set forth below according to rank, assignment and years of service

GRADE	6/1/15 (current)	6/1/16 (1% + \$2000)	6/1/17 (2.25%)	6/1/18 (2.75%)	6/1/19 (2.5%)
PO 6 <sup>th</sup> Grade:	47, 540	48,015 (+ \$2000)	49,095	50,445	51,706
PO 5 <sup>th</sup> Grade:	55,930	56,489 (+\$2000)	57,760	59,348	60,832
PO 4 <sup>th</sup> Grade:	72,290	73,013 (+\$2000)	74,656	76,709	78,626
PO 3 <sup>d</sup> Grade:	84,529	85,374 (+\$2000)	87,295	89,695	91,937
PO 2 <sup>d</sup> Grade:	96,766	97,733 (+\$2000)	99,932	102,680	105,247
PO 1 <sup>st</sup> Grade:	109,001	110,091 (+\$2000)	112,568	115,663	118,554
Sergeant:	122,084	123,304 (+\$2000)	126,078	129,545	132,783
Sgt./Det.:	128,188	129,469 (+\$2000)	132,382	136,022	139,423
Lieutenant:	134,070	135,410 (+\$2000)	138,456	142,264	145,820

# APPENDIX

## B



**APPENDIX B**  
**SICK INCENTIVE POLICY**

**I. Sick Leave Incentive/Disincentive Program**

**A. Sick Leave Incentive Program**

A member who uses the number of sick days in a calendar year as stated in the chart below shall receive the cash bonus payment stated in the chart. The payment shall be made in the month of January following the year in which the cash bonus has been earned.

<b>Days</b>	<b>Cash Bonus</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Less than 1 day	\$1,440	\$2,000	\$2,200	\$2,300	\$2,400
Less than 2 days	\$1,100	\$1,600	\$1,700	\$1,800	\$1,900
Less than 4 days	\$600	\$900	\$1,000	\$1,100	\$1,200
Less than 5 days	\$300	\$500	\$600	\$700	\$800

1. If an employee is out on Worker's Compensation for ninety (90) consecutive work days or more during a calendar year, that employee does not qualify for the Incentive. The days utilized for Worker's Compensation will not be included for the purposes of the disincentive.

**B. Sick Leave Disincentive Program**

1. A member who uses the number of sick days in a calendar year as stated in the chart below shall have leave days removed from the employee's time balance according to the following schedule. The time shall be deducted from the employee's balances in the following order: 1. Holidays; 2. Vacations; 3. Personal or Compensatory Leave.

<b><u>Days</u></b>	<b><u>Disincentive</u></b>
7-9	1/2 day removed for each day of sick leave used, more than 6 days.
10-12	1 day removed for each day of sick leave used, more than 9 days.
13-15	2 days removed for each day of sick leave used, more than 12 days.
16-20	3 days removed for each day of sick leave used, more than 15 days.
21 & above	5 days removed for each day of sick leave used, more than 20 days.

For purposes of this disincentive program, sick leave use of four (4) hours or less shall count as one half sick day; sick leave use of more than four (4) hours shall count as one sick day. Half sick days shall be cumulative for purposes of the disincentive schedule.

2. In the event the employee seeks to exclude sick leave days from the sick leave disincentive program, it is the employee's responsibility to provide appropriate and complete medical documentation (as defined herein) at the time of leave, but no later than ten (10) days following the commencement of the leave in question, that clearly demonstrates: 1) the basis for the leave; 2) the employee's ability/inability to perform the duties of his/her position and, if applicable, the light duty position available; and 3) the employee's return to work date.

- a. The Chief of Police or his/her designee shall provide employees a Return To Work Form (as attached hereto) that outlines job functions specific to his/her position or to any light duty position available at that time. The employee is required, in addition to the information requirements set forth in Section B2 above, to have his/her medical provider complete the form and return it to the Chief of Police.

