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May 25, 2017

VIA E-MAIL ONLY

**Public Employment Relations Commission
112 Henry Street Northeast, Suite 300
P.O. Box 40919
Olympia, WA 98504-0919**

**Re: Mill Creek Police Officers' Guild/City of Mill Creek
Unfair Labor Practice Complaint**

Dear Mr. Sellars:

I am the attorney for the Mill Creek Police Officers' Guild. Enclosed with this letter, please find each of the following documents:

1. a Complaint charging unfair labor practices; and
2. a certificate of service.

Please process these documents. Your cooperation is greatly appreciated. If you have any questions or comments concerning this matter, please do not hesitate to contact me.

Respectfully submitted,
Vick, Julius, McClure, P.S.



**Alyssa Melter
Attorney At Law**

Enclosures

**Cc: Rebecca Polizzotto
Greg Elwin
Jesse Mack**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

112 Henry Street NE, Suite 300, Olympia WA 98506

PO Box 40919, Olympia WA 98504-0919

Phone: 360.570.7300 Email: filing@perc.wa.gov

Web: www.perc.wa.gov

UNFAIR LABOR PRACTICE COMPLAINT

[] Amended Complaint in Case # _____

Applicable Rules: Chapters 10-08, 391-08, and 391-45 WAC

PARTIES Include information for all parties involved.**COMPLAINANT** Mill Creek Police Officers' GuildContact Alyssa MelterAddress 5506 6th Avenue South Suite 201ACity, State, ZIP Seattle, WA 98108Telephone (206) 957-0926 Ext. 108Email alyssam@vjmlaw.com**RESPONDENT** Mill Creek Police DepartmentContact Chief Greg ElwinAddress 15728 Main St.City, State, ZIP Mill Creek, WA 98012Telephone 425-921-5707 Ext. _____Email grege@cityofmillcreek.com**EMPLOYER** City of Mill CreekContact Rebecca Polizzotto, City ManagerAddress 15728 Main St.City, State, ZIP Mill Creek, WA 98012Telephone 425-921-5724 Ext. _____Email rebeccap@cityofmillcreek.com**ALLEGED VIOLATION**

Indicate if the alleged violation is against:

☒ Employer ☐ Union ☐ Both*

***Note:** If the violation is against both the union and employer, two separate complaints must be filed with two statements of facts describing the alleged violation against each.

STATEMENT OF FACTS and REMEDY REQUESTED

Attach on separate sheets of paper in numbered paragraphs a brief statement of the facts regarding the alleged unfair labor practice(s).

- Include times, dates, places, and participants of occurrences.
- Indicate statutes allegedly violated.
- State whether a related grievance has been filed.
- Describe the remedies requested.
- For more information refer to WAC 391-45-050.

BARGAINING UNIT

***Note:** If the alleged violation relates to more than one bargaining unit, a separate complaint must be filed for each unit.

Indicate Bargaining Unit: See AttachedDepartment or Division: Mill Creek Police Dept.**Collective Bargaining Agreement:**

- ☐ The parties have never had a contract.
- ☒ A copy of the most current contract is attached.

AUTHORIZED SIGNATURE FOR COMPLAINANTPrint Name Alyssa MelterTelephone (206) 957-0926 Ext. 108Address 5506 6th Ave South Suite 201AEmail alyssam@vjmlaw.comCity, State, ZIP Seattle, WA 98108Signature A. Melter Date 5/25/17

FACTS

Count 1

1. The City of Mill Creek ("City") is a "Public Employer" within the meaning of RCW 41.56.030(12).

2. The Mill Creek Police Officers' Guild ("Guild") is the exclusive bargaining representative for all commissioned police officers employed by the City in the Mill Creek Police Department ("Department"), excluding the police support officer, the chief of police, police commander, and confidential employees.

3. The Guild and City are signatory to a January 1, 2015 through December 31, 2017 collective bargaining agreement setting forth the wages, hours, and other terms and conditions of employment for members of the bargaining unit represented by the Guild. A copy of the collective bargaining agreement is attached as Exhibit A.

4. The regular work cycle for patrol officers in the Department consists of six rotating twelve-hour shifts and one eight-hour shift in each fourteen-day work cycle.

5. The eight-hour shift is known as a "modified shift" and occurs once every two weeks.

6. Patrol officers participate in shift bidding once a year. Following the shift bid, the Chief of Police (or his designee) assigns patrol officers to a squad.

7. According to well-established past practice, once employees are assigned to a squad, the squad sergeant conducts a bid (by seniority) for modified shift days. The result of the modified shift bid is that a patrol employee will have a set modified shift, meaning he or she will work an eight-hour day on the same day of the week every two weeks.

8. It has also been the City's/Department's practice to pay overtime when an employee is required to work more than eight-hours on his or her modified shift day (which is usually caused by short-staffing). The employee is paid overtime for all hours worked in excess of the scheduled eight-hour shift.

9. On December 27, 2016, Police Chief Greg Elwin informed Officer Rory Mundwiler that he was changing Officer Mundwiler's modified shift day to avoid paying overtime. The result was that Officer Mundwiler was required to work twelve hours on his scheduled modified shift day without receiving overtime compensation.

10. On December 27, 2016, Chief Elwin additionally sent an email to all patrol sergeants requiring them to change employees' modified shifts to avoid paying overtime, when possible. A copy of Chief Elwin's email is attached as Exhibit B.

11. Chief Elwin's actions on December 27, 2016 (as described in paragraphs 9 and 10) unilaterally change the well-established past-practice described in paragraphs 7 and 8.

12. The changes to the past-practice impact hours of work and wages.

13. Chief Elwin's action of implementing changes to the past-practice without bargaining constitutes a *fait accompli*.

14. The Guild gave a demand to bargain to Chief Elwin on December 28, 2016, requesting that he bargain both the decision and the effects of the decision to change officers' modified shifts and seeking confirmation that the City would restore the status quo ante. A copy of the demand to bargain is attached as Exhibit C.

15. Chief Elwin responded on December 29, 2016. His response stated, in part, "This directive is wholly within my right as Chief of Police to make. I do not see an issue here that needs to be bargained . . . **The adjustment to Corporal Mundwiler's schedule will not be reversed . . . Further, my directive to the patrol sergeants to make these adjustments in the future and as available will stand for the same reasons.**" (emphasis in the original). A copy of Chief Elwin's December 29, 2016 letter is attached as Exhibit D.

16. Ultimately, Officer Mundwiler was required to work twelve-hours on his scheduled modified shift day without receiving overtime compensation. Other patrol employees have been required to do the same because of Chief Elwin's December 27th directive.

17. The City's/Chief Elwin's action of changing the past-practice discussed in paragraphs 7 and 8 without bargaining constitutes a refusal to bargain in good faith and violates RCW 41.56.140(4) and 41.56.140(1).

18. The City's refusal to bargain in good faith in violation of RCW 41.56.140(4) and RCW 41.56.140(1) has injured the Guild and the members of the bargaining unit represented by the Guild.

REMEDY

THEREFORE, the Guild requests the following remedies:

- A. Findings of facts consistent with the Guild's allegations;
- B. An order requiring the City to cease and desist from refusing to bargain in good faith in violation of RCW 41.56.140(4) and RCW 41.56.140(1);

- C. An order requiring the City to cease and desist from interfering with, restraining, or coercing public employees in the exercise of their rights secured by RCW 41.56;
- D. An order requiring the City to restore the status quo ante (by prohibiting the City from changing modified shift days and refusing to pay employees overtime for hours worked in excess of eight hours on their scheduled modified shift day) until the City complies with its obligation to bargain in good faith;
- E. An order requiring the City to make the Guild and the members of the bargaining unit whole for all loss(es) sustained by them as a result of the violation(s) of RCW 41.56.140(4) and 41.56.140(1);
- F. An order requiring the posting of all orders and notices in this matter;
- G. An order granting the Guild any and all other relief to which it is deemed entitled.

Exhibit A

Collective Bargaining Agreement

between

**City of Mill Creek
and
Mill Creek Police
Officers' Guild**

**(Non-Sergeant's and Sergeant's
Bargaining Units)**

January 1, 2015 to December 31, 2017

Table of Contents

Article 1	RECOGNITION OF THE BARGAINING UNIT.....	3
Article 2	DEFINITIONS.....	3
Article 3	DEDUCTION AND REMITTANCE OF DUES	4
Article 4	GUILD BUSINESS	4
Article 5	HOURS OF WORK.....	5
Article 6	OVERTIME & COMPENSATION	7
Article 7	SALARIES	8
Article 8	PREMIUM PAYS.....	8
Article 9	INCENTIVE PAYS.....	10
Article 10	LEAVES	11
Article 11	HEALTH AND WELFARE	16
Article 12	GRIEVANCE PROCESS	19
Article 13	WORK STOPPAGES.....	21
Article 14	UNIFORMS.....	21
Article 15	OFF-DUTY EMPLOYMENT	22
Article 16	MANAGEMENT RIGHTS	22
Article 17	EMPLOYEE RIGHTS.....	23
Article 18	SAVINGS CLAUSE.....	24
Article 19	DURATION OF THIS AGREEMENT	25

Attachment A SALARY SCHEDULE

Attachment B JULY 10, 2012 MEMORANDUM REGARDING CORPORAL POSITION

Attachment C JULY 10, 2012 MEMORANDUM OF UNDERSTANDING, *as amended*,
July 26, 2015.

Attachment D REIMBURSEMENT FOR HOLIDAYS USED PRIOR TO OCCURANCE

This Agreement is by and between the *City of Mill Creek, Washington*, hereinafter referred to as the *City*, and the *Mill Creek Police Officer's Guild*, hereinafter referred to as the *Guild*.

