



**UNIVERSITY OF MARYLAND  
EASTERN SHORE**

**MEMORANDUM OF UNDERSTANDING**

**-between-**

**UNIVERSITY OF MARYLAND  
EASTERN SHORE**

**-and-**

**AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES**

**SWORN POLICE OFFICER BARGAINING UNIT**

**7/1/13 THRU 6/30/16**

**TABLE OF CONTENTS**  
**UNIVERSITY OF MARYLAND**  
**EASTERN SHORE and AFSCME**  
**MEMORANDUM OF UNDERSTANDING**  
**NON-EXEMPT BARGAINING UNIT**

<u>ARTICLE</u>	<u>PAGE NO.</u>
<b>PREAMBLE</b>	1
<b>1 RECOGNITION</b>	1
Section 1. Exclusive Representative	1
Section 2. Definition of Bargaining Unit	1
Section 3. New or Changed Classifications	1
<b>2 NON-DISCRIMINATION</b>	2
<b>3 MANAGEMENT RIGHTS</b>	2
Section 1. Scope of Rights	2
<b>4 UNION RIGHTS</b>	3
Section 1. Right of Access	3
Section 2. Representation Rights	3
Section 3. Means of Communication	3
Section 4. Bulletin Boards	3
Section 5. Right to Information	3
Section 6. New Employee Orientation	4
Section 7. Union Job Stewards	4
Section 8. Meeting Space	4
<b>5 EMPLOYEE RIGHTS</b>	5
Section 1. In General	5
<b>6 WORKING RELATIONS</b>	5
Section 1. Professional Working Relations	5
Section 2. No Verbal Abuse or Overzealous Supervision	5
<b>7 SCOPE OF AGREEMENT</b>	5
<b>8 HOURS OF WORK AND OVERTIME</b>	7
Section 1. Regular Workday	7
Section 2. Regular Work Period	7
Section 3. Hours Worked	8
Section 4. Work Schedule Changes	8
Section 5. Copy of Job Description	8
Section 6. Overtime	8
Section 7. Distribution of Overtime	8
Section 8. Overtime Pay	8
Section 9. Payment for Overtime Worked	9
Section 10. Advance Notice	9

	Section 11. Pre-Arranged Duty Assignment Pay	9
	Section 12. On-Campus Emergency (Off Duty Personnel)	9
	Section 13. Training Time	9
	Section 14. On Call	9
	Section 15. Call Back	10
<b>9</b>	<b>COST REIMBURSEMENT AGREEMENT</b>	<b>10</b>
<b>10</b>	<b>ESSENTIAL EMPLOYEES</b>	<b>10</b>
	Section 1. Essential Employees Defined	10
	Section 2. Essential Employees who Report to Work When the University is Closed	10
<b>11</b>	<b>PROBATIONARY PERIOD</b>	<b>11</b>
	Section 1. New Employees and Converted Contractual and Temporary Employees	11
<b>12</b>	<b>RECLASSIFICATION REQUESTS</b>	<b>11</b>
	Section 1. Reclassification Requests	11
	Section 2. Written Requests	11
	Section 3. Timeline for Processing	11
	Section 4. Decision and Salary Adjustment	11
	Section 5. Denial of Request and Appeal Rights	11
<b>13</b>	<b>WAGES and COMPENSATION [USM Coalition (Non-Exempt Units/ AFSCME MD MOA)]</b>	<b>12</b>
	Section 1. FY 2014 Cost of Living Adjustment and Merit Pay Adjustments	12
	Section 2. Compensation Reopener for FY2014	12
	Section 3. MOA Limited COLA and Merit Pay Adjustment Reopeners FY2015 and FY2016	12
	Section 4.	12
<b>14</b>	<b>WAGES (MOU)</b>	<b>13</b>
	Section 1. FY2014 Cost of Living Adjustment and Merit Pay Adjustments	13
	Section 2. Compensation Reopener for FY2014	13
	Section 3. Limited Reopeners FY2015 and FY2016	13
	Section 4.	13
<b>15</b>	<b>OTHER COMPENSATION</b>	<b>14</b>
	Section 1. Shift Differential	14
	Section 2. Acting Capacity Pay	14
<b>16</b>	<b>HOLIDAYS</b>	<b>15</b>
	Section 1. Recognized Holidays	15
	Section 2. Day of Observance	16
	Section 3. Holiday Pay for Regular Operations	16
	Section 4. Holiday Pay for 24/7 or Other Special Operations	16
	Section 5. Form of Payment	16
	Section 6. Use of Holidays	16
	Section 7. Holiday Termination Payment	17
<b>17</b>	<b>LEAVES</b>	<b>17</b>
	Section 1. Annual Leave	17
	Section 2. Personal Leave	17

	Section 3. Leave Reserve Fund	17
	Section 4. Family and Medical Leave (“FMLA” Leave)	19
	Section 5. Jury Service and for Legal Actions Leave	19
	Section 6. Educational Leave and Professional Improvement Leave	20
	Section 7. Administrative Leave	20
	Section 8. Military Leave With Pay	20
	Section 9. Call-up to Active Military Duty During a National Or International Crisis or Conflict	20
	Section 10. Leave of Absence Without Pay	20
	Section 11. Leave for Disaster Service	21
	Section 12. Accident Leave	21
	Section 13. Parental Leave	21
<b>18</b>	<b>SICK LEAVE</b>	<b>22</b>
	Section 1. Purpose and Applicability	22
	Section 2. General	22
	Section 3. Directed Use of Sick Leave/Medical Examinations	24
	Section 4. Verification of Absences Charged to Sick Leave	25
	Section 5. Advanced Sick Leave for the Employee’s Own Illness	27
	Section 6. Extended Sick Leave for the Employee’s Own Illness	28
<b>19</b>	<b>UNION LEAVE</b>	<b>29</b>
<b>20</b>	<b>PERFORMANCE EVALUATIONS</b>	<b>30</b>
	Section 1. Performance Ratings	30
	Section 2. Expectations Meeting (Establish Goals and Objectives)	31
	Section 3. Probationary and Mid-Year Performance Evaluations	31
	Section 4. Year End Performance Evaluation	32
	Section 5. Deficient Performance	32
	Section 6. Evaluation of the Department Head or Designee	33
	Section 7. Performance Evaluation Pay Adjustment	33
<b>21</b>	<b>DISCIPLINARY ACTIONS</b>	<b>33</b>
	Section 1. Progressive Discipline	33
	Section 2. Disciplinary Actions	33
	Section 3. Annual, Random, and For Cause Drug Tests	33
	Section 4. Right to Union Representation	33
<b>22</b>	<b>GRIEVANCE PROCEDURE</b>	<b>33</b>
<b>23</b>	<b>MISCELLANEOUS</b>	<b>41</b>
	Section 1. Access to Recreation Centers	41
	Section 2. Release Time for Campus Sponsored Committees	41
	Section 3. Attendance at Job-Related Trainings	41
	Section 4. Attendance at Job Interviews	41
<b>24</b>	<b>UNIFORMS AND EQUIPMENT</b>	<b>41</b>
	Section 1. Uniformed Job Classifications	41
	Section 2. Replacement of Uniforms	41
	Section 3. Safety Glasses	41
	Section 4. Shoe Allowance	42
	Section 5. Ammunition	42
<b>25</b>	<b>INSURANCE AND BENEFITS</b>	<b>42</b>
<b>26</b>	<b>RETIREMENT</b>	<b>42</b>

<b>27</b>	<b>TUITION REMISSION</b>	<b>42</b>
<b>28</b>	<b>HEALTH AND SAFETY</b>	<b>43</b>
	Section 1. General Duty	43
	Section 2. Safety Concerns	43
	Section 3. Joint Health and Safety Committee	43
	Section 4. Duties of the Health and Safety Committee	43
	Section 5. Investigative Reports	44
	Section 6. No Loss of Compensation	44
	Section 7. Personal Protective Equipment	44
	Section 8. Communicable Diseases	44
	Section 9. Hepatitis B	44
	Section 10. Cardiopulmonary Resuscitation (CPR) Training	44
	Section 11. Asbestos	44
	Section 12. Physical Examinations for Agricultural Technicians	45
	Section 13. Medical Monitoring	45
	Section 14. Inspection by Governmental Agencies	45
<b>29</b>	<b>CONTRACTING OUT</b>	<b>45</b>
	Section 1. Bargaining Unit Work	45
<b>30</b>	<b>PARKING</b>	<b>45</b>
<b>31</b>	<b>LABOR MANAGEMENT COMMITTEE</b>	<b>46</b>
	Section 1. Purpose of the Committee	46
	Section 2. Composition of the Committee	46
<b>32</b>	<b>NO STRIKE AND NO LOCKOUTS</b>	<b>46</b>
<b>33</b>	<b>SEVERABILITY</b>	<b>46</b>
<b>34</b>	<b>LAYOFF AND RECALL</b>	<b>47</b>
	Section 1. Layoff Notice	47
	Section 2. Order of Layoff	47
	Section 3. Seniority Points	47
	Section 4. Displacement Rights	48
	Section 5. Recall List	48
	Section 6. Severance Package	48
<b>35</b>	<b>DURATION, RENEWAL</b>	<b>50</b>
	Section 1. Duration	50
	Section 2. Renewal	50
	Section 3. New Matters of Negotiations Reopener	50
	<b>SIGNATURE PAGE</b>	<b>51</b>
	<b>Appendix 1</b>	<b>52</b>
	<b>General Order 1 – Cost Reimbursement Agreement</b>	<b>53</b>
	<b>General Order 2 – Drug Testing Program</b>	<b>56</b>

## **PREAMBLE**

This Memorandum of Understanding (MOU) is entered into by the University of Maryland Eastern Shore (Employer or University) and the American Federation of State, County, and Municipal Employees (Union or AFSCME). It is understood that the Board of Regents of the University System of Maryland (USM) must approve this MOU and that agreements on issues requiring funding or approval by the General Assembly of Maryland are tentative pending approval and funding by the General Assembly of Maryland. The provisions of this MOU shall in no way diminish or infringe any rights, responsibilities, powers or duties conferred by the Constitution of the State of Maryland, or the Annotated Code of Maryland, including State Personnel and Pensions Article (SPP), Title 3, Annotated Code of Maryland. In the event of an inconsistency between this MOU and the law, the law shall prevail.

## **ARTICLE 1 - RECOGNITION**

### **Section 1. Exclusive Representative**

The University recognizes the Union as the exclusive representative of the employees, as defined in Section 2 of this Article, for the purpose of negotiating collectively with the University pursuant to SPP, Title 3, with respect to wages, hours, and other terms and conditions of employment. For employees covered by this MOU, the University will not negotiate with any other union or employee organization on matters recognized by the State Higher Education Labor Relations Board as required subjects of bargaining.

### **Section 2. Definition of Bargaining Unit**

The term "employees", "bargaining unit employees" and "employees covered by this MOU" as used in this MOU shall mean all eligible sworn police officers employed by the University in the following job classifications: University Police Officer I, University Police Officer II, exclusive of managerial, supervisory and confidential employees as certified by the SHELRB.

### **Section 3. New or Changed Job Classifications**

Should any new University Police Officer job classification(s) be created, the Employer shall notify the Union at least thirty (30) days prior to the intended date of implementation. If it is believed that the bargaining unit status of a classification has changed, the University or the Union, whichever is proposing the change, shall notify the other. In either event (i.e., new classification(s) or change in status), if the parties are in disagreement over whether or not the classification(s) at issue should be included in the unit and covered by this MOU, they will meet and attempt to resolve the matter. Where they are unable to resolve the matter, either party may elect to pursue the matter in a timely fashion before the SHELRB. The decision of SHELRB shall be final and binding on both parties subject to any appeal rights provided by law.

## **ARTICLE 2 – NON-DISCRIMINATION**

It is the policy of the parties to prohibit discrimination in employment against any employee because of race, age, color, religion, creed, gender, sexual orientation, country of national origin, disability, marital status, veteran status, labor organization affiliation or lack of affiliation, and to promote and implement a positive and continuing program of equal employment opportunity.

## **ARTICLE 3 – MANAGEMENT RIGHTS**

### **Section 1. Scope of Rights**

The Employer retains the sole and exclusive authority for the management of its operations and may exercise all rights, powers, duties, authority and responsibilities conferred upon and invested to it by all laws including, but not limited to, Title 3, SPP. It is agreed by the parties that any section of this MOU that conflicts with current law, in particular Title 3, SPP, can be changed by the Employer after providing the Union with an opportunity to bargain over the proposed change. It is understood and agreed by the parties that the Employer possesses all other rights, powers, duties, authority and responsibilities to operate and manage all aspects of its operations including but not limited to its departments, agencies and programs and carry out constitutional, statutory and administrative policy mandates and goals, including but not limited to the right to:

1. Determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means and personnel by which its operations are to be conducted, technology needed, internal security practices, relocation of its facilities;
2. Maintain and improve the efficiency and effectiveness of operations;
3. Determine the services to be rendered, operation to be performed, and technology to be utilized;
4. Determine the overall methods, processes, means and classes of work or personnel by which governmental operations are to be conducted;
5. Hire, direct, supervise, and assign employees;
6. Promote, demote, discipline, discharge, retain, and layoff employees;
7. Terminate employment because of lack of funds, lack of work, under conditions where the employer determines continued work would be inefficient or nonproductive, or for other legitimate reasons;
8. Set the qualifications of employees for appointment and promotion, and set standards of conduct;
9. Promulgate and/or implement State, USM, University or department rules, regulations, policies or procedures;
10. Provide a system of merit employment according to the standard of business efficiency; and
11. Take actions, not otherwise specified in this Article necessary to carry out the mission of the Employer.

## **ARTICLE 4 - UNION RIGHTS**

### **Section 1. Right of Access**

Union representatives shall have reasonable access to areas in which employees work with prior notice and approval by the Employer for the purpose of administration of this MOU. It is understood that such representatives will not disturb the work of employees while visiting the Employer's facilities. Approval for access described in this section will not be unreasonably denied.

### **Section 2. Representation Rights**

Upon request, a bargaining unit employee may have union representation in the processing of a complaint, as provided in Article 17, or in a disciplinary matter as provided in Article 16.

### **Section 3. Means of Communication**

The Union shall be permitted to use internal University mail systems, including computer/electronic mail/fax, or mailings to the employees covered by this MOU, provided that such use does not interfere with the Employer's operations and is for legitimate Union business purposes. If the Employer can illustrate that the Union is not using equipment or services in a manner consistent with this Section, the Employer shall notify the Union and provide the specific usage(s) it finds in violation of this Section. A meeting between the Employer and the Union shall take place within two (2) business days in which the parties shall attempt to resolve the matter. If no agreement is reached, the Employer may revoke the Union's use of the equipment and services. The Union may submit to the Grievance Procedure outlined in this MOU the issue of whether the Employer's revocation is in compliance with this Article. Confidentiality shall be maintained subject to the Employer's security needs. Mass mailings through the Employer's mail processing department, shall be limited to six (6) per calendar year.

### **Section 4. Bulletin Boards**

The Employer shall provide space for a lockable bulletin board, provided by the Union, at the Physical Plant, Frederick Douglass Library, Richard A. Henson Building, Office of Residence Life Maintenance Building, J. T. Williams Administration Building, and the Student Services Center. These bulletin boards shall be for the exclusive use of the Union. The Union shall be responsible for the posting of all items on the bulletin board. The Employer shall designate reasonable conspicuous space in work or break areas for the placement of the bulletin boards, and the bulletin boards must be consistent with the interior design and furnishings of the particular building. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that posted items are not illegal, defamatory, factually inaccurate, partisan, or political and that no item is detrimental to the safety and security of the University. At the time of posting, the Union shall provide an informational copy of all items to the Employer (Human Resources Director).

### **Section 5. Right to Information**

The University shall provide the Union with the following information twice yearly: a listing of all bargaining unit employees. The report shall include the name, job title, assigned salary, department, office/work location, and work number. The report shall be submitted both



electronically, preferably in Excel format, and paper format. The University shall also provide to the Union a list of all new hires in the preceding months, a list of all employees who retired, resigned or otherwise separated from the University in the preceding half year and a list of all contingent employees due for conversion within 6 months. The University shall assign a unique identification number for all bargaining unit employees. All lists submitted to the Union shall include said unique identifier for each employee listed.

Upon request by the Union, the Employer will also provide, in accordance with the Maryland Public Information Act, any other relevant and necessary information that the Union is entitled to as the exclusive representative of bargaining unit employees.