3. The Chief of Police or his designee shall notify the employee in writing within fifteen (15) days of the receipt of the employee's request for consideration and submission of medical documentation, as required in Section B2 above, that the employee's sick leave will/will not be counted toward the sick disincentive policy. Should the Chief or his designee fail to notify the employee in writing within fifteen (15) days as required herein, the request for consideration shall be deemed denied and the affected employee shall have the right to appeal consistent with the Appeal Section below.

4. Sick days used in connection with the following catastrophic illnesses or injuries shall not be counted for purposes of the disincentive noted in Section B1 above based solely on the documentation submitted under Section B2 above. Under no circumstance shall the terms of this provision apply for purposes of the incentive payment provided in Section A above.

- a) Broken/dislocated limb or severe orthopedic condition that prevents an employee from performing light or regular duty.
- b) Hospitalization, post-surgical hospitalization and/or doctor mandated convalescence related to surgical procedures or the employee's hospitalization.
- c) Catastrophic illness or injury that causes a protracted impairment of health for a period/duration of at least two (2) weeks and prevents the employee from performing light or regular duty. Non-catastrophic illnesses or injuries, including but not limited to colds, flu (excluding Village mandated absences for medical epidemics), strains, stomach aches, sprains, toothaches, fever, or other injuries or illness of a similar nature.
- d) Pregnancy.

5. In addition to the disincentive provisions stated above, a member who uses more than 21 sick days, not excluded from the disincentive provisions, in a calendar year shall not be permitted to work outside employment or work voluntary overtime for a period of six (6) months. If the employee uses twenty-one (21) or more sick days, not excluded from the disincentive provisions, in any three (3) years in a five (5) year period, the employee shall not be permitted to work outside employment or voluntary overtime.

#### Appeals

6. Employees who are subject to the forfeiture of day(s) based upon the disincentive policy may file an appeal between July 1 to July 31 (for denials that occurred from January 1 to June 30) and between January 1 to January 31 (for denials that occurred from July 1 to December 31 of the preceding year). In order to be eligible to file an appeal, the affected employee must

have filed a request for consideration (as per Section 2 above). Employees filing an appeal must submit a written report, including all applicable documentation (e.g., medical reports) consistent with the documentation submitted under Section 2 above and the illness or injury initially alleged, in support of his/her claim to the Village Manager on behalf of the Review Committee.

7. The Review Committee shall be a permanent committee composed of the PBA Attorney, the Village Attorney and the Village Manager.

8. The Review Committee shall meet within one (1) month following each appeal deadline to review and render a written decision on each appeal filed. The decision shall be provided to the applicable parties. The decision of the Review Committee shall be final and binding, and not subject to review in any forum.

9. In the event that an appeal is denied, the Employee's time balance shall be reduced as provided in the sick disincentive policy by the Chief of Police.

10. The time frames included in this appeals process may only be extended through mutual consent of the parties.

# APPENDIX

C

## **APPENDIX C**

### **Global Positioning Satellite ("GPS") Policy**

#### **For Police Department Videos**

**Mission:** The Village's mission is to ensure the public safety and to make operations as efficient and safe as possible. To further this mission, all Police Department vehicles have been equipped with Global Positioning Satellite ("GPS") devices. GPS is technology that allows the Village to locate its vehicles. This technology is extremely important in providing employees a safe work environment and Village residents with the best possible service.

**Purpose:** The Village's GPS Monitoring Policy serves several essential purposes, including but not limited to the following:

- Assisting employees in emergency situation or when vehicles have been stolen. For example, the Village may use tracking information to locate a vehicle if the vehicle and employee are missing, or where an employee is sick or injured and unable to call for help or respond to calls.
- Determining the availability and location of personnel to redirect resources where needed.
- Evaluating routes used, miles traveled, speed, and fuel efficiency. Improper use of Police Department vehicles results in increased costs, including wear and tear on vehicles, and increased fuel consumption.
- Enabling the Village to defend itself if a motor vehicle accident occurs by establishing the vehicle speed and movement.