Article 1 RECOGNITION OF THE BARGAINING UNIT

The *City* recognizes the *Guild* as the exclusive bargaining representative for all commissioned employees of the *Mill Creek Police Department* excluding the police support officer, the chief of police, police commander, confidential employees, and all other employees of the employer. This agreement covers the two bargaining units represented by the Guild and previously certified in *Public Employees Relations Commission Case Nos. 9092-E-91-1503 (June 3, 1991)* and *13269-E-97-2209 (September 9, 1997)*.

Article 2 DEFINITIONS

Anniversary Date: Date used to determine annual wage/salary reviews. This date may be adjusted by changes in employment status, such as promotions, reclassifications, or unpaid leaves of absence in excess of five (5) consecutive days.

Annual Evaluation: Employees are given regular performance evaluations twice a year. For purposes of this Agreement, an Annual Evaluation is the evaluation that occurs in closest proximity prior to an employee's Anniversary Date.

Callback: An unanticipated emergency situation where an *Employee* is called back to active duty outside scheduled work hours.

Chief: The *Chief of Police*

City: The *City of Mill Creek*

City Manager: The *City Manager*

Classification: All positions sufficiently similar in duties, authority, and responsibility to permit: (1) grouping under a common title; (2) the application of common standards of selection; and (3) a common compensation rate.

Department: The police department of the *City of Mill Creek*.

Employee: All persons subject to this labor agreement as members of the bargaining unit.

Immediate Family: Any person related by birth, marriage, or adoption, including stepchildren, residing in the employee's household and legally dependent upon the employee.

Layoff: A non-disciplinary termination of an employee due to the *City's* financial position or a change in the need for which the position held was created.

Leave: An authorized absence from regularly scheduled work hours.

Officer: A non-sergeant Employee holding the rank of Officer.

Pay Status: The normal employment situation in which the employee is paid for time worked or the employee is on paid leave, e.g., vacation, sick leave or other paid leave of absence.

Resignation: A voluntary separation from employment with the *City*.

Seniority: The length of the employee's continuous service with the *City* since the employee's most recent date of hire. Seniority shall continue to accrue during a period of approved, unpaid leave not exceeding sixty (60) consecutive days. The seniority date is subject to adjustment by the *City* for all other breaks in service. Length of service as a temporary employee shall not be included in the determination of an employee's seniority with the department.

Separation: Discontinuation of the employment relationship regardless of reason.

Sergeant: An Employee holding the rank of Sergeant.

Termination: Involuntary separation of an employee from employment with the *City*.

Transfer: A change from a position in one classification to another position whether intra-departmental or inter-departmental.

Trial or Probationary Employment Period: The initial eighteen (18) month period of employment, which is an integral part of the examination and selection process and during which an employee may be terminated with or without cause. For lateral or experienced Employees, this trial employment period shall be twelve (12) months.

Article 3 DEDUCTION AND REMITTANCE OF DUES

The *City* shall make deductions for monthly *Guild* dues from the wages of each employee in the bargaining unit who executes a properly written authorization and such deductions shall be remitted each month to the *Guild*.

Article 4 GUILD BUSINESS

Section 4.1 Leave for Guild Officials

A *Guild* member, at the discretion of the *Chief* or a designee, may be granted time off with pay while conducting contract negotiations or grievance resolutions on behalf of the employees in the bargaining unit, provided that:

1. the *City* is notified by the member at least forty-eight (48) hours prior to the time off;
2. the *City* is able to properly staff the employee's job duties during the time-off; and
3. the wage cost to the *City* is no greater than the cost that would have been incurred had the *Guild* official not taken time-off.

Section 4.2 Investigation of Grievances

Guild representatives and agents of the *Guild* shall have the right to reasonable access to the police department for purposes of investigating grievances. *Guild* representatives and agents of the *Guild* shall not disrupt the operation or normal routine of any department. All other *Guild* business not specifically covered in this *Article* shall be conducted during off duty hours. Meetings or other *Guild* activities may be scheduled and held on *City* premises, provided that

they do not disrupt the operation or normal routine of *City* operations.

Section 4.3 Bulletin Board and City Property

The *City* will provide the *Guild* with bulletin board space for the purpose of posting matters relating to official *Guild* business. Except as specifically allowed in this *Agreement*, *City* vehicles, equipment, and facilities may not be used for *Guild* activities.

Section 4.4 Electronic Mail

Members of the *Guild* may use the *City's* electronic mail (e-mail) system to communicate *Guild* information to *Guild* members. The *Guild* recognizes that the e-mail system is the sole property of the *City*. Messages transferred through e-mail are not confidential and are subject to periodic review by the *City*. Employees should limit messages to necessary items within department policy and guidelines.

Article 5 Hours of Work

Section 5.1 General Schedule of Work Agreement

The work schedule will be what is mutually agreed upon between the *Chief* and the membership of the *Guild* (subject to the parameters set forth in the following subsections). If no agreement can be reached, the schedule will remain the same as the schedule referred to in *Article 5, Sections 5.3, 5.4 and 5.5*.

Section 5.2 Amended Schedule Changes

Any amended schedule change must be presented no earlier than *October 1* of each calendar year and no later than the 10th business day of October. The *Guild* and *City* will attempt to address the interests of the involved parties. Such interests shall not adversely impact or degrade departmental operations or the current budget allocation. Any agreed upon work schedule will commence on January 1st of each calendar year.

Section 5.3 Regular Work Cycle

The regular work cycle for patrol officers, including SWAT operators, shall be 80 hours in a fourteen (14) day work period. Patrol officers' regular work schedule consists of six (6) rotating twelve (12) hour work shifts and one (1) eight (8) hour work shift in the fourteen (14) day work cycle.

The assigned work schedule and work hours for employees designated as SWAT operators may vary from the regular work schedule (above) during work cycles in which the SWAT operator attends mandatory training or a preplanned deployment that is scheduled at least fourteen (14) days prior to the training/deployment. In the event of such scheduled mandatory SWAT training or preplanned deployment, the affected SWAT operator and his supervisor will mutually agree to deviations from the SWAT operator's regular work schedule to avoid the occurrence of unnecessary overtime.

Section 5.4 Duty Shift Assignment

Duty shifts will be assigned by the *Chief* or a designee for a minimum of six (6) months with consideration given to seniority, collateral assignments and/or effective and efficient deployment of staffing resources.

The *Chief* reserves the right to assign an alternate work cycle for employees whose duty assignments preclude the use of the regular work cycle.

Section 5.5 Temporary or Emergent Needs

The *Chief* may change the work schedule or work hours to meet temporary or emergent departmental needs.

Section 5.6 Detective, Bicycle Officer, K-9 Officer, and School Resource Officer Work Cycles

Police officers assigned as *detectives, bicycle officers, K-9 officers, and school resource officers* shall be scheduled forty (40) hours in a seven (7) day work period. Due to the nature and unpredictability of these assignments, a regular work schedule is not established. The combination of scheduled work hours during the seven (7) day work cycle shall not exceed forty (40) hours. Scheduled work shifts should not be less than five (5) hours per day, nor in excess of twelve (12) hours per day. Daily work shifts, or assigned work days, may be subject to modification at any time by the *Chief* or a designee based on the needs of the department.

Section 5.7 Meal and Rest Periods

A work day shall normally include a one-half (½) hour meal period and two fifteen (15) minute rest periods. All employees are subject to immediate call during meal and rest periods for which no overtime or additional compensation shall be paid.

Section 5.8 Callback

If an employee is called to duty and the callback time is not connected to the assigned working hours that day, the employee will be paid at a rate equivalent to one and one-half (1½) times the employee's regular rate of pay for a minimum of three (3) hours. Callback time begins when the employee reports to the worksite, with the exception of K-9 officers. For K-9 officers called to duty, callback time shall begin when the K-9 signs into service, and concludes when the K-9 is secured.

Section 5.9 Court Appearances

Any off-duty employee who, as a result of departmental duties, is required to appear in court shall be compensated at callback time as defined in *Article 5, Section 5.8*. The employee will reimburse the *City* for any subpoena or witness fee received.

Section 5.10 Auto Vehicle Locator

The *City* has or will implement Auto Vehicle Locator (AVL) technology in its vehicles which are operated by bargaining unit employees. The *City* agrees that it will not review AVL data solely to generate any complaints against bargaining unit employees. AVL data may be used as evidence to support allegations of misconduct made against a member by a known complainant. The *Guild* agrees that in general, the AVL technology is valid for purposes of admissibility in a grieving hearing, however, the *Guild* may challenge the reliability of the AVL evidence in specific instances. AVL data shall not be used to monitor or evaluate a bargaining unit employee's performance without just cause. If AVL data is relevant to an investigation, prior to any interview of the accused, the data shall be provided with a reasonable amount of time to review the data prior to commencing the interview.

Article 6 OVERTIME & COMPENSATION

Overtime work is hours worked in excess of the assigned daily schedule. All overtime must be authorized by the *Chief* or his designee.

Section 6.1 Overtime Compensation

Overtime work shall be compensated at one and one-half (1.5) times the employee's regular straight-time rate of pay.

Section 6.2 Compensatory Time Off

In lieu of overtime pay, employees may choose to earn compensatory time off at the rate of one and one-half (1 ½) hours off for each hour of overtime earned. The use of compensatory time off shall be requested by an employee and shall be subject to the same approval process as annual and/or holiday bank leaves. The maximum accumulation of compensatory time off shall be eighty (80) hours. Any accrual over eighty (80) hours shall be paid as overtime in the pay period it is earned. Compensatory time balances may be carried over from calendar year to calendar year. As of July 1, 2015, employees who currently have compensatory time banks in excess of eighty (80) hours are permitted to keep their balances, but may not earn additional compensatory time outside of the 80-hour cap.

