

AGREEMENT
BETWEEN THE CITY OF MORIARTY
POLICE DEPARTMENT
AND
LOCAL 2976 AFSCME COUNCIL 18



JULY 1, 2012 TO JUNE 30, 2014

TABLE OF CONTENTS

AGREEMENT PREAMBLE.....3
Article 1: Commitment to Citizens of Moriarty3
Article 2: Purpose.....3
Article 3: Recognition.....4
Article 4: Printing and Distribution of Master Agreement4
Article 5: Non-interference.....4
Article 6: Non-Discrimination and Compliance with Laws5
Article 7: City Rights5
Article 8: Union Rights7
Article 9: Deductions10
Article 10: Disciplinary Action.....13
Article 11: Grievance and Arbitration Procedure.....17
Article 12: Investigations.....25
Article 14: Leave.....31
Article 15: Drug / Alcohol Policy (Drug Free Workplace).....36
Article 16: Scheduling and Staffing.....36
Article 17: Filling of Vacancies.....37
Article 18: Reduction-in-Force (RIF).....37
Article 19: Vehicle Assignments.....37
Article 20: Health and Safety.....38
Article 21: Training.....40
Article 22: Severability.....42
Article 23: Complete and Entire Agreement.....43
Article 24: Term of Agreement.....44
Article 25: Signatures.....44

AGREEMENT PREAMBLE

This Agreement is made and entered into this 26th day of June, 2012 between the city of Moriarty, hereinafter "Employer" or "the City" and the American Federation of State, County and Municipal Employees, Council 18 (hereinafter referred to as "AFSCME" or "the Union") and is applicable to all eligible employees in the collective bargaining unit of the Employer described in the Recognition Article of this Agreement.

Article 1: Commitment to Citizens of Moriarty

The Union and Employer recognize the mission, goals and obligations of the City of Moriarty as a provider of services to the citizens of Moriarty through its employees. The Employer and the Union agree that delivery of those services is the primary mission of all City employees. The Employer and the Union agree to protect the public interest, at all times, by ensuring the orderly operation and functioning of City of Moriarty.

Article 2: Purpose

The Purpose of this Agreement is to provide reasonable terms and conditions of employment for employees covered hereunder and a means of amicable and equitable adjustment of any and all differences or grievances which may arise under the provisions of this Agreement, all of which the parties hereto believe and affirm will inure to the welfare and benefit of the people of the City of Moriarty.

Article 3: Recognition

The Employer recognizes AFSCME as the exclusive representative, as that term is defined in the Public Employee Bargaining Act [hereinafter referred to as "PEBA"], for employees in the bargaining unit, which consists of all non-probationary Police Officers with the rank of sergeant or lower, as certified by the New Mexico Public Employee Labor Relations Board on August 11, 2011.

Article 4: Printing and Distribution of Master Agreement

The City shall make this this Agreement available for download in Portable Document Format ("pdf") from the City of Moriarty website within thirty (30) days of receipt of written notice of the ratification by the Union membership and distribute the hyperlink to the Agreement via email to all employees within the bargaining unit. Consistent with law, the parties shall make reasonable accommodation, where needed, for persons with disabilities. The Union shall explain the Agreement to employees within the bargaining unit. The City shall explain the Agreement to supervisory and managerial employees.

Article 5: Non-interference

The parties acknowledge that each is free to conduct its affairs and business in the manner which each respectively believes to be in its own best interest subject to the provisions of this Agreement. The parties agree that neither shall interfere with the internal affairs of the other nor with the officials or representatives of the other in the conduct of their internal business affairs

and other matters not involving collective bargaining, provided, however, that nothing contained herein shall bar parties or their members from petitioning their elected political representatives or fully and actively participating in the political process.

Article 6: Non-Discrimination and Compliance with Laws

Section 1. The City and the Union agree that neither shall discriminate against any employee by reason of union membership or non-membership or activities on behalf or in opposition to the Union.

Section 2. Written personnel policies and procedures that effect bargaining unit employees shall be applied consistently in similar circumstances to the employees to whom the policies and procedures apply. Accommodations made to persons determined by the Employer to be qualified individuals with a disability shall not serve as precedent for other employees. With the exception of personnel policies and procedures dealing with compliance with the Fair Labor Standards Act (FLSA), the Americans With Disabilities Act (ADA), the Age Discrimination and Employment Act (ADEA), the Family and Medical Leave Act (FMLA), the Equal Pay Act (EPA) and all other applicable federal and state equal employment opportunity laws and regulations, alleged violations of this article may be grieved in accordance with the Grievance Procedure.

Article 7: City Rights

Section 1. The City retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and constitution of the State of New Mexico, the Public Employee Bargaining Act, and local Ordinances. The Union recognizes

that except as specifically limited, abridged, or relinquished by the terms and provisions of this Agreement, all rights to manage, direct, or supervise the operations of the City and employees are vested solely in the City. The City shall also have the management rights outlined below:

A. The administration of all matters covered by this Agreement shall be governed by the provisions of applicable constitutional provisions, Federal and State laws, and Ordinances adopted by the City. The Agreement shall at all times be applied subject to such constitutional provisions, Federal and State laws, and Ordinances.

