

INTRODUCTION

This is a case about a decorated police officer who dedicated years of service to the City of Franklin and its residents, only to have his career systematically destroyed through a coordinated campaign of retaliation and discrimination orchestrated by City leadership. Jacob Drouin (“Jacob”) served Franklin with distinction, rising to become President of the Franklin Police Patrolman’s Association and a leader in his department.

The Franklin Police Department maintains a pervasive and long-standing culture of favoritism and systemic retaliation, where the exercise of protected rights by officers is met with punitive career consequences while preferential treatment is reserved for those who adhere to an informal “code of silence” and personal loyalty over departmental policy. When Jacob challenged improper conduct by filing a grievance against the Police Department’s leadership in 2021, he became a marked man. In 2022, he suffered an on-duty injury and the City seized on its opportunity to build a case against him. When he organized and engaged in protected union activities, the City launched a pretextual investigation designed to silence him. They placed him on administrative leave one day before a scheduled union meeting to prevent him from participating. The City terminated his employment without due process, sought his placement on the Exculpatory Evidence Schedule, and urged the New Hampshire Department of Justice to prosecute him. In an effort to publicly humiliate him, the City publicly disseminated his confidential personnel file, marked him as a “cancer” within the Police Department, and criticized his union organizing efforts. In a statement about his termination, the City even blamed Jacob for engaging in “a campaign of public criticism.” Through this complaint, Jacob seeks to hold Defendants accountable for their wrongful conduct and violations of his federal and state constitutional rights.

Jacob brings this action against the City of Franklin, the Franklin Police Department, Former Chief David Goldstein, Current Chief Daniel Poirier, Former Mayor Jo Brown, and Former City Manager Judie Milner. Jacob brings the following claims: wrongful termination in violation of New Hampshire public policy; violation of his rights to freedom of speech, petition, and association under the First Amendment of the United States Constitution and Part I, Articles 22 and 32 of the New Hampshire Constitution for retaliating against his protected union activities and criticism of City leadership; and New Hampshire common law claims. Through this coordinated scheme, Defendants have caused Jacob severe economic harm, emotional distress, reputational damage, and the permanent loss of his chosen career, entitling him to compensatory damages, costs, and attorneys' fees.

PARTIES

1. Plaintiff Jacob Drouin is a resident of Epsom, New Hampshire. He resides at 18 Silver Hill Drive, Epsom, New Hampshire, 03234. Jacob served as a police officer with the Franklin Police Department from February 2016 until his wrongful termination in March 2023.

2. Defendant City of Franklin (the "City") is a municipality with an address of 316 Central Street, Franklin, New Hampshire, 03235.

3. Defendant Franklin Police Department ("Police Department") is a municipal agency with an address of 5 Hancock Terrace, Franklin, New Hampshire 03235.

4. At all times relevant to this Complaint, Defendant David Goldstein was the Chief of Police for the Police Department. Goldstein was Chief of the Police Department from 2009 to 2024. Goldstein resides at 47 Nutt Road, Auburn, New Hampshire 03032.

5. At all times relevant to this Complaint, Defendant Daniel Poirier was a Lieutenant with the Police Department. He was promoted to Chief of Police in or around November 2024. Poirier resides at 572 Mountain Road, Concord, New Hampshire 03301.

6. At all times relevant to this Complaint, Defendant Jo Brown was the mayor of Franklin, New Hampshire. Brown resides at 15 Sterling Drive, Franklin, New Hampshire 03235.

7. At all times relevant to this Complaint, Defendant Judie Milner was the city manager of Franklin, New Hampshire. Milner resides at 142 South Road, Belmont, New Hampshire 03220.

JURISDICTION AND VENUE

8. The Merrimack Superior Court has jurisdiction over this matter pursuant to RSA 491:7.

9. This Court has personal jurisdiction over this matter by virtue of the parties' contacts with New Hampshire.

10. Venue is appropriate in the Merrimack Superior Court because the conduct giving rise to this Complaint occurred in Merrimack County.

FACTS COMMON TO ALL COUNTS

11. In February 2016, Jacob joined the Police Department as a Patrol Officer, beginning a career of dedicated service to the City and its residents.

12. Jacob's commitment to the department and his fellow officers was exemplary. During his years of service, Jacob rose to third in seniority among patrolmen and was assigned numerous shifts as the Officer in Charge.

13. At all times during his employment, Jacob was a member of the Franklin Police Patrolman's Association, Local 214 ("Local 214").

14. Jacob's employment with the Franklin Police Department was governed, in relevant part, by the Collective Bargaining Agreement between the City of Franklin and Local

214, effective July 1, 2020, through June 30, 2023 (the “CBA”). A copy of the CBA is attached as Exhibit 1 and incorporated by reference.

15. The CBA established the terms and conditions affecting Jacob’s employment, including provisions governing job security, disciplinary procedures, union activities, leave benefits, and grievance rights:

- a. Article II of the CBA provides that the City shall only discipline or discharge a bargaining unit member with cause;
- b. Article VI of the CBA protects the rights of union members and officers to participate in union activities;
- c. Article XII of the CBA governs sick leave benefits, including provisions permitting employees to receive donated sick time from fellow officers;
- d. Article XVII of the CBA establishes the measure of seniority of an employee at the Franklin Police Department and requires the Department to make personnel decisions in whole or in part on the basis of seniority where specifically required by the CBA;
- e. Article XVIII of the CBA establishes disciplinary procedures applicable to bargaining unit members. These procedures require that discipline and discharge be only for just cause, that employees be afforded the opportunity to meet with the Chief of Police and be accompanied by a union representative prior to the institution of any discipline other than a verbal warning, that employees subject to investigation be informed of the nature of the investigation and allegations against them, that employees have the right to consult with and have present a

representative of their choosing during any interview, and that interviews be conducted without intentional intimidation, abuse, coercion, or threats; and

- f. Article XXIV of the CBA guarantees bargaining unit members the right to file grievances. The Article further protects union officers, including the Local President, in their capacity to represent other members in grievance proceedings.

16. Jacob's colleagues recognized his leadership and dedication by electing him Vice President of Local 214. Jacob later assumed the role of President pursuant to Article VI of the CBA.

17. On April 16, 2019, Jacob sustained a serious on-duty injury while playing basketball as part of his community policing duties.

18. Jacob suffered an L5-S1 disc herniation causing nerve root impingement that left him unable to work for approximately three months. The City's workers' compensation coverage provider, Primex¹, approved his workers' compensation claim after reviewing the medical documentation confirming the work-related nature of the injury and its severity.

19. Despite this injury, Jacob demonstrated his commitment to the department by returning to full duty in September 2019, even though he continued to experience effects of his on-duty injury.

20. In September 2021, Jacob sought clarification from Milner regarding Franklin's COVID-19 policy. Poirier viewed this as insubordination, and tried to reassert authority by changing Jacob's schedule outside of established process.

¹ Primex is a public entity risk pool management program established pursuant to RSA 5-B that provides risk management services, including workers' compensation coverage, to political subdivisions in New Hampshire.

21. Rather than submitting to this abuse, Jacob stood up for his rights and successfully filed a grievance pursuant to the CBA to challenge the improper conduct. From that point onward, Jacob had a target painted on his back.

22. Despite this hostile treatment from department leadership, and undeterred by his ongoing physical limitations from his 2019 injury, Jacob continued his dedicated service to the City.

23. At the direction of department leadership and despite the known limitations from his 2019 injury, Jacob became certified as a bicycle patrol officer in June 2022.

24. On July 23, 2022, while working a day shift conducting multiple bike patrols, Jacob suffered an aggravation of his back condition.

25. His condition worsened the next day when he worked a double shift during which he primarily drove patrol.

26. During and after his double shift, Jacob experienced worsening soreness, tightness, and sciatica pain radiating down his left leg, which impaired his ability to effectively undertake his police duties.

27. Jacob promptly reported his injury to his supervisor and called out sick on July 25, 2022 to seek professional medical treatment.

28. On July 25, 2022, Jacob saw his chiropractor, Dr. King, at Health Spine and Sport Therapy.

29. Jacob reported to Dr. King that his lower back became irritated during his bike patrol shift and was further aggravated when sitting for extended periods in his squad car during the double shift the City required him to work the following day. The pain significantly worsened when sitting, bending, and straightening.

30. Jacob's injury was confirmed further on July 26, 2022, when he sought an additional medical evaluation from Dr. Allen at Epsom Family Medicine.

31. After examining Jacob, Dr. Allen issued a formal disability letter to the City of Franklin stating that Jacob was medically unable to return to work until he was evaluated by physical therapy and then re-evaluated by Dr. Allen.

32. Dr. Allen also completed an official Concord Hospital workers' compensation form documenting the soreness and tightness in Jacob's lower back that began after his bike patrol shift on July 23, 2022.

33. From July 27, 2022 through July 31, 2022, Jacob remained out of work using previously earned, scheduled, and approved time off.

34. On August 4, 2022, Jacob met with an orthopedic specialist, Dr. McEntarfer, who ordered an MRI and approved the use of Prednisone and physical therapy.

35. Dr. McEntarfer completed a "Workers' Compensation Medical Form" on August 4, 2022 with a diagnosis of "left leg radiculopathy" and stated that Jacob could not return to work.

36. On August 5, 2022, Jacob returned to Epsom Family Medicine and saw Steven A. Schag, PA-C, who prepared a second disability note dated August 5, 2022, which stated that Jacob's return to work would be determined by an orthopedic specialist after he completed an MRI.

37. While Jacob sought medical care and treatment for his on-duty injury, the City immediately began coordinating with Primex and filed a report on July 25, 2022.

38. Primex required Jacob to submit to an interview with Kathy Ritson, a Primex claim adjuster. Jacob fully cooperated with this process.

39. From August 11, through August 14, 2022, Jacob took a pre-approved vacation to go camping with his family in Woodstock, New Hampshire.

40. During this vacation, Primex conducted surveillance of Jacob.

41. The Primex investigator filmed Jacob engaging in ordinary family camping activities and attempting to play basketball with his son.

42. The surveillance showed Jacob moving in a less-than-fluid manner, with a visible limp and obvious discomfort, consistent with Jacob's reported injury and ongoing limitations.

43. During the camping trip, Jacob did not participate in any activities that were inconsistent with the limitations described by Dr. McEntarfer.

44. On August 15, 2022, Jacob returned from his vacation and returned to physical therapy and reported the same symptoms and limitations as he reported before the trip.

45. Nonetheless, Primex used the investigator's observations to issue a denial of Jacob's claim on August 15, 2022, finding no causal relationship of the injury to employment.

46. At the same time, Goldstein escalated his efforts to force Jacob out of the department in retaliation for Jacob's successful 2021 grievance.

47. Jacob had a longstanding and well-documented interest in becoming a School Resource Officer ("SRO"), a specialized assignment he viewed as a promotion beyond his traditional patrol officer duties.

48. Jacob clearly and repeatedly communicated his goal to become an SRO to department leadership.

49. Despite his qualifications, experience, and expressed interest, Jacob was denied relevant training opportunities and passed over for an open SRO position in favor of a less

qualified candidate as part of Goldstein's continuing pattern of retaliation against him for his challenge of improper conduct by Police Department leadership.

50. Jacob filed another grievance on or about August 20, 2022 complaining of inequitable treatment by Goldstein, Poirier, Lt. Hale, and Milner concerning their refusal to assign him to the SRO position and to authorize the necessary trainings for him to become one.

51. On August 31, 2022, Jacob returned to Dr. McEntarfer for the results of his MRI. The scan confirmed a herniation at discs L5-S1 and measurable reduction in the size and strength of his left calf. Dr. McEntarfer subsequently cleared him only for light duty work with medical restrictions.

52. After receiving the Workers' Compensation Medical Form from Dr. McEntarfer, which documented Jacob's medical restrictions and confirmed his eligibility for light duty, Goldstein declined his request to return to work under a light duty status citing "incomplete medical file/documentation."

53. Goldstein knew that Jacob was under significant financial hardship at the time of this denial. Jacob's workers' compensation claim was under appeal, he had exhausted his accrued sick time, and he had been without a paycheck for weeks.

54. Jacob's fellow officers sought to donate accrued sick time to him pursuant to the CBA's donated time provisions.

55. Despite the availability of donated time and Jacob's hardship, the City refused to permit Jacob to utilize the donated time, resulting in lost wages.

56. The City, through Milner, had permitted Jacob to use donated sick time during his 2019 injury, before he filed grievances against the Defendants.

57. Jacob escalated his concerns through the chain of command and specifically requested clarification regarding what additional documentation, if any, was required for him to assume light duty.

58. Goldstein never provided the requested clarification, and no additional medical documentation was submitted. Nevertheless, just days later, Milner emailed Jacob authorizing him to assume light duty responsibilities with the Building & Grounds Department using the same medical documentation Goldstein had deemed insufficient.

59. Jacob was assigned to the Building & Grounds Department in September 2022, due to his August 2022 grievance.

60. Unlike Jacob, other officers were assigned to light duty within the Police Department. For example, after sustaining an injury in December 2022, Officers Kristin Tracy and Allysia Burton were assigned to light duty in the Police Department or dispatch center. Officer Tracy even received an extra eight hours of holiday pay as a result of her assignment.

61. Jacob immediately recognized that he was being treated differently than other officers who had received light duty assignments within the Police Department. When Jacob suffered his initial work-related injury in 2019, he was also assigned to light duty within the Police Department and worked in dispatch, where he became dispatch-certified.

62. Despite the availability of light duty positions within the department, including vacancies in dispatch, Poirier decided against assigning Jacob to those duties, without any credible explanation.

