

Labor Contract Between

**THE STATE OF NEBRASKA**

and

**PROTECTIVE SERVICES**

represented by

**FRATERNAL ORDER OF POLICE, NEBRASKA PROTECTIVE  
SERVICES, LODGE 88  
(FOP 88)**

**July 1, 2019 through June 30, 2021**

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## ARTICLE 1 - PREAMBLE

1.1 This Contract made and entered into this 24<sup>th</sup> day of May 2019 at Lincoln, Nebraska, pursuant to the provisions of Chapters 48 and 81, Reissue Revised Statutes of Nebraska, 1943 (R.R.S.) by and between the State of Nebraska (*hereinafter referred to as the Employer*) and the Fraternal Order of Police, Nebraska Protective Services, Lodge 88 (*hereinafter referred to as the Union or FOP 88*), as representative of employees, except as modified by Article 2.2, employed by the State of Nebraska in classes assigned to the following bargaining units as certified by the Nebraska Commission of Industrial Relations (CIR):

### Protective Service (P)

- 1.2 This Contract supersedes and cancels all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein, and together with any letters of understanding executed concurrently (or after) with this Contract constitutes the complete and entire agreement between the parties, and concludes collective bargaining over the issues contained herein.
- 1.3 The parties acknowledge that during the negotiations which resulted in this Contract, each had the right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Contract. Therefore, the Employer and the Union, for the duration of this Contract, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Contract. This Contract may only be amended during its term by the parties' mutual agreement in writing.
- 1.4 The Employer agrees that prior to making any change in terms and conditions of employment which are mandatory subjects of bargaining and not otherwise covered by this Contract, to meet and bargain with the Union in an attempt to reach an agreement. If no agreement is reached, the terms and conditions of employment shall not be altered, unless the Employer has a compelling need to change a term or condition of employment. When the Employer has a compelling need to change a term or condition of employment and no agreement has been reached through bargaining, the Employer may implement the change and the unresolved issue and the parties mutually agree that the matter may be submitted to final and binding arbitration. The losing party shall bear the cost of arbitration. Notwithstanding the above, the Union and the Employer reserve their rights to enforce its rights through the courts or the CIR (Commission of Industrial Relations).
- 1.5 Newly established work rules or amendments to existing work rules shall be reduced to writing and furnished to the Union at least seven calendar days prior to the effective date of the rule. The Employer agrees to only establish or amend work rules in a reasonable manner. For purposes of this Article, work rules are defined as and limited to rules promulgated by the Employer within its discretion which regulate the job related personal conduct of employees. Work rules shall not conflict with the terms of this Contract.

Work rules shall be available, upon request, to bargaining unit employees. Upon request specified work rules will be provided to the Union.

- 1.6 The Employer, the Union, and the employees agree to treat each other professionally and with respect and dignity. Employees will be afforded the right of privacy when being counseled on performance issues.
- 1.7 In the spirit of continuing their harmonious and cooperative relationship, the Employer and the Union agree to implement and exercise the provisions of this contract in a fair and responsible manner.

## ARTICLE 2 - RECOGNITION AND UNION SECURITY

- 2.1 The Employer recognizes the Union as the exclusive collective bargaining agent for employees as certified by the Nebraska Commission of Industrial Relations (CIR) as set forth in Appendix A. The Employer will not during the life of this Agreement bargain with any group of employees or with any other employee organization with respect to terms and conditions of employment covered by this Agreement, which are considered to be mandatory subjects of collective bargaining.
- 2.2 The Employer and the Union agree that for purposes of administration, this Contract shall pertain to bargaining unit employees who occupy the position class titles set forth specifically in Appendix A, except for temporary employees and employees occupying positions identified as supervisory or confidential either as agreed upon by the Employer and the Union or as identified at any time by the Commission of Industrial Relations or court of proper jurisdiction.
- 2.3 In accordance with section 48-837 of the Nebraska State Statutes, employees shall have the right to join and participate in, or to refrain from joining and participating in the Union. There shall be no interference, restraint, or coercion by the Employer or the Union against any employee because of membership or non-membership in the Union, or for exercising their rights under this Contract.
- 2.4 The Employer shall notify the Union of newly created classes and classification title changes on a quarterly basis. If the parties are unable to reach agreement as to the inclusion or exclusion of new classifications from the bargaining unit, they shall submit such classifications to the CIR for unit clarification. Newly created titles shall be assigned to the appropriate bargaining unit by the State Personnel Division. The parties shall meet to negotiate placement of these titles if the Union does not agree with the State Personnel Division's placement. All new classification titles and specifications shall be supplied to the Union as soon as finalized, but no later than ten days prior to the meeting.
- 2.5 **Dues Deduction:** Upon receipt of a voluntary written individual authorization order from any of its employees covered by this Contract on forms provided by the Union, the Employer will deduct from the pay due such employee those dues required as the employee's membership dues in the Union. Employees may withdraw membership from the Union only during the month of June each year by notifying the Union in writing of



their withdrawal. The Union will place the names of those withdrawing on the list of employees as described in 2.7 below.

- 2.6 Such order shall be effective only as to membership dues becoming due after the date of delivery of such authorization to the payroll office of the employing unit. Deductions shall be made only when the employee has sufficient earnings to cover deductions for social security, federal taxes, state taxes, retirement, health insurance, and life insurance. Deductions shall be in such amount as shall be certified to the Employer in writing by the authorized representative of the Union.
- 2.7 Upon receipt of a list of employees for whom dues deductions are to stop, certified to the Employer in writing by an authorized representative of the Union, the Employer will discontinue the automatic payroll dues deductions from such employees.
- 2.8 No other employee labor organization shall be granted or allowed to maintain payroll deduction for employees covered by this Contract.
- 2.9 The Employer shall submit to the Union a monthly "Agency Deduction Report" listing employees with Union dues deductions both in paper and in a mutually agreeable electronic format.
- 2.10 The Union shall indemnify the Employer and hold it harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any action taken by the Employer for the purpose of complying with the provisions of section 2.5 through 2.9, and section 2.14.
- 2.11 **Bulletin Boards:** The Union shall be afforded space on accessible existing and new bulletin boards mutually agreed by the parties to be used for posting of general employee information.
- 2.12 Union Stewards, as defined in Article 6, whose names have been certified to the Employer in writing, may, during non-work time, post Union notices on such bulletin boards. Except in locations where stewards have been designated, the Union may also certify to the Employer certain bargaining unit employees, who shall be called Bulletin Board Representatives. Bulletin Board Representatives shall perform their sole function of posting Union information on bulletin boards on non-work time. Material to be placed on the bulletin boards shall be limited to notices of the Union's recreational, educational and social affairs, notices of Union elections, appointments and results of Union elections and notices of Union meetings. Notices not to exceed one typewritten page, meeting the criteria to be placed on bulletin boards, will be placed on a state authorized e-mail system, and sent to the appropriate users by the Employee Relations Division, when requested by the union. In situations where the notice is to be sent to a restricted group of users, the union will supply the Employee Relations Division with a list of such users and their State authorized e-mail address. No more than two notices per week shall be published in this manner unless additional notices are approved by the Employee Relations Division. Employees may not respond to notices via any state authorized e-mail system. All notices other than those indicated above, shall be presented to the Agency Head and/or his/her Local Designee for approval. The agency shall provide

notice of decision within one work day. Such notices, if approved, shall indicate both posting and removal dates. The Union will be responsible for posting and removal of all Union notices.

- 2.13 At the beginning of each quarter, the State will provide the Union with a mutually agreeable electronic file, at the Union's expense, containing the names, home mailing addresses, agencies, class titles, class codes, and work sites of all newly hired, transferred, demoted or promoted employees in the bargaining units. The Union will keep this list confidential.
- 2.14 At the beginning of each fiscal year, and thereafter on a monthly basis throughout the period of this agreement, the State shall provide the Union with an electronic document, at the Union's expense, containing names, home mailing addresses, agencies, class codes, class titles, pay grades, annual salaries, work sites (by city and building), dates employed, and bargaining unit assignment of each employee in the bargaining units. At the beginning of each fiscal year the above detailed report shall also be provided in hard copy to the Union. The Union will keep this list confidential

### **ARTICLE 3 - MANAGEMENT RIGHTS**

- 3.1 It is understood and agreed that the Employer possesses the right to operate and direct the employees of the State and its various agencies to the extent that such rights do not violate its legal authority, and to the extent such rights are not modified by this Contract. These rights include, but are not limited to:
  - 3.2 The right to determine, effectuate and implement the State's budget, mission, goals, and objectives.
  - 3.3 The right to manage and supervise all operations and functions of the State.
  - 3.4 The right to establish, allocate, schedule, assign, modify, change and discontinue Agency operations, work shifts, and working hours.
  - 3.5 The right to establish, allocate, assign, or modify an employee's duties and responsibilities and the resulting classification of such duties and responsibilities.
  - 3.6 The right to establish, modify, change and discontinue work standards.
  - 3.7 The right to hire, examine, promote, train, transfer, assign, and retain employees; suspend, demote, discharge or take other disciplinary action against employees for just cause; and to relieve employees from duties due to lack of work or funds, or the employee's inability to perform his/her assigned duties after the Employer has attempted to accommodate the employee's disability.
  - 3.8 The right to increase, reduce, change, modify and alter the composition and site of the work force.

- 3.9 The right to determine, and implement policies for the selection, training, and promotion of employees.
- 3.10 The right to create, establish, change, modify and discontinue any State function, operation or division.
- 3.11 The right to establish, implement, modify and change financial policies, accounting procedures, contract for goods and/or services, public relations and procedures and policies for the safety, health and protection of property, personnel or client interests.
- 3.12 The right to adopt, modify, change, enforce, or discontinue any existing rules, regulations, procedures or policies.
- 3.13 The right to determine and enforce employee quality and quantity standards.
- 3.14 The right to introduce new or improved methods, equipment, technology or facilities.
- 3.15 The right to develop and implement alcohol and drug testing programs.

PURPOSE: To protect the personal safety of employees, State property and the general public. Employees shall not be permitted to perform their duties or enter upon the premises of the Employer while under the influence of alcohol, the illegal use of drugs, and/or controlled substances.

It is not the intent of the Employer to take disciplinary action as a direct consequence of receiving a confirmed positive result. However, nothing prohibits the employee from being subject to disciplinary action for inappropriate or illegal acts performed while under the influence of the illegal use of a controlled substance while on duty. The Employer may take disciplinary action only for just cause, with consideration to mitigating information, as a result of the employee's inability to perform required duties. The employee retains his/her grievance rights provided for in the FOP 88 Labor Agreement.

APPLICABILITY: All employees, however, employees with commercial driver's licenses will be subject to testing as specified by the Federal Department of Transportation. Testing to be conducted by the Employer or contracted licensed vendor hired by the Employer.

The following situations/conditions may require tests to be conducted of employees. For employees, failure or refusal to submit to such tests may result in disciplinary action:

1. Pre-employment
2. Work accident
3. Critical incident
4. Commercial Drivers (CD)
5. Return to duty
6. Reasonable Suspicion
7. There shall be no random testing

- A. Rights and Privacy: The rights and privacy of employees shall be safeguarded to the maximum extent possible. All records and/or results generated in compliance with this procedure will be confidential. Under no circumstances shall the employee be required to provide their social security numbers or home address to the drug collection site. All information and reports concerning such incidents are to be maintained in the strictest of confidence ensuring that the alleged substance abuse is not discussed at or outside the workplace. Any breach of confidentiality is subject to severe disciplinary actions.
- B. Methods of Testing:
- a. Drug Analysis - Gas Chromatography/Mass Spectrometry urinalysis testing shall be the only method of testing.
  - b. Alcohol Analysis - Gas Chromatography blood testing shall be the only method of testing.
- C. Chain of Custody: The urine and/or blood sample shall be documented. If needed, a second test is permissible, but will be done from the original sample. If the test results are positive, and the employee wants to challenge the test results, it will be at the Employer's expense. If the results of the re-test are negative, the test results will be considered negative. At any point in the chain of custody, if any of the following occurs, the employee shall not be re-tested and the sample shall be void (any discrepancy, any lapse of unknown time or an illegible signature of an unidentifiable person).
- D. Controlled Substances Tested: THC, cocaine, opiates, phencyclidine (PCP), amphetamines/methamphetamine, benzodiazepine, barbiturates, LSD, and any derivatives from these controlled substances.
- E. Alcohol Testing: A positive test shall be considered a level of .02 or above.
- F. Work Time for Test Administration of Drug Testing: The employee shall be considered on work time pertaining to the administration of alcohol/drug testing, including overtime. All time used under this testing process shall be considered time worked for purposes of wages and overtime; and all testing costs shall be borne by the Employer. Upon request, an employee may have an available employee representative present if being requested to undergo an alcohol/drug test.
- G. Reports/Documentation: Reports shall list all facts being considered, including circumstances leading up to the test. If disciplinary action is pursued, then reports and/or information supporting reasonable suspicion shall be made available to the employee. Should a false accusation be made that an employee is suspected of substance abuse, the accuser shall be subject to disciplinary action.
- H. Employee's Opportunity to Discuss Results of a Positive Test: An employee has the opportunity to discuss the positive results.
- I. Employer/Employee Options to Positive Test Results: Employees may be allowed a leave of absence for treatment on an inpatient or outpatient basis. Employees participating in rehabilitation programs shall be entitled to use their accumulated vacation, holiday, comp time, and other accrued leave time. Nothing herein shall be

construed to diminish any rights which may apply under the ADA, FMLA, or other relevant laws.

The Employer shall make reasonable efforts to reassign employees who are participating in an outpatient rehabilitation program to duties within their job description or temporarily reassign to another position for which he/she is qualified, until the employee is able to return to regularly assigned duties, with such return subject to the employee following the rehabilitation treatment program.

Definitions:

1. Commercial Drivers (CD) Testing: Employees required to hold a Commercial Driver's License (CDL) are subject to the Federal Department of Transportation Guidelines.
2. Critical Incident Testing occurs when actions of an employee may have caused serious physical injury or death of any person(s); and /or damage to State property or public property.
3. Work Accident Testing occurs when an employee is involved in an accident where the employee, another employee, or a person in the public is injured; and/or State property or public property is damaged while the employee is on duty.
4. Return to Duty Alcohol/Drug Testing occurs when an employee has been tested for alcohol or drugs with positive results, that employee will need to submit to testing prior to returning to work.
5. Follow Up Drug Testing – Upon request, an employee, who has a verified positive result for a controlled substance listed in the 'Controlled Substance Tested' section, will need to submit to follow up testing. The Employer shall have the right to follow up testing once within the following six months from the date of employee's last positive test results.
6. Pre-employment Testing: The Employer has the right to test for any drug by any method of the Employer's choosing to any person not employed by the State of Nebraska.

(Department of Correctional Services employees covered by this Contract see Appendix M for alcohol and drug testing provisions.)

(Nebraska State Patrol employees covered by this Contract see Appendix F for alcohol and drug testing provisions.)

**ARTICLE 4 - GRIEVANCE PROCEDURE**

- 4.1 A grievance is a written complaint alleging a violation involving the application and interpretation of the provisions of this labor contract. 4.2 A grievance shall contain a statement of the grievance by indicating the issue involved, the relief sought, the date the

incident or violation took place, if known, and the specific section or sections of the Contract involved. The grievance and all related documents from this point forward at all steps shall be presented by hand delivery, by facsimile, by a mutually agreeable electronic format, or through the U. S. Postal Service to the Agency Head and/or his/her Designee and will be typed or printed legibly (on forms mutually agreed upon by the Employer and the Union, and **furnished by the Union**). The grievance form will state the name of the employee(s) authorizing the filing of the grievance and all grievances shall be signed by at least one aggrieved employee. An aggrieved employee shall have the right to a Union Representative appointed by the Union. Nothing contained herein shall prevent an aggrieved employee from filing a grievance on behalf of a class of similarly situated employees.

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

- 4.2 A grievance shall contain a statement of the grievance by indicating the issue involved, the relief sought, the date the incident or violation took place, if known, and the specific section or sections of the Contract involved. The grievance and all related documents from this point forward at all steps shall be presented by hand delivery, by facsimile, by a mutually agreeable electronic format, or through the U. S. Postal Service to the Agency Head and/or his/her Designee and will be typed or printed legibly (on forms mutually agreed upon by the Employer and the Union, and **furnished by the Union**). The grievance form will state the name of the employee(s) authorizing the filing of the grievance and all grievances shall be signed by at least one aggrieved employee. An aggrieved employee shall have the right to a Union Representative appointed by the Union. Nothing contained herein shall prevent an aggrieved employee from filing a grievance on behalf of a class of similarly situated employees.
- 4.3 Any bargaining unit employee shall have the right to meet and resolve his/her individual complaint with the Employer.
- 4.4 Failure to file a grievance at either of the two steps within the established time limits shall cause the employee to forfeit grievance rights on the issue in question unless the Employer, in its discretion, extends the time limit. Should an employee fail to properly file a grievance form, the Agency Head and/or his/her Designee shall notify grievant of such failure and stay the time limit for filing a grievance for no more than two additional work days beyond the day the Agency Head and/or his/her Designee informed the employee that the grievance had been improperly filed. Failure to answer a grievance shall be deemed a denial of the relief requested and the grievant may forward the grievance to the next step.
- 4.5 **STEP 1.** Within fifteen workdays of the occurrence of the grieved action (or from the day the employee should have known about the action) the employee shall present a formal written grievance (on the grievance form) to Agency Head and/or his/her Designee.
- 4.6 The Agency Head or Designee shall confer, unless the employee is unavailable, with the grievant either in person or by telephone, and issue a decision within fifteen work days of receipt of the grievance. Telephone conferences shall only be conducted by mutual agreement of the parties.



- 4.7 **STEP 2.** Within fifteen workdays of receipt of the decision in Step 1, the grievant may appeal said decision through the Administrator of the DAS - Employee Relations Division, at which time the grievant will also provide a notice to the agency involved, of their Step 2 appeal. Delivery of the notice by facsimile shall be valid. At the time said appeal is filed, the grievant and/or representative and the Administrator of the DAS Employee Relations Division may mutually agree to submit the dispute to voluntary binding arbitration otherwise the dispute shall be submitted to the State Personnel Board as established by Neb. Rev. Stat. Sections 81-1318 - 1319. The Administrator of the DAS Employee Relations Division retains the discretion to order that individual cases be processed through the State Personnel Board procedure.
- 4.7.1 Cases in which the grievant chooses not to participate in voluntary binding arbitration shall be processed through the State Personnel Board procedure.
- 4.7.2 **MINI HEARING PROCESS.** When an appeal has been submitted to the Administrator of the DAS Employee Relations Division, and before a hearing officer/arbitrator is appointed, the Administrator of the DAS Employee Relations Division or his/her designee may confer with the Union representative, or grievant, if the grievant chooses not to be represented by FOP 88 or any other representative, and the Agency representative to discuss and attempt to informally resolve the grievance. Attempting to resolve the grievance does not mean that a conference/hearing must be held in all cases and that written narratives must be filed. The Administrator of the Employee Relations Division or his/her designee, may, prior to any conference or hearing being held, use telephone conferences, in person meetings, or written communications, as a means to gather information and to propose settlements to the parties. Any of these may be ex parte. Should the parties agree to a settlement prior to a conference/hearing being held, a note, signed by the parties, will be placed in the file indicating that the matter has been resolved. The note will provide a brief outline of the settlement. In cases where the grievant is not represented by the union, a union representative may attend the hearing and observe. A copy of the written decision shall be sent to the union. Cases pending at the second step which have not been assigned to a hearing officer or set for hearing shall proceed through this process. This conference (mini-hearing) shall be informal and the rules of evidence shall not apply. All exhibits that the Agency or Grievant want the Administrator of the DAS Employee Relations Division/Designee to consider must be received by the DAS Employee Relations Division and the opposing party a minimum of three days before the mini-hearing. If either party does not comply with this time limit, the Administrator of the DAS Employee Relations Division/Designee may impose sanctions. Neither party may be represented by anyone licensed (active or inactive) to practice law in the State of Nebraska at this conference.
- 4.7.3 The Administrator of the DAS Employee Relations Division or his/her designee may request a conference with the parties to discuss resolution of the grievance and shall have the authority to interview witnesses or require documents and other items to be produced prior to the conference. In cases involving discipline, the agency shall present its case first and in all other cases the grievant shall present his/her case first. However, the intent of the parties is that the matter be considered at this step in an informal manner and be resolved as expeditiously as possible.