B. The City shall retain the right in accordance with applicable Federal and State laws and City Ordinances:

1. to determine the mission of the City and its departments;
2. to set standards;
3. to exercise control and discretion over City organization and its operations;
4. to direct employees of the City and conduct evaluation and judgment of an employee's skill, ability, efficiency, and general performance;
5. to hire, promote, transfer, assign, and retain employees in positions within the City; and to suspend, demote, discharge, or take other disciplinary action against employees for just cause;
6. to relieve employees from duties because of lack of work or for other legitimate reasons;
7. to maintain the efficiency of the operations;

8. to determine the methods, means, and personnel by which such City operations are to be conducted;
9. to effect reorganizations of City Departments; prior to any such reorganization Management will notify the Union President; and
10. to take whatever actions may be necessary to carry out the functions and mission of the City and maintain uninterrupted service to its citizens in situations of emergency.

Section 2. The City shall have the right to make such reasonable rules and regulations respecting the conduct of employees, not in conflict with this Agreement, as it may from time to time deem best for the purpose of maintaining order, safety, and/or efficient operations.

Section 3. Items not covered in this agreement will be handled in accordance with the most recent City Personnel Ordinance, Police Department Administrative Policies and Procedures, City Safety Handbook, and/or other City policies or as these items are amended. If items are not in the policies, such will be left to management discretion.

Article 8: Union Rights

Section 1. The Union shall have the right to select sufficient stewards to represent employees covered by this Agreement.

Section 2. The Union shall provide the Employer with the following information about Stewards, and Union Officials; a written list of the names, addresses, telephone numbers and the agency to which they are employed who are authorized to act on behalf of the Union and the extent of their authority. Stewards and union officials shall have full power on behalf of the

Union to resolve all disputes and disagreements through the grievance procedure in the administration of this agreement as set forth in Article 11 of this Agreement.

Section 3. If the parties agree to a meeting for the purpose of administering this Agreement or implementing any provision of this Agreement, the parties shall first attempt to schedule the meeting at a time when the appropriate Union officials are on duty. Union officials who attend such meeting while on duty shall receive their regular pay for such time. If a Union official is not on duty when any such meeting occurs, such a Union official shall not be entitled to compensation from the City for such time.. Union officials, as defined in this section are: the Local Union President, Local Union Vice-President, and stewards.

Section 4.

- A.** The Employer shall approve reasonable written request for annual leave, accrued comp time, and/or leave without pay [hereinafter referred to as “LWOP”] for up to fourteen (14) calendar days, if requested by steward/union officials, in order to participate in Union executive board meetings, Union conventions, and employment as Union staff, provided that such approval of said leave does not impair the City’s ability to provide police protection.
- B.** The Union shall have exclusive use of separate bulletin boards of an equal size near every bulletin board used by the Employer to give information to employees. The Union will provide the bulletin board and the Employer will install it unless the Employer agrees to allow the Union to use existing bulletin board space.
- C.** Postings on union bulletin boards shall be confined to internal union business, including notices and announcements of meetings, news items, labor-management

news, but shall not include materials of a partisan, political, defamatory or obscene nature or personal criticism of any individual. Distribution of Union literature at worksites shall not include materials of a defamatory or obscene nature or personal criticism of any individual. The Employer shall not authorize the posting of notices critical of the Union or any union member (except for instances necessary to protect employees) the Union shall receive advance written notice in these instances), or of its representatives on the Employer's official bulletin boards. The Union shall not authorize the posting of notices critical of the City or any City employee (except for instances necessary to protect employees) the City shall receive advance written notice in these instances), or of the City's representatives on the Union's official bulletin boards. When the Union uses the bulletin board, a copy of said posting shall be provided to the Chief of Police.

Section 5. Except as limited by law or this Agreement, each employee shall have the right to join and assist the Union freely or to refrain from doing so, without fear of penalty or reprisal from the City or the Union, and the Employer and the Union shall assure that each employee shall be protected in the exercise of such right. Allegations concerning violations of these rights shall be filed with the PELRB.

Section 6. Union representatives may request the use of city property to hold union meetings. Upon prior notification, the Employer will provide meeting space where feasible. Where the available space is available for rent to the public, paying users of space will be given priority over non-paying users.

Section 7. The Union shall be permitted to use the City's internal department mail boxes, for bargaining unit mailings in accordance with applicable executive policies. Inter-department mailings shall be confined to internal union business, including notices and announcements of meetings, news items, labor-management news, but shall not include materials of a partisan, political, defamatory or obscene nature or personal criticism of any individual. Distribution of Union literature at worksites shall not include materials of a defamatory or obscene nature or personal criticism of any individual. When the Union uses the City's internal department mail boxes, a copy of said mailings shall be provided to the Chief of Police.