Section 6.3 Overtime Calculations

Overtime calculations shall begin when the employee arrives at the worksite. Time paid but not worked i.e. holidays, holiday bank hours, sick leave, bereavement leave, vacation, compensatory leave or leave without pay, shall be excluded from the computation of daily hours worked when computing overtime hours.

Section 6.4 Limitation of Daily Hours

In no case shall an *Employee's* work day exceed fourteen (14) hours in a twenty four (24) hour period unless prior supervisory approval is obtained.

If the K-9 officer houses the canine, for the purpose of this limitation and for purposes of scheduling compensable time, K-9 officer's work hours include specified in-service time, drive time from the station to the officer's residence, and an additional sixty (60) minutes per scheduled work day. The additional sixty (60) minutes of paid work time per scheduled work day is intended to compensate the K-9 Officer for the time it takes to feed, care for, and maintain the canine and the assigned K-9 vehicle outside of the time he or she is in service, including time spent on his or her regular days off within the same work cycle. If care for the canine and/or K-9 vehicle will require more than the allotted out of service care time in a given work cycle, the K-9 officer shall notify his or her supervisor and seek approval to work the additional time prior to or as soon as practical after realizing the additional time that will be required.

Section 6.5 Fair Labor Standards Act Overtime Rights

Nothing described herein lessens the *employee's* rights to overtime compensation under the *Fair Labor Standards Act*.

Article 7 SALARIES

Section 7.1 Salaries

The rates of pay covered by this *Agreement* shall be set forth in *Attachment A, Salary Schedule* which is incorporated herein by this reference.

Section 7.2 Step Increases

An employee shall receive a step increase on his or her Anniversary Date provided his or her performance meets the standards, expectations, and requirements of the position at the time of his or her last Annual Evaluation. If an employee fails to meet such standards, expectations and requirements, and if at the employee's subsequent half yearly evaluation, the employee meets the standards, expectations and requirements of the position, then the employee shall receive the applicable step increase starting on the first day of the regular pay period after the half yearly evaluation is complete. In no case shall a step increase cause the employee's salary to exceed the top step of the salary range.

Article 8 PREMIUM PAYS

Section 8.1 Eligibility

Except as where expressly provided in this Article, Employees shall not be eligible for more than one type of premium pay that falls under this Article 8 at any one time. If an Employee is assigned to two or more separate roles that both qualify for premium pay at different rates, the Employee will receive the higher of the two premiums during the time such dual roles are assigned.

Section 8.2 Premium Pay for Field Training Officer

Officers who are assigned to field train a new hire shall receive five percent (5%) of their base pay in addition to their base pay for each day they perform as *Field Training Officer (FTO)*, also known as or referred to as a Patrol Training Officer (PTO) (hereinafter referred to as the "*Field Training Officer (FTO)*").

Effective July 1, 2015, *Corporals* who are assigned to field train a new hire shall receive five percent (5%) of their base pay in addition to their base pay, and in addition to either the three percent (3%) or five percent (5%) *Corporal* premium provided in Section 8.5, for each day they perform as *Field Training Officer (FTO)*. No other stacking of premiums is permitted.

Effective July 1, 2015, *Sergeants* who are assigned to field train a new hire shall receive five percent (5%) of their base pay in addition to their base pay for each day they perform as *Field Training Officer (FTO)*.

Section 8.3 Premium Pay for Detective and Detective Sergeant

Officers appointed as full-time *Detective* shall receive a five percent (5%) premium in addition to their base salary. *Sergeants* appointed as full-time *Detective Sergeant* shall receive a six percent (6%) premium in addition to their base salary.

Section 8.4 Premium Pay for School Resource Officer and K-9 Officer

Employees appointed as full-time *School Resource Officer* or *K-9 officer* shall receive a three percent (3%) premium in addition to their base salary.

Section 8.5 Premium Pay for Corporal

Officers assigned as full time *Corporals* shall receive a three percent (3%) premium in addition to their base pay for the duration of the assignment to *Corporal* status. In accordance with the terms and conditions of Attachment B, the Chief will assign no more than four *Officers* to *Corporal* status.

Corporals who are assigned primary supervisory responsibility in the temporary absence of a sergeant or acting sergeant assigned to the same shift for a period of time in excess of 7 consecutive regularly scheduled work shifts, during which the regularly assigned sergeant or acting sergeant does not perform any normal duty assignments, shall receive a 5% premium applied to his/her base monthly salary for every day within that period in excess of the initial 7 consecutive work shifts. This premium will not be in addition to the 3% *Corporal* premium.

Section 8.6 Acting Chief Pay

Sergeants formally designated as Acting Chief shall receive a 5% premium in addition to their base salary for each day they perform as Acting Chief.

Article 9 INCENTIVE PAYS

Section 9.1 Educational Incentive Program

An education premium shall be paid at one of the following rates to employees who have successfully completed a prescribed course of study through an accredited institution as set forth below and successfully completed the probationary period.

Level of Education	Monthly Base Salary Premium
▪ associate's degree	Two percent (2%)
▪ bachelor's degree	Four percent (4%)
▪ master's degree in an Approved Field of Study	Five percent (5%)

For the purposes of this section, an *Approved Field of Study* is designated to be:

- Business Administration
- Education
- Political Science
- Sociology
- Criminology
- English
- Psychology
- Computer Science
- Law & Justice
- Public Administration

Effective July 1, 2015, all bachelor's degrees will be paid at 100% of the educational premium; no *Field of Study* restrictions apply to bachelor's degrees.

Employees hired prior to *July 1, 1995*, who earned 90 quarterly college credits or the equivalent towards a bachelor's degree prior to January 1, 2012 shall be entitled to a two percent (2%) monthly base salary premium.

An *Employee* who does not possess an associate's degree, but who enrolls and obtains a minimum grade of a C in classes in an *Approved Field of Study* is eligible for tuition reimbursement, as per the *City's* personnel policies, in an amount not to exceed five hundred dollars (\$500) on an annual basis (*January 1 to December 31*).

Section 9.2 Longevity

An employee shall receive a longevity premium provided they have met all of the following criteria:

- A. have consistently met standards, expectations, and requirements of the position;
- B. have been employed as a commissioned officer of the *City of Mill Creek* for a minimum of seven (7) years; and,

Longevity premiums shall be awarded based on years of service as a commissioned officer of the *City of Mill Creek* according to the following schedule:

Greater than 7 years	Greater than 10 years	Greater than 15 years	Greater than 20 years	Greater than 25 years
2%	3%	4%	5%	6%
<i>All longevity premiums are calculated on base pay and are not cumulative.</i>				

If the employee fails to meet standards, expectations, and requirements of the position, the longevity premium will expire. If, at the employee's subsequent evaluation, the employee meets the standards, expectations, and requirements of the position, then the employee shall receive the longevity premium according to the above schedule.

Section 9.3 Stacking

Effective January 1, 2015, *Employees* may stack eligible longevity and education premiums when they have been employed as a commissioned officer of the *City of Mill Creek* for a minimum of eight (8) years. Effective July 1, 2015, *Employees* may stack eligible longevity and education premiums when they have been employed as a commissioned officer of the *City of Mill Creek* for a minimum of seven (7) years.

Article 10 LEAVES

Section 10.1 General

Accrued Annual Leave and Holiday Bank hours shall be scheduled in accordance with the July 10, 2012 Memorandum of Understanding, as amended, that is attached and incorporated by reference herein as Attachment C.

Section 10.2 Holidays

- A. The *City* observes the following ten (10) holidays: *New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day after Thanksgiving, Christmas Eve Day, Christmas Day.*

Section 10.3 Holiday Bank

- A. In lieu of holidays listed in *Section 10.2.A*, all *Employees* who have completed the Academy will receive eighty (80) hours of holiday bank on *January 1* of each year. These hours are banked and can be used in the same manner as annual leave. While attending the academy, holidays are taken and paid on the days City Hall closes in observation of the holiday to the extent the academy is closed for the holiday on the same day. In instances where an entry level employee completes the academy mid-year, the employee will receive holiday bank equivalent to the number of holidays remaining in the year as of the completion of the academy. New lateral employees who are fully-commissioned at the time of hire will receive a holiday bank equivalent to the number of holidays remaining in the year as of the date of the employee's first day of scheduled work.
- B. Banked holiday hours may be used at any time during the year provided that:
1. Requests to use banked holiday hours shall be submitted in accordance with *Article 10, Section 1*,

2. Employees shall be paid for any unused banked holiday hours for holidays occurring between *January 1* and the time of the *employee's* separation from the *City* within that same calendar year; and,
 3. Employees shall reimburse the *City* for any holiday hours used in advance of the holiday occurring at the time of an employee's separation from the *City*. Reimbursement shall be deducted from the employee's final paycheck. At the time of hire, employees shall acknowledge this term of employment by signing the form exhibited as *Attachment D*.
- C. All unused banked holiday hours shall be forfeited at the end of each calendar year. If the *City* cancels an employee's approved banked holiday hours request during the period *November 15* through *December 31* of any year and the time off cannot be rescheduled to a mutually agreeable time prior to the end of the calendar year, provided the employee has had their written request for leave approved by the *Chief* or his designee at least forty-five (45) calendar days prior to the leave, the *City* agrees to allow carryover of the canceled banked holiday hours until *March 31* of the subsequent year.
- D. All employees are entitled to one floating holiday (8 hours) per year. New employees whose hire date is October 1 or later do not accrue a floating holiday for that calendar year. The floating holiday shall be taken by an employee at any time during the calendar year with prior approval of their assigned sergeant. Employees may not take the floating holiday during their trial period. Floating holidays may not be carried over from one calendar year to the next; however, if an employee's trial period crosses over into the next calendar year, the employee may carry the prior calendar year's floating holiday over to the next calendar year. Employees who are separated from employment with the *City* during their trial period will not be paid for unused floating holiday.
- E. Employees who start a shift on the calendar date of an observed holiday shall receive pay for that shift at one and one-half (1.5) times their regular rate of pay.

