

# **NJIT/NJSOLEA AGREEMENT**

## **JULY 1, 2005 - JUNE 30, 2007**

Agreement Between:

NEW JERSEY INSTITUTE OF TECHNOLOGY

and

NEW JERSEY SUPERIOR OFFICERS' LAW ENFORCEMENT ASSOCIATION

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## **NJIT/NJSOLEA AGREEMENT**

This Agreement is entered into by New Jersey Institute of Technology, hereinafter (“NJIT” or “the University”) and New Jersey Superior Officers’ Law Enforcement Association, hereinafter referred to as (“NJSOLEA”).

### **ARTICLE I**

#### **RECOGNITION**

NJIT recognizes NJSOLEA as the sole and exclusive negotiating agent for the purpose of negotiating terms and conditions of employment for all full-time commissioned Police Lieutenants, full title Assistant to the Director of Public Safety - Lieutenant, hereinafter referred to as “Lieutenant(s)”; specifically excluding all other Commissioned Police Officers above and below the rank of Lieutenant and all other employees of NJIT.

### **ARTICLE II**

#### **NEGOTIATING PROCEDURE**

A. The NJSOLEA shall present its demands for a successor Agreement to NJIT, in writing, related to terms and conditions of employment on or before October 1, prior to the expiration of this Agreement. On or before November 1, NJIT shall meet with the NJSOLEA for the purpose of negotiating, in good faith, a mutually acceptable Agreement.

B. Should any provision in or portion of this Agreement be held unlawful and unenforceable by a court of competent jurisdiction or unenforceable by the Public Employment Relations Commission (PERC), such decision of the court/PERC shall only apply to the specific provision or portion thereof, directly specified in the decision. Upon the issuance of final determination, after any and all appeals, the parties agree immediately to meet and discuss a substitute for the invalidated provision or portion thereof.

C. This Agreement incorporates the entire understanding of the parties on all matters which were or could have been the subject of negotiations, and shall not be changed except by an amendment mutually agreed upon between the parties in writing.

### **ARTICLE III**

#### **MANAGEMENT RIGHTS**

A. NJIT retains and reserves unto itself all rights, powers, duties, authority, and responsibilities conferred upon and vested in it by the law and constitutions of the State of New Jersey and the United States of America.

B. All such rights, powers, duties, authority, and responsibilities possessed by NJIT may be exercised without restrictions, subject to the limitations imposed by law and except as they are specifically abridged and modified by this Agreement.

C. NJIT retains its responsibility to promulgate and enforce the rules and regulations, subject to limitations imposed by law, governing the conduct of and activities of those Lieutenants subject to this Agreement and not inconsistent with the express provisions of this Agreement.

## **ARTICLE IV**

### **DUES/FEE DEDUCTION**

#### **A. Dues**

1. In accordance with Chapter 310 of the Laws of New Jersey for 1967 (N.J.S.A. 52:14-15(9)(e), as amended), NJIT agrees to deduct from each paycheck, except for one (1) paycheck during each of the two (2) months in which three (3) paydays occur, the NJSOLEA dues and regular assessments of each member of the negotiating unit who furnishes a voluntary written authorization of such deduction on a form acceptable to NJIT.

2. The right of dues deductions for any Lieutenant of the negotiating unit shall be limited to the NJSOLEA and each Lieutenant in the negotiating unit shall be eligible to withdraw such authorization only as of July 1 of each year provided the notice of withdrawal has been timely filed.

3. The amount of the NJSOLEA dues shall be such amount as shall be certified to NJIT by the NJSOLEA at least thirty (30) days prior to the date on which deduction of dues are to begin.

4. The deduction of NJSOLEA dues made from each paycheck, except for one (1) paycheck during each of the two (2) months in which three (3) paydays occur, pursuant hereto, shall be submitted by NJIT to the NJSOLEA before the fifteenth day of the calendar month succeeding that in which such deductions are made, together with a list of names of negotiating unit members from whose pay such deductions are made.

5. The NJSOLEA agrees to save NJIT, its trustees, officers, Lieutenants and representatives, harmless from any action or actions commenced by any member(s) of the negotiating unit against NJIT, for any claim arising out of such deduction and the NJSOLEA assumes full responsibility for the disposition of any such funds once they have been turned over to them as provided.

6. Errors made by NJIT in the deduction and/or remittance of monies under this Agreement shall not be considered by the NJSOLEA as a violation of this Agreement.

#### **B. Representation Fee (Agency Shop)**

**1. Purpose of Fee**

Subject to the conditions set forth in number 2. below, Fee Assessment, all eligible nonmember Lieutenants in this unit will be required to pay to the majority representative a representation fee, in lieu of dues, of services rendered by the majority representative until June 30, 2007. Nothing herein shall be deemed to require any Lieutenant to become a member of the majority representative.

**2. Fee Assessment**

It is understood that the implementation of the agency fee program is predicated on the demonstration by the NJSOLEA that more than fifty percent (50%) of the eligible Lieutenants in the negotiating unit are dues paying members of the NJSOLEA.

If, at the signing of this Agreement, the above percentage has not been achieved, the agency fee plan will be continued through the calendar year, after which it shall be discontinued unless the minimum has been achieved prior to that occurrence. Then, if the minimum percentage is exceeded on any quarterly date, i.e., January 1, April 1, July 1, or October 1, the agency fee plan shall be reinstated, with proper notice to affected Lieutenants.

On July 1, in each year of the Agreement, an assessment shall be made to determine if the minimum percentage has been exceeded. If it has, the agency fee shall continue until the following annual assessment. If it has not, the agency fee will be discontinued and eligibility for reinstatement shall be on a quarterly basis as provided above.

**3. Deduction and Transmission of Fee**

After verification by NJIT that Lieutenants must pay the representation fee, NJIT will deduct the fee for all eligible Lieutenants in accordance with this Article.

The mechanics of the deduction of representation fees and the transmission of such fees to the NJSOLEA will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the NJSOLEA.

NJIT shall deduct the representation fee as soon as possible after the tenth day following re-entry into this unit for Lieutenants who previously served in a position identified as excluded or confidential, for Lieutenants re-employed in this unit from a re-employment list, for Lieutenants returning from leave without pay, and for previous Lieutenant members who become eligible for the representation fee because of non-member status.

NJIT shall deduct the representation fee from a new Lieutenant as soon as practicable after thirty (30) days from the date of employment in a position in this unit.

**4. Demand and Return System**

The representation fee in lieu of dues shall be available to the NJSOLEA only if the procedures herein set out, are maintained by the NJSOLEA.

The burden of proof under this system is on the NJSOLEA.

The representation fee, subject to refund, shall not reflect, however, the costs of support lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the Lieutenants represented, advantages, in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with NJIT.

The Lieutenants shall be entitled to a review of the amount of the representation fee by requesting the NJSOLEA to substantiate the amount charged for the representation fee. This review shall be provided in conformance with the internal steps and procedures established by the NJSOLEA.

The NJSOLEA shall submit a copy of the NJSOLEA review system to NJIT. The deduction of the representation fee shall be available only if the NJSOLEA establishes and maintains this review system in accordance with law.

If the Lieutenant is dissatisfied with the NJSOLEA's decision, he/she may appeal to a three (3) member board established by the Governor.

**5. Employer Held Harmless**

The NJSOLEA hereby agrees that it will indemnify and hold NJIT from any claims, actions or proceedings brought by any Lieutenant in the negotiations unit which arises from deductions made by NJIT in accordance with this provision.

**C. Amount of Dues/Fees**

Prior to the beginning of each contract year, the NJSOLEA will notify NJIT, in writing, of the amount of regular membership dues, initiation fees and assessments charged by the NJSOLEA to its own members for that contract year, and the amount of the representation fee for that contract year. Any changes in the dues, assessments and/or representation fee structure during the contract year shall be certified to NJIT at least thirty (30) days in advance of the requested date of such change. The change will be reflected in payroll deductions at the earliest practicable time after receipt of the request.

The representation fee, in lieu of dues, shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members, less the cost of benefits financed through the dues, fees and assessments and available to or benefiting only its members, but in no event shall such fee exceed eighty-five percent (85%) of the regular membership dues, fees and assessments.

**D. Errors or Omissions**

NJIT shall not be liable to the NJSOLEA for any retroactive or past due representation fee or dues for a Lieutenant who was identified by NJIT as excluded or confidential or in good faith was mistakenly or inadvertently omitted from deduction of the representation fee or dues.

**E. Legal Requirements**

Provisions in this clause are further conditioned upon all other requirements set by statute.

**ARTICLE V**

**RIGHTS OF THE NJSOLEA**

A. NJIT agrees to recognize those Lieutenants of the negotiating unit, not to exceed three (3), who are designated by the NJSOLEA as representatives for collective negotiations, by written notice of the names of such Lieutenants in the negotiating unit given to NJIT. This section shall not preclude either party from inviting others to attend collective negotiations or providing factual knowledge or expertise with respect to a particular subject for collective negotiations. In this event, advance notice, shall be given the other party.

B. Representatives of the NJSOLEA shall be permitted to transact official business on NJIT's property at all reasonable hours provided they first have obtained permission in advance from the Director of Public Safety or his/her designee, and they do not interfere or interrupt normal NJIT operations or work of any Lieutenant in the bargaining unit, or other NJIT employees or groups of employees.

C. The NJSOLEA shall have the right to post, on mutually agreed bulletin boards, bulletins and notices relevant to official NJSOLEA business which affects the Lieutenants in the negotiating unit.

**ARTICLE VI**

**LABOR/MANAGEMENT COMMITTEE**

A. A committee consisting of NJIT and NJSOLEA representatives may meet for the purpose of reviewing the administration of this Agreement and to discuss problems which may arise.

B. Either party to this Agreement may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such a meeting. Requests by the NJSOLEA for such a meeting will be made to the Vice President of Human Resources.

C. A maximum of three (3) Lieutenants representatives of the NJSOLEA may attend such meetings. Lieutenants representatives who attend such meetings, during their scheduled work shift, shall be granted time off to attend without loss of pay.

D. The committee meetings are not intended to bypass the grievance procedure, the normal chain of command, or to be considered collective negotiating meetings, but are intended as a means of fostering good labor relations through an exchange of views between the parties to this Agreement.

## **ARTICLE VII**

### **INVESTIGATION, DUE PROCESS, DISCIPLINE & CHALLENGE**

As members of NJIT's Department of Public Safety, Lieutenants are entrusted with the safety and security of university property and its representatives, employees, students, licensees and guests. Failure to perform or negligent performance of a Lieutenant's responsibilities could have serious and unacceptable consequences. Misconduct is on its face, unacceptable and often terminable. A high standard of excellence is expected and must be maintained by all Lieutenants at all times, exemplifying respect, honor, dignity, commitment, integrity and requisite skills. It is against this purpose and expectation that the conduct of Lieutenants will be measured.

#### **A. Management Meetings:**

The Department of Public Safety, through its supervisory structure and in accordance with the authorized chain of command, retains as a nonnegotiable prerogative, the right to meet with Lieutenants, at its discretion, to discuss any matter of pertinent business, including, but not limited to, providing information and/or direction, reviewing and/or altering individual and/or departmental responsibilities and providing performance assessment. Except as otherwise specifically provided for in this Agreement, there is no right to NJSOLEA representation for a Lieutenant attending any of these meetings. Attendance and participation at these meetings are not optional with the Lieutenants, but must be adhered to as directed.

#### **B. Investigation:**

A Lieutenant's conduct is always subject to investigation where there is a real nexus between the conduct and the Lieutenant's position at the university. Where the Lieutenant is questioned directly as to his conduct or his knowledge on a matter under investigation and discipline is a foreseeable consequence of the Lieutenant's response he shall be afforded NJSOLEA representation in accordance with law. This type of meeting is called an "investigatory conference" and is preliminary to any charge of disciplinable conduct. This meeting is not a part of a Lieutenant's permanent record except when and unless it is found that the Lieutenant engaged in misconduct in the meeting itself, (i.e., provides false evidence). There is no privilege or immunity in employment in providing false statements or refusing to respond to a direct inquiry, except and only as mandated under applicable law.

#### **C. Due Process:**

Prior to invoking formal, final, employment discipline upon a Lieutenant, that is greater in severity than a written reprimand, he/she shall be afforded both notice of any and all charges

against him/her and an opportunity to be heard on those charges. No Lieutenant shall be prejudiced in the determination of discipline based upon a decision to remain silent at the meeting or not attend the meeting at all. This meeting is called a due process meeting and all Lieutenants shall be afforded NJSOLEA representation at due process meetings. Legal counsel representing NJSOLEA shall be permitted to attend employment due process meetings only where employment charges include or reasonably may be construed to include criminal behavior in violation of New Jersey's Penal Code, as codified in New Jersey Statutes. Where such criminal behavior is a reasonably foreseeable consequence of such charge, the Lieutenant will not be charged or allowed to waive NJSOLEA and/or legal representation without first contacting the NJSOLEA, who shall have a right to then have a representative, including legal counsel, at the meeting.

**D. Discipline:**

1. Following any investigation deemed necessary by NJIT and requisite due process, where applicable, a Lieutenant may be disciplined for just cause.
2. Discipline under this Article means: official written reprimand, suspension without pay and discharge.
3. Any disciplinary action imposed upon a Lieutenant may be processed as a grievance through the regular grievance procedure.
4. A Lieutenant who is suspended without pay or discharged may file a grievance at Step Three of the grievance procedure.
5. The terms of this Article shall not apply to probationary Lieutenants.

**E. Grievance Procedure:**

**1. Any Lieutenant of the Negotiating Unit May Appeal:**

- (a) A claimed violation or other improper application by the University of the terms of this Agreement, University rules, regulations or governing policy specifically affecting the grieving Lieutenant's negotiable terms and conditions of employment.

**2. Time Limits:**

- (a) Failure of a grievant to meet any of the calendar limitations stipulated in the procedure below will constitute a waiver of his/her rights to claim a grievance on the basis of the same alleged factual situation. Likewise, a failure on the part of the designated representative of NJIT to meet the procedural obligations of any step in the grievance procedure, within the prescribed period of time, will give the grievant an automatic

right to proceed to the next available step in the procedure. It is understood that nothing contained in this procedure should be construed as limiting the right or propriety of a Lieutenant of the negotiating unit to informally discuss any problem with an appropriate member of NJIT administration.