Article 9: Deductions

Section 1. The Employer shall honor voluntary uniform union membership dues deduction authorizations. The amount of the dues shall be certified in writing and shall not include special assessments, penalties or fines of any type.

- A.** The Employer shall also honor separate additional voluntary deduction authorizations for the Union's political action committee (PEOPLE) executed on or following the date of ratification of this agreement.
- B.** The standard form to be used following the execution of this Agreement authorizing dues deduction and authorizing PEOPLE deduction shall be attached as an appendix to this Agreement.
- C.** The Employer will begin all voluntary deductions promptly after the authorization is received in a timeframe consistent with other employee payroll deductions.

Section 2. All money deducted from wages under this Article shall be remitted to the AFSCME Council 18 promptly after the pay day covering the pay period of deduction.

- A. If an employee has insufficient earnings for the pay period, no dues or other deduction will be made for that employee for that pay period.
- B. The Employer shall provide the Union with a list of the names of each of the employees from whom the Employer is making deductions under this Article and the amount deducted.
- C. This listing may be made available in an electronic format.
- D. The Union shall certify to the Employer, in writing, by a duly authorized officer, the amount per pay period to be deducted for Union membership dues under deduction authorizations.
- E. An employee shall specify the amount, if any, of additional authorizations for the PEOPLE program.

Section 3. Processing of Union Membership Cards

- A. All membership cards shall be submitted to AFSCME union hall at 1202 Pennsylvania NE, Albuquerque, Nm 87110 or to the employee's respective Agency HR office
- B. AFSCME Council 18 or the Agency shall stamp, date, and initial each membership card upon arrival indentifying the membership card was received.
- C. Each party shall make a copy of the membership card, process the card, and mail or fax a copy of the card to the other party.

D. The Agency shall maintain a copy of the membership card in the employee's personnel file.

Section 4. The duty of the Employer to honor membership dues deduction authorizations shall continue until the employee instructs the Employer and the Union in writing to end such deduction, as long as such employee instruction to end membership is made during the first full calendar week of May of any year that this Agreement is in effect. The Employer shall confirm with the Union that the employee has complied with this provision prior to termination of deductions. An employee may terminate deductions for the Union's Political Action Committee (PEOPLE) at any time.

Section 5. It is specifically agreed that the City of Moriarty assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the City of Moriarty harmless from and against any claims, actions or proceedings arising from deductions made by the City of Moriarty pursuant to this Article. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

Section 6. Union Security. It is specifically agreed that the City of Moriarty assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the city harmless from and against any claims, demands, actions, proceedings or liability arising from deductions made by the City pursuant to this Article, including reasonable attorneys fees incurred. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union; provided this Section 4 shall not be applicable to claims or liabilities

or attorneys fees incurred solely as a result of a breach by the Employer of its statutory duties or obligations under the United States Constitution.

Article 10: Disciplinary Action

Section 1. Employees are subject to this Agreement and any administrative or departmental regulations and shall be disciplined only for just cause.

Section 2. "Just Cause" means any behavior relating to the employee's work, which is inconsistent with the employee's obligation to the City. Just cause includes but is not limited to: inefficiency, incompetency, misconduct, negligence, insubordination, performance which continues to be inadequate after reasonable efforts have been made to correct it, or conviction of a felony or misdemeanor. Progressive discipline is not a necessary element of just cause.

Section 3. Disciplinary actions shall be consistent with governing laws and regulations and shall be taken without regard to race, age, religion, color, national origin, sex, sexual orientation, physical or mental disability, serious medical condition, or union membership or non-membership. No employee shall be disciplined for refusing to perform an unlawful act.

Section 4. The City may utilize alternative methods to resolve conflicts or improper employee performance or behavior whenever appropriate.

Section 5. Any supervisor may take disciplinary action against an employee pursuant to the supervisor's authority and consistent with departmental policies. Copies of any documented disciplinary action shall be placed in the employee's personnel file with the signature of the employee acknowledging receipt of the action. The employee's signature shall not be construed as an agreement with the imposed discipline. Should an employee refuse to sign a document,

then a notation that the employee refused to sign the document shall be included with the document. Employees will be provided a copy of any disciplinary document prior to placement in the official personnel file. Disciplinary actions shall remain in the employee's official personnel file for a minimum of fourteen months. If no additional disciplinary action is taken against an employee within fourteen months, then the employee may request that the Mayor remove the documented disciplinary action from the employee's personnel file. The Mayor shall not unreasonably refuse to remove the documented disciplinary action. If additional disciplinary action is taken against an employee within fourteen months, then the documented disciplinary action shall not be removed.