### **Section 6. New Employee Orientation**

One Local union officer or job steward, shall be granted twenty (20) minutes during the new employee orientation sessions organized by the Employer to meet with new bargaining unit employees and to make a presentation on behalf of the Union. In the event the Employer does not provide for an employee orientation, a Local 1833 union officer or job steward and the new bargaining unit employee will be allowed twenty (20) minutes, with notification to and approval of their respective supervisors, without loss of compensation, to meet during work time to discuss information pertaining to the role of the Union. The Union Officer or job steward will coordinate the twenty (20) minute information meeting through the Human Resources Director or designee. The Human Resources Director will arrange the meeting within a reasonable time.

### **Section 7. Union Job Stewards**

The Union may appoint or elect certain bargaining unit employees to serve as union job stewards. There will be a total of six (6) job stewards representing employees covered by this MOU. Consistent with operational needs, the Employer will allow reasonable release time as defined in Article 19 of this MOU, without loss of compensation, to job stewards for the purpose of presenting grievances to the Employer on behalf of an employee. Typically, a grievance will have no more than one union representative (President or job steward) in attendance at a grievance hearing. Exceptions may be granted by mutual agreement of the parties. This limitation does not apply to non-university employee staff representatives. The Union will submit a list of job stewards to the employer within ninety (90) days after the ratification of this MOU, and thereafter will notify the Employer in writing as to any changes to the job stewards' list. No employee may serve or act as a job steward until officially designated by the Union.

### **Section 8. Meeting Space**

The Employer agrees to provide, at no cost to the Union, meeting space to conduct six union related meetings per year provided that the Union submits a written request for the use of facilities a minimum of two weeks in advance of the date of the meeting and complies with University reservation procedures. The University will respond to a written request within three (3) business days. When a request for use of meeting space is denied, the Employer will state the reasons for the denial in writing. The Employer shall not discriminate against the Union or its members when assessing the feasibility of providing meeting space for Union business, nor shall the Employer unreasonably deny a request.

## **ARTICLE 5 – EMPLOYEE RIGHTS**

### **Section 1. In General**

In addition to all rights granted under this MOU, all employees in the bargaining unit shall enjoy the protections and rights codified in Section 3-301, Title 3, of the State Personnel and Pensions Article, Annotated Code of Maryland.

## **ARTICLE 6 – WORKING RELATIONS**

### **Section 1. Professional Working Relations**

The University and the Union agree that all employees, regardless of bargaining unit or union membership standing, shall treat each other with dignity and respect during the course of performing their professional duties for the University.

### **Section 2. No Verbal Abuse or Overzealous Supervision**

The University and the Union agree that supervisory employees must demonstrate exemplary conduct. Such conduct includes, but is not limited to restraining from verbal or physical attacks on employees, threatening employees, and humiliation or harassment in any form prohibited by law. We also expect employees to maintain the same rules of professionalism.

## **ARTICLE 7 -- SCOPE OF AGREEMENT**

The specific provisions of this MOU supersede the corresponding specific terms of the previously established policies and procedures maintained by the University at the time this MOU is ratified. This MOU may be modified only by the written agreement of the University and the Union. All Board of Regents (BOR) and University policies and procedures shall remain in full force and effect unless modified specifically by this MOU or as provided below.

The University and the Union acknowledge and agree that during the negotiations that resulted in this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject of bargaining as provided in SPP, Title 3, and applicable SHELRB regulations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU. The University and the Union agree that for the term of this MOU, each waives the right to bargain collectively, and neither shall be obligated to bargain collectively with respect to: 1) any subject specifically referred to in this MOU unless such bargaining is initiated by the University pursuant to this MOU's savings clause or because of an emergency condition or legislative mandate; 2) subjects on which the Union made, or could have made, proposals during bargaining, but about which no agreement was reached, so long as the Union was aware or reasonably should have been aware of the subject during the bargaining process; and, 3) subjects on which the University made specific proposals but about which no agreement was reached, unless any such subject is raised by the University pursuant to this MOU's savings clause or because of a legislative mandate or emergency condition. The parties

further agree and intend that the waiver set forth in the sentence above (“Waiver”) shall be construed as consistent with the provisions of the Preamble to this MOU and enforceable.

Except as provided in the Waiver, the University and the Union acknowledge their mutual obligation to negotiate as defined and limited by law and this MOU over University proposed changes in wages, hours and other terms and conditions of employment which affect bargaining unit employees and which are not reserved to the University as a management right or otherwise allowed by this MOU. In such circumstances, the obligation to bargain is limited to those changes that will affect the wages, hours and other terms and conditions of employment of bargaining unit employees and that are subject to bargaining under applicable law.

The University must provide thirty (30) calendar days notice prior to the implementation of any such proposed change in wages, hours and other terms and conditions of employment, to the Union, provided however, that if the proposed change is to meet a legislative mandate or an emergency situation (including an emergency fiscal management issue) the University may provide the Union with less than thirty (30) days notice but such shorter notice must be as soon as reasonably possible prior to the implementation of the proposed change. In such circumstance the notification must indicate the legislative mandate or emergency situation as well as any known timeframes in conjunction with the mandate or emergency.

In circumstances where the proposed change is not required because of an emergency situation or legislative mandate and the thirty (30) days notice is given, the Union, within ten (10) days of receipt of the University’s notice, may request bargaining in connection with the proposed change by notifying the University in writing and may also submit a written request to the University for information which is relevant and necessary to the proposed change. Where the Union does not request bargaining during the ten (10) day period, the University is free to implement the change immediately. Where the Union does request bargaining but does not request information, the Union shall submit its written proposals in response to the University’s proposed change(s) within ten (10) days of the University’s notice of proposed change, and the parties will meet promptly to discuss the change(s) and any proposals submitted by the Union. This ten (10) day time limit may be extended by written agreement of the parties.

In the event the Union requests information relevant and necessary to the proposed change(s), any such information request must be submitted to the University within ten (10) days of receipt of the University’s notice, and the Union must submit its written bargaining proposals to the University within five (5) days of the Union’s receipt of the University’s good faith response to the Union’s information request. The Union agrees that it will tailor its information request so as not to delay the bargaining process.

In circumstances where the proposed change is required to meet a legislative mandate or an emergency situation, and the proposed change implementation date is less than thirty (30) days, the University may provide the Union with less than thirty (30) days notice, and the Union may request bargaining within a proportionate amount of time (request for bargaining is to ten (10) days as shorter University notice is to thirty (30) days). The Union must also submit to the University its written proposals within this proportionate time period (where shorter notice is given) or the ten (10) day period, whichever is applicable. Where the Union does not request bargaining, the University is free to implement the change. When the Union does request bargain and submits its proposals

within the required timeframe, the parties will meet promptly. The Union may also request information relevant and necessary to the proposed change. The Union will tailor its information request so as not to delay the bargaining process. The University will provide its good faith response to the Union's information request as soon as reasonably possible.

The Union's ability to negotiate under this Article does not provide the Union with a "veto" power over the University's proposed changes, and it shall not delay the implementation of such changes. The University may implement the proposed changes that are subject to this bargaining process as scheduled even if after good faith negotiations there has not been mutual agreement.

Where bargaining is requested by the Union over changes necessary to meet a legislative mandate or emergency condition, the parties will negotiate in good faith, and the University may implement any changes necessary to meet the legislative mandate or emergency condition, including any applicable timeframes, regardless of whether an agreement has been reached. The parties understand and agree the University's implementation of the proposed change(s) within the time frame identified to meet the emergency condition or legislative mandate is paramount. Failure of the Union to submit a timely information request, or failure of the University despite good faith efforts to respond to any such request, or the failure of the parties to complete bargaining shall not be deemed as a failure to discharge any obligations under the law or this MOU, and the University may implement any proposed change within the identified time frame.

This Article is also subject to Article 31 Severability.

## **ARTICLE 8 – HOURS OF WORK AND OVERTIME**

### **Section 1. Regular Workday**

The regular workday shall be designated by the Chief or his/her designee which will include 10 consecutive work hours inclusive of roll call and lunch. It is understood that sworn police officers may take break periods, however, they may be interrupted dependent upon the operational needs of the Department.

### **Section 2. Regular Work Period**

The regular work period shall consist of rotating shifts during the 12:00 midnight Sunday through 12:00 midnight the following Saturday pay period. The shifts shall run as follows:

Day Shift: 8:00 a.m. – 6:00 p.m.

Late Shift 5:00 p.m. – 3:00 a.m.

Night Shift 10:00 p.m. – 8:00 a.m.

The temporary or permanent structure of the shifts may be changed at the discretion of the Chief with two weeks notice to affected Officers. The Union will be given notice of the change and an opportunity to bargain regarding the effects of the change. At an employee's request, temporary schedule changes may be approved by the Chief or his/her designee.

### **Section 3. Hours Worked**

Nothing in the Agreement shall be construed as a guarantee by the University of hours to be worked per day, per week, or per year. The University pay records, practices and procedures shall govern the payment of all wages.

### **Section 4. Work Schedule Changes**

Work schedules (scheduled shifts and/or workdays) may be changed by the University from time to time in its discretion as deemed necessary to meet the operational needs of the University. The University shall provide affected employees with at least fourteen (14) calendar days' advance notice of any planned permanent change in an employee's work schedule. In recognition of their status as "essential personnel," the University may make temporary changes to the regular work schedules of sworn police officers as deemed necessary in the discretion of the Chief of Police.

### **Section 5. Copy of Job Description**

The Employer retains the right to change an employee's job-related duties. Upon initial employment and upon each significant change in the employee's duties and/or job classification thereafter, the affected employee shall be furnished a copy of his/her revised job description.

### **Section 6. Overtime.**

The amount of overtime and the selection of employees to perform such work shall be determined by the University, provided however that such overtime work shall be distributed as equally as possible among all the employees within the specific job classification and department/office deemed capable of performing the needed overtime work by the University when the need for overtime work is determined by the University to exist more than forty-eight (48) hours prior to its commencement.

### **Section 7. Distribution of Overtime.**

The Employer will make reasonable efforts to distribute overtime opportunities as equally as possible among all qualified employees within a specific job classification in their respective department/office on a semi-annual calendar year basis. Refusal of overtime work will be taken into account for overtime distribution purposes. Management will maintain a list containing the name and the number of hours of overtime offered, worked, and refused for each employee in his/her department/office. The Employer may assign mandatory overtime work without regard to the foregoing to meet operational needs.

### **Section 8. Overtime Pay**

For all hours actually worked in excess of 40 hours in a work week, an employee shall be paid one and one-half (1.5) times his/her regular straight-time rate of pay for that work period. All hours associated with paid leave (except paid Administrative Leave) shall be considered as hours worked for the purposes of computing overtime. A limited amount of compensatory time may be allowed at the request of the officer and upon approval by the Chief or his/her designee.

### **Section 9. Payment for Overtime Worked**

All timely submitted hours worked under the overtime provisions of this contract shall be paid on the next regularly scheduled pay-day provided that such hours of overtime took place before the payroll reporting deadlines in effect at that time.

### **Section 10. Advance Notice**

The Employer shall normally provide notice of required scheduled overtime work at least twenty-four hours in advance of such overtime. Notice of emergency or unscheduled overtime work will be given as soon as reasonably possible. Refusal of scheduled overtime work by employees on the basis that management did not provide advance notice within the time limits (24 hours) shall not be charged against those employees as an overtime opportunity refused. The Employer retains the right under any circumstances to require the least senior qualified employees to perform the overtime work.

### **Section 11. Pre-Arranged Duty Assignment Pay**

An Officer summoned to court, a hearing or a staff meeting in connection with his/her official duties on his/her off-duty time will be compensated at the regular straight rate of pay for time spent at this pre-arranged duty for a minimum of three (3) hours. An officer required to appear during the morning session and afternoon session for the same case or a different case in the same day shall receive only one (1) minimum payment of three (3) hours under this section. This may cause an Officer to be paid overtime if the total work hours for the week exceed 40 hours for the week.

### **Section 12. On-Campus Emergency (Off Duty Personnel)**

In the event of an on-campus emergency requiring the response of off-duty employees, those employees will be compensated at one and one-half (1 1/2 ) time his/her regular straight time of pay for a minimum of four (4) hours, inclusive of travel time.

### **Section 13. Training Time**

An Officer attending an off campus training session on his/her off-duty time will be compensated at the regular straight rate of pay as well as reasonable travel to and from the training site not to exceed eight (8) hours per day with approval of the Chief of Police or his/her designee. This may cause an Officer to be paid overtime if the total work hours for the week exceed 40 hours for the week.

### **Section 14. On Call**

- A. Employees may be placed in an on-call status at the direction of the University. The following guidelines apply:
1. An employee assigned to on-call status is eligible to receive compensation in the amount of twenty-four dollars (\$24) per day, plus appropriate wages for all hours worked. On-call pay shall be included in the computation for overtime wages.
  2. The employee must be accessible at all times and must immediately notify his/her supervisor if inaccessible. If inaccessible, on-call pay will be forfeited.
  3. An employee cannot be designated on-call for more than seven (7) consecutive days, however he/she may be on-call for 24 hours on each of those days.
  4. An employee who is assigned to on-call status and cannot be reached, or does not report within two (2) hours of being contacted, will face disciplinary action and will not receive on-call pay for that day.

5. Employees will not receive on-call compensation if performance of the duties is an extension of the regular workday or workweek.
6. Essential employees are not automatically assigned to on-call status.
7. The University will make reasonable efforts to allocate on-call assignments among qualified eligible employees on a rotating basis.

### **Section 15. Call Back**

The University may, at its discretion, require an employee(s) to report to work in “call-back” capacity. Employees who are required to return to work on a regularly scheduled on-duty day after going off-duty, or are required to work on a regularly scheduled off-duty day are eligible for call-back compensation, a guaranteed minimum of two (2) hours of pay at the applicable rate of pay even if the time spent on duty is less than two hours. This circumstance does not apply to the employee who may be working overtime as a continuation of the employee’s normal hourly schedule. Normally, travel between home and work is not work time. However, where employees have gone home after completing a day’s work or are on scheduled off duty days and subsequently are required to return to the normal place of work or any other location in order to perform a necessary task, travel time is included as work time. Additionally, such hours spent in travel shall be considered as hours worked and count toward the accumulation of overtime hours. Travel time counts toward the two-hour minimum call-back time. An employee who is called back during a qualifying shift will receive a pro-rata shift differential.

## **ARTICLE 9-COST REIMBURSEMENT AGREEMENT**

All Police Officer I employees are subject to the Cost Reimbursement Agreement (see General Order on Cost Reimbursement - Attached).

## **ARTICLE 10 -ESSENTIAL EMPLOYEES**

### **Section 1. Essential Employees Defined**

All members of the bargaining unit covered by this MOU are deemed essential employees.

### **Section 2. Essential Employees who Report to Work when the University is Closed**

Employees in this category will be governed by USM Policy 170 VI-12.00 - POLICY ON EMERGENCY CONDITIONS: CANCELLATION OF CLASSES AND RELEASE OF EMPLOYEES (Approved by the Board of Regents on May 1, 1992). Employees who are required to perform duties after an emergency condition has been declared shall be compensated with compensatory leave or cash payment equivalent to the Administrative Leave granted to non-essential employees who are released from the same facility.

Administrative leave can either be paid or used at another time, provided that it is used by the end of the calendar year in which it is earned, or it will be paid out. Such administrative leave is accrued as compensatory time or paid at time-and-one-half.

Only extenuating circumstances of a most serious nature will warrant the exemption of an essential employee from the requirement to report for duty in a timely manner.

## **ARTICLE 11 - PROBATIONARY PERIOD**

### **Section 1. New Employees and Converted Contractual and Temporary Employees**

Probationary periods shall be administered per provisions of USM Policy VII – 1.21 Policy on Probation for Nonexempt Employees, except that extensions of status change probationary periods are limited to ninety (90) days rather than six (6) months. The current practice of extending the probation of all sworn police officers new to the University an additional 6 months will continue. The Employer agrees to provide the Union with an opportunity to comment on any proposed changes to the aforementioned policy before implementing the changes.

## **ARTICLE 12 – RECLASSIFICATION REQUESTS**

### **Section 1. Reclassification Requests**

Reclassification requests may be made by members of the nonexempt job group when the job class to which a position is assigned is changed by raising it to a higher class, reducing it to a lower class, or changing it to another class at the same level. Reclass actions are based upon significant and substantial changes that evolve in the position's primary duties, when structured changes occur in the position's duties and responsibilities that were unforeseen at the time of hire and are crucial to the mission and/or organizational effectiveness of the university, or as a result of changes in the job evaluation program. Employee initiated requests may occur no more than once per year.

### **Section 2. Written Requests**

The employee shall submit his/her request to the appropriate supervisor and concurrently to the Office of Human Resources. The employee shall prepare the request on the appropriate Reclassification Request Form along with attachments of relevant materials such as the employee's approved job description.