**3. Procedure for Handling Grievances:**

**(a) Step One**

A grievant shall first discuss his/her grievance informally with the Deputy Chief. The grievant may at his/her option, be accompanied by a representative of NJSOLEA. All grievances resolved at Step One shall be without precedent. Copies of written responses/resolutions shall be prepared by the Deputy Chief with copies to the union, employee, Director of Public Safety, and Vice President of Human Resources.

**(b) Step Two**

(i) Within five (5) workdays of the occurrence causing the grievance or of the time the grievant should have reasonably known of the occurrence causing the grievance, the grievant shall, if he/she is not satisfied through informal discussion provided for in Step One, submit in writing to the Director of Public Safety, with copies to the Vice President of Human Resources, the claimed facts behind, and basis of the grievance and the desired remedy. Time limits, which begin after the written grievance is submitted, may be mutually extended by the parties only in writing.

(ii) NJSOLEA shall be notified by the Director of Public Safety in the event the grievant is not represented by NJSOLEA, and a representative shall have the right to be present, at this time and all subsequent steps in the grievance procedure, to present the views of NJSOLEA. The Director of Public Safety, or his/her designee which may be a representative from the Department of Human Resources or other University official, within ten (10) calendar days after receipt of the written grievance, shall meet with the grievant and the representative of NJSOLEA in an effort to resolve the grievance. The Director of Public Safety, or designee shall indicate his/her disposition of the grievance, in writing, within three (3) calendar days of

said meeting to the grievant and NJSOLEA and Vice President of Human Resources.

(c) **Step Three**

- (i) If the grievant and/or NJSOLEA is dissatisfied with the decision at Step Two of the grievance procedure, or if the discipline grieved consists of a suspension without pay or discharge from employment, directly appealable to the third step of the grievance procedure, the grievant and/or NJSOLEA shall, within seven (7) calendar days of the date of the decision at Step Two (or the date of the notice of suspension or termination, in the case of a direct appeal), file a written grievance with the Senior Vice President of Administration and Treasurer, with copies to the Vice President of Human Resources. The grievance shall contain: (1) a brief and concise factual statement of the action grieved, (2) the section(s) of the collective bargaining agreement allegedly violated, (3) the specific policy and/or rule or regulation allegedly violated and (4) the desired remedy.
- (ii) Within thirty (30) days of receipt of the written grievance at Step Three, the Vice President or his/her designee shall schedule and hold a hearing for the purpose of determining the standing and merits of the grievance. If the grievance involves a challenge to an imposed disciplinary sanction the grievant may be represented either by their local NJSOLEA representative or legal counsel, provided the NJSOLEA designates such counsel as the representative of the NJSOLEA, or there is an appropriate substitution of representation. In no case shall the grievant be entitled to dual representation of both an NJSOLEA representative released from active duty for purposes of representation and counsel at the Step Three hearing. An NJSOLEA representative, other than legal counsel may be present and represent the grievant at all non-disciplinary grievance hearings.
- (iii) At least one (1) week prior to the date of the grievance hearing concerning an imposed disciplinary sanction, the University and the grievant shall exchange the following information:

- (1) All documents which the University relied upon in imposing the disciplinary sanction(s) and all documents relied upon by the grievant in challenging the sanction(s).
- (2) A list of all witnesses they intend to call at the grievance hearing, and a brief summary of the substance of the anticipated testimony.
- (3) If there is any tangible evidence which forms the basis of the disciplinary action, it shall be described and provided to the grievant's representative for inspection and/or testing, providing that such inspection can be conducted without damaging or compromising the integrity of the evidence.
- (4) Copies of the grievant's personnel file within the Department of Human Resources.

There shall be no other pre-hearing discovery authorized, including interrogatories, document production, depositions, or similar procedures.

**(d) Hearing Procedure:**

- (i) The grievance hearing shall be held before the Vice President or his/her designee. Such hearing is not intended to be judicial in nature, and therefore rules of evidence applicable in judicial or quasi-judicial hearings shall not be applied. The hearing officer controls the hearing and in so doing determines what evidence to hear and the manner of presentation of evidence, and advocacy witnesses may be subjected to a relevancy review and determination by the hearing officer. All allowed witnesses will be given paid release time from university duty to testify when called upon. Testimony may be in the form of reply to direct questioning, or may be narrative.
- (ii) A transcript of the proceeding shall be arranged for and made by the University in cases of grievances of disciplinary sanctions. The grievant and/or NJSOLEA shall be entitled to a copy provided that they agree, in advance, to share the cost of transcription. No other recordings of the proceedings may be made (e.g. tape recordings) unless the parties specifically agree, in

which case copies of any tapes shall be made available to the non-taping party.

- (iii) The grievant bears the burden of proving his/her grievance (e.g. that there was a violation of agreement, policy, rule or regulation) by a preponderance of the credible evidence. In the case of a disciplinary sanction of a non-probationary Lieutenant, alleging discipline without just cause, the University bears the burden of demonstrating just cause by a preponderance of the credible evidence. Each party shall be permitted to make an opening statement, provided that same is not testimonial in nature.
- (iv) In grievances of disciplinary sanctions, witnesses shall testify under oath, being duly sworn by the certified short hand reporter transcribing their testimony. The other party may cross-examine the witness upon completion of direct testimony; there will be an opportunity for redirect testimony and recross examination. The Step Three hearing officer may, in his/her discretion, limit testimony and rule upon admissibility of evidence based upon relevancy of the testimony, its probative value, the potential for redundancy in cumulative effect, giving due regard both for grievant's opportunity to be heard and the necessity to conduct an efficient hearing that is neither unduly time consuming to the public entity nor directed to matters of limited or no substantial relevancy. Witnesses' testimony shall be factual and not based on hearsay. Only in exceptional circumstances, may expert and/or character testimony be presented by either party, and then only upon a significant proffer that such testimony is directly relevant to a necessary finding in resolution of the underlying grievance, and the relevancy of such testimony would outweigh the administrative burden of hearing such testimony.
- (v) All procedural or evidentiary rulings of the hearing officer shall be final and binding for purposes of this hearing. Upon the close of testimony, the parties may present closing statements summarizing their positions. Upon mutual agreement of the parties, or upon the request of the hearing officer, written briefs will be provided.

- (vi) The hearing officer may render his/her decision orally at the time of hearing if there is no transcript of the hearing taken and briefs are not submitted, otherwise, he/she will reserve the decision until the transcript and/or briefs are submitted. At that time, the decision will be provided in writing, with copies to the Vice President of Administration and Treasurer, NJSOLEA, grievant, and Vice President of Human Resources. Absent agreement by the parties this will occur within thirty (30) days of the receipt of the transcript and/or briefs.
  
- (vii) In the event the grievance is one that is both appealable and, in fact appealed to either an arbitrator at Step Four or another appropriate forum, the arbitrator (or other appropriate third party) shall be provided a copy of the transcript below and briefs (where such exist) and the written determination of the Vice President or his/her designee. In the case of grievances of disciplinary sanctions, the sole issue before this Step Four forum, which shall be limited solely to a review of the record below, shall be whether the grievant by clear and convincing evidence of record carried his/her burden; the record thereby demonstrating that the hearing officer, in his/her determination, (1) committed a substantial violation of contractual procedure of significant effect or impact or (2) the decisional findings of the hearing officer were wholly arbitrary, capricious or unreasonable, based upon the evidence before him, giving due regard for the hearing officer's ability and authority to assess the credibility of witnesses.

(e) **Step Four**

- (i) If the NJSOLEA is dissatisfied with the decision at Step Three, and the alleged grievance involves a specific violation of this locally negotiated Agreement, as described in the definition of a grievance in E., Grievance Procedure, 1.(a.), Any Lieutenant of the Negotiating Unit May Appeal; above, and the NJSOLEA desires and is authorized by law to institute arbitration or other appeal proceedings, it must, within fourteen (14) calendar days of receipt of the Vice President or his/her designee's reply, give proper notice to either the New Jersey Public Employment Relations

Commission, hereinafter referred to as PERC, or to the Board of Trustees, consistent with the procedures set forth by statute, with a copy to the Vice President of Human Resources and the General Counsel. Any arbitration proceedings shall be in accordance with the rules and regulations of PERC, and for grievances of disciplinary sanctions, subject to the parameters limiting the scope of review set forth in (d.) vii., Hearing Procedures, above.

- (ii) The recommendation or decision of the reviewing individual or body shall not in any manner modify or cause anything to be added to or subtracted from this Agreement or any policy of the University.
- (iii) Fees and expenses of an arbitrator where such proceedings are authorized, shall be shared equally by the University and the NJSOLEA. Only with prior written agreement of the parties, shall any other expense or fee contained in this grievance procedure be shared.

4. NJIT will give written notification to the President of the NJSOLEA of grievance hearings or meetings beginning with Step Two for all Lieutenants of the negotiating unit. The President of the NJSOLEA shall also be sent copies of all grievance answers.

5. Decisions of an arbitrator involving minor discipline, as defined by law, shall be final and binding. Arbitration of major discipline is not available under law and not authorized by this Agreement.

## **ARTICLE VIII**

### **NON-DISCRIMINATION**

A. The provisions of this Agreement shall be applied equally to all members of the negotiating unit without discrimination as to age, gender, gender preference, marital status, race, color, creed, national origin, veteran's status or political affiliation.

B. All references to Lieutenants in the negotiating unit or agents of NJIT in this Agreement are expressly gender neutral and wherever one gender is used it shall be construed to include both male and female Lieutenants and/or NJIT agents.

C. NJIT agrees not to interfere with the right of Lieutenants to become members of this unit, and there shall be no discrimination, interference, restraint, or coercion, by either NJIT or any representative of the NJSOLEA against any Lieutenants because of NJSOLEA membership or lack of membership or because of any Lieutenant's activity or lack of activity in any capacity pertaining to any authorized, legal activities of the NJSOLEA.

D. The NJSOLEA recognizes its responsibilities as negotiating agent and agrees to represent all Lieutenants in the negotiating unit without discrimination, interference, restraint, or coercion regardless of membership or lack of membership in the NJSOLEA.

## **ARTICLE IX**

### **SENIORITY**

#### **A. Recognition:**

1. **Probationary Exclusion:** All Lieutenants, appointed after this signing of this Agreement, shall be considered as probationary appointments for a period of eighteen (18) months from the date of appointment as commissioned police Lieutenant.

2. **Retroactive Recognition and Tie Breakers:** Upon completion of such probationary period, seniority as a Lieutenant will be dated as of the initial date of appointment as a Lieutenant. In the event that two (2) or more Lieutenants have the same initial date of appointment, continuous prior commissioned police officer service, continuous university service, and the alphabetical order of their last names, in that order, shall be used to determine their seniority with regard to each other.

3. The Department of Human Resources shall maintain a seniority list of all Lieutenants, a copy of which shall be furnished to the NJSOLEA every six (6) months, normally in January and July.

4. A Lieutenant's seniority shall cease and his/her employment status shall terminate for any of the following reasons:

- (a) Resignation or retirement.
- (b) Discharge for cause.
- (c) Continuous lay-off for a period of two (2) years.
- (d) Failure of a recalled Lieutenant to notify NJIT in writing, within seven (7) calendar days of receipt of notification of recall that he/she intends to accept such offer of re-employment. A Lieutenant accepting such an offer of re-employment must return to active service within fourteen (14) calendar days of such notice of recall unless a later date is agreed to by NJIT.

Written notice of recall to work shall be sent by NJIT, by certified mail, return receipt requested, to the Lieutenant's last known address as shown on NJIT records.

- (e) Failure to report for work for a period of three (3) consecutive, scheduled working days without subsequent notification to NJIT of a justifiable excuse for such absence.
- (f) Failure to report back to work immediately upon expiration of vacation, leave of absence, or any renewal thereof, unless failure to return to work is excused by NJIT. Excused failure to return shall not be unreasonably withheld by NJIT.
- (g) Failure to return to work immediately with appropriate, formal certification of the elimination of the disability (or other intervening cause for absences) following exhaustion of authorized leave afforded under and pursuant to this Agreement (Job Abandonment).

**B. Application:**

1. **Layoff:**

- (a) If a reduction in force is necessary, layoffs shall take place in the inverse order of the date of hire into the Lieutenant's job classification.
- (b) NJIT shall simultaneously provide the NJSOLEA and the Lieutenant(s) concerned a two (2) week notice of layoff. NJSOLEA may request and have scheduled a meeting with the Manager of Labor Relations to discuss possible alternatives; however, the final discretion rests with NJIT.
- (c) When a Lieutenant is scheduled for a layoff due to reduction or reorganization in the workforce, he/she shall be permitted, to the extent permitted by law, to exercise his/her seniority rights to replace (bump) a Sergeant or other commissioned police officer with less seniority provided the Lieutenant with greater seniority is qualified in all respects to perform the work of the

bumped officer in accordance with the prevailing job description for that position.

- (i) The NJSOLEA may discuss any questions of “qualifications” with the Manager of Labor Relations through the labor management committee established under Article VI, Labor/Management Committee, of this Agreement.
- (ii) A Lieutenant with no previous commissioned police officer experience at NJIT, who successfully exercises his/her bumping privileges into a commissioned police officer position, shall serve a ninety (90) day performance based probationary period. During said period, if NJIT is not satisfied with the Lieutenant’s performance, but not earlier than sixty (60) days into the probationary period, it will then place such Lieutenant on layoff. A Lieutenant thus laid off shall remain entitled to recall for the remainder of the recall period but shall not be entitled to bump again unless recalled and he/she successfully completes the associated probationary period after which he/she is again laid off. Existence of the probationary period satisfies the notice of layoff requirement. Nothing herein waives or modifies the right of NJIT to terminate a Lieutenant for just cause at any time. Discharge during the probationary period is not grievable.
- (iii) Salary Range and Step placement for a Lieutenant, successfully exercising the contractually authorized bumping privilege, shall be as follows:
  - (1) The Lieutenant shall be placed at the same or nearest higher step on the commissioned police officer or Lieutenant’s salary range from that step occupied prior to layoff, if available in the range. If not available within the range, then the Lieutenant shall be placed at the closest step available within the appropriate range.