Section 6. Prior to implementing any suspension, demotion or termination, an employee will be provided written charges against the employee and notice of a predetermination meeting. The purpose of the predetermination meeting is to provide the employee an opportunity to respond to the charges and is not an evidentiary hearing. Following the predetermination meeting, the employee will be given written notice of the recommendation of disciplinary action provided to the City Council. City Council shall make the final determination to prior to demotion, suspension or termination.

Section 7. If the Chief of Police has reason to believe that an allegation of a violation of this Agreement, applicable laws or regulation is severe, then, in consultation with the Mayor, the Chief of Police may immediately suspend an employee with pay. Upon suspension with pay an employee shall return all City issued equipment.

Section 8. Off-duty conduct may be cause for discipline if it diminishes the integrity of the Police Department. Employees are directed to immediately inform the Chief of any off-duty

conduct that involves an arrest of the employee or other conduct that may diminish the integrity of the Department.

Section 9. An employee shall be progressively disciplined when appropriate, as determined by the City. The step of corrective action used will depend on the severity of the infraction and the employee's previous work/disciplinary record. Under certain circumstances, suspension without pay, demotion, or dismissal may be the appropriate initial disciplinary action. Progressive discipline is not a necessary element of just cause.

Section 10. Time Limits. The Employer may impose any disciplinary action or issue a notice of contemplated action no later than thirty (30) days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed.

Section 11. Disciplinary actions include, but are not limited to, the following:

- A.** Reminder. A Supervisor may remind an employee of applicable standards, rules or regulations.
- B.** Performance Counseling. Performance counseling provides immediate disciplinary action against employees who fail to conform to certain departmental standards of conduct and appearance. This procedure does not require a subsequent investigation. Performance counseling may be imposed within the employee's chain of command by an oral reprimand or performance counseling.
- C.** Oral Reprimand. An employee may be issued an oral reprimand as determined by the Supervisor.
- D.** Written Reprimand. An employee is typically issued a written reprimand in circumstances where the infraction is perceived to be of a greater consequence

than that for which an oral reprimand is typically issued or if a prior oral reprimand to correct the same or similar behavior was ineffective.

- E. Suspensions and Demotions. An employee may be suspended without pay, and/or demoted for a single serious offense, or for continued substandard job performance or misconduct when previous attempt(s) to correct behavior have failed.
- F. Dismissal. An employee may be dismissed when other discipline has failed to improve unacceptable behavior or job performance, or when an employee has committed a single serious offense.

Section 12. Performance counseling and oral reprimands will be documented by the supervisor and reported to the Chief of Police. An action of performance counseling or an oral reprimand will not bar a more severe penalty or recommendation by the Chief of Police for the same disciplined conduct.

Section 13. An employee may attach a written response to any disciplinary action documented in the employee's personnel file.

Section 14. An employee who has completed the probationary period and has been dismissed, demoted, or suspended has the right to an appeal. The arbitration provision set forth in this Agreement is also applicable to an appeal of a disciplinary action of suspension, demotion, or dismissal, where the Union irrevocably elects to arbitrate an appeal instead of proceeding under the City's personnel manual's appeal process.

Article 11: Grievance and Arbitration Procedure

Section 1. Scope.

- A.** This grievance and arbitration procedure is applicable to allegations of a violation, misapplication, or misinterpretation of this Agreement, excluding Articles 1 and 2.
- B.** A grievance is defined as a charge by either party to this Agreement that the other has violated one or more expressed provisions of this Agreement.
- C.** For purposes of this Article, "day" means calendar day unless otherwise specified. In the event the day an action or response is due is a Saturday, Sunday, or legal Holiday, the action or response shall be due the following workday.
- D.** The parties agree that this Section shall not be used by either party as a waiver, or concession of position, as to the interpretation of the PEBA.
- E.** This grievance and arbitration procedure does not apply to allegations concerning personnel policies and procedures dealing with compliance with the Fair Labor Standards Act (FLSA), the Americans With Disabilities Act (ADA), the Age Discrimination and Employment Act (ADEA), the Family and Medical Leave Act (FMLA), the Equal Pay Act (EPA) and all other applicable federal and state equal employment opportunity laws and regulations.

Section 2. Grievances may be filed on behalf of an individual aggrieved employee or group of employees (group grievance) covered by this Agreement or by the Union.

Section 3. An individual employee may present a grievance under the provisions of this Article and have it adjusted without the intervention of the Union so long as:

- A.** The adjustment is consistent with the terms of the Agreement; and

- B.** The Union is provided with the opportunity to be present during the grievance meetings, is provided copies of grievance documents, and is provided an opportunity make its views known.

Section 4. An employee may not retain outside representation under this grievance procedure without the advance approval of the Union. An individual employee may not invoke arbitration.

Section 5. Steps in the Grievance Procedure. The parties shall use the grievance procedure in an attempt to resolve issues at the lowest possible level. Employees should attempt to resolve any problem with their immediate supervisor before filing a formal grievance under the procedures established in this Article. Informal resolution of grievances prior to Step 1 shall not be binding upon the parties as past practice or interpretation of this Agreement. The parties agree that voluntary face to face meetings can be an effective way to reach resolution and a meeting shall occur in an attempt to resolve the grievance. Meetings to resolve grievances may be conducted by mutual agreement in person, telephone and/or by videoconferencing.

