

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**CITY OF BEVERLY**

**AND**

**AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, STATE COUNCIL 93, Local #111, DPS FOREMEN**

This Memorandum of Agreement ("Agreement") between the City of Beverly ("City") and the American Federation of State, County, and Municipal Employees, AFL-CIO, State Council 93, Local #111 ("Union") for DPS Foremen is effective this \_\_\_\_ day of , 2015.

WHEREAS, the City and the Union have concluded negotiations over terms for Collective Bargaining Agreements to succeed the Collective Bargaining Agreement between the parties covering the period July 1, 2011 through June 30, 2014 ("7/1/2011-6/30/2014 CBA");

WHEREAS, the City and the Union have agreed to extend the 7/1/2011 – 6/30/2014 CBA through 6/30/2015 with no changes (the "7/1/2014-6/30/2015 CBA") followed by a three year Collective Bargaining Agreement effective July 1, 2015- June 30, 2018 (the "7/1/2015-6/30/2018 CBA") with the following changes only.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties mutually agree that the provisions as outlined below shall be incorporated into a new Collective Bargaining Agreement and shall replace any language in the previous Agreement where language for such Article or Section is included herein.

All changes shall become effective as of the date specified; if no effective date is specified, changes shall become effective as of the date this agreement is signed, ratified and funded. Neither the increases in wages or in any other benefit apply to any position or person not in the bargaining unit as of the date the 7/1/2015-6/30/2018 CBA is signed and ratified.

Specific language changes to the previous Agreement are as follows:

1. Title Page (housekeeping) – Update dates to reflect dates of the new collective bargaining agreements (the 7/1/2014-6/30/15 CBA and the

7/1/2015-6/30/2018 CBA).

2. Article 3 – Discrimination and Coercion, p. 2 - Add a new section 3.4 reflecting the “no 2 bites”:

“3.4. The provisions of this article shall be grievable but not arbitrable. The parties, by written agreement only in any case, may make an exception for a specific matter to be arbitrable notwithstanding this non-arbitrability clause, after the applicable statute of limitations for filing a legal or statutory claim has run. Any such agreement shall establish a date certain by which any arbitration must be filed. Failure to specify such date shall make any such agreement ineffective and unenforceable. Nothing herein shall be deemed to create an obligation on the part of the City to file for arbitration.”

4. Article 7 – Grievance and Arbitration Procedure, p. 4-6 - Change as follows, including changing working days to calendar days, tightening up time limits and *de novo* review.

- a. 7.1.1. Change “seven (7) working days” to “seven (7) calendar days” in sentences one and two.
- b. 7.1.2. Change “seven (7) working” to “ten (10) calendar days” in sentences one and two.
- c. 7.1.3 Change “thirty (30) days” to “thirty (30) calendar days.”
- d. 7.3 Amend to read, “Failure to present a grievance within or advance it in accordance with any of the time limits specified shall be deemed as a final waiver and abandonment of the grievance. Failure of the City to reply to a grievance within the time limits specified shall constitute a denial of the grievance entitling the grievant to advance to the next step, and starting the time period within which the grievance must be advanced or waived. The time limits specified may be extended only by mutual agreement of the parties in writing in each instance to a date certain. Failure to specify such date shall make any such extension ineffective.”
- e. Add new 7.6 on *de novo* review:

“A decision by an arbitrator to take jurisdiction over the procedural arbitrability objection(s) of the City, including timeliness, will be subject to *de novo* review in the courts.”

f. Renumber 7.6 to 7.7. Renumber 7.7 to 7.8. Renumber subparagraphs accordingly.

g. 7.8.5 Change “June 30, 2014” to “June 30, 2018”.