- (d) The parties hereto commit to work together toward minimization of departmental, university and bargaining unit disruption caused by implementation of the contractually authorized layoff and bumping scheme.

2. **Recall:**

- (a) The recall period shall be for twenty-four (24) calendar months from the date of original layoff.
- (b) For the period of recall, Lieutenants laid off from their positions shall be entitled to recall, by seniority, to the job classification of Lieutenant. Additionally, for the period of recall, Lieutenants laid off from their positions shall be eligible for probationary recall into the commissioned police officer job classification. However, for recall to such classification the Lieutenant must first be considered qualified to perform in the position to which recall is desired and second must serve a ninety (90) day performance based probationary period, during which time the Lieutenant may be discharged without resort to the grievance procedure. During said period, if NJIT is not satisfied with the probationary Lieutenant's performance but no earlier than sixty (60) days into the probationary period, it will then place such Lieutenant on layoff. A Lieutenant thus laid off shall remain entitled to recall for the remainder of the recall period but shall not be entitled to bump again unless recalled and he/she successfully completes the associated probationary period after which he/she is again laid off.
- (c) Lieutenants laid off, pursuant to this Agreement, shall retain, in addition to the twenty-four (24) month recall potential, only those contractual benefits required by law.
- (d) All Lieutenants on recall roster must be recalled to their former jobs, if the job is reinstated, prior to the hiring of new Lieutenants into such positions.

**ARTICLE X**

**OUT OF TITLE WORK**

A. When a Lieutenant is temporarily assigned to work in another job title, such assignment may be made for periods up to sixty (60) calendar days unless mutually extended by NJIT and the NJSOLEA. NJIT is not restricted to filling the assignment from only those who apply and in filling such opening shall first consider the qualifications of the applicant and providing such qualifications are equal shall then consider the length of continuous service of the applicant.

1. If NJIT assigns a Lieutenant to temporary work in another job title having a higher salary range, he/she shall, after ten (10) continuous working days in that position, be considered to be working in an “acting capacity” and shall then receive the rate of pay for that position, retroactive to the first day of the temporary assignment. For purposes of this provision only, rate of pay shall be defined as not less than five percent (5%) of the Lieutenant’s current base salary.

**ARTICLE XI**

**POSTING, HIRING AND PROMOTION**

A. In keeping with NJIT’s commitment to affirmative action and equal employment opportunities, all recruitment efforts will conform with the application sections of NJIT’s Equal Employment Opportunity/Affirmative Action policies. Accordingly, a permanent job opening which represents a promotional opportunity shall be posted in accord with applicable University policies. Copies of such posting shall be furnished to the NJSOLEA.

B. NJIT’s Promotion Policy for Lieutenants promoted from the ranks of NJIT Sergeants shall be to calculate not less than a 7.5% increase to the Sergeant’s salary just prior to promotion.

**ARTICLE XII**

**SICK LEAVE**

<b>Eligibility</b>	<b><u>Accrual</u></b>	<b>Which shows on computerized records as:</b>
Lieutenants, upon promotion or hire	One and one-quarter (1 ¼) days per month, Fifteen (15) working days per full fiscal year.	8.75 hours per month, or 4.04 hours per bi-weekly pay, 105 hours in a full fiscal year.

Bi-Weekly accruals are credited and eligible for usage at the end of the pay period.

Lieutenants shall not be eligible to accrue sick leave while on unpaid leave of any kind, except Military Leave.

**Utilization**

- Lieutenants may use sick leave when they are unable to perform their work by reason of personal illness, injury or exposure to contagious disease or for the attendance of the Lieutenant upon a member of the immediate family<sup>1</sup> who is seriously ill, or whose spouse is hospitalized due to pregnancy. (See also Family Leave)
- Sick Leave may be used for dental, optical, or other medical examinations or treatments when scheduling such appointments during non-working hours is unavailable or not practicable.
- Accumulated Sick Leave may be used to grieve the death and/or attend the funeral of the Lieutenant's immediate family; father, mother, spouse, child, foster child, sister or brother of Lieutenant and relatives of Lieutenants residing in the same household as Lieutenant. Leave utilized for Bereavement under this provision shall be limited to three (3) days per occurrence unless exception for extraordinary reason is made by and at the discretion of the Vice President of Human Resources or his/her designee. Leave taken for purposes of Bereavement must, upon request, be validated through independent written documentation whether anticipated or unanticipated.
- In the event of an early closing, a Lieutenant who is absent due to an authorized pre-approved leave for that day will have his/her accumulated leave bank charged for a full or half day. A Lieutenant who calls out the day of an early closing will be charged the value of a full day against his/her respective leave bank.

### **Authorization**

1. **Anticipated Leave:** Requests to use Sick Leave must be requested as far in advance as practicable and approved by the Lieutenant's immediate supervisor. Approval will not be unreasonably denied. Examples of anticipated Leave, by way of illustration but not limitation, include physician appointments, dentist appointments, scheduled surgery and short term care for an ill member of the immediate family. Within a reasonable period of time following utilization of Sick Leave for this purpose the Lieutenant upon request by the University must validate the reason for scheduled Leave by means of written proof that the scheduled purpose of the Sick Leave did occur.
2. **Unanticipated Leave:** Sick Leave that cannot be anticipated in advance, such as sudden illness, must be reported by contacting, as soon as possible and, to the extent possible, within one-half (½) hour after the beginning of the Lieutenant's scheduled workday, the Lieutenant's supervisor or by utilizing such method specifically directed by the Lieutenant's supervisor.

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<sup>1</sup> Immediate Family for the purposes of this Article shall mean: Spouse, Child, or parent.

Lieutenants are responsible for reporting their absences, except in emergency situations. Reporting of absences by other persons on a continuous or intermittent basis shall be considered on a case-by-case basis and with medical certification.

### **Validation**

- Upon reasonable suspicion of abuse or patterned absenteeism, the University may require the Lieutenant to provide medical certification for single day or multiple day absences. Prior to or at the time of his/her return to work, the Lieutenant shall provide such medical certification, validating the medical need for absence. Failure to provide such medical certification may result in denial of paid sick leave and/or the absence shall be subject to disciplinary action up to termination of employment.
- If absent for five (5) or more consecutive working days, the Lieutenant must provide medical certification specifically validating the Sick Leave usage. Leave taken for purposes of Bereavement (as above) shall not be counted.
- A Lieutenant absent for unanticipated Sick Leave for any and all periods totaling more than ten (10) days in one (1) fiscal year may be required to submit a medical certification validating the Sick Leave usage. Leave taken for purposes of Bereavement (as above) shall not be counted.
- In any event, a Lieutenant suffering from a certified chronic illness must, at least once every six (6) months, provide the University with medical certification.

### **Confidentiality of Records**

All medical reports and diagnosis provided pursuant to this Article shall remain confidential within the Department of Human Resources subject to such disclosure as may be needed by university officials with a direct need to know.

### **False reports**

Lieutenants, who falsely report the need for sick leave or otherwise deceive or attempt to deceive the University as to the need for sick leave, shall be subject to disciplinary action up to termination of employment even for the first offense.

### **Sick Leave & Outside Employment**

All requests for outside employment, paid or unpaid, while on Sick Leave must be pre-approved, in advance and in writing, by the Vice President of Human Resources and Chief of Police. Each request shall be evaluated on a case-by-case basis. Working outside NJIT

without prior written approval while on Sick Leave, paid or unpaid, may result in immediate forfeiture of the sick leave and possibly termination of employment.

### **Unused Sick Leave – Retirement**

Subject to the provision of State rules and regulations (N.J.S.A. 11A:6-17) promulgated there under, a full-time Lieutenant who enters retirement, pursuant to the provisions of a State administered or approved retirement system, and has to his/her credit any earned and unused accumulated Sick Leave shall be entitled to receive supplemental compensation for such earned and unused accumulated Sick Leave only to the extent such is funded by the State.

The supplemental compensation to be paid shall be computed at the rate of one-half (½) of the eligible Lieutenant's daily rate of pay for each day of earned and unused accumulated Sick Leave based upon the average annual compensation received during the last year of his/her employment prior to the effective date of his/her retirement, provided, however, that no such supplemental compensation payment shall exceed the statutory limit (currently \$15,000). This supplemental compensation shall be paid in a lump sum after the effective date of retirement. It may be deferred by the Lieutenant for payment within one (1) year of the effective date of retirement.

## **ARTICLE XIII**

### **FAMILY LEAVE POLICY**

NJIT has long recognized the importance of family issues as an integral component of a responsive human resource environment in which its Lieutenants will prosper. It has heretofore provided a number of benefits including leaves of absence for personal and family reasons. Both State and Federal government have determined to specifically legislate in this regard by affording unpaid leave to Lieutenants under certain specific circumstances. The result demands that NJIT policies, state law and federal law be properly recognized and promulgated in lawful, equitable and contemporary policy. NJIT, therefore, hereby certifies the following Family Leave Policy which incorporates as appropriate (and shall be interpreted consistent with) NJIT's other standing leave policies.

The University may preliminarily designate an employee's absence as Family Leave when:

1. An employee (or a spokesperson on behalf of an employee) notifies the Department of Human Resources or the immediate supervisor of a personal serious health condition or the serious health condition of an eligible family member (listed below).
2. Upon the employee or the supervisor's notification to the Department of Human Resources after 3 consecutive days of paid or unpaid absence.

Family Leave runs consecutively after accumulated sick leave banks are exhausted for a Lieutenant's own serious health condition and Family Leave shall run concurrently with

accumulated sick leave for a Lieutenant's eligible family member. Accumulated sick leave balances that exceed the 60 days of Family Leave may continue to be utilized thereafter upon submission of medical certification updates to be provided in intervals of not less than every 30 days.

**A. Available Leave**

Under prescribed parameters as set out hereafter, an eligible Lieutenant may take a leave of absence from employment for up to twelve (12) weeks during a defined twelve (12) month period for anyone of the following reasons:

1. Birth and child care of a Lieutenant's biological child during the child's first year of life.
2. Adoption or foster care placement and care for the infant/child in his/her first year following adoption or foster care placement.
3. Serious illness or health related, disabling condition of a spouse, child(ren), or parent.
4. Serious illness or health related, work disabling condition of the Lieutenant.

**B. Twelve Week Period (Parameters)**

1. While NJIT may, under other provisions of employment or of its own discretion, authorize leaves of absence greater than twelve (12) weeks and for other purposes, under this policy a maximum of twelve (12) weeks leave for any and all enabling reasons may be taken during the same twelve (12) month period for leaves pursuant to A.1.2. or 3., Available Leave, above. One twelve (12) week leave pursuant to A.4., Available Leave, above may also be taken in each defined twelve (12) month period. The twelve (12) month period is defined in provision E., Leave Year, below.

2. For leaves taken pursuant to A.1. or 2., Available Leave, above, the maximum twelve (12) week period must commence prior to the child's first year following birth (A.1., Available Leave) or prior to the first anniversary date of an adoption or foster care placement (A.2., Available Leave).

3. The twelve (12) week period amounts to sixty (60) work days that may be taken as set out below.

4. The leave may be taken on a consecutive week, intermittent weeks or reduced time basis as follows:

- (a) Intermittent leave consists of leave taken in separate blocks of time, and may include leave of periods from

an hour or more to at least one (1) week intervals that are not necessarily consecutive, and within the twelve (12) month period. Intermittent leave may only be scheduled and taken with the consent of NJIT, when invoking leave under provisions A.1. or 2., Available Leave, above.

- (b) Reduced time leave consists of a work reporting schedule that allows a shortened workday or shortened workweek. Reduced time leave may only be scheduled and taken with the consent of NJIT when invoking provisions A.1. or 2., Available Leave, above. A Lieutenant on reduced time leave may, at the discretion of NJIT, be transferred for the term of leave, to another position of equivalent pay and benefits that better accommodates NJIT. Leave under this provision shall be accounted for and charged on an hour-for-hour basis.
- (c) Requests for reduced time leave or intermittent leave under provisions A.1. and 2., Available Leave, above, shall be forwarded to the Department of Human Resources for a case-by-case review and determination following consultation with the department head or other appropriate supervisor of the applicant.
- (d) All leaves, for all reasons, are predicated upon the Lieutenant providing NJIT as much notice as possible. Absent extraordinary circumstances, at least fifteen (15) days advance notice of leave is required. Failure to provide such notice except where appropriately waived, shall result in a delay in commencement of leave, if otherwise entitled, for the requisite fifteen (15) day period.

### **C. Leave Validation**

Each leave, as set out in provision A., Available Leave, above, is subject to the prerequisite validation as follows:

1. Both A.1. and 2., Available Leave, leaves must be validated, at NJIT's request, as to the enabling facts of the leave. For example, it must be established by the applicant for leave hereunder that he/she is the parent, within the express meaning of that term as hereinafter defined.

2. Leave, under A.3., Available Leave, above, must be validated by a written certification from a qualified, licensed, health care provider, that the Lieutenant is needed and

able to provide care directly related to and on account of an acutely or chronically debilitating health condition requiring hospitalization and/or continuing licensed health provider intervention and treatment. The certification must also specify the debilitating condition and the prognosis for abatement or recovery with medical opinion as to time anticipated for abatement or recovery. Finally, upon request by NJIT, the Lieutenant must validate, through reasonable means, the enabling family relationship.

3. Leave, under A.4., Available Leave, above, must be validated by a written certification of expert opinion by a qualified, licensed health care provider, describing the work debilitating illness or other work debilitating health related condition and its disabling onset, affect and anticipated duration.

4. Under leave enabling provisions, A.3. and 4., Available Leave, above, when NJIT reasonably believes a submitted certification is suspect, in significant degree, it may require a second opinion from a licensed health care provider who is qualified in the field of the contended disability illness. An opinion concurring with the Lieutenant's submitted validation shall result in leave validation. An opinion dissenting from a suspect/faulty validation shall result in referral, as set out hereunder, to a third, independent health care provider, qualified in the field of the contended disability/illness, for final, binding opinion either validating or invalidating the leave.