- A. Step 1.** Grievances must be initiated by presenting a written grievance to the employer promptly and no later than fourteen (14) calendar days after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged grievance. Failure to submit a grievance within fourteen (14) days following the discovery of the act, or the condition which gave rise to the grievance, will constitute forfeiture of the right to file. Furthermore, any grievance determination not appealed to the succeeding level within the time limits expressed herein shall be considered as closed. When it is

mutually agreed by the parties in writing, the time limits expressed herein may be extended. A grievance may be withdrawn at any step of this procedure by the grievant.

1. The Union or grievant shall submit the grievance to the immediate supervisor in writing.
2. If the grievance concerns the immediate supervisor, then the grievant shall submit the grievance directly to the Chief of Police at Step 2.
3. The grievance, whether submitted to the immediate supervisor at Step 1 or to the Chief of Police at Step 2, shall set forth:
 - a. The employee's name, job title,
 - b. The name, address, and telephone of the Union representative, if any;
 - c. The Article(s) of this Agreement alleged to have been violated;
 - d. A description of the alleged violation;
 - e. The relief requested;
 - f. The signature of the grievant or of the Union representative.
4. The immediate supervisor shall respond in writing within fourteen (14) calendar days of receipt of the written grievance. The Union or grievant shall schedule a meeting with the immediate supervisor, during which the parties will attempt to resolve the grievance. The meeting with the immediate supervisor should be held within fourteen (14) days of the filing of the grievance. If both parties agree the meeting may be digitally

recorded for the review by the Police Chief and/or Mayor, and such recording shall not to be used as evidence in an arbitration proceeding. Within fourteen (14) days of the meeting, the immediate supervisor will provide a written response to the employee. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 2 by filing with the Police Chief within fourteen (14) calendar days of the time for response of the Step 1 grievance.

- B. Step 2.** The Union or grievant shall submit the grievance to the Police Chief in writing. The Union or grievant shall schedule a meeting with the Police Chief, during which the parties will attempt to resolve the grievance. The Police Chief may review any recording from the previous meeting. The meeting with the Chief of Police should be held within fourteen (14) days of the filing of the grievance. If both parties agree the meeting may be digitally recorded for the review by the Mayor, and such recording shall not to be used as evidence in an arbitration proceeding. Within fourteen (14) days of the meeting, the Chief of Police will provide a written response to the employee. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 3 by filing with the Mayor within fourteen (14) calendar days of the time for response of the Step 2 grievance.

- C. **Step 3.** The Union or grievant shall submit the grievance to the Mayor in writing. The Union or grievant shall schedule a meeting with the Mayor, during which the parties will attempt to resolve the grievance. The meeting with the Mayor should be held within fourteen (14) days of the filing of the grievance. The Mayor may review any prior recordings. Within fourteen (14) days of the meeting, the Mayor will provide a written response to the employee. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Arbitration as set forth below.

Section 6. Should a grievant file a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission or the Human Rights Division of the New Mexico Department of Labor, regarding the matter to be grieved, the grievance will be dismissed without further action by either party.

Section 7. Arbitration. This procedure shall be the sole and exclusive method for resolving any and all claims arising from the alleged violation of this agreement. Additionally, the Union may irrevocably elect to proceed under this arbitration procedure for a disciplinary action of suspension, demotion, or discharge of an employee instead of utilizing the City's existing personnel appeal process.

- A. Prior to an appeal to binding arbitration, the procedure for the settlement of the grievance must have been exhausted.
- B. The Union shall submit a notice of intent to appeal to by making a written demand for arbitration. The notice must be received by the City Clerk within seven (7) working days from the date of the delivery of the City's response at Step

Three to grievances of this Agreement or from the date of final disciplinary action by the City Council for suspensions, demotions, or dismissals. The written demand for arbitration shall serve as the Union's irrevocable election to proceed under this arbitration procedure instead of utilizing the City's existing personnel appeal process for disciplinary actions of suspension, demotion or dismissals.

- C.** An arbitrator shall be selected in the following manner:
1. Within seven (7) calendar days of the written demand for arbitration, the Union shall make a request for a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), unless the parties within such time period can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. The request shall specify that the panel of arbitrators be drawn from the FMCS sub-region in which New Mexico lies. The Union shall provide a copy of the list of names to the City immediately upon receipt from FMCS.
 2. The City and the Union shall meet within fourteen (14) days from the date of receipt of the list of names from FMCS to select an arbitrator.
 3. Each party will strike one (1) name alternately until a single name remains and he or she shall be the Arbitrator. The Union shall bear the cost of obtaining the panel of arbitrators from FMCS and shall decide which party strikes the first name from the panel of arbitrators.
- D.** The Arbitrator shall decide all issues of arbitrability prior to hearing the merits of the case. The Arbitrator shall incorporate any such decisions concerning

arbitrability into the final decision. If the Arbitrator determines the case is arbitrable, and no issues of arbitrability exist, then the Arbitrator shall consider the facts and testimony regarding the grievance in arbitration and following a hearing shall prepare and submit to the parties, in writing, a report and decision within thirty (30) calendar days after the conclusion of the hearing or submission of briefs, whichever is later.