**How it works:** GPS tracking devices are capable of transmitting, by satellite, real-time information about the vehicle's location and movements throughout the day, including the speed at which the vehicle travels and the amount of time spent at locations.

**What information is tracked:** The Village will be able to determine by address or intersection where the vehicle is located at any time. In addition, the Village will be able to determine how long a vehicle remains at a particular location, the speed of the vehicle and the length of time taken to travel between locations. Employees should have no expectation of privacy in the information captured by the GPS devices.

**Investigation Process:** If any Police Department vehicle is determined to be in an inappropriate or otherwise unusual location, operated in a manner that is illegal or that violates established policy, the Chief of Police or his/her designee will investigate the matter. The employee assigned

to the vehicle at issue may be questioned by the Chief of Police and/or his or her designee(s) for the stated purposes herein. Based upon the Department's investigation, including but not limited to interview(s) of the employee(s) in question, a review of the information captured by the GPS device, and any additional interviews of individuals who may possess pertinent information, as determined by the Chief of Police his/her designee(s), the employee may be subject to discipline, up to and including termination in accordance with applicable law, rules and regulations of the department.

If there is any reason to believe a GPS device has been tampered with, interfered with, or disabled, the Chief of Police and/or his or her designee(s) will investigate the matter. The Village Manager or his/her designee's participation in this policy shall be solely for administrative purposes (e.g., addressing software problems, device malfunctions, data issues) and, as such, they cannot initiate or participate in the investigation or presentation of discipline related to GPS information. The Village Manager and/or his/her designee shall also maintain all information received through the GPS system in the strictest of confidence consistent with their Oaths of Office as public officials.

It is not the intention of the Department to review GPS data for the purpose of general performance review, for routine preparation of performance reports or evaluation. Nothing in this policy will prohibit supervisors from accessing GPS data for administrative purposes and in furtherance of administrative investigations, but it is not the intent of the department to routinely monitor GPS data to develop evidence of administrative violations. This shall not preclude periodic supervisory inspections to ensure that GPS equipment is functioning properly. Inadvertent discovery of other departmental violations during such review shall require the supervisor to articulate the purpose of expanding the scope of the review.

Officers will be permitted to review GPS data related to an incident in which they were involved for the purposes of (1) conducting a criminal investigation; (2) preparing reports; (3) preparing for courtroom testimony or courtroom presentations; (4) providing testimony pursuant to an administrative or disciplinary hearing; and (5) assisting the officer in professional development/training. Officers will be permitted to review GPS data prior to any administrative or disciplinary questioning by the Department.

# APPENDIX

## D

## **Alcohol and Drug Testing Policy**

- I. Purpose:** To set guidelines for alcohol and drug testing of sworn members of the Village of Mamaroneck Police Department (herein "Employees") in an effort to establish effective detection and a deterrent to abuse and/or improper use of alcohol and prescription drug, as well as illegal drug possession.
- II. Policy:** The Village of Mamaroneck and the Village of Mamaroneck PBA recognize that the use and possession of intoxicating and/or controlled substances in the work place constitutes a serious threat to the health and safety of all employees and members of the public, as well as the employee involved. Accordingly, this policy will formalize department regulations which prohibit the use of any illegal substance or drug and the abuse of alcohol and prescription drugs which are capable of impairing the ability of our employees to perform their duties.