Section 10.4 Annual Leave

Annual leave shall be granted to all *Employees*.

- A. Paid annual leave will be granted according to the following schedule and will be accrued monthly.

Months of Service	Hours per Month
0-48	8
49-84	10
85-120	12
121-180	14
181+	16

- B. The maximum number of annual leave hours which may be carried over from December 31 of one year to January 1 of the next year is three hundred (300) hours. Accrued hours in excess of three hundred (300) will be forfeited. If the *City* cancels an employee's approved vacation request of more than four (4) consecutive days during the period *November 15* through *December 31* of any year and the time off cannot be rescheduled to a mutually agreeable time prior to the end of the calendar year and such cancellation causes the accrual to go over the three hundred (300) hour limit, provided that the employee has had their written request for leave approved by the *Chief* or his designee at least forty-five (45) calendar days prior to the leave, the *City* agrees to allow the carryover of any time over three-hundred (300) hours of the canceled annual leave until *March 31* of the subsequent year.
- C. All employees are encouraged to take annual leave during the year in which it is earned. After one (1) year of employment, employees shall take a minimum of five (5) days of annual leave per calendar year. The minimum increment in which annual leave may be taken is one (1) hour.
- D. Upon an employee's separation from the *City*, the *employee* or beneficiary shall be paid for unused annual leave at their current rate of pay. Cash payment for unused annual leave upon separation may not exceed three-hundred (300) hours.

Section 10.5 Sick Leave

- A. Any employee who expects to arrive late or to be absent from work must advise their supervisor or the *Chief* as early as possible before the employee's scheduled starting time, but for swing and graveyard shift employees, this notice shall normally be not less than two (2) hours before the employee's scheduled starting time. Frequent tardiness or absenteeism will be treated as a cause for disciplinary action.
- B. Sick leave with pay for full-time regular employees shall be accrued at the rate of eight (8) hours per month. Any sick leave accrued but unused in any year shall be accumulated for succeeding years up to a maximum one thousand forty (1,040) hours, or six (6) months. Employees who are granted paid sick leave shall continue to accrue sick leave at the indicated rate during such absence.
- C. An employee eligible for sick leave with pay shall be granted such leave for the following reasons:
1. illness or physical incapacity of the employee,
 2. forced quarantine of the employee in accordance with community health requirements,
 3. physical or mental health examinations of employee or member of employee's immediate family,
 4. extension of bereavement leave,
 5. to care for the employee's child because the child has a health condition that requires treatment or supervision, or
 6. to care for the employee's spouse, parent, parent-in-law, or grandparent who has a serious health condition or an emergency condition.
 7. When an employee is eligible under the Family Medical Leave Act to take bonding leave

to bond with his or her child that was born or adopted within 12 months of the use of such leave, up to 160 hours of accrued sick leave may be used concurrently with approved FMLA bonding leave even if the employee's child or spouse does not have any health condition requiring treatment, supervision or care.

Sick leave shall be taken in no less than fifteen (15) minute increments.

- D. The *Chief* may require the absent employee to obtain a physician's statement stating the cause and circumstances of the absence for the purpose of assuring that employees are utilizing sick leave benefits for the purposes intended by the *Agreement*. Failure to obtain a physician's statement may be cause for denial of sick leave pay for the period of absence.
- E. Any employee found to have abused sick leave by falsification or misrepresentation may be subject to disciplinary action.
- F. Employees shall not be paid for any unused sick leave benefits upon separation of employment except in the following circumstances:
 - 1. *Employees who* have served the *City* for a period of ten (10) consecutive years shall receive twenty-five percent (25%) of their unused sick leave balance upon retirement from law enforcement. Retirement means:
 - a. an *Employee* is no longer working for the *department* or another law enforcement/security position, and;
 - b. the *Employee* has applied for, is eligible and is receiving retirement benefits through the LEOFF retirement system.
 - 2. *Employees who* die while off-duty at any time during their employment with the *City* will receive twenty five percent (25%) of their unused sick leave balance.
 - 3. *Employees who* are killed in the line of duty will receive one hundred percent (100%) of unused sick leave balance. The *Employee* must be a current *employee* of the *City of Mill Creek* and must be performing official duties consistent with the laws, regulations, and policies of the *City of Mill Creek* at the time of death.

Section 10.6 Leave Related to the Birth or Adoption of a Child

Employees who miss work due to pregnancy related complications or illness shall be granted all rights and benefits as an employee off work due to illness. In addition, the *City* will provide all state and federal benefits and rights required to be provided to employees relating to the birth or adoption of a child, including, but not limited to, those benefits required pursuant to the Family Medical Leave Act, the Washington Family Leave Act, Washington State Family Care Act, and the Washington Law Against Discrimination.

Section 10.7 Jury Duty

Time off with pay will be granted for jury duty provided that the employee assigns monies received for such service to the *City* and provided that they return to work on any day they are excused from service, when four or more hours of the employee's scheduled work day remain.

Section 10.8 Unpaid Leave of Absence

Leaves of absence without pay may be granted at the discretion of the *City Manager* for good cause. Prior to leave without pay being granted, all annual leave time, compensatory time off, holiday bank hours, and the floating holiday must be exhausted. If the leave qualifies for one of the allowed uses listed in Section 10.5.C of this Agreement, accrued sick leave must also be exhausted. At any time during the leave of absence, for good cause or to maintain the efficiency or effectiveness of the department, the *City Manager* may require the employee to return to work. No annual or sick leave benefits or any other benefits shall accrue, or be paid, while an employee is on leave without pay. An employee on an approved leave of absence without pay may continue their health insurance benefits by paying the full premium cost to the *City* in advance for each month of absence.

Section 10.9 Military Leave

- A. Any *Employee* who is a member of the *Washington National Guard* or *Federal Reserve Military Unit* is entitled to be absent from their duties with the *City* with full pay for up to twenty-one (21) days during each calendar year while engaging in the performance of officially ordered military duty and while going to or returning from such duty. Such leaves shall be in addition to any other leaves or annual leave benefits. During the period of military leave, the employee shall continue to accrue all leave benefits and to receive their normal rate of pay.
- B. Employees who are called or volunteer for services with the *Armed Forces of the United States* or the *Washington National Guard* are entitled to be considered for reinstatement in accordance with the provisions of the laws of the *State of Washington*.
- C. An employee promoted to fill a vacancy created by a person serving in the armed forces will hold such position on a temporary basis, subject to the return of the absent *employee*. The promoted employee may be restored to the position he held previously or another equivalent position, if available.
- D. A new employee hired to fill a vacancy created by a person serving in the armed forces shall hold such position subject to the return of the absent employee. The new employee may be placed in an equivalent position or, if no such position exists, may be subject to separation.

Section 10.10 Bereavement Leave

- A. In the event of a death in the employee's immediate family, the employee may be granted leave of absence not to exceed three (3) working days with pay.
- B. For bereavement leave purposes the employee's immediate family is defined as the employee's spouse, child, parent, brother, sister, guardian or grandparent, mother-in-law, father-in-law, or any other person residing with or legally dependent upon the employee. Unusual circumstances may receive individual consideration by the *City*.

Section 10.11 Temporary Assignments and Light Duty

Employees who have a verified medical condition that substantially restricts or prohibits them from performing their primary duty assignment may be afforded a temporary or light duty

assignment if such assignment is available. The *Chief*, or a designee, may accommodate requests for temporary or light duty assignments, when available, under the following conditions:

- A. a temporary or light duty assignment shall be available only during the period of time that the employee is unable to perform their primary assignment.
- B. the employee is qualified and capable of performing the temporary or light duty assignment.

If available, temporary or light duty assignments will not conflict with any restrictions or required accommodations as defined by the employee's physician.

Temporary or light duty assigned employees will be scheduled by, and work under the direct supervision of, an assigned sergeant, commander or the Chief.

Temporary or light duty assignment requests, under normal circumstances, will only be considered if the anticipated duration of the medical condition is two (2) consecutive calendar weeks or more. The anticipated duration must be verified in writing by a physician prior to consideration.

The *City* will first make use of all available temporary or light duty assignments within the police department operation. If a temporary or light duty assignment is not available within the police department, or if those available hours/duties have been expended, the employee may be offered another assignment within the *City* if available. If a temporary or light duty assignment is offered and accepted outside of the *department*, including passports, the employee will be compensated at a rate of pay for that position classification. Such compensation may be less than the employee's standard hourly/monthly rate of pay.

If an employee gains advance knowledge of a medical condition that may be cause to request a temporary or light duty assignment, the employee is encouraged to provide the *City* notice as soon as possible and practical.

If two (2) or more employees request temporary or light duty assignments during the same time period, or if requested periods overlap, the *Chief* will consider such requests based on the following criteria in order of importance:

1. date that the temporary or light duty request was received.
2. preference will be given to medical conditions that occurred on-duty.
3. seniority of the employee, without preference to rank or assignment.