- E.** Arbitration shall be conducted according to the rules established by the FMCS.
- F.** Any arbitration hearing conducted pursuant to this Agreement shall take place in Moriarty, New Mexico.
- G.** The Arbitrator shall have the authority to determine whether there was a violation of this agreement, or in the case of a grievance of a disciplinary action, whether there was just cause for said disciplinary action. However, the Arbitrator shall not have the power: (1) to add to, subtract from, or modify this agreement; (2) to substitute his or her discretion for that of the employer; or (3) to exercise any responsibility or function of the employer.
- H.** The Arbitrator's award in disciplinary cases is limited to back pay and/or reinstatement, or reinstatement to a similar position at both parties' discretion if irreconcilable personality conflicts exist. The award shall be limited to the amount of wages and benefits the employee otherwise would have earned subject to discount based on any earnings or compensation received by the grievant including, but not limited to, unemployment insurance benefits. The employee has an obligation to mitigate his/her damages. The arbitrator shall not have

authority to make an award of attorney's fees, punitive damages, or general compensatory damages.

- I. The losing party shall pay the cost of arbitration, including the arbitrator's fees and expenses.
- J. The Arbitration award shall be considered an award issued under the provisions of the New Mexico Uniform Arbitration Act.
- K. An Arbitrator's decisions shall be final and binding on the parties' subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.

Section 8. Miscellaneous Grievance and Arbitration Provisions.

- A. If the Employer fails to respond within the designated time limits, the grievance shall be deemed denied and the Union may advance the grievance to the next step in accordance with the procedures set forth in this Article.
- B. The issue of non-grievability may be properly raised at any step of the grievance procedure. The arbitrator shall decide all issues regarding the grievability of grievances.
- C. Grievances may be withdrawn by the Union at any step of the grievance procedure without prejudice except as to objections to timeliness.
- D. The arbitration procedure set forth in this Article shall not apply to events which occur before the effective date of this Agreement.
- E. The two parties to this Agreement may be represented by counsel at any step of the grievance and arbitration procedure.

- F. Court reporters are permitted in arbitration but not required. Each party shall be responsible for providing and bearing the cost of their own court reporter if they desire to have one present.

Article 12: Investigations

Section 1. Investigative Interviews and Procedures (See NMSA 29-14-4). When any peace officer is under investigation by this department for alleged actions: that could result in administrative sanctions being levied against the officer, the following requirements shall be adhered to:

- A. Any interrogation of an officer shall be conducted when the officer is on duty or during his normal working hours, unless the urgency of the investigation requires otherwise;
- B. Any interrogation of an officer shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise;
- C. Prior to commencement of any interrogation session:
 - 1. An officer shall be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation;
 - 2. An officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief of Police determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an

informant or ,because disclosure would jeopardize or compromise the integrity or security of the investigation; and

3. A reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation;

D. During any interrogation session, the following requirements shall be adhered to:

1. Each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;
2. There shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one hour rest period between the sessions;
3. The combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise;
4. There shall not be more than two interrogators at any given time;
5. An officer shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and
6. An officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session.

E. Any interrogation of an officer shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript;

provided that any recesses called during the interrogation shall be noted in the transcript; and

- F. An accurate copy of the transcript or tape shall be provided to the officer, upon his written request, no later than fifteen working days after the investigation has been completed.

Section 2. Polygraph examinations. (See NMSA 29-14-5). After reviewing all the information collected in the course of an investigation of a peace officer; the Chief of Police may order the officer to submit to a polygraph examination administered by a licensed polygraph examiner, provided that:

- A. All other reasonable investigative means have been exhausted;
The officer has been advised of the chief's reasons for ordering the polygraph examination.

Section 3. Investigation of administrative matters. (See NMSA 29-14-6). When any police officer is under investigation for an administrative matter, the officer shall be permitted to produce any relevant documents, witnesses or other evidence to support his case and he may cross-examine any adverse witnesses during any grievance process or appeal involving disciplinary action.

Section 4. Personnel files. (See NMSA 29-14-7).

- A. No investigation containing comments adverse to a police officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file if:

1. The officer's refusal to sign is noted on the investigation by the Chief of Police; and
 2. The notation regarding the officer's refusal to sign the investigation is witnessed by a third party.
- B.** A police officer may file a written response to any document containing adverse comments entered into his personnel file and the response shall be filed with the Chief of Police within thirty days after the document was entered into the officer's personnel file. A police officer's written response shall be attached to the document.