63. Instead, Poirier directed Jacob to remain with the City's Building & Grounds Department, where he was assigned manual labor tasks that exceeded his medical restrictions and exacerbated his injuries. In response to the City's improper conduct, Jacob formally

requested that a task analysis be completed to define the specific duties he could perform within his medical limitations.

64. While Jacob's initial request for a task analysis was denied, the City eventually agreed to conduct the task analysis.

65. After the task analysis was completed and forwarded to Dr. McEntarfer, the doctor again cleared Jacob for light duty, but specifically restricted him from bending, kneeling, squatting, and climbing.

66. Despite these express medical restrictions and task analysis process, Jacob was assigned to the City's Buildings & Grounds Department where he was deliberately assigned tasks that exceeded his documented medical restrictions through November and part of December 2022.

67. During this time, Jacob was effectively ousted from the Police Department.

68. On November 2, 2022, Jacob received a text from Poirier instructing him not to attend a range day training, despite it being necessary for Jacob to maintain his police certifications.

69. On November 3, 2022, Jacob submitted a request to meet with Goldstein to notify him of the ongoing misconduct and retaliatory behavior he was experiencing through Poirier.

70. On November 4, 2022, Jacob used the Police Department gym to follow his prescribed physical therapy regimen. While performing these exercises, Jacob was observed by Sgt. Daniel Ball, who reported this use to Goldstein. Goldstein seized upon this incident as another opportunity to harass Jacob, telling him he was not permitted to use the gym unless medically cleared to do so.

71. On November 7, 2022, Poirier met with Jacob and confirmed Goldstein's directive that Jacob could not use the Police Department gym. During this meeting Poirier referred to Jacob as a "good kid" and accused him of "playing games."

72. On November 9, 2022, the Police Department held a "Mandatory Training for Patrol Safety and Tactics for All Full Timers" which had been posted on the overtime board in Poirier's office.

73. A text message was sent to every full-time department member, except for Jacob. After another officer advised Jacob of the training, he received permission from his supervisor at Building & Grounds to attend.

74. Jacob's attendance, however, created a stir. During the lunch break, Sgt. Daniel Ball, who was not a part of the training, approached Jacob in front of other officers and advised Jacob that Poirier had ordered him to tell Jacob not to participate in the scenario-based training at the range.

75. Afterwards, Jacob inquired with Poirier about why he was disallowed from the training. Upon entering Poirier's office, he immediately told Jacob "get your duty belt, bring it down to your locker, and go work at highway." He was given no answers or clarifications.

76. Subsequently, in a letter dated November 10, 2022, Goldstein indicated that Jacob was excluded from the trainings because they may "exceed [his] light duty medical restrictions" without further elaboration. Goldstein also denied Jacob's request for a meeting stating, "I do not envision any reason to meet at the present time" and noted that "Lt. Poirier was carrying out [his] directives."

77. On November 23, 2022, Dr. McEntarfer issued a return to work note with the modification that Jacob may "return to using the gym as long as he follows PT protocols."

78. Despite this express authorization from Dr. McEntarfer, Goldstein again emailed Jacob prohibiting him from using the Police Department's gym facilities "until such time as medical clearance permits you to do so" and cited "liability" concerns and the Police Department's "inability to provide monitoring of [his] use of the gym[.]"

79. During Jacob's light duty assignment, he also continued fulfilling his duties as Vice President of Local 214.

80. On or about December 1, 2022, Jacob scheduled a chapter meeting for December 17, 2022 at the Police Department. At this meeting, Jacob intended to call for a vote of "no confidence" in Police Department and City leadership, including Goldstein, Poirier, and Milner.

81. Upon learning of this planned vote of no confidence, Goldstein, Poirier, Milner, and their subordinates immediately sought to silence Jacob and prevent him from leading this challenge to their leadership.

82. On December 15, 2022, just two days before the scheduled union meeting, Milner and Goldstein viewed the surveillance video of Jacob taken months earlier while he was camping with his family. Milner and Goldstein used this stale footage as a pretextual basis to initiate a formal internal affairs investigation into Jacob's alleged untruthfulness.

83. On December 16, 2022, one day before the scheduled vote of no confidence, Jacob was suddenly placed on paid administrative leave pending the outcome of this investigation, which was led by Lt. Hale. Jacob was required to turn in his badge, firearm, and department identification and was directed not to return to the Department during the investigation.

84. The City deliberately placed Jacob on leave in bad faith for the express purpose of preventing him from attending and participating in the Local 214 meeting he had organized.

85. On December 20, 2022, Goldstein sought to have the New Hampshire Department of Justice pursue criminal charges against Jacob for his alleged untruthfulness, even though it had not yet initiated any investigation and did not have cause to initiate any investigation for truthfulness.

86. At or around this time, the Defendants interfered with Jacob's workers' compensation status to deny coverage and prevent medical treatment. As a result of this delayed treatment, Jacob has a permanent disability.

87. On January 20, 2023, Jacob's Police Standards and Training Certification ("PSTC") certification expired because he was locked out of his Franklin Police Department emails address, and was unable to complete the certification requirements.

88. As a result of the lapsed PTSC, Milner changed Jacob's leave to an unpaid leave effective January 22, 2023. Milner returned him to paid leave on or about February 1, 2023.

89. On or about January 23, 2023, Jacob was voted President of Local 214 chapter when the previous president, Jon Francis, was promoted to sergeant.

90. Despite his new role as President of Local 214, Poirier, Goldstein, and Milner prohibited Jacob from participating in or representing Officers Harden and Faro in their scheduled grievance hearings.

91. Despite the attempted interference by the City, Local 214 voted no confidence in the Department's leadership on or about February 10, 2023.

92. On February 20, 2023, Jacob, as President of Local 214, issued a statement on the patrolmen's no confidence vote on Chief David Goldstein, Lieutenant Daniel Poirier, Lieutenant Ralph Hale Jr., and City Manager Judie Milner. The statement alleged a culture of retaliation, favoritism, and intimidation.

93. Later that day, Milner sent an email which stated that Jacob was “so vocal and such a cancer to the department, some members of the police force are buying the Kool Aid.” She stated further that she and the Police Department’s administration discussed how to support the staff after “the cancer” (Jacob) is removed.

94. As a result, Lt. Hale doubled down on the investigation into Jacob’s conduct. Lt. Hale’s investigation into Jacob’s alleged conduct sought to only further the agenda of the City and Police Department leaders to destroy Jacob.

95. The investigation ignored, failed to evaluate, and/or failed to consider Jacob’s medical records which documented his injuries and treatment.

96. As part of Lt. Hale’s investigation, Jacob was interviewed on February 21, 2023 and a polygraph examination was conducted by Lt. Dana R. Flanders II on February 24, 2023. This flawed and unreliable polygraph aimed to show Jacob was untruthful.

97. Polygraphs are generally considered unreliable, especially in light of physical injuries such as Jacob’s disc herniation.

98. Critically, the New Hampshire Supreme Court has ruled that polygraph test results are inadmissible as evidence of guilt or innocence in criminal trials. *See State v. Ober*, 126 N.H. 471, 471–72 (1985). “This rule of inadmissibility is based upon the unreliability of such tests, as well as the danger that a jury will rely upon them to establish the truth or falsity of a witness's statements.” *Id.*

99. Nonetheless, Defendants used the polygraph results to conclude that Jacob was dishonest in his statements to the City and recommended he be referred for placement on the Exculpatory Evidence Schedule (“EES”).

100. On February 27, 2023, just fifteen minutes prior to his Worker's Compensation Appeals Board hearing, the Defendants, through counsel, informed Jacob that the City would approve his injury as compensable if he resigned from his position. They made this offer even though they were supposedly investigating Jacob for misrepresenting the nature of the injury.

101. On or about March 16, 2023, the Defendants terminated Jacob's employment and hand delivered a notice of his termination to him that same day.

102. Goldstein and City administration denied Jacob an opportunity to meet and discuss or hold a pre-termination hearing, in violation of the CBA.

103. After his termination, the Defendants continued to engage in a pattern of retaliatory conduct against Jacob because he criticized the City and the Police Department.

104. After Jacob's termination the City disclosed Jacob's confidential personnel file to the public and the media, including statements and reports from the Tilton, Franklin, and Loudon police departments marked confidential.

105. At a June 5, 2023 City Council Meeting, the City, through Brown, issued a statement about Jacob's termination, stating that he "initiated a campaign of public criticism" against the Police Department, in addition to criticizing the vote of no confidence, maligning Jacob, and publicizing his private personnel matters.

106. At this meeting, Brown stated that the City released Jacob's private personnel files "[b]ecause the City believe[d] Mr. Drouin's public statements have improperly impacted the reputation of the Police Department, its administration, and perhaps others."

107. Three days after Jacob's termination, on March 20, 2023, Goldstein sought Jacob's placement on the EES, effectively ending his law enforcement career.

108. Goldstein did so in direct contravention of RSA 105:13-d, III(a), which requires that, when a local law enforcement agency refers an officer for placement on the EES, the agency must describe “how the officer was notified and afforded an opportunity to contest placement[.]” Jacob was afforded no opportunity to contest his placement before Goldstein's referral.

109. Despite Defendant’s attempts to discredit Jacob and invalidate his disabilities, the New Hampshire Retirement System approved his application for accidental disability retirement on July 31, 2024, based on his documented medical conditions.

110. Jacob has been unable to get another job in law enforcement. Instead, he has worked in sales and as a paraprofessional.

111. As a direct and proximate result of the Defendants’ conduct, Jacob has suffered severe emotional distress including anxiety, sadness, depression, worry, fear, shock, and physical manifestations thereof including but not limited to functional swallowing disorder, dysphagia, globus sensation, elevated heart rate, high blood pressure, sleep disturbances, panic attacks, and weight changes.

112. As a direct and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer damages, including but not limited to lost back pay, front pay, and other such damages as are allowed by law.

COUNT I
Wrongful Termination (Violation of Public Policy)
Against City of Franklin and Franklin Police Department

113. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

114. Jacob was employed by the City and the Police Department from February 2016 until his termination on or about March 16, 2023.

115. Jacob suffered an adverse employment action when the City and the Police Department terminated his employment, in bad-faith and in retaliation for actions supported by public policy because he acted as a whistleblower with respect to corrupt and retaliatory practices, participated in union activities, and requested reasonable accommodations for his disc herniation injuries.

116. Jacob suffered an adverse employment action when the City and Police Department terminated his employment for availing himself of his rights to receive workers' compensation under RSA 281, an act that public policy promotes.

117. Jacob suffered an adverse employment action when the City and Police Department terminated his employment for availing himself of his rights to file grievances against the City and Police Department, an act that public policy promotes.

118. The City is directly liable for its retaliation and wrongful termination of Jacob's employment.

119. The City is also vicariously liable for the acts of Defendants Milner, Brown, Goldstein and Poirier, as each were acting within the scope of their employment, their conduct was of the kind they were employed to perform, occurred substantially within the authorized time and space of his employment and was actuated, at least in part, by a purpose to serve the City.

120. As a result of the Defendants' conduct, Jacob has suffered damages including but not limited to: economic losses, lost wages, lost earning capacity, lost business opportunities, past and future embarrassment, humiliation, anxiety, sadness, depression, worry, fear, shock, and

other severe emotional distress and physical manifestations thereof including but not limited to functional swallowing disorder, dysphagia, globus sensation, elevated heart rate, high blood pressure, sleep disturbances, panic attacks, and weight changes.

COUNT II

42 U.S.C. § 1983 – Violation of the First Amendment of the United States Constitution Violation of the Rights to Free Speech, Association, and Petition Against All Defendants

121. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

122. The Defendants are state actors whose actions must comply with the First Amendment to the United States Constitution.

123. The right to free speech is an essential liberty safeguarded by the First Amendment. *See 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2311 (2023) (“[T]he freedom to speak is among our inalienable human rights . . . [t]he freedom of thought and speech is ‘indispensable to the discovery and spread of political truth.’” (citing *Whitney v. California*, 274 U.S. 357, 375 (1927) (*Brandeis, J., concurring*))).

124. The right to associate is an essential liberty safeguarded by the First Amendment. *Shelton v. Tucker*, 364 U.S. 479, 486 (1960) (noting that freedom of association is “closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society”); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984) (“The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.”)

125. “The First Amendment provides, in relevant part, that ‘Congress shall make no law abridging the right of the people to petition the Government for a redress of grievances.’ [The U.S. Supreme Court has] recognized this right to petition as one of ‘the most precious of

the liberties safeguarded by the Bill of Rights[.]” *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 524 (2002) (ellipses removed).

126. Acting under color of state law, and in performance of their official duties, the Defendants deprived Jacob of his firmly entrenched constitutional rights, to associate, to speak and express himself, to receive information, and to petition the City for a redress of grievances, guaranteed by the First and Fourteenth Amendments to the United States Constitution.

127. In this case, the Defendants have retaliated against Jacob by:

- a. Failing to abide by the City of Franklin Charter and Code by treating him inequitably and passing him over for an SRO position and related training;
- b. Denying reasonable accommodation requests, such as a task analysis to start light duty assignment;
- c. Denying donated sick time while simultaneously prohibiting him from working light duty assignments;
- d. Forcing him to work outside the police department while on light duty;
- e. Prohibiting him from attending training that was required for him keep his certification as a police officer;
- f. Prohibiting him from accessing the Police Department gym, despite medical clearance;
- g. Placing him on administrative leave the day before a scheduled union meeting where the agenda was to discuss a vote of no-confidence in the administration;
- h. Initiating an internal affairs investigation based solely on surveillance footage and without reviewing the underlying medical records;

- i. Requiring and relying on an invalid, unreliable, and inadmissible polygraph examination;
- j. Terminating his employment without proper due process;
- k. Seeking he be placed on the EES;
- l. Referring him for criminal charges; and
- m. Releasing his confidential personnel file to the media.