### **Section 3. Timeline for Processing**

The Office of Human Resources shall have appropriate personnel conduct a desk audit to determine the need for reclassification action within 6 months of the filing of the request or as soon as practicable following the submission of the request.

### **Section 4. Decision and Salary Adjustment**

- a. Salary upon lateral reclassification shall remain the same.
- b. Salary upon promotional reclassification shall be 6% of the base salary at the time of the filing of the reclassification request.
- c. Salary upon demotion shall be placed within the range of the new classification. In no case shall it exceed the range of the new position.

### **Section 5. Denial of Request and Appeal Rights**

The denial of a reclassification request shall be provided to the employee by the Vice President of Administrative Affairs in writing with an explanation of the reasons for denial. The employee may appeal a denial pursuant to the grievance policies contained in this MOU at Article 17.



## **ARTICLE 13 – WAGES AND COMPENSATION**

### **Section 1. FY2014 Cost of Living and Merit Pay Adjustments**

- (a) Cost of Living Adjustment: Effective no later than January 1, 2014, each bargaining unit employee covered by this Memorandum of Agreement shall receive a Cost of Living Adjustment (COLA) of 3% to their base pay.
- (b) Merit Pay Adjustment: Effective as of the pay period that includes April 1, 2014, a Merit Pay Adjustment shall be added to the base pay of each employee who has achieved “meets standards” or better on his/her last performance rating. If the merit adjustment would cause an employee’s pay rate to exceed the maximum pay rate for the employee’s pay grade range, the employee’s pay rate will be adjusted to the maximum of the pay range and the remainder of the merit adjustment shall be provided in the form of a one-time, lump sum payment which shall not be included in the employee’s base pay. The lump sum shall be paid as soon as practical following April 1, 2014.

### **Section 2. Compensation Reopener for FY2014**

The Parties agree to accept the FY2014 COLA and merit pay adjustments agreed upon by the USM Coalition and AFSCME. If negotiations are reopened between AFSCME and the State of Maryland as to the amount and/or effective date of the FY2014 COLA and salary increments provided for in the applicable collective bargaining between AFSCME and the State.

### **Section 3. MOA Limited Reopeners FY2015 and FY2016**

The Parties will reopen negotiations under this MOA beginning in the first week of September 2013 and 2014, respectively, for the sole purpose of accepting any agreement made between the USM and AFSCME as to what COLA, if any, and what Merit Pay Adjustments, if any, and what funding conditions and requirements for both items shall be included in the USM budget request submitted to the Governor for FY2015 and FY2016. All other terms and conditions of the MOA covering the period July 1, 2013-June 30, 2016, shall remain in full force and effect, except as otherwise provided herein.

### **Section 4.**

Any bonus, COLA or Merit Pay Adjustment provided for above shall be subject to the General Assembly’s prior approval and funding and all controlling directions or restrictions imposed by the Governor or General Assembly.

## **ARTICLE 14 – WAGES**

### **Section 1. FY2014 Cost of Living and Merit Pay Adjustments.**

Pursuant to the terms of the current MOA between the USM Coalition (Non-Exempt Units) and AFSCME MD, each bargaining unit employee will receive the following adjustments:

- (a) Cost of Living Adjustment: Effective no later than January 1, 2014, each bargaining unit employee covered by this Memorandum of Agreement shall receive a Cost of Living Adjustment (COLA) of 3% to their base pay.
- (b) Merit Pay Adjustment: Effective as of the pay period that includes April 1, 2014, a Merit Pay Adjustment shall be added to the base pay of each employee who has achieved “meets standards” or better on his/her last performance rating. If the merit adjustment would cause an employee’s pay rate to exceed the maximum pay rate for the employee’s pay grade range, the employee’s pay rate will be adjusted to the maximum of the pay range and the remainder of the merit adjustment shall be provided in the form of a one-time, lump sum payment which shall not be included in the employee’s base pay. The lump sum shall be paid as soon as practical following April 1, 2014.

### **Section 2. Compensation Reopener for FY2014**

The Parties agree to accept the FY2014 COLA and Merit Pay Adjustments agreed upon by the USM Coalition and AFSCME, if negotiations are reopened between AFSCME and the State of Maryland as to the amount and/or effective date of the FY2014 COLA and salary increments provided for in the applicable collective bargaining between AFSCME and the State.

### **Section 3. Limited Reopeners FY2015 and FY2016**

Pursuant to the terms of the current MOA between the USM Coalition (Non-Exempt Units) and AFSCME MD, that MOA will be subject to reopening for the sole purpose of negotiating an agreement as to what COLA, if any, and what Merit Pay Adjustment, if any, and what funding conditions and requirements for both items shall be included in the USM budget request submitted to the Governor for Fiscal Years 2015 and 2016 respectively. Subject to approval and funding by the General Assembly and controlling directions or restrictions imposed by the Governor or General Assembly, COLA and/or Merit Pay Adjustments for FY2015 and/or FY2016 agreed upon by the USM Coalition (Non-Exempt Units) and AFSCME MD pursuant to the aforementioned reopener provisions shall be incorporated into this MOU.

### **Section 4.**

Any bonus, COLA or Merit Pay Adjustment provided for above shall be subject to the General Assembly’s prior approval and funding and all controlling directions or restrictions imposed by the Governor or General Assembly.

## ARTICLE 15 - OTHER COMPENSATION

### Section 1. Shift Differential

- A. An employee who regularly works a qualifying shift is eligible for shift differential pay for hours actually worked subject to the conditions set forth below. A qualifying shift means a full-time or permanent part-time shift that starts at or after 2:00 P.M. and at or before 1:00 A.M. The rate of shift differential pay is one-dollar (\$1.00) per hour. Shift differential will be included in the regular rate calculation for the computation of overtime. The following provisions establish eligibility:
1. To qualify for shift differential, an employee must be employed on a fifty percent (50%) or more basis of full-time employment.
  2. Shifts and eligibility for shift differential pay are not established by the time the employee begins to work, but rather by when an established shift starts.
  3. An employee who works any part of a qualifying shift is eligible for shift differential pay on a prorated basis.
  4. Shift differential is authorized for an employee who is permanently assigned to a qualifying shift while on approved leave with pay. An employee who is on a permanent schedule of rotating shifts is eligible to claim the shift differential only for leave taken while scheduled for a qualifying shift. However, such payment of shift differential will cease after ten (10) full workdays of continuous paid leave for which there has been a shift payment.
- B. In an overtime situation where the employee continues working from a non-qualifying shift into a qualifying shift, the employee is eligible for a prorated shift differential provided the employee works at least one-half (1/2) of the qualifying shift.

### Section 2. Acting Capacity Pay

Acting capacity pay is paid when an officer is appointed to a different position in a higher sworn police officer classification on a temporary basis. An officer who is in acting capacity must meet the minimum qualifications of the position. The effective date for acting capacity pay shall be the date that the officer began performing the higher level duties.

- A. The amount of acting capacity pay shall be the amount which the officer would be paid if reclassified to the higher classification.
- B. When an officer is appointed to acting capacity to a classification with a salary range which is one (1) pay range higher, the officer shall be given at least a six percent (6%) increase in annual salary. When an officer is appointed to a classification with a salary range which is two (2) or more pay ranges higher, the officer shall be given at least a twelve percent (12%) increase in annual salary.

- C. At the conclusion of the Acting Capacity Appointment, the officer shall be returned to the officer's former position with the same salary and status which the officer held prior to the acting capacity appointment. Additional salary adjustments will be made if there were any pay adjustments such as merit or COLA that occurred during the acting appointment.

## **ARTICLE 16 – HOLIDAYS**

### **Section 1. Recognized Holidays**

In order to meet operational needs, the Director of Public Safety shall schedule holidays on dates other than the calendar date designated by the Governor and legislature. The actual dates of observance for paid holidays and University holidays vary from year to year. The University's Human Resources Office shall publish an annual holiday schedule, which shall indicate the days the holidays are earned and the date of observance. The current year's listing of observed dates may be found on employees' timesheet web page. Generally, the institution will be closed on the dates of holiday observance except for essential personnel and employees designated by their department head required to perform duties on a holiday to meet operational needs. Scheduling of any employee who is not designated as essential to work on a holiday must be approved by the Vice President for Administrative Affairs.

Holidays for Sworn Police Officers will be prescheduled based upon the workweek schedule rotation. The University reserves the right to assign holidays in accordance with this schedule rotation and shall make an effort to grant the Employee the day off requested, subject to operational needs. An Employee may be required to work on the Employee's prescheduled holiday. If required to work on their prescheduled holiday, the Employee will be paid at their regular straight time rate of pay for all hours worked plus any overtime pay required in accordance with Article 6 Hours of Work, Section 7 of this MOU.

The following are recognized holidays:

<b><u>Holiday</u></b>	<b><u>Date Earned</u></b>
New Year's Day	January 1
Dr. Martin Luther King Jr.'s Birthday	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 <sup>st</sup> Monday in September
Columbus Day	2 <sup>nd</sup> Monday in October
Election Day (General and/or Congressional)	1 <sup>st</sup> Tuesday in November (even-numbered years)
Veterans' Day	November 11
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Friday after Thanksgiving Day	4 <sup>th</sup> Friday in November
Christmas Day	December 25

In addition, employees are eligible to earn holiday leave for three (3) University holidays, which shall be observed at the discretion of the University President or designee. The actual dates of observance for paid holidays and University holidays vary from year to year. The current year's listing of observed dates for holidays may be found on the University personnel web page and in the campus directory.

To earn holiday leave, employees must be in a paid employment status on the date the holiday is earned. To earn holiday leave for University holidays, employees must be in paid employment status on the calendar date the holiday is observed.

Part-time employees on at least fifty (50) percent basis of fulltime employment shall earn holiday leave on a prorated basis.

Employees covered by this MOU shall also earn holiday leave for any other holiday that the President of the University determines will be observed by the University.

### **Section 2. Day of Observance**

When a holiday falls on a Saturday, it is observed the Friday before, and when a holiday falls on a Sunday, it is observed on the following Monday. The Employer reserves the right to determine when holidays are observed.

### **Section 3. Holiday Pay for Regular Operations**

Employees shall receive holiday leave at their regular hourly rate for every holiday the employee is entitled to observe. If an employee is required to or authorized to work on the day the employee is entitled to observe a holiday, the employee will be paid at the applicable rate of pay under the FLSA for all hours worked and will receive earned holiday leave for that day.

### **Section 4. Holiday Pay for 24/7 or other Special Operations**

Holidays in 24/7 or other special operations are prescheduled based upon the workweek schedule rotation. The Employer reserves the right to assign holidays in accordance with this schedule rotation and shall make best efforts to grant the employee the day off requested, subject to operational needs. Management will work with 24/7 employees to allow them to take their prescheduled holidays; however, due to operational needs, an employee may be required to work on the employee's prescheduled holiday. When this occurs, the employee will be paid at the applicable rate of pay under the FLSA for all hours worked on the day the employee was prescheduled to observe the holiday and will receive earned holiday leave for that day.

### **Section 5. Form of Payment**

When an employee earns overtime compensation during a week in which the employee worked on a day the employee was scheduled to observe a holiday, the employee will be paid for the overtime on a cash basis, provided however, that the supervisor and the employee may mutually agree to compensatory time in lieu of cash payment as outlined in Article 7, Hours of Work and Overtime.

### **Section 6. Use of Holidays**

Holiday and University holiday leave may not be carried on the books for use at other times except as prescheduled as described in Section 1, paragraph 2.

**Section 7. Holiday Termination Payment**

Employees who leave their employment at the University for any reason are entitled to be paid for any unused holiday leave that has been earned as of the date of separation. If a holiday is taken and the employee severs employment before the holiday is earned, the employee will pay back the holiday upon severance.

**ARTICLE 17 – VARIOUS LEAVE TIME**

**Section 1. Annual Leave (USM Policy VII-7.00)**

Annual Leave for employees covered by this MOU is governed by USM Policy on Annual Leave (VII-7.00 approved by the Board of Regents April 25, 1991) and is subject to all the terms and conditions set forth therein with the following modification:

Annual leave for full-time employees in the bargaining unit is earned on a prorated basis and can be used to the extent it is accrued and available. Leave will be earned according to the following schedule. (Part-time employees in the bargaining unit working 50% or more will earn annual leave on a pro-rated basis.)

From 0 to 6 months: Leave is earned on a prorated basis and can be used to the extent it is accrued and available during an employee’s first six months of service up to a maximum of: 5.5 days.

Beginning with the 1 <sup>st</sup> month through the completion of the 1 <sup>st</sup> year:	11 days
Beginning with the 2 <sup>nd</sup> year through the completion of the 2 <sup>nd</sup> year:	12 days
Beginning with the 3 <sup>rd</sup> year through the completion of the 3 <sup>rd</sup> year:	13 days
Beginning with the 4 <sup>th</sup> year through the completion of the 4 <sup>th</sup> year:	14 days
Beginning with the 5 <sup>th</sup> year through the completion of the 10 <sup>th</sup> year:	15 days
Beginning with the 11 <sup>th</sup> year through the completion of the 20 <sup>th</sup> year:	20 days
Beginning with the 21 <sup>st</sup> year and thereafter:	25 days

**Section 2. Personal Leave (USM Policy VII - 7.10)**

Personal Leave for employees covered by this MOU is governed by USM Policy on Personal Leave (VII - 7.10 approved by the Board of Regents, December 3, 1999). Full-time employees shall receive three days (not to exceed 24 hours) of personal leave in each calendar year. Part-time employees working 50% or more shall receive personal leave on a pro-rated basis.

Personal leave must be used by the end of the first pay period which ends in the new calendar year. Any personal leave that is unused as of that time shall be forfeited by the employee and shall be contributed to the USM Leave Reserve Fund in accordance with the then current USM Policy on Leave Reserve Fund. No employee shall be paid for unused personal leave.

The use of personal leave shall require prior notification to the employee’s supervisor.

**Section 3. Leave Reserve Fund (USM Policy VII - 7.11)**

Request for leave under the LRF will be in accordance with USM Policy VII – 7.11 Policy on Reserve Fund (LRF) and the terms described below.

Personal leave unused by an employee shall be remitted to the Leave Reserve Fund available for University employees. The Leave Reserve Fund provides paid leave to full time and part-time employees who become temporarily medically disabled. A person authorized to act on the employee's behalf may make the leave request on behalf of the employee when the employee is unable to do so.

An employee wishing to receive leave under this policy shall submit a request directly to the Office of Human Resources at the Institution where the employee works. The request may be submitted by using the "USM Leave Reserve Fund Request," attached to this MOU, or by a written request containing the following information:

- Employee's name;
- Name of Institution;
- Employing department;
- Employee's position title, USM service date and number of months of creditable service;
- Amount of leave and specific dates requested; and

Physician's certification of temporary disability which includes the physician's judgment as to when the employee may reasonably be expected to return to work – a prognosis, not diagnosis, or appropriate documentation of the birth or adoption of a child, if the employee is requesting parental leave. (This information should be kept confidentially at the Institution and not forwarded to the USMO-HR.)

If the Institution's Department of HR determines that the employee is eligible to apply for leave from the LRF, it will forward the request for leave to the USMO-HR within five (5) working days following receipt of the request from an employee. The USMO-HR office will issue a response within five (5) working days after its receipt of a request for leave.

An employee who is determined to be ineligible for leave from the LRF by his/her Institution's Department of HR, or whose request for leave is denied by the USMO-HR, shall have the right to file a grievance concerning that determination in accordance with Section 13-201 *et seq.*, of the Annotated Code of Maryland Education Article. Such a grievance shall be initiated at Step Two of that grievance procedure within five (5) days after receipt of the written determination of the Institution's Department of HR or the USMO-HR which is the subject of the grievance. In the case a grievance concerning the denial of a request for leave by the USMO-HR, the written decision by the President or President's designated representative shall be rendered after consultation with the Chancellor or the Chancellor's designated representative.

Beginning in March, 2013, upon written request from AFSCME MD, the USM (USMO-HR) on behalf of the USM Coalition will furnish the Union annually a report containing the following information for the preceding Calendar Year:

1. For each Coalition Institution, the number of FLSA classified Non-Exempt employees whose requests for LRF usage were approved and the total number of hours and minutes approved.

2. For each Coalition Institution, the number of FLSA classified Non-Exempt employees whose requests for LRF usage were denied.