### **III. Definitions**

- 1) Prohibited Use of Alcohol and Prescription Drugs:** The possession, on-duty use, pre-duty use of alcohol, in an amount that would adversely affect job performance, and prescription drugs (beyond the scope of a medical prescription) may subject an employee to testing under the terms of this policy.
- 2) Prohibited Drugs:** For the purposes of this article "Prohibited Drugs" shall include amphetamines, cocaine, marijuana, methamphetamines, MDMA, opiates (NIDA 5 plus extended opiates (all forms natural and synthetic), phencyclidine (PCP) and their metabolites.
- 3) Prohibited Drug Abuse:** For the purposes of this article, "Prohibited Drug Abuse" shall include the possession or use of a controlled substance or marijuana, which has not been legally prescribed and/or dispensed and the improper or excessive use of a legally prescribed drug.
- 4) Random Employee Selection Sheet:** A computer generated list of randomly selected employees identified by employee I.D. numbers.
- 5) Computer Control Sheet:** A computer generated list of all employees contained within the drug test data base.
- 6) Medical Review Officer ("MRO"):** An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee as having used drugs in violation of this policy.



An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of the results to the Chief of Police. The MRO review shall include review of the chain of custody to insure that it is complete and sufficient on its face. The duties of the MRO with respect to negative results are purely administrative. The MRO shall be a licensed physician with knowledge of substance abuse disorders.

The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by, or the supervisor of any persons who have responsibility for the drug testing or quality control operations of the laboratory.

The role of the MRO is to review and interpret confirmed positive test results obtained through the Village's testing program. In addition to carrying out his responsibility, the MRO shall examine alternative medical explanations for any positive test results. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with the procedures set forth in the mandatory guidelines for federal workplace drug testing programs.

- 7) **Substance Abuse Professional:** Means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed certified 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 alcohol and drug-related disorders.
- 8) **Procedure:** Employees shall be subject to random and reasonable suspicion alcohol and drug testing. If such testing is requested by the Village, it shall be at the Village's expense.

#### **IV. Procedure**

##### **A. Prohibited Conduct**

- 1. No employee shall report for work or remain on duty after the employee has consumed alcohol in any amount that adversely affects his/her job performance.

2. No employee shall consume alcohol at any time immediately prior or during an employee's tour of duty.
  - a. Exception: This prohibition does not include the reasonable consumption of alcohol by a sworn member of the Department engaged in undercover operations at the direction and request of the Chief of Police or his designee. However, such an employee must consume reasonably and, even under this exception, the recording of a breath alcohol test result of 0.04 or greater will be considered to have consumed more than a reasonable amount and will be in violation of this policy.
3. No employee shall engage in any illegal or unauthorized use of drugs at any time while on or off-duty. This includes, but is not limited to, while an employee is on or off the premises, as well as during the employee's meal or other break periods.
  - a. This prohibition does not apply to prescription or over-the-counter medications taken by employees in safety-sensitive positions which:
    - i. Have been lawfully prescribed to, or obtained by, the employee; and
    - ii. Are being used by the employee in accordance with the prescription's guidelines; and,
    - iii. Before reporting to work under the influence of such medication, the employee has inquired whether the drug manufacturer or the employee's physician warns against driving, operating machinery or performing other work-related safety-sensitive tasks. If such warnings exist, the employee taking the medication must inform his or her supervisor of such restrictions before reporting to work under the influence of such substances. When informing his or her supervisor(s) or the Human Resources Department of such restrictions, the employee should not identify the medication(s) being used or the reason for its use. The Village will evaluate and respond to this information on a case-by-case basis. Responses may include, among other things, temporary job reassignment or modifications, a request for additional medical documentation and consultation, and/or an instruction that the member not work until the restriction is removed. Any employee reporting to work in a safety-sensitive position without first advising the Village about warnings accompanying lawfully prescribed or obtained medications will be subject to disciplinary

action up to and including possible termination of employment. An employee's lack of knowledge concerning such warnings will not excuse a violation of this rule where an employee has failed to make the inquiries required by this rule.