128. The Defendants engaged in this campaign of harassment against Jacob because he spoke out against Goldstein and Poirier, led a vote of no confidence against the Police Department and City leadership, and filed grievances through the CBA grievance procedures.

129. Immediately after learning he led a vote of no confidence against Police Department and City leadership, Milner stated that Jacob was “so vocal and such a cancer to the department, some members of the police force are buying the Kool Aid” and discussed how to remove Jacob from the Department.

130. Brown, on behalf of the City, stated that the City released Jacob’s confidential personnel file “[b]ecause the City believe[d] Mr. Drouin’s public statements have improperly impacted the reputation of the police department, its administration, and perhaps others.”

131. The Defendants carried out acts toward Jacob that constituted the government’s efforts to execute on its discriminatory policy against him.

132. The Defendants violated Jacob’s federal constitutional rights when they placed him on leave in bad faith to prevent him from attending and participating in the Local 214 chapter meeting he had organized.

133. The Defendants violated Jacob’s federal constitutional rights when they initiated a pretextual investigation into his truthfulness in retaliation for leading a vote of no confidence in the Police Department and City leadership.

134. “[O]fficial reprisal for protected speech offends the Constitution because it threatens to inhibit exercise of the protected right, and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (internal quotation, brackets, and citation omitted).

135. In sum, Defendants, together, have violated Jacob’s federal constitutional rights, directly and indirectly, through retaliatory conduct against Jacob for the content and viewpoints he expressed in public speech, for petitioning the City and Police Department, and associating with Local 214.

136. The Defendants acted under the color of state law when they deprived Jacob of his federal constitutional rights.

137. The actions by the Defendants are accordingly in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment, as it incorporates the right to Free Speech, Free Association, and Right to Petition of the First Amendment of the United States Constitution.

138. Jacob was damaged by the Defendants’ violations of § 1983.

COUNT III
**42 U.S.C. § 1985 – Conspiracy to Interfere with Civil Rights
Against All Defendants**

139. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

140. At all times relevant to this Complaint, the Defendants were all linked together by public appointment or employment, as supervisors, managers, or officers of the City of Franklin and Police Department.

141. The Defendants conspired to retaliate against Jacob on the basis of his constitutionally protected speech, petition, and association, as set forth above.

142. Jacob was damaged by the Defendants' violations of § 1985.

COUNT IV
**Part I, Articles 22 and 32 of the New Hampshire Constitution
Violation of the Rights to Free Speech, Association, and Petition
Against All Defendants**

143. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

144. As a New Hampshire citizen, Jacob is entitled to the protections of free speech under Part I, Article 22 of the New Hampshire Constitution and freedom of association and the right to petition the government under Part I, Article 32 of the New Hampshire Constitution.

145. Part 1, Article 22 of the New Hampshire Constitution provides: "Free speech and Liberty of the Press are essential to the security of Freedom in a State: They ought, therefore, to be inviolably preserved."

146. Part I, Article 22 prohibits the government from discriminating or retaliating against citizens based on the viewpoint they express. *See City of Keene v. Cleaveland*, 167 N.H. 731, 739 (2015) ("[T]he content of protected speech cannot be restricted simply because it is

upsetting or arouses contempt” (internal quotation and citation omitted)); *Petition of Brooks*, 140 N.H. 813, 819 (1996) (“A content-based prohibition on speech concerning matters of public interest must be subjected to the most exacting scrutiny” (quotation omitted)); *see also Montenegro v. New Hampshire Div. of Motor Vehicles*, 166 N.H. 215, 219 (2014) (holding that the denial of a vanity license plate because the government disagrees with its message is impermissible viewpoint discrimination).

147. Part I, Article 32 states: “The People have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their Representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer.”

148. Acting under color of state law, and in performance of their official duties, the Defendants deprived Jacob of his firmly entrenched constitutional rights to associate, to speak and express himself, to receive information, and to and to petition the Government for a redress of grievances, guaranteed by Part I, Articles 22 and 32 of the New Hampshire Constitution.

149. In this case, the Defendants have discriminated against Jacob by:

- a. Failing to abide by the City of Franklin Charter and Code by treating him inequitably and passing him over for an SRO position and related training;
- b. Denying reasonable accommodation requests, such as a task analysis to start light duty assignment;
- c. Denying donated sick time while simultaneously prohibiting him from working light duty assignments;
- d. Forcing him to work outside the police department while on light duty;

- e. Prohibiting him from attending training that was required for him keep his certification as a police officer;
- f. Prohibiting him from accessing the Police Department gym, despite medical clearance;
- g. Placing him on administrative leave the day before a scheduled union meeting where the agenda was to discuss a vote of no-confidence in the administration;
- h. Initiating an internal affairs investigation based solely on surveillance footage and without reviewing the underlying medical records;
- i. Requiring and relying on an invalid, unreliable, and inadmissible polygraph examination;
- j. Terminating his employment without proper due process;
- k. Seeking he be placed on the EES;
- l. Referring him for criminal charges; and
- m. Releasing his confidential personnel file to the media.

150. The Defendants engaged in this campaign of harassment against Jacob because he spoke out against Goldstein and Poirier, led a vote of no confidence against the Police Department and City leadership, and filed grievances through the CBA grievance procedures.

151. Defendant Milner stated that Jacob was “so vocal and such a cancer to the department, some members of the police force are buying the Kool Aid” and discussed how to remove Jacob from the Department immediately after learning he led a vote of no confidence against Police Department and City leadership.

152. Brown, on behalf of the City, stated that the City released Jacob's confidential personnel file "[b]ecause the City believe[d] Mr. Drouin's public statements have improperly impacted the reputation of the police department, its administration, and perhaps others."

153. The Defendants carried out acts toward Jacob that constituted the government's efforts to execute on its discriminatory policy against him.

154. The Defendants violated Jacob's state constitutional rights when they placed him on leave in bad faith for the express purpose of preventing him from attending and participating in the Local 214 chapter meeting he had organized.

155. The Defendants violated Jacob's state constitutional rights when they initiated a pretextual investigation into his truthfulness in retaliation for leading a vote of no confidence in the Police Department and City leadership.

156. In sum, Defendants, together, have violated Jacob's state constitutional rights, directly and indirectly, through retaliatory conduct against Jacob for the content and viewpoints he expressed in public speech, for petitioning the City and Police Department, and associating with Local 214.

157. The actions by Defendants are accordingly in violation of Part I, Article 22 and Part I, Article 32 of the New Hampshire Constitution.

158. Jacob was damaged by Defendants' violations of Part I, Article 22 and Part I, Article 32.

COUNT V
Breach of Contract (Violation of Collective Bargaining Agreement)
Against City of Franklin and Franklin Police Department

159. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

160. At all times relevant to this Complaint, Jacob’s employment was governed by the CBA between the City of Franklin and Local 214.

161. The CBA constitutes a valid, binding, and enforceable contract between Jacob (as a third-party beneficiary and member of Local 214) and the City of Franklin and Police Department.

162. The City and Police Department breached Article II of the CBA by pursuing a bad-faith investigation to manufacture cause to terminate Jacob without cause or without a legitimate non-pretextual basis as retaliation for his protected activities, as outlined above.

163. The City and Police Department breached Article VI of the CBA by placing Jacob on administrative leave and issuing a restrictive directive to prevent him from presiding over the scheduled December 2022 Local 214 union meeting, thereby obstructing his contractually protected union activities.

164. The City and Police Department breached the express and implied duties outlined in Article XII of the CBA by arbitrarily denying Jacob access to donated sick time from his peers while simultaneously refusing to accommodate his medical restrictions.

165. The City and Police Department breached Article XVIII of the CBA by failing to conduct a fair and objective investigation, relying on an unreliable and inadmissible polygraph, and ignoring medical documentation to reach a predetermined outcome that was not supported by any actual conduct.

166. The City and Police Department breached Article XVIII of the CBA by bypassing the progressive disciplinary procedure and proceeding directly to termination despite Jacob’s years of service and the lack of a legitimate prior disciplinary record regarding the alleged “truthfulness” issues.

167. The City and Police Department breached Article XVIII of the CBA by using Jacob's protected act of filing formal grievances, participating in activities of Local 214, and leading a vote of no confidence as the catalyst for an investigation, effectively punishing him for utilizing the CBA's dispute-resolution tools.

168. The City and Police Department breached Article XXIV by interfering with Jacob's ability to file grievances, participate in the grievances of other officers in his role as President of Local 214, and by retaliating against him for exercising his rights under this provision.

169. Jacob performed all duties required of him under the CBA.

170. As a direct and proximate result of Defendants' breaches of the CBA, Jacob has suffered significant damages, including loss of wages, loss of healthcare and retirement benefits, and the permanent end of his career in law enforcement.

COUNT VI
Breach of the Implied Covenant of Good Faith and Fair Dealing
Against City of Franklin and Franklin Police Department

171. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

172. At all times relevant to this Complaint, Jacob's employment was governed by the CBA between the City of Franklin and Local 214.

173. The CBA constitutes a valid, binding, and enforceable contract between Jacob (as a third-party beneficiary and member of the bargaining unit) and the City of Franklin and Police Department.

174. The CBA contained the implied duty of good faith and fair dealing, requiring that the City and Police Department not act in a manner that would interfere with Jacob's right to receive the benefits of the CBA.

175. The City and Police Department breached the implied covenant of good faith and fair dealing by engaging in a targeted campaign to destroy Jacob's reputation and career.

176. The City and Police Department breached the implied covenant of good faith and fair dealing by weaponizing an investigation into alleged truthfulness as a pretext to retaliate against Jacob for his protected role as President of Local 214 and for filing grievances with Police Department leadership.

177. The City and Police Department breached the implied covenant of good faith and fair dealing by declaring Jacob a "cancer" to be "removed," demonstrating that the decision to terminate him was predetermined and motivated by personal animosity and a desire to silence dissent rather than a legitimate evaluation of his performance or truthfulness.

178. The City and Police Department breached the implied covenant of good faith and fair dealing by bypassing the progressive discipline structure of Article XVIII and the grievance protections of Article XXIV to terminate Jacob, place him on EES, and refer him to the Attorney General's Office for criminal charges, actions that were intended to render the contract's protections for long-term officers meaningless.

179. The City and Police Department breached the implied covenant of good faith and fair dealing by consciously disregarding Jacob's documented injuries and workers' compensation rights by assigning him to physical labor outside his restrictions, effectively attempting to force a resignation or exacerbate a physical injury to avoid their contractual obligations.

180. The City and Police Department breached the implied covenant of good faith and fair dealing by releasing confidential personnel records to the media for the admitted purpose of damaging Jacob's reputation.

181. The City and Police Department's actions were a malicious subversion of the contract, intended to deprive Jacob of his livelihood and his right to a career free from arbitrary administrative interference.

182. As a direct and proximate result of the Defendants' breach of the implied covenant of good faith and fair dealing, Jacob has suffered significant damages, including loss of wages, loss of healthcare and retirement benefits, and the permanent end of his career in law enforcement.

COUNT VII
Intentional Infliction of Emotional Distress
Against All Defendants

183. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

184. The Defendants engaged in a targeted campaign of harassment intended to interfere with and destroy Jacob's career.

185. The actions of the Defendants were extreme and outrageous when they referred to Jacob as a "cancer" and a sickness to be "removed" from the department in internal communications.

186. The actions of the Defendants were extreme and outrageous when they consciously disregarding known medical restrictions by assigning Jacob to physical labor intended to exacerbate his spinal injury.

187. The actions of the Defendants were extreme and outrageous when they orchestrated a bad faith investigation and a flawed polygraph as a pretext to prevent him from exercising his rights as President of Local 214.

188. The actions of the Defendants were extreme and outrageous when they publicly released private personnel records to the media for the admitted purpose of damaging Jacob's reputation after his termination.

189. The actions of the Defendants were extreme and outrageous when they enacted a campaign to destroy Jacob's reputation and career, including by recommending he be placed on the EES and by seeking criminal charges to be brought against him.

190. As a direct and proximate result of this extreme and outrageous conduct by the Defendants, Jacob has suffered severe emotional distress.

191. This severe emotional distress has manifested in anxiety, sadness, depression, worry, fear, shock, and physical manifestations thereof including but not limited to functional swallowing disorder, dysphagia, globus sensation, elevated heart rate, high blood pressure, sleep disturbances, panic attacks, and weight changes.

192. The Defendants acted intentionally and recklessly, with the specific goal of causing Jacob severe mental anguish or with the knowledge that such anguish was substantially certain to occur.

193. As a direct, proximate, and foreseeable result of the Defendants' extreme and outrageous conduct, Jacob suffered damages.

COUNT VIII
Negligent Infliction of Emotional Distress
Against All Defendants

194. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

195. The Defendants owed Jacob a duty of care to act as a reasonable employer and to follow established medical restrictions and state laws regarding the handling of injured employees and confidential personnel information.

196. The Defendants breached this duty by negligently failing to ensure that Jacob's light-duty assignments were safe and consistent with his L5-S1 disc herniation.

197. The Defendants breached this duty by negligently failing to protect the confidentiality of Jacob's personnel file from public disclosure.