**Section 4. Family and Medical Leave (“FMLA” Leave) (USM Policy VII - 7.50)**

Family and Medical Leave for employees covered by this MOU is governed by USM Policy on Family and Medical Leave (VII - 7.50 approved by the Board of Regents, August 27, 1993; Amended April 16, 2004; Amended October 22, 2004; Amended June 18, 2010)) and is subject to all terms and conditions set forth therein with the following modification:

This type of leave is based on federal law as described in the Family and Medical Leave Act of 1993 (FMLA). The University shall make FMLA leave available to employees in accordance with the FMLA and USM policies.

FMLA leave is not a separate form of accrued leave, like sick or annual leave. FMLA leave allows a qualifying employee to take employment-protected leave (by first using available sick and annual leave and then unpaid leave) for up to twelve (12) weeks for any of the following reasons.

- 1) To care for the employee’s child after birth, or placement for adoption or foster care;
- 2) To care for the employee’s spouse, son, daughter, or parent who has a serious health condition;
- 3) For a serious health condition of the employee, including pregnancy and recovery time, that renders an employee unable to perform his or her job; or
- 4) Any other reasons stated in USM Policy VII-7.50 as of February 18, 2004.

The National Defense Authorization Act requires the USM to provide additional FMLA leave benefits for Staff employees with family members in the military.

1. Certain family members may use up to 26 weeks in a 12 month period to care for an ill or injured service member under certain conditions.
2. Certain family members may use their 12 week FMLA entitlement for certain qualifying exigencies.

To qualify for FMLA Leave:

- 1) The employee must have worked for the University for at least twelve (12) months, and
- 2) The employee must have worked at least 1040 hours in the twelve (12) months immediately preceding the date the leave is to commence.

In addition to USM Policy VII-7.50, the Sick Leave Article contains specific provisions dealing with Family and Medical Leave.

**Section 5. Jury Service and Legal Actions Leave (USM Policies VII-7.21 and VII-7.22)**

Jury service and legal actions leave for employees covered by this MOU are governed by USM Policy on Jury Service (VII-7.21 approved by the Board of Regents, February 28, 1992; Amended



May 7, 1993) and USM Policy on Leave for Legal Actions (VII-7.22 approved by the Board of Regents, February 28, 1992) and is subject to all the terms and conditions set forth therein with the following modification to USM Policy VII-7.21:

Employees who are dismissed from jury duty will be expected to return to work for the balance of their scheduled workday if the amount of time left in the employee's workday exceeds three (3) hours.

**Section 6. Educational Leave and Professional Improvement Leave** (USM Policy VII-7.12)

Employees may be granted educational or professional leave for up to two years pursuant to USM Policy Leave of Absence without Pay (VII-7.12 approved by the Board of Regents May 1, 1992; Amended November 12, 1993), subject to all of the terms and conditions therein.

**Section 7. Administrative Leave** (USM Policy VII-7.20)

Administrative Leave for employees covered by this MOU is governed by USM Policy on Administrative Leave (VII-7.20, approved by the Board of Regents, February 28, 1992).

Administrative Leave may be granted when emergency conditions exist.

The institution Chief Executive Officer (CEO) may approve a request for administrative leave or may require an employee to take administrative leave for any purpose considered to be in the best interests of the Institution.

**Section 8. Military Leave With Pay** (USM Policy VII-7.23)

Military Leave for employees covered by this MOU is governed by USM Policy on Military Leave (VII-7.23 approved by the Board of Regents, February 28, 1992; Amended December 6, 2002; Amended October 17, 2003; Amended September 10, 2004; Amended June 18, 2010) and is subject to all the terms and conditions set forth therein.

An employee is entitled to Military Training Leave With Pay for military training purposes for a period of not more than fifteen (15) workdays (pro-rated for part time employees) in any calendar year. Military Training Leave applies to employees who are members of the organized militia or the Army, Navy, Air Force, Marines or Coast Guard Reserves.

**Section 9. Call-Up to Active Military Duty During a National or International Crisis or Conflict** (USM Policy VII-7.24)

Military leave for call up to Active Duty during a national or international crisis or conflict for employees covered by this MOU is governed by USM Policy VII – 7.24 (Approved by the Board of Regents, October 5, 2001; Amended December 6, 2002; Amended October 17, 2003; Amended September 10, 2004; Amended June 18, 2010) and is subject to all the terms and conditions set forth therein.

**Section 10. Leave of Absence Without Pay** (USM Policy VII-7.12)

Leave of Absence Without Pay for employees covered by this MOU is governed by USM Policy on Leave of Absence Without Pay (VII-7.12 approved by the Board of Regents, May 1, 1992; Amended November 12, 1993) and is subject to all the terms and conditions set forth therein.

Employees may request full or partial leave without pay for a two-year (24-month) period in accordance with the provisions of the USM Policy VII – 7.12. Approval of unpaid leave will be at the discretion of the University President or designee. No employee shall be denied unpaid leave unreasonably.

**Section 11. Leave for Disaster Service** (USM Policy VII-7.26)

Disaster Service Leave for employees covered by this MOU is governed by USM Policy on Leave for Disaster Service (VII-7.26 approved by the Board of Regents, October 11, 2002) and is subject to all terms and conditions set forth therein.

**Section 12. Accident Leave** (USM Policy VII-7.40)

Accident Leave for employees covered by this MOU is governed by USM Policy on Accident Leave (VII-7.40 approved by the Board of Regents, May 1, 1992; Amended November 12, 1993; Amended December 13, 1996) and is subject to all the terms and conditions set forth therein.

**Section 13. Parental Leave** (USM Policy VII-7.49)

To support employees in balancing professional and family demands during and after the birth or adoption of a child, each eligible employee is assured a period of up to eight (8) weeks (i.e., forty work days) of paid parental leave to care for a new child, as follows:

- A. Nature of Leave: The parental leave period will consist of any form of annual, sick, personal, holiday or leave reserve fund leave accrued or otherwise available to the employee under this Agreement and USM policies, to be supplemented as necessary by the Institution with additional paid leave days to attain an eight (8) week period of paid parental leave.
- B. Applicability: The eight (8) week paid leave assurance is available during a six (6) month period surrounding:
  1. The birth of a newborn;
  2. The recent adoption of a child under the age of six (6); and
  3. At the discretion of the Institution's President or designee and subject to any limitations established by the Institution, the assumption of other parenting responsibilities, such as foster parenting or legal guardianship of a child under the age of six (6).
- C. Eligibility: The paid leave assurance will apply as follows:
  1. Leave shall be pro-rated for eligible .50 or greater Full Time Equivalent staff.
  2. If a child's parents are employed by the same Institution, both may be eligible for paid parental leave up to the eight (8) week maximum as follows:
    - a. Both parents may use accrued annual, sick or personal leave concurrently with the birth of a child or adoption of the child under age six (6);

- b. A parent may use additional guaranteed paid leave under this policy only during a period when that parent is the child's primary caregiver.
3. An employee shall be eligible for assured minimum paid parental leave after one (1) year of employment with the Institution, except to the extent that Institution's policies permit a lesser eligibility period.
4. An employee may be eligible for paid parental leave under this policy on one occasion in a given 12-month period, and on two separate occasions during the duration of the staff member's employment within the USM. Any additional periods of paid parental leave require the approval of the President, or the President's designee.
5. The employee must have a satisfactory record of sick leave usage and work performance.

## **ARTICLE 18 – SICK LEAVE**

### **Section 1. Purpose and Applicability**

This Article governs the accrual and use of sick leave for all employees covered by this MOU. When a provision of this Article provides an employee with the eligibility to use sick leave that is also covered by the Family and Medical Leave Act (FMLA), the sick leave and the leave under the FMLA run concurrently. Also, employees must use their accrued sick leave in accordance with the specific provisions of this Article and exhaust all accrued annual leave and personal leave prior to using unpaid FMLA leave.

### **Section 2. General**

- A. Sick leave is paid leave granted to employees in an effort to provide some protection against the loss of earnings due to absences for health reasons.
- B. A full-time employee shall earn sick leave at the rate of fifteen (15) workdays per year. Employees who are appointed at least 50% time shall earn sick leave on a pro rata basis. Sick leave is accumulated and carried forward from year to year without limit.
- C. An employee may request that his/her illness, injury, or disability occurring during a period of annual or personal leave be charged to sick leave. Verification of such illness, injury, or disability may be required by the Office of Human Resources as provided in Section 4 of this Article.
- D. An employee may use on a continuous basis, subject to the terms and conditions of this MOU dealing with such leaves, earned leave (sick, annual and personal leave), advanced sick leave, extended sick leave, leave granted through the leave reserve fund, or unpaid family medical leave, as needed for personal illness and for parental leave, consistent with Article 16, Section 13 [Parental Leave].

- E. Earned sick leave is granted by the Department Head or designee (normally the immediate supervisor) pursuant to the terms and conditions of this Article when an employee is absent because of:
1. Illness, injury, or disability of the employee.
  2. A pre-scheduled medical appointment, examination, or treatment for the employee with an accredited, licensed or certified medical provider listed in Section 4 F. of this Article that cannot be scheduled during non-work hours. Employees will provide three (3) working days' advance notice if possible, but in no event less than one day's advance notice. Employees shall make every effort to schedule the appointment either at the beginning or the end of the scheduled workday in order to reduce time away from work. However, the University shall not unreasonably deny medical appointments when the time available overlaps with the employee's regular work hours.
  3. Illness or injury in the employee's immediate family and medical appointments, examinations or treatments for the immediate family member with an accredited, licensed or certified medical provider listed in Section 4.F. of this Article that cannot be scheduled during non-work hours.
    - a). Immediate family as used in this section means a spouse, child, step-child, foster child, grandchild, mother, father, mother-in-law, father-in-law, brother, sister, grandparent, or legal dependent of the employee irrespective of residence. Use of sick leave may also be granted to care for any other relative who permanently resides in the employee's household for whom the employee has an obligation to provide care. The Office of Human Resources may require an employee to provide certification by a medical provider listed in Section 4.F. of this Article to demonstrate this obligation or to authenticate the need for the employee to care for the ill family member. Certification from a medical provider does not need to include information about the specific illness or health condition of the family member or relative.
    - b). Sick leave, to the extent it is accrued and available, shall be granted by the Office of Human Resources pursuant to the terms and conditions of this Article.
  4. Death of a relative.
    - a) For the death of a close relative, the Department Head or designee (normally the immediate supervisor) may grant the use of up to five (5) days of accrued leave. If the death of a close relative requires an employee to travel requiring staying away from home overnight, upon request the Department Head or designee (normally the immediate

supervisor) may grant the use of up to a maximum of seven (7) days of accrued leave for this purpose.

- b) Close relative as used in this Section means a spouse, child, step-child, foster child, mother, father (or someone who took the place of a parent), mother-in-law, father-in-law, grandparent of the employee or spouse, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, or other relative who permanently resided in the employee's household.
- c) The Department Head or designee (normally the immediate supervisor) or designee may grant the use of up to a maximum of one (1) day of sick leave for reasons related to the death of the employee's or his/her spouse's aunt, uncle, niece, or nephew.

#### 5. Integration of Sick Leave and Family and Medical Leave

When an employee requests and is granted leave for reasons defined as “qualifying events” under the Family and Medical Leave Act (FMLA), the employee may use accrued sick leave, to the extent it is available, for any portion of that leave pursuant to the provisions of this MOU on FMLA. In all instances where leave is granted pursuant to the FMLA, employees must exhaust all accrued paid leave, including sick, personal, and annual, prior to moving to unpaid Family and Medical Leave. Advanced sick leave shall only be granted for the illness of the employee. Leaves under FMLA will not be considered when determining if any employee has a satisfactory attendance record.

#### 6. Pregnancy, childbirth and adoption.

Pregnancy, childbirth and adoption are considered “qualifying events” under the FMLA and as such are governed by Section 5 above. Accrued sick leave may be used to care for a child following childbirth or adoption, subject to the provisions of Article 16, Section 13 [Parental Leave].

### **Section 3. Directed Use of Sick Leave/Medical Examinations**

- A. The Office of Human Resources, in accordance with the provisions of this MOU dealing with Family and Medical Leave, may direct an employee to use accrued sick leave if it believes that an employee is unable to perform the essential responsibilities of his/her position due to illness, injury or disability.
- B. While either in active work status or on any type of employee-related sick leave, an employee may be required to undergo a medical examination(s) and evaluation(s), and may be required to provide verification of fitness for duty, as directed by the Office of Human Resources to ascertain whether the employee is able to regularly and routinely perform the responsibilities of his/her position. Such determination will be made in

writing by a certified medical provider as defined in Section 4. F. of this Article, with copies provided to the Office of Human Resources and to the employee.

1. If the examination is conducted by a certified medical provider selected by the USM Institution, the Institution shall bear the costs of such medical examination. The employee may, however, see his/her own physician at the employee's own cost.
2. If the examination(s) reveal(s) that an employee is unable to regularly and routinely perform the responsibilities of his/her position, action may be taken by the Office of Human Resources in accordance with policies on voluntary separation, termination, reasonable accommodation, modified duty or disability retirement, if applicable.
3. In cases where there is a conflict between the evaluation, prognosis, diagnosis or recommendation of the employee's personal health care provider and the certified medical provider selected by the USM Institution, the President or designee may choose which health care provider's report to follow or may require subsequent medical examinations and evaluations in deciding what steps should be taken regarding the employee's sick leave status or continued employment. If subsequent medical examinations and evaluations are required, the employee's medical provider and the University's medical provider shall by agreement select the third medical provider who will render an opinion. In the event they are unable to reach agreement on a third medical provider, the third provider will be selected by the University. In selecting the third provider, the University shall not select a provider that has been under contract, or that at the present time is under contract with the University. The decision of the President or designee regarding the employee's fitness for duty will take into account the medical opinions rendered. The decision of the President or designee is final. The expense of obtaining the third medical provider's opinion will be borne by the University.

#### Section 4. Verification of Absences Charged to Sick Leave

- A. In order to verify that the employee's use of sick leave is in accordance with this Section, to assure medical attention for an employee or to prevent the abuse of sick leave usage, the University may require an employee to submit verification of the reason for the use of accrued sick leave, advanced or extended sick leave.
- B. Verification of Illness for Absences of Five (5) or More Consecutive Days  
  
The University may require an employee to provide an original certificate of illness or disability in cases where an absence is for five (5) or more consecutive workdays. The certificate required by this Section shall be signed by a certified medical provider as defined in Section 4.F. below.
- C. Verification of Illness for Absences of Less than Five (5) Consecutive Days

The University may require an employee to submit an original certificate of illness or disability for absences of less than five (5) consecutive days on the following conditions:

1. Where an employee has a consistent pattern within a twelve-month period of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization.
2. Where an employee has unusual absence patterns such as Monday/Friday, or the day before and/or the day after a holiday.
3. Where an employee has five (5) or more occurrences of undocumented sick leave usage within a twelve (12) month period.
4. Where an employee has three (3) or more occurrences of undocumented sick leave usage of two (2) or more consecutive days in a twelve month period.

D. Procedures for Certification Requirement

Prior to imposing a requirement on an employee for documentation of sick leave use, under Section C above, the University shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future occurrences of sick leave. If the employee has another undocumented absence after such counseling, the University may, subject to the concurrence of the Office of Human Resources, then put the employee on written notice that he/she must certify all sick leave usage for the next six (6) months if the undocumented absence accumulated in accordance with this Section 4. At the conclusion of the six (6) months, the certification requirement will be rescinded provided the employee has complied with the certification requirement and is in compliance with this Article. If the employee has not complied with the certification requirement and is not in compliance with this Article, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement. Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplications of this procedure. Failure of the employee to provide certification as described in this Section may subject the employee to disciplinary action.

E. Verification may include but may not be limited to:

1. A written statement from the medical provider (as listed in Section 4.F. of this Article) indicating that the employee is required to be absent from work due to illness;
2. The duration of absence from work;
3. Prognosis of employee's ability to return to work;

4. Title and original signature of an accredited, licensed or certified medical provider; and
  5. Documentation of the birth or adoption of a child, if sick leave is requested under Article 16, Section 13 [Parental Leave], and
  6. Any other information necessary to verify that the employee's use of sick leave is in accordance with this Article. Such information does not need to include information about the specific illness or health condition of the employee.
- F. Medical verification as outlined in this Article may be obtained from an accredited Christian Sciences practitioner, or from the appropriate of any of the following licensed or certified medical providers:
1. Physician;
  2. Physical Therapist;
  3. Clinical Psychologist;
  4. Dentist;
  5. Oral Surgeon;
  6. Chiropractor;
  7. Podiatrist;
  8. Certified Nurse Practitioner;
  9. Certified Nurse-Midwife; or
  10. Licensed Certified Social Worker-Clinical

### **Section 5. Advanced Sick Leave for the Employee's Own Illness**

- A. An employee who sustains a temporary, recoverable illness, injury or serious disability, or is eligible for parental leave may request advance use of sick leave subject to the following two conditions:

The employee shall:

1. have exhausted all other types of accrued leave; and
  2. have performed at a "meets standards" or better level of performance and have not been placed on a sick leave certification requirement as provided in Section 4 or been disciplined for a sick leave related offense during the past 12 months.
- B. Advanced sick leave is not an entitlement. The granting of requests for advanced sick leave is at the discretion of the Office of Human Resources.