- (a) Referral for a third, binding health care professional's opinion shall be by agreement of the Lieutenant selected health care provider and NJIT selected health care provider. Failing agreement, referral shall be by agreement of the Lieutenant and NJIT. Failing secondary agreement, referral shall be made by NJIT.
- (b) Both second and third health care provider's opinions shall be arranged and paid for by NJIT.
- (c) Failure by a Lieutenant to provide a certification which, on its face, purports to meet the primary validation requirements set out above, shall result in denial of leave and its benefits, and not a second or third opinion, as the original certification is the sole responsibility of the Lieutenant as prerequisite to either any leave entitlement or a second or third opinion by a licensed health care provider.

5. While a Lieutenant is on Family Leave, pursuant to provisions A.3. or 4., Available Leave, above, NJIT may request and is then entitled to periodic formal updates or re-certifications as appropriate to the original certification parameters. NJIT imposed requirement for update or re-certification hereunder shall not be unreasonably applied, and NJIT will consider, in good faith, the necessity and frequency of update or revalidation unique to each

individual leave based upon the nature and parameters of the original certification and any factual change in individual circumstance.

6. Prior to a Lieutenant's return to NJIT from leave provided pursuant to provision A.4., Available Leave, above, NJIT may request and receive health care provided certification that the Lieutenant on leave is no longer work disabled from the originally certified health condition and can return to the workplace as sufficiently recovered to perform the regular, necessary functions of the job. NJIT will cooperate fully with the health care provider in making this assessment by providing, if necessary, a position description and/or thorough discussion of the dimensions of the position not easily gleaned from such position description.

7. All medical records provided in accordance with policy and consistent with law shall remain confidential with NJIT and within NJIT, shall remain disclosable only to the Department of Human Resources or those officers of NJIT with a need to know the certified rationale, including by way of illustration, the President, Senior Vice President for Administration and Treasurer, and General Counsel. The Lieutenant may choose to disclose the health condition diagnosis to his/her immediate supervisor or others in which case the legal confidentiality of the information is waived with respect to such agents to which such information is disclosed or to which disclosure is reasonably to be anticipated by the Lieutenant's disclosure.

8. For Reduced Time Leave or Intermittent Leave taken under provisions A.3 and 4 above, employees must notify in writing, with copies to the appropriate supervisor and the Department of Human Resources, time taken (hours, days, weeks) for authorized Family Leave. Notice can be summarized in one document for each pay period, as appropriate.

**D. Leave Prerequisites**

1. Prerequisite to family leave:

- (a) A Lieutenant must have worked for NJIT at least one (1) year (365 days) prior to commencement of leave. However, the time need not be consecutive nor need it be full-time.
- (b) A Lieutenant must have worked a minimum of 1,000 hours in the year (12 consecutive months) immediately preceding the leave for leaves under provision A. 1. 2. & 3., Available Leave, above.
- (c) A Lieutenant must have worked a minimum of 1,250 hours in the year (12 consecutive months) immediately preceding the leave for leave pursuant to A.4., Available Leave, above.

2. The hours prerequisites set out above refer to actual hours worked at NJIT and do not refer to excused or unexcused absences.

**E. Leave Year**

NJIT will calculate available leave by the “rolling” method. This means that when requesting otherwise available leave under this policy, NJIT will calculate the amount of leave used within the immediately preceding twelve (12) months of employment and subtract that number from the total number of days equal to twelve (12) workweeks (60 days). Each leave year is then unique to each Lieutenant of NJIT.

**F. Leave Entitlements**

**1. Compensation:**

- (a) For Well Baby Care leave under provisions A.1. and 2., Available Leave, above, a Lieutenant will be afforded an option to charge accrued vacation and/or administrative day leave for the absence.
- (b) For leave to care for a seriously ill spouse, child or parent under provision A.3., Available Leave, above, a Lieutenant will be required to charge any and all accrued sick leave, until exhausted, as prerequisite to taking unpaid leave under this policy. Following exhaustion of accrued sick leave, a Lieutenant will be afforded the election of charging vacation and/or administrative leave accruals while on an authorized, validated family leave.
- (c) For leave under provision A.4. Available Leave, above, a Lieutenant will be required to charge any and all accrued sick leave until exhausted, as prerequisite to become eligible for Family Leave under this policy. Following exhaustion of accrued sick leave, a Lieutenant will be afforded the election of charging vacation and/or administrative leave accruals which shall run concurrently with an authorized, validated family leave.
- (d) Elected or required utilization of paid vacation, administrative day, or sick leave accruals does not extend family leave or otherwise modify those other leaves available to Lieutenants of NJIT.

2. **Health Benefits:** That health benefits coverage in effect and covering the Lieutenant immediately prior to leave shall be maintained throughout the period of family leave subject only to program participation and parameters alteration as appropriately negotiated and/or implemented, consistent with law.

3. **Other Benefits:** Other benefits available to Lieutenants on leave shall be governed by the provision applicable to the leave. If for example, the Lieutenant is drawing paid sick leave while depleting family leave, the provisions of sick leave policy not inconsistent with this policy shall govern, while the provisions of unpaid leave policy that are not inconsistent with this policy shall govern an unpaid family leave or any portion thereof.

4. **Worker's Compensation:** Follow up visits to medical professionals as a result of Worker's Compensation claims that are not covered under Worker's Compensation Leave may be chargeable as Family Leave when all enabling prerequisites are met. If prerequisites are not met, sick leave banks may be utilized.

5. **Reinstatement:** A Lieutenant ready and able to return to his/her position of employment immediately following exhaustion of family leave will be returned to his/her position or, at NJIT's discretion, to an equivalent position with equivalent pay and benefits unless the Lieutenant would have been terminated in the absence of any leave (e.g., layoff, or natural term expiration of a terminal or temporary position of employment).

(a) **Key Employee Exception:**

- (i) Lieutenants of NJIT who, during a period of family leave taken pursuant to A.1., 2. or 3., Available Leave, above, are within the top five percent (5%) of NJIT's employees with respect to gross income paid by NJIT, are "Key Employees" and may be denied leave as set out above if such leave will, as can be established by NJIT, cause substantial and grievous economic or other organizational harm to NJIT.
- (ii) Lieutenants of NJIT who, during a period of family leave taken pursuant to A.4., Available Leave, above, are within the top ten percent (10%) of NJIT's Employees with respect to gross income paid by NJIT are also "Key Employees" and may be denied reinstatement as set out above, if such reinstatement will, as can be established by NJIT, cause substantial and grievous economic or other organizational harm to NJIT.
- (iii) Key Employees must be individually noticed by NJIT, prior to taking leave, that they are Key Employees and that leave and/or position restoration may be denied

them depending upon their Key Employee status and type of leave desired.

- (iv) A Lieutenant on leave who, during the leave, becomes a Key Employee or a Key Employee who failed to receive such notice prior to commencement of leave and who would not otherwise be entitled to leave or would not otherwise be reinstated pursuant to this provision, will be notified by NJIT immediately and given an opportunity to immediately return from leave with full restoration to his/her position prior to denial of further leave or denial of reinstatement.

## **G. Definitions**

1. **Child**: A child is the biological, adopted or formally placed, foster care child, step child or legal ward of the Lieutenant requesting leave and under eighteen (18) years of age or eighteen (18) years and over but certifiably incapable of self-care because of mental or physical impairment.

2. **Parent**: A parent is the biological or legally recognized parent of a child. For leave pursuant to provision A.3., Available Leave, above, a parent shall include parents-in-law.

3. **Spouse**: A spouse is the legally recognized, married partner of the Lieutenant requesting leave.

4. **Serious Illness or Health Related Condition**: This is defined as an illness, injury or physical or mental impairment that involves a period of incapacity or treatment following in-patient care in a hospital, hospice, or residential medical care facility; a period of incapacity requiring more than three (3) days' absence from work and continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated would likely result in incapacity of more than three (3) days; or continuing treatment by or under the supervision of a health care provider of a chronic or long-term condition or disability that is incurable.

5. **Health Care Provider**: A "health care provider" is defined as any doctor of medicine or osteopathy, podiatry, optometry, or psychiatry or any nurse practitioner or psychologist performing within the scope of their licensed practice as defined under law.

## **H. False Reports**

Employees, who falsely report the need for Family Leave or otherwise deceive or attempt to deceive the University as to the need for Family Leave, shall be subject to disciplinary action up to termination of employment even for the first offense.

**I. Family Leave & Outside Employment**

All requests for outside employment, paid or unpaid, while on Family Leave must be pre-approved, in advance and in writing, by the Chief of Police and the Vice President of Human Resources. Each request shall be evaluated on a case-by-case basis. Working outside NJIT without prior written approval while on Family Leave, paid or unpaid, may result in immediate forfeiture of the sick leave and possibly termination of employment.

**J. Jurisdiction**

This policy applies to all Lieutenants of NJIT and shall be administered consistent with other NJIT policies, including collectively negotiated policies, and the law.

**ARTICLE XIV**

**ADMINISTRATIVE LEAVE**

**A. Administrative Leave**

1. Newly hired, full-time Lieutenants shall be granted one-half (½) day of administrative leave after each full calendar month of employment to a maximum of three (3) days during the remainder of the first fiscal year of employment. Lieutenants promoted from the ranks of commissioned police officer or Sergeant shall not be treated as new hires for purposes of this provision.

2. Three (3) administrative leave days per calendar year are granted to all full-time Lieutenants entering their first full fiscal year of employment and annually thereafter. Priorities for granting of leaves are:

- (a) Emergencies;
- (b) Observation of religious or other days of celebration  
but  
not public holidays;
- (c) Personal business;
- (d) Attendance at the funeral of an individual other than a member of the immediate family. Absences related to funerals of immediate family members are considered under other provisions of this Agreement; and
- (e) Other personal affairs.

3. Administrative leave shall not be cumulative, and any such leave credit remaining unused by an officer at the end of the fiscal year and/or upon separation of employment shall be cancelled.

4. Requests for administrative leave must be approved by the Director of Public Safety in advance, except in emergency situations. Emergency situations shall be reasonably verified by the Lieutenant on leave as soon as practicable following utilization of the leave, upon the request of NJIT. Unapproved emergencies are limited to health and safety related matters.

## **ARTICLE XV**

### **MILITARY LEAVE**

#### **A. Military Leave, Without Pay**

1. In accordance with State and/or Federal regulations, NJIT shall grant a qualifying employee, who is a member of the U.S. military reserves or the New Jersey State militia or the organized militia of another State, a leave of absence, without pay, for Inactive Duty Service. (An example of Inactive Duty Service is weekend drills.)

2. A qualifying employee granted Military Leave of Absence, without pay, that is less than two (2) consecutive weeks, shall continue to accrue vacation, personal, and sick leave. A qualifying employee granted a Military Leave of Absence, without pay, that is more than two (2) consecutive weeks, shall not accrue vacation, personal, and/or sick leave during such leave of absence

3. A qualifying employee granted a Military Leave of Absence, without pay, may, with advance notice, use accrued vacation, personal leave, or floating holidays. Sick Leave shall not be used for Military Leave of Absence.

#### **B. Military Leave, With Pay**

1. In accordance with State and/or Federal regulations, NJIT shall grant a qualifying employee, who is a member of the U.S. military reserves or a member of the organized militia of another State, a leave of absence for up to 30 working days in any calendar year without loss of pay or benefits for Federal Active Duty Service. NJIT shall grant a qualifying employee who is a member of the New Jersey State organized militia a leave of absence for up to 90 working days in any calendar year without loss of pay or benefits for Federal Active Duty Service.

2. Should the employee be called to active duty service for a national or state emergency or foreign conflict which exceeds the 30 or 90 working days described in A above, NJIT shall grant a leave of absence through the end of that calendar year without loss of benefits and shall pay the employee the difference between their applicable NJIT base salary and their military “base pay” provided the employee provides proof of military service and “base pay”. This is often referred to as Differential Pay and is not currently mandated by Federal or State regulations.

3. If a qualifying employee is eligible for a Military Leave with pay or a Military Leave with differential pay as described above, he/she continues to accrue vacation, personal, and sick leave. Qualifying employees eligible for Military Leave with pay or Military Leave with differential pay shall be entitled to all health and welfare benefits.

C. A qualifying employee who is called to New Jersey State Active Duty Service, for example during a natural disaster or New Jersey State emergency, shall be eligible for a Military Leave of Absence as required by New Jersey State or Federal regulations.

D. A qualifying employee for purposes of this Article shall be defined as any employee who has achieved non-probationary status at least once during his/her current employment with NJIT or a temporary employee who has been employed more than one (1) year. A non-qualifying employee is eligible for Military Leave of Absence, without pay, only.

E. A qualifying employee eligible for Military Leave of Absence, with or without pay, shall not suffer any loss of seniority.

**F. Extensions of Military Leave**

1. Should a qualifying employee be called to Federal Active Duty Service beyond the first calendar year or subsequent consecutive years, he/she shall be eligible for the paid leave as described in B.1. above effective each January 1<sup>st</sup>.

2. Should a qualifying employee be called to Federal Active Duty Service beyond the 30 or 90 working days described above in the second calendar year or subsequent consecutive years, NJIT, at its sole discretion, may extend the Military Leave of Absence with differential pay, as described in B. 2. above, for the remainder of that second calendar year or subsequent consecutive years. If NJIT decides not to grant a Military Leave of Absence with differential pay, NJIT shall grant a Military Leave of Absence, without pay, for the remainder of that calendar year.

G. Failure to provide advance notice of call to duty, except in emergency situations, could result in loss of protections under Federal and/or State regulations and shall be just cause for disciplinary action up to termination of employment. Failure to provide verification of attendance or military pay records may result in delay in pay or benefits until such verification is provided.

H. In the event that Federal and/or State law may be amended to provide a greater benefit to the employee than set forth herein, such law shall supersede the terms of this contract.

## **ARTICLE XVI**

### **LEAVE FOR NJSOLEA ACTIVITY**

A. NJIT agrees to provide time off without loss of pay for delegates of the NJSOLEA to attend formal union activities provided that the total amount of time without loss of pay during the period of this Agreement shall not exceed a total of twelve (12) days during each year of this Agreement and provided such activities are not, by their nature and content, adversarial to NJIT.