- 4.7.4 After the conference and a review of the grievance and other documents submitted by the parties, the Administrator of the DAS Employee Relations Division or his/her designee shall issue a written decision to the parties to reverse, modify or uphold the answer made by the Agency Head at Step 1. This decision shall be issued within 20 workdays of the conference and shall include a description of the events giving rise to the grievance and the rationale upon which the decision is made. If a written decision is not rendered within 20 workdays, either party may request the grievance be heard before the hearing officer/arbitrator, as appropriate. This decision shall not constitute a part of the appeal record if the matter is heard by an arbitrator or a hearing officer.
- 4.7.5 If either party is not satisfied with the decision made by the Administrator of the DAS Employee Relations Division or his/her designee, that party shall give notice that the appeal be heard by a hearing officer/arbitrator, depending upon which process the grievant has chosen or is required to follow, by filing a notice with the Administrator of the DAS Employee Relations Division in the office of the Employee Relations Division within 7 workdays of receipt of the decision from the Administrator of the DAS Employee Relations Division or his/her designee.
- 4.7.6 If notice is not received within the prescribed time frames, the decision of the Administrator of the DAS Employee Relations Division or his/her designee shall be considered final.
- 4.7.7 If a party appeals a grievance decision to the second step and fails to pursue the matter through the process, due to any of the following reasons: refuses or neglects to choose an arbitrator or hearing officer; refuses or neglects to sign the documents indicating the choice of hearing officer or arbitrator; or refuses or neglects to sign the documents promising payment to the hearing officer or arbitrator, the Administrator of the DAS Employee Relations Division shall notify such party, by first class U.S. Mail, of the omission and that if it is not corrected within 45 calendar days from the date of the letter, the grievance appeal shall be dismissed. If the omission is not corrected within 45 calendar days then the Administrator of the DAS Employee Relations Division shall dismiss the case.
- 4.7.8 **Voluntary and Binding Arbitration:** If the grievant chooses to submit the appeal to voluntary binding arbitration, he/she shall sign a waiver indicating he/she acknowledges that the decision of the arbitrator is final, except as provided in the Uniform Arbitration Act, and cannot be appealed. If the waiver is not filed within ten working days of the appeal being filed at Step 2, it shall be presumed that the grievant does not wish to participate in voluntary binding arbitration, and the appeal shall be processed through the State Personnel Board hearing process.
- 4.7.9 The arbitrator's scope of review shall be to determine whether or not term(s) of this Contract has/have been violated, and whether the Agency's action was taken in good faith and for cause. Arbitration hearings shall be informal and the rules of evidence shall not apply. The parties may be represented by attorneys in arbitration hearings. In cases involving discipline, the agency shall present its case first, and in all other cases the grievant shall present his/her case first. The decision of the arbitrator shall be final and

may not be appealed. The arbitrator shall decide the grievance in question based upon the issues presented in the written grievance filed pursuant to the grievance procedure. The arbitrator may interpret relevant provisions of this Contract and apply them to the particular case presented to him/her, but the arbitrator shall have no authority to add to, subtract from, or in any way modify the terms of this Contract or any agreements made supplementary hereto. The arbitrator shall have the authority to order reinstatement and to award back pay. The fee and expenses of an arbitrator employed by the Administrator of the DAS Employee Relations Division shall be borne equally by the parties. Arbitrators shall be selected from lists developed and mutually agreed upon by the parties. If the parties cannot agree upon an arbitrator, a method of alternate striking of names shall be employed.

- 4.7.10 The Administrator of the DAS Employee Relations Division/designee shall have the authority to set time limitations for: the length of time within which an arbitrator must be chosen; the amount of time the parties will have to present their case (although each party will receive the same amount of time); the time within which a case must be heard after an arbitrator is appointed; the length of time that will be allowed for the parties to submit post hearing briefs; and the period of time after a hearing within which the arbitrator must enter his/her decision. Post hearing briefs shall not be allowed in any case unless the parties and the arbitrator are all in agreement as to the need for such briefs.
- 4.7.11 The decision of the arbitrator shall be made in writing within 60 calendar days of the conclusion of the hearing and shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding and the DAS Employee Relations Division, shall receive a copy of the decision by first class U.S. Mail. The Arbitrator's decision will become public record upon submittal to the parties. If the arbitrator does not render a decision within 60 calendar days from the date the arbitration hearing concludes (the last day of the hearing or the date the last brief was received, whichever is later), a penalty of \$50 per day will be imposed and deducted from the arbitrator's fee for each day over 60 calendar days the decision is late, until the decision is received. This penalty may only be waived upon mutual agreement of the parties and the Administrator of the DAS Employee Relations Division.
- 4.7.12 **Hearing Officer/State Personnel Board Hearing:** The Board's scope of review shall be to determine whether or not term(s) of this Contract has/have been violated, and whether the Agency's action was taken in good faith and for cause. The Board shall decide the grievance in question based upon the issues presented in the written grievance filed pursuant to the grievance procedure. The Board may interpret relevant provisions of this Contract and apply them to the particular case presented to it, but the Board shall have no authority to add to, subtract from, or in any way modify the terms of this Contract or any agreements made supplementary hereto. The Board shall have the authority to order reinstatement and to award back pay. The fee and expenses of any hearing officer employed by the State Personnel Board shall be borne equally by the parties. In cases involving discipline, the agency shall present its case first and in all other cases the grievant shall present his/her case first. Hearing officers shall be selected from lists developed and mutually agreed upon by the parties. If the parties cannot agree upon a hearing officer, a method of alternate striking of names shall be employed.

- 4.7.13 The Administrator of the DAS Employee Relations Division/designee shall have the authority to set time limitations for: the length of time within which a hearing officer must be chosen; the amount of time the parties will have to present their case (although each party will receive the same amount of time); the time within which a case must be heard after a hearing officer is appointed; the length of time that will be allowed for the parties to submit post hearing briefs; and the period of time after a hearing within which the hearing officer must enter his/her decision. Post hearing briefs shall not be allowed in any case unless the parties and the hearing officer are all in agreement as to the need for such briefs. The recommended decision of the hearing officer shall be made in writing within 60 calendar days of the conclusion of the hearing and shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. The DAS Employee Relations Division and FOP 88, shall receive a copy of the decision by first class U.S. Mail. If the hearing officer does not render a recommended decision within 60 calendar days from the date the appeal hearing concludes (the last day of the hearing or the date the last brief was received, whichever is later), a penalty of \$50 per day will be imposed and deducted from the hearing officer's fee for each day over 60 calendar days the recommended decision is late, until the recommended decision is received. This penalty may only be waived upon mutual agreement of the parties and the Administrator of the DAS Employee Relations Division.
- 4.7.14 If either the grievant or the involved agency should choose to appeal the decision of the Personnel Board, the appeal shall be brought pursuant to the Nebraska Administrative Procedure Act.
- 4.8 Any meeting held pursuant to the grievance procedure may be taped if the parties to said grievance mutually agree to the taping.
- 4.9 Both parties must provide the other party and the arbitrator/hearing officer with a listing of all exhibits to be introduced at the hearing, a copy of each exhibit and a listing of individuals that the party plans to call as a witness in the arbitration/hearing five calendar days prior to the hearing.
- 4.10 **Discovery:** At any stage after a grievance is put into writing, the employee and/or the Agency has the right to request discovery relevant to the grievance. The employee and/or the Agency may take the deposition of any witnesses or the other party and may make requests for admissions, documents or interrogatories which are relevant to the grievance. Discovery requests not made pursuant to a timely and properly filed grievance will be returned to the requesting party without action, other than a statement of the reason for such return. In matters where subpoenas are requested prior to the matter being filed at the second step, the Employee Relations Administrator will have the authority to issue subpoenas.
- 4.11 Such requests and/or notice shall be addressed to the party from which the discovery is sought. Only discovery requests which are relevant or would lead to relevant evidence for the grievance will be granted; however, in no case will discovery be granted which seeks evidence which is recognized as privileged by the Courts of this State.

- 4.12 Discovery requests must be presented to the designated human resources representative/personnel contact and will be typed or printed legibly (on a form mutually agreed upon by the Employer and the Union). The form will note that objections to the discovery request(s) must be filed within 10 workdays of receipt, otherwise, information sought in the discovery must be provided within 20 workdays of receipt of request.
- 4.13 Either party may object to discovery requests. Objections to such requests must be made, in writing, to the Administrator of the DAS Employee Relations Division within ten workdays of receipt of the request. The Administrator of the DAS Employee Relations Division, or his/her designee, shall meet with the representative of the employee (or with the employee if he/she is unrepresented) and a representative of the Agency in an attempt to reach agreement on the objection to the discovery request. Should the parties be unable to resolve the objection, the Administrator of the DAS Employee Relations Division or his/her designee shall enter a written decision as to whether the objection shall be granted or denied. Either party has 15 workdays to comply/respond to a Decision/Order issued by the Administrator of the DAS Employee Relations Division, or an arbitrator, on an Objection to Discovery, unless the parties mutually agree to another date. If either party does not agree with the DAS Employee Relations Division Administrator's decision, such decision may be appealed to the arbitrator/hearing officer level within five work days of receiving the DAS Employee Relations Division Administrator's decision, and the matter will be heard by the arbitrator/hearing officer. If an arbitrator/hearing officer has not been appointed, the parties will choose one in an expeditious manner so that the objection to discovery may be resolved.

If the grievance is at Step 2, when the objection to discovery is made, and a hearing officer/arbitrator has already been appointed or the appeal is already scheduled to be heard by the State Personnel Board (Board), then the objections to discovery shall be made to the hearing officer or the Board/arbitrator, as appropriate, and the hearing officer or Board/arbitrator shall consider the matter and issue a decision by the same process and within the same time limits set out above for matters where the objection is submitted to the Administrator of the DAS Employee Relations Division.

Notwithstanding the above provisions, when an objection to discovery is made concerning the release of: employment applications, scoring devices, rankings of applicants, lists of criteria considered in filling a position, or applicant scoring sheets, the Administrator of the DAS Employee Relations Division or his/her designee shall have the authority to conduct a hearing and enter an order to resolve such objections. The Administrator of the DAS Employee Relations Division or his/her designee shall also have the authority to issue protective orders.

- 4.14 Within five (5) workdays of receipt of the discovery requests, the requesting party shall notify the answering party of any failure on the part of the answering party to properly respond to the request.
- 4.15 The failure to respond to any discovery requests may result in the answering party being denied the right to introduce the requested evidence during any Appeal hearing or other appropriate sanctions may be imposed.

- 4.16 **Subpoenas** (Hearing Officer/Board). If either party to a grievance hearing before the Personnel Board or designated representative wishes to use any individual as a witness in the presentation of their case, they may request the Personnel Board/hearing officer or a designee, to subpoena the attendance of the witness. Request forms for subpoenas are available in the DAS Employee Relations Division and must be submitted at least 8 calendar days prior to the hearing. Notice of less than eight calendar days shall not guarantee witness attendance. At least four (4) workdays before the scheduled hearing, the requesting party shall notify the other party of the names of any individual(s) who have been subpoenaed as a witness. The requesting party or their representative is responsible to serve the subpoenas on the employee(s) sought to be a witness. The subpoenas are to be served on the employee at least four (4) workdays before the scheduled hearing. The Personnel Board or designated representative may limit the number of witnesses either party may call to testify, considering relevancy of proposed testimony and whether or not it would be repetitious. The cost of serving any subpoenas shall be paid by the requesting party. The parties shall not be required to serve subpoenas by the process set out in statute, but may serve them in person or by first class U.S. mail.
- 4.16.1 **Subpoenas** (Arbitrators). If either party to a grievance hearing before an Arbitrator or designated representative wishes to use any individual as a witness in the presentation of their case, they may request the Arbitrator to subpoena the attendance of the witness. Request forms for subpoenas are available through the arbitrator and must be submitted at least eight (8) calendar days prior to the hearing. Notice of less than eight (8) calendar days shall not guarantee employee attendance. At least four (4) workdays before the scheduled hearing, the requesting party shall notify the other party of the names of any individual(s) who have been subpoenaed as a witness. The requesting party or their representative is responsible to serve the subpoenas on the employee(s) sought to be witnesses. The subpoenas are to be served on the employee at least four (4) workdays before the scheduled hearing. The arbitrator may limit the number of witnesses either party may call to testify, considering relevancy of proposed testimony and whether or not it would be repetitious. The cost of serving any subpoenas shall be paid by the requesting party. The parties shall not be required to serve subpoenas by the process set out in statute, but may serve them in person or by first class U.S. mail.
- 4.16.2 Employees who are subpoenaed to attend an appeal hearing or arbitration shall be granted time off from their assigned duties to appear and all hours in attendance shall be considered work time.
- 4.17 Agencies shall, upon receiving a written request from the grievant or his/her representative, provide to the grievant, at least two (2) workdays prior to the Step 1 meeting, an abstract of the Agency disciplinary records concerning the same or similar offenses and the type of punishment administered. This abstract shall only contain offenses committed by the bargaining unit members. The grievant or his/her representative must request said abstract at least eight work days prior to the second step hearing, and the abstract shall only consist of Agency disciplinary records concerning the same or similar offenses and the type of punishment administered for two years prior to the offense in question. The grievant and/or his/her representative shall only be given one abstract during each grievance process.



- 4.18 In all grievances where the Union is representing an employee, the employer shall not discuss the grievance with the employee without the Union present, unless the meeting is held at the employee's request.
- 4.19 Work days, as referenced in the grievance appeal process, shall refer to days Monday through Friday and exclude all recognized State holidays.

#### **ARTICLE 5 - LAYOFFS AND RESIGNATIONS**

- 5.1 The Agency shall decide when a layoff is necessary, and which classifications and positions will be affected.

Reasonable alternatives will be analyzed, reduced to writing and presented to the Union at the meeting provided for between the agency and the union at Section 5.2 prior to laying off any front line bargaining unit employee(s). These alternatives shall include:

- a. Eliminating unfilled, funded positions.
  - b. Reducing layers of bureaucracy and re-directing resources to the front-line positions.
  - c. Providing re-training/transfer opportunities within the agency.
  - d. Reducing the work force by attrition.
- 5.2 Within three workdays of issuing the layoff notices to affected employees, the Agency shall meet with the Union regarding the layoff. An overall layoff plan shall be provided to the Union at least five work days prior to the meeting between the Union and the Agency. The Union agrees to keep such advance information confidential until affected employees receive layoff notice from the Agency.
- 5.3 Each employee affected by a layoff shall be provided as much advance written notice as feasible, but shall not be provided notice less than fifteen workdays prior to the effective date of the layoff except in circumstances beyond the control of the Agency, such as: revenue shortfalls, loss of federal funds, and natural disasters.
- 5.4 The layoff notice shall be provided to affected employees fifteen workdays prior to the date of layoff, and shall at a minimum include:
- a. the reason for the layoff;
  - b. the effective date of layoff;
  - c. the seniority list of bargaining unit members affected; and
  - d. bumping rights.
- 5.5 When a layoff occurs the following rules shall apply:
- a. The Agency shall identify the affected classifications, positions, and work locations, and shall establish bumping rights, which are limited by facility, and/or geographical area, and/or bargaining unit, and/or by Division and/or by total Agency in order to provide the most efficient continued operation of the Agency. Such bumping limitations must be specifically defined and pre-set in the Agency layoff plan. If no

other options exist, then under Section 5.6.c.6 and 5.6.c.7 the employee may bump agencywide.

- b. The order of layoff will be based on service anniversary date as adjusted for leaves of absence, layoffs, suspensions, unpaid leaves of more than 14 calendar days, except for military leave. Time spent as an intermittent or temporary employee is not counted. If both employees have the same service anniversary date then the tie shall be broken by lot.
- c. If bumping to an occupied position, the person being displaced must be the least senior employee in that classification consistent with the identified bumping limitations at Section 5.5.a.
- d. Bumping to a position assigned to a classification with a higher minimum rate of pay is not allowed unless the employee actually performed the duties of the higher level position and was reclassified to a position assigned to a classification with a lower rate of pay within the previous twenty-four months for other than disciplinary or voluntary reasons.
- e. Bumping shall not take place between agencies.
- f. Bumping shall be limited to positions covered by this contract except as determined otherwise by the Agency Head and/or his/her Designee.
- g. Non-bargaining unit employees shall not bump into positions in the bargaining unit. Employees not covered by these bargaining units who are subject to layoff due to an agency reorganization may fill vacant positions covered by this contract, only after these vacant positions are offered to bargaining unit employees subject to layoff.
- h. The agency plan may not layoff permanent employees in the affected classification(s) in the affected geographical area until all temporary employees, with the same funding source, within that classification and within 25 miles of the worksite have been released.

5.6 Subject to the limitations of the agency layoff plan, the rights of the laid off employee shall be in the following sequential order:

- a. If there is a vacant position in the same classification within 25 miles, the employee shall, if qualified, in order of seniority, transfer to the vacant position. If more than one vacancy exists in the same classification, the employee may choose which vacancy they want to fill. In no event shall an employee be required to accept a transfer or reassignment in excess of twenty-five miles from their current work location. Employees may, if qualified, voluntarily accept a vacant position of the same classification more than 25 miles away.
- b. In lieu of bumping, an employee may transfer to a vacant position of the same or lower minimum rate of pay which the employee is qualified to hold. If more than one vacancy exists in the same classification, the employee may choose which vacancy

they want to fill. Affected bargaining unit employees with the highest seniority shall have first choice. The salary of the employee selecting transfer shall be set in accordance with section 5.7 of this Article. If two or more laid off employees have the same service anniversary date and elect to transfer to the same vacant position, this tie shall be broken by lot.

- c. In order to provide the most efficient continued operation of the Agency, employees occupying positions designated for layoff and who elect to exercise his/her bumping rights shall, except in situations where specific job related factors are involved, bump employees with the least seniority in the following sequence:
  1. positions of the same classification; In any agency when two or more employees of the same classification are being laid off concurrently, the employee with the most state seniority shall have the first choice of the positions eligible to be bumped into, however, no employee shall be allowed to bump a more senior employee. The positions eligible to be bumped into shall equal the number of positions of the same classification in the agency which will remain occupied, or the total number of positions being reduced, whichever is the smaller number. The positions eligible to be bumped shall be the ones occupied by employees with the least state seniority.
  2. positions within the same classification series assigned to a classification with a lower minimum rate of pay;
  3. positions within classifications the employee occupied within the previous 24 months of an equivalent or lower minimum rate of pay;
  4. positions within the same classification series as the employee occupied within the previous 24 months with a lower minimum rate of pay.
  5. positions assigned to a classification with a higher minimum rate of pay if the employee actually performed the duties of the higher level position and was reclassified to a position assigned to a classification with a lower minimum rate of pay within the previous 24 months for other than disciplinary or voluntary reasons.
  6. positions of the same classification at any Agency location occupied by an employee with the least seniority in that classification.
  7. positions of a lower classification in the same series at any Agency location occupied by an employee with the least seniority in that classification series.
  8. previously held positions in other agencies within the last 24 months if the employee's duties and responsibilities were reassigned from one agency to another agency.
- d. Agencies shall provide employees occupying positions designated for layoff seven calendar days to respond to bumping options.

- e. Employees who are bumped from their positions shall be able to exercise their rights as outlined in Section 5.6. The seniority of an employee shall be based on service anniversary date as defined in 5.5.b.
- 5.7 Employees bumping to a position with a lower minimum rate of pay in lieu of layoff shall, at the discretion of the Agency Head and/or his/her Designee, have their salary reduced in accordance with Section 11.9.
- 5.8 Employees who have retired shall not be eligible for recall. Other employees or former employees who have been laid off are eligible for reinstatement to their previous classification or to a lower classification within the same series for 24 months after layoff. The right of reinstatement to the previous or lower classification with the same series means that any employee laid off shall be offered a vacant position with the same or lower minimum rate of pay in the same series from which he/she was laid off, provided he/she meets the minimum qualifications for the vacancy before a new employee may be hired or current employee promoted.
- 5.9 Any employee laid off shall be offered a position in the classification from which he/she was laid off, provided he/she meets the minimum qualifications for the position before a new employee may be hired for such position by the Agency if such opening becomes available within 24 months of the employee's layoff. If the employee was exempt from the current minimum qualifications for the position before the employee was laid off, the employee shall be exempt from the current minimum qualifications for purposes of recall. Employees or former employees declining reinstatement to a position of a lower classification within the same series shall be given the opportunity to be reinstated to a position of their previous classification, if positions become available within the 24 month period.
- 5.10 Former employees who were laid off, or employees who transferred or bumped to another position in lieu of layoff, shall be reinstated in the reverse order from which they were laid off or transferred. The Agency shall maintain a list of laid off employees eligible for reinstatement.

The agency shall place employees on a re-call list for the classification from which they were laid off. Employees may designate that they do not wish to be recalled to positions located at work sites in excess of 25 miles of their original work site. Employees or former employees who decline to be recalled twice to any permanent position in their previous classification and location or not acting to notify the Agency Head and/or his/her Designee of acceptance or refusal shall be removed from the recall list and shall no longer have recall rights. Offers for temporary employment to their previous classification/location shall not be counted towards the two recall limitation requirement.

- 5.11 Those desiring to be reinstated shall, following notification by certified mail or following notification by e-mail for which a return delivery receipt is received, of the availability of a position, notify the Agency Head and/or his/her Designee in writing of the acceptance or refusal of the position within seven calendar days. It is the responsibility of the employee or former employee to inform the Agency of any change in address. Failure to

receive notification of a position's availability because of an address change shall not cause the seven calendar day reply period to be lengthened.