198. The Defendants breached this duty by submitting him to a culture of retaliation, favoritism, and intimidation.

199. Jacob has suffered severe emotional distress as a result of the Defendants' actions.

200. This severe emotional distress has manifested in anxiety, sadness, depression, worry, fear, shock, and physical manifestations thereof including but not limited to functional swallowing disorder, dysphagia, globus sensation, elevated heart rate, high blood pressure, sleep disturbances, panic attacks, and weight changes.

201. This emotional harm was foreseeable as a result of the Defendants' conduct outlined above.

202. As a direct, proximate, and foreseeable result of the Defendants' conduct, Jacob suffered damages.

COUNT IX
Invasion of Privacy - Public Disclosure of Private Facts
Violation of Part I, Article 2-b of the New Hampshire Constitution
Against all Defendants

203. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

204. As a municipal employee, Jacob had a protected privacy interest in his confidential personnel file, which contained sensitive, non-public information.

205. After Jacob's termination the City disclosed Jacob's confidential personnel file to the public and the media, including statements and reports from the Tilton, Franklin, and Loudon police departments marked confidential.

206. The disclosure of these professional and personal details would be highly offensive to a reasonable person, and was offensive to Jacob.

207. The information contained in the personnel file that was disclosed by the City did not involve matters of newsworthiness or legitimate public concern that would outweigh Jacob's right to privacy.

208. Brown discussed the City's decision to release the file at the June 5, 2023 City Council Meeting, stating that it released the files "[b]ecause the City believe[d] Mr. Drouin's public statements have improperly impacted the reputation of the Police Department, its administration, and perhaps others."

209. This disclosure reached a sufficiently large number of people such that the information has become, or was certain to become, public knowledge.

210. This disclosure also violates Part I, Article 2-b of the New Hampshire Constitution.

211. As a direct, proximate, and foreseeable result of the Defendants' conduct, Jacob suffered damages.

Count X
Civil Conspiracy
Against All Defendants

212. Jacob incorporates the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

213. At all times relevant to this Complaint, the Defendants were all linked together by public appointment, election, or employment, as supervisors, managers, or officers of the City of Franklin and Police Department.

214. The overt conduct was willful, wanton, malicious, and/or oppressive.

215. The Defendants' conduct, as set forth in this complaint, is the product of overt agreements among and between the Defendants, acting in concert, unlawfully, and inflicted injury on Jacob, as set forth above.

REQUEST FOR JURY TRIAL

216. Jacob hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter a judgment for Plaintiff on all counts;
- B. Enter a judgment declaring that Defendants violated Plaintiff's rights to free speech and association under the United States Constitution and the New Hampshire Constitution;
- C. Grant compensatory damages, including general, actual, consequential, special, and enhanced compensatory damages, in an amount to be proven at trial;
- D. Grant pre- and post-judgment interest as allowed by law;
- E. Award costs and attorneys' fees, including those provided by statute; and
- F. Grant such other further relief as this Court may deem just, equitable, and proper.

Respectfully submitted,

JACOB DROUIN

By his attorneys,

RATH, YOUNG AND PIGNATELLI, P.C.

Date: March 4, 2026

/s/ Cassandra Moran _____
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VERIFICATION

STATE OF NEW HAMPSHIRE
COUNTY OF merrimack

I, Jacob Drouin, upon oath, depose and state, that I have read the contents of the foregoing Verified Complaint, and the contents thereof are true and correct to the best of my knowledge, information and belief.

Date: 3/4/26

Jacob Drouin
Jacob Drouin

Subscribed and sworn to before me on this 4th day of March 2026.

Stephanie A. Curtin

Notary Public/ Justice of the Peace

My Commission Expires: 10/30/29



Exhibit 1

AGREEMENT BETWEEN
THE CITY OF FRANKLIN, NEW HAMPSHIRE
AND
NEW ENGLAND POLICE BENEVOLENT ASSOCIATION (NEPBA) LOCAL 214
(FRANKLIN POLICE PATROLMAN'S ASSOCIATION)
(Effective Dates: July 1, 2020 to June 30, 2023)

SIGNATURE DRAFT
December 2, 2020

Prepared by:
WESCOTT LAW, PA
28 Bowman Street
Laconia, NH 03246
(603) 524-2166 Telephone

FRANKLIN POLICE DEPARTMENT CONTRACT

TABLE OF CONTENTS

		Page No.
Article I	Recognition	1
Article II	Management Rights	1
Article III	Interference with Operations and Lockouts Prohibited	3
Article IV	Probationary Employees	3
Article V	Dues Check Off	3
Article VI	Shop Steward/Union Business	4
Article VII	Bulletin Board	5
Article VIII	Job Posting	5
Article IX	Holidays	7
Article X	Vacations	7
Article XI	Bereavement Leave	9
Article XII	Sick Leave	9
Article XIII	Military Leave	13
Article XIV	Residency	13
Article XV	Mileage	14
Article XVI	Uniform Allowance	14
Article XVII	Seniority	14
Article XVIII	Discipline and Discharge	15
Article XIX	Employee Indemnification	17
Article XX	Call Back	17
Article XXI	Wages, Longevity, Overtime, Private Detail, Professional Membership, Education	18
Article XXII	Insurance and Retirement	24
Article XXIII	Physical Readiness	24
Article XXIV	Grievance Procedure	32
Article XXV	Separability	34
Article XXVI	Expenditure of Public Funds	34
Article XXVII	Effect of Agreement	34
Article XXVIII	Duration	35

ARTICLE I
RECOGNITION

- 1.1. The City of Franklin (hereinafter referred to as the "Employer") and the New England Police Benevolent Association (NEPBA) Local 214 (Franklin Police Patrolman's Association) (hereinafter referred to as the "Union") hereby agree as follows:
- 1.2. The employer hereby recognizes the Union as the exclusive bargaining representative pursuant to the provisions of New Hampshire RSA 273-A for all Regular Full Time Patrol Officers, Detective Patrol Officer, Youth Services Officer, Regular (Full Time) Communications Specialists (formerly "Dispatchers") and Secretaries. Excluded from recognition or coverage under this agreement are the Chief of Police, Detective Lieutenant/Prosecutor, Patrol Lieutenant, Patrol Sergeants, Detective Sergeants, Communications Supervisor, Secretary to the Chief of Police, Special Police Officers, On-call Communications Specialists and all other supervisors, professional and confidential employees, persons in a probationary or temporary status, persons employed seasonally, irregularly or on-call and all other employees of the Franklin Police Department. The parties agree that they shall jointly file a unit modification petition to the New Hampshire Public Employee Labor Relations Board excluding the positions of Master Patrol Officer and Clerk/Typists from the bargaining unit.
- 1.3. It is specifically agreed by the parties hereto that any rights, duties or authority existing by virtue of the New Hampshire Revised Statutes Annotated or other law shall in no way be abridged or limited by any of the provisions of this Agreement and to the extent that any provision of this Agreement is inconsistent with any such law, the provision(s) of law shall prevail.

ARTICLE II
MANAGEMENT RIGHTS

- 2.1. It is agreed that except as specifically delegated, abridged, granted or modified by this agreement or required by statutory law, all of the rights, powers, and authority the City possessed prior to the signing of this agreement are retained by the City and remain the exclusive right of management without limitation. Furthermore, these retained rights are not subject to the grievance or arbitration procedures contained herein.
- 2.2. Management of the City, its operation, direction of the work force and the authority to execute all the various duties, functions, and responsibilities in connection therewith are vested in the City. The exercise of such duties, functions and responsibilities shall not conflict with this agreement.
- 2.3. It is understood and agreed that the City has all the customary and usual rights, powers, functions and authority of management. Any of the rights, powers, functions or authority which the City had prior to the signing of this agreement, including those in respect of

rates of pay, hours of employment, or conditions of work, are retained by the City except as those rights, powers, functions or authority are specifically abridged or modified by this agreement.

- 2.4. Without limitation, but by way of illustration, the exclusive prerogatives, functions, and rights of the City shall include the following:
 - 2.4.1. To plan, direct, supervise and control all operations, functions and policies of the City in which the employees in the bargaining unit are employed.
 - 2.4.2. To determine the need for and the qualifications of new employees, transfers and promotions.
 - 2.4.3. To establish, revise and implement standards for hiring, classification, evaluation, promotion, quality of work, safety, materials, uniforms, appearance, physical condition, equipment, methods, policies and procedures, work rules and regulations.
 - 2.4.4. To assign shifts, workdays, hours of work and work locations subject to the terms of this contract.
 - 2.4.5. To close or eliminate an office, operation, service or facility, or combination of facilities, or to relocate, reorganize or combine the work of divisions, offices, operations or facilities for budgetary or other reasons.
 - 2.4.6. To implement new, and to revise or discharge, wholly or in part, old methods, procedures, materials, equipment, facilities and standards.
 - 2.4.7. To determine the need for a reduction or an increase in the work force and the implementation of any decision with regard thereto.
 - 2.4.8. To discipline, suspend, demote or discharge an employee for cause.
 - 2.4.9. To assign and distribute work.
 - 2.4.10. To determine the need for additional educational courses, training programs, on-the-job training and cross-training.
 - 2.4.11. To contract out any work it deems necessary in the interests of efficiency, economy, improved work product, equipment or emergency.
 - 2.4.12. To determine the mission, policies, and standards of service offered to the public.
 - 2.4.13. The City may prepare, issue, enforce rules and safety regulations necessary for safe, orderly, efficient operations.

ARTICLE III
INTERFERENCE WITH OPERATIONS
AND LOCKOUTS PROHIBITED

- 3.1. Under no circumstances will the Union cause, encourage, sponsor or participate in any strike, work slowdown, sick out, sanctions, multiple resignations, any form of job action, withholding of any services or any curtailment or work or any restriction or interference with the operations of the Franklin Police Department or the City of Franklin government during the term of this Agreement. In the event of any such activity set forth above, the Employer shall not be required to negotiate on the merits of the dispute which gave rise to any such activity until any and all such activity has ceased. The Employer will not lock out any employees during the term of this Agreement.
- 3.2. Should any employee or group of employees covered by this Agreement engage in any activity prohibited by Section 1, above, the Union shall forthwith disavow any activity and shall use all means to induce such employee or group of employees to terminate such activity forthwith.

ARTICLE IV
PROBATIONARY EMPLOYEES

- 4.1. All newly hired or appointed Police Officers must serve a probationary period twelve (12) continuous months from the date of appointment to a regular (full-time) position and such probationary employees shall not be entitled to representation by the Union or be covered by any terms of this agreement.
- 4.2. **Any police officer hired who is certified by the New Hampshire Police Standards and Training Council shall serve a probationary period of six (6) months active employment status from their date of hire.**
- 4.3. All newly hired or appointed Communications Specialists and clerical personnel must serve a probationary period of six continuous months from the date of appointment to a regular full-time position and such probationary employees shall not be entitled to representation by the Union or covered by any terms of this agreement.

ARTICLE V
DUES CHECK OFF

- 5.1. Upon an individually written authorization card signed by the employee and approved by the Union, the City agrees to deduct from each employee's wages, a sum for the Union dues to be collected each pay period. The Union agrees to hold the Police Department and the City harmless from any claim or liability arising out of its deduction of dues and

payment to the Union under this Section. The Union dues, along with a statement of which employees have paid dues, shall be sent on a monthly basis to: Treasurer, New England Police Benevolent Association, 7 Technology Drive, Suite 102, Chelmsford, MA 01863.

- 5.2. Non-members who request that the Union provide grievance representation shall be charged the full fair costs of the processing of grievances and/or representation services, said charge set at \$40.00 per hour for time incurred by the local and National Union officials. The Union will charge the costs, up to \$200.00 per hour, for time incurred by attorneys retained by the Union. The Union will send an invoice for costs and expenses so incurred periodically and such payment will be due within thirty (30) days.

ARTICLE VI

SHOP STEWARD/UNION BUSINESS

- 6.1. The officers and representatives of the NEBPA Local 214 are as follows: President, Vice President, Secretary/Treasurer and two (2) Stewards. If either the Chief of Police or the President or designee requests a meeting with the other to discuss a matter pertaining to this agreement, the Chief shall retain the right to schedule such a meeting so as not to disrupt the workplace, work schedule or departmental coverage. If a settlement cannot be reached, the President or designee shall reduce any resulting grievance to writing and submit it in accordance with the grievance procedure.
- 6.2. Time spent in grievance processing or investigating which is done by a Union Steward or member, will be done either before or after working a regular shift and will not be compensated for.
- 6.3. Joint Meeting. An official Union representative shall be granted reasonable time at no loss of pay for attendance at grievances or other joint meetings which have been scheduled by mutual agreement of the parties.
- 6.4. Contract Negotiations. Up to three Bargaining Unit members may attend negotiation sessions without loss of pay. Of the three Bargaining Unit members there shall be no more two representing patrol and no more than two representing communications.
- 6.5. The City agrees that any employee named as President shall be granted a single day off upon so being named, with pay, to attend Union training. An employee may utilize this benefit only once during his/her time of employment with the City.
 - 6.5.1. Representatives of the Union may meet with the Chief of Police or his/her designee once a month to discuss matters of mutual concern, including those matters of mutual concern necessary by the implementation of this agreement. A written agenda shall be submitted by the Union to the Chief of Police no less than five (5) days before the scheduled meeting. At the discretion of the Chief of

- Police, or designee, additional matters may be placed on the agenda.
- 6.5.2. Nothing contained herein shall prevent the Chief of Police or designee and the Union from meeting on a less frequent basis upon mutual agreement.
- 6.5.3. Nothing contained herein shall prevent the Union from consulting with the Chief of Police or designee at any time if matters of mutual concern arise of an urgent or emergency nature.
- 6.5.4. Grievances must be submitted in accordance with the procedure contained in this agreement.
- 6.6. The Union shall be permitted to meet at the Franklin Police Department to conduct business matters so long as the meetings are scheduled at a convenient time so as to minimize any inconvenience to the Department.