5. Article 8, Civil Service, p. 6

a. The City eliminated Civil Service effective January 8, 1996.

b. Change name of article to Progressive Discipline/Just Cause .

c. Delete Section 8.1 and replace it with text from current Appendix C. Renumber Paragraphs in Appendix C as 8.1.1; 8.1.2; 8.1.3 respectively. Renumber subparagraphs of C.2 as (A); (B); (C); (D). Delete phrase in 8.1.1. “In accordance with Article 8 and Article 9” so that 8.1.1 will now read “Employees may only be disciplined for Just Cause. As part of this the parties agree to follow the process of progressive discipline.”

d. Replace “labor service” with “new” in 8.2.

6. Article 12, Pay and Classification Plan Pg. 8 - Delete 12.5 and replace with agreed financial package.

7. Article 14, Overtime, p. 9-10 - . Insert new section 14.8 Call Lists per union 9.23.2014 proposal:

14.8 Call Lists:

14.8.1 Employees shall provide one number for call in lists, except for snow and ice lists, for which an employee may supply up to two contact numbers, specifying the primary number to be called. The city shall only be required to use the primary number supplied by the employee, however at the city’s discretion they may use the secondary number providing that they use the secondary number for every employee in an attempt to reach them.

14.8.2 All call in lists shall be posted annually for 5 business days so that they may be updated.

14.8.3 Employees shall sign for each list they wish to be considered eligible for call ins.

14.8.4 Should an employee wish to be removed or added to a list after the posting they shall submit, in writing a request to do so.

8. Article 18, p. 12, Other Monetary Considerations

18.4 The City will pay up to \$85 directly to the provider for a legally mandated Department of Transportation physical only if received at a provider and a location selected by the City.

9. Article 20, Sick Leave, p. 13 - 15

a. Change 20.2 to read:

“20.2. Any sick leave allowed under this article may be accumulated but said accumulation shall not exceed two hundred (200) days at any time. An employee who has accumulated more than 200 days as of 1/1/2016 is grandfathered for purposes of maximum accumulation at the amount he/she has accumulated as of that date and may continue to accumulate up to the amount he/she had as of that date (1/1/2016).”

b. Section 20.4 Change “two hundred (200)” to “one-hundred and fifty (150)”. Add “or death” after retirement. Fix typos by changing “of” to “on” in first part of sentence, and “or” to “of” in the second part of sentence. Delete “as severance pay” and add “days” after “sick leave”. Section 20.4 will now read:

“Upon retirement or death, employees will receive remuneration on the basis of fifty percent (50%) of not more than one-hundred and fifty (150) of his/her sick leave days.”

“An employee who has accumulated more than 150 sick days as of 1/1/2016 is grandfathered at the amount he/she has accumulated as of that date and may convert up to one half (1/2) of his accumulated sick

pay on retirement or death, but in no event can an employee grandfathered under this clause convert more than ½ of 200 days, or half of the amount at which the employee is grandfathered, whichever is less.”

c. Change Section 20.5:

Upon death of an employee, his heirs, administrators, executors or assigns shall receive remuneration for accumulated sick leave in accordance with section 20.4. If any conflict exists regarding who should receive such payment, it shall be up to the party or parties seeking payment to resolve any such conflict before the City makes payment.

d. Add new section 20.14 on OPEB:

“Effective 10/1/2016, and annually thereafter on October 1, the City will reduce sick leave for each full time employee by one day of sick leave (8 hours). This will apply for all employees hired on or after 7/1/15. It will also apply to current employees with five or more years of service as of October 1 of each year. The City will contribute the value of such day to the OPEB fund established by the City. The yearly sick time accrual allotment will be reduced by one day. This day shall not affect the employee’s eligibility for sick leave incentive.”

10. Article 21, Vacations, p. 15 - Change “Upon termination of employment” to “Upon resignation, retirement or termination of employment ‘ in Section 21.4.
11. Article 23, Bereavement Leave, p.16 – Add Section 23.3: To accommodate family travel and service arrangements, an employee shall be given up to two weeks from the date of death to utilize bereavement days.”
12. Article 25, Add a new section, Section 25.4 clarifying that statutory LOAs run concurrently with any time under the contract.