- 5.12 Employees or former employees reinstated within 24 months to a position of their previous classification (held at the time of layoff) shall return at the same distance into the salary range the employee was at when he/she left State employment. Employees reinstated shall not be required to serve an original probationary period, unless this probationary period was not completed prior to layoff. In those instances where the employee was serving a probationary period upon layoff, the probationary period will be completed upon reinstatement.
- 5.13 The service date for reinstated employees shall be adjusted by the number of days in a non-paid status.
- 5.14 Employees reinstated during the 24 month period shall retain all previously accumulated sick leave, except that employees who have previously received payment for one-quarter of their sick leave balance shall start with a zero sick leave balance. Employees eligible for retirement who are laid off shall have the option to defer the payment of one-quarter of their sick leave account for up to 24 months. Should the laid off employee return to state employment within 24 months, the employee's sick leave balance and service date shall be reinstated (minus time in a non-pay status). Should the laid off employee not obtain further state employment at the end of the 24 month period, the agency from which they left shall pay them one-quarter of their sick leave account.
- 5.15 Layoff provisions do not apply to voluntary or involuntary furloughs of less than a total of thirty (30) work days, within a six month period. In cases of involuntary furlough, employees will be furloughed starting with the least senior employees within classification of the affected program area and work unit. In order for this to be implemented, the Governor shall approve all furloughs.
- 5.16 Furlough is defined as placing an employee in a temporary non-duty, non-pay status because of the lack of funds. An intermittent furlough is a furlough action in which the non-duty, non-pay status occurs discontinuously over a period of time (e.g. one work day per month for a six month period) rather than consecutively.
- 5.17 Furloughs shall not adversely affect an employee's health insurance premium contributions and service anniversary date, nor shall leave earnings be prorated as a result of the furlough.
- 5.18 **Resignations.** To resign in good standing, an employee must give written notice to the Agency Head and/or his/her Designee at least ten workdays before separation unless the Agency Head and/or his/her Designee agrees to a shorter period. Employees providing less than ten days written notice prior to separation, may be considered as separated not in good standing.
- 5.19 The Employer agrees that it will not replace current employees, while they are employed by the State, with workfare clients or interns.

- 5.20 **State Re-employment Program.** When filling a position externally, agencies employing positions covered by this labor contract will ensure that priority consideration is given to laid-off State employees who have opted for participation in the State re-employment program. To be eligible, an employee must enroll in the program within 30 days of the effective date of the layoff. In order for a participant in the re-employment pool to receive priority consideration for State employment, the employee must apply for the position in question, which must be at the same or a lower minimum rate of pay than the employee's prior position, observing timeframes and guidelines identified in the job listing. Priority consideration shall mean offering employment to employees when the above criteria is met and the employee meets the minimum qualifications as identified in the job listing.
- 5.21 Employees accepting employment through the program may, at the Agency Head's discretion, be required to serve an original probationary period for any position which is secured utilizing priority consideration of the re-employment pool. The laid off employee shall remain in the State re-employment program until he/she is offered a permanent full-time or part-time position and accepts or declines the position. If the employee accepts the position and then does not complete original probation, the employee shall have the right, within 30 calendar days, to re-enroll in the State re-employment program one additional time. If the employee declines a permanent position after re-enrolling in the program, the employee will no longer be eligible to participate in the program.

## ARTICLE 6 - UNION REPRESENTATIVES

- 6.1 Employees selected by the Union to act as employee representatives shall be known as "stewards." The names of employees selected as officers and stewards, and the names of other official non-employee Union representatives (employees of the Union) who may represent employees shall be certified in writing to the Employer and the Agency involved by the Union on July 1 of each year. The listing shall include the assigned area of Union responsibility for each steward. The Employer and the Agency involved shall be made aware of any changes in the above names and assignments as they occur. Management will be under no obligation to apply the provisions of this Section to any person not on this list.
- 6.2 Stewards shall be reasonably distributed throughout Agencies and shifts to allow proper support for employees. However, no two stewards may actively process the same grievance or any other matter at the same time. At the request of the Union a second non-compensated steward may observe for training purposes.

When there is no agency steward available at the employee's work location, the employee may, upon request, and with the mutual agreement of the agencies involved, be represented by the closest available steward in the employee's agency or a steward from another agency, if the steward from the other agency is closer than the one from the employee's agency.



- 6.3 **Union Staff Activity:** The Employer agrees that non-employee representatives of the Union (Union employees), provided they have been certified in writing to the Employer, and have first obtained permission from the Agency or its designated representatives (permission shall not be unreasonably denied), shall be allowed during working hours on the Employer's premises, with no harassment to:
- a. Post Union notices on designated bulletin board space as prescribed elsewhere in this Article (Stewards and/or Union officers may do so only during non-work time.);
  - b. Meet with employees on non-work time, in non-work areas, including break time in non-work areas;
  - c. Attend meetings scheduled as provided in the grievance procedure of this Contract;
  - d. Consult with the Agency;
  - e. Consult with local Union officers or stewards, after such employees receive permission from the first level of supervision outside the bargaining unit, concerning the enforcement of any provisions of this Contract and be provided a private meeting room, if requested, if available, and shall not be unreasonably denied. Such activities shall not interrupt the work of the Agency.
- 6.4 When requested by an employee, a steward may investigate any alleged grievance in his/her assigned area and assist in its presentation, unless another Union steward is performing this function. The steward shall be allowed up to twelve hours per month of paid work time, which shall include any travel time necessary, and to the extent possible, the use of vacation or compensatory time for this purpose with prior approval of the supervisor. The supervisor shall not unreasonably withhold approval. The steward or Union officer shall notify that supervisor upon return to work. The twelve hours per month is neither transferable nor cumulative, and shall be limited to the steward's normal work week. Stewards may use steward time for discussion of work rules per Section 1.5 with the agency personnel representatives and for management investigatory meetings per Section 10.6.
- 6.5 To the extent possible, all meetings relative to grievances shall be scheduled during or contiguous to the grievant's normal working hours.
- 6.6 Employees may discuss grievances and complaints with stewards for reasonable amounts of time during their regular work shift without loss of pay, providing that the supervisor has authorized the absence. The employee shall notify that supervisor upon return to work.
- 6.7 Union officers and stewards will be granted leave of absence, accrued vacation or compensatory time, election of type of leave up to employee, for up to two workdays in order to attend Union business, subject to the employing agency's determination of reasonableness. In determining whether a State employee's request is reasonable, the employing agency shall consider public safety and business necessity.

- 6.8 Bargaining unit employees who are the authorized delegates of the local Union, to a State FOP or International Union Convention, seminar, or other union activity, will be granted a leave of absence, accrued vacation or compensatory time, election of type of leave up to employee for such purpose, subject to the employing agency's determination of reasonableness. Such leave shall not exceed fourteen calendar days during the term of this Contract. In determining whether a State employee's request is reasonable, the employing agency shall consider public safety and business necessity.
- 6.9 The Employer agrees to include a Union orientation notice in the packet of material provided to new employees, such notice to be supplied voluntarily by the union. Upon a request from the Union, the Employer will provide an opportunity for a Union representative to meet with new employees for up to twenty (20) minutes at the close of the orientation session, or where orientation is not provided, to meet with new employees for up to twenty (20) minutes during the work day, in a non-work space normally used for employee meetings. Attendance by new employees at such meetings shall be voluntary. Stewards may use steward time for orientation when it occurs during their normal work time.
- 6.10 Notwithstanding the above, one employee from each bargaining unit covered by this contract may be granted a one-time leave of absence, as requested in writing by a certified Union official, and when such leave of absence does not cause undue hardship on the agency, to conduct official Union business. Such leave for purposes of this provision shall not exceed one year and shall not be unreasonably denied. Such leave shall not affect the service date.

## ARTICLE 7 - WORK SCHEDULE

- 7.1 **Work Schedules:** Work schedules are defined as an employee's assigned hours, days of the week, days off and shift rotations.

(Department of Health and Human Services employees covered by this Contract see Appendix C for work schedule provisions.)

(Department of Correctional Services employees covered by this Contract see Appendix M for work schedule provisions.)

- 7.2 The Employer shall provide ten work days written notice to the affected employees prior to making changes in their permanent work schedules, except when requested or agreed to by the Employee or in cases of emergency. (An emergency is defined as an unexpected, unforeseen or unanticipated event.) Non-permanent work schedule changes may be made by the Employer in order to respond to emergency staffing needs or in response to employee requests. At an employee's request, the reason for permanent change of schedule will be provided.

(Department of Correctional Services employees covered by this Contract see Appendix M for work schedule provisions.)

- 7.3 **Flex Time:** Agencies shall, where practicable, establish flex time work schedules for their employees. Such flex time work schedules shall guarantee the Employer's ability to provide services, to meet all workload demands as defined by the Employer, and to the extent practicable, meet employees' personal scheduling preferences. Approval of such requests shall not be unreasonably denied.
- 7.4 **Job Sharing:** Job sharing may be allowed by mutual agreement of the Agency Head and/or his/her Designee and the employees involved.
- 7.5 **Meal Periods:** All employees shall be granted an unpaid meal period of at least thirty minutes in duration or at the Employer's discretion, a paid meal period in those situations where qualified relief is not available. Where practicable, the Employer will attempt to schedule the meal period at approximately the middle of each shift. Requests to adjust the schedule for a day which allows employees to work through a meal period may be approved in advance with mutual agreement between the worksite supervisor and bargaining unit employee.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Meal Period provisions.)

- 7.6 **Rest Periods:** All employees shall be granted a fifteen minute rest period during each one-half shift (one half shift shall not be less than four hours). The rest period shall be scheduled at approximately the middle of each one-half shift. The Employer retains the right to respond to emergency situations by not allowing a rest period. Rest periods shall not be cumulative. Unless prior supervisory approval is given, rest periods shall not be taken before one hour after the employee arrives at work, nor one hour before the employee leaves work. Rest periods are considered work time. The provisions of this section may not be used for the purpose of regular and routine denial of rest periods. The employees may discuss union business during rest periods in non-work areas.

(Department of Correctional Services employees covered by this Contract see Appendix M for Rest Period provisions.)

- 7.7 **Shift Differential:** Bargaining unit members on duty and working fifty percent or more of a shift between the hours of 6:00 p.m. and 6:00 a.m. shall receive sixty cents per hour shift differential for all hours worked on that shift.

For employees working 24 hours or longer continuous work periods, shift differential is not applicable.

- 7.7.1 Shift differential for all direct care staff is as follows for the following classifications:

2<sup>nd</sup> and 3<sup>rd</sup> shifts weekdays \$1.00

1<sup>st</sup> shift weekends (Saturday and Sunday) and holidays \$1.25

2<sup>nd</sup> shift weekends (Saturday and Sunday) and holidays \$1.50

3<sup>rd</sup> shift weekends (Friday and Saturday) and holidays \$1.50

Developmental Disabilities Safety and Habilitation Specialist

Mental Health Security Specialist II  
Youth Security Specialist I, II

Food Service Aides, Food Service Assistants, and Food Service Cooks who work between 6:00 p.m. and 6:00 a.m. shall receive shift differential at the second shift rates for all hours worked between those hours. Food Service Aides, Food Service Assistants, and Food Service Cooks who work at least three (3) consecutive hours and have any hours worked between the 6:00 p.m. and 6:00 a.m. time frame shall be guaranteed a minimum of three (3) hours of 2<sup>nd</sup> shift differential pay. For employees who start their shift between 6:00 p.m. and 6:00 a.m. and do not work three (3) consecutive hours, they will be paid 2<sup>nd</sup> shift differential for only the hours worked. As these employees do not work traditional shifts, the employing agency, in consultation with the union, shall designate the assigned shift of each food service position.

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

7.8 **Call-Back Time/Call-In:** Employees eligible for overtime who are called back for duty or called in on the employee's day off will be guaranteed a minimum of two hours at the appropriate rate of pay. This provision shall not be construed so as to provide for additional compensation if the employee is recalled back for duty within the original two hour period, except that employees who are called back to work in excess of two hours will be paid for actual time worked. To qualify for call-in compensation, the time worked cannot be contiguous to the end of an employee's scheduled work shift.

7.9 **On Call/Standby Pay:** Employees eligible for overtime under this Agreement, and required to be on-call/standby status shall be compensated at the rate of 8% of the normal hourly rate of pay for each hour in such on-call/standby status.

On Call/Standby shall be defined as an employee who is not on the Employer's premises, but is on call and waiting for work, and the employee's personal activities are substantially restricted.

7.10 **Travel Time:** Employees who are required by the Employer to report to a work site other than that normally assigned or for the purpose of training, picking up tools, equipment, and/or uniforms and subsequently travel to a second work site, shall be in a paid status for time spent in traveling to and from work sites. Overtime eligible employees away from the work site shall be in a paid time status during times of travel or when performing work related duties.

7.11 **Mileage Reimbursement:** An employee will be reimbursed at the rate per mile set by the IRS for mileage allowance for Employer approved travel in the employee's personal vehicle for work related travel.

7.12 **Meal and Lodging Reimbursement:** Employees who are required to travel shall be compensated for meals and lodging according to what is reasonable and customary given the geographic location, as follows:

- a. Breakfast - When an employee leaves for overnight travel at or before 6:30 a.m., breakfast shall be reimbursed.
- b. Lunch - When an employee leaves for overnight travel at or before 11:00 a.m. or returns from overnight travel at or after 2:00 p.m., the noon meal shall be reimbursed.
- c. Supper - When an employee returns from overnight travel at or after 7:00 p.m., the evening meal shall be reimbursed.
- d. One-Day Travel - Breakfast shall be reimbursed when an employee leaves at or before 6:30 am. Lunch shall not be reimbursed. Supper shall be reimbursed when an employee returns at or after 7:00 pm.

The appropriate record keeping procedure for the proper reporting of travel expenses under this Agreement shall be consistent with the completion of the current State of Nebraska Accounting System Expense Reimbursement Document and the I.R.S. Code. The employee must adequately account, upon request from the Employer, for each separate expense, dates of travel, and the area of travel.

- 7.13 **Governor Appointed Committees:** When the Governor appoints an employee to serve on a committee, board or other body, time spent at meetings, and travel to and from meetings, of the committee, board or other body shall be considered hours worked. The employee shall not be reimbursed for time spent on other activities related to the committee when such time falls outside their normal work schedule.

## ARTICLE 8 - ORIGINAL PROBATIONARY PERIOD

- 8.1 All new hires and rehires shall be required to serve an original probationary period of six months from date of hire and shall be so notified. Employees who transfer from one Agency to another may be required by the Agency Head and/or his/her Designee to serve another original probationary period. An employee shall be removed from original probation status on the day following the end of the original probationary period, unless notified in writing of extension or separation by the Agency Head and/or his/her Designee. When an employment offer is extended to an employee transferring from one Agency to another, the offer shall state whether or not the employee will be placed on original probation in the new position. If the offer provides that the employee will be placed upon original probation, the employee may withdraw from consideration or the employee may negotiate with the Agency to have the original probation requirement waived.
- 8.2 An employee who is transferred (promotion, demotion, lateral move, or move to a lower position) within an Agency or who transfers to another agency while serving an original probationary period may have his/her probationary period extended, or may be required to begin a new original probationary period of not less than six months, at the discretion of the Agency Head and/or his/her Designee.

- 8.3 An Agency Head and/or his/her Designee may extend the original probation of an employee for reasons of performance, transfer, promotion, and leave of absence for a period not to exceed a total of one calendar year from the date of hire or rehire.
- 8.4 The notification of extension shall be in writing and shall include the specific period of extension. In cases of extension for performance reasons the employee shall be provided specific performance improvement requirements.
- 8.5 Employees may be separated at any time during the original probationary period. Two weeks' notice of separation does not have to be given to original probationary employees; however, the Agency Head and/or his/her Designee shall notify the employee in writing of the date the separation is effective. Employees on original probation do not have grievance rights.

**ARTICLE 9 - TRANSFERS, PROMOTIONS, AND FILLING VACANT POSITIONS**

- 9.1 Whenever a vacancy occurs in a position the Employer intends to fill in any bargaining unit, a notice of such vacancy shall be posted on bulletin boards, or electronic bulletin boards where used, normally used for communicating with bargaining unit employees in the Agency or specific facility in which the vacancy exists stating the job title, description, qualifications, shift, designated days off, and work area, date of availability, pay range, and closing date for applications. Exclusions to vacancy posting relating to specific agencies may be mutually agreed to in writing by the parties. Postings will be made in one or more of the following ways: Internal Posting meaning internal within the Agency; State Internal Posting meaning any permanent Classified System employee may apply; or External Posting meaning State and non-State employees may apply. Upon posting applicants may apply for the position in writing for a period of not less than seven calendar days. The Employer shall fill job vacancies using factors of: a) knowledge, experience, and ability; b) any job related tests, c), background/reference checks, d) agency budget/financial considerations, and e) Veteran's preference, which shall be applied consistently among applicants. Where applicants rate substantially the same on such factors, permanent state employee applicants shall be selected, and where two state employee applicants rate substantially the same, the more senior employee shall be selected by using the employee's continuous State service date.

(DHHS employees covered by this Contract see Appendix C for vacancy posting provisions.)

- 9.2 For purposes of this Article, a job will not be considered to have been vacant, if a qualified employee of the Agency is placed in the position, when such placement is the result of one of the situations listed below. Posting of a job opening does not waive the Agency's right to exercise the provisions of this section. Posting of jobs shall not be required when:
  - a. the vacant position is filled by an employee displaced by layoff;
  - b. the vacant position is filled due to the reasonable accommodation of an employee who has a qualifying disability according to the Americans with Disabilities Act;



- c. a position is reclassified and the employee remains in that position;
  - d. the vacant position is filled by a bargaining unit employee receiving an appropriate disciplinary demotion.
  - e. the vacant position is filled as a result of a grievance or litigation settlement, court order, State Personnel Board order, order of the Nebraska Equal Opportunity Commission, or the U.S. Equal Employment Opportunity Commission;
  - f. In job sharing situations when it has been determined by management that positions occupied by two or more employees with part-time status are to be converted to a position with one full time employee, it should be first offered to the most senior employee occupying the position. If declined, management will offer the position to next senior employee and so forth. If all occupants decline full-time status, then the position will be filled through provision of 9.1 and current employees will be displaced.
- 9.3 No employee shall be transferred to a position assigned to a classification with a lower minimum rate of pay with no salary reduction and then promoted to a position assigned to a classification with a minimum rate of pay as high as that of the previously held classification with a salary increase within one year. Employees not selected for transfer or promotion shall be notified. Upon request, employees will be afforded the opportunity to meet and discuss what is needed to qualify for the position in the future.
- 9.3.1 Promotion and transfer of employees shall not change the employee's state seniority date (state seniority date is defined as the employee's service anniversary date as adjusted for leaves of absence, layoffs, suspensions, or unpaid leaves, of more than 14 calendar days).
- 9.4 **Promotional Probation:** A promoted employee may be placed on probation for a period of up to six months to determine his/her ability to perform the job (this is not another original probationary period when the promotion occurs within the same agency). An Agency Head and/or his/her Designee may extend the non-original probation of a promoted employee for reasons of performance, transfer, and leave of absence for a period not to exceed a total of one calendar year from the date of hire, rehire, transfer, or return from a leave of absence. If the promoted employee is not performing adequately in the new position during the promotional probationary period, the employee shall, if the position is still available, be reverted to the employee's previous position and pay rate or apply for any open position for which he/she is qualified to hold. The agency shall not be required to utilize the disciplinary process to revert an employee back to the employee's former position or a vacant position assigned to a classification having a minimum rate of pay equivalent to the former position. The Agency shall document efforts to provide the promoted employee with performance improvement counseling when utilizing this provision. Every reasonable effort shall be made to retain said employee.
- 9.5 **Transfers:** Except in cases where there are specific job knowledge elements/factors (business necessity) requiring the Employer to permanently transfer a specific employee, no employee shall be permanently transferred by the Agency unless volunteers are

solicited from the affected work area and/or shift assignment. If two or more employees volunteer, the one with the most classification seniority, in the agency, shall be transferred. If no employee volunteers for permanent transfer, the Agency shall permanently transfer the employee with the least seniority in said classification from the affected work area and/or shift assignment. In the event of a tie in classification seniority, the employee with the least state seniority shall be transferred.

No employee shall, as a result of Agency action, suffer a loss in wages through transfer to a position of the same classification.

Permanent transfers shall be those excluding transfer to positions due to sickness, authorized leave or emergencies. It is understood that affected work areas shall not be unreasonably defined. Employees who do not accept a transfer of more than 50 miles from their current work location will be laid off under the provisions of Article 5.

9.6 **Moving Allowance:** With the prior approval of the Agency Head and/or his/her Designee concerning reimbursable costs, employees involuntarily transferred to a new job location fifty miles or more from the employee's old residence than the old residence was from the old job location shall be reimbursed for receipted moving expenses, as provided in the IRS guidelines. For the purposes of this section, promotions and the exercise of any bumping option shall be considered as a voluntary transfer. Notwithstanding the above, at the discretion of the Agency Head and/or his/her Designee, employees may be reimbursed for moving expenses.