Article 11 HEALTH AND WELFARE

Section 11.1 Eligibility for Benefits

- A. Employees are eligible for employee benefits as described in *Articles 8, 9, and 10*.

Section 11.2 Health Care Insurance

- A. For 2015 and 2016, the *City* will provide *Employees* the option of enrollment in one of two health care insurance plans offered by the Association of Washington Cities (AWC) Benefit Trust. Employees may select either AWC HealthFirst “Zero” No Deductible or the AWC High-Deductible Health Plan (HDHP) with optional Health Savings Account (HSA).

Effective January 1, 2017, employees have the option of enrollment in one of two health care insurance plans offered by AWC. Employees may select either AWC HealthFirst 250 or the AWC HDHP with optional HSA.

- B. Health care insurance may only be purchased in increments of one month. New employees are eligible for coverage on the first day of the calendar month following employment. However, employees hired on the first day of the calendar month shall be eligible for health care coverage immediately.
- C. When an employee is separated from employment with the *City*, health care insurance benefits will continue until the last day of the month of separation from employment. The *City* will pay its portion of the premium cost for that entire month and the employee is responsible for his/her share of the premium, if applicable.
- D. The *City* shall contribute one hundred percent (100%) of the premium for the employee’s dental and vision insurance, and one hundred percent (100%) of the premium for dependents’ dental and vision insurance. However, Employees agree that they will pay the additional monthly amount equal to the difference in premiums between Dental Plan A and Dental Plan F for any given year.

For any AWC health care insurance plan selected, the *City* shall contribute ninety percent (90.0%) of the premium for the employee’s medical insurance, and ninety percent (90.0%) of the premium for dependents’ medical insurance.

Effective January 1, 2016, employees who enroll in the AWC HDHP with HSA option shall receive fifty percent (50.0%) of the premium cost-savings from the other applicable AWC health care insurance plan offered by the *City* (*i.e.* AWC HealthFirst “Zero” No Deductible in 2016 and AWC HealthFirst 250 in 2017). A dollar amount equal to fifty percent (50.0%) of the premium cost-savings from the premium level enrolled (*e.g.* employee only, employee + 1 dependent, etc.) will be deposited by the *City* into employees’ HSAs on a monthly basis. HSA contributions will only be made for the employee and dependents who are enrolled in the AWC HDHP with HSA. If an Employee enrolls in the AWC HDHP and declines coverage for any dependents, no HSA contributions will be made for such dependents. However, an Employee declining coverage for dependents may be eligible for alternative fringe benefits pursuant to Section 11.2.E. Employees will be responsible for all administrative fees charged by the bank administering the employee’s HSA.

- E. The *City* will provide employees with a *Section 125* plan that allows for any premium payment made in accordance with that plan to be made on a pre-tax basis. Any employee hired on or before July 1, 2015 who chooses not to purchase health insurance benefits for themselves or their eligible dependents may choose to have the *City* pay up to fifty percent (50%) of the amount that the *City* would have contributed towards employee/dependent health insurance for use towards a choice of alternative fringe benefits, subject to any taxes or withholdings required by law. This choice does not apply to any employee who declines coverage because they are an eligible dependent of another full-time employee. The choice of alternative fringe benefits include legally accepted *Section 125* expenditures, alternative insurance coverage (to the extent permitted by the Affordable Care Act without penalty to the *City*), *MEBT* contributions, or deferred compensation contributions. Employees have no right to receive cash in lieu of these alternative fringe benefits. Employees may choose during the *City's* open enrollment period whether they will waive insurance coverage for eligible dependents. Re-enrollment to *City* coverage can be accomplished during the open enrollment period or immediately if other coverage is terminated, as provided in *City* coverage re-enrollment contracts. Upon re-enrollment, payment towards alternative fringe benefits will be reduced or eliminated accordingly.

To comply with the requirements of the Affordable Care Act (ACA) or otherwise avoid IRS penalties imposed in conjunction with the ACA, the *City* may require employees who choose to participate in the benefit described in this Section to provide proof of enrollment in other employer-sponsored group health coverage (*e.g.* proof of coverage through the employer of a spouse). Employees' participation in the benefit described in this Section may be restricted by the *City* if it will result in a violation of the ACA or otherwise result in the imposition of penalties, and subject to the restrictions of Section 11.2.F below.

- F. An employee who is eligible for *City*-provided insurance coverage may elect to decline medical and/or dental coverage provided that the *City* is able to maintain its required underwriting participation requirements. An employee may not decline participation in vision insurance coverage. When the participation requirement threshold is reached, the opportunity to decline coverage will be extended to employees on the basis of seniority. The option to decline, and any re-enrollment options, will be subject to any and all underwriting requirements put forward by the provider.

Section 11.3 Municipal Employee Benefit Trust (MEBT)

- A. Each employee shall contribute one hundred percent (100%) of the amount of the current employee's tax under the *Federal Insurance Contributions Act* to *MEBT*, and the *City* shall contribute one hundred percent (100%) of the current employer's tax under the *Federal Insurance Contributions Act*.
- B. Each employee shall notify the *Plan* Administrator on the designated form at least thirty (30) days prior to the anniversary date of the *Plan* of their intention to make any extra employee contributions. Extra employee contributions shall be limited per the *MEBT* plan document. Such extra employee contributions may be handled through deductions from monetary compensation each pay period.
- C. Benefits shall vest according to the *MEBT* plan.

Section 11.4 Deferred Compensation Plan

Employees may defer a portion of their taxable income into a retirement savings plan which is subject to federal rules and regulations governing deferral limits, tax liability, and restrictions on withdrawals.

Section 11.5 Retirement Program

Employees are required to participate in the *Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System* as long as their compensated hours continue to qualify them for service credit under the appropriate plan. Participating employees shall pay any required amounts towards the contribution costs by means of a payroll deduction.

Article 12 GRIEVANCE PROCESS

The grievance procedure is established to further good employee/employer relations by providing employees with a means for airing problems or complaints regarding their employment with the *City*. It is the *City's* policy to provide appropriate avenues of communication to meet a variety of needs and to encourage honest and open communication in the employee/supervisor relationship. Employees and supervisors are encouraged to resolve problems and pursue solutions through an informal process of communication and problem-solving. It is in the interests of the organization that problems be resolved at the lowest level possible. If, however, an employee feels that after working with their supervisor a satisfactory solution has not been reached, a formal grievance may be filed. No retaliation, disciplinary action or discrimination shall occur because of the filing of a grievance, nor shall such filing prevent the *City* from taking appropriate personnel actions.

Section 12.1 Definition and Eligibility

A grievance is a dispute, disagreement, or complaint by an employee or party to the agreement alleging a violation of this agreement. Employees who are still in their trial period are not eligible to grieve their discharge. Claims of employment discrimination, other than those related to union membership, or any harassment related claim, are not subject to the grievance procedure.

Grievances not involving disciplinary actions shall be made only as provided in *Section 2* of this *Article*. Grievances involving disciplinary actions may be made either as provided in *Section 2* of this *Article* or through the civil service appeals process, but not both. The *Employee* shall be deemed to have selected an alternative when a written notice is first filed under either alternative. No relief shall be available through the *civil service* appeals process as to any matter which has been submitted as a grievance under the terms of this agreement or as to any matter not within the jurisdiction of the *Civil Service Commission*.

Grievances shall be submitted in writing and contain: (1) a brief description of the facts, (2) the *Article* or *Section* of the Agreement violated, and (3) the remedy requested. The grievance shall be dated and signed by the employee or Guild representative.

Section 12.2 Procedure

A grievance shall be handled in the following manner:

- Step 1. The Employee or Guild representative will present the grievance to the employee's supervisor within ten (10) calendar days of its alleged occurrence or when the *Employee* should reasonably have discovered the alleged occurrence. The supervisor shall respond, in writing, to the complaint within ten (10) calendar days of receiving the complaint.
- Step 2. In the event no agreement is reached or the *Employee* is not satisfied with the outcome, the Employee or Guild representative may submit a written complaint to the *Chief* within ten (10) calendar days of receipt of the unsatisfactory response. Acknowledgment of Employee's complaint shall be made in writing within five (5) calendar days, and every effort shall be made by the *Chief* to resolve the complaint, in writing, within ten (10) calendar days of its acknowledgment.
- Step 3. In the event no agreement is reached or the Employee is not satisfied with the outcome, the Employee or Guild representative may submit a written complaint to the *City Manager* within ten (10) calendar days of receipt of the unsatisfactory response. The *City Manager* shall acknowledge receipt of the complaint, in writing, within five (5) calendar days of its presentation. The *City Manager* may conduct an informal hearing or investigation of the grievance. The *City Manager's* decision, in writing, shall be made within twenty (20) calendar days of the acknowledgment.
- Step 4. Without limiting the definition and eligibility of a grievance as described above, *Step 4* does not apply to written reprimands. In the event no agreement is reached or the Employee is not satisfied with the *City Manager's* decision from Step 3, the Guild may submit a written *Notice of Arbitration* to the *City Manager* within ten (10) calendar days of receipt of the unsatisfactory response. The *City Manager* shall acknowledge receipt of the *Notice of Arbitration*, in writing, within five (5) calendar days of its presentation. The arbitration shall proceed as follows:
 - a) The cost of any hearing room and the cost of a shorthand reporter, if any, shall be borne equally by the *City* and the *Guild*. Each party shall pay the expenses of their own representatives. The cost and expenses of the arbitrator shall be borne solely by the non-prevailing party. In the event the arbitrator is unable to determine who the prevailing party is, those expenses shall also be borne equally by the *City* and the *Guild*.
 - b) Within ten (10) calendar days of acknowledging the *Notice of Arbitration*, the parties shall attempt to jointly choose an arbitrator, if after ten (10) calendar days, the parties have not been able to reach agreement on an arbitrator, they will jointly apply in writing to the nearest office of the *American Arbitration Association (AAA)* or another arbitration service agreed to by the parties for a list of five (5) arbitrators. Within three (3) calendar days of receiving the list of arbitrators each party shall strike two (2) names. The party to do so first shall be determined by coin flip. The remaining unstricken name shall serve as arbitrator for the grievance.