- C. Advanced sick leave shall not be granted in instances where the illness or injury or disability occurred on the job, and the employee has been granted accident leave or temporary total disability benefits by the Workers' Compensation Commission.
- D. Written requests for advanced sick leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed, or certified medical provider or appropriate documentation of the birth or adoption of a child, if the employee is requesting parental leave, as outlined in Sections 4.A. and 4.F. of this Article.
- E. Sick leave may be advanced at the rate of fifteen (15) working days per year of service to a maximum of sixty (60) working days in any one calendar year, provided, however, that during the first six (6) months of service, the amount of advanced sick leave that can be authorized will be prorated based upon the employee's length of service at the time it is requested.
- F. The use of advanced sick leave constitutes a debt for which payment shall be enforceable upon the employee's return to work or upon the employee's separation from employment, whichever is earlier. Upon return to work the minimum rate of payback for advanced sick leave shall be at one-half the rate that sick leave and annual leave is earned. An employee may elect to pay back advanced sick leave by applying any earned leave or by reimbursing the USM with cash.
- G. Annual, sick and holiday leave earned, and personal leave credited while on advanced sick leave shall be applied as earned/credited.
- H. Additional requests for advanced sick leave will not be granted until all previously granted advanced sick leave has been repaid. The only exception to this provision is in cases where the maximum amount of advanced sick leave had not been requested originally and additional advanced sick leave, consecutive to that already granted, is needed to cover the employee's continued absence arising from the original illness, injury or disability.
- I. The Office of Human Resources may refer an employee who is on advanced sick leave as follows:
  - 1. The employee may be referred to a USM Institution-named certified medical provider paid for by the Institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
  - 2. If there is a conflict between the employee's physician and the USM Institution-named physician, the provisions of Section 3.B.3. shall apply.

**Section 6. Extended Sick Leave for the Employee's Own Illness**

- A. An employee who sustains a temporary, recoverable illness, injury or serious disability may request extended sick leave, subject to the three following conditions:

The employee shall:

1. have been in USM and/or State service for at least five (5) years;
  2. have exhausted all types of accrued leave and advanced sick leave; and
  3. has performed at a "meets standards" or better level of performance and has not been placed on a sick leave certification requirement as provided in Section 4 or been disciplined for a sick leave related offense during the past twelve (12) months.
- B. Extended sick leave is not an entitlement. The granting of requests for extended sick leave shall be at the discretion of the Office of Human Resources.
- C. The maximum cumulative total of extended sick leave available to an employee in USM or State service is twelve (12) work months (fifty-two (52) work weeks).
- D. Annual, sick and holiday leave earned, and personal leave credited while on extended sick leave shall be applied as earned/credited.
- E. Written requests for extended leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed or certified medical provider as outlined in Sections 4. A. and 4.F. of this Article.
- F. The Office of Human Resources may refer an employee who is on extended sick leave as follows:
1. The employee may be referred to a USM institution-named certified medical provider paid for by the Institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
  2. If there is a conflict between the employee's physician and the Institution-named physician, the provisions of Section 3.B.3. shall apply.

## **ARTICLE 19 – UNION LEAVE**

- A. AFSCME MD may request that bargaining unit employees be released from their normal duties for the purpose of participating in approved union activities.
- B. The total amount of union leave granted at any Institution during a fiscal year may not exceed one day for every twenty-five (25) of its bargaining unit employees of that Institution as of July 1 of the current fiscal year, provided that a minimum of eight (8) days union leave will be granted by the University each fiscal year covered by this MOU. No employee outside of the bargaining unit will be counted in the leave calculation under this Article.

- C. All requests for union leave shall be submitted to the institution Director of Human Resources/Personnel in writing by Council 92 fifteen (15) working days in advance of the day on which the leave is to begin and shall include:
  - 1. A general description of the activity and its purpose;
  - 2. The date and location of the activity;
  - 3. The name(s) of the employee(s) for whom union leave is being requested.

Where the leave request is for eight (8) hours or less, the minimum notice required is seven (7) working days.

- D. After verifying the validity of the request with a staff union representative and the accuracy of the time being requested, the Institution Director of Human Resources/Personnel may approve union leave if the employee's services can be spared without impairing the services of the department(s) involved and union leave is available pursuant to Section B of this Article. Approval of leave under this section shall not be unreasonably denied.
- E. If the employee organization needs to substitute an employee or employees for those previously granted union leave, or substitute new dates, such requests will be submitted as soon as possible to the Institution Director of Human Resources for approval. Such substitutions may be approved if the substitution will not impair the services of the unit. Approval of substitutions or dates shall not be unreasonably denied.
- F. AFSCME Maryland Convention

AFSCME Maryland Convention: In years when the AFSCME Maryland local convention takes place, each Institution will provide paid leave for actual time used by one (1) bargaining unit employee to attend that convention on days which the attendee would otherwise be regularly scheduled to work their regular day. The total number of hours of paid leave time which the bargaining unit employee shall be provided for actual attendance at the AFSCME Maryland local convention shall not exceed eight (8) hours per day at the straight time rate of pay.

## **ARTICLE 20 - PERFORMANCE EVALUATIONS**

### **Section 1. Performance Ratings**

Employees shall receive a written performance review at the end of their probationary period and annually (normally March) thereafter. Due to the practice of extending the probationary period for all newly hired officers, that review will occur after two six months probationary periods or one year from the date of hire. The purposes of the performance evaluation are to establish a communication tool to ensure that employees are performing at acceptable levels and to provide a means by which to document performance and to establish a procedure for correcting performance problems should they occur. An employee shall be rated on the achievement of performance goals and objectives established by the supervisor in collaboration with the employee during the annual

expectations meeting as well as employee performance related to an established set of performance factors, established by the Employer and discussed with the employee at the expectations meeting.

An employee shall receive one of the following ratings:

1. Above Standards
2. Meets Standards
3. Below Standards

### **Section 2. Expectations Meeting (Establish Goals and Objectives)**

Annually (normally March of each year), an employee will meet with the Department Head or designee who will be responsible for conducting the employee's performance review for the upcoming year.

At the expectations meeting, the Department Head or designee and the employee will discuss the specific performance factors for which the employee will be held accountable and the supervisor, in collaboration with the employee will establish the employee's performance goals and objectives for the upcoming year. Performance factors and performance goals and objectives should be reasonably specific, attainable, measurable, and job-related. The expectations meeting will be documented in writing and signed by both the Department Head or designee and the employee.

### **Section 3. Probationary and Mid-Year Performance Evaluations**

An expectations meeting, in accordance with Section 2 of this Article, will be held with each employee at the time of hire.

When the employee's probationary period ends, the Department Head or designee, with input if applicable from the lead worker or "supervisor" to whom the employee is assigned, will prepare a written performance evaluation of the employee. The end of probationary period performance evaluation may include a self-assessment prepared by the employee, and shall address both an evaluation of the employee's performance and suggestions for ways that the employee and the Department Head or designee can work to address issues that have arisen.

The employee and the Department Head or designee will meet to discuss the end of probationary period performance evaluation, and will document in writing the results of the evaluation and will include in that documentation:

1. Any modifications made to the employee's job description;
2. Specific tasks and standards established by the Department Head or designee, in collaboration with the employee, that will assist the employee in accomplishing the employee's overall objectives for the next evaluation period;
3. Any training needs established.

In addition, although optional, supervisors are strongly encouraged to conduct mid-year performance evaluations, according to the aforementioned protocol, for all employees. Where an employee receives a year-end performance evaluation that is "Below Standards" or is exhibiting performance below "Meets Standards" during the first half of the evaluation period and the

employee remains employed, the employer will conduct a mid-year performance evaluation and take other appropriate remedial measures until the employee's performance meets standards or the employee is terminated or demoted.

#### **Section 4. Year End Performance Evaluation**

The end-of-year evaluation shall be based on those performance factors and goals and objectives established at the expectations meeting and shall include the following:

1. An overall performance rating;
2. Modification of the employee's job description (if applicable);
3. Recommendations for training as appropriate

Where an employee did not have an opportunity to perform work described by a performance standard or goal and objective, that standard or goal and objective will not be considered in the year-end performance evaluation. All applicable performance factors and goals and objectives will be applied fairly and objectively. The University should take into account any equipment and resource problems, lack of training, frequency of work interruptions, and other matters outside of an employee's control when applying performance factors and goals and objectives. Time off on approved leave (sick, personal, annual, etc.) and authorized time for union representational purposes and other authorized activities will not be considered negatively in the application of performance factors and performance goals and objectives, provided that where an employee has been placed on notice regarding a sick leave usage problem, the employee's sick leave usage may be taken into account.

The performance evaluation requires a second signature. An individual superior to the individual preparing the performance evaluation and with knowledge of the department and the employee must review and approve the employee's end-of-year evaluation. This approval must be secured prior to the end-of-year evaluation meeting with the employee.

The Department Head or designee shall meet with the employee, discuss the performance evaluation, and give the employee a copy of the end-of-year evaluation. The employee must sign the evaluation and a copy will be placed in the employee's personnel file.

A statement of an employee's comments and/or objections to an evaluation may be attached and put in the employee's personnel file. Overall performance evaluations of Meets Standards or Above Standards may only be grieved through Step 2 of the grievance procedure; overall performance evaluations of Below Standards may be grieved through the entire grievance process.

The Employer will not apply forced distributions or any other limitation to employee ratings.

#### **Section 5. Deficient Performance**

In the event management concludes that an employee's job performance is at a level which will result in an evaluation of Below Standards, therefore jeopardizing his/her eligibility to receive a merit increase, management will notify the employee. The employee will be given a reasonable amount of time to correct the performance deficiencies before a year-end performance evaluation is conducted unless the deficient performance warranting the denial of the merit increase occurs

late in the evaluation period. Failure to notify the employee pursuant to this provision shall not entitle the employee to a merit increase if the employee's performance does not warrant it.

#### **Section 6. Evaluation of the Department Head or Designee**

Employees may anonymously evaluate on an annual basis, in writing, on a form provided by the Employer, the Supervisor, the Department Head or designee.

#### **Section 7. Performance Evaluation Pay Adjustment**

Merit pay adjustments for employees with an annual rating of Meets Standards or Above Standards shall be governed by provisions of Article 9, Wages, of this MOU. Employees who receive ratings of Below Standards are not eligible for merit increases, and may be subject to other corrective measures.

## **ARTICLE 21 – DISCIPLINARY ACTIONS**

#### **Section 1. Progressive Discipline**

The University subscribes to the tenets of progressive discipline, where appropriate. However, the University reserves the right to administer any discipline deemed appropriate by the University. No employee shall be disciplined without cause.

#### **Section 2. Disciplinary Actions**

Progressive disciplinary actions may include but are not limited to the following actions: counseling, verbal reprimand, written reprimand, forfeiture of leave, suspension without pay, involuntary demotion, and termination. The Employer is not required to utilize all of the above-listed actions when administering discipline.

#### **Section 3. Annual, Random, and For Cause Drug Testing**

Officers are subject to random drug screening pursuant to the General Order regarding Random Drug Testing.

#### **Section 4. Right to Union Representation**

Whenever the University is investigating conduct which might reasonably lead to disciplinary action against the employee, at the employee's option, the employee shall have the right to union representation at any meeting, hearings, or formal or informal discussions with the employee pertaining to the investigation or imposition of discipline relating to such conduct. This provision does not preclude an employee from discussing any matter with the University without the presence of a union representative.

## **ARTICLE 22 - GRIEVANCE PROCEDURE**

### **GENERAL**

In the event of an alleged violation or disagreement over any of the provisions of this MOU, a bargaining unit employee represented by AFSCME, MD, which shall be the exclusive employee organization to represent the employees shall have the right to file a grievance in accordance with Section 13-201 et seq., of the Annotated Code of Maryland Education Article, a copy of which is set forth below for convenient reference. It is the intention of the parties that

this grievance procedure be read in harmony with the Public Safety Article Title 3 (LEOBR) et seq. of the Annotated Code of Maryland. The parties understand and agree that in the event any provision of this grievance procedure conflicts with any provision of the Public Safety Article Title 3 (LEOBR), the applicable Code provision shall prevail. Grievances can be filed electronically or in print form.

**Title 13, University of Maryland – General Provisions: Subtitle 2. University of Maryland Classified Employee Grievance Procedures**

**§ 13-201. Definitions.**

- (a) *In general.*- In this subtitle, the following words have the meanings indicated.
- (b) *Day.*- "Day" means, except as otherwise provided, a working day, Monday through Friday, regardless of work schedule, weekend work, or midweek days off.
- (c) *Grievance.*- "Grievance" means any cause of complaint arising between a classified employee or associate staff employee and his employer on a matter concerning discipline, alleged discrimination, promotion, assignment, or interpretation or application of University rules or departmental procedures over which the University management has control. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

**§ 13-202. (Omitted)**

**§ 13-203. Steps in grievance procedure.**

- (a) *Availability of procedure; number of steps.*- If, following informal discussion with the supervisor, a dispute remains unresolved, the grievance procedure is available. There are three steps in the grievance procedure.
- (b) (1) **Step One.** Step one is the initiation of a complaint. Grievances shall be initiated within 30 calendar days of the action involved, or within 30 calendar days of the employee having reasonable knowledge of the act, unless these time limits are further delimited as stated in §13-205. Appeals within the grievance procedure shall be timed from receipt of the written opinion of management or from when such opinion is due, whichever comes first. An aggrieved employee or the employee's designated representative may present the grievance in writing to the department head or chairman or designee for formal consideration. If the grievance is presented to the department head or chairman or designee, within 5 days after the receipt of the written grievance a conference shall be held with the aggrieved or the employee's designated representative and within 5 days after the conclusion of the conference a decision shall be rendered in writing to the aggrieved or the employee's designated representative. If the aggrieved employee is not satisfied with the decision rendered at this step, the employee or the employee's designated representative may appeal in writing to step two within 5 days.

(2) Both employee and department head or chairman or designee shall continue to review the matter, either privately or with the help of others in the employee's immediate work unit who are directly involved in the grievance. Each department head or chairman or designee shall use judgment in keeping superiors informed of the status of each grievance and, if necessary, request guidance, advisory committees, or other assistance consistent with departmental policy. If either the employee or the department head or chairman or designee feels the need for aid in arriving at a solution, the campus personnel department may be requested to provide resource staff or any other available resource personnel may be invited to participate in further discussions. The addition of such participants does not relieve the department head or chairman or designee and the employee from responsibility for resolving the problem.

- (c) **Step Two.** The appeal shall be submitted to the president of the constituent Institution or the president's designated representative within 5 days after the receipt of the written decision at step one. The president or the president's designated representative shall hold a conference with the aggrieved or the employee's designated representative within 10 days of receipt of the written grievance appeal and render a written decision within 15 days after the conclusion of the conference.
- (d) **Step Three.** In the case of any still unresolved grievance between an employee and the constituent Institution, the aggrieved employee, after exhausting all available procedures provided by the constituent Institution, may submit the grievance to either arbitration or to the Chancellor who may delegate this responsibility to the Office of Administrative Hearings in accordance with Title 10, Subtitle 2 of the State Government Article. In either case, the appeal shall be submitted within 10 days after the receipt of any written decision pertaining to that grievance and issued by the constituent Institution. If the grievance is arbitrated, the Parties shall select an arbitrator by mutual agreement. If they are unable to reach a mutual agreement, an arbitrator shall be supplied by the American Arbitration Association by their procedures. Any fees resulting from arbitration are assessed by the arbitrator equally between the two parties. The arbitration award is advisory to the Chancellor or administrative law judge, as appropriate, and an additional appeal or hearing may not be considered. The Chancellor or administrative law judge, as appropriate, shall make the final decision that is binding on all parties.
- (e) **Authority of Chancellor or administrative law judge.** - The Chancellor or administrative law judge, as appropriate, shall have the power to award back pay in any grievance and the president of the constituent Institution shall enforce such order. In any reclassification case in which the Chancellor or administrative law judge, as appropriate, or his designated representative, determines that an employee has been misclassified, the Chancellor or administrative law judge, as appropriate, may, in his discretion, award back pay to the employee for a period not to exceed one (1) year prior to the initial filing of the grievance.
- (f) **Coercion, discrimination, interference, reprisal and restraint prohibited.** -

(1) During any stage of a complaint, grievance, or other administrative or legal action that concerns State employment by a full-time or part-time employee of an Institution, or by a temporary or contractual employee of an Institution, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of an



Institution solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(2) An employee of an Institution may not intentionally take or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(3) An employee who violates the provisions of this subsection is subject to disciplinary action, including termination of employment.