9.6.1 If an employee, whose moving expenses (all or a part) have been paid, resigns within one calendar year of the move, the Agency Head and/or his/her Designee may require the employee to reimburse the Agency for a portion of the moving expenses, based on the length of time the employee worked after the move.

9.6.2 Employees who have been involuntarily transferred or have exercised bumping rights to another geographical location of the State shall be allowed up to twenty-four hours of time off with pay for the purpose of attending to their personal affairs in their present location and establishing their personal affairs in their new location. Such time off from work must be approved in advance by the Agency Head and/or his/her Designee.

#### **ARTICLE 10 - DISCIPLINE OR INVESTIGATORY SUSPENSION**

10.1 An employee shall be disciplined in accordance with this labor contract. Discipline will be based upon just cause and will in no case be effective until the employee has received written notice of the allegations describing in detail the issue involved, the date the alleged violation took place, the specific section or sections of the contract or work rules involved, except in emergency or critical situations where oral notice shall suffice, and has had an opportunity to present justification of their actions at a prediscipline meeting. Any disciplinary action or measure imposed upon an employee may be processed as a grievance through the grievance procedure when it is in violation of the terms of this contract. The Employer shall not discipline an employee without just cause, recognizing and employing progressive discipline. When imposing progressive discipline, the nature

and severity of the infraction shall be considered along with the history of discipline and performance contained in the employee's personnel file. (*Reference Section 22.7*)

10.2 **Reasons for Imposing Disciplinary Action** – Appropriate disciplinary action, subject to just cause as defined in Article 10, may be taken for any of the following offenses for violating reasonable agency work rules including those contained in agency policy and procedures manuals, legally promulgated rules and regulations, or for violating any provision of the FOP 88 and State of Nebraska Labor Contract:

- a. Violation of, or failure to comply with, the Labor Contract, State constitution or statute; an executive order; regulations, policies or procedures of the employing agency; or legally promulgated published rules.
- b. Failure or refusal to comply with a lawful order or to accept a proper assignment from an authorized supervisor.
- c. Inefficiency, incompetence or gross negligence in the performance of duties.
- d. Unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs. Use of a controlled substance by the employee as prescribed by his/her physician and/or other licensed health practitioner shall not be a violation.
- e. Negligent or improper use of state property, equipment or funds, or conversion of state property. This includes transmitting threatening, obscene, or harassing material through the State's communication systems.
- f. Bribery to gain, or attempt to gain, promotion, leave, or favorable assignment for individual benefit or advantage.
- g. Falsification or intentional omission of required information on the employment application/resume.
- h. Unauthorized use or abuse of any type of leave, meal or rest periods.
- i. Repeated tardiness or unauthorized leave, including unauthorized departure from the work area.
- j. Failure to maintain appropriate working relationships with the public, employees, supervisors, or managers while on the job or when performing job related functions.
- k. Failure to obtain and maintain a current license or certification required by law or agency standards as a condition of employment.
- l. Conviction of a felony.

- m. Acts or conduct which adversely affects the employee's performance and/or the employing agency's performance or function.
- n. Work place harassment based, in whole or in part, on race, color, sex, religion, age, disability or national origin, which manifests itself in the form of unwelcome comments, jokes, printed material and/or unwelcomed sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.
- o. Display of materials and/or the utterance of offensive comments in the workplace that are derogatory towards a group or individual based upon race, gender, color, religion, disability, age or national origin.

10.3 **Investigatory Suspension or Reassignment.** When the Employer determines that an employee must be removed from a current work assignment pending the completion of an investigation by the Employer to determine if disciplinary action is warranted, the Employer may:

- a. reassign the employee to another work assignment at their current rate of pay until the investigation is completed.
- b. suspend the employee from work without pay for alleged violations involving a report or statement supporting the allegation of gross misconduct/negligence, or for actions which have brought the agency into non-compliance with governing state or federal laws/regulations, until the investigation is completed or until six work days have elapsed, whichever occurs first. In all other instances, except those outlined above and those described in 10.3.c, the suspension shall be with pay. The investigation may continue after the suspended employee returns to a paid status. If the employee is found not to have committed the violations alleged, the employee will be granted pay, benefits, leave, and service credit for the period of suspension.
- c. in cases where the employee has been charged in court with a felony, which is directly related to the workplace or which has the potential for significant impact on, or disruption of, the workplace, the Employer may suspend the employee from work with or without pay until the charges are resolved.

(Department of Correctional Services employees covered by this Contract see Appendix M, Section M.14.1)

When the Employer has placed an employee on investigatory suspension, the Employer shall have thirty work days from the date of discovery of an infraction to initiate disciplinary action by serving a written notice of allegations on the employee except when the Employer is awaiting the results of an outside investigation. If no action is taken, disciplinary action is barred for that particular incident. Employees on investigatory suspension are not eligible to be paid shift differentials.

10.4 If evidence in an investigation shows that no disciplinary action should be taken, the Agency Head and/or his/her Designee shall insure that all documentation of the suspension is purged from the employee's personnel file.

- 10.5 Any meeting held pursuant to these provisions may be tape recorded if the parties so agree.
- 10.6 Upon request employees shall be allowed representation at investigatory meetings which have the potential to lead to discipline and pre-disciplinary meetings. However, representation shall not be allowed when the purpose of the meeting is solely to deliver the written notice of allegations. Unless otherwise agreed to, the employees are not entitled to representation at routine supervisory and/or nondisciplinary counseling conferences.
- 10.7 No employee shall receive disciplinary action or unpaid investigatory suspension based solely on the uncorroborated statements of inmates/forensic patients.
- 10.8 Notice of disciplinary charges being instituted and the imposition of disciplinary action shall only take place at the worksite or by letter, and bargaining unit employees' confidentiality shall be respected during investigation or disciplinary procedures.
- 10.9 In no case will an employee be charged with a disciplinary violation when the employee behavior occurred more than 180 calendar days prior to the initiation of the disciplinary process and has been known by the direct supervisor for more than 180 calendar days. In the case of an outside investigation, the 180 calendar days does not commence running until the completion of the outside investigation.
- 10.10 Whenever the results of a predisciplinary hearing are forwarded to the Agency Head for resolution, the Director/Designee will respond within thirty (30) calendar days of receipt, except when the parties mutually agree to extend the time limit. If a response is not received within 30 calendar days, or the extended period if the time for response is extended, then the discipline recommended to the Agency Head/Designee shall be implemented.
- 10.11 Discipline shall not be imposed on an employee who failed to follow an actual unlawful order or direction.

#### **ARTICLE 11 - WAGES**

- 11.1 The parties agree that pay increases and resulting salary levels must be developed by reviewing total compensation received by employees, including paid leave periods and Employer contributions to group benefit plans.
  - 11.1.1 Nothing in this Agreement prevents the Employer from providing, in addition to the provisions of this Article, merit increases/bonuses to employees.
- 11.2 On July 1, 2019, all employees, except those in the Military Security Officer and Military Security Trainee classifications, shall be placed on the pay lines established in Appendix A according to the same percentage into the range that they occupied as of June 30, 2019.

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

Employees who, as of July 1, 2018, had attained 5 or more years of service, but had not attained one of the following continuous service anniversary dates during the fiscal year preceding July 1, 2018, and are considered by the employing agency to have had at least satisfactory performance during the preceding five year period, shall have his/her annual full-time equivalent salary base increased by one quarter of one percent on July 1, 2019. This amount, as an hourly rate, shall then be added to each employee's hourly pay rate once placement has occurred on the pay lines established in Appendix A on July 1, 2019.

|          |          |          |
|----------|----------|----------|
| 5 years  | 25 years | 45 years |
| 10 years | 30 years | 50 years |
| 15 years | 35 years | 55 years |
| 20 years | 40 years | 60 years |

In addition, for employees within specified classifications—Corrections Officer, Corrections Corporal, Corrections Sergeant, and Corrections Unit Caseworker—a merit increase shall be available on the following conditions. Employees must be considered by the employing agency to have had at least satisfactory performance in order for years of service to be recognized for this increase. The below increase shall be calculated according to the pay lines established in Appendix A on July 1, 2019, after placement has occurred.

On July 1, 2019, all employees currently in the classifications outlined in the above paragraph shall receive a percentage increase to his/her annual full-time equivalent salary base in accordance with his/her accumulated years of service as of June 30, 2019, and subject to the satisfactory performance requirement. Such increases shall be according to the minimum benchmarks as follows:

|                                      |                |
|--------------------------------------|----------------|
| 1 Year of Satisfactory Performance   | 2.5% Increase  |
| 3 Years of Satisfactory Performance  | 5.0% Increase  |
| 5 Years of Satisfactory Performance  | 7.5% Increase  |
| 7 Years of Satisfactory Performance  | 10.0% Increase |
| 10 Years of Satisfactory Performance | 12.5% Increase |

Until such time that the total number of overtime hours paid to unit employees by the Nebraska Department of Corrections is reduced to the number of total overtime hours paid by the Department in 2014, the following restriction shall apply: for the purposes of determining whether an employee has completed a year of satisfactory performance for the calculations described herein, the Department shall not include in the employee's evaluation any consideration of whether the employee worked overtime, or the amount thereof. In the event that an employee receives a determination that a year of service shall not be counted for the purposes of an enhancement in his or her pay rate as provided in this section, the employee may file a written request for an audit of this determination to D.A.S. Employee Relations, who will undertake a good faith investigation of this determination.

Following the completion of the investigation, in the event that Employee Relations determines that the employee's participation in overtime was a cause of a reduction in his or her evaluation score, Employee Relations shall determine that the relevant year of

service shall be counted for the purposes of the raise in pay rate provided in this section. However, if after a good faith investigation into the determination, Employee Relations determines that the employee’s evaluation did not include consideration of whether the employee worked overtime or the amount thereof, Employee Relations shall notify the employee of the determination, and the Department shall provide the employee with a list of work improvements that the Department has determined are necessary for the employee to remedy his or her performance. The determination of Employee Relations described herein shall not be grievable.

11.2.1 On July 1, 2019, the Military Security Specialist classification shall be changed to Military Security Trainee, and an additional position created as a Military Security Officer.

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

11.2.2 On July 1, 2019, the minimum rate and maximum rate of pay for the following classes shall reflect the amounts shown below and the incumbents of those classifications shall have their salaries adjusted upward by the same dollar amount as the minimum rate. Incumbents who qualify for the Military Security Officer will be placed into that classification. Such adjustments shall be in lieu of any other increase outlined in this contract.

|                           | <u>Minimum Rate</u> | <u>Maximum Rate</u> |
|---------------------------|---------------------|---------------------|
| Military Security Officer | \$16.804            | \$23.746            |
| Military Security Trainee | \$15.354            | \$22.237            |

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

11.3 On July 1, 2020, all employees, except those in the Military Security Officer and Military Security Trainee classifications, shall be placed on the pay lines established in Appendix A according to the same percentage into the range that they occupied as of June 30, 2020.

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

On July 1, 2020, any employees within the following classifications—Corrections Officer, Corrections Corporal, Corrections Sergeant, and Corrections Unit Caseworker—and who meet the criteria outlined in Section 11.2, shall have his/her annual full-time equivalent salary base increased by 2.5% if they have attained one of the following benchmarks for years of service in the past fiscal year:

- 1 year
- 3 years
- 5 years
- 7 years
- 10 years

Employees must be considered by the employing agency to have had at least satisfactory performance in order for the years of service to be considered for this increase.

The above increase shall be calculated according to the pay lines established in Appendix A on July 1, 2020, after placement has occurred.

- 11.3.1 On July 1, 2020, all employees in the Military Security Officer and Military Security Trainee classifications shall receive a one and one-quarter percent (1.25%) salary increase to their annual full time equivalent salary base. An additional salary increase of one-half percent (0.5%) shall be available to those whose performance has been scored satisfactory by their agency for the past calendar year. These increases, where applicable, shall be calculated concurrently for a total one and three-quarter percent (1.75%) salary increase to their annual full-time equivalent salary base. Such adjustments shall be in lieu of any other increase.

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

- 11.4 **Pay Plan.** The minimum rate and maximum rate of pay for each classification in each bargaining unit will be established per the pay range assignments found in Appendix A.
- 11.5 **Pay Periods.** Employees must be notified at least 90 calendar days in advance of changes to their respective pay period or payday. The Employer will make a good faith effort to minimize the impact to the employee of any change in pay period or payday.
- 11.6 **Promotions.** Promotions. A bargaining unit member who is promoted to a classification with a higher minimum rate of pay shall have his/her salary increased by: 5% for promotions where the new classification's minimum rate of pay is equal to or greater than 7.5% but less than 15% above the minimum rate of pay of the classification which the employee occupied prior to promotion;

7.5% for promotions where the new classification's minimum rate of pay is equal to or greater than 15% but less than 22.5% above the minimum rate of pay of the classification which the employee occupied prior to promotion; or

10% for promotions where the new classification's minimum rate of pay is equal to or greater than 22.5% above the minimum rate of pay of the classification which the employee occupied prior to promotion.

The employee's salary shall be at least at the minimum rate of pay for the new classification. In no case, shall the employee be paid more than the maximum rate of pay of the new classification.

- 11.7 **Demotions.** A bargaining unit member who is demoted, either voluntarily, or as a result of disciplinary action, from a classification with a higher minimum rate of pay to a classification with a lower minimum rate of pay, shall have his/her salary decreased by:

5% for demotions where the new classification's minimum rate of pay is at least 7.5% below but not more than 15 % below the minimum rate of pay of the classification which the employee occupied prior to demotion;



7.5% for demotions where the new classification's minimum rate of pay is at least 15% below but not more than 22.5% below the minimum rate of pay of the classification which the employee occupied prior to demotion; or

10% for demotions where the new classification's minimum rate of pay is at least 22.5% below the minimum rate of pay of the classification which the employee occupied prior to demotion.

An employee who is demoted, either voluntarily or as a result of a disciplinary action, to a classification from which they were promoted, will be returned to their previous salary, adjusted for any general increases that may have been applied during the time they were in the higher level position.

Under no circumstances will the employee's salary be less than the minimum rate of pay of the new classification nor greater than 5% above the maximum rate of pay for the new classification. *(See Section 19.11 for salary adjustments for downward reclassifications.)*

- 11.8 A former employee may be rehired at a salary that is up to the same percentage into the range as their former classification.
- 11.9 The Director of State Personnel will forward in-grade hiring requests and in-grade salary adjustments to the Employee Relations Administrator. Such requests shall include, if applicable, similar salary adjustments for incumbent employees possessing the same job qualifications or unique job related factors. The Union and the Employee Relations Administrator will discuss these requests, meet concerning them if necessary, and in instances where both parties agree with the request, it will be implemented. The Union will respond to such requests within one and one-half work days of receipt of the request. In the event the parties are unable to reach an agreement in conjunction with such requests, the Employer shall have the ability to hire employees into the range and make appropriate equity adjustments to other employees in the same agency and classification. The Union shall be entitled to initiate a grievance on behalf of named adversely affected employees in the same agency and classification, at Step 2 of the process. The employee must sign the grievance, and the employee may withdraw his/her name from the grievance at any point during the process.

## ARTICLE 12 - OVERTIME

- 12.1 For the purposes of this Contract, an "overtime eligible" employee shall mean an employee who receives time and one-half compensation for overtime hours.
- 12.2 **Scheduling of Overtime:** The Employer will, as far as practicable, offer overtime on an equal basis by state seniority (state seniority date is defined as the employee's service anniversary date as adjusted for leaves of absence, layoffs, suspensions, or unpaid leaves, of more than 14 calendar days) among those included employees in that classification assigned to the work unit who normally perform the work involved.

- 12.3 The Employer may require employees to work overtime which may include evenings, weekends, and/or holidays. Overtime will be offered to volunteering employees within the classification and work unit, but where there is more than one volunteer, overtime shall be offered on a rotating basis beginning with the permanent employee with the most state seniority (state seniority date is defined as the employee's service anniversary date as adjusted for leaves of absence, layoffs, suspensions, or unpaid leaves, of more than 14 calendar days), although the Employer reserves the right to assign overtime to an employee based on immediate availability or special job qualifications, however, the assignment of overtime will not be done in a discriminatory manner. If there are no volunteers, then employees will be required to work overtime on a rotating basis beginning with the employee with the least state seniority (defined above). Except as provided above, refusal to work overtime will not be grounds for adverse action.

However, where Appendix language is present, the Appendix language shall prevail.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Overtime provisions.)

(Department of Correctional Services employees covered by this Contract see Appendix M for Overtime provisions.)

- 12.4 For overtime purposes, an Agency Head and/or his/her Designee shall determine each employee's work week, which will consist of seven consecutive calendar days. The Union and the State concur that employees working in hospitals, nursing homes, or establishments for the sick, aged, or mentally ill or developmentally disabled, may be assigned a 14-day, 80 hour work period. The work period for employees, for overtime purposes, shall be determined by the Agency and shall be in compliance with the Fair Labor Standards Act and its exemptions.
- 12.5 Employees in classifications in bargaining units covered by this Labor Contract shall be eligible for time and one-half overtime compensation except for those classifications identified in Appendix A as exempt. Those classifications identified as exempt in Appendix A shall not be eligible for time and one-half overtime.

Notwithstanding the above, the parties shall meet and negotiate concerning additions and/or deletions to overtime status. The meeting shall be at the call of either party.

Employees determined to be ineligible for overtime under this agreement if entitled to overtime under the Fair Labor Standards Act (FLSA), shall be compensated at time and one-half for overtime hours worked.

- 12.6 Hours worked in excess of 40 per week must be authorized in advance by the Agency Head and/or his/her Designee. The Union and the State concur that for employees working in hospitals, nursing homes, or establishments for the sick, aged, or mentally ill or developmentally disabled, hours worked in excess of eight hours per day and in excess of 80 hours in a 14-day period must be authorized in advance by the agency head and/or his/her Designee, providing that the employees receive overtime compensation for work in excess of eight hours in any work day and in excess of 80 hours in such a 14-day

period. Such authorization may be written or oral, but in any event, such approval shall be made a matter of written record by the Agency.

12.7 In the event of an emergency, or when it is not possible or practical to obtain prior approval for overtime work to be performed, the Agency Head and/or his/her Designee may approve the overtime in writing subsequent to the time the work was performed.

12.8 Employees eligible for overtime shall receive compensation at one and one-half times their hourly rate in the form of either pay or compensatory time off, at the employee's discretion, for hours worked in excess of forty hours in any work week (or 8 and 80 for hospital employees and shift workers in the Veterans' Homes and at BSDC), except that the Employer maintains the ability to choose to pay cash at any time for overtime compensation obligations.

a. The employee must indicate his/her choice of overtime compensation on the timesheet or on a required overtime approval form for the pay period during which the overtime was worked; the first overtime designation made during a pay period applies to the entire pay period;

b. The employee may not carry more than 240 hours of compensatory time (160 hours x 1.5), except that members of the Protective Service Bargaining Unit at the Department of Correctional Services may be allowed to carry more than 480 hours of compensatory time (320 hours x 1.5) -- amounts over this limit must be taken in pay.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Overtime provisions.)

(Department of Correctional Services employees covered by this Contract see Appendix M for Overtime provisions.)

12.9 Holidays shall not be considered as work hours for overtime purposes. Leave time (vacation, sick, etc.) shall not be considered as hours worked.

Hours actually worked on the employee's designated holiday shall be considered as hours worked for overtime purposes.

12.10 Upon proper Agency authorization, up to two hundred and forty hours of compensatory time (not more than one hundred and sixty-hours of actual overtime hours worked) may be accumulated by an employee. Time accumulated over the above noted amounts must be paid for at time and one-half rates. Payment of overtime shall be paid at the employee's current hourly rate, or at the average regular rate of pay for the final three years of employment, whichever is higher.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Overtime provisions.)

12.11 Between December 25 and December 31 of each year, an employee may elect by notifying the Agency in writing, to receive payment for unused compensatory time

accumulated during the prior State fiscal year. Compensatory time hours not paid shall be continued in the employee's compensatory time balance.

- 12.12 An employee shall be entitled to use compensatory time off upon request, except that the Employer may refuse such requests based on staffing requirements. However, staffing requirements shall not be a permanent reason to deny such request.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Overtime provisions.)

- 12.13 Employees not eligible for time and one-half overtime may, at the discretion of the Agency Head, receive up to straight time compensation in the form of pay or compensatory time off for extra hours worked. Those classifications now receiving straight time compensation in the form of pay or compensatory time shall continue to receive such during the term of this contract.

### ARTICLE 13 – INSURANCE

- 13.1 **Health Insurance:** For the duration of this Contract, the monthly Employer contribution toward any group health insurance option offered by the Employer shall be the amount equal to seventy-nine percent (79%) of the total premium cost of the plan, option, and coverage chosen by the bargaining unit member, for which the bargaining unit member is eligible.

For purposes of this section, plan and option shall mean one of the choices of levels of medical and other benefits offered by a carrier. Coverage shall mean the rate categories of single, two-party, four-party, and family, as offered under any contract entered into for medical benefits.