- c) The administrative record of the grievance shall be provided by the *City* to the arbitrator at least three (3) days before the arbitration session commences.
- d) Unless otherwise agreed, the arbitration shall be conducted at the offices of *AAA*. The *Employee* shall be entitled to appear at the arbitration with a *Guild Representative*. Both parties shall be allowed to have legal representation. The arbitrator shall have no power to render a decision that will add to, subtract from, or alter, change or modify in any way the terms of this *Agreement*, but shall be restricted solely to resolving the issue presented by the challenged action.
- e) The arbitration shall be completed and a decision issued within thirty (30) days of the deadline for submitting post-hearing briefs to the arbitrator. The arbitrator's decision shall be written, shall review the facts of the grievance and the arbitrator's conclusions, shall state the arbitrator's decision on the issues presented, and shall identify the prevailing party.
- f) Any time limits stipulated in the grievance procedure may be extended for stated periods of time by the parties by mutual written agreement. All dates shall be calculated as calendar days.

Article 13 WORK STOPPAGES

The *City* and the *Guild* agree that the public interest requires efficient and uninterrupted performance of all *City* and departmental services and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. Specifically, the *Guild* shall not cause or condone and no *Employee* shall commit any work stoppage, including any strike, slowdown, refusal to perform assigned duties, sick leave, or other absence which is not bona fide, or other interference with *City* or departmental functions. In the event of such work stoppage or interference, the *Guild* agrees to take every appropriate step to promptly end such work stoppage or interference.

Article 14 UNIFORMS

Section 14.1 Uniform Issuance and Replacement

Each *Employee* who is required to wear a uniform will be issued uniforms pursuant to the *City's* uniform policy. The *City* shall replace at the *City's* expense any *City* issued uniform that is no longer serviceable as a result of on duty damage or wear and tear.

Section 14.2 Uniform Cleaning

Upon receipt of a dry cleaning bill, the *City* shall pay a selected dry cleaner the cost of cleaning one (1) uniform shirt and pants four times per fourteen (14) day cycle. The *City* shall pay for cleaning of sweaters and outerwear two (2) times per year. The *City* shall not pay for the cost of cleaning jumpsuits unless otherwise provided by *City* policy. If the *City* requires detectives to regularly wear a suit and tie on a daily basis as a regular required uniform while working at the Police Department, the *City* will pay a selected dry cleaner the cost of cleaning such uniform. The *City* will not pay cleaning costs under this Section for times a Detective is required to wear a suit and tie for a special circumstance, such as attendance in court.

Section 14.3 Bullet-Proof Vests

The *City* will provide bullet-proof vests which shall be worn in accordance with the *Police Department Policy & Procedures Manual*.

Section 14.4 Annual Equipment Allowance

For 2015 (expiring December 31, 2015), as a continuation of the practice from the expired 2012-2014 Agreement, the *City* shall purchase or reimburse Employees for duty-related footwear and/or collar microphones in an amount not to exceed a combined biennial total of \$250 (two hundred and fifty dollars) including any applicable taxes and/or shipping costs. Footwear and/or Collar Microphone purchases and/or reimbursements may be made upon hire and every other year thereafter. The *City* will not pay more than \$250 for any combination of the footwear and/or collar microphone in any two year period per individual Employee.

Effective January 1, 2016, the *City* shall provide Employees with a flat-rate payment for the purchase of duty-related equipment not provided by the *City* (e.g. footwear, collar microphones, etc). Receipts are not required. On or about January 5, 2016, each employee will be given a flat-rate payment of \$250 for the purchase of duty-related equipment, including the payment of any associated taxes or shipping costs. On an annual basis thereafter (i.e. January 5 of each year), employees shall be given a flat-rate payment of \$125. Newly-hired employees shall be given a flat-rate payment of \$250 on the date they are hired but will not qualify for additional payments in the year of their hire.

Article 15 OFF-DUTY EMPLOYMENT

Employees seeking employment during off-duty hours shall submit a written request for approval to the *Chief*, which fully describes the nature of the work to be performed and the hours to be worked. The request will be denied if the *Chief* determines that the off-duty employment involves misuse of the commission, could adversely affect the *Employee's* on-duty work performance, could adversely affect the *Department's* image or efficiency, or could be a conflict of interest.

Article 16 MANAGEMENT RIGHTS

A. The *Guild* recognizes the prerogative of the *City* to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority.

B. The *City* has the right to schedule overtime work as required in a manner most advantageous

to the department and consistent with the requirements of municipal employment and the public safety.

- C. It is agreed by the parties that every incidental duty connected with operations enumerated in job descriptions is not always specifically described.
- D. The *City* reserves the right to discharge or discipline an Employee for cause and to lay off personnel for lack of funds or for the occurrence of conditions beyond the control of the *Department*.
- E. The *City* shall have the right to determine reasonable schedules of work and to establish the methods or processes by which such work is performed.
- F. No policies or procedures covered in this *Agreement* shall be construed as delegating to others or as reducing or abridging any of the authority conferred on the *City* or its officials, including but not limited to:
 - 1. The responsibility of the *City Manager* as the *Chief Executive Officer* of the *City* for enforcing the laws of the *State* and *City*, recommending an annual budget or directing the proper performance of all executive departments;
 - 2. The responsibility of the *City Council* for the enactment of ordinances, the appropriation of monies and final determination of employee compensation;
 - 3. The responsibility of the *Civil Service Commission*, as provided by *City* ordinance, for determining status and tenure of Employees, certifying registers, and reviewing appointments for the police service;
 - 4. The responsibility of the *Chief* and designees are governed by ordinances, *Civil Service Rules*, and *Departmental* rules, as limited by the provisions of this *Agreement*, to:
 - a. recruit, assign, transfer or promote members to positions within the *department*;
 - b. take disciplinary action against *Employees*;
 - c. determine methods, means, and personnel necessary for *departmental* operations;
 - d. control *departmental* budget; and
 - e. take whatever actions are necessary in emergencies in order to assure the proper functioning of the *Department*.

Article 17 EMPLOYEE'S RIGHTS

- A. All *Bargaining Unit Members* shall be entitled to the protections that are set forth in this *Article*.
- B. *Bargaining Unit Members* shall be informed in writing about the nature of any investigation that they are requested or directed to participate in by the *Department*, either as a witness or as a suspect. *Bargaining Unit Members* shall be provided with this information within a reasonable period of time (at least seventy-two (72) hours except in the case of a bona fide emergency) before any interrogation or questioning of the *Bargaining Unit Member*

commences. The information provided to *Bargaining Unit Members* in this regard shall be sufficient to reasonably apprise the *Bargaining Unit Member* of the specific nature of the allegations that are the subject of the investigation.

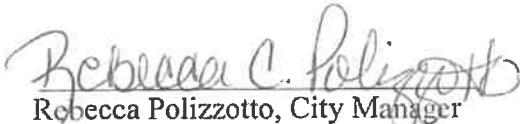
- C. Any interrogation or questioning of a *Bargaining unit member* shall take place at a reasonable hour, preferably when the employee is on duty unless the exigencies of the investigation dictate otherwise. Where practical, interrogations shall be scheduled during regular business hours, Monday through Friday.
- D. All *Bargaining Unit Members* who are asked to participate in a *Departmental* internal investigation, either as a witness or as a suspect, will be advised before they are questioned that they have the right to have a *Guild representative* and/or a *Guild attorney* present to advise and/or to assist them during such questioning. Before commencing any questioning, the *City* will also make a reasonable effort to accommodate the schedule of any *Guild representative* or *Guild attorney* that a *Bargaining Unit Member* asks to be present during questioning, so that the representative or attorney of the *Bargaining Unit Member's* choice will have a reasonable opportunity to be present during the questioning given the particular circumstances presented.
- E. Questioning of *Bargaining Unit Members* will be conducted in accordance with the federal and state constitutional and statutory rights of the *Bargaining Unit Member*. For instance, no *Bargaining Unit Member* will be required to take a polygraph examination for any purpose connected with an internal investigation.
- F. Questioning shall not be overly long and *Bargaining Unit Members* will be afforded a reasonable opportunity during the questioning process to attend to personal necessities, meals, telephone calls, and rest periods. *Bargaining Unit Members* will also be provided with a reasonable opportunity to caucus with their *Guild representative* and/or *Guild attorney* upon request during the questioning process.

Article 18 SAVINGS CLAUSE

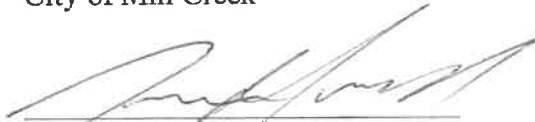
All provisions of this *Agreement* shall be complied with unless any of such provisions shall be declared invalid or inoperative by a court of competent jurisdiction. In such event, either party may request renegotiations of such invalid provisions for the purpose of adequate and lawful replacement thereof. Such findings shall have no affect whatsoever on the balance of this *Agreement*.