ARTICLE VII
BULLETIN BOARD

- 7.1. The Chief of Police shall designate a space within the Franklin Police Station for the location of a Union bulletin board which shall be used by the Union to notify the membership of Union affairs. In his discretion, the Chief may designate a portion of a departmental bulletin board for Union use. No material which could be construed to be offensive, derogatory or inflammatory shall be posted upon the bulletin board. The Chief of Police, in his sole discretion, may remove any notice or posting which he deems inappropriate. Any material so removed will be delivered to the Union president.

ARTICLE VIII
JOB POSTING

- 8.1. When a vacancy occurs as a result of the establishment of a new position or retirement or termination of a current employee, the Chief shall post a notice for five (5) days indicating the position, its pay grade, the qualifications required and the normal working hours for the position, which shall be subject to change at the discretion of the Chief.
- 8.1.1. Shift assignments shall be bid four (4) times per year based upon seniority. The bids and assignments shall occur in January, April, July and October of each year.
- 8.1.2. Changes in assignments may be made for the following reasons:
- 8.1.2.A. Personal conflict of interest, (i.e., working with relatives, spouse/girlfriend etc.)

- 8.1.2.B. Temporary coverage for vacations, attendance at training schools, or coverage required on a shift due to prolonged absence of a shift member due to injury, suspension or illness.
- 8.1.3. Employees shall be given a minimum of one week notice when their shift assignment is to be changed, except in emergency situations as determined by the Chief of Police.
- 8.1.4. The Chief of Police or his/her designee may override the work schedule at any time or make specific schedule assignments based upon the needs of the Department and/or the City. In such instances, the decision of the Chief shall be non-grievable. Additionally, special assignments which may arise from time to time shall not be subject to shift bidding or shift assignments as stated herein and such assignments shall similarly be non-grievable. Any employee assigned to a temporary duty assignment of more than thirty (30) days which alters the employee's shift schedule as designated under the terms of this agreement shall be allowed to participate in the next shift schedule bid available to that employee in keeping with Section 8.1.1. Nothing in this section shall be considered an abrogation of management rights, privileges or authority generally or specifically an abrogation of those rights as delineated in Section 2.4.1., 2.4.4., and 2.4.9. of this contract to assign personnel as required in the discretion of the employer.
- 8.1.5. Shift trades may be requested by one employee to another employee. Shift trades shall not be granted unless there is a mutual agreement between the two (2) parties. Shift trades shall be subject to the approval of Chief of Police or his/her designee. There shall be no additional cost to the City resulting from a shift trade. Payment from the City shall be made to the bargaining unit member actually working the traded shift.
- 8.2. The job posting shall be left on the bulletin board for five (5) days and all employees in the bargaining unit who deem themselves qualified in the posted positions' prerequisite experience, knowledge, skills and abilities shall be eligible to sign up to indicate their interest in filling the position. Nothing in this posting procedure shall be deemed to limit the Department's right to seek applicants for the position from outside the Bargaining Unit or the Department. The job posting will contain, at a minimum, the formal job title, applicable starting pay range and the components of the application process such as an oral interview, medical/psychological testing, required certifications and other significant components of the screening process.

ARTICLE IX
HOLIDAYS

9.1. The following holidays are recognized by the parties to this Agreement in accordance with the current practice of the Department:

New Year's Day	Columbus Day
Martin Luther King Day	Veterans' Day
President's Day	Thanksgiving Day
Memorial Day	Friday after Thanksgiving
Independence Day (July 4th)	Christmas Day
Labor Day	

9.2. If a member of the Bargaining Unit is scheduled to work on a holiday and actually works, that employee shall be eligible to receive holiday pay as is the current practice, provided however, that to be entitled to such pay the employee must work the scheduled day preceding and the scheduled day following the holiday unless that employee's failure to work on either day results from an excused absence. An "excused absence" shall be defined as vacation leave, sick leave, military leave or compensatory leave, provided that any leave taken by the employee is authorized in accordance with the General Orders or Standard Operating Procedures of the Department or with this Agreement. When sick leave is taken on the scheduled work day immediately preceding or following a holiday, the Chief of Police or his designee may take such action as they deem necessary to verify illness on the part of the employee including, but not limited to a telephone interview, personal visit or a requirement for a physician's note before holiday pay will be paid.

ARTICLE X
VACATIONS

10.1. Vacation leave is approved by the Chief of Police or a designee. It accrues on a weekly basis to all regular employees (full-time) who are members of the Patrol Unit on the following schedule:

Hire Date		
<u>Anniversary</u>	<u>Accrual Rate</u>	<u>Annual Vacation</u>
1 - 4	1.53 hours per week	80 hours (10 days)
5 - 14	2.30 hours per week	120 hours (15 days)
15 or more	3.07 hours per week	160 hours (20 days)

10.2. Regular employees shall accrue no vacation leave during their first year of employment, and they may take no vacation leave. On the first Hire Date Anniversary, 10 vacation leave days (80 hours) shall be awarded in a lump sum, and employees will simultaneously begin accruing vacation leave on a weekly basis at 1.53 hours per week. On the fifth Hire Date Anniversary, the accrual rate shall change to 2.30 hours per week,

and on the fifteenth Hire Date Anniversary, the accrual rate shall become 3.07 hours per week. Notwithstanding the above, the regulation of vacation of secretaries and Communications Specialists is governed by the city's Personnel Plan.

- 10.3. Vacation leave shall be used within one anniversary year after its award or accrual. That is, on employees' Hire Date Anniversaries, they may have up to one year's accrued vacation leave "carried over" into the next year. Any unused vacation leave in excess of the previous year's total annual accrual shall be immediately forfeited on the Hire Date Anniversary unless the City Manager has approved an exception to policy based upon unusual circumstances. Example: an employee reaching the fourth Hire Date Anniversary with 12 vacation days accrued but not used will forfeit two vacation days, as only 10 days (the annual accrual) may be carried over into the next anniversary year.
- 10.4. The Chief of Police or a designee shall schedule (determine the time and order of) all vacations in the department, and all requests for vacation leave must be submitted to the Chief in writing at least four (4) weeks in advance. The Department shall provide notification to an employee within 10 days of his or her request as to whether the request is granted or denied. Vacations shall not interrupt nor interfere with the normal operations of the Police Department, and the Chief shall have the right to change the vacation schedule so as to prevent any such interruption or interference. The Chief of Police may designate reasonable "no vacation" time periods based on known seasonal peak demand work periods. Unless the Chief or designee specifically authorizes an exception, no employee shall take vacation leave in excess of 10 days at one time, regardless of the annual entitlement. No more than two (2) employees shall take vacation leave at any one time unless the Chief of Police has ruled that such leave will not seriously reduce the operational effectiveness of the department.
 - 10.4.1. Requests for vacation leave of one week or more must be submitted at least four (4) weeks in advance unless waived by mutual agreement. Vacation leave may be taken in one or half day increments and requests must be submitted at least two weeks in advance unless waived by mutual agreement.
- 10.5. Vacation leave shall be paid at the regular straight-time rate for the number of regular hours normally scheduled for the employee. Employees desiring advance vacation pay prior to taking the leave must make such request through the department payroll clerk at least 15 days before the pay day that the pay is to be received. Under no circumstances will advance vacation pay be paid in an amount exceeding the actual number of accrued vacation leave days (and any paid holidays) being taken. The City shall not grant payment in lieu of vacation leave, except upon termination of employment.
- 10.6. Any regular (full-time) employee whose employment is terminated, voluntarily or involuntarily, after the first Hire Date Anniversary shall be compensated for all vacation time accrued up to the date of termination.

- 10.7. When a paid holiday falls within a vacation leave taken by an employee who would normally take the holiday off with pay, the employee shall not be charged with having used a vacation day for that date. Employees who would normally work the holiday and receive additional holiday pay shall be charged a vacation day but shall also receive the holiday pay.
- 10.8. Vacation Leave (Part-Time Employees). Members of the bargaining unit who are regular part-time employees are defined as those working regularly scheduled shifts of at least twenty hours per week. On-Call employees are not regulars. Regular part-time employees accrue no vacation during the first year of their employment. On the first Hire Date Anniversary, they shall begin to accrue vacation leave at the rate of .096 days per week (five days per year). All other provisions of vacation leave are the same as for regular full-time employees (see above).
- 10.9. Implementation. Accrual of vacation time pursuant to this system commenced with the pay period beginning January 7, 1996.

ARTICLE XI
BEREAVEMENT LEAVE

- 11.1. Any regular full-time employee shall be excused from work for not more than three (3) consecutive work days, provided that such excused work days can be taken in four consecutive calendar days, because of death in the immediate family and shall be paid the normal rate of pay for the scheduled working hours excused.
- 11.2. "Immediate family" shall mean spouse, domestic partner, parents, step-parents, parents-in-law, grandparents, children, stepchildren, brothers/sisters, a blood relative residing in the same household or a ward residing in the same household.

"Domestic partner" shall mean "unmarried adults living in a committed relationship who share a permanent residence, are both over eighteen (18) years of age and are not blood relatives of any degree that would prohibit legal marriage."

ARTICLE XII
SICK LEAVE

12.1. All full-time regular employees shall be entitled to sick leave in accordance with the following:

A. Amount; accumulation of unused time.

- (1) Each full-time regular employee shall have the equivalent of 96 hours' sick time made available the first day of each fiscal year. Unused sick time may be accumulated to a maximum of 480 hours.

- B. Paid sick leave shall be granted for absence from duty for the following reasons:
- (1) Illness.
 - (2) Noncompensable bodily injury or disease.
 - (3) Exposure to contagious disease; quarantine.
 - (4) Attendance upon a member of the immediate family whose condition requires the care of the employee, with prior approval by the department head and the City Manager or their designee.
 - (5) Dental and doctor appointments, with prior notice and approval by the supervisor.
 - (6) Up to three days for adoption or birth of a child.
- C. If absence is caused by accident compensable under workers' compensation, then the City shall pay the difference between workers' compensation and the employee's regular pay during the employee's sick leave eligibility. This shall be accomplished in the following manner:
- (1) The employee shall endorse the workers' compensation check to be payable to the City of Franklin. Upon receipt of the endorsed check, the City shall issue a check for the week in the amount of the employee's normal weekly wage or salary.
 - (2) Normally, a delay of some weeks occurs between the illness/injury and receipt of the first workers' compensation check. During this period, employees must use accrued sick leave (and vacation leave, if desired) to receive a paycheck from the City. Upon receiving the endorsed retroactive workers' compensation checks (which the employee is required to submit), the Finance Office will restore the appropriate amount (equivalent to the amount of the checks) or sick and/or vacation leave to the employee's accrued balances. New Hampshire Retirement deductions will also be refunded in the following paycheck as worker's compensation is not considered earnable compensation.
 - (3) When employees have reduced their accrued leave balances to zero yet remain absent from work and covered by workers' compensation, the City will provide no further payments or subsidies, and employees may cash their workers' compensation checks directly.
- D. Upon termination of employment, any unused accumulated sick leave balances are forfeited.

- E. If absence is caused by injury covered by workers' compensation, the employee may use sick time for a maximum of 40% of his or her usual workweek.
- F. Employees absent for any reason shall report to their department head or their designee immediately, giving the reason for their absence. The City Manager and/or department head may require, as a condition precedent to the payment of sick leave, the certification of a qualified physician certifying the employee is fit for duty. Whenever sick leave is requested to be used in conjunction with vacation leave, a physician's statement shall be required in each instance. In all cases, a physician's certificate shall be required if the absence is three days or more.
- G. If the department head has reason to believe that an employee is misusing sick leave in any way, including but not limited to calling out sick falsely or calling out sick in a regular pattern, the department head may require certification of a qualified physician certifying the employee is fit for duty. Any abuse may be subject to disciplinary action up to and including termination.
- H. Sick leave may be used in fifteen-minute increments.
- I. Sick days will be given to all part-time regular employees on a prorated basis. All other provisions of sick leave in the personnel rules and regulations shall apply.
- J. Upon approval of the City Manager, in an extreme emergency, employees may request, in writing, a donation of accumulated, unused sick time to another employee.
- K. After completing 30 days' service, full-time regular employees will be covered by the City's current short/long-term disability plan on the first day of the following month. Coverage is at the City's expense for full-time regular employees, subject to the availability of approved funding. Because of delays in receiving disability checks from the insurance company, employees may use available sick and vacation time to continue receiving weekly paychecks. Insurance checks will be signed over to the City, and the employee's leave balances up to the amount of the disability check will be restored. At no time will paid accrued leave balances and paid disability total more than the employee's weekly pay based on the employee's regularly scheduled weekly hours.