#### **§ 13-204. Decisions.**

A decision may not be made at any step of the grievance procedure that conflicts with or modifies a policy approved by the Board of Regents of the University or with any applicable statute or with any administrative regulation issued under appropriate statutory authority or that otherwise delimits the lawfully delegated authority of University officials unless prior approval has been obtained from the responsible official.

#### **§ 13-205. Suspensions pending removal; involuntary demotions; rejection on probation; disciplinary suspension.**

(a) **Suspensions pending removal.**- Within five (5) days from the date on which the employee receives the charges for removal as evidenced by the return receipt or other evidence of delivery of the charges to the employee an employee who is suspended under charges for removal may request an opportunity to be heard in his own defense. Within thirty (30) days if possible after receipt, the president or the president's designated representative shall investigate the charges and give the employee an opportunity to be heard. Testimony shall be taken under oath and both the department head or chairman or designee and the employee have the right of representation by counsel and the right to present witnesses and give evidence. Within fifteen (15) days following the conclusion of the conference, the written decision shall be rendered to the employee. In the case of appeals from charges pending removal, the department head or chairman or designee may request through appropriate channels the Attorney General's representative to the University to serve as counsel. In case no hearing is timely requested, the Campus Director of Personnel shall act upon the charges or order such other actions as are indicated by the findings in the case. If a hearing is timely requested and the removal is upheld, step three of the grievance procedure shall be available to the removed individual. The appeal shall be submitted within ten (10) days after receipt of the written University decision.

(b) **Involuntary demotions.**- Within five (5) days, an employee who is notified of demotion may file a written answer with the president or the president's designated representative and request an investigation of the demotion. Within twenty (20) days, if possible, after receipt, the president or the president's designated representative shall investigate the demotion and give the employee an opportunity to be heard. Within fifteen (15) days following the conclusion of the investigation, the written decision shall be rendered to the employee. If an investigation is timely requested and the demotion is upheld, step three of the grievance procedure is

available to the demoted employee. The appeal shall be submitted within ten (10) days after receipt of the written University decision.

(c) ***Rejection on probation.-***

(1) Rejection on Original Probation. Within five (5) days of the notice of rejection, an employee who is rejected on original probation may file a written request with the president or the president's designated representative for a hearing. Within twenty (20) days, if possible, after receipt, the president or the president's designated representative shall conduct a hearing. Within fifteen (15) days following the conclusion of the hearing, the written decision shall be rendered to the employee. If the hearing is timely requested and the rejection is upheld, step three of the grievance procedure is available. The appeal shall be submitted within ten (10) days after receipt of the written University decision. Rejection for cause is not required in the case of an employee rejected on original probation.

(2) Rejection on Promotional, Transfer, or Horizontal Change Probation. Within five (5) days of receipt of the recommendation of the department head or chairman to reject, an employee who is promoted and then rejected within the probationary period for the new class and for whom a vacancy in the former class is not available may file an answer with the president or the president's designated representative and request an investigation of the proposed rejection. Within twenty (20) days, if possible, after receipt, the president or the president's designated representative shall investigate the proposed rejection. The same rule applies to an employee who has completed a probationary period in one classification and makes a horizontal change to a new classification, and is rejected in the new classification or who transfers to another department in the same classification and is rejected. Within fifteen (15) days following the conclusion of the investigation, the written decision shall be rendered to the employee. If the investigation is timely requested and the rejection is upheld, step three of the grievance procedure is available to the rejected employee. The appeal shall be submitted within 10 days after receipt of the written University decision.

(d) ***Disciplinary suspension.-***

(1) This subsection does not apply to suspensions pending charges for removal.

(2) Alleged infractions shall be investigated by the responsible supervisor or administrator or designee at the earliest opportunity following knowledge of it, and the investigation shall be promptly completed. All suspensions of employees shall be implemented within 3 days of the alleged infraction or knowledge of the alleged infraction by the responsible supervisor or administrator. All suspension days shall be consecutive.

(3) The employee or the employee's designated representative may submit a written appeal on a disciplinary suspension to the president or the president's designated representative within 5 days of notification of the suspension, or the employee or the employee's designated representative may appeal the suspension within 3 days of notification of the suspension to the department head or chairman or designee. The department head or chairman or designee shall hear the case within 3

days from the receipt of the written appeal. If the appeal is unheard or unanswered as a result of management delay, the employee shall be reinstated with full back pay.

(4) If the suspension is upheld by the president or the president's designated representative, step three of the grievance procedure is available to the employee. If the employee chooses to appeal to the department head or chairman or designee, any further appeals shall proceed through steps two and three of the grievance procedure.

(e) *Preliminary hearing.*-

(1) If an employee is suspended without pay pending a hearing on disposition of charges for removal, the president or the president's designated representative shall notify the employee in writing of the reasons for the suspension at the time of the notice of the suspension.

(2) Within 5 working days of the notice of suspension, the employee may request in writing that the president or the president's designated representative, in addition to conducting a hearing on the merits, conduct a preliminary hearing to determine whether or not the employee may continue to work with pay pending the disposition of the charges.

(3) The president or the president's designated representative shall conduct a preliminary hearing within 5 working days after the president or the president's designated representative receives in writing the request from the suspended employee for the preliminary hearing.

(4) The preliminary hearing shall be limited to the issues of:

- (i) Whether suspension without pay is necessary to protect the interests of the University of Maryland or the employee pending final disposition of the charges; and
- (ii) Whether other employment and status alternatives should be considered.

(5) At the preliminary hearing, the employee may:

- (i) Rebut the reasons given for the suspension;
- (ii) Allege mitigating circumstances; and
- (iii) Offer alternatives to the suspension, including:
  - 1. Return to the position with pay;
  - 2. Transfer to another position with pay; or
  - 3. Suspension with pay.

(6) Within 5 days after the preliminary hearing is completed, the president or the president's designated representative shall render a written decision that is conclusive as to the issue of whether or not the employee may continue to work with pay pending the disposition of the charges.

**§ 13-206. Miscellaneous provisions.**

(a) In cases of appeal to an arbitrator, each Party is responsible for any expense incurred in the preparation and presentation of its own case and for any record or transcript it may desire.

- (b) Upon the formal or informal initiation of a grievance an employee designated as a grievance procedure representative shall not suffer any loss of pay for investigating, processing or testifying in any step of the grievance procedure. Release time from normal work schedules is to be granted all witnesses to attend grievance hearings. Expenses incurred in connection with attendance by employees at grievance hearings shall be borne by the employee's department.
- (c) Similar grievances may be consolidated and processed together as a single issue. Where a number of individual grievances have been reduced into a single grievance, not more than three employees selected by and from the group may be excused from work to attend a grievance meeting called by the responsible administrator at step one and not more than five employees at steps two and three unless, at any step, prior permission is granted by the person hearing the grievance.
- (d) Employee complaint forms shall be available in the campus personnel department. The University form shall be used.
- (e) It is the responsibility of the head of each organizational unit to assure that each employee understands the channels of communication and appeal, specifically who is the department head or chairman and who acts in their absence.
- (f) An employee may not leave the post of duty to engage in grievance handling without the knowledge of and permission from the designated supervisor.
- (g) A formal grievance may be filed by the aggrieved employee; the request to appeal a grievance must bear the signature of the employee or the employee's representative at each step of the procedure.
- (h) A record of each grievance and its disposition shall be furnished to the employee involved. A file copy of each grievance shall be maintained at the last step at which the grievance was processed, and an additional copy shall be filed with the campus personnel department which shall be available to the employee or the employee's representative.
- (i) At any point in the grievance procedure, the employee may elect to obtain, change, or dismiss the representative by providing a written notice to the person hearing the grievance. However, the action does not allow the grievant to return to a previous step in the procedure.
- (j) A hearing officer may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence or witnesses.
- (k) Each step of the grievance procedure shall be processed as quickly as practicable within the specified time limits. Failure to appeal at any step constitutes acceptance. Failure to answer is a denial to which an appeal may be made. By mutual agreement, the time limits and/or steps may be waived.

- (l) It is the responsibility of each Party to the grievance procedure at each step of the procedure to duplicate the grievance form prior to filing it with the employer or returning it to the employee and to retain one copy of the form.
- (m) A grievance may start with a complaint or request by a permanent or temporary employee.
- (n) An employee may be represented at every step of the grievance procedure by a Party or organizational representative.
- (o) An employee shall receive a copy of this grievance procedure upon employment at the University.
- (p) Both Parties shall make an effort to resolve the grievance at the lowest possible level.
- (q) All grievance hearings shall be open hearings unless either Party requests that the hearing be closed.
- (r) At any step of the grievance procedure, either Party may require that witnesses be excluded from the hearing room until called.
- (s) Any Party who elects to use this procedure for resolution of a problem is presumed to agree to abide by the final disposition arrived at in this procedure and the final disposition may not be subject to review under any other procedure within the University.
- (t) Any question concerning the timeliness of a grievance or whether a complaint is subject to the grievance procedure shall be raised and resolved promptly, unless the person hearing the grievance or appeal determines that the decision on a motion to dismiss will be deferred pending a hearing on both the merits and the motion.

**§ 13-207. Sovereign immunity; satisfaction of awards.**

- (a) *Defense of sovereign immunity unavailable.*- The defense of sovereign immunity may not be available to the University, unless otherwise specifically provided by the laws of Maryland, in any administrative, arbitration, or judicial proceeding held pursuant to this section, or the personnel policies, rules, and regulations for classified employees of the University System of Maryland involving any type of employee grievance or hearing, including, but not limited to charges for removal, disciplinary suspensions, involuntary demotions, or reclassifications.
- (b) *Funds provided for satisfaction of awards.*- The Governor shall provide in the annual State budget adequate funds for the satisfaction of any final monetary or benefit award or judgment that has been rendered in favor of the employee against the University in any administrative, arbitration, or judicial proceeding.
- (c) *Awards which have not been satisfied.*- Awards under this section that have not been satisfied pursuant to subsection (d) of this section, shall be reported to the Comptroller of the Treasury, who shall maintain and report annually to the Governor an accounting of existing awards.

Upon appropriation of funds by the legislature, the Comptroller of the Treasury shall satisfy existing awards in order of date of award.

- (d) *Timeliness of satisfaction.*-If the University has sufficient funds available to satisfy any award under this section at the time the award is rendered, the award shall be satisfied as soon as practicable but not more than 20 days after the award becomes final.

## **ARTICLE 23 – MISCELLANEOUS**

### **Section 1. Access to Recreation Centers**

Subject to University rules and regulations, employees and their dependents have access to and use of all appropriate campus facilities, including but not limited to all health and fitness facilities, sports complex, dining facilities, the library, and computer facilities that are otherwise open to employees. Employees will pay the same fees as other employees when using University facilities.

### **Section 2. Release Time for Campus Sponsored Committees**

Employees shall be allowed paid release time with the approval of the supervisor based upon operational needs to serve as members of employment-related, campus-sponsored committees to which they are appointed or elected.

### **Section 3. Attendance at Job-Related Trainings**

Employees will be paid for time spent in University required training consistent with the provisions of this MOU and the FLSA. The Employer will make reasonable efforts to have employees attend required training during their regularly scheduled work hours. All travel undertaken in conjunction with approved University required training must be documented by the employee and pre-approved by management. All out-of-state travel must have a pre-approved travel request form. Expenses properly incurred in conjunction with approved University required training are reimbursable to the extent allowed by and as provided by University regulations.

### **Section 4. Attendance at Job Interviews**

Employees shall be allowed reasonable paid release time to attend job interviews on the University campus for University job opportunities.

## **ARTICLE 24 -- UNIFORMS AND EQUIPMENT**

### **Section 1. Uniformed Job Classifications.**

The Employer shall provide employees the uniform and equipment items listed in Appendix 1.

### **Section 2. Replacement of Uniforms**

The Employer will replace uniforms on a department-by-department basis consistent with current practices. Replacement uniforms shall be in new condition, fit properly, and be provided at no cost to the employee. Employees are responsible for maintenance and upkeep. If a uniform is damaged or lost through the fault of the employee, replacement shall be at the employee's expense.

**Section 3. Safety Glasses**

Where an employee’s duties require the use of non-prescription safety glasses, the Employer shall make such glasses available.

**Section 4. Shoe Allowance.**

The University shall, upon submission by the officer of proof of purchase, shall reimburse University Police Officers up to Seventy-five Dollars (\$75.00) in a twelve (12) month period for the cost of shoes meeting the University standard for color (black) and style.

**Section 5. Ammunition**

The University will provide sufficient rounds of ammunition for purposes of annual in-service qualification. Actual distribution of rounds will depend on availability and modifications may be required.

**ARTICLE 25 – INSURANCE AND BENEFITS**

Employees covered by this MOU who are otherwise eligible may participate in the health and other insurance plans as offered by the State of Maryland and the University System of Maryland, as they may exist from time to time, on the same basis and subject to the same terms and conditions including the payment of all applicable premiums, co-pays, deductibles and other fees and expenses as established for other University and State employees.

**ARTICLE 26 – RETIREMENT**

Employees covered by this MOU who are otherwise eligible may participate in the Maryland State (Employees’ and Teachers’) Retirement Systems and the Maryland State (Employees’ and Teachers’) Pension Systems, as appropriate, subject to all of the terms and conditions of those Systems and their respective Plans, including any modifications made to those Systems and Plans during the term of this MOU. All disputes or grievances regarding the Retirement and/or Pension Systems shall be resolved in accordance with the procedures specified in the plan or by applicable law.

**ARTICLE 27 - TUITION REMISSION**

**Section 1.**

Tuition remission shall be administered by UMES consistent with UMES Procedure and *USM Policy VII-4.10, Policy on Tuition Remission for Faculty and Staff* and *USM Policy VII-4.20, Policy on Tuition Remission for Spouses and Dependent Children of Faculty and Staff*, and/or any USM successor tuition remission policies that may be adopted during the duration of this MOU.

**Section 2.**

In the event that during the duration of this MOU, the Board of Regents adopts a policy, which rescinds or modifies in whole or in part the afore-referenced tuition remission policies, the University may implement those changes after consultation or bargaining, if required, with the Union. The parties further agree that the University’s tuition remission program must at all times comply with applicable law and that the University may implement any modifications necessary to

come into compliance with applicable law. Where the modifications or changes that the University intends to implement are subject to the obligation to bargain collectively under *SPP 3-101 et. seq.*, the process outlined in Article 6 - Scope of Agreement of this MOU applies.

## **ARTICLE 28 - HEALTH AND SAFETY**

### **Section 1. General Duty**

The Employer and all employees covered by this MOU shall comply with all safety rules and regulations established by the Employer, as well as all applicable safety-related laws and regulations.

### **Section 2. Safety Concerns**

Where an unsafe condition is alleged to exist, the affected employee shall first notify his/her immediate supervisor who shall take whatever necessary corrective action the supervisor deems appropriate. Employees are encouraged to bring forth their safety concerns and are not subject to adverse actions for doing so. Where the matter is not resolved to the satisfaction of the employee, the matter will be submitted to the University's Safety Officer for review. The Safety Officer will advise the employee of the results of his investigation and any corrective action taken or proposed to be taken within thirty (30) days of receiving notice of the employee's concern or explain why additional time is needed. Nothing in this Article requires the Employer to take any specific corrective actions proposed by an employee. However, corrective actions shall be implemented in accordance with the judgment of the University.

### **Section 3. Joint Health and Safety Committee**

As a way to promote and maintain safe and healthy working conditions in the workplace, the Employer and the Union agree to establish a campus-wide Health and Safety Committee comprised of representatives from all areas of the campus community. The Union shall select a total of four representatives (clerical staff (1), housekeeping staff (1), and trades and labor pool staff (2)) to act as representatives to the Health & Safety Committee along with other employees. The Health and Safety Committee shall be the primary advisory group on matters pertaining to accident and injury prevention, reduction, and management. The committee shall be chaired by the University Safety Officer and shall meet every other month.

### **Section 4. Duties of the Health and Safety Committee**

The Health and Safety Committee is responsible for:

- a) Recommending that adequate health and safety rules and regulations are implemented and monitored.
- b) Reviewing and monitoring potential risks and hazards that exist in the work environment, including unsafe work practices, and making recommendations for their elimination or reduction.
- c) Monitoring and evaluating the need for health and safety training for employees.
- d) Reviewing accident records and statistics in order to determine the need for corrective action.
- e) Promoting health and safety education.