Eligible State employees and their eligible dependents will be granted access to health and prescription drug benefits in accordance with the State's group health insurance plan enrollment and coverage guidelines.

The following deductibles, out-of-pocket maximums, coinsurance after deductible provisions, and prescription drug card provisions take effect each July 1.

Total Benefit Maximum - Unlimited

\$1400 Annual deductible per person for the first and second year of this contract – In Network

\$2600 Annual deductible per family for the first and second year of this contract – In Network

\$4000 Annual medical out-of-pocket maximum per person – In Network

\$8000 Annual medical out-of-pocket maximum per family – In Network

80% coinsurance for most covered services after deductible – In Network

Co-payment for doctor office visits only, not to exceed \$45.

Co-payment for specialty doctor office visit, not to exceed \$55.

(The change in the co-payment for doctor office visits shall not change the manner in which ancillary costs are calculated.)

Co-Payment for Urgent Care Center visit, not to exceed \$75.

The plan shall include a three-tier formulary prescription drug card coverage with a:

\$5.00 co-payment per 30 day supply of Tier 1 drugs;

\$40.00 co-payment for a 30 day supply of Tier 2 drugs for the first and second year of this labor contract.

\$60.00 co-payment for a 30 day supply of Tier 3 drugs for the first and second year of this labor contract.

The annual pharmacy out of pocket maximum is \$2250 per individual for the first and second year of this labor contract.

The annual pharmacy out of pocket maximum is \$4500 per family for the first and second year of this labor contract.

Mail order is available for long-term maintenance drugs for a 90 day supply with a cost of two times the 30 day supply for each level of drugs.

The State reserves the right to add a 4<sup>th</sup> Tier for specialty drugs not to exceed \$100 for a 30 day supply.

The combination of pharmacy and medical out-of-pocket maximums will not exceed the limits set forth in the Patient Protection and Affordable Care Act.

In addition to the above, the Employer may offer different group health insurance plans. The Employer retains the discretion to arrange health insurance coverage through a health insurance exchange in accordance with the Patient Protection and Affordable Care Act.

- 13.2 Group health, dental, and vision insurance benefits, in addition to the employee assistance program, will be offered to retirees who retire on or after the effective date of this Contract until the age of sixty-five. The entire cost of such insurance and participation in the employee assistance program to be borne by the retiree.

- 13.3 **Life Insurance:** The Employer will provide a \$36,000 group life insurance policy for each full-time employee. The full cost will be borne solely by the Employer.
- 13.3.1 **Optional Life Insurance:** The Employer shall offer a group optional life insurance policy for each full-time employee and the employee's dependents, at the employee's cost.
- 13.4 **Dental Insurance:** The Employer agrees to offer group dental insurance to bargaining unit employees and their dependents, at employee cost.
- 13.5 **Long Term Disability Insurance:** The Employer agrees to offer group long term disability insurance for bargaining unit employees at employee cost.
- 13.6 **Vision:** The Employer agrees to offer group vision insurance to bargaining unit employees and their dependents, at employee cost.
- 13.7 A labor/management committee with equal numbers of participants from the employer and unions shall oversee the State's RFP process.
- 13.8 **Accidental Death and Dismemberment Insurance:** The Employer shall offer a group AD&D insurance policy for each full-time employee at the employee's cost.

#### ARTICLE 14 - AUTHORIZED LEAVE

- 14.1 **Holidays:** The following holidays, are compensated holidays for employees in all bargaining units and are scheduled on the dates indicated below:

|                             |                               |
|-----------------------------|-------------------------------|
| New Year's Day              | January 1                     |
| Martin Luther King, Jr. Day | Third Monday in January       |
| President's Day             | Third Monday in February      |
| Arbor Day                   | Last Friday in April          |
| Memorial Day                | Last Monday in May            |
| Independence Day            | July 4                        |
| Labor Day                   | First Monday in September     |
| Columbus Day                | Second Monday in October      |
| Veteran's Day               | November 11                   |
| Thanksgiving Day            | Fourth Thursday in November   |
| Day after Thanksgiving      | Friday following Thanksgiving |
| Christmas Day               | December 25                   |

- 14.2 **Holiday Leave for Part-time Employees:** Employees working part-time schedules shall receive paid time off for holidays on a pro-rated basis.
- 14.3 **Weekend Holidays:** When a holiday falls on the first day of an employee's weekend, it shall be observed on the preceding day. When a holiday falls on the second day of an employee's weekend, it shall be observed on the following day. A weekend is two

consecutive days off, whether they be Saturday/Sunday, Tuesday/Wednesday, Friday/Saturday, etc.

- 14.4 **Work on a Holiday:** In addition to normal holiday pay, hours worked by an overtime eligible employee on the employee's designated holiday shall be compensated at 1.5 times their normal hourly rate of pay. All hours worked on the employee's designated holiday in excess of an employee's normally scheduled work day shall be compensated at two times the employee's normal hourly rate. (see Section 12.9)

(Department of Health and Human Services employees covered by this Contract see Appendix C for Holiday provisions.)

- 14.5 **Vacation Leave:** Earning of vacation leave by bargaining unit employees begins immediately upon employment. Full-time employees in all bargaining units earn vacation leave according to the following schedule based on their service anniversary date (Employees working part-time schedules shall earn vacation leave on a pro-rated basis):

|                                 |                 |         |
|---------------------------------|-----------------|---------|
| 1st year through 5th year ..... | 96 hours .....  | 12 days |
| 6th year .....                  | 120 hours ..... | 15 days |
| 7th year .....                  | 128 hours ..... | 16 days |
| 8th year .....                  | 136 hours ..... | 17 days |
| 9th year .....                  | 144 hours ..... | 18 days |
| 10th year.....                  | 152 hours ..... | 19 days |
| 11th year.....                  | 160 hours ..... | 20 days |
| 12th year.....                  | 168 hours ..... | 21 days |
| 13th year.....                  | 176 hours ..... | 22 days |
| 14th year.....                  | 184 hours ..... | 23 days |
| 15th year.....                  | 192 hours ..... | 24 days |
| 16th year and more.....         | 200 hours ..... | 25 days |

See Section 14.15 for accrual rates for employees returning to work after a break of service of less than five calendar years.

- 14.6 **Scheduling Vacation Leave:** Vacation leave should be applied for in advance by the employee and may be used only when approved by the Agency Head and/or his/her Designee. Vacation leave may not be unreasonably denied or deferred so that the employee is deprived of vacation rights.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Vacation Posting provisions.)

(Department of Correctional Services employees covered by this Contract see Appendix M for Vacation Posting provisions.)

- 14.6.1 Notwithstanding any other provision in this contract, all vacation leave requests made electronically or in writing will be approved or denied electronically or in writing within seven (7) calendar days of receipt of the request, or within 18 work days of the closing date of their annual vacation scheduling.

- 14.7 **Balancing of Vacation Leave:** An employee's accumulated vacation time in excess of thirty-five days shall be forfeited as of the end of business on December 31<sup>st</sup> of each calendar year.

It is the responsibility of the head of an employing agency to provide reasonable opportunity for a State employee to use rather than forfeit accumulated vacation leave. If a State employee makes a reasonable written request to use vacation leave before the leave must be forfeited under this section and the employing agency denies the request, the employing agency shall pay the State employee the cash equivalent of the amount of forfeited vacation leave that was requested and denied. Such cash payment shall be made within thirty days after the requested and denied vacation leave is forfeited under this section. Such cash payment shall be considered compensation for purposes of a State employee's retirement benefit in a defined contribution or cash balance benefit plan administered by the Public Employees Retirement Board but shall not be considered compensation for purposes of a State employee's retirement benefit in any other defined benefit plan administered by the Public Employees Retirement Board. In determining whether a State employee's request to use vacation leave is reasonable, the employing agency shall consider the amount of vacation leave requested, the number of days remaining prior to forfeiture during which the State employee may take vacation leave, the amount of notice given to the employing agency prior to the requested vacation leave, any effects on public safety, and other relevant factors.

- 14.8 **Vacation Leave Payment:** Employees who leave employment shall be paid for any unused accumulated vacation leave earned, calculated on their base hourly rate. Pay for the unused accumulated vacation leave shall be in a lump sum addition to the employee's last paycheck.

- 14.9 **Catastrophic Illness Donation.** The provisions of this section are non-grievable. Employees may contribute accrued vacation leave or compensatory time to benefit another State employee in the same agency suffering from a catastrophic illness. Catastrophic condition is considered a medical condition such as cancer, heart condition, organ transplant, and any other major medical condition that limits employees' ability to work. Vacation/compensatory leave shall be donated in no less than four (4) hour increments. The contributing employee must identify the specific amount of time donated and the name of the recipient of the donated vacation/compensatory leave on forms provided by the Employer for this purpose. The agency shall transfer donated leave to the recipient's account on an as needed basis.

Donated Leave will be available only to employees who have exhausted their own paid leave and compensatory time/leave through bona fide serious illness or accident. Donating employees must sign an authorization, including specifying the specific employee to be a recipient of the donation. Leave transferred will be converted to a dollar value and then converted to hours based on the recipient's hourly rate e.g., the leave donor's salary is \$6.00 per hour and the recipient's salary is \$12.00 per hour; thus a donor must transfer twice the amount of hours to achieve full conversion. No more than 1200 hours of donated leave may be received by an employee during a twelve month period.



Eligibility of Recipient:

1. Must be suffering a serious illness or injury resulting in a prolonged absence of at least thirty work days during the past six months.
2. Must produce satisfactory medical verification.
3. Must have completed original probation.
4. Must have exhausted all earned paid leave time including compensatory time off, sick leave and vacation leave.
5. Must not have offered anything of value in exchange for the donation.

Eligibility of Donor Employee:

1. Only four (4) hour increments of vacation/compensatory leave may be donated.
2. Must not have solicited nor accepted anything of value in exchange for the donation.
3. Must have remaining to his/her credit at least 40 hours of accrued vacation leave, if donating vacation leave.

14.10 **Sick Leave:** Full-time employees in all bargaining units earn sick leave according to the following schedule (Employees working part-time schedules shall earn sick leave on a pro-rated basis):

|  |                 |         |
|--|-----------------|---------|
| 1 <sup>st</sup> year through 5 <sup>th</sup> year.....   | 96 hours .....  | 12 days |
| 6 <sup>th</sup> year through 15 <sup>th</sup> year ..... | 112 hours ..... | 14 days |
| 16 <sup>th</sup> year and more.....                      | 144 hours ..... | 18 days |

14.10.1 There shall be no maximum limit on accumulation of sick days except as provided in Section 14.14.

14.11 The following conditions are valid reasons that sick leave may be used:

- a. When an employee is unable to perform his/her duties because of sickness, disability, injury, or when an employee's presence at work jeopardizes the health of others by exposing them to a contagious disease. Pregnancy, post-natal recovery, and miscarriage, shall be treated as a temporary medical condition.
- b. When the illness, disability, injury, or major surgery of an immediate family member requires the employee's presence, (including but not limited to the following examples: administer medical care, transport immediate family to medical appointments). The immediate family shall be considered as: spouse, children,

parents, others bearing the same relationship to the employee's spouse, and any other individual for whom the employee is the legal guardian. At the Agency head's discretion, the definition of immediate family may be broadened.

- c. When an employee prescheduled medical, surgical, dental or optical examinations or treatment, or when the employee must seek emergency medical treatment.
- 14.11.1 Should an employee require hospitalization while on vacation, vacation leave shall be changed to sick leave, effective the date of hospitalization, upon application to the employee's immediate supervisor outside the bargaining unit. Upon such application, employees may be requested by the Agency Head/Designee to furnish proof of hospitalization, if requested by the Agency Head/Designee. Further, vacation leave may, if approved by the Agency Head/Designee, be changed to sick leave upon submission of a physician's statement substantiating and verifying treatment of the employee.
- 14.12 **Request for Sick Leave:** Sick leave shall be requested in advance when possible. Such request shall be answered within 2 (two) work days. In the case of illness, injury, emergency or any other absence not approved in advance, the employee should inform the first level of supervision outside the bargaining unit of the circumstances as soon as possible. An employee may be required to submit substantiating evidence when the reason for the leave request was a medical or dental appointment or when the Agency Head and/or his/her Designee suspects sick leave abuse. Substantiating evidence may be required if the sick leave absence exceeds three consecutive workdays.
- 14.13 Sick leave may be denied when the employee fails to substantiate the legitimate use of sick leave.
- 14.14 All sick leave shall be forfeited upon separation from employment, except that an employee age 55 or above, or of a younger age if the employee meets all criteria necessary to retire under the primary retirement plan covering his/her State employment, or at death, shall receive a one-time payment of one quarter of his/her accumulated sick leave not to exceed 480 hours. An employee may only receive this payout once no matter how many times the employee is re-employed with the State. A retiree returning to state employment will begin earning vacation and sick leave at the beginning earning rate of a newly hired employee. (See Section 5.14 for employees who have been laid off for payment of sick leave.)
- 14.15 Employees returning to work on or after July 1, 2001, after a break in service of less than five calendar years shall have their accumulated unpaid sick leave balance reinstated, unless the employee previously received a payout of sick leave. The employee's service date shall be adjusted for the period of absence. The employee's vacation leave and sick leave earning rate will also be adjusted, and the new rate of earning will be based on the adjusted service date. Employees returning to work after a break in service of more than five calendar years shall start with a zero sick and vacation leave balance and shall be considered to be new employees for service date purposes, and shall earn vacation and sick leave at the beginning earning rate of a newly hired employee.

14.16 **Family and Medical Leave**

14.16.1 **Eligibility.** Family and Medical Leave is unpaid time off from work. An employee must have at least twelve total months of service and at least 1250 hours of service in the previous twelve month period to be eligible for Family and Medical Leave. Temporary employment with the State of Nebraska counts toward an employee's eligibility. An employee can use paid vacation leave, accumulated compensatory time, or sick leave, if the requested sick leave meets conditions outlined in Section 14.11.a., b., or c., as part of their 12 weeks of Family and Medical Leave if the employee should so choose.

14.16.2 **Conditions for Using Family and Medical Leave.**

Unpaid Family and Medical Leave may be used for the following reasons:

- a. Because of the birth of a child of the employee.
- b. Because of the adoption or placement of a foster care child with the employee.
- c. In order to care for the serious health condition of the employee's spouse, child, or parent.
- d. Because of the serious health condition of the employee.
- e. Because of any qualifying exigency (as defined by the Secretary of Labor) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- f. Because the employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 12 month period to care for the service member. The leave described in this subsection f. shall only be available during a single 12 month period.

**NOTE:** Spouse does not include unmarried domestic partners. Child may include step-children, foster children, or certain other children having more than a short-term residence in the employee's home such as legal wards of the employee. Care for mother-in-law or father-in-law is not included. However, parent may include individuals other than natural or adoptive parents who served in a long-term parental role for the employee.

**NOTE:** Serious health conditions are defined as illness, injury, impairment, or physical or mental conditions that involve; (1) in-patient care, (2) absence from work, school or other regular daily activities for more than three calendar days and continuing treatment by a health care provider, or (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, or prenatal care. Examples of serious health conditions include: heart attack, heart by-pass or valve operations, most cancers, back

conditions requiring extensive therapy or surgery, strokes, severe respiratory conditions, spinal conditions, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, need for prenatal care, severe morning sickness, childbirth, and recovery from childbirth. This does not include voluntary or cosmetic treatments, unless inpatient hospitalization is required.

14.16.3 **Certification of Serious Health Conditions.** When requesting Family and Medical Leave for serious health conditions, an employee must provide certification from a health care provider which includes:

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) any appropriate medical facts;
- (4) a statement containing specific information why the employee is needed to care for the child, spouse, or parent, **or**; a statement containing specific information why the employee is unable to perform the functions of the job;
- (5) if the leave is to be intermittent, a statement containing specific information concerning planned medical treatments, the expected dates and duration of treatment.

14.16.3.a **Medical Second Opinions.** The Agency may require a second opinion (the Agency's choice of health care provider) and must pay for the cost of the second opinion. If the second opinion differs from the first, a third opinion may be sought (from a mutually agreed upon health care provider, again, at the Agency's expense). The results of the third opinion are final.

14.16.4 **Notice of Intent to Use Family and Medical Leave.** A minimum of 30 days' notice to the Agency must be provided by the employee before he or she may use Family and Medical Leave. Where 30 days' notice is not foreseeable, notice must be given as early as possible.

14.16.5 **Family and Medical Leave Duration.** Unpaid Family and Medical Leave is limited to a total of twelve weeks within a twelve month period, starting with the date the employee first uses unpaid Family and Medical Leave, except that the leave under Section 14.16.2.f may be 26 weeks during a single 12-month period, but the leave provided under 14.16.2.e and 14.16.2.f cannot exceed a combined total of 26 weeks during a 12-month period.

14.16.6 **Family and Medical Leave Not Cumulative.** Family and Medical Leave cannot be carried forward beyond the twelve month period and banked for future use.

14.16.7 **Incremental Use of Family and Medical Leave.** With approval of the agency, Family and Medical Leave may be taken in increments with proper medical certification (federal law allows employees not eligible for overtime "exempt employees" to make

incremental use of unpaid Family and Medical Leave without affecting their “salaried” status).

- 14.16.8 **Health Insurance while on Family and Medical Leave.** Employer health insurance contributions shall continue during an employee’s unpaid Family and Medical Leave absence, provided the employee makes his/her required contribution. Employer contributions shall be based as if the employee had continued to work his/her normal schedule. When an employee does not return to work from Family and Medical Leave for at least 30 calendar days following the leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle the employee to Family and Medical Leave; or 2) other circumstances beyond the employee's control, the employee will be required to reimburse the State for the State's share of health insurance premiums paid on the employee's behalf during the Family and Medical Leave.
- 14.16.9 **Service Date Adjustments.** The employee’s Service Date shall be adjusted when an unpaid absence due to Family and Medical Leave exceeds 14 consecutive calendar days.
- 14.16.10 **Family and Medical Denials.** DAS Employee Relations Division shall be notified by the Agency of any requests for Family and Medical Leave which are denied.
- 14.17 **Bereavement Leave:** Up to five days of bereavement leave may be granted to employees upon request for death in the immediate family. For purposes of this section, immediate family shall mean spouse, father, mother, grandfather, grandmother, sister, brother, child, grandchild, spouse of any of these, or someone who bears a similar relationship to the spouse of the employee and any other individual for whom the employee is the legal guardian. Step-persons bearing these relationships are included. At the Agency Head and/or his/her Designee's discretion, the definition of immediate family may be expanded to include other individuals with a similar personal relationship to the employee as that of an immediate family member. Bereavement leave will not be unreasonably denied and will be consistently applied.
- 14.18 **Injury Leave:** All employees, except “E” Bargaining Unit employees, who are disabled as a result of a job-related injury or disease, which is deemed compensable by Worker’s Compensation, may be granted injury leave not to exceed five of the employee’s normal working shifts for any particular injury. A working shift is counted even if an employee is absent for any portion of their assigned shift. Disabled shall mean unable to perform the essential functions usually encountered in one’s employment due either to an injury/disease or to treatment for an injury/disease.
- a. Any job related injury or disease shall be reported to the proper agency authority as soon as possible and the agency shall have the responsibility to supply all the necessary information to the Office of Risk Management.
  - b. No employee shall receive a salary (workers’ compensation plus regular pay) in excess of his or her normal wage.

- c. Health insurance with the appropriate employer contribution will be paid during an absence under workers' compensation after all accrued leave and compensatory time has been depleted.

**Worker's Compensation:** Any job related injury or disease shall be reported to the proper agency authority as soon as possible, and the agency shall have the responsibility to supply all the necessary information to the Office of Risk Management. No employee shall receive a salary (workers' compensation plus regular pay) in excess of his or her normal wage. The appropriate employer health insurance contribution will be paid during an absence under workers' compensation after all accrued leave and compensatory time has been depleted.

14.19 **Military Leave:** Military leave shall be granted in accordance with applicable federal and state laws, and is limited to 120 hours a year, with no accumulation of unused leave carried over to the following calendar year. Such military leave may be taken in hourly increments. Employees who are members of the National Guard or Reserve shall provide their Unit Training Assembly (drill) schedule to their supervisor as soon as it is available from the Military Unit. Where practicable, the Agency shall allow the employee to flex his/her work schedule to accommodate Unit Training Assembly (drill) schedules.

14.20 **Civil Leave:** All employees shall be eligible for paid civil leave under the following conditions:

- a. **Jury Duty:** If an employee is called to serve as a juror, he/she shall be entitled to paid civil leave. Employees will return to work when not actually serving as a juror on a daily basis.
- b. **Election Board Duty:** If an employee is appointed as a clerk, judge, or election inspector on an election or counting board, he/she shall be entitled to paid civil leave.
- c. **Voting Time:** All employees shall be allowed up to two paid hours for the purpose of voting provided the employee does not have sufficient time before or after regular duty hours to vote. The two hours authorized for voting does not apply to those employees who by reasons of their employment must vote by use of an absentee ballot.
- d. **Court Appearances:** Time spent by employees appearing in court as a function of their current or previous positions in state government shall be considered as hours worked. All witness fees and reimbursements received as a result of these court appearances shall be returned to the State.