12.2. Family Medical Leave Act of 1993 (FMLA)

12.2.1. In addition to the other provisions herein, eligible employees shall be granted up to 12 weeks of unpaid leave during any 12 month period for:

12.2.1.A. Birth and first year care of a child;

12.2.1.B. Adoption or foster placement of a child in the employee's home;

- 12.2.1.C. Serious medical condition of the employee's spouse or partner, child, or parent, or;
 - 12.2.1.D. Employee's own serious medical condition which renders the employee unable to perform the functions of the job.
- 12.2.2. The City shall maintain group health benefits under the existing conditions during the period of FMLA leave, and shall restore the employee to the same or equivalent position and to all other benefits upon conclusion of the FMLA leave. Vacation and sick leave shall not accrue during the unpaid leave.
- 12.2.3. Eligible employees are defined as those who have worked for the City of Franklin for at least 12 months (not necessarily consecutive) and worked for at least 1,250 hours during the 12 months preceding the start date of the requested leave.
- 12.2.4. Implementation.
- 12.2.4.A. Requests for unpaid FMLA leave shall be submitted in writing 30 days in advance through the Chief of Police to the City Manager, who is the approving authority. Requests not within this time frame must contain justification for shorter notice.
 - 12.2.4.B. The City shall have the right to require medical certification of the illness or of the employee's need to care for the ill person prior to approving unpaid FMLA leave, and shall have the right to require reasonable periodic medical re-certifications during the unpaid leave. The City further has the right to require additional medical certification at any time by a physician of the City's choosing and at the City's expense.
 - 12.2.4.C. Employees shall be required to exhaust all vacation balances prior to taking unpaid leave and in those instances in which the employee is personally ill, all sick leave balances shall be exhausted also prior to the approval of unpaid leave.
 - 12.2.4.D. Twelve weeks in "any 12 month period" shall be measured backward from the date that the requested leave is to begin. Example: An employee requests one week of unpaid leave under the FMLA to begin July 15. The Police Chief shall review the amount of FMLA unpaid leave taken during the preceding 12 months back to the previous July 15, and shall recommend denial of the leave if 12 weeks have already been taken during that time. Any FMLA leave taken during that time which was charged against an accrued leave balance shall not be counted as part of the "12 weeks in twelve months."

12.2.4.E. FMLA leave may be taken intermittently as needed, in increments as small as one hour. (Example: An employee requests one unpaid hour three days per week for chemotherapy sessions). The City retains the right to assign employees to an alternative position at equivalent pay and benefits if the alternative position is better suited for intermittent leave. (NOTE: The FMLA provides that payroll deductions for unpaid intermittent leave may be applied to salaried, exempt employees without jeopardizing their FLSA exempt status).

12.2.4.F. The City retains the right to require periodic statements of intent to return to work from employees absent on unpaid FMLA leave.

ARTICLE XIII
MILITARY LEAVE

- 13.1. Whenever employees must be absent from work due to their participation on active duty as a member of the Reserve Component of the United States Armed Forces, the City guarantees all rights and privileges accorded such employees by the Soldiers' and Sailors' Relief Act and the Veterans' Readjustment Act.
- 13.2. Employees called to active duty for training or during national emergencies, shall be guaranteed restoration to employment at the same level of benefits and compensation that would have pertained if employment had not been interrupted by military service.

ARTICLE XIV
RESIDENCY

- 14.1. All members of the Bargaining Unit serving in the patrol and dispatch functions shall live within forty-five (45) minutes response time to the Franklin Police Station at normal driving speeds. The Chief of Police, or his designee, shall make a final determination as to whether any residence meets the criteria of this article. Such determination shall not be subject to the grievance procedure. The Chief of Police may allow for minor deviations from the policy established herein. All bargaining unit members employed by the City within the Police Department as of May 10, 1995 shall have their current residences exempted from the above policy. In the event that any member so exempted desires to relocate their residence, such relocation shall be to a residence that is no less conforming to this policy than the present residence. For additional future relocations, such relocations shall either be more conforming to this policy or, at least not less conforming than the residence which is being vacated.

ARTICLE XV
MILEAGE

- 15.1. Personal vehicles shall not be used for official business unless no City vehicle suitable for the task is available. Use of a personal vehicle must be for the City's convenience, not the employees. In the event that the use of a personal vehicle is necessary and authorized as such by the Chief of Police, employees shall be reimbursed at the same rate per mile as is established by the City Council for all employees, provided that the appropriate voucher forms have been filed. Employees shall also be reimbursed for necessary toll and parking fees incidental to duties performed in the employee's personal vehicle, police cruiser or other City vehicle.

ARTICLE XVI
UNIFORM ALLOWANCE

- 16.1. The Chief of Police or his designee shall establish the uniform of the Department which shall not be altered or changed by the bargaining unit employees. The City shall supply each employee with a reasonable quantity of uniform items, including footwear and winter boots, and shall replace same on an as needed basis, subject to the qualifications contained in Section 2, below.
- 16.2. Uniform items that are damaged, destroyed, are made unserviceable or are unrepresentable will not be replaced by the Police Department, if in the opinion of the Chief, the damage resulted from the carelessness, negligence or improper use by the employee.
- 16.3. Items to be returned. Employees, at the time of termination of employment, are required to return all articles of uniforms and equipment which were provided by the employer.
- 16.4. Cleaning of uniforms. The City shall provide cleaning for two sets of uniforms per week per uniformed employee, except during leave periods. In the event that the City's contracted cleaner is unavailable or closed for a period in excess of one (1) week, the City agrees to reimburse employees for one (1) uniform cleaning at a non-contracted service.
- 16.5. Each employee who is employed in the position of detective or juvenile officer as of July 1st of any year of this contract shall, during the first pay period of the fiscal year, receive an annual clothing allowance in the amount of \$500.00.

ARTICLE XVII
SENIORITY

- 17.1. Seniority shall be measured from the last date of hire of an employee. Seniority shall terminate upon the occurrence of one of the following events:

Retirement
Discharge
Layoff for one (1) year; or
Absence due to illness or accident in excess of twelve (12) months.
Failure to return from lay off within fourteen (14) calendar days or
notification that a permanent full time job is available.

- 17.2. This definition of seniority and parts thereof shall have force and effect only with respect to provisions of this Agreement specifically requiring the Department to make personnel decisions in whole or in part on the basis of seniority.

ARTICLE XVIII
DISCIPLINE AND DISCHARGE

- 18.1. The City and the Police Department agree that it may only discipline or discharge members of the bargaining unit for just cause, which is unsatisfactory performance or misconduct as defined in the City's Administrative Code, Personnel Policy, Rules, and Regulations, violation of department rules or regulations; provided however, that the term "discharge" shall not include termination of employment directly caused by departmental reduction or restructuring for bonafide financial, regulatory, or law enforcement reasons.

18.1.1. Discipline shall include any of the following: reprimand, written reprimand, suspension, reduction in rank or discharge.

- 18.2. Disciplinary Procedures.

Prior to the institution of any discipline other than a verbal warning, the affected employee shall have the opportunity to meet with the Chief of Police. The employee may be accompanied by the Union President, Vice President, Secretary, Treasurer or other professional representative of NEPBA.

- 18.3. Any employee who will be interviewed or ordered to write a report concerning any act which if proven could reasonably result in any type of discipline shall be afforded the following safeguards:

The employee will be informed prior to any interview or ordered written memo if the City believes the employee is a suspect in any investigation regarding a criminal offense or misconduct which could lead to any discipline.

The City will comply in good faith with the requirements of this section but the Union recognizes that the City may not always be able to identify whether the referenced employee is a suspect in the early stages of an investigation or interview.

- 18.4. The employee will be informed of the nature of the investigation and the allegations against them. The employee will be afforded the opportunity to consult with the representative of their choosing prior to any interview or ordered written memo. The employee shall be afforded the right to have the representative of their choosing at any interview. The employee shall have the right to review Police reports on file to refresh their memory prior to being interviewed. The Union and the City agree that in all cases the principles of "Weingarten" and "Garrity" and other applicable case law shall be observed. The rights afforded the Bargaining Unit members in this paragraph apply to disciplinary investigations and procedures only and do not apply in criminal investigations or disciplinary investigations that later become criminal investigations.
- 18.5. If the City records the interview in any manner, a copy of the complete interview shall be furnished upon request and at the same cost the City is required to pay for the copy, if applicable.
 - 18.5.1. Interviews with any employees shall be conducted absent circumstances of intentional intimidation, abuse, coercion or threats. The employee shall be entitled to reasonable intermissions as requested for personal necessities and/or to consult with their representative.
- 18.6. Interviews and investigations shall be completed without unreasonable delays. Upon request, the employee shall be provided notification of the status of the investigation within three (3) working days. Except in unusual circumstances, such request by the employee shall be made not more frequently than once every ten (10) days.
- 18.7. If the investigation results in any discipline against the employee, a complete copy of the investigation will be furnished upon request, said copy shall include all reports, recordings and transcripts. The copy shall be furnished at the same cost the City is required to pay for the copy. Whenever possible, should the information not be in the complete report, the employee shall be furnished with the names, addresses and telephone numbers of all complainants and witnesses who were interviewed in the investigation. It is understood that the report may be redacted for purposes appropriate in the discretion of the City.
- 18.8. Any form of disciplinary action against the employee shall be for just cause and will be subject to the grievance procedure except as specifically stated herein.
- 18.9. The City agrees to counsel and/or reprimand employees privately with the understanding that immediate spot corrections are sometimes appropriate in the workplace but will occur in a format designed not to subject the employee to undue significant embarrassment.
- 18.10. An employee may request that a disciplinary record be removed after a three (3) year period of good conduct if disciplined with a verbal or written warning or reprimand and after four (4) years of good conduct if disciplined with a more stringent disciplinary

action. If the employee's request is denied, it shall not be resubmitted for a period of two (2) years from the denial decision.

- 18.11. All employees shall be allowed access to their personnel files and records during normal working hours for inspection and/or copies of documents which will be provided by the City. Said inspection shall be made subject to prior arrangement with the City.
- 18.12. Employees shall be provided a copy of all City and Police Department policies and procedures. Employees shall be issued all policies and procedures and subsequent modifications or updated in writing.

ARTICLE XIX **EMPLOYEE INDEMNIFICATION**

- 19.1. The City shall defend members of the bargaining unit against any claims made against them arising out of an act or omission by the employee while acting in good faith within the scope of his/her employment. The City shall indemnify members of the bargaining unit for any judgments entered against them arising out of any act or omission by the employee acting in good faith within the scope of his/her employment, to the extent that the claim is within the scope of coverage of an insurance policy maintained by the City.
- 19.2. The obligation of the City to defend and indemnify shall not: (a) extend to act to alleged criminal conduct by members of the bargaining unit; or (b) preclude discipline or discharge of the members of the bargaining unit for the conduct which gave rise to the claim.

ARTICLE XX **CALL BACK**

- 20.1. **Callback Pay:** Regular (full time) employees who are members of the bargaining unit and subject to the FLSA (non-exempt employees) who have left their normal places of work at the end of their regularly scheduled shifts, but who are called back to duty with no advance notice prior to the start of their next regularly scheduled shift, shall be paid a minimum of four (4) hours of pay at the rate of 1.5 times their normal hourly rates. Callback work in excess of four (4) hours shall be paid at the rate of 1.5 X normal hourly rate X actual hours worked (to the nearest tenth of an hour). Employees called back twice or more within the initial four (4) hours will be paid only one four (4) hour minimum. This policy applies only to unscheduled, regular overtime. Regular overtime scheduled before employees have left their place of duty shall be paid as regular overtime, even if the employees left their place of duty before returning to perform the overtime. An early call-in to report for work at an earlier than normally scheduled time does not qualify for callback pay.

Callbacks shall not be used for routine duties which may be as efficiently accomplished through the use of an early call in or an extended shift, except in unusual circumstances where it is deemed necessary to use a callback for such duties for the appropriate discharge of the Department's mission. When the purpose of the callback has been completed, an employee's supervisor may, but shall not be compelled to, release the employee from further duty before the conclusion of the four (4) hour minimum time span.

ARTICLE XXI
WAGES, LONGEVITY, OVERTIME, PRIVATE DETAILS,
PROFESSIONAL MEMBERSHIP, EDUCATION

21.1. Wages.

21.1.1. Appointment Rates:

- 21.1.1.A. The classes of jobs within the bargaining unit and their assignment to pay grades are shown at Appendix A. The minimum rate of pay for a class shall normally be paid upon appointment to a position within the class. Appointment rates above the minimum rate may be paid with the approval of the City Manager. Justification for approval will include recognition of exceptional qualifications of the appointee, previous related experience or the lack of qualified persons available at the minimum rate.

- 21.1.1.B. Police Officers who have not been certified by the New Hampshire Police Standards and Training Academy as full time Officers, but who are employed full time as such shall receive wages no less than entry level (Step One) for a Franklin Police Officer until such certification has been received.

21.1.2. Wage Increases:

- 21.1.2.A. Salary adjustments (step increases) within established ranges in the approved budget shall not be automatic, but shall be based upon the merit system as recommended by the Chief of Police and approved by the City Manager. Subject to approved fiscal year funding in an approved budget, all regular full time employees and regularly scheduled part time employees may be awarded merit pay raises in the form of steps (normally one) within the appropriate labor grade, which shall primarily be based upon successful goal achievement as evidenced by the performance appraisal for the preceding anniversary year. Rarely, and upon the Chief's recommendation, the City Manager may award one

additional step to employees demonstrating truly exceptional merit above their peers. Merit increases shall be effective on the first Sunday following the Hire Date Anniversary of employees. For employees who are promoted to a position on a higher labor grade, the Promotion Anniversary date shall be used for pay purposes rather than the Hire Date Anniversary. Promoted employees shall be subject to a six-month "performance probation" period, during which time unsatisfactory performance may be grounds for demotion or termination of employees. Employee Performance Appraisals shall be completed annually in the month immediately prior to the Hire Date (or Promotion Date) Anniversary for every employee. Any employee receiving an unfavorable evaluation that leads to the denial of a merit increase shall be entitled to a meeting with appropriate supervisory personnel. Step increases shall not automatically continue upon the expiration of this agreement or any subsequent agreement unless specifically so stated.

21.1.2.B. Any employee that has not received their completed performance appraisal by the end of the pay period immediately following their anniversary date shall be allowed to meet with the Chief of Police. If the employee still has not received their completed performance appraisal within seven (7) days after the meeting with the Chief of Police, the employee shall be allowed to meet with the City Manager.