4. No employee shall engage in the unlawful or unauthorized manufacture, solicit, sell, purchase, transfer, use, posses, distribute or dispense alcohol, or drugs under this policy while on duty, if outside the scope of his/her job duties, including while on any property owned by the Village of Mamaroneck, including vehicles, without permission from the Chief of Police or by prescription from a medical professional. In addition, an employee's illegal conduct involving drugs or alcohol during non-work times may also result in discipline, up to and including discharge.
5. No employee shall refuse to submit to any required drug or alcohol test conducted pursuant to this policy.
6. No employee shall fail to stay in contact with the Village or the medical review officer while awaiting the results of a drug test.
7. No employee shall report to duty if the employee tests positive for alcohol or drugs on a required test under this policy.
8. No employee shall violate the rules and procedures, terms, and/or conditions of any substance abuse program attended in connection with this policy.

#### **B. Random Periodic Testing**

The Department reserves the right to conduct random drug testing based upon an indiscriminate selection basis, as described below. This form of testing shall occur as frequently as on a quarterly basis and shall involve up to fifty (50%) percent of the Department each calendar year; as determined by the Department.

#### **C. Refusal to Submit**

The refusal by an employee to submit to a drug test pursuant to the provisions of this policy may result in immediate suspension and subsequent disciplinary action, up to and including termination.

An employee who engages in any of the following conduct will be considered to have refused to submit to a test:

1. refusing or failing to appear for any substance abuse test within a specified time, as determined by the Department, after being directed to do so by the Department;
2. failing to sign an authorization form permitting the release of the drug and/or alcohol test result to the Department;
3. failing to remain at the testing site until the testing process is complete;
4. failing to provide a urine, blood, breath or saliva specimen for testing;
5. failing to attempt to provide a urine, breath or saliva specimen for testing;
6. failing to provide a sufficient amount of urine or breath when directed, without an adequate medical explanation;
7. failing or declining to take a second drug or alcohol test that the Department or collector has directed to be taken;
8. failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Department as part of the "shy bladder" procedures, or the insufficient breath procedures;
9. adulterating or substituting a urine specimen, or attempting to adulterate or substitute a urine specimen;
10. in the case of a directly observed or monitored collection in a drug test, failing to permit the observation or monitoring of the provision of a urine specimen (unless prohibited by law);
11. refusing or failing to notify the Department promptly that the employee was involved in a work-related accident, without a valid excuse; or,
12. failing to cooperate with any part of the testing process such as by delaying the collection, testing or verification process or otherwise engaging in conduct that clearly obstructs or manipulates, or attempts to obstruct or manipulate, the testing process.

#### **D. Testing Procedures**

##### **1. Random Drug Testing**

- i. All testing collection procedures will be supervised by the Chief of Police's designee and every reasonable effort will be made to maintain employee confidentiality.

- ii. Each sworn member being tested under this section shall present his or her shield and identification card at the test location, as determined by the Department, to ensure proper identification.
- iii. Upon notification by the Department of his/her selection for testing, the employee must make themselves available to the testing location and personnel as soon as practical but no later than 2 hours following notification. Notification of testing will occur while an employee is on duty and any time spent taking a test will be compensable time.
- iv. Each employee being tested may consult with and be accompanied by a representative of his or her collective bargaining unit. The bargaining representative may confer with and advise the employee before and after the collection process, but shall not participate in or interfere with the process in any way. The collection process shall not be delayed because the association representative is unavailable.
- v. The integrity of the sample collection process will be maintained with due regard for the dignity and privacy of the employee. There shall be no direct observation of the giving of the urine sample unless there is reason to believe that the sample may be tampered with, in which event direct observation shall be made by a person of the same gender as the employee supplying the sample at the testing location.
- vi. Testing shall be performed by a laboratory licensed or certified by the Department of Health and Human Services (DHHS). Two separate containers, supplied by the lab shall be prepared for each employee being tested (split sample). Each container shall have a code number and date of collection affixed. The specimen shall be divided into two samples at the time of collection and shall be sealed and initialed in the presence of the employee and his/her bargaining representative, if so chosen and available.
- vii. The laboratory administering the test shall assure the chain of custody is established in order to verify the identity of each sample being tested.
- viii. Initial screening will be the Enzyme Multiple Immunoassay Test (EMIT). No sample will be further tested upon a negative screening for prohibited substances, as defined in this policy. After a negative screening, the sample will be destroyed.