“25.4 - Leaves taken under this agreement for reasons covered by any state or federal law, including but not limited to the FMLA, will be considered FMLA leave as well as leave under this Agreement and

leave under any other applicable state and federal law, and will be deducted from the employee's statutory leave entitlement.”

13. Article 26, Holiday, p. 17- Update dates.

14. Article 29, Miscellaneous Provisions , p. 19–

a. Delete “or Civil Service Rule” from 29.1.

b. Add a new section 29.3:

“29.3 – Lack of Valid Driver’s License. Employees shall notify their supervisor in the event of any loss, suspension, revocation, and/or other lack of valid driver’s license. Such notification shall occur before or at the start of the employee’s next shift.”

c. Add a new Section 29.4:

“29.4 - Direct Deposit - All payments of payroll related items to any member will be made by the city treasurer to a bank account of the member’s choosing. All members shall provide the information necessary to make such direct deposits to the city’s accounting department within sixty (60) days of the execution of this agreement.”

15. Article 30 - Re-Opener, p. 20 - Change to read as follows:

“30.1 If any other bargaining unit in the City of Beverly, during the life of this Agreement, receives across the board percent wage increases voluntarily given by the City greater than the wage increases contained in this Agreement, the City agrees to reopen this contract as to base salary only. The City is not required to re-open negotiation of this contract based upon an award from an arbitrator at the Joint Labor Management Committee for Municipal Police and Fire (J.L.M.C.)

16. Article 31 – Duration of Agreement, p. 20

Correct paragraph numbering by changing 33.1 to 31.1, 33.2 to 31.2, and 33.3 to 31.3.

Delete and replace with the following:

"31.1 This Agreement shall become effective on July 1, 2015 and shall remain in full force and effect until June 30, 2018. Both parties to this Agreement will confer during the month of January 2018 to discuss any proposed changes or amendments and will make every effort to consummate a total agreement prior to June 30, 2018.

31.2 (No change)

31.3 Change to reflect date new agreements are entered into from "this 30<sup>th</sup> day of June, 2011."

17. Appendix A, Weekly Wage Schedule - Delete and replace with updated wage schedule.

a. **Wage increase**

July 1, 2014- June 30, 2015	0%
July 1, 2015 – June 30, 2016	2%
July 1, 2016 - December 31, 2016	1%
January 1, 2017 - June 30, 2017	1%
July 1, 2017 – December 31, 2017	1%
January 1, 2018 – June 30, 2018	1%

18. Eliminate Appendix C. Rename Appendix D as Appendix C. Rename Appendix E as Appendix D.

19. Appendix E, Letter of Agreement - Delete and replace with this document.

20. Grievances and Litigation Withdrawn/Dismissed – The Union has reviewed any pending (including any which may have been held in abeyance) arbitration cases, grievances, charges of prohibited practice and litigation with the employer and has made an independent determination that the likelihood of success on the merits in each of the cases when considered in terms of the overall contract settlement and the likely costs of pursuing such cases, if any, does not warrant maintaining such cases and that such cases, if any, shall accordingly be withdrawn. In return for the bargained for consideration contained in this MOA, the Union hereby agrees to withdraw and dismiss any and all grievances, arbitrations, charges

of prohibited practice, other proceedings or litigation in whatever forum with prejudice to refiling.

21. In addition to the provisions above, a one time payment of \$900 will be made to each bargaining unit member (as of the date of execution of the agreement) on or about January 22, 2016. In the event the City cannot arrange for the payment by that date, the City will notify the Union and will attempt to make the payment as soon thereafter as possible.

22. This Agreement is subject to the following:

- A. Ratification by both the City and the Union; and,
- B. An appropriation by the City Council each year of sufficient monies to fund the cost increases for such year of this Agreement.

**CITY OF BEVERLY**

**AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO, STATE  
COUNCIL 93, LOCAL #111 (DPS)**

By:   
\_\_\_\_\_  
Michael Collins

By:   
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Mark Lee

Date: 12-29-15

Date: 12/30/15