Section 5. Forced disclosure of financial status prohibited. (See NMSA 29-14-9). A peace officer shall not be required by this department to disclose information regarding his financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

Section 6. Constitutional rights; notification. (See NMSA 29-14-8). When any peace officer is under administrative investigation and a determination is made to commence a criminal investigation, he shall be immediately notified of the investigation and shall be afforded all the protections set forth in the bill of rights of the United States and New Mexico constitutions.

Section 7. Exercise of rights. (See NMSA 29-14-1 to 29-14-11). A peace officer shall not be subjected to any retaliation by this department due to the officer's lawful exercise of his rights under the Peace Officer's Employer Employee Relations Act.

Section 8. Political activity (See NMSA 29-14-10). The department shall not prohibit a police officer of his department from engaging in any political activity when the officer is off

duty; except as otherwise required by law. Officers shall not engage in political activity while on duty, such action shall result in disciplinary action.

Article 13: Pay

Section 1. An employee who is regularly scheduled for the graveyard shift shall receive their base hourly rate plus a \$0.90 increase to their base hourly rate as shift-differential compensation.

Section 2. The parties agree to a 2.5% increase in pay beginning July 1, 2012, subject to City Council approval.

Section 3. Each employee shall be entitled to a clothing allowance of seven-hundred dollars (\$700.00) per year for expenses related to meeting the uniform requirements. The City shall provide the employee with a Purchase Order for use with an authorized City vendor or shall reimburse the employee for such expenses upon the submission of a receipt showing the purchase.

Section 4: Holiday Pay.

- A.** A regular full time non-exempt employee required to be on duty during a paid holiday, the employee shall receive 8 hours holiday pay computed at the regular rate plus 1.5 times the hourly rate for all time worked on that holiday.
- B.** If the holiday falls on an employee's regularly scheduled day off the employee will receive eight hours straight time.
- C.** Part time employees will be paid for holidays if the holiday falls on their regularly scheduled day to work.

D. Temporary employees will not receive holiday pay.

Section 5: Overtime Pay.

- A. The City of Moriarty may offer compensatory time off in lieu of overtime pay for all non exempt employees in compliance with the Fair Labor Standards Act.
- B. Overtime worked shall be compensated either with pay computed at 1.5 times the base hourly rate of pay or with paid time off at 1.5 times the number of overtime hours worked.
- C. Holiday overtime is overtime worked on an actual holiday. Holiday overtime pay shall be compensated with either pay computed at 2.25 times the base hourly rate of pay or with paid time off at 2.25 times the number of overtime hours worked.
- D. Overtime for nonexempt police employees is time worked in excess of 80 hours per 14-day work period.
- E. Sick leave, and leave without pay shall not be included in the work period for purposes of computing overtime pay or compensatory time off.
- F. Overtime does not apply to employees whose work period is less than 40 hours per week. These employees shall receive straight time for hours worked in excess of their regular work period. However, if the hours worked exceeds the hours for full time employees as described in paragraph D above, the part time employee shall be paid overtime as computed in of this section.
- G. A non exempt employee may accrue a balance of up to 40 hours compensatory time at any given time.

- H. Requirement of frequent and considerable overtime/compensatory time off in a department shall be considered evidence of under staffing or poor management of resources and shall be grounds to investigate by the Mayor and City Council.

Section 6: Call Back Pay. As defined in section 3-5-3 of the City of Moriarty personnel manual, a “Call Back” occurs when an employee has completed a regularly scheduled shift and is officially ordered to and does report back to work for emergency service. When an employee is called back to work, the employee shall be paid a minimum of 2 hours even if a less time was actually worked. For work performed during call back employee will be paid 1.5 times base rate or the two hours straight time, whichever is greater.

Section 7: Stand By Pay.

- A. Employees may be required to be available to answer emergency service requests. If the employee does not respond to emergency calls while required to be on standby that employee will not be considered to have been on standby and therefore the hours will not be used to compute standby pay. Volunteer activity is not considered Standby time.
- B. Employees required to be on standby, will not be paid unless required to respond, at that time the employee will be paid 1.5 times their base rate for hours worked.

Article 14: Leave.

Section 1. Vacation Accrual: All employees within the bargaining unit shall accrue leave based on length of service, in accordance with the following rate table:

- A. 3.31 hours per paid period for the first year through the fourth year of employment.
- B. 3.97 hours per paid period for the fifth year through the ninth year of employment.
- C. 4.96 hours per paid period for the tenth year through the fourteenth year of employment.
- D. 6.62 hours per paid period for the fifteenth year and thereafter of employment.

Section 2. Holiday During Leave: When a designated holiday falls within an employee's vacation leave, that day shall be paid as a holiday and shall not be deducted from accrued vacation leave.