- ix. Each and every positive EMIT test will be confirmed using Gas Chromatography- Mass Spectrometry test (GCMS). Only if confirmed by GCMS will a test result in a positive report.
- x. All confirmed positive drug test results will be reviewed by a medical review officer ("MRO") to determine whether there is any legitimate explanation for the positive test result. This review may include a medical interview, review of the employee's medical history, or review of any other relevant biomedical factors and all medical records made available by the employee.
- xi. An employee's use of prescription and over-the-counter medications may result in a positive test result. Employees will be given the opportunity to discuss with the MRO any legitimate explanation for the positive test result. If the MRO determines that there is a legitimate medical explanation for the confirmed positive test result, the MRO will report the test result as negative. If the MRO determines that there is no legitimate explanation for the confirmed positive test result, the result will be verified by the MRO as a confirmed positive test.
- xii. If an employee refuses or fails to make himself/herself available to speak with the MRO, the MRO may verify a test as positive without having communicated directly with the tested individual.
- xiii. If the MRO reports to the Village that a negative drug test was dilute, the employee will be directed to take another test immediately. If the employee refuses to take a second test, this constitutes a refusal to test.
- xiv. Any employee whose test results in a positive report, may, within 5 business days of receiving notification of such result, request in writing to the MRO with a copy to the Police Chief, that the second (split) sample be made available for retesting at a licensed/certified (DHHS) laboratory from a list of such laboratories supplied by the Department. If the re-testing results in a negative report, the test will be deemed negative and all samples destroyed.
- xv. Selection of employees to be tested on a random basis shall be performed by a computer program which will randomly select the employee numbers of those to be tested. As part of the selection process, all current employees may be selected for random testing regardless of whether they had/had not been previously selected at any point in time. The selection process will adhere to the guidelines set forth by the US Department of Transportation Federal regulation 382.305.

- xvi. The list of randomly selected employees will remain valid for 10 business days from the date it is drawn or for 10 business days after a listed employee returns to work from paid leave. In either instance the employee will be scheduled and sent for the test at the Departments earliest convenience, without unreasonable delay. Any randomly generated list will automatically expire on the 11<sup>th</sup> business day from the date drawn, the employee returns from paid leave or once the following list is established, whichever occurs first.
- xvii. The selected employee will be ordered to report for testing and advised of his/her right to have PBA representation, provided such participation by the PBA representative does not unduly delay testing. Selected employees will not be given any advance notice of randomly scheduled tests. The President of the Village of Mamaroneck PBA or designee will be permitted to review the list of bargaining unit members selected for testing and the computer control sheet after all selected bargaining unit members have been tested.
- xviii. The Department is not required to provide any notice to employees selected for random testing. All aspects of the random testing process, the test(s) and results of the same, shall be confidential with due regard for the privacy and dignity of the member, except as expressly provided otherwise herein.

Members selected for testing must appear, with the following exceptions:

- 1. Medically Incapacitated (i.e., employee is hospitalized);
- 2. Regularly scheduled day off;
- 3. Military leave;
- 4. Scheduled vacation;
- 5. Leave due to death in family; and
- 6. Personal day/compensatory time day.

- xix. All random employee selection sheets and corresponding computer control sheets will be maintained by the Supervisor in charge of Detectives.

## **2. Reasonable Suspicion Testing**

To assist supervisors to understand and to avoid the problems associated with application and enforcement of this drug/alcohol policy and these procedures, the Village will provide to its supervisors a comprehensive awareness and training program. Training will include, but not limited to, the making of determinations of

reasonable suspicion, the process of sending an employee for a drug/alcohol test and referring an employee to an employee assistance program.