The total number of days of such leave which may be used in each year shall be exclusive of leave provided under the provision of New Jersey law and ordinarily granted under that statute. Leaves for such activities of more than five (5) days duration in each year of the Agreement shall be at the sole discretion of NJIT. Such approval will not be unreasonably withheld.

The NJSOLEA shall request, in writing, approval from the Vice President of Human Resources or his designee to use such leave. Such requests shall be made, in writing, no less than two (2) weeks in advance by the NJSOLEA specifying the type of NJSOLEA activity for which time off is sought, the individual(s) to be granted the time off and the maximum amount of time to be utilized.

## **ARTICLE XVII**

### **OTHER LEAVES OF ABSENCE**

**A. Extraordinary Leave:**

**1. Eligibility:**

- (a) Any Lieutenant not entitled to or after having exhausted the other leave benefits provided by this Agreement but desiring to remain employed by NJIT may apply for an unpaid leave of absence. This leave is considered an extraordinary leave and will not be routinely granted. A minimum prerequisite to consideration of leave is a significant period of consistently outstanding service to NJIT.
- (b) In reviewing requests for unpaid leave of absence NJIT will ensure that Article XIV, Family Leave Policy, is fully complied with as prerequisite to its discretionary

determination as to whether to grant a request and the parameters on such grant when given. Unless and except as expressly provided for in writing, there shall be no benefits bank accrual during any unpaid leave, nor shall there be any monetary contribution by NJIT on behalf of such Lieutenant except as may be mandated by law, or as otherwise expressly provided for by this Agreement.

**2. Procedure:**

- (a) Any and all requests for leave of absence under this provision must be made in writing, with specific statement of need for leave, as far in advance of the desired leave as possible. Application for leave must be submitted to the Lieutenant's immediate supervisor, except in such cases where the specific statement of need recites a personal, medical or other extraordinary confidential basis, in which case the full application shall be submitted to the Department of Human Resources, with notice to the immediate supervisor that a request has been made for the duration stated on the application. Following review of the request, a recommendation to either grant or deny the leave will be made and forwarded to the Vice President of Human Resources or his/her designee who will issue the determination.
- (b) Approval, denial or modified approval of the requested leave shall, except in the case of emergency, be provided within two (2) weeks by NJIT. Reason for denial of unpaid leave shall be provided with a denial of leave by NJIT.
- (c) Accepting a position with another employer, while on a leave of absence, except as may be expressly understood as part of the reason for leave and approved by NJIT in advance, will result in forfeiture of the leave of absence and all benefits derived therefrom or maintained during said leave and immediate termination of NJIT employment.
- (d) Administration of this Article is grievable only on the limited basis that NJIT held no rational basis to deny the requested leave. Problems arising out of the administration of this Article may be referred to the Labor/Management forum for discussion and attempted resolution.

**ARTICLE XVIII**

## **HOLIDAYS**

1. Paid Holidays recognized by the University are:

New Year's Day	Labor Day
Martin Luther King's Birthday	Thanksgiving Day
Good Friday	Friday After Thanksgiving
Memorial Day	Christmas Day
Independence Day	

2. In addition to the above, the four days that fall between Christmas Day and New Year's Day shall be considered holiday. Lieutenants who are required to work any or all of these holidays shall be entitled to another day off in lieu of working.

3. A recognized holiday which falls on a Saturday will be celebrated on the preceding Friday. A recognized holiday which falls on a Sunday will be observed on the following Monday.

4. To be eligible for a paid holiday, a Lieutenant must be in a paid status on the last work day immediately preceding the recognized holiday and in a paid status on the first work day immediately after the recognized holiday. A lieutenant on an unpaid leave of absence is not entitled to pay for a holiday falling during such periods.

- i. **Example:** A lieutenant on unpaid Family Leave on July 1, 2, 3, 5, 6, 7, is not entitled to pay for recognized Independence Day (July 4<sup>th</sup>) holiday.

5. A holiday which occurs during a vacation period, sick leave, or personal leave, is considered a holiday and will not be charged against leave banks.

6. Lieutenants whose employment terminates for any reason is not entitled to pay out for a holiday observed after his/her last day worked.

- i. **Example:** A lieutenant resigning on Tuesday, July 3<sup>rd</sup>, is not entitled to pay for the recognized Independence Day (July 4<sup>th</sup>) holiday.

7. There is no waiting period for a lieutenant to be eligible for a paid holiday so long as the recognized holiday occurs after his or her first working day.

8. The thirteen (13) holidays, annually provided pursuant to this Agreement, constitute the entire paid holiday schedule provided by NJIT. It is expressly intended and understood that there are no additional paid days available to represented Lieutenants except as expressly provided by other provisions of the controlling collective bargaining agreement.

## **ARTICLE XIX**

## WORKERS' COMPENSATION

A. A Lieutenant on Workers' Compensation shall receive that payment to which he/she is entitled by law, in accordance with benefit regulation and accompanying procedure in effect at the time of eligibility for Workers' Compensation. Should a Lieutenant wish to supplement that compensation received under New Jersey Workers' Compensation law and regulation to receive the same total salary compensation received when not on Workers' Compensation, he/she may elect to utilize, on an hour for hour basis, his/her sick leave accrual for a period not to exceed six (6) calendar months. The election to supplement Workers' Compensation must be made in a signed writing to the Department of Human Resources, with a copy to the Benefits Manager, and supplementation will be progressive only from the time the request is received by the Department of Human Resources.

B. All requests for outside employment while on Workers' Compensation Leave must be pre-approved, in writing, by the Vice President of Human Resources. Each request shall be evaluated on a case-by-case basis. Accepting a position with another employer without prior written approval while on Workers' Compensation Leave, paid or unpaid, may result in immediate forfeiture of the leave and possibly termination of employment."

## ARTICLE XX

### EDUCATIONAL BENEFITS

All Lieutenants, and where applicable, their dependants are eligible to participate in the existing University Tuition Remission Plan as authorized by the Board of Trustees, and subject to the applicable rules and regulations governing the Plan.

## ARTICLE XXI

### VACATIONS

A. **ELIGIBILITY:** All full-time Lieutenants are allotted paid vacation of 20 days {one hundred forty hours<sup>2</sup>} per year accrued on a bi-weekly basis.

Bi-Weekly accruals are credited and eligible for usage at the end of the pay period.

Lieutenants shall not be eligible to accrue vacation leave while on unpaid leave of any time, except Military Leave.

B. **CAP UPON ACCRUAL:** Unused vacation time may be accrued up to two (2) years vacation accrual at the applicable hourly accrual rate set forth in Paragraph A, at which point hourly vacation time accrued but unused is capped. Vacation accrual recommences once

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<sup>2</sup> The use of hourly accruals does not alter NJIT's designation of exempt status.

the use of actual vacation time results in a decrease in vacation hours below the capped level of two hundred eighty (280) hours.

**C. PAYOUT:** Upon separation from employment, lieutenants are entitled to be paid for certain unused accrued vacation, as follows:

**Termination for Cause:** A lieutenant terminated from employment for cause receives no vacation payout.

**Probationary Employment:** A lieutenant separated from employment within his/her probationary period receives no vacation payout.

**Voluntary Resignation, Retirement:** A Lieutenant separating from employment voluntarily receives no vacation payout. In the event a lieutenant gives written notice of resignation or retirement not less than two (2) weeks prior to the planned date of separation, he/she shall be permitted to utilize up to ten (10) days of accumulated but unused vacation time at any time prior to the date of separation. In the event a bargaining unit member has more than ten accumulated vacation days, he/she may use any additional vacation leave time, with the consent of his/her supervisor. Such approval shall not be unreasonable withheld.

**Layoff from Employment or Employment Related Death:** A lieutenant separated from employment due to fiscal or re-organizational based layoffs or employment related death receives the lesser of the current value of his/her accrued, unused vacation or 15 days.

**D. USE:** Utilization of vacation shall be governed by the following:

1. Thoughtfully planned utilization of the vacation benefit is encouraged and expected. Vacation should be scheduled and taken at a time and at intervals that are mutually agreeable to the lieutenant and that lieutenant's designated supervisor, except and only where superseding law and policy allow vacation to be unilaterally invoked by the lieutenant, e.g., when taking Family Leave. It is therefore expected that vacation will be requested of that lieutenant's supervisor well in advance of the desired use by a lieutenant, and sufficiently in advance of suggested use, so that the absence is planned for, and the regular work flow is minimally disrupted.

2. Under normal conditions, vacation periods must not exceed three (3) consecutive weeks.

3. If a regular paid holiday occurs during a Lieutenant's vacation period, an additional vacation day may be scheduled at a time mutually agreeable to the Lieutenant and the Chief or his/her designee.

## **ARTICLE XXII**

### **UNIFORMS**

A. Newly hired Lieutenants shall be required to purchase their own University, standard issue uniform. After six (6) months of continuous employment in good standing, as a New Jersey Institute of Technology commissioned police Lieutenant, the entire cost of the initial issue shall be reimbursed to said Lieutenants.

B. Each Lieutenant shall be entirely responsible for repair and/or replacement of damaged and/or worn out uniform articles. This responsibility includes the cost of such necessary repair and/or replacement. The Department of Public Safety uniform standards must be maintained and will be enforced.

C. Maintenance of the New Jersey Institute of Technology Lieutenant's uniform shall be the entire responsibility of each Lieutenant, including the cost of cleaning and pressing as necessary.

D. NJIT shall provide the following scheduled annual uniform allowance, for the maintenance, repair, and replacement, to all eligible Lieutenants as follows:

July 1, 2005 – June 30, 2006:	\$1,350.00
July 1, 2006 – June 30, 2007:	\$1,350.00

Payment of the scheduled uniform allowance shall be semi-annually as follows:

1. A Lieutenant, with less than six (6) months full-time service prior to July 1<sup>st</sup> of each fiscal year of the program, shall receive one-half (½) of the allowance, further prorated as appropriate, to the nearest month of service, payable the last payroll of the calendar year and one-half (½) of the allowance further prorated as appropriate, and payable the last payroll of that fiscal year.

2. A Lieutenant, with at least six (6) months full-time service prior to July 1<sup>st</sup> of each fiscal year of the program shall receive one-half (½) of the allowance in the first payroll of that fiscal year and the remainder in the last payroll of that calendar year.

E. The allowance is interchangeable and usable for maintenance and repair and replacement, as needed, on an individual basis.

**F. Payment Conditions:**

1. All uniform allowance payments, accrued in accordance with provision D. above, and due and owing at the time of ratification of this Agreement, shall be paid in one (1) lump sum to each eligible Lieutenant within one (1) full pay period following mutual written ratification of this Agreement.

2. A condition precedent to eligibility for uniform allowance shall be active or approved inactive employment status at the time of scheduled payment.

**ARTICLE XXIII**

## **RETIREMENT\***

Lieutenants shall be eligible to participate in available State authorized retirement system(s), consistent with applicable rules and regulations. Should there be changes made in such Plan(s), by legislation, during the terms of this Agreement, all such changes, appropriate to members of the negotiating unit, shall be made in accordance with the provision of such legislation.

\*For information only.

## **ARTICLE XXIV**

### **HOURS OF WORK**

1. All Lieutenants are designated by NJIT as exempt status under Fair Labor Standards Act. At NJIT's discretion all Lieutenants may be scheduled for presence at NJIT up to eight hours per day, including an hour unpaid lunch, in order that proper coverage of the workforce may be provided NJIT. There will not be a change in scheduled shift span unless preceded by seventy-two (72) hours notice to the affected Lieutenant(s), except in cases of emergency.

2. If a summer schedule of ten (10) hours per day, including an hour unpaid lunch is adopted, bargaining unit members shall be notified no later than April 1 of each calendar year.

3. For the purpose of University accounting only, Lieutenants' pay is based on a 35 hour week. A full day of leave time used shall be debited as 7 hours and a half day of leave time used shall be debited as 3.5 hours. If the parties agree to a four day work week, a full day of leave time used shall be debited as 8.75 hours and a half day of leave time used shall be debited as 4.375 hours.

4. Release Time: Lieutenants are expected to work the equivalent of the hours of operation set forth in Paragraph 1, and carry the expectation of some evening or weekend work, in addition to the general hours of operation, as part of the job description. For example, certain periodic university functions occur at night or on weekends. Where work demands require employees to work substantially beyond regular business hours and beyond the defined expectations of the job, such employees may be afforded release time (time off without debit of leave banks) with the approval of the Chief of Police.

5. Individual Flex-time Schedules: Individual flexible time reporting schedules deviating from the standard workday may be adopted, provided that they are consistent with business necessity and do not impair university operations. Such individual flex-time schedules either altering the starting and ending time, or reducing reporting from five days to four days must be agreed to by the employee and the Chief and approved by the Vice President of

Human Resources, who shall keep a record of all approved flexible time arrangements for unit members. Such reporting structures must meet the following minimum standards:

- a. The schedule must accommodate NJIT's business interests in providing greater service to its constituencies.
- b. No flex-time schedule will be approved that reduces the minimum number of hours worked in the work week.
- c. The work week will consist of at least four (4) days, and will not be subject to further reduction in days during summer months.
- d. Where a choice of flexible hours cannot be made available to all employees within the same bargaining unit provisions, the most senior member of the unit will be given the right of first refusal on flexible scheduling, provided that such employee is in good standing.
- e. Flexible schedules may be ended, in the discretion of the university, upon two (2) weeks' minimum notice.
- f. It is expressly understood that no flex-time arrangement shall in any way alter the expectations outlined in the unit members' position description (except as may be required as a "reasonable accommodation" to a disability defined by State and Federal law). Further, it is understood that the granting of a flex-time arrangement shall not change situations where the employer, in its sole discretion, may extend the work hours of an employee as necessary.

## ARTICLE XXV

### **SALARY PROGRAM AND COMPENSATION**

#### **Salary Program: July 1, 2005 through June 30, 2007:**

It is agreed that during the term of this Agreement, for the period July 1, 2005 through June 30, 2007, the following salary and fringe benefit improvements shall be provided to eligible Lieutenants in the unit, within the applicable policies and practices of NJIT and in keeping with the conditions set forth herein. In order to receive the benefits, as set out hereunder, the Lieutenants must be employed by NJIT at the time of ratification of this Agreement or thereafter.