- f) Reviewing the availability and adequacy of first aid supplies and equipment and recommending improvements as necessary.
- g) Maintaining and reviewing minutes of all committee meetings.

### **Section 5. Investigative Reports**

The committee shall be entitled to copies of any investigative report produced by any State, County or Federal agency or any report prepared by any member or sub-committee of the Committee as a result of investigating any situation described under Section 4 above.

### **Section 6. No Loss of Compensation**

Members of the Health and Safety Committee will receive paid work release time while performing approved duties associated with the responsibilities of the Committee, and/or attending training or conferences required by the Employer. All time spent by the employee on Committee Activities must be consistent with operational needs and pre-approved by the employee's supervisor.

### **Section 7. Personal Protective Equipment**

The Employer shall provide personal protective clothing and equipment (not including safety shoes or prescription safety glasses) that, as determined by the Employer, are required by applicable state laws and regulations. In the event the Employer requires an employee to wear safety shoes on the job, the Employer, upon proof of purchase will reimburse the employee on a one-time basis during the duration of this MOU \$75.00 (but not to exceed the cost of the shoe) towards the cost of one pair of safety shoes approved by the Employer and purchased by the employee during the duration of the agreement. The Employer will provide guidelines in conjunction with what constitutes an Employer approved safety shoe (type, specifications, etc.). The Employer will make available non-prescription safety glasses to employees who are required to wear them as part of their job.

### **Section 8. Communicable Diseases**

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Training by a certified entity shall be provided, at least once a year, to educate employees in the area of recognition and prevention of such diseases and blood borne pathogens. The training shall be based on the standards established by OSHA.

### **Section 9. Hepatitis B**

Employees who have any contact with blood and other body fluids shall be offered Hepatitis B vaccination at a location designated by the Employer and at the Employer's expense. The Employer will cover any costs of the vaccination that are not covered by the employee's health insurance.

### **Section 10. Cardiopulmonary Resuscitation (CPR) Training**

Employees assigned to job classifications where, as determined by the Employer, training in CPR may be a valuable skill, shall be offered CPR training.

### **Section 11. Asbestos**

All employees who work with or around asbestos shall have the proper required training and personal protective equipment. When an asbestos hazard is discovered, employees shall be

immediately notified of the existence and location of the hazard, and the Employer shall take precautionary measures to protect the employees from exposure. The Employer shall conduct periodic inspection and monitoring to detect the presence of asbestos at least once a year.

### **Section 12. Physical Examinations for Agricultural Technicians**

Agricultural Technicians will be provided the opportunity to take a physical examination annually at a location determined by the employer. The Employer will cover any costs of the routine physical examination that are not covered by the employee's insurance.

### **Section 13. Medical Monitoring**

Medical Monitoring is according to the schedule set by the Maryland Asbestos Program.

### **Section 14. Inspection by Governmental Agencies**

A copy of any investigation report prepared by any government agency, which conducted an investigation on the premises of the Employer, shall be furnished to the Union upon request.

## **ARTICLE 29 - CONTRACTING OUT**

### **Section 1. Bargaining Unit Work**

- A. The Employer retains the right to contract out services that are performed or that could be performed by employees covered by this MOU. The University understands that the Union opposes the contracting out of public services. Where the Employer decides to contract out a service that is performed by employees covered by this MOU, the Employer will provide the Union with written notice of its decision no less than sixty (60) days before the effective date of the service contract. The notice shall include the following:
1. A statement of what efforts will be made by the University to place affected employees in University positions that are vacant at the time of notice;
  2. A statement of what employment possibilities are available with the contractor; and
  3. A statement of which employees, if any, will be laid off as a result of the contracting out of the services. Employees who are laid off are subject to Article 32 – Layoff and Recall.
- B. The parties specifically agree that this Article is intended to state the complete obligation of each party with regard to bargaining over the effects of a decision by the Employer to contract out.

## **ARTICLE 30 – PARKING**

Employees may park in the University parking lots on an as available basis provided that any employee electing to do so pays the same parking fees as applicable to all other University employees and complies with all parking regulations, provided that the University will not raise parking fees by more than 50% a year.

## **ARTICLE 31 – LABOR – MANAGEMENT COMMITTEE**

### **Section 1. Purpose of the Committee**

The University and the Union agree to create a Labor-Management Committee for the purpose of identifying issues of concern to either party and to jointly procure solutions to such concerns. The Committee shall also serve as a forum of discussion for any issues associated with the implementation of any aspect of this MOU. However, the Committee shall not serve as a substitute for formal negotiations when such is necessary and required.

### **Section 2. Composition of the Committee**

The University and AFSCME shall appoint four (4) members each to the Labor-Management committee. The committee shall meet at least once a month for the first six months and every other month or as needed after that. Each of the parties shall alternate as chair.

## **ARTICLE 32 - NO STRIKE AND NO LOCKOUTS**

Consistent with State Personnel and Pensions Article Section 3-303, employees are prohibited from engaging in any strike. The Employer may take disciplinary action, including termination of employment, against any employee who participates in a strike. "Strike", as defined in Section 3-303, means any concerted action to impede the full and proper performance of employment duties in order to induce, influence, coerce, or enforce demands for a change in wages, hours, terms, or other conditions of employment, and includes a total or partial refusal or failure to report to work; refusal or failure to perform employment duties; withdrawal from work; work stoppage; or, work slowdown. The Union agrees that it will not engage in or encourage any strike activity and agrees that it shall take all necessary steps to obtain immediate compliance with this Article by employees covered by this MOU. The Union is subject to all penalties and remedies under law for a violation of this Article or Section 3-303.

Consistent with State Personnel and Pension Article Section 3-304, the University may not engage in any lockout. "Lockout", as defined in Section 3-304, means action taken by the University to interrupt or prevent the continuity of the employees' usual work for the purpose and with the intent of coercing the employees into relinquishing rights guaranteed by Title 3 of the State Personnel and Pensions Article, or any action taken by the University to bring economic pressure on employees for the purpose of securing the agreement of their exclusive representative to certain collective bargaining agreement terms.

## **ARTICLE 33 – SEVERABILITY**

This MOU is subject to all applicable laws. Should any part of this MOU be declared invalid by operation of law, the part at issue will be unenforceable and the remainder of the MOU shall not be affected but shall remain in full force and effect. In the event a provision is thus rendered invalid, upon written request of either party, the Employer and the Union shall meet promptly and attempt to negotiate a substitute for the invalid provision.

## ARTICLE 34 – LAYOFF AND RECALL

### Section 1. Layoff Notice

When the University decides to layoff an employee or employees, a notice shall be given to the affected employee(s) and the Union at least ninety (90) calendar days in advance of the effective date of such layoff. Notices of layoff shall be in writing and shall be acknowledged in writing by the employee. The written notice shall include the reason for the layoff (i.e., position abolished, discontinued or vacated because of a lack of supporting funds, program change, change in departmental organization or stoppage or lack of work). The Employer may place an employee who receives a notice of layoff on administrative leave for any portion of the ninety (90) calendar day notice period. Administrative leave will not be unreasonably denied.

### Section 2. Order of Layoff

The University shall determine in which classifications layoffs will occur. Layoffs will occur by division. Within each classification affected, layoffs shall occur in the following order:

1. All regular status employees serving an original probationary period in the classification and division in which the layoff is to occur; then
2. All regular status employees who have completed an original probationary period, in the classification and division in which the layoff is to occur, in order of seniority, with the employee having the lowest number of seniority points being laid off first.

### Section 3. Seniority Points

The formula for establishing seniority points shall be as follows:

- (A) One point shall be given for each complete month of credited service for the following:
  - (1) University System (and/or predecessor organizations) and State service including service as medical system University personnel as defined in the Education Article, Section 13-1B-01(r)
  - (2) Service with the division where the layoff is to occur: and
  - (3) Service in the job classification and its job series where the layoff is to occur.
- (B) For creditable service of less than a complete month, the employee shall be credited with .032 points for each day of creditable service.
- (C) For part-time employees, creditable service shall be determined by the funded percentage of the position.
- (D) The combined total of all points shall determine the order of layoff. If two or more employees in the same classification have the same number of seniority points: the Divisional Vice President, with approval of the Chief Executive Officer, will determine the employee(s) to be retained based upon a reasonable written evaluation of the specific

objective skills, knowledge, and abilities of each employee, prepared by the Division Head or Chairperson.

#### **Section 4. Displacement Rights**

Employees covered by this MOU who are notified that they are being laid off may elect to exercise displacement rights as provided herein. An employee's election to exercise displacement rights must be made by giving written notice to the Office of Human Resources within fifteen (15) calendar days of the notice to the employee of the layoff.

- (1) An employee in a position which is to be abolished, discontinued, or vacated shall be allowed to displace another employee with less seniority in the same job classification, or, if not available either
  - a. Progressively to each lower classification in the same job series; or
  - b. In any other classification in which the employee held satisfactory regular status.
- (2) The displacement as applied in one (1) above, shall be limited to the division in which the employee is employed at the time that the notice of layoff is given.
- (3) An employee who elects not to displace another employee or who is ineligible to displace another employee in accordance with this Section shall be laid off.
- (4) An employee who is displaced under this Article is subject to the terms and conditions of this Article.

#### **Section 5. Recall List**

An employee who is laid off shall be recalled for reappointment following a layoff if, within two (2) calendar years from the effective date of layoff, the specific position from which the layoff occurred is reestablished, provided the employee continues to meet minimum qualifications of the job.

For a period of three (3) calendar years from the effective date of the layoff the employee will be notified of job vacancies at the University and, if interested, shall be granted interviews for appointment to vacancies in the classification in which the employee was laid off, any lower classification in that job series, any classification for which the employee has completed an original probationary period, or any other position vacancy for which the employee meets the minimum qualifications.

- (1) Notice of recall from a layoff shall be sent to the employee by certified mail, return receipt requested.
- (2) The recalled employee shall have up to ten (10) workdays following receipt of the recall notice to notify the University of their intention to return to work.
- (3) The recalled employee shall have up to twenty-one (21) workdays following receipt of the recall notice to actually return to work.

#### **Section 6. Severance Package**

Laid off employees who are eligible may receive the following severance package:

1. Tuition Remission:
  - a) Employees who are laid off, who have completed less than ten (10) years service with the University and who are receiving tuition remission at the time of layoff may complete the semester in which

the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for one additional full-time semester or two additional part-time semesters, not to exceed a total of 18 credit hours, at UMES only.

- b) Employees who are laid off, who have completed more than ten (10) years service with the University and who are receiving tuition remission at the time of layoff, may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for two additional full-time semester or four additional part-time semesters, not to exceed a total of 36 credit hours, at UMES only.
- c) For purposes of this Section, full-time shall be considered twelve (12) credit hours or more. Part-time shall be considered to be less than twelve (12) credit hours.
- d) The tuition remission benefit described in this Section is for the employee only, with the exception that any employee dependent enrolled in coursework in the semester in which the employee is laid-off and receiving tuition remission may continue to receive tuition remission for the balance of that semester.

2. Employment Assistance

The Office of Human Resources will be available to assist employees laid off with the following:

- Developing a resume
- Composing a cover letter
- Interviewing skills
- Mock interviews
- Conducting a job search
- Employment agency contacts
- Recommended readings

3. The Office of Career Services will be available to assist the laid off employee with the following:

- Career Counseling
- Job/Internship Posting & Searches
- Resource Library
- On campus recruitment and interviews
- Career Fairs
- Resume and cover letter assistance

## **ARTICLE 35 - DURATION, RENEWAL**

### **Section 1. Duration**

This MOU shall become effective when all conditions precedent to its effectiveness have been met. No portion of this MOU shall be implemented until all of its provisions are effective. No provision of this MOU has retroactive application unless required by law. This MOU expires at 11:59 p.m. on June 30, 2016. The Parties shall ensure that their respective ratification processes are completed as promptly as possible after the conclusion of negotiations.

### **Section 2. Renewal**

Should either Party desire to renew this MOU, they may only do so by providing written notification of its intent to do so to the other Party by August 1, 2015. After notification is provided, the Parties shall then commence negotiations for a successor MOU, during the last year of this MOU at dates and times agreed to by the Parties. The Parties agree that each side will exchange their complete package of proposals for changes to the MOU no later than August 15, 2015 and that negotiations for a successor MOU will commence in the first week of September, 2015 unless otherwise mutually agreed by the Parties.

### **Section 3. New Matters of Negotiations Reopener**

No provisions of this Memorandum of Understanding (MOU) shall operate as a waiver of either Parties' right to request bargaining during the term of this Agreement over subject matters that become permissible matters of bargaining after its effective date. All other terms and conditions of the MOA covering this period July 1, 2014 – June 30, 2016 shall remain in full force and effect, except as provided herein.

SIGNATURE PAGE

**UNIVERSITY OF MARYLAND  
EASTERN SHORE**

**AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES**

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**Joseph F. Vivona**  
Vice President for Administration, USM  
USM Coalition

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**Patrick Moran, President**  
American Federation of State, County &  
Municipal Employees (AFSCME)  
Maryland Council 3

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**Juliette B. Bell**  
President  
University of Maryland Eastern Shore

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**Jack Hughes**  
Chief Negotiator  
AFSCME MD

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**Marie H. Billie**, Chief Negotiator  
Assistant Vice President  
University of Maryland Eastern Shore

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**Joe Hartman**  
President Local 1833  
AFSCME

---

**Carl Zacarias**, Assistant Attorney General  
Office of the Attorney General – Educational Affairs Division  
*for legal sufficiency*



## APPENDIX 1

The University shall provide and replace at no cost to the employee, the following uniform and equipment items as outlined in Article 23 Uniforms and Equipment and Article 27 Health and Safety. This list does not constitute an exhaustive list, additional items shall be included as outlined elsewhere in this Agreement.

### Uniform Apparel

Badge  
Rank Insignia (collar and sleeve)  
Tie Clasp (State Seal)  
Name Plate  
Long-sleeve shirts (5)  
Short-sleeve shirts (5)  
Winter Trousers (5)  
Summer Trousers (5)  
Winter Patrol Coat  
Necktie (3)  
Duty Belt  
Rain Gear  
Sweater

### Equipment

OC Spray and Holder  
ASP Baton and Holder  
Handcuffs (one pair) and Case  
Magazine Pouch  
Radio and Charger, with Holder  
Streamlight Stinger Flashlight  
And Holder  
Belt Keepers  
Firearm with 2 spare Magazines (3 Total)  
Holster  
Manufacturer Warranted  
Protective Body Armor  
Eye/Ear Protection (*to be made available on as-needed basis*)

### Uniform During Pregnancy

The University shall provide maternity/pregnancy uniforms (2 shirts and 2 pairs of pants) for employees in classifications required to wear a uniform. The employee is responsible for making a request to her immediate supervisor as soon as she determines that a different size of clothing is necessary. In the event that a size appropriate uniform is not available from the existing inventory, the University shall place an order for an appropriate uniform within a reasonable period of time after receipt of the employee's request. An employee who issued maternity/pregnancy uniforms will be responsible for returning the issued items within thirty (30) days of the conclusion of the maternity leave.

**GENERAL ORDER – COST REIMBURSEMENT AGREEMENT**

This AGREEMENT, made this \_\_\_\_\_(Day) of \_\_\_\_\_(Month), \_\_\_\_\_(Year), by and between University of Maryland Eastern Shore; 30737 University Boulevard South; Princess Anne, Maryland 21853, and \_\_\_\_\_(Name), University Police Officer I, II or III.

WHEREAS, University of Maryland Eastern Shore has employed the Officer on \_\_\_\_\_(Date), for the purpose of developing the Officer according to his/her capabilities; training the Officer to perform his/her official duties; increasing and enhancing the retention of the Officer in University of Maryland Eastern Shore service and meeting University of Maryland Eastern Shore's personnel needs with the University of Maryland Eastern Shore Police Department; and

WHEREAS, upon successful completion of the entrance level training program phase of a Maryland Police Training Academy, the Officer will assume duties with University of Maryland Eastern Shore in a continued probationary period; and

WHEREAS, the parties, by the Agreement, intend to provide for reimbursement of University of Maryland Eastern Shore for its cost (expenditures) during the hiring process and entrance level training required by state law in the event that the Officer voluntarily terminates his/her employment with the University of Maryland Eastern Shore as hereinafter set forth.