- i. If an employee's supervisor has reasonable suspicion to believe that the employee, while on duty, is under the influence of a substance prohibited under this policy, the supervisor shall immediately meet with the employee and provide them the opportunity to explain their conduct, performance or behavior. *Caution will be taken not to accuse the employee of substance abuse, but the employee will be presented with instances of questionable behavior. Prior to referring an employee for testing, the supervisor will discuss the problem in a private location with the employee and, if available and able to participate in a timely manner, a PBA representative.*
- ii. This meeting shall be considered a disciplinary interview however the employee shall not be entitled to advanced notice as to when the meeting will take place, but the employee shall have the opportunity to request a PBA representative. Should the employee not provide an explanation that is satisfactory to the supervisor, the supervisor shall immediately notify the Chief of Police or his/her designee who, after evaluating the grounds upon which reasonable suspicion is based, shall direct what action should be taken.
- iii. The Chief of Police or his/her designee may direct that testing be immediately performed for prohibited use of alcohol or drugs. Under circumstances where there is reasonable suspicion to believe the employee may be under the influence of alcohol or drugs, the Chief may direct that alcohol and drug testing be administered.
- iv. In the event an employee is directed to submit to testing for one or more of the prohibited substances identified in this policy, he/she shall follow such direction and submit to testing consistent with the terms of this policy.
- v. If the employee is ordered to submit to a test based on reasonable suspicion they shall be advised of their right to have a bargaining representative present for collection of the sample(s), but under no circumstances shall the collection be delayed for more than 2 hours to accommodate the presence of a bargaining representative. The bargaining representative may confer with the employee before and after the actual sample collection, but shall not participate in or interfere with the process in any way. Prior to the testing being



conducted, the employee being tested shall be afforded the opportunity and be responsible for contacting a bargaining representative should he or she wish to do so.

- vi. All testing collection procedures will be supervised by the Chief of Police's designee and every reasonable effort will be made to maintain employee confidentiality.
- vii. Each employee being tested shall present his or her shield and identification card at the test location, as determined by the Department, to ensure proper identification.
- viii. A written report shall be made by the supervisor who made the reasonable suspicion observations which shall include but is not limited to:
  - 1) a description of the employees appearance, behavior, conduct, body order and speech;
  - 2) the names of witnesses to the employee's appearance, behavior, conduct, body order, and speech, when practical;
  - 3) if the employee's appearance speech, body order, conduct, or behavior is not the basis for testing, a list of the facts used to support a determination of reasonable suspicion and the source of that information. A copy of the report shall be provided to the affected employee with in twenty four (24) hours of the test decision.
- ix. Refusal to submit to a reasonable suspicion test, as set forth in this policy, shall be grounds for disciplinary action being taken against the employee, up to and including dismissal from the Department.
- x. Employees subject to reasonable suspicion drug or alcohol testing must make themselves available immediately upon request and no later than 2 hours after request for such testing. Subject employees will be entitled to overtime payment for all hours or fractions thereof over the eight-hour workday that is required to complete the testing process.
- xi. An employee who is required to submit to a "reasonable suspicion" test will be placed on paid administrative leave (as further defined below) after the completion of the drug or alcohol tests. The Village also reserves the right to evaluate the employee's conduct that

triggered the drug and/or alcohol test, to determine if the conduct in and of itself warrants discipline, up to including termination.