Employees attending courts as a plaintiff, defendant or witness on non-work related matters, may use vacation leave or earned compensatory time. In the event the employee is subpoenaed for non-work related matters and does not have vacation leave or compensatory time the Agency Head and/or his/her Designee shall grant a leave of absence. Any witness fees paid to the employee for these court appearances shall be kept by the employee.

- e. **Disaster Relief Leave.** Employees who provide proof of their disaster relief volunteer certification with the American Red Cross may, with appropriate supervisory authorization, be granted paid civil leave not to exceed fifteen working days in each calendar year to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross.
  
- 14.21 **Leave of Absence:** An Agency Head and/or his/her Designee may grant employees an unpaid leave of absence, not to exceed one year (except for military service and some worker's compensation cases), when such absences will not interfere with the best interest of the state. Under unusual circumstances this time may be extended by the Agency Head and/or his/her Designee. Written requests for leaves of absence will be considered for such things as temporary disabilities, educational purposes, or other uses. Medical leaves of absence shall not exceed six weeks unless approved by a physician. The leave of absence when granted, shall be in writing and detail the employment conditions that will be in effect at the end of the absence. Vacation leave shall not be required to be exhausted prior to such requests.
  - 14.21.1 During the leave of absence, the temporarily vacated position may be filled by either employing a temporary employee or assigning another qualified employee to assume the duties of the position.
  - 14.21.2 No leave benefits will accrue during a leave of absence
  - 14.21.3 Sick and vacation earned but unused prior to leave of absence will be carried forward upon the employee's return.
  - 14.21.4 The employee's service date shall be adjusted for non-pay absences in excess of fourteen calendar days, except when an employee is still eligible for worker's compensation payments.
  
- 14.22 **Adoption Leave:** Upon request, the mother of newly adopted children shall receive the same sick leave allowed to State employees who are new mothers by natural birth (generally six weeks) when adopting a child. Fathers of newly adopted children should receive leave on the same terms as fathers by natural birth.
  
- 14.23 **Leave for Part-time Employees:** All types of leave are granted in proportional amounts for part-time employees.
  
- 14.24 **Advancement of Vacation and Sick Leave:** Agency heads may advance vacation and sick leave to employees in an amount not to exceed a total of 80 hours (pro-rated for part-time employees). Employees shall reimburse the State for all used unearned vacation and sick leave upon separation or transfer.
  
- 14.25 In case of extreme weather conditions, Agencies shall be as lenient as possible in the approval of compensatory time or vacation leave time in accordance with the Governor's emergency weather policy.

14.26 Leave requests shall be responded to within two work days from receipt by their supervisor and/or designee.

14.27 **Maternity Leave Donation (MLD) Program.** When an expectant mother needs to be away from work due to a birth of a child she may request MLD. MLD shall be available only to employees who have exhausted their own earned sick leave, in conjunction with an approved Family Medical Leave (FML) under the Family Medical Leave Act and only with approval of the agency head and/or designee.

14.27.1 **Eligibility of Recipient.** Employees shall meet the following criteria before request(s) for donations can be made:

- a. Be the expectant mother of a newborn baby
- b. FML request has been approved by the agency
- c. Have exhausted all earned sick leave
- d. Have not offered anything of value in exchange for the donation

14.27.2 **Requesting Maternity Leave Donations.** Employees must submit a written request for MLD to the agency/facility Human Resources office. The request must include substantiating evidence as described in the Family Medical Leave Act. (For your convenience, request forms are available from your agency/facility Human Resources office or the DAS State Personnel website.) The Human Resources staff will be responsible to initiate the process to verify eligibility, seek agency head approval, request donations, apply the conversion formula to donations received, advise the employee of donations received and notify the appropriate payroll personnel of changes to receiving/donating employees' leave balances. Agency heads and/or their designee(s) must approve both the FML and MLD requests before solicitation for donations begin.

14.27.3 **Contributing Maternity Leave Donations.** Employees may contribute accrued vacation leave or earned compensatory time to benefit another State employee in the same agency who requests MLD. Vacation leave and earned compensatory time shall be donated in no less than 4 hour increments. The contributing employee must identify the specific amount of time donated and the name of the recipient of the donated time on the appropriate forms for that purpose. Vacation leave and compensatory time donated and transferred to another State employee pursuant to this provision shall be irrevocably credited to the recipient's MLD account.

Vacation leave and compensatory time transferred shall be converted to a dollar value and then converted to hours based on the recipient's hourly rate (e.g., the leave donor's salary is \$12.00 per hour and the recipient's salary is \$24.00 per hour, thus, in this case, twice the amount of hours is needed to achieve full conversion.) No more than an equivalent of 480 hours of MLD may be received by an employee during a twelve-month period. No more hours than required during the approved FML period should be received. (e.g., the employee has 2 weeks of paid sick leave accrued. After the 2 weeks of accrued sick leave is used, the employee can only request 4 weeks of donated leave to fill a 6 week FML request.) The agency shall transfer donated leave to the recipient's



account from the donor's accruals in chronological order based on the date the form was received and on an as needed basis.

14.27.4 **Eligibility of the Donor.** Before donating vacation leave or earned compensatory time employees shall meet the following criteria:

- a. Only increments of four (4) hours may be donated.
- b. Have not solicited nor accepted anything of value in exchange for the donation.
- c. Have remaining to his/her credit at least 40 hours of accrued vacation leave. Earned compensatory time can be donated completely- leaving a zero balance.

14.27.5 **Adoptive Mothers.** Per Neb. Rev. Stat. § 48-234 adoptive mothers may be entitled to use the MLD program in certain situations. Adoptive mothers must meet the eligibility requirements as outlined above.

14.27.6 The provisions of this section are non-grievable.

#### **ARTICLE 15 - ANTI - DISCRIMINATION AND WORKPLACE HARASSMENT**

- 15.1 The provisions of this Agreement shall be applied to all employees in the bargaining units without discrimination as to protected age, sex, marital status, race, color, creed, national origin, handicap, or political affiliation. Each of the parties hereto recognize their individual responsibilities under this paragraph and agree to fulfill those responsibilities.
- 15.2 Employees have the right to a workplace free from sexual harassment, inappropriate physical conduct and threatening behavior.

#### **ARTICLE 16 - SAVINGS CLAUSE**

- 16.1 If any provision of the Contract is subsequently declared by the proper legislative or judicial authority to be unlawful, unenforceable or not in accordance with applicable statutes, all other provisions of the Contract shall remain in full force and effect for the duration of this Contract. The parties shall meet as soon as possible to agree on a substitute provision should any provision of this Contract be declared unlawful, unenforceable or not in accordance with applicable statutes. If the parties are unable to agree on a substitute provision within thirty days following commencement of the initial meeting, the provision becomes inoperative and the matter shall be postponed until contract negotiations are reopened.

#### **ARTICLE 17 - PAY DURING TEMPORARY TRANSFER**

- 17.1 When any employee of the bargaining unit performs the duties of a position in a classification higher than the classification currently held by the employee, the employee shall receive a temporary pay increase to the hiring rate of the higher classification or an increase in accord with Section 11.8, whichever is higher, but in no case shall the

employee receive a pay reduction. An employee will be deemed to be assigned such duties when the temporary transfer exceeds fifteen consecutive calendar days. Any such pay increase will begin on the sixteenth day, shall be retroactive to the date of the temporary transfer, and shall end when the employee reverts to his/her previous classification.

(Department of Correctional Services employees covered by this Contract see Appendix M for Temporary Reassignment provisions.)

### **ARTICLE 18 - HEALTH AND SAFETY**

- 18.1 The Employer agrees to furnish and maintain in safe working condition tools and equipment required by the Employer to carry out the duties of each position. Employees are responsible for reporting any unsafe condition or practice. Employees are responsible for properly using and caring for the tools and equipment furnished by the Employer. Employees shall not use such tools and equipment for personal use. Refusal to work in an unsafe environment shall be a defense to disciplinary action.
- 18.2 Recognizing the intrinsic nature of each job performed in the State, the Employer agrees to provide a safe working environment. The Employer agrees to maintain all state facilities, buildings, grounds, and equipment in accordance with directions of the applicable federal and state agencies. The Employer agrees to comply with Neb. Rev. Stat. Section 48-443. In the event the building or worksite is leased from a county or other third party, it shall be the Employer's responsibility to pursue improvements that will make the worksite safe and healthy.
- 18.3 The Employer shall develop policies for addressing bomb threats, fire and weather emergencies, and evacuations; and agencies shall develop policies addressing violence in the workplace.
- 18.4 Employees will be provided with ongoing information, training, and supplies concerning exposures in the work place that could present a substantial health or safety risk.
- 18.5 Where employees are required by the Employer to wear uniforms and safety and protective clothing, see the appropriate Appendix to this Contract concerning the terms and conditions of issue, parameters of wear, replacement of the required uniforms, and maintenance of such uniforms.

(Department of Health and Human Services employees covered by this Contract see Appendix C for Uniforms provisions.)

(Nebraska State Patrol employees covered by this Contract see Appendix F for Uniforms and Protective Clothing provisions.)

(Department of Correctional Services employees covered by this Contract see Appendix M for Uniforms provisions.)

(Department of Administrative Services employees covered by this Contract see Appendix P for Uniforms provisions.)

(Nebraska Military Department employees covered by this Contract see Appendix Q for Uniforms provisions.)

- 18.6 The Employer agrees that bargaining unit employees may submit requests to the State Claims board.
- 18.7 All Employer-owned vehicles which are used by bargaining unit employees shall be equipped as required by law. All occupants of motor vehicles used in the course of employment are required to use seat belts. Bargaining unit employees shall not use portable radar detectors, or headphones while operating State owned motor vehicles. Employees operating State vehicles will use extreme caution if it is necessary to operate a cell phone while operating a motor vehicle.
- 18.8 **Employee Assistance Program:** The Employer shall maintain an Employee Assistance Program. Records concerning an employee's treatment for alcoholism, drug or stress-related problems shall remain separate from other personnel materials. All Employee Assistance records shall remain confidential.
- 18.9 Whenever an employee is required to perform duties which require working with or around hazardous chemicals, agents, or equipment, the employee shall receive necessary training and shall be provided necessary protective equipment and clothing. At a minimum the education and training must include:
- a. The location of toxic substances.
  - b. The names of the substances, including the generic or chemical name, as well as the trade or other commonly used names.
  - c. The acute and chronic effects of exposure to the hazardous substance, and any symptoms and effects of exposure.
  - d. The potential for flammability, explosion and reactivity of such substance.
  - e. Appropriate emergency treatment.
  - f. Proper conditions for safe use and exposure to such toxic substances.
  - g. Procedures for cleanup of leaks and spills of such substances.
- 18.10 For each hour of continuous and intensive VDT (video display terminal) use, employees shall be entitled to a five minute non-VDT use work assignment. All employees working in jobs which are subject to repetitive motion shall be afforded necessary information and training on how to prevent repetitive motion disease and injury.
- 18.11 The Agency shall request the Attorney General's office to provide legal counsel to employees sued for actions taken by them in the course and scope of their employment. The Agency shall in no way be held liable for damages, judgments, or legal fees arising out of cases in which the employee has refused State provided legal counsel and chosen Union, private or other legal services. When an employee is served with legal process relating to his/her job, the employee is responsible to seek legal help and shall notify the Agency's litigation contact person as soon as practicable.
- 18.12 Safety issues shall be a proper subject for any Labor-Management Committee meeting including the statewide Safety Committee coordinated through the Department of Administrative Services, Risk Management Division.

- 18.13 Possession of a firearm is forbidden in State work places by employees other than those who may be authorized in connection with official duties for the employer, and Game and Parks Commission employees who reside in State housing or who serve as Volunteer Hunter Education Instructors, and Aeronautics employees who reside on state airfields. Nothing in this paragraph is intended to supersede Neb. Rev. Stat. 69-2441 (3), which permits a concealed handgun permit holder to have a firearm in his or her vehicle in a parking area open to the public, when said firearm is securely locked in a glove box, trunk, compartment, or storage box.
- 18.14 Use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs is prohibited.

### **ARTICLE 19 - CLASSIFICATION AND CLASSIFICATION APPEALS**

- 19.1 Employer agrees to classify/reclassify positions based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required -- the end result being that all classifications/reclassifications shall be in balance with the classification for similar work being performed by other state employees. The Employer retains the right to assign and/or reassign work, which may affect the classification assignment of each position.
- 19.2 If an employee disagrees with his/her classification assignment, the employee may request a review of such assignment provided the position has not been reviewed by the Administrator of the DAS State Personnel Classification and Compensation Section in the previous twelve calendar months. Requests for review shall be submitted in writing to the Agency Director or Designee and shall contain the following:
- a. a current State Personnel Division job description questionnaire completed by the employee and signed by the first level supervisor outside the bargaining unit;
  - b. a concise and specific statement as to why the employee believes the current classification assignment is inappropriate and the specific reasons therefore; and
  - c. a concise and specific statement of why the classification sought (which must be a currently existing classification) is appropriate, and the specific reasons therefore. Upon request from the employee, the Agency or DAS - State Personnel will consult with the employee concerning possible classifications to be listed as the classifications sought.
- 19.3 From the date of receipt of an employee classification request by the Agency Personnel Office or Designee, the Agency shall have forty-five work days to review and if necessary change the assignment of duties and responsibilities of a position. The Agency's review shall include a review of the submitted job description by the first level supervisor outside the bargaining unit who shall provide written remarks indicating agreement or disagreement with the contents of the submitted job description. After that review period of forty-five work days, the Agency shall not reassign work during the

reclassification review. The Agency Head or Designee shall issue a written response advising the employee of the Agency's decision regarding accuracy of the description and any changes made in assigned job duties.

- 19.4 No position shall be classified or reclassified without written authorization of the Director of State Personnel.
- 19.5 Within fifteen work days after receipt of the Agency Head's or Designee's written decision on either: a) an employee's review request, or b) an Employer initiated review, the employee, through the Agency Head or Designee, may forward the reclassification review request to the Administrator of the DAS State Personnel Classification and Compensation Section.

The employee shall also include items a, b, and c of 19.2 above to be forwarded to the Administrator of the DAS State Personnel Classification and Compensation Section at this stage of an Employer initiated review.

- 19.6 The Administrator of the DAS State Personnel Classification and Compensation Section shall issue a decision in writing no later than fifteen work days from receipt of request, except in cases where State Personnel job description questionnaires or other relevant information must be collected from other employees, in which case the Administrator of the DAS State Personnel Classification and Compensation Section shall have up to forty-five work days from receipt of the request to issue a decision. The decision of the Administrator of the DAS State Personnel Classification and Compensation Section shall be implemented during the current or next pay period. An employee reclassified to a classification assigned to a lower minimum rate of pay may have his/her salary reduced by up to 2.5% for each 7.5% between the minimum rates of pay of the former classification and the new classification with the resulting pay not being more than 5% above the maximum of that classification during the current or next pay period.
- 19.7 Within fifteen work days from receipt of the decision of the Administrator of the DAS State Personnel Classification and Compensation Section, the employee may appeal the decision of the Administrator to the Classification Appeal Panel. This appeal may be initiated only if the action had an immediate adverse financial impact (reduction in salary) on the employee.
- 19.8 The Classification Appeal Panel shall be made up of five members, two chosen by the Chief Negotiator, and two chosen by the Union, and a fifth member chosen by the other four. In addition, the four members shall select an alternate fifth member to serve in the absence of the original fifth member. All members and alternates shall have education or experience concerning job evaluation techniques, such education and experience to be evaluated by members of the Panel themselves. All members shall undergo training provided by the State Personnel Division concerning Nebraska's classification system. The Union and the Employer shall each designate one alternate to serve as their representative on the Classification Appeal Panel when a regular member is unable to attend or when a regular member is unable to vote. All members shall serve for the duration of this Contract. The entire Panel may elect to hear classification appeals or the Panel may designate a minimum of three members to hear such appeals. The Panel

members hearing the appeal shall have authority to make decisions without the need for the entire Panel's review or approval.

- 19.9 Rules of procedure regarding said appeals shall be developed by the Classification Appeal Panel. The function of the Classification Appeal Panel shall be to ensure classifications/reclassifications are in balance with the classification for similar work being performed by other state employees and that the issues raised by the appealing employee were taken into consideration. The review of the Classification Appeal Panel shall be limited to the issues raised by the appealing employee in the original appeal request. New issues shall not be allowed at this step of the review. The Classification Appeal Panel shall, when recommending overturning a decision of the Administrator of the DAS State Personnel Classification and Compensation Section, provide their findings, conclusions, and recommended decision to the State Personnel Director at the close of the meeting. The State Personnel Director will make the final decision.
- 19.10 The Classification Appeal Panel members shall be limited to a choice to either recommend upholding the decision of the Administrator of the DAS State Personnel Classification and Compensation Section, or to recommend granting the employee the reclassification sought.
- 19.11 Implementation of upward classification changes appealed to the Classification Appeal Panel will be effective the first day of the next full pay cycle following final determination by the DAS State Personnel Director. Implementation of appropriate pay increases shall be made retroactive to the date on which the employee's appeal to the Classification Appeal Panel was received by the Administrator of the DAS State Personnel Classification and Compensation Section. Pay increases for upward classification changes will be calculated in the same manner as provided in Section 11.8 for promotions. An employee reclassified to a classification assigned to a lower minimum rate of pay may have his/her pay reduced as provided in Section 19.6, effective the date of the determination by the Administrator of the DAS State Personnel Classification and Compensation Section, except that if the DAS State Personnel Director reverses such reclassification action, the employee shall revert to his/her former rate of pay and shall be awarded back pay for the time spent in the inappropriate lower classification.
- 19.12 When jobs are retitled or reclassified, and the core duties remain essentially the same, employees holding such positions before the position was retitled or reclassified, shall retain their classification seniority.

## **ARTICLE 20 - EMPLOYEE TRAINING AND EDUCATIONAL ACTIVITIES**

- 20.1 **Training:** The Employer agrees to maintain its continuing effort to provide employees with training necessary for the accomplishment of employees' assigned duties. Priority shall be given to immediate work requirements, when assigning employees to training activities. Employee seniority shall, be a factor considered when assigning employees to training activities related to less immediate work requirements.

- 20.2 The cost of training required by an Agency shall be paid by that Agency. An employee participating in required training shall be considered to be on work time.
- 20.3 **Tuition Assistance:** Bargaining unit employees can enroll in university or college, vocational technical school or extension courses. The course may be by correspondence or attendance at classes during non-working hours or during working hours with approval of the Agency Head and/or his/her Designee. Where practicable, in relation to work requirements, the Employer shall be liberal with the approval of requests for accrued/unused vacation leave, flex-time scheduling, compensatory time, or leave without pay for the purpose of enabling employees to attend classes conducted during an employee's regularly scheduled work hours.
- 20.4 Employees participating in this program shall, prior to class starting date, submit a "request for tuition assistance" form to the Agency Head and/or his/her Designee for approval. Financial assistance shall be for tuition only. Eligibility for tuition reimbursement requires a course grade of "C" or better, or pass for pass/fail courses.
- 20.5 The Employer may reimburse the employee for 50% to 100% of tuition for approved job, career related, or degree required courses. For employees with the same job title, and performing the same work, the determination shall be the same for the same or similar courses during the term of this Contract.
- 20.6 Employees eligible for other educational reimbursements through other governmental programs shall use these programs first. If the cost of an approved course is more than the amount available from other sources, the Employer may reimburse the employee for up to 100% of the difference for tuition costs only.
- 20.7 Employees who receive tuition assistance may be required to reimburse the Employer if they voluntarily leave their employment within one year of the course completion date. However, employees who are laid off or terminated by the Employer shall not be required to repay tuition assistance received.

#### **ARTICLE 21 - LABOR/MANAGEMENT COMMITTEE**

- 21.1 The parties agree to the establishment of Labor/Management Committees.
- 21.2 The committees may be established on a regional, district, facility, department-wide or all bargaining unit basis with mutual agreement of the parties. Such requests shall not be unreasonably denied or delayed. The number of paid employees participating on behalf of the Union shall be three unless otherwise mutually agreed upon by the parties.
- 21.3 Issues taken to Facility/District/Regional Labor Management meetings shall be responded to within thirty working days. It is understood that some issues may take longer to establish policies and/or to implement. In these cases, Management shall respond with a decision as to their position on the issue or their intended course of action. A good faith effort shall be made to resolve issues at this level. If a satisfactory

resolution cannot be reached within two attempts, then either party may call for a Department-wide Labor Management meeting.