21.1.2.C. **Commencing July 26, 2020 the pay table attached hereto as Appendix A shall become effective.**

21.1.2.C.1. **For the second and third year of this Agreement, all bargaining unit employees shall receive the same cost-of-living adjustments as all non-unionized employees of the City are granted.**

21.1.2.D. The City will provide a paycheck stub breakdown in the following categories: regular pay, overtime pay, court pay, detail pay, vacation pay and sick pay. The City will also show accumulated individual leave accruals.

21.1.2.E. Payment of Wages. Employees shall be provided at least two (2) weeks notice in advance of any change in the frequency of pay periods.

21.1.3. Longevity Pay. On the appropriate Hire Date Anniversary, Regular (full time) employees shall be moved to the corresponding Longevity Pay Table. Employees

moved to a Longevity Pay Table will occupy the same labor grade and step as on the previous table. The Longevity Pay Tables (attached) award longevity payments on an hourly basis which equate to annual payments as shown below:

<u>Anniversary</u>	<u>Annual Longevity Pay</u>
New Hire	Table A (Regular Pay Table)
10th Anniversary	Table B (\$500 Annual Increase)
20th Anniversary	Table C (Additional \$500 Annual Increase)

21.1.4. Overtime Payment:

- 21.1.4.A. All employees not exempt from the Fair Labor Standards Act (FLSA) shall be paid at 1.5 times their normal hourly rates for each hour or portion thereof actually worked in excess of 40 hours worked in a work week. The City's work week is defined as from 12:01 am Sunday morning to 12:00 pm (midnight) Saturday. A work day is defined as from 12:01 am until 12:00 pm (midnight). For purposes of overtime pay calculations, all paid holidays, bereavement leave, and all absences charged against an employee's accrued leave balances shall be treated pursuant to the City Personnel Plan as in effect as of the effective date of this contract (July 1, 2014). Paid absences not charged to accrued leave balances, such as administrative leave or leave without pay, shall not count as hours worked in a week.
- 21.1.4.B. Overtime is not authorized unless approved in advance by the employee's immediate supervisor. Any overtime worked without such advance approval shall not be paid. The Chief of Police may, at his/her discretion, issue blanket advance approval for certain specific frequently reoccurring situations.
- 21.1.4.C. Compensatory Time. The City's normal practice is to pay monetary overtime. At the employee's request, the Chief of Police may authorize compensatory time off in lieu of monetary payment for overtime. Compensatory time for non-exempt employees shall be paid at the same rate as cash overtime; each hour of overtime worked is compensated by one and one-half hours of paid absence from work. Compensatory time may be accrued up to forty hours; any overtime thereafter worked shall be paid in cash until the compensatory time balance has been reduced below forty hours. With the Chief's permission, compensatory time may be used in conjunction with other paid absences.

- 21.1.4.C.i. Overtime shall be assigned to qualified full-time employees on a rotating basis, according to seniority. No part-time employee shall be assigned to cover overtime or regular shifts when there are full-time employees available and willing to take the shifts. Overtime for which there is less than four (4) hours notice may be filled at the City's discretion.
- 21.1.4.C.ii. For the purposes of contacting the employee regarding available overtime, a telephone call to the phone numbers (not to exceed two (2)) provided by the employee shall be placed and a message left if possible. This process shall not apply if the employee is available in person or working at the time. If the City is unable to reach an employee promptly, it may move to the next individual on the rotation list.
- 21.1.4.C.iii. Swapping of an overtime assignment shall not be permitted. Any overtime assignment that cannot be filled by the original employee who took the assignment must be filled by reassigning it from the rotating list.
- 21.1.4.C.iv. Employees may elect not to be placed on the rotation list by notifying the Chief of Police or his/her designee. It is understood that the Chief may, in his/her sole discretion, require overtime of any employee to meet the requirements of the City or Department.
- 21.1.4.C.v. The City shall post a detail information sheet for one (1) week after of the filling of overtime shifts.

21.1.5. Private Details.

- 21.1.5.A. Section 1: Private details are those details which are supported by a funding source other than the salary or overtime accounts of the Franklin Police Department.
- 21.1.5.B. **Section 2: All private details shall be paid at a rate of time and one-half or \$45.00 per hour, whichever is higher for the specific officer assigned to the detail, from the date of ratification in 2020 forward, \$47.00 per hour in the calendar year 2021 and \$49.00 per hour in calendar year 2022. The City may charge an additional administrative fee in connection with**

private details, said fee remaining the property of the City. The above rate shall apply to all members of the bargaining unit as of the date of ratification of this contract.

An employee shall be paid a minimum of four (4) hours pay pursuant to this section for any private detail assigned.

21.1.5.C. Section 3: Private details are not subject to the overtime provisions of this agreement. However, in the event that no eligible officer volunteers for a private detail, the Chief of Police or his designee may in their discretion make a mandatory assignment of a private detail. In such case, such assignments shall be in order of inverse seniority on a rotational system established by the Chief.

21.1.5.D. Section 4: Private details shall be offered to all qualified police officer employees of the Department and distributed on an equitable rotational basis. A rotational list shall be established to ensure that private details are so distributed. The list shall be established in order of seniority with the Chief of Police having the discretion to place current part-time or special officers within the rotational list at any location. Future full time officers shall be placed on the list so they shall be the last to receive private detail assignments as of the date which they are placed. The Chief shall retain full discretion to place future part-time and/or special officers within the rotation. In the event that an individual either refuses to accept a private detail or is unable to accept same for any reason, including lack of availability for notice purposes, that detail shall then be offered to the next employee on the rotational list. For each detail, the Department shall commence offering to employees on the list at the point in the list immediately after the name of the employee who received the last private detail assignment. For purposes of contacting an employee regarding an available detail, a telephone call shall be placed to the numbers (not to exceed two (2)) provided and a message left if possible. This procedure shall not apply if the employee is available in person or on duty at the time.

21.1.5.E. The swapping of details shall not be permitted. A detail that cannot be filled by the original officer who accepted the officer must be filled by reassigning it from the call list.

21.1.6. Municipal Details. A municipal detail shall be defined as a detail worked by a bargaining unit member, which would normally qualify for overtime pay

which is a scheduled event such as a parade, municipal ceremony or other similar occurrence for which payment is drawn from the municipal police budget as opposed to a private detail or other overtime assignment as described above. Municipal details, to the extent that they occur in hours that would otherwise qualify for overtime pay, will be paid at a minimum of four (4) hours at the employee's overtime rate.

21.1.7. Witness Fees. Any off-duty police officer/dispatcher who must physically appear in court for matters arising out of his or her official duties, including conferences with prosecution officials, hearings and complaints, signing of complaints, civil court, involuntary hospitalization hearings, depositions, parole or probation hearings, and motor vehicle hearings or any other approved meeting location directed or approved by supervising officers shall be compensated by a minimum of four (4) consecutive hours of the employee's overtime rate. In the event that a bargaining unit member is required to appear separately in both a morning and afternoon session of the court, the employee shall be compensated by a minimum of four (4) consecutive hours at the employee's overtime rate for the second appearance. Should an officer be required to make an appearance outside of the guaranteed minimum stated above, said appearance being contiguous in time, then the officer shall receive overtime pay for actual time worked. Such payment shall not apply to civil cases privately brought or similar matters where the Franklin Police Department is not an active party to the matter. In such cases, officers shall be compensated in accordance with State law, the rules of court or other applicable regulation by the outside party requesting their presence and/or participation.

21.1.8. Field Training Officer. Any bargaining unit member who serves as a Field Training Officer shall receive a \$1.00 per hour pay differential for time when that employee is actually serving as a Field Training Officer involved in the direct supervision of a junior employee.

21.1.9. Educational Incentive. Any employee who, while a full-time employee of the Department, earns a degree listed in this Section shall be entitled to one time payment for achieving the following educational degrees:

Associate's Degree: \$250.00

Bachelor's Degree: \$500.00

Master's Degree: \$750.00

To receive this one-time bonus, the employee will need to receive their degree after the conclusion of any probationary status and the degree will need to be in a recognized law enforcement related field. The decision of the Chief of Police or his/her designee on whether a degree has been earned in a "recognized law

enforcement related field” will be final and not subject to the grievance procedure.

21.1.10. O.I.C. Any Bargaining Unit member who serves as an Officer-in-Charge shall receive a \$1.50 per hour pay differential for time when that employee is actually serving as the Officer-in-Charge.

21.1.11. Dispatch Shift Differential. Any bargaining unit member assigned to dispatch duty for either of the following shifts shall receive the listed increases in their hourly rate of pay: second shift – \$0.50, third shift – \$0.75. This benefit shall apply only to hours actually worked by the employee and not to any form of leave or other form of compensation. For purposes of this section, work performed primarily between 3:00 – 11:00 p.m. shall be considered second shift and work performed primarily between 11:00 p.m. – 7:00 a.m. shall be considered third shift.

ARTICLE XXII INSURANCE AND RETIREMENT

- 22.1. The City will provide to members of the Bargaining Unit health and life insurance on the same terms and conditions (level of benefits, deductibles, premium co-payments) as provided to non-union employees of the City.
- 22.2. The City shall continue the present practice of allowing the members of the bargaining unit to participate in the New Hampshire State Retirement System.

ARTICLE XXIII PHYSICAL READINESS

- 23.1. All newly sworn police officers, full or part-time, shall be required to pass such physical readiness and other examinations as required for certification by the State of New Hampshire.
- 23.2. It shall be a continuing condition of employment for all sworn police officers who are members of the Bargaining Unit to continue to meet the standard applied in Section 23.1., above. Any officer exempt from this requirement as of the effective date of this contract shall continue to have the benefit of that exemption subject to amendment by the State of New Hampshire.

23.3. Any employee returning to work after a work interruption of at least one calendar week (7 consecutive days) due to illness or injury may be required to present to the City a certificate of physical fitness for performance of his proposed duties. Such certificate shall be signed by the employee's physician and shall duly identify the employee and shall also state that the employee is qualified to resume his employment. In the event that an employee is required to obtain such a certificate from a physician chosen by the City, that will be accomplished without cost to the employee. If the City's physician does not agree with the conclusion reached by the employee's physician, the employee shall submit to an examination by an impartial physician agreed upon by both the employee's physician and City's physician. The cost of the examination by the impartial physician shall be born by the employer.

23.4. Physical Examinations and Drug Testing.

23.4.1. The City of Franklin shall require a physical examination, including drug tests, as a condition for employment, and may require other medical or psychological testing to be performed by a qualified physician to be selected by the City. The City will assume the cost for the physical and laboratory tests and any other medical or psychological testing required.

23.4.2. Drug Testing Program. The City shall implement and operate a drug testing program in accordance with the following.

I. PURPOSE:

This Administrative Regulation describes the City of Franklin's drug and alcohol testing program for all staff of the Franklin Police Department. Within this policy are the procedures for testing, record keeping and enforcement that will be used by the City to monitor and ensure compliance.

The policy will comply with Federal Department of Transportation and Federal Motor Carrier Safety Administration (FMCSA) mandates found in 49 CFR-Part 40 (Procedure for Transportation Workplace Drug and Alcohol Testing Programs) and 49-CFR Part 382 (Controlled Substances and Alcohol Use and Testing).

II. POLICY STATEMENT:

The City of Franklin has a strong commitment to the health, safety and welfare of its employees, their families and the public at large. Therefore, the City seeks to hire and employ workers who are free of illegal drugs and alcohol. The Franklin Police Department will conduct pre-employment, random, reasonable suspicion, post-vehicle accident and return-to-duty (following a confirmed positive test) drug and alcohol testing.

III. RESPONSIBILITIES:

A. All Franklin Police Department personnel shall comply with the following:

- 1.) Submit to and cooperate with drug and alcohol testing as required.
- 2.) Not report for duty within four (4) hours of using alcohol or remain on duty while under the influence of alcohol or controlled substances. An alcohol concentration of 0.02 to 0.039 will preclude assignment to duties for a period of twenty-four hours. An alcohol concentration of .04 or greater shall be actionable under Section IX of this policy.
- 3.) Not use alcohol or controlled substances while on duty.
- 4.) Not consume alcohol after an accident that requires alcohol testing for eight hours or until tested, whichever occurs first.
- 5.) Properly participate and successfully complete any rehabilitation program prescribed by a substance abuse professional (SAP).

B. The City of Franklin shall:

- 1.) Pay all costs for testing, training and record keeping. The City may contract for testing and other services related to this policy and will ensure that procedures used for testing meet and exceed the requirements of 49 CFR-Part 40. The City will closely monitor the vendor who provides testing services to protect the employees, ensure the integrity of the testing processes, and safeguard the validity and attributability of the test results.
- 2.) Provide training for all covered employees on the content of the policy and governing directive. Additional training will be provided when changes in the policy or those directives occur. (Material to be provided to employees is outlined in 49 CFR 382.601).
- 3.) Pay all costs for testing associated with any employee's first positive test results. This includes subsequent required testing. This is for the first offense only. If any employee fails required testing after the first positive result he or she will pay all costs associated with the second test.

IV. TESTING:

A. Requirements for controlled substance testing:

- 1.) Random Testing – A periodic, unannounced, scientifically random selection of covered employees will determine the participants required to meet the annual number of random controlled substance tests designated by FMCSA. The random testing selection process shall comply with 49 CFR Part 382.305 (i)(1) and (i)(2).