- xii. The Village shall transport or make arrangements for the transport of the employee to and from the collection site
- xiii. Testing shall be performed by a laboratory licensed or certified by the Department of Health and Human Services (DHHS). Two separate containers, supplied by the lab shall be prepared for each employee being tested (split sample). Each container shall have a code number and date of collection affixed. The specimen shall be divided into two samples at the time of collection and shall be sealed and initialed in the presence of the employee and his/her representative, if so chosen and available.
- xiv. The laboratory administering the test shall assure the chain of custody is established in order to verify the identity of each sample being tested.
- xv. Initial screening will be the Enzyme Multiple Immunoassay Test (EMIT). No sample will be further tested upon a negative screening for prohibited substances, as defined in this policy. After a negative screening, the sample will be destroyed.
- xvi. Each and every positive EMIT test will be confirmed using Gas Chromatography- Mass Spectrometry test (GCMS). Only if confirmed by GCMS will a test result in a positive report. All confirmed positive drug test results will be reviewed by MRO to determine whether there is any legitimate explanation for the positive test result. This review may include a medical interview, review of the employee's medical history, or review of any other relevant biomedical factors and all medical records made available by the employee.
- xvii. An employee's use of prescription and over-the-counter medications may result in a positive test result. Employees will be given the opportunity to discuss with the MRO any legitimate explanation for the positive test result. If the MRO determines that there is a legitimate medical explanation for the confirmed positive test result, the MRO will report the test result as negative. If the MRO determines that there is no legitimate explanation for the confirmed positive test result, the result will be verified by the MRO as a confirmed positive test.

- xviii. If an employee refuses or fails to make himself/herself available to speak with the MRO, the MRO may verify a test as positive without having communicated directly with the tested individual.
- xix. If the MRO reports to the Village that a negative drug test was dilute, the employee will be directed to take another test immediately. If the employee refuses to take a second test, this constitutes a refusal to test.
- xx. Any employee whose test results in a positive report, may, within 5 days business days of receiving notification of such result, request in writing to the MRO with a copy to the Police Chief, that the second (split) sample be made available for retesting at a licensed/certified (DHHS) laboratory from a list of laboratories supplied by the Department. If the testing results in a negative report, the test will be deemed negative and all samples destroyed. All tests will be fully paid for by the Village.
- xxi. If the test is positive for prohibitive substances, the employee may be subject to discipline, up to and including dismissal.

#### **E. Results of Drug Testing**

Employees will be notified of the results of all tests conducted under this policy and provided a copy of the corresponding test results as they become available.

#### **F. Positive Test Results**

All positive test results will be reviewed and verified by a Medical Review Officer designated by the Department.

#### **G. Miscellaneous**

1. Should any provision of this or any comparable drug or alcohol testing policy and procedure be declared illegal by a Court of competent jurisdiction, the remaining sections of the policy and procedure shall remain in full force and effect. The parties shall, however, meet immediately to negotiate provisions to replace any section declared to be illegal.
2. Nothing herein shall be construed to restrict the Departments right, consistent with applicable provisions of law, to conduct other types of drug testing,, provided that random drug testing is defined in the annexed policy and procedure and shall be governed exclusively by the terms of this stipulation.
3. Should a test be required of an off-duty employee, the standard to be employed shall be reasonable cause as opposed to reasonable suspicion.

4. The village contracts with laboratories shall require that the laboratory maintain employee test records in confidence. The contract shall provide, in addition to the MRO's access to related information, as described herein, the laboratory shall disclose information related to testing only to the Chief of Police or his/her designee.
5. Any employee who is the subject of a drug test conducted under this policy shall, upon written request, have access to any records or results relating to his or her test or related information.
6. The Village reserves the right to elect to elect to engage a different outside testing administrator.

#### **H. Disciplinary Process**

1. If a positive test occurs, such results shall provide grounds for a disciplinary action, up to an including dismissal, based upon incompetency and/or misconduct.
2. The level of discipline determined by the Department shall be premised upon a number of considerations, including but not limited to the employee's prior work history (both prior violations of this policy and other unrelated Department rules), the length of time on paid administrative leave, the nature and quantity of the prohibited substance used in violation of this policy, the events related to the failed test (e.g., if property damage or personal injury occurred in conjunction with the incident preceding the call for a test), etc.
3. Any disciplinary action taken by the Department under this policy shall be processed through the applicable procedures in the Village of Mamaroneck/PBA Collective Bargaining Agreement, the Department's Rules and Regulations, and applicable law