Subject to the State Legislature enacting appropriation of funds for these specific purposes, NJIT agrees to provide the following benefits, effective at the time stated herein.

**1. Band/Range**

Lieutenants shall continue to be placed in Band 10 as established by the University. Band 10 shall be indexed in accordance with the Senior Administration's funding determination for the fiscal years in this Agreement.

**2. Across-the-Board Salary Adjustments:**

- (a) Effective July 1, 2005, each Lieutenant, employed on the date this Agreement is signed, shall receive \$2,000 signing bonus added to their June 30, 2005 base salary. This is a one-time, non-precedent setting, bonus.
- (b) Effective in the first full payroll of Fiscal Year 2006 (July 3, 2005) each Lieutenant shall have their base salary increased by three (3) percent of their base salary immediately preceding the first full payroll.
- (c) Effective in the first full payroll of Fiscal Year 2007 (July 2, 2006), each Lieutenant shall have their base salary increased by three and one-quarter percent (3.25%) of their base salary immediately preceding the first full payroll.

**3. Merit Compensation Program:**

A merit compensation program shall be available to all Lieutenants with at least six full months of service prior to July 1<sup>st</sup> of the year of awarding each year during the salary program. The program shall be administered as follows:

- (a) The merit pool for Lieutenants will be comprised of the composite base salary of the Lieutenant's employed by NJIT as of June 30<sup>th</sup> of the year of evaluation of the performance standards.
  - (i) Effective the first full pay of the Fiscal Year 2006 (July 3, 2005), the merit pool for Lieutenants will be set at 3%.
  - (ii) Effective the first full pay of the Fiscal Year 2007 (July 2, 2006), the merit pool for Lieutenants will be set at 3.25%.
- (b) The merit award shall be added to the Lieutenant's base salary unless he/she will exceed the maximum of Band 10. Should the Lieutenant's merit award exceed

the maximum of Band 10, the full or partial amount in excess of the maximum shall be in cash.

- (c) There is no minimum conferral of merit awarding mandated.
- (d) **Absence of Discipline:** A Lieutenant must remain free from all disciplinary sanctions imposed and of record by NJIT, and imposed by the State of New Jersey and each of its agencies and instrumentalities as a Lieutenant's conduct must be above reproach all year, each year. A formal investigation into the propriety of a Lieutenant's conduct by the State of New Jersey or a State sponsored authority that could lead to suspension or loss of commissioned officer status will disqualify the Lieutenant from consideration for merit until such time as the investigation fully exonerates said Lieutenant. Less than full exoneration disqualifies the Lieutenant from consideration for merit during the time period that is both the focus of and that which is covered by the investigation. In this regard, less than full exoneration equates to disqualifying discipline. Neither NJIT's imposed disciplinary charges nor NJIT's implemented disciplinary action are of, themselves, "of record", disqualifying a Lieutenant from merit consideration, as long as formal, authorized appeal/grievance procedures are actively and properly utilized and a decision is not yet final and binding.
- (e) **Performance Standards:** All merit compensation shall be based upon total adherence to quality service during the past fiscal year's performance as it relates to the following specific performance standards:
  - (i) **Leadership/Supervision:** As senior officers, each Lieutenant is responsible, in either a consultative or lead role, for the primary supervision, development, and evaluation of the work of subordinate personnel within the Public Safety hierarchy. As such, he or she develops and uses strategies to influence others, defines problems/issues for employees in a straightforward manner, serves as a role model to others, demonstrating commitment to

achieving challenging objectives, and establishes measurable, challenging, and achievable expectations. The individual also holds self and others accountable for achieving established performance expectations, builds support and enthusiasm for the accomplishment of stated goals of the Public Safety Department, provides feedback regarding actual performance against goals and makes fair and consistent recommendations on performance ratings, disciplinary actions and other personnel matters. Supervises, assigns and evaluates the work of subordinate personnel, taking necessary disciplinary actions against subordinate officers, and making effective recommendations to hire or terminate employees.

(ii) **Quality Assurance/Attention to Detail:**

Lieutenants shall accomplish tasks through concern for all areas of Public Safety in relation to the university community. Shows concern for all aspects of their senior officer positions. Accurately checks for processes and tasks and follows up in a timely manner with appropriate persons, including reading police reports/investigations and observing actions in the field. Has the desire to see things accomplished logically, clearly, and well. It takes various forms including monitoring and checking work or information, insisting on the clarity of roles and duties, and setting up and maintaining information systems. Makes effective recommendations to improve administrative and budgetary operations within the Department.

(iii) **Honesty and Integrity:**

Acts in accordance with all university and department of Public Safety policies, procedures and expectations. Acts in accordance with the spirit and letter of the policies, practices and noticed expectations of the university. Comports oneself with resolute honesty and without situational rendition of pertinent facts. Will not compromise one's responsibility to place the

best interests of the department and university over personal gain.

- (iv) **Analytical Thinking/Problem Solving:** As senior officers responsible for public safety administration and policies, Lieutenants are responsible for maintaining operations through the exercise of independent judgment and discretion. As such, each Lieutenant must be able to understand a situation, issue, problem, and prioritize administrative responsibilities. Commits to actions after identifying alternative methods that are based on logical assumptions and information. Takes into consideration available resources, constraints, public safety and university organizational values, and changing environments. This individual breaks down problems, sees basic relationships, establishes multiple relationships, makes complex plans and analyses and occasionally creates concepts.
  
- (v) **Verbal and Written Communication:** Lieutenants must communicate effectively both verbally and in writing with superiors, peers, subordinates, and all members of the university community in order to provide direction and training, explanation of departmental policies and procedures, laws, legal rights and responsibilities, and be able to resolve, on a local level, complaints, personnel matters and disputes, as well as to disseminate information. As such, he or she expresses ideas effectively in individual and group situations adjusting style and methods to the specific needs of the audience. The individual also thinks through the message or material for presentation in advance and organizes the message or presentation in logical flow, and uses vocabulary and communicative concepts that are appropriate to the audience and communicative purpose.
  
- (vi) **Attendance:** Punctual in arriving at work, at assigned tours in responding to regular duties and in responding to unexpected

circumstances, as well as accountable for their whereabouts at all times while on shift. Remains free from disciplinary sanctions for excessive or patterned abuse of sick leave.

(vii) **Appearance:** Uniforms maintained in excellent condition. Uniform attire worn in appropriate manner and time designated. Presents himself/herself, without deviation, in a ready, alert, neat, properly groomed, and fully uniformed manner when necessary, in formally representing NJIT.

(f) **Review of Performance:** No earlier than forty-five (45) days before the end of the fiscal year of performance review and no later than fifteen (15) days following the end of the fiscal year of performance review (or the signing of this Agreement, whichever occurs first), each eligible Lieutenant's performance shall be reviewed against those "Performance Standards" set out in provision A.3.c. above.

(i) The standards set out herein, mark categorized attributes of the prototype Lieutenant's professional and personal characteristics that should lead to excellent performance as an NJIT Lieutenant. Those standards will be qualitatively assessed, given the record of performance of each eligible Lieutenant over the preceding year of eligibility and cumulatively over the Lieutenant's term of commissioned police employment. Verbal and written, evaluative correspondence between departmental supervision, and each Lieutenant is pertinent contextual material in qualitative performance assessment against those pronounced standards and will be weighed in ultimate merit determination.

(ii) The evaluation of performance against the published standards will be in writing and provided to each eligible Lieutenant within the annual evaluation period set out in (d) (i) (1) above. Specific descriptions, commendations, and examples of meritorious performance must be set out and verified for merit step awards to

be provided to eligible Lieutenants as well as formal certification of the evaluating supervisor(s) (e.g. Deputy Chief, Chief) that there are no instances of conduct that would either lead to or cause disqualification from meritorious performance as measured against the published standard.

However, upon contest by the NJSOLEA on behalf of a Lieutenant, as set out below, no more than one (1) supervisory evaluation of non-meritorious performance may be overturned per year of the program. Awards granted on appeal will be charged against the maximum expenditure of monies in the year of award. If sufficient monies are not available, the expenditure due to appeals will be charged against the subsequent merit pool, including the compounded value of the merit award as it affects salary creating the subsequent pool.

(iii) A merit award will be based upon a Lieutenant strictly meeting all performance standards set out herein.

(g) **Appeal Procedure:** There will be a limited appeal procedure available to the NJSOLEA on behalf of one (1) Lieutenant annually, to seek reconsideration of non-awarding of merit to an eligible Lieutenant as follows:

(i) The NJSOLEA may, within thirty (30) days of the published conferral of awards to Lieutenants, file a written appeal on behalf of a Lieutenant's denial of merit pay, based upon the past year's performance, as it relates to the published performance standards and the comparative performance of other Lieutenant's receiving merit pay. The appeal must state, with particularity, the factual basis for a finding of substantial error or misjudgment in the evaluation that lead directly to a denial of the award. The appeal shall be filed with the Department of Public Safety and copied to the Department of Human Resources.

- (ii) The burden of proof in the appeal rests with the NJSOLEA; it must demonstrate, based upon the record of credible evidence, that it is more likely than not that all performance standards were met or exceeded, including a reasonable finding that there are no instances of conduct that would allow a reasonable person to find such conduct disqualifying of meeting or exceeding the full breadth and depth of performance standards. In addition to this finding, where all merit funds have been spent, it must also be established that the Lieutenant whose performance is being appealed, compared favorably, in meeting or exceeding performance standards, to one or more Lieutenants who received merit.
  
- (iii) A Merit Appeals Board, consisting of the Sr. Vice President for Administration and Treasurer, the Vice President of Human Resources, or their respective designees and a supervisory, Superior Officer, including the Director of Public Safety, above the level of Police Lieutenant, that has not taken part in the evaluation appealed (as selected by the NJSOLEA) will review the written submission and, at its sole discretion, either review and respond to the record as it stands or call a hearing, within thirty (30) days of submission of the written appeal, to hear oral argument, question the advocates, direct the gathering and submission of evidence not in the record, recess the hearing until all materials it deems necessary are before it or disallow any further gathering or submission of evidence, as it deems most appropriate to efficacious resolution to the controversy and allow for closing statements as it deems relevant to a proper finding.
  
- (iv) The Merit Appeals Board will issue its decision in writing, to the NJSOLEA, within sixty (60) days of the close of hearing or within ninety (90) days of the NJSOLEA's written submission, if no hearing is called. The decision of the Merit Appeals Board will be

final, binding and the exclusive avenue for redress of the administration of the merit pay program.

## **ARTICLE XXVI**

### **HEALTH BENEFITS**

It is agreed that during the term of this Agreement, for the period July 1, 2005 through June 30, 2007, the following salary and fringe benefit improvements shall be provided to eligible Lieutenants in the unit, within the applicable policies and practices of NJIT and in keeping with the conditions set forth herein. In order to receive the benefits, as set out hereunder, the Lieutenants must be employed by NJIT at the time of ratification of this Agreement or thereafter.

Subject to the State Legislature enacting appropriation of funds for these specific purposes, NJIT agrees to provide the following benefits, effective at the time stated herein.

#### **A. State Health Benefits Program**

1. The State Health Benefits Program is applicable to employees in this Agreement and the University agrees to continue to participate in the State Health Benefits Program for the duration of this agreement.

2. Changes in benefits or open enrollment periods adopted by the State Health Benefits Commission are a requirement for continued participation in the State Health Benefits Program and the parties recognize that changes shall apply to employees represented by the union. Changes, corrections or reinterpretations of the program promulgated by the State shall be incorporated into the Agreement and thereafter be applicable to all employees.

3. Current eligible employees (those who work at least 20 hours per week or more) will have the option, on the open enrollment dates, of selecting one of the following plans: Traditional Indemnity, Managed Care/Point of Service (New Jersey Plus), or an HMO approved by the State Health Benefits Commission.

4. A summary of recently adopted changes (P.L. 2003, Chapter 199) are listed below.

#### **B. Premiums**

1. The Managed Care/Point of Service Plan (New Jersey Plus) shall remain without any premium cost to eligible employees and their eligible dependents.

2. Effective July 1, 2003, newly hired employees shall not be eligible to enroll in the Traditional Plan. Eligible employees hired prior to July 1, 2003, who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

3. Employees who elect coverage in an approved HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

4. The above employee contributions to premiums shall remain in effect for the duration of this Agreement.

**C. Coordination of Benefits:** If a husband and wife are both eligible for coverage under the State Health Benefits Program as employees:

1. Each may elect single coverage in any participating health plan, provided that he or she is not covered under a health plan as a dependent of his or her spouse.

2. Each qualified dependent is eligible for coverage under one parent only.

**D. Deductibles and Co-Payments:**

1. Effective July 1, 2004, Traditional Plan deductible (Major Medical) will increase from \$100.00 to no more than \$250.00 as determined by applicable statutes and regulations.

2. Effective July 1, 2004, HMO and NJ Plus co-payments for primary and specialists (i.e. office visits) shall increase from \$5.00 to \$10.00 per visit.

**E. Medicare B Reimbursement:** Consistent with law, the State will no longer reimburse active employees or their spouses for Medicare part B premium payments (original effective date 1/1/96).

**F. Retirees Health Insurance**

1. The State agrees to assume upon retirement the full cost of the Health Benefits coverage for State employees and their dependents including the cost of charges under Part B of the Federal Medicare Program for eligible employees and their spouses, but not including survivors, for employees who accrue twenty-five (25) years of pension credit service, as provided under the State plan, by July 1, 1997, and those employees who retire for disability on the basis of fewer years of pension credit in the State plan.

2. Employees who are barred from participation in the Traditional Plan will not be eligible to select Traditional Plan upon retirement. Retirees will not be offered a plan for which they were ineligible as active employees.

3. Co-payments for retirees participating in the Traditional Plan and NJ Plus will increase July 1, 2004 to \$6.00 for generic prescription drugs, \$13.00 for preferred, and \$26.00 for other brand prescription drugs. The mail order co-payments for retirees for a 90-day supply will increase to \$6.00 for generic, \$19.00 for preferred and \$32.00 for other brands.