NOW, THEREFORE, in consideration of employment by University of Maryland Eastern Shore of the Officer, and other good and valuable considerations, receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

- 1. That University of Maryland Eastern Shore shall pay:
  - a. background investigation \$ Amount
  - b. polygraph examination \$ Amount
  - c. psychological screening \$ Amount
  - d. medical exam \$ Amount
  - e. tuition fee to attend Police Training Academy \$ Amount
  - f. shoe allowance \$ Amount
  - g. salary while in \_\_\_\_ (#) week Police Training Academy \$ Amount  
*(less minimum hourly wage earned while in the Academy)*

TOTAL \$ \_\_\_\_\_

- 2. The Officer agrees not to involuntarily terminate employment with University of Maryland Eastern Shore during the forty-eight (48) month period immediately following his/her successful completion of a Police Training Academy.
- 3. That in the event the Officer voluntarily terminates employment with University of Maryland Eastern Shore during the forty-eight (48) month period following the successful completion of a Police Training Academy, he/she agrees to reimburse University of Maryland Eastern Shore for the total expenses listed in paragraph 5 section 1. Whether the officer voluntarily or is involuntarily terminated such

reimbursement will be reduced on a pro rata basis according to that portion of the forty-eight (48) months which the Officer has actually served at the time he/she leaves University of Maryland Eastern Shore. If the officer is separated for cause the expenses due under this paragraph will be recovered by University of Maryland Eastern Shore.

4. It is agreed that amounts which become due University of Maryland Eastern Shore as a result of the Officer's failure to meet the terms of this Agreement may be withheld from wages or any other monies due to the Officer by University of Maryland Eastern Shore. If such wages or other monies are insufficient to repay the Officer's obligations to University of Maryland Eastern Shore, then such outstanding amounts are immediately due and owing by the Officer. If 30 days after the Officer terminates his/her employment with University of Maryland Eastern Shore the account becomes delinquent and deemed uncollectible requiring referral to the Central Collection Unit of Maryland. The Officer acknowledges that the Central Collections Unit may collect any collection fees allowed by law.
5. The University shall afford the employee an opportunity to be heard by a University Official, concerning any proposed withholdings from the employee's paycheck, in reference to reimbursement of costs expressly stated in the Cost Reimbursement Agreement, prior to withholding any such amount.
6. Prior to attending a Police Training Academy, the Officer may resign his/her office without obligation, except to return all uniforms, materials and equipment furnished by University of Maryland Eastern Shore.
7. It is agreed, if in the sole judgment of the Vice President for Administrative Affairs of the University of Maryland Eastern Shore, the Officer's separation is necessitated by adverse, unforeseen and extenuating circumstances that impose undue personal hardship, other than cause, the Officer may be released from this Agreement.
8. It is understood that this Agreement in no way limits or alters the authority of University of Maryland Eastern Shore to terminate the employment of the Officer pursuant to other authority prescribed within the Laws of Maryland and the policies of University of Maryland Eastern Shore.
9. This Agreement shall be interpreted according to the laws of the State of Maryland.

\_\_\_\_\_(SEAL)  
University of Maryland Eastern Shore Appointing Authority or Designee

\_\_\_\_\_(SEAL)  
Director of Public Safety

\_\_\_\_\_(SEAL) \_\_\_\_\_  
University Police Officer I WITNESS

## General Order – Drug Testing

### University of Maryland Eastern Shore Department of Public Safety/Police Department Drug and Alcohol Policy

#### I. Policy

Because of its law enforcement responsibilities and the sensitive nature of its work, the Department of Public Safety/Police Department (hereinafter Police Department) has a compelling obligation to eliminate illegal substance use from its workplace and by its employees for their health and safety and also for the protection of the University campus as a whole. The use, possession, or sale of illegal drugs and alcohol in the workplace poses a serious risk to the health and safety of all department personnel. The University and the public, in general, has a right to expect that employees of this department are at all times both physically and mentally prepared to respond; and therefore not under the influence of drugs or alcohol in the performance of their duties. Therefore, it is the policy of the Police Department to have a drug and alcohol-free environment, and for employees on duty to be drug-free and not under the influence of alcohol.

#### II. Definitions

- A. "Abuse" means the use of:
1. Alcohol when it may impair job performance or endanger the safety of others in the workplace;
  2. Any illegal drug (including off-duty use);
  3. Any over-the-counter drug when the user knows or should know that it may impair job performance or endanger the safety of others in the workplace; or
  4. Any intentional misuse of any prescription drug in a manner inconsistent with its medically prescribed intended use or under circumstances that the user knows or should know is inconsistent with its medically prescribed, intended use.
- B. "Alcohol" means ethyl alcohol or ethanol.
- C. "Alcohol Test" means a test for alcohol by a breath alcohol test conducted by a law enforcement agency on breath testing equipment certified by the State Toxicologist.
- D. "Conviction" means:
1. A judgment of conviction, whether entered upon a finding of guilty or acceptance of a plea of guilty or nolo contendere, and the imposition of sentence; or

2. The staying of a judgment of conviction and the placing of a defendant on probation after a finding of guilty or the acceptance of a plea of guilty or nolo contendere.
- E. "Drug" mean any controlled dangerous substance, any other substance which may be dispensed by a licensed health care professional or an over the counter drug which may impair one's mental faculties, changes one's mood and/or physical performance. The term drug also includes marijuana obtained by use of a prescription.
- F. "Drug Test" means the compulsory production and submission of urine by an employee for chemical analysis in order to detect prohibited drug usage.
- G. "Employee" means any sworn police officer who is employed by the University Police Department.
- H. "Reasonable Suspicion" is that quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific objective facts and any rationally derived inferences from those facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs or alcohol.
- I. "Sensitive Position" - All sworn police officers within the University Police Department are classified as holding "Sensitive Positions."
- J. "Substance" means alcohol or drugs.
- K. "Supervisor" means an employee assigned to a position having day-to-day responsibility for supervising subordinates, or who is responsible for directing work assignments.

### **III. Application of Policy – General**

- A. No employee shall illegally possess, use, manufacture, purchase, sell, transfer, distribute, dispense any controlled dangerous substance, or possess, use, manufacture, purchase, sell, transfer, distribute or dispense alcohol in the workplace, in University vehicles, on University property, except when necessary in the performance of a police task. No University Police Officer shall abuse drugs or alcohol.
- B. All Police Officers must report to work in a fit condition to perform their duties and remain fit during the performance of their duties. Employees who report to work under the influence of drugs or alcohol, or who become under the influence of drugs or alcohol while at work, are in violation of this policy and shall be subject to disciplinary action in accord with this UMES Policy and the Maryland Law Enforcement Officer's Bill of Rights.

- C. If an employee is undergoing prescribed medical treatment with any drug, which may alter his/her behavior or physical or mental ability and which may affect the performance of the employee's job, then:
1. The employee shall notify their immediate supervisor.
  2. The employee shall advise his supervisor of the known side effects of such medication as well as the prescribed period of use.
  3. The employees shall keep all prescribed medicine in its original container which identifies the drug, date of prescription, and prescribing doctor, or supply documentation of description.
  4. The supervisor shall forward documentation, via a confidential memorandum, to the Police Chief who shall forward this information to the Administrative Assistant who shall place this information in the employee's confidential medical file.
  5. The employee may be temporarily reassigned to other duties, where appropriate.
- D. No employee shall ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage during or immediately prior to the employee's working time for the University. The misuse of any prescription, over-the-counter drug or other generally available substance where such misuse impairs job performance is prohibited and will result in discipline in accord with this UMES Policy and the Maryland Law Enforcement Officer's Bill of Rights.
- E. All employees must report in writing any charge, arrest and/or conviction relating to drug or alcohol possession, use, or sale (including, but not limited to, any violations of traffic law involving driving while intoxicated or driving under the influence of alcohol or drugs) to their Supervisor at the beginning of their next work day. A conviction, or failure to report a charge, arrest and/or conviction, even as to off-the-job offenses, will constitute a violation of this policy. Upon notification of a charge or arrest, the department shall have the authority to initiate its own administrative investigation, to determine whether the employee has violated the drug and alcohol policy, and to take disciplinary action, if appropriate.
- F. An applicant rejected for employment because of a positive drug test may be eligible to reapply unless the positive drug test reveals an illegal drug which results in an automatic permanent rejection by the Maryland Police Training Commission.

- G. The University Department of Public Safety will educate and inform its employees about:
  - 1. The dangers of drug and alcohol abuse in the workplace and the community at large;
  - 2. The department's policy of maintaining a drug-free work place;
  - 3. Any drug and alcohol abuse counseling, rehabilitation, and employee assistance programs that are available;
  - 4. The penalties that may be imposed upon employees for drug and alcohol abuse violations.
- H. All employees shall receive this policy and shall acknowledge receipt of the same.
- I. Any employee found to be in violation of any of the provisions of this policy shall be subject to disciplinary action in accord with this UMES Policy and the Maryland Law Enforcement Officer's Bill of Rights and/or may be required to participate in and satisfactorily complete an alcohol or drug abuse assistance or rehabilitation program.

#### IV. Detection and Reporting

- A. Any employee having a reasonable basis to believe that another employee is illegally using, under the influence of, or in possession of any illegal substance, controlled substance or alcohol shall immediately report the facts and circumstances to their supervisor. Supervisors shall immediately notify the Police Chief who will ascertain if there is reasonable suspicion of a violation of this policy.
- B. The Supervisor and/or highest ranking Supervisory Officer on duty shall observe and/or meet with the suspected individual to determine if there is a reasonable suspicion that the employee is violating this policy.
- C. Employees who are suspected to be in violation of this policy shall immediately be taken to an approved testing center and be tested for alcohol and drugs. Employees shall never permit someone to operate a motor vehicle if they suspect the person is under the influence of alcohol or drugs. Police Officers shall be given a direct order to take the test.

#### V. Drug and Alcohol Testing

- A. All drug and alcohol testing will be performed in conformance with applicable law. For reasonable suspicion and post-incident tests, breath alcohol testing may be conducted by a law enforcement agency on breath testing equipment certified by the State Toxicologist. All alcohol and drug tests will be administered by a qualified facility. Police Officers shall be given a direct order to take the test.



- B. To be qualified, a laboratory/facility shall employ:
1. Testing procedures that ensure privacy to employees and applicants consistent with the prevention of tampering; including procedures providing that urine samples will be provided in a private restroom stall or similar enclosure so that the employee is not viewed while providing the sample.
  2. Methods of analysis that ensure reliable test results.
  3. Chain-of-custody procedures that ensure proper identification, labeling and handling of test samples; and
  4. Retention and storage procedures that ensure reliable results on confirmatory tests of original samples.
- C. No drug or alcohol test will be conducted without the employee's consent. However, refusal to consent to a test will constitute insubordination and will result in discipline up to and including termination. Positive drug tests on any specimen will be confirmed. Upon confirmation of a positive drug test result, the University Department of Public Safety (or at its direction, the laboratory) will provide to the employee in person or by certified mail within thirty (30) days from the date the test was performed:
1. Notice that the applicant or employee will be given the option of having the same a sample re-tested, at the employee's expense, at another certified laboratory;
  2. A copy of the laboratory test indicating the results;
  3. A copy of the department's written drug and alcohol policy; and
  4. Written notice of the University's intent to take disciplinary action, terminate employment or change the conditions of continued employment if applicable.
- D. All positive drug or alcohol tests will be subject to review by a certified medical review officer. Medical review is required to assure an accurate positive result. All breath alcohol tests with results of .02 or greater will be subject to a second confirmatory breath alcohol test.
- All records pertaining to drug and alcohol tests shall remain confidential, and may be disclosed only to persons who might need to know such information, including but not limited to, persons participating in the decision with respect to any disciplinary action to be taken with respect to such employee, persons responsible for or involved in the implementation of any disciplinary action, including any rehabilitation program, or persons having responsibility for observing or evaluating the performance of the employee.
- E. All results pertaining to drug or alcohol tests shall be filed in the employee's separate confidential medical file. Employees will be informed of the results of any drug and alcohol tests.

F. Types of Testing. The Department of Public Safety shall have the following types of testing programs:

1. Application for Employment

Applicants for police employment who are given a conditional offer of employment will be tested for drugs in accordance with standards of the Maryland Police Training Commission. An integral part of any employment offer shall be that the classification or job requires a negative drug test. Confirmed positive results will result in the withdrawal of the employment offer for an applicant for employment and other possible disciplinary action up to and including termination, as to existing employees.

Failure to report to test or refusal to take the test will result in immediate withdrawal of an employment offer.

2. Rehabilitation and Monitoring. Employees participating in drug and alcohol rehabilitation programs when such testing is part of that program; or employees who are being monitored for use after known abuse of drugs or alcohol.

Employees experiencing substance abuse problems are encouraged to seek assistance through the Employee Assistance Program or self-referral to an alternate certified rehabilitation program prior to its negative effect in the workplace.

3. Reasonable Suspicion. Testing for drugs and/or alcohol when job performance, behavior or other information or circumstances indicates that there is a reasonable suspicion that the employee may be under the influence of drugs or alcohol which adversely affects job performance or which may negatively impact the safety, health, or general well-being of other employees or the public.

4. Random Testing. Employees subject to random testing will be subject to random selection a minimum of two times per year. Selection will be made by a random process of computerized selection of officers by Peninsula Occupational Health (or other organization that meets the testing standards identified in this policy) staff who will notify the Police Chief of the employees selected. These employees will be contacted by the Chief or his designated Supervisor and told when to report for random testing. Personnel on pre-approved leave will be excused from testing. All employees selected for testing will be held as confidential.

Employees who are on duty at the time of notification will be allowed to leave their assigned area for the purpose of submitting to the drug test. During the time required for the testing process, personnel will not be subject to calls or assignments, and will be considered "out of service."

Off duty employees who are contacted and directed to report for a drug test will receive compensation in accordance with established Departmental procedures.

5. Post Incident Testing. Testing for drugs and/or alcohol may be required under any of the following circumstances:
- a. Injury believed to be caused by carelessness on the job requiring treatment at a medical facility;
  - b. Causation of a near accident of serious magnitude even though no one is seriously injured;
  - c. Involvement in what is believed to be a careless and avoidable accident of serious magnitude where equipment was damaged even though no injuries were reported.

- G. Drug Positive Results. SUPD employees will be tested for the below listed drugs and concentrations of these drugs at or above the following levels shall be considered a positive test result when using the initial immunoassay drug.

Initial Test

Level (ng/ml)	
Amphetamines	1000
Barbiturates	300
Marijuana	50
Opiates	300
Cocaine (metabolite)	300
Phencyclidine	25
Benzodiazepines	300

Concentrations of a drug at or above the following levels shall be considered a positive test result when performing a confirmatory GC/MS test on a urine specimen that tested positive using a technologically different screening method:

Confirmatory Test

Level (ng/ml)

**Amphetamines:**

Amphetamine	..... 500
Methamphetamine	500

**Barbiturates:**

Amobarbital	300
Pentobarbital	300
Secobarbital	300

Butalbital	300
Butabarital	300
Cannabinoids (THC-COOH)	15
<b>Opiates:</b>	
Codeine	300
Morphine	300
Cocaine (Metabolites)	150
Phencyclidine	25
Benzodiazepines	300

- K. Alcohol Positive Results. Concentrations of alcohol of .02 or greater, confirmed by a second test, shall be considered a positive test result. Upon confirmation of a positive result, an employee (other than an applicant who has received a conditional offer of employment, which shall be withdrawn) will be subject to discipline up to and including termination.

Failure to report for a test or refusal to take a test shall be treated as a confirmed positive result and shall subject the employee to discipline up to and including termination.

- L. Invalidity  
In the event that any portion of this policy shall be held to be invalid, such invalidity shall not affect the other valid portions of this policy.

#### VI. Consequences for Policy Violation

- A. Upon confirmed positive test for drugs or alcohol, or other violation of this policy, the employee will be subject to disciplinary action, up to and including termination, in accordance with Departmental policy. All discipline procedures for sworn officers shall be in accordance with the Law Enforcement Officers' Bill of Rights.
- B. The President or her designee may offer an employee who admits to a violation or who tests positive for alcohol or illegal drugs or prescription drugs a last chance agreement. In such a case, the last chance will be conditioned on the following:
1. Employee must agree to be evaluated thru the Employee Assistance Program (EAP);
  2. Employee must agree to a treatment program recommended by the EAP;
  3. Employee must successfully complete the treatment program recommended by the EAP;
  4. Employee must consent to a drug/alcohol test after completing the recommended treatment program in connection with the employee's return to work; and
  5. Employee must agree to random Rehabilitation and Monitoring testing for 24 months following the employee's completion of the treatment program and return to work.

- C. Rehabilitation or additional drug or alcohol testing, if permitted by the department, will be at the employee's expense.