Section 3. Sick Leave. Each regular, limited-term or probationary full time employee shall accrue sick leave at the rate of 3.70 hours per paid period. Each regular, limited-term or probationary part time employee shall accrue 2.00 hour per paid period. There is no maximum accrual on sick leave. Sick leave may be authorized for personal illness or off the job injury, exposure to contagious diseases which would endanger the health of other employees, to tend to immediate family members who are sick, (immediate family shall include: Spouse, Child, Parent, Brother, Sister, Grandchild or Grandparent) or for required medical or dental or eye treatment or examination. Sick leave may not be authorized for reasons unrelated to illness or injury nor for slight indisposition which does not incapacitate the employee for performance of duties.

Probationary employees may use accrued sick leave. Sick leave shall be charged as used, i.e., if an employee is absent two hours, they shall be charged two hours of sick leave. At the discretion

of the Department Director an employee may be sent home on sick leave or unpaid leave if the employee seems to be too sick to perform his job duties.

Section 4. Donation of Sick Leave. An employee who has used all accrued sick leave may use accrued annual leave for sick leave purposes until paid leave is exhausted. Employees may voluntarily donate any amount of their unused sick leave to another employee who has used all of his sick and vacation leave to avoid leave without pay for the absent employee. The hours donated will be hour for hour, not dollars per hour. The donating of sick leave will be authorized by the Department Director via the "Donation of Sick Leave" form, only after the employee uses up all of his sick hours. Subsequent approved absences for sick leave purposes for such employee will be leave without pay.

Section 5. Notification of Supervisor. An employee who is unable to come to work because of one of the reasons specified in Section 3 above, shall promptly notify his/her immediate supervisor so that duties may be reassigned.

Section 6. Proof of Reason for Absence. Any employee using over twenty-four (24) consecutive hours of sick leave shall submit a written release from a physician which attests to the employee's ability to resume regular duties. If the employee does not submit proof to supervisor for the sick leave taken, then the absence shall be considered leave without pay.

Section 7. Holiday During Sick Leave: A holiday which is observed during an approved paid sick leave shall be paid as a holiday and shall not be deducted from accrued sick leave.

Section 8. Abuse of Sick Leave: Any employee who abuses sick leave by using it for other purposes than those authorized in Section 3 above shall have such absence charged as leave

without pay. Abuse of sick leave is grounds for discipline. A Supervisor or Department Director has discretion to request evidence of employee illness or injury from a medical doctor.

Section 9. Death in Immediate Family: Up to three (3) days of administrative leave may be granted to an employee who has a death in the immediate family. For purpose of death in family, immediate family shall include the following: spouse, parent, brother, sister, grandparent, grandchild, child, mother in law, father in law, sister in law, brother in law, niece, nephew, aunt and uncle.

Section 10. Special Hardship Leave: For circumstances not covered in Section 3 and with the recommendation of the Personnel Director and the approval by the Mayor, special leave may be granted with pay for up to four (4) calendar months to employees having at least ten years continuous service, in cases of extreme hardship. This leave may be granted only after all other applicable leave has been used and only if the employee is not eligible for pension benefits, City or State programs or Social Security.

Section 11. Training Leave, Active Duty Training For Public Employees: All regular and limited-term employees who are members of organized units of the military reserves shall be given (not to exceed fifteen days) military leave with pay annually when they are ordered to active duty training with such organized units, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled. Orders from the military must be submitted to the Department Director and forwarded to the Personnel Department (§ 20-4-7, NMSA 1978).

Section 12. Civil Leave (Jury Duty): Depending on the circumstances as evaluated by Department Director and Personnel Director, a regular or limited-term employee who is called to

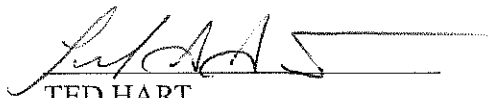
Article 24: Term of Agreement.

Upon ratification of the union and acceptance of the Mayor, This Agreement will remain in full force and effect until June 30, 2014. For the successive years of this Agreement, either party may request the negotiation of wages and two (2) items identified by each party by filing written notice with the other party no later than March 30, of each contract year. Should neither party request negotiations during the second and third year of the contract, the contract shall continue in full force and effect in accordance with the New Mexico Public Employee Bargaining Act (PEBA). Either party may request the negotiation of a successor agreement by filing a written request with the other party no later than March 30, 2014.

Article 25: Signatures.

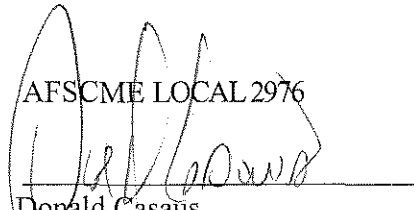
IN WITNESS THEREOF, the parties have signed their names and affixed the signature of their authorized representatives on this the 26th day of June, 2012.

CITY OF MORIARTY



TED HART,
Mayor,
City of Moriarty

AFSCME LOCAL 2976



Donald Casaus
President,
AFSCME LOCAL 2976