**G. Prescription Drug Program**

1. The University shall continue to participate in the Prescription Drug Benefit during the term of this Agreement. The Program shall be funded and administered by the State.

2. It shall provide benefits to all eligible unit employees and their eligible dependents provided the employee is enrolled in one of the medical plans listed in Section A.

3. Each prescription required by competent medical authority for Federal legend drugs shall be paid for by the State from funds provided for the Program subject to a deductible provision which shall increase effective July 1, 2004 from \$5.00 to \$10.00 for brand name prescription drugs and from \$1.00 to \$3.00 for generic drugs; mail order co-payments shall increase from \$5.00 to \$15.00 for brand name and from \$1.00 to \$5.00 for generic drugs. Renewals of such prescription are further subject to specific procedural and administrative rules and regulations which are part of the Program.

**H. Eye Care Program**

1. It is agreed that Eye Care Program shall include all employees and their eligible dependents (spouse and unmarried children under 23 years of age who live with the employee in the regular parent-child relationship). The coverage shall be \$35 for regular glasses and \$40 for bifocal glasses or more complex prescriptions with all other conditions for eligibility as in the current plan.

2. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

3. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$35 or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

4. Each eligible employee and dependent may receive only one (1) payment for glasses and one payment for examinations during the period of July 1, 2003 to June 30, 2005 and one payment for glasses and one payment for examination during the period of July 1, 2005 to June 30, 2007. This program ends on June 30, 2007. Proper affidavit and submission of receipts are required of the employee in order to receive payment.

**I. Dental Care Program**

During the term of this Agreement, full time employees and their eligible dependents shall continue to be eligible to participate in the Dental Care Program established by the State.

1. Full-time employees and eligible dependents shall be eligible for the State administered Dental Care Program which shall be continued during the life of this Agreement.

2. Participation in the Program shall be voluntary with a condition of participation being that each participating employee authorizes a biweekly salary deduction not to exceed 50% of the cost of the type of coverage elected, e.g., individual employee only, husband and wife, parent and child or family coverage.

3. Each employee shall be provided with a brochure describing the details of the Program, enrollment information and the required forms.

4. Participating employees shall be provided with an identification card to be utilized when covered dental care is required.

5. An optional Dental Program Organization which will provide services through specific dentists will be made available to employees in this unit. Participation in this Program shall be voluntary with a condition that each participating employee authorizes a biweekly salary deduction not to exceed 50% of the cost of the coverage for a one (1) year period.

6. Employees will be able to enroll in only one (1) of the two (2) programs or in no program at all.

## **ARTICLE XXVII**

### **DEFERRED COMPENSATION**

A. It is understood that the State will continue the program which will permit eligible Lieutenants in this negotiating unit to voluntarily authorize deferment of a portion of their earned base salary so that the funds deferred can be placed in an Internal Revenue Service approved Federal Income Tax exempt investment plan. The deferred income so invested and the interest or other income return on the investments are intended to be exempt from current Federal Income Taxation until the individual Lieutenant withdraws or otherwise receives such funds as provided in the plan.

B. It is understood that the State shall be solely responsible for the administration of the Plan and the determination of policies, conditions and regulations governing its implementation and use.

C. The State shall provide literature describing the Plan as well as a required enrollment or other forms to all Lieutenants when the Plan has been established.

D. It is further understood that the maximum amount of deferrable income under this Plan are as follows, subject to future amendment.

1. January 1, 2005 through December 31, 2005: Fourteen Thousand Dollars (\$14,000) for all Lieutenants less than 50 years of age and Eighteen Thousand Dollars (\$18,000) for those Lieutenants 50 years of age or older.

2. January 1, 2006 through December 31, 2007: Fifteen Thousand Dollars (\$15,000) for all Lieutenants less than 50 years of age and Twenty Thousand Dollars (\$20,000) for those Lieutenants 50 years of age or older.

**ARTICLE XXVIII**

**DRUG SCREENING POLICY AND PROCEDURE**

NJIT and NJSOLEA agree to the NJIT/NJSOLEA Drug Screening Policy and Procedure as set out in Appendix A, Drug Screening Policy and Procedure, herein.

**ARTICLE XXIX**

**JOB ACTION**

It is recognized by both NJIT and NJSOLEA that the continued and uninterrupted operation of the University is of paramount importance. Therefore the NJSOLEA agrees that it will refrain from any act contrary to law such as strike, work stoppage, slow down, or other job action during the life of this Agreement and will eschew any threat, encouragement, support or condoning of any such job action.

**ARTICLE XXX**

**PARKING**

**A. Fees:**

The following parking fees shall be charged and collected through payroll deduction for all members of the bargaining unit desiring to park and duly registering his/her motor vehicle with the University according to published University regulations, enabling and entitling him/her to daily parking privileges on University premises:

1. All parking at all available locations, including NJIT's parking deck, shall be on a first come, first served basis following registration of a bargaining unit member's motor vehicle, entitling him/her to parking privileges at the rate not to exceed the parking fee schedule for other exempt and non-aligned employees, as follows:

	<b><u>Base Salary</u></b>	<b><u>Fee Per</u></b>
<b><u>Minimum</u></b>	<b><u>Maximum</u></b>	<b><u>Semester</u></b>

\$42,400.01	\$53,000.00	\$125.00
\$53,000.01	\$63,600.00	\$150.00
\$63,600.01	\$74,200.00	\$175.00
\$74,200.01	\$84,800.00	\$200.00
\$84,800.01	\$94,800.00	\$225.00
\$94,800.01	\$104,800.00	\$250.00

2. Fees shall be collected through payroll deduction and spread over the first five (5) consecutive pay periods following registration of a motor vehicle by a Lieutenant. There will be no rebates or discounts for partial use during any semester in which a vehicle is registered and therefore entitled to be parked on NJIT's premises.

**ARTICLE XXXI**

**DURATION**

The provisions of this Agreement shall be effective either (1) as of the dates expressly specified herein or (2) upon the date of mutual ratification as attested by execution hereof, and all portions of this Agreement shall terminate as of June 30, 2007.

**ARTICLE XXXII**

**SUCCESSOR AGREEMENT**

The parties agree to enter into collective negotiations concerning a successor Agreement to become effective on or after July 1, 2007, subject to the provisions set forth in Article II, Negotiating Procedures.

The parties hereby acknowledge and agree to the terms and conditions of the aforementioned Agreement between New Jersey Institute of Technology and the NJIT Superior Officer Association, entered into, as of July 1, 2005 and which will terminate June 30, 2007.

**Signed this 4th day of August, 2005.**

**FOR NJSOLEA:**

**FOR NJIT:**

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Lieutenant Charles Tighe  
Chief Negotiator

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Holly C. Stern, Esq.  
Chief Negotiator

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Lieutenant Joseph Marswillo  
Negotiating Team Member

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Gail D. Weiner, Esq.  
Negotiating Team Member

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Lieutenant Carol Ellis  
Negotiating Team Member

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Dr. Theodore T. Johnson  
Negotiating Team Member

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Connie J. Sutton-Falk  
Negotiating Team Member

## **APPENDIX A**

### **NEW JERSEY INSTITUTE OF TECHNOLOGY PUBLIC SAFETY DEPARTMENT DRUG SCREENING POLICY AND PROCEDURE FOR POLICE LIEUTENANTS**

#### **I. Introduction**

New Jersey Institute of Technology's Public Safety Department has a legal responsibility and managerial obligation to maintain a safe work environment for its officers, and employees, as well as a duty to protect the community that it is sworn to serve. The professional responsibilities, legal prerogative and the integrity of any law enforcement agency demands that its Police Lieutenants ("Lieutenants") refrain, without excuse or exception, from the use and possession of illegal or medically unauthorized controlled dangerous substances (herein "drugs"). No person can function well while abusing drugs according to the New Jersey Department of Law and Public Safety Division of Criminal Justice. There is conclusive proof that the use and/or abuse of many types of drugs can and does produce negative effects on an individual's cognitive, emotional and physical health and conduct. Lieutenants, being in positions of public trust, may not operate outside of the law. The possession and use of drugs in itself is a crime in this jurisdiction, and grounds for arrest, prosecution, incarceration and dismissal. A condition of employment must and shall be, a Lieutenant who is free from drug possession, use and/or dependence. It is, therefore, the policy of NJIT's Public Safety Department that no Lieutenant shall possess or use any drugs, whether on or off duty, unless the drug has been legally prescribed for the Lieutenant by a physician licensed to practice medicine and used in the manner prescribed.

#### **II. Purpose**

The purpose of this policy is to protect the integrity, credibility and effectiveness of NJIT's Public Safety Department; to preserve the public's trust earned by its Lieutenants; and to ensure a drug free workplace for Department members. Testing Lieutenants for substance abuse in accordance with legally authorized parameters, will help ensure that these objectives are accomplished, while balancing the need to safeguard the rights of the individual members tested against unreasonable intrusions into their person. It is acknowledged that legal requirements pertaining to drug testing may change and evolve; the policy may be amended from time to time to reflect changes in legal requirements and parameters, as well as the negotiated pacts of the university and its unionized officers, including Lieutenants.

## **Definition of Terms**

- A. **Lieutenants**: All commissioned police officers, with supervisory responsibilities, serving within the Department of Public Safety and holding that formal NJIT **assigned** rank.
- B. **Supervisors**: Sworn superior officers holding the rank of Deputy Chief or higher or administrative, supervisory personnel assigned to positions having day-to-day responsibilities for supervision of Lieutenants.
- C. **Urinalysis**: A urine test administered under approved conditions and procedure for detecting illegal drug usage.
- D. **Reasonable Individualized Suspicion**: An apparent state of facts and/or circumstances found to exist upon inquiry by the appropriate supervisor, as determined by the Director of Public Safety, which would induce a reasonably intelligent and prudent person to believe that a reasonable, objective basis exists to suspect that a urinalysis will produce evidence of a drug as defined by this policy.
- E. **Random Drug Testing**: A standardized, random, selection methodology of testing individual Lieutenants for drugs that does not depend upon reasonable individualized suspicion and does not predetermine who will be tested.
- F. **Drugs**: Controlled substances or illegal drugs, as follows: amphetamine/methamphetamine; barbiturates; benzodiazepines; cannabinoids; cocaine; methadone; phencyclidine; opiates and illegal steroids.

## **IV. Drug Testing Parameters**

- A. **Pre-employment or Probationary Period Screening** - Drug screening shall occur as part of the pre-employment medical examination administered to persons applying for any Lieutenant positions with the NJIT Public Safety Department. Additionally, screening at the discretion of NJIT may take place at any time during a Lieutenant's probationary period with the Department of Public Safety.
- B. **Employment Screening** - In balancing the NJIT community's right and obligation to have a drug-free Public Safety Department against the Lieutenant's right to privacy, urinalysis will be the chosen method of screening. Screening will be administered as follows: (1) screening of any Lieutenant in the absence of "reasonable individualized suspicion" may be conducted at NJIT's discretion at any time following random selection, or (2) individual screening will be administered when there is a "reasonable individualized suspicion" to believe that an individual Lieutenant is using drugs in violation of this policy. Testing on the basis of "reasonable individualized suspicion" will be required based on the

objective facts and on rational inferences, drawn by a supervisor, to indicate that the usage of any drug may be the cause of an unfit condition where the Lieutenant is:

1. Impaired in, or incapable of performing their assigned duties, and/or
2. The subject of investigation where sufficient evidence and facts are present to constitute a “reasonable/individualized suspicion” that they are involved in the use, possession or sale of drugs; and/or
3. Experiencing (without plausible, legitimate explanation proffered and fully validated) excessive absenteeism and significantly reduced productivity, and/or
4. Found to have excessive or otherwise suspicious on-duty injuries or motor vehicle accidents indicating negligence in relation to assigned duties; and/or
5. Exhibiting unusual and/or bizarre behavior patterns, reasonably deemed inconsistent with regular and appropriate behavior patterns.

#### V. **Testing Procedures**

- A. Any Lieutenant who is consuming a prescribed medication which may not otherwise be defined as a drug under this policy or ingesting over-the-counter drugs, shall, upon being ordered to submit to drug testing, inform his or her immediate supervisor of the nature of the illness or injury, along with the name and type of medication being taken and the physician prescribing same.
- B. **Reasonable Individualized Suspicion:** Supervisors shall prepare a written report requesting urinalysis, where there is a credibility to the sources of information, e.g., by tip, informant, personal knowledge, observations, other documentation or reliable information that a member is a user of drugs. The report, which shall be confidential, shall be forwarded to the Director of Public Safety and the Department of Human Resources, documenting the specific reasons for the request with all circumstances and/or corroborating evidence supporting reasonable, individualized suspicion (e.g., relevant facts exhibited by the Lieutenant).
  1. The decision to test a Lieutenant for drugs based upon satisfaction of the standards for reasonable individualized suspicion, shall be made by the Director of Public Safety. Under emergent circumstances, the Director of Public Safety may order drug testing based upon an oral report. If the Director of Public Safety cannot be contacted within a reasonable period of time, an NJIT designee, normally the Deputy Chief, may (acting in his absence) order such test.

- C. **Random Drug Testing:** In the case of random drug testing, a published standardized, selection procedure shall be utilized to select no more than twenty-five percent (25%) of the pool of Lieutenants for drug testing at any one time. This procedure must conform with the following guidelines:
1. The selection of any Lieutenant must be based purely upon chance which may only include mathematical probability as a likelihood of selection.
  2. The NJSOLEA has the right, at its request, to have a duly authorized representative present as a witness to the selection process and such representative may at management's direction participate in the selection process. In addition, any of the following members of NJIT administration (or their successors in position responsibility or their designees) may be present to witness the selection process:
    - (a.) President;
    - (b.) Senior Vice President for Administration and Treasurer;
    - (c.) Associate Vice President for Facilities Management;
    - (d.) Director of Public Safety and Chief of Police;
    - (e.) Vice President of Human Resources.
  3. To reach the maximum allowable number of Lieutenants tested at any one time, you would round to the number of Lieutenants nearest twenty-five percent (25%) at the time of selection. For example, if there are three (3) officers in the testing pool 25% is .75 employees which is rounded up to 1 employee.
  4. As the selection is truly random, there is no limit on the number of times one may be randomly selected nor will there be any alteration in the selection procedure regardless of comparable differences among Lieutenants in times selected.
  5. There will be no more than five (5) random tests per year to be scheduled at NJIT's discretion.
  6. As the procedure is publishable, it will be available to the NJSOLEA for validity testing as a random process.
  7. **Confidentiality:** The identification of Lieutenants selected for random testing as well as the fact that a random selection and testing procedure has been determined and scheduled to occur, prior to the collection of specimens, shall remain confidential to the extent practicable. Any Lieutenant who without authorization from NJIT, discloses either the identity of selected Lieutenants or the planning of a random selection and

testing, shall be subject to severe discipline. This, without mitigation of an extraordinary nature, is a terminable offense.