- 2.) Post Accident Testing – Any on-duty employee involved in a motor vehicle accident will be tested as soon as practicable after the accident, but no later than 32 hours. Employees must not consume alcohol or drugs after an accident that requires testing for eight hours or until tested, whichever occurs first.
- 3.) Reasonable Suspicion Testing – Testing will be required whenever the Police Chief, or their designee, observes specific, contemporaneous articulable conditions of appearance, behavior, speech or body odors and including chronic or withdrawal symptoms indicating the use of a controlled substance by a covered employee.
- 4.) Pre-employment Testing – Prior to any final offer of employment, any Police Department applicant must be tested for controlled substances with a negative result. The hiring offer will be conditional upon test results.
 - a.) The applicant shall be given a copy of this policy and will be informed of the test appointment.
 - b.) The Medical Review Officer will notify the applicant of positive test results. The MRO will give the applicant an opportunity to discuss the results prior to release of the information to the City of Franklin.
 - c.) After the City Manager has received the test results, eligibility for employment will be determined. The test results shall be kept confidential.
- 5.) Return to Duty Testing – A directly observed controlled substance test with verified negative results must be completed for any employee who has previously tested positive before the employee may return to duty.
- 6.) Follow-up Testing – Following return to duty after removal for controlled substance use, an employee who has completed a prescribed rehabilitation program will be tested (directly observed) at least six times, not to exceed twelve times in the first twelve months after return. Further follow-up testing may be conducted for up to sixty months. Costs for all follow-up testing will be borne by the City for the first positive test result only. If any employee tests positive after the first positive test he/she will pay for all costs associated with the second positive test.

B. Requirements for alcohol testing:

- 1.) Random Testing – A periodic, unannounced, scientifically random selection of covered employees will determine the participants required to meet the annual number of random alcohol tests. The percentage of covered employees tested will be at least 10%, except that in no case will the percentage tested exceed that in effect for Commercial Motor Vehicle drivers as prescribed by the FMCSA. The random testing selection process shall comply with 49 CFR Part 382.305 (i)(1) and (i)(2).
- 2.) Post Accident Testing – Any on-duty employee involved in a motor vehicle accident will be tested as soon as practicable after the accident, but no later than 8 hours. Employees must not consume alcohol or drugs after an accident that requires testing for 8 hours or until tested, whichever occurs first.
- 3.) Reasonable Suspicion Testing – Testing will be required within 2 hours whenever the Police Chief, or their designee, observes specific, contemporaneous articulable conditions of appearance, behavior, speech or body odors indicating prohibited use of alcohol by an on-duty covered employee.
- 4.) Return-to-Duty Testing – An employee who has engaged in conduct prohibited by this policy involving alcohol must have an alcohol test with a result indicating alcohol concentration of 0.00 before being returned to duty.
- 5.) Follow-up Testing – Following return-to-duty after removal for alcohol misuse, an employee who has completed a prescribed rehabilitation program will be tested at least six times, (not to exceed twelve), unannounced, in the first twelve months after return. Further follow-up testing may be conducted for up to sixty months.
- 6.) Confirmation Testing – Any test resulting in indication of alcohol concentration greater than 0.02 will be followed as soon as practicable by a second test to confirm the quantitative data of alcohol concentration.

V. NOTICE:

All recruitment announcements for any Police Department position will disclose that a drug-screening test will be required for the applicant.

VI. TESTING TECHNIQUES:

A. Drug Testing:

- 1.) Drug testing is accomplished by analyzing the employee's urine specimen (urinalysis). Specimens will be collected at a location selected by the City of Franklin. The testing facility must assure that specimen collection be done in a dignified, professional and confidential manner. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a US Dept. of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory.
- 2.) All urinalysis procedures are required to include split specimen techniques. Each urine sample is subdivided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result, the split specimen may be used for a second confirmation test. This test will be done at a SAMHSA certified laboratory if requested in writing by the employee within 72 hours. If the second confirmation test is positive the employee will be charged for this test. In the event the second test is negative, the City will pay for the second test.
- 3.) During testing, an initial screening test is performed. If the test is positive for one or more drugs, a confirmation test will be performed.
- 4.) All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the City of Franklin. In the event of a positive test result, the MRO will first contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive result (such as over the counter or prescription medications). If the MRO determines there is a legitimate medical explanation for presence of drugs, the results will be reported as negative.

B. Alcohol Testing:

Alcohol testing will be conducted using either an evidential breath testing (EBT) device or a saliva screening device listed as approved by FMCSA. A certified Breath Alcohol Technician (BAT), trained in the use of the EBT and alcohol testing procedures, must perform the breath test. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. In the event of a confirmed positive test

result for alcohol, the employee, at their option and cost, may request an immediate blood test to be evaluated at a SAMHSA/NIDA certified laboratory of their choice.

VII. CONSEQUENCES:

If an employee or applicant violates this policy, the City of Franklin may consider, but is not limited to the following:

- A. Job applicants – Job applicants will be denied employment with the City if a positive test result has been confirmed or the applicant does not request a confirmation test. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive test result.

- B. Refusal to Submit – Any employee who has been notified of the requirement for testing, who fails to provide adequate breath for alcohol testing, fails to provide adequate urine for controlled substance testing or engages in conduct that clearly obstructs the testing process will be considered to have refused to submit to testing.
 - 1.) Refusal to submit will result in termination.
 - 2.) A job applicant who refuses to submit to a drug and alcohol screening test will be denied employment with the City of Franklin.

- C. Rehabilitation – When the evaluation of a Substance Abuse Professional (SAP) determines that a rehabilitation program, if any, is required by an employee to resolve problems associated with alcohol misuse or controlled substance abuse, the employee will properly follow the prescribed program as a condition of continued employment with the City. If any employee fails to follow the prescribed program established by the SAP he/she will be terminated.

VIII. DISCIPLINE:

- A. Alcohol
 - 1.) First positive test results: 0.04 or greater – Suspension of thirty calendar days without pay. Completion of treatment plan as determined by SAP. Failure to participate shall result in termination of employment.
 - 2.) Second positive test results: 0.04 or greater – Termination.

B. Controlled Substance

- 1.) First positive test results for controlled substance: Suspension of thirty calendar days without pay. Completion of treatment plan as determined by SAP. Failure to participate shall result in immediate termination. Reinstatement shall be conditioned upon negative results for controlled substances upon retesting. Failure to receive a favorable result upon retesting shall result in termination.
- 2.) Second offense shall result in termination.

C. Any infraction with loss of license shall be handled in accordance with the City License Suspension/Revocation Administrative Regulation No. 11.

D. Any employee who willfully refuses to comply with the aforementioned testing and EAP requirements shall be terminated immediately. See section VIII, paragraph; A, B and C.

IX. CONFIDENTIALITY OF TEST RESULTS:

- A. All information from an employee or applicant drug and alcohol test is strictly confidential. Disclosure of test results to any other person; agency or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released by the MRO to the City until confirmed. The records of unconfirmed positive test results and negative test results will be maintained by the MRO, and reported to the City where they will be kept on file.
- B. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation or administrative proceedings arising out of a positive drug or alcohol test or other violation of these rules, or as required by law.
- C. Any unauthorized or improper disclosure of confidential information associated with the application of this policy shall subject an employee to termination.

X. MISCELLANEOUS:

- A. If applicable, the City of Franklin will provide employees being tested with transportation to and from the testing site.
- B. Upon employee request, a union representative will be notified of an employee's reasonable suspicion or post-accident testing.
- C. Designated union representatives (i.e. Stewards) will be included in all

supplementary and supervisory training held in relation to the performance of this policy.

- D. Specimens may only be tested for the covered drugs and the specimens may not be used to conduct any other analysis or test.
- E. The person who makes the determination of reasonable suspicion shall not conduct the test.
- F. If employees test positive for drug or alcohol consumption, as herein defined, the City will pay for all costs of the initial testing. If the employee tests positive as herein defined a second time he/she will pay for all costs associated with compliance with this policy.
- G. The name, address and contact information of all testing facilities and/or laboratories utilized by the City to conduct drug or alcohol testing shall be provided to the Union.
- H. The name and address of the medical review officer shall be provided to the Union.
- I. Except in emergency circumstances, or other circumstances which would otherwise reasonably render testing to be ineffective, all testing pursuant to this policy shall be conducted outside of the City of Franklin.

ARTICLE XXIV **GRIEVANCE PROCEDURE**

- 24.1. For the purpose of this contract, a grievance is defined as a written dispute, claim or complaint which is filed and signed by an employee in the Bargaining Unit who alleges an actual instance of aggrievement and which arises under and during the term of this Agreement. Grievances are limited to matters of interpretation or application of specific provisions of this Agreement and must specify the specific Article and Section of this Agreement which has allegedly been violated, the date of the alleged violation, all witnesses to same and the relief requested.
- 24.2. Whenever an employee in the Bargaining Unit has a grievance as defined in Section 1, above, the following procedure shall be utilized or such grievance shall be deemed waived. The phrase "working days" as contained herein shall mean Monday through Friday, exclusive of legal holidays.

- 24.2.1. The employee involved shall file the grievance in writing as specified above with the employee's immediate supervisor and the Union within ten (10) working days from the date of the event which gives rise to the alleged grievance.
- 24.2.2. If the grievant is not satisfied with the disposition of the grievance by their immediate supervisor or if no decision has been reached within five (5) working days after filing with their immediate supervisor, the grievant, together with the Union, may file the grievance with the Police Chief within ten (10) work days.
- 24.2.3. If the grievant is not satisfied with the disposition of the grievance by the Police Chief or if no decision has been reached within five (5) working days after filing with the Chief of Police, grievant, together with the Union, may appeal the decision of the Chief of Police to the City Manager within ten (10) working days. The decision of the City Manager shall be final and binding upon the parties and shall not be subject to any further appeal or redetermination. However, the Union or the employee may request an advisory opinion of the Personnel Advisory Board pursuant to Section D, below. It is understood that this step shall be advisory only and shall not alter the binding authority of the Manager in these matters.
- 24.2.4. If the grievant or Union is not satisfied with the disposition of the grievance by the City Manager or if no decision has been rendered within ten (10) working days after the meeting at which the City Manager originally considered said grievance, the Union may request that the City Manager submit the matter to the Franklin Personnel Advisory Board pursuant to Section 25 of the Franklin City Charter. Said request of the City Manager to submit the matter to the Personnel Advisory Board shall be in writing. It is understood that the decision of the Personnel Advisory Board is advisory only and does not alter the binding authority of the Manager in these matters.
- 24.2.5. Any of the time requirements stated in this article may be extended by mutual written consent.
- 24.3. Excluded from this grievance procedure are grievances which question the exercise of rights set forth in Article II of this Agreement, entitled Management Clause, or which question the use or application of any right over which the Employer or its designated agents have discretion.
- 24.4. Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with an appropriate member of the staff of the Franklin Police Department and having the grievance adjusted without the intervention of the Union provided the adjustment is not inconsistent with the terms of this Agreement.

ARTICLE XXV
SEPARABILITY

25.1. If any Article of this agreement or any application of any portion of any Article of any Article of this Agreement to any employee is held to be contrary to law, then such Article shall not be deemed valid, but all other Articles shall continue in full force and effect. Upon such invalidation the Union and the Employer agree to meet and negotiate concerning the Article affected.

ARTICLE XXVI
EXPENDITURE OF PUBLIC FUNDS

26.1. Any agreement reached which requires the expenditure of public funds for its implementation shall not be binding upon the Employer, unless, and until, the necessary specific appropriations have been made by the Franklin City Council. If such funds are not forthcoming, the Employer and the Union shall resume negotiations regarding matters affected.

ARTICLE XXVII
EFFECT OF AGREEMENT

- 27.1. This instrument constitutes the entire Agreement and final resolution of all matters in dispute between the Employer and the Union arrived at as a result of collective bargaining negotiations, except such amendments hereto as shall have been negotiated by mutual agreement and reduced to writing and signed by the parties.
- 27.2. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity make demands with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and that opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees the other shall not be obligated, to bargaining collectively with respect to any subject or matter referred to, or covered by this Agreement, or with respect to any subject or matter referred to, or covered by this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

ARTICLE XXVIII
DURATION

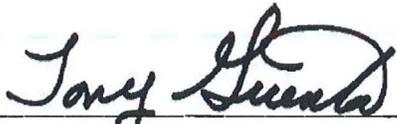
28.1. **The provisions of this Agreement shall be effective on July 1, 2020 unless specifically stated otherwise. This contract shall expire on June 30, 2023. Upon the expiration**

of this agreement or any subsequent agreement hereto, all rights and benefits accorded to the Bargaining Unit Members shall remain at their then current levels until the execution of a subsequent agreement or unless altered by the operation of law.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals by their duly authorized officers and representatives, this 14th day of DECEMBER, 2020.

CITY OF FRANKLIN

**New England Police Benevolent Association
(NEPBA) Local 214**

By: 
Tony Giunta, Mayor

By: 
Ron Scaccia

Date: December 10, 2020

Date: _____

By: 
Judie Milner, City Manager

By: 
Jon Francis

Date: 12/14/2020

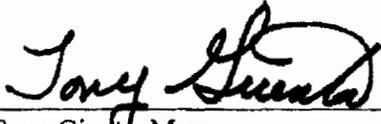
Date: 12/14/2020

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals by their duly authorized officers and representatives, this ____ day of _____, 2020.

CITY OF FRANKLIN

**New England Police Benevolent Association
(NEPBA) Local 214**

By: 
Tony Giurta, Mayor

By: 
Ron Scaccia

Date: December 10, 2020

Date: 12-11-20

By: _____
Judie Milner, City Manager

By: _____
Jon Francis

Date: _____

Date: _____