## **ARTICLE 22 - PERSONNEL FILE INFORMATION**

- 22.1 With prior approval for absence from work from the first level of supervision outside the bargaining unit, an employee shall be allowed to inspect his/her personnel file during normal office hours or if feasible, at the employee's work site.
- 22.2 Upon receipt of written authorization from the employee, the Agency will allow another employee or designated representative to inspect their entire personnel file or payroll record maintained by the Agency.
- 22.3 Personnel files cannot be removed from the premises and all file reviews will be under the supervision of the Agency.
- 22.4 Except as needed to process grievances, the Agency will provide one copy of up to ten personnel file documents when requested by an employee during each year of this Contract. Copies can be provided via CD, other media storage, or as an email attachment.
- 22.5 An employee shall be notified in writing within ten work days of any non-routine information being placed in his/her personnel file.
- 22.6 An employee may include rebuttal documents of his/her choice in his/her personnel file.
- 22.7 At the request of the employee, records of disciplinary action shall be removed from the employee's personnel file after two years after the discipline was imposed, except in situations where the employee has been disciplined for workplace harassment, the records shall be removed from the file after four years at the employee's request.

## **ARTICLE 23 - NO STRIKE - NO LOCKOUT**

- 23.1 The Union and the Employer recognize and agree that the rendering of services to the citizens of the State cannot be withheld, interrupted, or discontinued, and that to do so could endanger the health, safety and welfare of the inhabitants thereof, as well as violate State Statute.
- 23.2 Neither the Union nor its agents or any employee, for any reason, will authorize, institute, aid, condone or engage in a slowdown, sympathy action, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the Employer.
- 23.3 Neither the Employer nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Contract.



- 23.4 The Employer may discharge or discipline any employee who intentionally in concert violates the terms of this Article and any employee who fails to carry out his/her responsibilities under the terms of this Article.
- 23.5 Nothing contained herein shall preclude the Union or the Employer from obtaining whatever remedies may be available to the parties at law or in equity in the event of a violation of this Article.
- 23.6 The parties agree to comply with the provisions of Sections 48-802 and 48-821 R.R.S. Neb., which are recognized as applicable to the parties to this Contract.

#### **ARTICLE 24 - TERM OF CONTRACT**

- 24.1 The terms and conditions of this Contract shall continue in full force and effect commencing on July 1, 2019, and terminating on June 30, 2021 unless the parties mutually agree in writing to extend any or all of the terms of this Contract.
- 24.2 Negotiations for a new Contract shall be conducted in compliance with the provisions of the State Employees Collective Bargaining Act (Neb. Rev. Stat. Sections 81-1369 through 81-1388).
- 24.3 Activities preparatory for the commencement of bargaining shall be as follows:
- On September 1 of the year preceding the beginning of a period to be covered by the Contract, the Union shall submit a set of original Contract proposals to the Employer. On October 1 of the year preceding the beginning of a period to be covered by the Contract, the Employer shall submit a set of counter proposals to the Union. The parties shall commence bargaining on proposals on or before the second Wednesday in September.
- 24.3.1 In the event either party wishes to modify any of the Appendices to this contract, such party shall notify the other party by October 15 of the year preceding the beginning of a period to be covered by the Contract. The Union shall submit their Appendix proposal no later than October 30<sup>th</sup>, and the Employer shall respond to the Union proposal no later than November 10<sup>th</sup> of the year preceding the beginning of a period to be covered by the contract.
- 24.4 If no agreement is reached by December 1, unresolved issues shall be submitted to mediation.
- 24.5 The Employer shall pay up to eight hundred hours of salaries for employee representatives on the Union bargaining team for time spent at the bargaining table. Time spent in agency specific appendix bargaining will be counted as time spent in labor-management committee meetings.

## ARTICLE 25 - MISCELLANEOUS

- 25.1 **Flexible Spending Account:** The Employer will provide an opportunity to employees to voluntarily participate in a flexible spending account, subject to Internal Revenue Service Code Section 125. Employees may choose to set aside an amount from their paychecks, which is not taxed. This money can be set aside only in a medical and/or dependent care account for payment of eligible expenses.
- 25.2 **Pay Range Assignments:** Recognizing that changes may occur in jobs during the term of this Contract due to technology, new programs, evolution of responsibilities, and in the interest of enabling employees to realize the prompt benefit of equitable pay at the earliest date possible, the parties agree to meet quarterly during the term of this Contract in an attempt to mutually agree upon such pay range re-assignments.
- 25.3 Employees exercising their rights under the Effectiveness in Government Act shall have those protections set out in Neb. Rev. Stat. Sec. 81-2701 to 81-2710.
- 25.4 **Tax Sheltered Parking.** The Employer will provide an opportunity to employees to voluntarily participate in a tax sheltered parking program, subject to Internal Revenue Service Code Section 132. The plan will apply to employees paying for parking at a state facility through payroll deduction, and will apply to employees paying for parking at a private facility through payroll deduction. The effect of this plan will be to reduce the amount of taxable income to employees meeting this criteria, as pre-tax dollars will be used to pay for employee parking payments.
- 25.5 Individual employee identification cards or badges – including electronic security pass cards – shall be replaced, at no cost to the employee when damaged due to normal wear and tear.

APPENDIX A - PAY LINES

Institute new pay lines as outlined below in accordance with CIR Case No. 1480, issued March 3, 2019. Per Neb. Rev. Stat. 81-1383 (2)(b)(i)(C)(ii), those classifications whose total compensation Minimum or Maximum were below 93% of the midpoint or above 107% of the midpoint shall have the rate increased or reduced to 98% of the midpoint and 102% of the midpoint respectively in equal annual installments. The State has decided to conduct these increases in 2 annual installments over the biennium rather than the 3 annual installments outlined in the statute.)

| Job Code                  | Job Title   | 07/01/2019 Minimum Hourly Rate | 07/01/2019 Maximum Hourly Rate | 07/01/2020 Maximum Hourly Rate | 07/01/2020 Maximum Hourly Rate |
|---------------------------|---|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <b>PROTECTIVE SERVICE</b> |   |                                |                                |                                |                                |
| P66112                    | Corrections Corporal  | 18.440                         | 25.270                         | 18.440                         | 25.270                         |
| P66111                    | Corrections Officer   | 17.000                         | 24.410                         | 17.000                         | 24.410                         |
| P66113                    | Corrections Sergeant  | 20.600                         | 28.580                         | 20.600                         | 30.570                         |
| P66441                    | Corrections Unit Caseworker                                 | 19.233                         | 27.350                         | 19.233                         | 27.350                         |
| P76251                    | Developmental Disabilities Safety & Habilitation Specialist | 15.354                         | 22.237                         | 15.354                         | 22.237                         |
| P76141                    | Mental Health Security Specialist I                         | 13.290                         | 20.370                         | 13.290                         | 20.370                         |
| P76142                    | Mental Health Security Specialist II                        | 16.160                         | 24.349                         | 16.160                         | 26.460                         |
| P61851                    | Security Communications Specialist                          | 14.505                         | 21.735                         | 15.920                         | 24.510                         |
| P64831                    | Security Guard  | 12.180                         | 18.520                         | 12.180                         | 19.400                         |
| P76751                    | Youth Security Specialist I                                 | 13.860                         | 20.770                         | 13.860                         | 22.300                         |
| P76752                    | Youth Security Specialist II                                | 16.010                         | 24.115                         | 16.010                         | 25.990                         |
| P64910                    | Military Officer Trainee                                    | 15.354                         | 22.237                         | 15.354                         | 22.237                         |
| TBD                       | Military Security Officer                                   | 16.804                         | 23.746                         | 16.804                         | 23.746                         |

[For revisions, see Letter of Agreement dated July 1, 2019 at the end of this document.]

## APPENDIX C – DEPARTMENT OF HEALTH AND HUMAN SERVICES

### C.1 CASELOAD/WORKLOAD

C.1.1 Employees participating in any projects or on committees approved, required, or allowed by the collective bargaining agreement or DHHS/Governor appointed committees, shall, if determined necessary by management, be allowed overtime and/or have their caseloads adjusted. Overtime must be authorized in advance.

C.1.2 The Employer shall make reasonable efforts to distribute workloads in a fair and responsible manner. The employer recognizes that additional coverage assignments may affect an employee's ability to adequately cover his/her own caseload/workload. Overtime may be authorized.

### C.2 MISCELLANEOUS PROVISIONS

C.2.1 Management will make a good faith effort to communicate proposed changes to current practices and/or job duties in order to allow employees an opportunity to offer feedback prior to implementation. (This provision shall be non- grievable).

C.2.2 Management will be encouraged to utilize a process for employees to provide feedback annually on supervisory performance and work issues.

C.2.3 The Agency reaffirms its commitment to give thoughtful and appropriate consideration to the suggestions and views of employees on any subject of mutual or individual concern.

C.2.4 Employees shall have the option to attend open enrollment meetings regarding any State approved benefits on paid work time and shall receive mileage compensation. Employees shall attend the meeting closest to their permanent work site unless prior authorization is given by the supervisor to attend at an alternate site. Office coverage must be maintained during the orientation meetings.

C.2.5 Any entity that contracts with the Health and Human Services and which uses state employees in the conduct and completion of their business will be notified that said state employees are covered by a collective bargaining agreement. The agency agrees to remain neutral in any union organizing campaign of individuals not employed by the State.

C.2.6 The Agency shall not consider Management developed ranking tools, such as but not limited to Work Improvement Plans/Performance Accountability Plans or Reports, etc., as discipline.

C.2.7 In all 24-hour operations, clear accessible and current work schedules shall be made available to all employees to the extent possible. The parties mutually agree to

explore options such as software, web-based schedule access and other technological and process improvements to further the goal of clear, accessible and current schedules.

C.2.8 No employee shall be disciplined, evaluated, or placed on a Performance Improvement Plan for reasons arising from the unsubstantiated statement or testimony of a client or patient.

### C.3 INTERNAL EMPLOYEE TRANSFER OPTION

C.3.1 The following option is available to employees in addition to other recruiting techniques to expedite and facilitate the filling of vacancies, without diminishing an employee's rights and protections afforded under the provisions of Article 9 of this labor contract. Twenty-four hour facilities will continue to use the provisions in C.4 in this Appendix for internal transfers.

C.3.2 Any contract covered classification may be considered when utilizing this internal employee transfer option, as deemed appropriate by the Agency.

C.3.3 Under this process, vacant positions will first be made available to qualified current DHHS employees for five (5) calendar days. Qualified employees must hold the same classification title as the vacant position and must be located within the same Division as the vacancy. Once available, interested employees may express their interest in the position via an application in the on-line applicant tracking system. System generated responses will keep applicants informed of their progress in the process.

C.3.4 All internal qualified employees who express interest will be considered. The successful candidate will be selected based on factors such as seniority, knowledge, experience and ability. Where two or more qualified employees rate essentially the same in all categories, classification seniority date will be used to make the final decision.

C.3.5 If no internal employee is deemed qualified, the vacant position will be posted through the open competitive process in accordance with Article 9.1 of this labor contract. Employees who were evaluated through this process and not selected may apply for the same position through the competitive process.

C.3.6 EMPLOYEE ACCESS TO FEDERAL TAXPAYER INFORMATION. In accordance with the Internal Revenue Service (IRS) Publication 1075, prior to the Nebraska Department of Health and Human Services (Department) granting any employee access to federal taxpayer information (FTI), the Department must initiate a suitability background investigation. The investigation must be favorably adjudicated by the Department as a condition of hire or continued employment. A reinvestigation will be initiated within 10 years of the previous background investigation. The investigation must include:

- a. Federal Bureau of Investigation fingerprint check

- b. Local law enforcement agency check
- c. Eligibility to work in the United States

THE FOLLOWING PROVISIONS APPLY TO SHIFT WORKERS WITHIN THE TWENTY- FOUR HOUR FACILITIES:

C.4 INTERNAL TRANSFER

To reduce the time positions are vacant, the following procedure will be implemented to expedite the internal transfer process for specified classes mutually agreed to by each DHHS facility and the union. New employees may not use this process while on original probation.

Vacant positions will be posted for no more than five (5) calendar days. Posting will be limited to only the 24 hour facility where the vacancy exists.

Employees who received any formal disciplinary action will be considered ineligible for this type of transfer opportunity. Period of ineligibility shall be six (6) months from the date the employee received the disciplinary action.

Once an employee successfully uses this internal transfer process, they may not use the internal transfer process again for the next 6 months. If more than one person volunteers to transfer through the process, the person selected will be the employee with the most continuous (no breaks in service) time in that classification as an employee of the agency.

In situations where the agency can demonstrate that certain qualifications and/or experience is necessary to perform the job (those specific qualifications/experience shall be listed on the posting), then the transfer opportunity shall be offered to applying employees in descending order based upon time in the class until an employee is found who meets these criteria or until all employees applying have been considered, whichever occurs first. If the position is filled through the process, unsuccessful applicants will be notified that the position was filled through this process. If no applicant qualifies through this process, the vacant position shall be advertised as provided in Section 9.1.

C. 5 SENIORITY

- C.5.1 Within two (2) months after the execution of this Agreement and every six (6) months thereafter, a list by bargaining unit in each facility showing the seniority of each employee shall be posted electronically and/or on specified bulletin boards pursuant to Article 2.11.

C. 6 TEMPORARY SHIFT/WORK AREA REASSIGNMENTS

- C.6.1 In the event emergency situations and/or (to prevent an adverse impact on delivery of services to clients) care requirements necessitating temporary reassignment of

employees from their regular assignment or shift, the 24 hour facility will take into consideration the employee's length of service, qualifications, and other job related factors. Temporary assignments shall be evaluated on a daily basis unless the employee has been informed of the alternate anticipated time.

- C.6.2 Temporary reassignments shall be accomplished by first reassigning qualified employees who have volunteered for the temporary reassignment. If no volunteers are available, the least senior qualified employee shall receive the temporary reassignment. (If appropriate, other job related factors may be considered.)

This provision is not applicable to new hires for the first 90 days of employment.

## C.7 WORK SCHEDULES

- C. 7.1 Change in permanent work schedules may be adopted by action of the employees for designated groups of employees by mutual agreement between a majority of the employees involved and the facility. When a schedule change is proposed by employees, the affected group must be named as well as the proposed schedule. If the proposed schedule change(s) is rejected, the 24 hour facility shall provide a written explanation for the rejection.

- C.7.1.a Determination of the schedule preference of a majority of employees shall be accomplished by a vote of the affected employees conducted under guidelines mutually agreed upon by the Union and the 24 hour facility after approval of the proposed change by the 24 hour facility. Said guidelines will include the provision that a majority vote of employees affected and voting shall be required to indicate a desire for schedule revision by the employees. Should the new schedule require a 40 hour work week, the 8 and 80 hour overtime provisions shall be waived, with new overtime computations to be in the waiver. A copy of the waiver shall be sent to the FOP 88 office. In addition, changes in work schedules may be adopted in the Dietary, Maintenance, or Housekeeping units not assigned to particular buildings under the same conditions noted above. There shall be a limit of one vote per fiscal year for any group of employees.

- C.7.1.b Schedule assignment will be based on classification, qualifications, and/or client care needs. When qualifications are not significantly different, state seniority shall be the determining factor in schedule preference. However, in such cases, once an employee selects a schedule based on employee's seniority, the employee may not change schedules again for one year unless approved by the 24 hour facility or as a result of changing positions through other provisions of this Labor Contract.

- C.7.2 (Permanent) Work schedules will be arranged so that at least in every other work week employees shall have two (2) consecutive days off which will, where practicable, be Saturday and Sunday (if the employee so requests). However, it is not required that such days be Saturday and Sunday. Such two (2) consecutive days off,

if practicable, shall be the same two (2) days each alternate week. Further, days off may be split if necessary in alternate weeks to provide such consecutive days off; however, employees shall not be scheduled to work more than six (6) consecutive days unless mutually agreed.

## C. 8 MEAL PERIODS

- C.8.1 For those employees whose scheduled work day is ordinarily eight (8) consecutive hours, a meal period shall be considered time worked, as those employees are considered on duty from the beginning of their shift until they finish their shift.

## C. 9 VACATION / HOLIDAY SCHEDULING

- C. 9.1 Each 24 hour facility will post by December 15 a form on which employees shall designate preferred vacation time. (Holidays occurring in conjunction with vacation time will also be included.) Said form will remain posted until February 15. This will cover the period from April 1 through March 31 of the following year. The facility will post results March 15 in designated areas accessible to employees. Once the schedule has been posted, employee's vacation period will not be changed unless said change is necessary to prevent an adverse impact on delivery of services to clients. In such cases the employee will be permitted to select an alternate vacation period which will likewise not adversely affect the delivery of services to clients.

- C.9.1.a Alternate Vacation Posting Process Schedule. Facilities will post by December 15 for the period of April 1 through September 30. (Holidays occurring in conjunction with vacation time will also be included.) Said form will remain posted until February 15. Each facility will post results March 15 in designated areas accessible to employees.

A second posting will occur on June 15 and shall remain posted until August 15. (Holidays occurring in conjunction with vacation time will also be included.) This will cover the vacation period of October 1 through March 31. Each facility will post results September 15 in designated areas accessible to employees.

Once the schedule has been posted, the employee's vacation period will not be changed unless said change is necessary to prevent an adverse impact on delivery of services of clients. In such cases, the employee will be permitted to select an alternate vacation period which will likewise not adversely affect the delivery of services to clients.

- C.9.1.b Labor/management meetings may be convened to consider implementation of an alternate posting process, as defined above.

- C.9.2 In evaluating and granting requests for vacation leave under the posting process, classification, seniority, and work unit as defined by the operational needs of the facility will be the criteria used for granting vacation leave. Vacation requests, of three (3) work days or more, shall take priority over vacation requests of less than



three (3) work days, regardless of seniority. When an employee requests vacation leave of two or more consecutive days, the Agency will either approve the entire request or deny the request. Some of the requested dates shall not be approved and other dates denied.

- C.9.3 Employees must submit a written request to cancel vacation to the immediate supervisor outside the bargaining unit, no later than fourteen (14) calendar days prior to the start of the vacation to be canceled, unless a shorter timeframe is approved by the immediate supervisor. A cancellation request shall cover the entire request as originally posted. This requirement applies to vacation approved by either the Vacation Posting Process or by written request. Such requests for shorter notice shall not be unreasonably denied.

The 24 hour facility will endeavor to permit the employee to reschedule the employee's vacation so long as such rescheduling does not adversely affect the vacation schedule of the other employees, nor adversely affect the delivery of services.

- C. 9.4 Employees who wish to schedule vacation, or earned or to be earned holiday(s), outside of the posting process may do so by submitting a written request to their immediate supervisor outside the bargaining unit at least two weeks in advance of the requested vacation or earned or to be earned holiday(s). Such requests shall not be unreasonably denied. Provided operational needs permit, this two week advance notice requirement may be waived, and such requests shall not be unreasonably denied. For scheduling of vacation outside of the posting process, approval of vacation shall be based on the provision of operational needs, and such request shall not be unreasonably denied.
- C.9.5 When two or more requests are received on the same date, requesting vacation or earned or to be earned holiday(s) leave for the same date(s), the employee with the greatest seniority shall be given preference.
- C.9.6 Any employee may take such vacation in increments of not less than one hour as the employee may desire, provided however, the employee shall advise the 24 hour facility at the earliest practicable time. The taking of such vacation in hourly increments will be subject to approval by the 24 hour facility, but such approval will not be unreasonably withheld.
- C. 9.7 Holidays shall be deemed to fall on the day on which the actual holiday occurs as defined in Article 14.1 of the Master Contract. Absence on a scheduled holiday, when approved in conjunction with vacation leave approved through the posting process, shall not be denied if an employee with more seniority later requests leave on the same day.
- C.9.8 Each local Labor Management committee shall be convened to discuss alternative vacation/holiday scheduling methods to provide an opportunity for all employees to

get a desired holiday off, taking seniority into consideration. Any alternative methods implemented shall supersede any conflicting language of Section C.9.

## C.10 UNIFORMS

- C.10.1 When the 24 hour facility deems it necessary for an employee to wear a uniform as a condition of employment, the 24 hour facility shall provide for the full costs of three uniforms as defined by the facility on a set annual basis. In the event uniforms cannot be supplied through the 24 hour facility's usual and customary process, then, at the 24 hour facility's discretion, the employee shall be reimbursed for the purchase of uniforms at a rate not to exceed the usual and customary rate paid by the 24 hour facility for the procurement of uniforms. Such reimbursement is subject to the submission of a clearly dated sales receipt, with payment processing for the reimbursement to be initiated by the 24 hour facility within two work weeks following submission of the receipt.
- C.10.2 The uniforms are considered the 24 hour facility's property and are subject to be returned by the employee upon employment termination in the same condition as initially provided to the employee (normal wear and tear excepted).
- C.10.3 Employees' last names shall not be required to be displayed on their persons. Use of initials for the last name is acceptable.