8. The only matter grievable under this Policy is whether the testing procedure reasonably leads to truly random selection.

D. **Notification of Drug Screening**

1. A Lieutenant tested on the grounds of “reasonable individualized suspicion”, discretionary testing during his/her probationary period, or random testing, need receive no minimum notification that drug screening, through urinalysis, will be conducted prior to reporting to the testing location, other than that notification time that is necessary for transportation purposes. Whenever practicable, Lieutenants shall be notified during their tour of duty on the date of the test, and testing itself will be conducted during a tour of duty.
2. Any Lieutenant who refuses to appear for testing at the time and place designated by the Department after being notified to do so, shall be subjected to the same penalties and consequences as those Lieutenants who test positive for the presence of illegal drugs including, but not limited to, the termination of employment from NJIT, following provision of applicable due process of law.

- E. **Responsibility** - A supervisor designated by the Director of Public Safety shall be directly responsible for scheduling and supervising the conducting of all drug screening for Lieutenants.

F. **Processing of Urine Specimen**

1. **Designated Laboratory and Test** – The New Jersey State Toxicology Laboratory within the Division of Criminal Justice, shall be the sole facility for testing procedures for Lieutenants unless and until a fully licensed alternative testing facility is chosen by NJIT and formally noticed to the Superior Officers Association (NJSOLEA). The following two (2) step testing process will be followed:
  - (a.) The Enzyme Multiplied Immunoassay Test (EMIT) and Thin Layer Chromatography (TLC) will be used as initial drug screening procedures.
  - (b.) Gas Chromatography/Mass Spectrometry (GCMS) technique is used to confirm all positive results of initial drug screening.
2. **Preliminary Acquisition Procedures**

Before a Lieutenant is ordered to submit to a drug test on the basis of “reasonable individualized suspicion”, the Department shall prepare a confidential report which documents the basis thereof. The Director of Public Safety (or such individual designated by this policy to render approval of testing) shall base his/her decision on the contents of this confidential report. No such report shall be required in the event of either emergent circumstances mandating immediate testing, or allowable random testing.

Prior to the submission of a urine sample for any type of testing, the Lieutenant shall complete a medical questionnaire which clearly describes all medications, both prescription or over the counter, which he or she ingested during the prior thirty (30) days.

The Director of Public Safety shall designate an official monitor responsible for urine sample acquisitions. The monitor may, but need not be, the Deputy Chief. The monitor shall, whenever practicable, be of the same gender as the Lieutenant(s) producing the required samples. As the official monitor, he/she shall be responsible for ensuring that all relevant disclosure forms have been thoroughly completed by the Lieutenant, and that the specimen containers used during the sample acquisition process have been approved by the New Jersey State Toxicology Laboratory. The official monitor shall also take all reasonable steps to ensure to the extent practicable that the invasion of the Lieutenant’s privacy is minimized during the sample acquisition process. Prior to submitting the urine sample to the laboratory for testing, both the official monitor and the Lieutenant shall inspect the specimen bottle packet for indications of pre-void tampering. The official monitor may also choose to designate another witness to the sample acquisitions.

3. **Specimen Acquisition Procedure**

(a.) After the official monitor has reviewed the appropriate forms for accuracy and inspected the empty specimen collection container for signs of tampering, the Lieutenant shall void into the container. The Lieutenant shall seal the specimen container and deliver it to the official monitor.

(b.) At the time the urine sample is provided, the Lieutenant will have the option to submit two (2) samples. Both samples will be acquired according to the procedures outlined herein. One will be forwarded to the State Toxicology Laboratory for testing. The official

monitor will store the remaining sample in a frozen state within, or accessible to, the Department according to Departmental procedures regarding chain of custody and evidence storage, in accordance with Attorney General Guidelines. The samples will remain in storage for sixty (60) days or until notification by the State Toxicology Laboratory that the first specimen tested negative. This sample will be made available upon request through the appropriate channels to the Lieutenant or at the Lieutenant's election, his/her authorized employment representative (which for this process only may include retained counsel).

- (c.) To the maximum extent possible, privacy will be maintained during the specimen production process, however, should the Department of Public Safety have documented reason to believe the Lieutenant will adulterate the specimen or otherwise compromise the integrity of the test process, the official monitor or his/her designee (of the same gender as the Lieutenant) may directly observe the Lieutenant while he/she produces the specimen.
- (d.) In the event a Lieutenant is unable to produce a urine specimen, the Lieutenant may remain under the supervision of the official monitor until he/she is satisfied that the Lieutenant cannot produce a specimen. At such time, the official monitor may allow the Lieutenant to drink fluids in an attempt to induce production of a specimen. A Lieutenant's continued inability to produce a specimen may result in the Lieutenant being examined by a physician of NJIT's choice and at NJIT's expense to determine if the inability to produce the sample is the result of a medical/physical infirmity or a refusal to cooperate with the drug testing process. A determination by the examining physician, that the inability to produce a urine specimen is based upon a refusal to cooperate with the drug testing process shall be cause for termination of the Lieutenant.
- (e.) Upon successful production and delivery of a required urine sample to the official monitor, he/she shall maintain the chain of custody by submitting the sealed specimen container(s) to the New Jersey State Toxicology Laboratory, Division of Criminal Justice

within one (1) working day of collection. In the event the specimen cannot be submitted within one (1) working day, it shall be stored in a controlled access refrigerated storage area until submission to the State Toxicology Laboratory.

- (f.) Throughout the testing process, the identities of the tested Lieutenants shall remain confidential to the extent practicable. Individual specimens shall be identified by social security numbers only. Lieutenants' names shall not appear on specimen containers or forms submitted to the State Toxicology Laboratory.

G. **Drug Test Results**

1. **Notification**

It is the procedure of the State Toxicology Laboratory to notify the Director of Public Safety, as to the result of the urinalysis, immediately upon completion of the test. The laboratory will retain only those samples which have been confirmed to be positive for the presence of drugs. All oral notifications will be confirmed by written reports within fifteen (15) working days of submission of the specimen.

2. **Positive Results**

All Lieutenants who are tested, and are confirmed to be positive for the presence of drugs, shall:

- (a.) Be notified of this fact by the Director of Public Safety as soon as practicable after oral notification is received from the laboratory.
- (b.) Be provided with a copy of the laboratory report, as soon as practicable after receipt of same.
- (c.) Be suspended from duty immediately without pay, pursuant to Article VII, Investigation, Due Process, Discipline and Challenge, of the collective bargaining agreement, pending a due process hearing for dismissal from employment.
- (d.) Be terminated from employment, in accordance with Article VII, Investigation, Due Process, Discipline and Challenge, of the collective bargaining agreement.

- (e.) Be given the opportunity to challenge a termination from employment based upon a confirmed positive result in the same manner as provided in the collective bargaining agreement for challenging disciplinary impositions involving potential termination of employment. The only grievable issues with regard to discipline resulting from a positive drug test are as follows:
  - (i.) a challenge to the testing results or procedure;
  - or
  - (ii.) in the case of drug testing based upon “reasonable individualized suspicion”, a claim that reasonable grounds for testing did not exist.
- (f.) In addition to the above measures, any Lieutenant who produces a confirmed, positive result for use of drugs shall also be:
  - (i.) included in a central registry maintained by the Division of State Police, to be accessed only through court order or as part of a confidential investigation related to law enforcement employment;
  - (ii.) reported to the Essex County Prosecutor;
  - (iii.) permanently barred from sworn law enforcement employment in New Jersey.
- (g.) Lieutenants who have produced two (2) simultaneous samples may, upon notification of a positive test result, request that the Director of Public Safety release the second (2<sup>nd</sup>) sample for the sole purpose of having the same independently tested. Under such circumstances, the Lieutenant must designate, as the independent testing facility, a laboratory licensed to conduct such tests by the New Jersey Department of Health under the New Jersey Criminal Laboratory Improvement Act. If an authorized representative of the designated laboratory does not take possession of the second (2<sup>nd</sup>) sample maintaining an appropriate chain of custody, within sixty (60) days of production, the Department of Public Safety will destroy the sample.

3. **Negative Results**

- (a.) If the test result, as determined at any stage of the process, is negative, any recorded allegation of drug abuse against the Lieutenant shall be classified as "unfounded".
- (b.) Any Lieutenant whose specimen is found to be negative, or who has a verified, lawfully issued, medically valid prescription explaining a positive result, shall receive a letter from the Director of Public Safety stating that no illegal substances were found and no negative inferences may be drawn from the testing itself. A copy of the letter will be provided to the Lieutenant, and at the Lieutenant's election placed in the Lieutenant's personnel file. Records and documents relating to a test based upon asserted, reasonable individualized suspicion will be made available to the Lieutenant in accordance with legal mandate, or the terms of their Collective Bargaining Agreement.
- (c.) Negative specimens shall be destroyed immediately upon completion of urinalysis by the Medical Examiner's Toxicology Laboratory.

**VI. Record Keeping**

- A. The Department of Human Resources shall maintain the following records of random and individualized reasonable suspicion testing:
  - 1. the identities of all Lieutenants ordered to submit urine samples;
  - 2. the reason for the order;
  - 3. the date the urine sample was collected;
  - 4. the identity of the official monitor of the collection process;
  - 5. the chain of custody of the urine sample(s) from the time of collection to the time of submission to the State Toxicology Laboratory (or the licensed alternative testing facility set out under provision V.F. above).
  - 6. the results of the testing;

7. copies of notifications to Lieutenants selected or ordered to undergo testing;
  8. documentation of disciplinary action taken against any Lieutenant who tests positive or refuses to submit to testing.
- B. The Department of Human Resources shall also maintain the following records for all random testing:
1. a description of the process used to randomly select Lieutenants for drug testing;
  2. the date selection was made;
  3. a copy of the document listing the identities of those selected for drug testing;
  4. a list of those who were actually tested; and
  5. a roster of NJIT personnel with knowledge of the specific testing process and those identified for testing. (To the extent practicable, this roster will be confined to those with a need to know in accordance within legal parameters, managerial prerogative and public policy.)

## **VII. Central Drug Registry**

- A. The Department of Public Safety shall include in its submission to the Division of State Police for inclusion in its central drug registry, the following information as to each individual:
1. name of the individual who tested positive, or who refused to submit to drug testing;
  2. last known address of the individual;
  3. date of birth;
  4. social security number;
  5. SBI number (if applicable);
  6. substance the individual tested positive for, or circumstances of the refusal to submit a urine sample;

7. date of dismissal from the agency; and
  8. whether the individual was an applicant, trainee, probationary or non-probationary Lieutenant.
- B. Information contained in the central registry will be released to those outside of NJIT, by the Division of State Police only under the following circumstances:
1. In response to an inquiry from a law enforcement agency as part of the background investigation process for prospective or newly appointed personnel.
  2. In response to a court order.

### **VIII. Responsibilities To Report**

- A. **Lieutenants' Responsibilities** - When a Lieutenant observes a fellow Lieutenant, a Sergeant, a Police Officer or a Public Safety Officer seemingly in a stupor or receives other information that supports the observing Lieutenant's suspicion that such department member is unfit to perform his/her duties and that use or abuse of drugs is related to the Lieutenant's or subordinate's condition, the Lieutenant shall:
1. Immediately notify his or her supervisor(s) of the evidence of suspected drug use;
  2. A supervisor must also execute an "Administrative Submission" and record observations and other pertinent data.
- B. **Lieutenant's Responsibilities** - Upon personally observing or receiving information from a supervisor or other Lieutenant having information that a Lieutenant is involved in drug related activities or is unable to perform his/her assigned function because of the possible use or abuse of drugs, Lieutenants shall:
1. Notify the Director of Public Safety and comply with instructions received.
  2. Conduct an investigation to determine whether there are sufficient facts to constitute a reasonable individualized suspicion that a department member is using drugs.
  3. Make necessary notifications and scheduling for testing pursuant to this policy.
  4. Transport or meet the department member and his/her supervisor at the State of New Jersey Medical Examiner

Toxicology Laboratory, Newark, New Jersey (or the authorized alternative facility).

5. Immediately forward a preliminary report of the drug-related incident to the Director of Public Safety.
6. Forward a final report to the Director of Public Safety with findings, recommendations and conclusions.

**IX. Responsibility For Compliance**

All Lieutenants are responsible for both the understanding and enforcement of this policy and procedure. Inadequacies on the part of the Lieutenants reflect directly on the supervisory and command personnel and generally on the credibility of the entire department.

**ATTACHMENT A**

**CERTIFICATION**

In accordance with controlling university policy and collective agreement,

I, \_\_\_\_\_ (Lieutenant's Name), hereby certify as follows:

(Please Print)

(COMPLETE APPLICABLE SECTION)

1. I am currently employed in active status as a commissioned Police Lieutenant in the Department of Public Safety;

**AND**

2. I am currently being treated by a licensed health care practitioner with the following duly prescribed, medications:

Medication:	Prescribed by:	Starting date:	End Date:

AND/OR

3. I am currently using, or have used within the last thirty (30) days, the following non-prescription medications or substances for treatment of a health condition:

Medication:	Starting Date:	End Date:

4. I hereby authorize the Chief of Police, Department of Public Safety, or Deputy Chief to contact my health care practitioner(s) specified herein solely for the purpose of confirming that the prescribed medication and/or substances to which I have certified herein was duly prescribed by said health care practitioner(s).

Signed to and Certified by:

\_\_\_\_\_  
(Signature)  
on this \_\_\_\_\_ day of \_\_\_\_\_.