Article 19 DURATION OF THIS AGREEMENT

This *Agreement* shall be effective and shall remain in full force from January 1, 2015 through December 31, 2017.



Rebecca Polizzotto, City Manager
City of Mill Creek

8/4/2015
Date


Jesse Mack, Guild President
Mill Creek Officers Guild

8/3/2015
Date

Attest:


Kelly Cheln, City Clerk
City of Mill Creek, Washington

8/4/2015
Date

Attachment A

to 2015-2017 Labor Agreement

Non-Sergeant's Salary Schedule

January 1, 2015: The following salary schedule shall be in effect, reflecting a 2.25% across the board increase.

Year	Step A (0-12 mo)	Step B (13-24 mo)	Step C (25-36 mo)	Step D (37-48 mo)	Step E (49-60 mo)	Step F (61 + mo)
2014 (Ref. only)	\$4,828	\$5,125	\$5,422	\$5,719	\$6,016	\$6,471
2015	\$4,937	\$5,240	\$5,544	\$5,848	\$6,151	\$6,617
2016	\$5,085	\$5,398	\$5,710	\$6,023	\$6,336	\$6,815
2017	\$5,212	\$5,532	\$5,853	\$6,174	\$6,494	\$6,985

Effective January 1, 2016 the above referenced pay schedule shall be in effect and reflects a 3.0% across the board increase.

Effective January 1, 2017 the above referenced pay schedule shall be in effect and reflects a 2.5% across the board increase.

Sergeant's Salary Schedule

January 1, 2015: The following salary schedule shall be in effect, reflecting a 2.25% across the board increase.

Year	Step A (0-12 months)	Step B (13-24 months)	Step C (25-36 months)
2014 (Ref only)	\$6,796	\$7,136	\$7,492
2015	\$6,949	\$7,297	\$7,661
2016	\$7,157	\$7,515	\$7,890
2017	\$7,336	\$7,703	\$8,088

Effective January 1, 2016 the above referenced pay schedule shall be in effect and reflects a 3.0% across the board increase.

Effective January 1, 2017 the above referenced pay schedule shall be in effect and reflects a 2.5% across the board increase.

Attachment B

[add Memo]

Attachment B

MEMORANDUM

TO: Bart Foutch, MCPG President
FROM: Bob Crannell, Chief of Police 
DATE: July 10, 2012

SUBJECT: CORPORAL POSITION

Pursuant to our productive discussions on June 12, June 19, and July 9, 2012, the following summarizes the City's planned initial process of establishing a Corporal position.

- 1: The Department intends to use the attached position description for the new Corporal Position.
- 2: The Department will allocate organizationally a Corporal position for each shift configuration. Appointments will be made based on staff interest and established qualifications.
- 3: The following testing/evaluation process for Corporal appointments will be used:
 - a) Submittal of a Letter of Interest and a Professional Resume to the Chief or his designee,
 - b) A written test consisting of no more than 50 questions. The questions will solicit responses related to: Policies, Procedures, the Revised Code of Washington, Current and Applicable Case Law, and the Collective Bargaining Agreement,
 - c) The questions will consist of responses in the form of true/false, fill-in the blank, and multiple choice. No narrative responses will be included in the written test, and
 - d) The written test/evaluation will be blind scored.

Candidates, regardless of their performance on the written component, will participate in an Oral Interview. The Oral Interview Panel will consist of a Mill Creek Police Department Sergeant selected at random, a current Member of the Department's assigned Interview Cadre, and a fully commissioned law enforcement officer from an outside jurisdiction.

The final component will be a Recommendation Panel consisting of all regularly appointed Mill Creek Police Department Sergeants. The Recommendation Panel will be provided with all testing/evaluation material and the most recent Performance Evaluation of the Candidate.

The Recommendation Panel, upon completion of all interviews, will present the Chief of Police with an un-ranked Roster consisting of the names of those eligible and deemed qualified to serve as Corporals.

SUBJECT: CORPORAL POSITION
Page 2 of 2

The Chief will appoint the Corporal(s) at his discretion and may seek input from the Recommendation Panel should he choose to do so.

- 4: To make this position one of career development, the Department will host an annual Corporal's test/evaluation whether open positions are available or not. The Roster developed by the Recommendation Panel at each subsequent test/evaluation will supersede any and all previous Rosters and/or recommendations.**
- 5: Corporals selected and appointed will perform their assigned duties for a period of not less than 1 (one) year unless removed for any one or more of the following reasons:**
 - a) Any sustained disciplinary action above a Written Reprimand,**
 - b) Any evaluation consisting of an overall rating of Below Standard,**
 - c) Upon the written recommendation of 3 (three) or more Sergeants, including the Corporal's current Sergeant.**

After the 1 (one) year period has passed, Corporals may indicate their intention and desire to remain as a Corporal for the following year. This intention, and recommendation from their current Sergeant, must be included in the interested Corporal's annual evaluation. Corporals eligible and recommended may remain as a Corporal for no more 4 (four) years. Corporals may vacate their position voluntarily after 1 (one) year.

Once the Corporal has indicated his/her intention to vacate the position, or is removed as noted above, he/she will be removed from the Roster.

- 6: After the receipt of the initial Roster, and upon appointment of the position by the Chief, Corporals will bid shifts based on their Department seniority. Subsequent shift bids and assignments shall be based on established tenure as a Corporal and/or Department seniority if more than one Corporal was appointed at the same time.**

Corporals shall bid shifts following the Sergeants, but prior to the Patrol Officers.

This, like other new programs, will need some adjustment and amendments over time to make sure that the program is beneficial and that it meets the ever changing dynamics of the Department. We hope that the above process will be successful, but recognize that it may change over time and need to be re-evaluated and modified as needed.

Attachment C

[add MOU]

Attachment C



MILL CREEK OFFICER'S GUILD

P.O. Box 13261
Mill Creek, WA 98208
www.mcpog.org

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE CITY OF MILL CREEK (CITY)

AND

THE MILL CREEK POLICE OFFICER'S GUILD (GUILD)

The Memorandum of Understanding ("MOU") between the City and the Guild establishes a process for determining scheduling and priority of accrued leave requests. The process will enable the City to plan for training and other manpower issues, and the Guild members to plan vacations in advance.

The City and the Guild agree as follows:

- 1) The City shall finalize and post the work schedule for the twelve month rotation by August 1st. The City will simultaneously circulate a leave request roster, covering the first six month period of the rotation, October through March, for the purpose of requesting accrued leave. Guild members will use this roster to mark requested leave for the first half of the rotation, October through March, by September 15th. By February 1st, the City shall circulate a leave request roster covering the second six month period of the rotation, April through September, for the purpose of requesting accrued leave. Guild members will use this roster to mark requested leave for the second half of the rotation, April through September, by March 15th. Accrued leave means annual leave, earned compensatory time off, holiday bank, and floating holiday. Guild members shall have 24 hours to place their vacation bid. If a member fails to make a bid within 24 hours they shall be skipped. Once the next bid has been placed, the roster returns to the skipped member for an immediate bid. The roster will then be forwarded to the next member. In the event a member is on days off, the on duty supervisor shall contact the member and notify them that their 24 hour window is in effect.
- 2) The City shall then schedule the accrued leave requests in the following order: sergeants, by time in rank, *i.e.* the most senior sergeant will have their request granted first, then followed by all other employees in order of seniority. No more than 50% of any one patrol squad, and no more than six employees assigned to patrol, will be authorized leave at the same time. No more than three sergeants will be authorized accrued leave at the same time. No more than 50% of those assigned as detectives will be authorized accrued leave at the same time.
- 3) If an employee submits and obtains approval of leave pursuant to Article 10, Section 10.4(B), and due to unforeseen or emergent circumstances the leave request is denied, those leave hours cancelled will be granted an extension in addition to

the 300 hour limit until March 31st of the following calendar year. If the City cancels a member's accrued leave granted during the above listed bidding process the City shall restore all cancelled accrued leave.

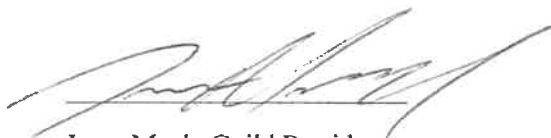
- 4) Accrued leave not scheduled in accordance with the paragraphs above in this agreement shall be determined on a first come first served basis with the following stipulations; shifts with five (5) employees assigned shall be allowed to have a maximum of two employees off at one time; shifts with four (4) employees assigned shall be allowed to have a maximum of two employees off at one time; shifts with three (3) employees assigned shall be allowed to have a maximum of one employee off at one time. For the purposes of determining the number of officers assigned to a shift, officers assigned as Bike Patrol Officers and/or SRO Officers shall not factor into the equation. The assigned shift Sergeant and assigned Corporal are discouraged from taking leave concurrently. In the event that the shift Sergeant and Corporal request the same days off, every effort shall be made to fill one of the positions with a shift swap, therefore providing the proper supervision. If this is not possible, the vacation request shall be governed by the preceding guidelines. Leave applies to vacation, holiday and / or compensatory time. Unforeseen sick leave and bereavement leave are excluded from this restriction.
- 5) It is understood that all leave requests shall have precedence over scheduled modified shifts.

This Memorandum of Understanding shall act as an addendum to the Collective Bargaining Agreement between the parties. It shall remain in full force and effect until rescinded in writing by both parties.

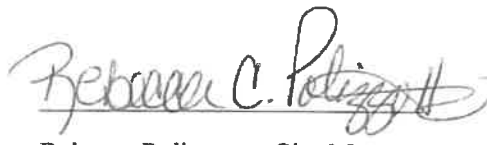
By signature below, all parties agree with the provision of this agreement.

Signed this 20th day of July, 2015.

For the Guild:


Jesse Mack, Guild President

For the City:


Rebecca Polizzotto, City Manager

ATTEST:

By: 
Kelly M Chelin, City Clerk

Attachment D

Reimbursement at Time of Employee's Separation for Holidays Used Prior to Occurrence of Holiday

I, _____ understand that, per the terms of this *Agreement*, the City has a system of "banking" holiday hours.

I further understand that, per the terms of this *Agreement*, I may use these holiday hours in advance of the date on which the actual holiday occurs.

I further understand that, per the terms of this *Agreement*, at the time of my separation from employment with the City, I am required to reimburse the City for any holiday hours which I use in advance of the date on which the actual holiday occurs.

I further understand that, per the terms of this *Agreement*, reimbursement shall be deducted from my final paycheck.

Signature: _____

Date: _____

Exhibit B

From: Greg Elwin
Sent: Tuesday, December 27, 2016 8:17 AM
To: Bart Foutch
Cc: Rory Mundwiler; Robert Phillips; Sean Conner; Rod Fleming
Subject: Modified shift adjustment

Sarge,

Based on our conversation this morning, please adjust Rory's "Modified" day from January 1, 2017 to January 4, 2017.

Due to staffing levels, his modified on the 1st has become a Mod+4, denying him his ability to work an 8 hour shift while at the same time incurring 4 hours of unnecessary overtime. Since Rory will already be here for 12 hours on January 1st either way, we are not cutting into his personal time or asking him to work more hours than he is already scheduled for. To the contrary actually, as he will now get an extra 4 hours off; 4 hours he is contractually entitled to.

In this same light, please forecast your squads schedules and look for those upcoming Mod+4 shifts that may be able to be adjusted. I understand that they all can't, but in those instances where making adjustments is available, please do.

All,

Please forecast your squads schedules as well and make adjustments to Mod+4's as available.

Thanks

Greg



Greg Elwin
Chief of Police
grege@cityofmillcreek.com
Desk: 425-921-5707 | Mobile: 425-287-8023 | Fax: 425-745-4680

Exhibit C



MILL CREEK OFFICER'S GUILD

P.O. Box 13261
MILL Creek, WA 98208
www.mcpog.org

Chief Elwin,

December 28th, 2016

The Guild learned that on December 27th you mandated a change to Corporal Mundwiler's "modified shift." This is a deviation from the past practice of allowing officers to work their bid/scheduled modified shift as required to fulfill patrol staffing. Hours of work are a mandatory subject of bargaining; therefore, the Guild requests that you bargain both the decision and the effects of the decision to change officers modified shifts.

Please contact me as soon as possible to set up a time to begin bargaining. Please also confirm that the City will restore the status quo ante, and not mandate Corporal Mundwiler or any other Guild member, to change their scheduled modified shift unless and until the City has complied with its duty to bargain under RCW 41.56.

Sincerely,

Mill Creek Police Guild

Kyle Hughes – President

Nathan Lerma – Vice President

Exhibit D



MEMORANDUM

To: Kyle Hughes, President - MCPOG
From: Chief Gregory Elwin
cc:
Date: December 29, 2016
Re: Demand to bargain letter dated December 28th, 2016

Kyle,

I have received your letter indicating your demand to bargain a decision and the effects of a decision I made on December 27th, 2016. On that date, I asked Corporal Rory Mundwiler if he would adjust his 'Modified' shift from January 1st, 2017 to January 4th, 2017. This request was made by me in an effort to accomplish two goals; ensure that Corporal Mundwiler received his 8 hour shift during the affected 14 day schedule cycle and to be fiscally responsible with the Police Department's overtime budget. I told Corporal Mundwiler that if he did not voluntarily make the shift adjustment that I would direct Sgt Foutch to make the adjustment as a directive. Corporal Mundwiler declined to voluntarily adjust his schedule, so I directed Sgt Foutch to make the change for the reasons mentioned above. Although Sgt Foutch was present and a participant in this conversation, I made the directive via email and included the other three patrol sergeants in order to ensure a consistent message was delivered across shift lines. Corporal Mundwiler was also copied the email. The meeting with Sgt Foutch and Corporal Mundwiler was entirely congenial; Corporal Mundwiler however did not want to voluntarily give up the Mod+4 shift.

Since I have arrived, I have been constantly looking for ways to improve our efficiencies, operations and overall approach to law enforcement. Two of the messages that I have consistently delivered are: 1) the responsibility of police department leadership to look out for the well-being of our staff, and; 2) ensuring we are fiscally responsible. One area that touches both of these priorities is overtime, and in this instance, the adjustment of a 'modified' shift to a 'modified +4' shift. When this adjustment is made, the affected officer is not afforded the contractually required "...eight (8) hour work shift in the fourteen (14) day work cycle." This 8 hour day is required pursuant to Section 5.3 of the current collective bargaining agreement (CBA) and exists in part to ensure that officers don't work too many hours during a calendar year. Although compensated with overtime pay, this adjustment deprives officers of their time off (which is not consistent with looking out for the well-being of our staff) and incurs unnecessary overtime cost (which is not consistent with being fiscally responsible).

As I reviewed the applicable CBA sections that touch this issue, I rely on several sections that speak towards my authority to administer police department operations. In the area of overtime, Article 6 clearly states *"All overtime must be authorized by the Chief or his designee."* My directive to the patrol sergeants on this issue should be clear that I am not authorizing, nor am I delegating to them the authority to authorize, overtime related to a 'modified + 4' shift that can be adjusted to eliminate the 4 hours of overtime. I do recognize that we are bound by ensuring the modified shift is assigned during the fourteen (14) day cycle and cannot always be adjusted to mitigate the overtime work and expense, but in those instances where it can be, I expect that it will be.

Further, Article 16 Section B reads *"The City has the right to schedule overtime work as required in a manner most advantageous to the department and consistent with the requirements of municipal employment and the public safety."* Making an adjustment to a 'modified+4' shift so that it becomes only a 'modified' shift with no overtime related to it is "...most advantageous to the department..." in that it meets the two goals set forth above; take care of our officers and be fiscally responsible. These adjustments are also "...consistent with the requirements of municipal employment..." for the same two reasons as well as it ensures we are meeting the necessary staffing needs. The "...public safety." aspect is also met in that rested and comfortable officers provide better public service. Working too many hours does not equate to rested and comfortable officers.

Section E of this same article reads *"The City shall have the right to determine reasonable schedules of work and to establish the methods or processes by which such work is performed."* It is my observation that the previous administration delegated much of this management right to the sergeants, and by association, the MCPOG. This has led to the 'past practice' on this issue that allows officers to select their own modified days well ahead of time and that those days are selected to be most advantageous to the individual officers as opposed to "...most advantageous to the department..." as required in Section B above. It is not my desire or intent to deprive officers of their input on the scheduling of their 'modified' days, but as we prepare for our next round of shift bidding, those days will necessarily need to be scheduled so as to be most advantageous to the department while as often as possible being 'mutually advantageous'. The past practice I speak of here is not a responsible use of resources - human or financial - and as such it is incumbent on me to assert my management right here.

During our conversation, you asked me if officers would be able to adjust their 'modified' days to be an advantage to them, to wit changing their 'modified' day to a scheduled leave day so as to only use 8 hours of leave time as opposed to 12. It is my understanding that this is already occurring in the department and I am not opposed at all to continuing this practice in the spirit of finding common ground that is as 'mutually advantageous' as possible while still maintaining my authority to responsibly run the police department. As long as those adjustments do not result in additional and unnecessary overtime, that flexibility will be allowed.

This directive is wholly within my right as Chief of Police to make. I do not see an issue here that needs to be bargained; the most glaring concern is the fact that these management rights have not been asserted until now. **The adjustment to Corporal Mundwiler's schedule will not**

be reversed. Before my directive to Sgt Foutch, Corporal Mundwiler would have worked 12 hours on January 1st and 12 hours on January 4th with no 8 hour shift in that 14 day work cycle. After this adjustment, he will still work 12 hours on January 1st but will only work 8 hours on January 4th, meeting the expectations of Section 5.3 and ensuring he has the requisite time off. Corporal Mundwiler is actually better off with this adjustment and it is also better for the City, knowing that our officers are getting the time off they deserve and being fiscally responsible. **Further, my directive to the patrol sergeants to make these adjustments in the future and as available will stand for the same reasons.**

This decision and the associated directive are made with the best interest of the police department as a whole in mind. The only potential negative to an employee that can be spoken of is the reduction of overtime pay for individual officers; overtime that is not a right or an entitlement and is only allowed if “...*authorized by the Chief or his designee.*”

If there are effects of this decision that you feel exist that I have not anticipated, please do let me know so that they can be discussed further.

At your service,

Gregory Elwin, Chief of Police

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BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mill Creek Police Officers' Guild,

Complainant,

and

City of Mill Creek,

Respondent.

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Certificate of Service

On this 25th day of May, 2017, I filed, via e-mail, the Unfair Labor Practice Complaint and this Certificate of Service to the following:

Public Employment Relations Commission
filing@perc.wa.gov

Additionally, I e-mailed a copy of the foregoing documents to the following parties:

Rebecca Polizzotto
City Manager
rebeccap@cityofmillcreek.com

Greg Elwin
Police Chief
grege@cityofmillcreek.com

Jesse Mack
Guild President
jordynsdaddy@hotmail.com

Dated this 25th day of May, 2017.



Alyssa Melter
Attorney for Guild
No. 46481
alyssam@vjmlaw.com