## C.11 OVERTIME

- C.11.1 Employees may be required to work beyond their normal scheduled shifts in accordance with the provisions of this section. Management will avoid requiring overtime whenever possible. No employee shall be required to work in excess of sixteen (16) hours in a twenty-four (24) hour period absent a qualifying emergency. An "Emergency" is an unexpected, unforeseen or unanticipated event, such events may include a natural disaster, severe weather emergency, and a public health emergency. An emergency can also be a similar disaster as declared by the Governor or his/her designee.
- C.11.2 Any scheduled work shift which begins before, and ends after midnight, shall be considered as worked on the day on which it began.
- C.11.3 Each regularly scheduled work shift will have a regular starting and quitting time. Such hours will be consecutive and not split.
- C.11.4 In cases where employees have chosen compensatory time as the method of overtime compensation, the 24 hour facility will consult with and will consider the desires of the employee when compensatory time use is requested. If the compensatory time cannot be used within the succeeding 6 pay periods in which it was earned, the employee shall receive payment for said time.

- C.11.5 When an employee and manager mutually agree to a 40 hour work week, the 8 and 80 hour overtime provisions shall be waived, with new overtime computations to be in the waiver. A copy of the waiver shall be sent to the FOP 88 Office.
- C.11.6 Seniority lists for overtime assignments will be available in each work unit.
- C.11.7 Employees are not eligible to work overtime during their initial ninety (90) days of employment, unless determined qualified by their direct supervisor. This must be documented in writing to the employee at least seventy-two (72) hours prior to the start of the first overtime worked. Overtime worked for training purposes prior to an employee being deemed qualified under this provision will not make an employee eligible to work overtime for non-training purposes.
- C.11.8 When an employee works at least 4 hours into the next shift, and the employee did not have that time formally scheduled in advance of the start of their shift, the facility will furnish food to the employee at no cost.
- C.11.9 The employer (each facility) will develop and maintain an overtime roster for each separate direct care classification in which overtime is regularly needed. Voluntary and mandatory overtime will be assigned based on the overtime roster. The overtime roster is a list of qualified employees, within the classification and classification series and work unit, that rotates based on the last overtime performed (i.e., once an employee has worked four (4) or more hours of voluntary or mandatory overtime his/her name moves to the bottom of the overtime roster). The initial overtime roster to be developed will be in ascending adjusted state seniority (less senior employee at the top of the list). The names of new employees will be added to the bottom of the overtime roster once their initial ninety (90) day period is completed or when they are determined qualified by their supervisor.
- C.11.10 Available overtime that is posted a day or more in advance will be awarded based on the entire overtime shift being covered (i.e., if the overtime shift is eight (8) hours in duration then first consideration goes to those who indicated an ability to work eight (8) hours) and first to the employee(s) on duty the shift that precedes the overtime shift and whose name is closest to the top of the overtime roster. The overtime will then be awarded to the off duty employee(s) whose name is closest to the top of the overtime roster. The employer will not wait for return responses from off duty employees and will continue to move through the names of those who have signed up. If the off duty employee should later respond and the overtime has not been taken, it will be awarded on a first come first serve basis. At the discretion of the employer, the overtime may then be awarded, not necessarily by seniority, to an employee that occupies another classification, but is qualified to perform the required work. Overtime worked of four (4) or more hours will cause an employee's name to be moved to the bottom of the overtime roster.
- C.11.10.1 The principle and intent of C.11.10 is to provide everyone the opportunity to volunteer for overtime and avoid extended shifts as much as possible. It was discovered through early implementation of this program that paragraph C.11.10

required those working the prior shift to be considered first resulting in a double shift. It is agreed that awarding an overtime shift should not be limited to the preceding shift, but expanded to off-duty employees as well. This does not prevent preceding shift employees from being included for in the process.

- C.11.11 The next available overtime that is posted a day or more in advance will be awarded in the order as outlined in C.11.9.
- C.11.12 The 24 hour facility may "pass over" and not offer overtime to employees who have indicated in writing any scheduling problems, conflicts or personal commitments which make working overtime undesirable.
- C.11.13 When overtime is unplanned and not posted in advance it will be offered first to the employee(s) on duty the shift that precedes the overtime shift and whose name is closest to the top of the overtime roster. If no employees volunteer, the overtime may then be offered to an off duty employee(s).
- C.11.14 If mandatory overtime is necessary, it will be directed to the employee(s) on duty the shift that precedes the mandatory overtime shift and whose name is closest to the top of the overtime roster. Once the employee has worked four (4) or more hours of mandatory overtime, their name will be moved to the bottom of the overtime roster. For multiple employees directed mandatory overtime on the same day and the same shift, the names of the employees will be moved to the bottom of the overtime roster in the order it appeared at the top.
- C.11.15 Every effort will be made to avoid mandatory overtime which may include the assignment of overtime to qualified employees in other work units. If this occurs, it will be directed to the employee(s) on duty the shift that precedes the mandatory overtime shift and whose name is closest to the top of their overtime roster.

Once the employee has worked four (4) or more hours of mandatory overtime, their name will be moved to the bottom of their overtime roster. For multiple employees directed mandatory overtime on the same day and the same shift, the names of the employees will be moved to the bottom of their overtime roster in the order it appeared at the top.

- C.11.16 Mandatory Overtime – Earning Byes. Each employee shall have 1 bye per quarter to use at his or her discretion during each State fiscal year this Contract is in effect, for a total of 4 byes per State fiscal year. When an employee exercises a bye, they are not required to work a mandatory overtime assignment, and their name will be moved to the bottom of the overtime roster. Unused byes may be carried over (accumulated) from quarter to quarter within the same State fiscal year.
  - C.11.16.1 Earning Additional Byes. Each employee has the opportunity to “earn” 1 additional bye each quarter during the State fiscal year for working a total of 40 hours or more

of voluntary overtime during the quarter. The additional bye will be made available to the employee for use during the following quarter from when it was earned. Employees may carry over up to 2 accumulated, unused byes at the end of a State fiscal year into the next State fiscal year. In the event that all eligible employees on the overtime roster have requested to use a bye for the overtime assignment, the eligible employee whose name is closest to the top of the overtime roster will be held for the mandatory overtime assignment.

C.12 CALL IN FOR ABSENCES

C.12.1 In cases of absence, essential employees as determined by the 24 hour facility shall provide a standard 60-minute advance call-in notice prior to the start of first shift and a standard 2-hour advance call in notice prior to the start of second and third shift. This standard notice may be lessened for a department at the discretion of the 24 hour facility and may be waived in individual emergency situations. Such waiver shall not be unreasonably withheld.

## APPENDIX F - NEBRASKA STATE PATROL

- F.1 Pursuant to section 18.5 the following provisions shall apply to State Patrol employees covered by this Contract:

Where the Agency requires the wearing of uniform, identifiable clothing, the Agency shall provide such articles of clothing on an as needed basis to include slacks, shirt and belt. Necessary alterations will be made at the expense of the Agency. Maintenance of issued clothing will be at the employee's expense.

Protective clothing which is reasonable and necessary to the job will be provided by the Agency.

- F.2 The Patrol supports the concept of physical fitness and encourages all employees to maintain healthy life styles. Wellness Programs are available to all employees on-line through the DAS / Wellness Options Program.

Employee participation in organized Wellness Programs is encouraged by the Patrol. Participation in such programs shall be conducted at the employee's expense and on off- duty time.

- F.3 Nebraska State Patrol may extend the probationary period of a newly hired employee into safety sensitive positions, not to exceed a total of one calendar year from the date of hire or rehire, if the employee has a pre-existing medical condition at the time of hire/rehire, which prevents the agency from administering a pre-employment polygraph examination. The Nebraska State Patrol may administer a polygraph examination to persons hired or rehired into safety sensitive positions when the employee is medically able to undergo a polygraph examination provided that the employee is on original probation. The provisions in this Section apply to new hires and rehires, including bargaining unit members that transfer to a position in the State Patrol from a position in another State agency.

- F.4 Article 3.15 Guidelines

PURPOSE: To protect the personal safety of employees, State property and the general public. Employees shall not be permitted to perform their duties or enter upon the premises of the Employer while under the influence of alcohol, the illegal use of drugs, and/or controlled substances.

It is not the intent of the Employer to take disciplinary action as a direct consequence of receiving a confirmed positive result. However, nothing prohibits the employee from being subject to disciplinary action for inappropriate or illegal acts performed while under the influence of the illegal use of a controlled substance while on duty. The Employer may take disciplinary action only for just cause, with consideration to mitigating information, as a result of the employee's inability to perform required

duties. The employee retains his/her grievance rights provided for in the Fraternal Order of Police Labor Agreement.

APPLICABILITY: All employees of the State Patrol, however, employees with commercial driver's licenses will be subject to testing as specified by the Federal Department of Transportation. Testing to be conducted by the Employer or contracted licensed vendor hired by the Employer.

The following situations/conditions may require tests to be conducted of employees. For employees, failure or refusal to submit to such tests may result in disciplinary action:

1. Pre-employment
2. Work accident
3. Critical incident
4. Commercial Drivers (CD)
5. Return to duty
6. There shall be no random testing

- A. Rights and Privacy: The rights and privacy of employees shall be safeguarded to the maximum extent possible. All records and/or results generated in compliance with this procedure will be confidential. Under no circumstances shall the employee be required to provide their social security numbers or home address to the drug collection site. All information and reports concerning such incidents are to be maintained in the strictest of confidence ensuring that the alleged substance abuse is not discussed at or outside the workplace. Any breach of confidentiality is subject to severe disciplinary actions.
- B. Method of Testing: Gas Chromatography/Mass Spectrometry urinalysis testing shall be the only method of testing.
- C. Chain of Custody: The urine sample shall be documented. If needed, a second test is permissible, but will be done from the original sample. If the test results are positive, and the employee wants to challenge the test results, it will be at the Employer's Employee's expense. If the results of the re-test are negative, the test results will be considered negative. At any point in the chain of custody if any of the following occurs, the employee shall not be re-tested and the sample shall be void (any discrepancy, any lapse of unknown time or an illegible signature of an unidentifiable person).
- D. Controlled Substances Tested; THC, cocaine, opiates, phencyclidine (PCP), amphetamines/methamphetamine, benzodiazepine, barbiturates, LSD, and any derivatives from these controlled substances.
- E. Alcohol Testing: Alcohol shall only be tested in regards to a work accident, critical incident and commercial drivers will be subject to testing as specified by the Federal Department of Transportation.

- F. Work Time for Test Administration of Drug Testing: Employee shall be considered on work time pertaining to the administration of alcohol/drug testing, including overtime. All time used under this testing process shall be considered time worked for purposes of wages and overtime; and all testing costs shall be borne by the Employer. Upon request, an employee may have an available employee representative present if being requested to undergo an alcohol/drug test.
- G. Reports/Documentation: Reports shall list all facts being considered, including circumstances leading up to the test. If disciplinary action is pursued, then reports and/or information supporting reasonable suspicion shall be made available to the employee. Should a false accusation be made that an employee is suspected of substance abuse, the accuser shall be subject to disciplinary action.
- H. Employee's Opportunity to Discuss Results of a Positive Test: An employee has the opportunity to discuss the positive results.
- I. Employer/Employee Options to Positive Test Results: The Employer may take disciplinary action in accordance with Agency policies and procedures. Employees may be allowed a leave of absence for treatment on an inpatient or outpatient basis. Employees participating in rehabilitation programs shall be entitled to use their accumulated vacation, holiday, comp time, and other accrued leave time. Nothing herein shall be construed to diminish any rights which may apply under the ADA, FMLA, or other relevant laws.

The Employer shall make reasonable efforts to reassign employees who are participating in an outpatient rehabilitation program to duties when their job description or temporarily reassign to another position for which he/she is qualified, until the employee is able to return to regularly assigned duties, with such return subject to the employee following the rehabilitation treatment program.

Definitions:

1. Commercial Drivers (CD) Testing: Employees required to hold Commercial Driver's License (CDL) are subject to the Federal Department of Transportation Guidelines.
2. Critical Incident Testing occurs when actions of an employee may have caused serious physical injury or death of any person(s); and /or damage to State property or public property.
3. Work Accident Testing occurs when actions of an employee is involved in an accident where the employee, another employee or a person in the public is injured; and/or State property or public property is damaged while the employee is on duty.



4. Return to Duty Alcohol/Drug Testing occurs when an employee has been tested for alcohol or drugs with positive results, that employee will need to submit to testing prior to returning to work.
5. Follow Up Drug Testing – Upon request, an employee, who has a verified positive result for a controlled substance listed in the ‘Controlled Substance Tested’ section, will need to submit to follow up testing. The Employer shall have the right to follow up testing once within the following six months from the date of employee’s last positive test results.
6. Pre-employment Testing: The Employer has the right to test for any drug by any method of the Employer’s choosing to any person not employed by the State of Nebraska.

## APPENDIX M - DEPARTMENT OF CORRECTIONAL SERVICES

### M.1 DEFINITIONS

M.1.1 Unless the context is shown to intend otherwise, words and phrases in this Appendix are used in the following sense:

M.1.2 AGENCY SENIORITY – Total months of continuous service with an Agency as identified by Agency records.

M.1.3 CLASSIFICATION SENIORITY – Total amount of service in each job classification as listed below unless there is a break in service with the agency.

Corrections Officer  
Corrections Sergeant  
Corrections Corporal  
Corrections Unit Caseworker

M.1.4 EMERGENCY – Escape, riot, fire, hostage situation, natural disaster, or other unusual situation, declared by the Director and/or designee, which threatens, or may threaten the security of the institution, work area or safety of the public, employees, inmates and/or others.

M.1.5 JOB CLASS SPECIFICATION – The official written description of a class of work which defines the classification, lists some of the more typical tasks of the classification and the supervision exercised and received.

M.1.6 PRIMARY POST ASSIGNMENT – The post assignment which is given the employee on an official form. This assignment is permanent and dictates assignment of class, classification, etc. This is subject to the Agency providing ten work days written notice to the affected employees prior to making changes in their permanent work schedules, except when requested or agreed to by the Employee or in cases of emergency as defined in M.1.4.

M.1.7 PROMOTION – Reassignment of an employee from one class to another class of a higher classification with increased duties and responsibilities.

M.1.8 SUPERVISORY COUNSELING: A supervisory counseling is a means of correcting or clarifying performance expectations, and is not considered a form of discipline.

### M.2 SEARCHES OF EMPLOYEES

M.2.1 When Management determines that employees should be subject to pat or strip searches, those searches shall be conducted in such a manner as to afford the employee dignity. Strip searches shall only be conducted upon reasonable suspicion and the supervisor will, prior to the search, provide the employee written notice authorizing the search, signed by the CEO, or designee outside the bargaining unit.

M.2.2 Pursuant to the law, employee's cell phones shall not be searched if they are placed in a locked locker or left in the employee's locked car.

### M.3 HOURS OF WORK

M.3.1 Employees scheduled work day shall ordinarily be eight (8) hours. Shifts at TSCI, NSP, DEC and LCC may be 8 or 12 hours at management's discretion. No more than fifty percent (50%) of shifts at these facilities will be 12 hours. Employees at these facilities, upon implementation of 12 hour shifts, shall bid for shifts according to Appendix Section M.11. Employees working 12 hour shifts shall be entitled to at least 3 consecutive days off per week. A meal period shall be considered time worked, as shift employees are considered on duty from the beginning of their shift until they finish their shift. Meals shall be expeditious and only the amount of time reasonable and necessary to eat shall be used.

M.3.2 Employees shall not be unreasonably denied rest periods not to exceed a total of thirty (30) minutes during each work day. The Employer retains the right to respond to emergency situations by not allowing a rest period. Lack of relief staffing is considered a reasonable reason for denying rest periods.

M.3.3 Work Schedules and Changes - Correctional Officers, Correctional Corporals, and Correctional Unit Caseworkers will be assigned to permanent shifts and permanent days off. This is subject to the Agency providing ten work days written notice to the affected employees prior to making changes in their permanent work schedules, except when requested or agreed to by the Employee or in cases of emergency as defined in M.1.4.

Subject to Institutional needs, Sergeants will be assigned to a permanent shift and days off, and will rotate from post to post on that shift every six months; except for Sergeant positions designated as an exempt post. When making assignments or conducting the bidding process for shift/days off seniority will be taken into considerations; however, Institutional needs will be the determining factor. Sergeants may be temporarily assigned to a different shift and/or days off, to fulfill Institutional needs or for training purposes. M.4.2 is not applicable to Sergeants; however the provisions of M.13.1 do apply.

### M.4 SENIORITY

M.4.1 Where jobs are reclassified or renamed, employees therein will retain their seniority.

M.4.2 Classification seniority for Protective Services Bargaining Unit members will be the prime consideration in personnel actions taken within the Agency. This includes bidding on post/job assignment, permanent days off, the bidding of vacancies on permanent shift, except when the Agency needs an employee with certain identified qualifications/skills, which shall be posted with the job. In the event the employee believes seniority was not taken into consideration, an internal complaint or a written request may be made of the personnel action. This request must be made within five

(5) days from the date of notification the personnel action was taken. The decision maker will have five (5) work days in which to answer the employee in writing. Grievance time limitations will not begin to run until the process has been completed.

M.4.3 State seniority shall be the prime consideration in the assignment of vacation, overtime and lateral transfers.

M.4.4 A classification and state seniority list book will be maintained in the shift supervisor's office, and will be made available to employees to view at any time, upon request. The list shall be updated semiannually and contain each employee's name, classification, and seniority date. A copy of the seniority list shall be furnished to a Facility Union Representative upon completion.

M.4.5 If two or more employees have the same classification seniority date, the tie shall be broken by the state seniority date.

If two or more employees have the same state seniority date, the tie shall be broken by the employee's NIS number, the lower number signifying greater seniority.

## M.5 UNIFORMS

M.5.1 The basic uniform issued to an employee shall be stated in the Regulations of the Agency.

M.5.2 The Agency shall replace any portion of the uniform which has become worn out or has been damaged in the line of duty.

M.5.3 The State will reimburse Correctional Officers, Corporals, Unit Caseworkers and Sergeants in the Protective Services Bargaining Unit up to \$150 per contract year for uniform cleaning, alteration and repairs, and the purchase of authorized uniform articles which are not readily available, including appropriate footwear. Such payments shall not accumulate one fiscal year to another.

M.5.4 For Custody Staff, parkas and raincoats shall be made available at all facilities to staff assigned to custody posts. Various sizes will be on hand to accommodate most personnel.

## M.6 OVERTIME

M.6.1 A standard work week shall be 40 hours plus roll call time. In no event, except per Section M.1.4, shall any employee work more than 16 consecutive hours plus roll call without a minimum of a 7 hour break. All hours in excess of this standard work week shall be considered overtime and compensated at one and one-half times the regular hourly rate for all members of the bargaining unit. The Agency will continue to provide roll call time at the facilities where it now exists during the fiscal years for which this Contract is in effect.

- M.6.1.1 Seniority lists for overtime assignments will be maintained in the shift supervisor's office and will be made available for employees to view at any time upon request.
- M.6.1.2 When a Correctional employee is required to work into the next shift on overtime for four (4) hours or more, and the employee is not provided an opportunity to eat or obtain a meal, the State will furnish a meal to the employee at no cost to the employee.
- M.6.1.3 Employees in this Unit shall have the choice of taking compensatory time for overtime worked, with the exception that the Employer has the right to pay for Holidays worked, when the budget permits.
- M.6.1.4 EXEMPT POST/JOB ASSIGNMENT: Is defined as a post/job assignment that is not positioned within a normal rotation with other employees and has specific duties and work hours different from employees in the normal rotation.
  - a. This employee cannot be placed on a mandatory list with other employees assigned to normal rotation post/job assignments and can only be mandated to work their assigned post/job assignment.
  - b. The employee may volunteer to work overtime, but shall be the last for consideration after all other employees that volunteered to work have been offered the opportunity to work first.

## M.6.2 MANDATORY OVERTIME

- M.6.2.1 MANDATORY OVERTIME: Means that the employee is directed by management that they have been required to work mandatory overtime and that the employee works any amount of time into the next shift.
- M.6.2.2 The employer shall create and maintain an accurate up to date mandatory overtime list of employees in the order of least to greatest state seniority for each shift by classification identified in Appendix M.1.3. Officers and Corporals are on the same list. The list shall include the employee's name, shift, classification, state seniority date and last mandatory date.

The mandatory overtime list is a continuous rotating list from least senior to most senior.
- M.6.2.3 The continuous rotating list for mandatory overtime is maintained in the shift supervisor's office and shall be made available for employees to review at any time upon request
- M.6.2.4 If no employee volunteers for overtime, then on the basis of rotating seniority, least to the most senior, an employee will be required to work the overtime. New hires will be placed on the mandatory overtime list following one calendar week after successful completion of pre-service training. If there are no available employees from the required classification available, an employee from a different classification may be mandated to work.

An employee, who volunteers for overtime on their scheduled day off, will not be held over for mandatory overtime on the following shift.

- M.6.2.5 Employees who are selected to work mandatory overtime and work beyond the expiration of their shift are moved to the bottom of the mandatory overtime list. If an employee is not required to work mandatory overtime, but in the course of the performance of duties an employee works beyond the expiration of their shift, they must work two hours before they move to the bottom of the mandatory overtime list.
- M.6.2.6 Depending on Institutional needs, the shift supervisor may elect to split the mandatory/voluntary overtime shift assignment, between two or more employees, which can also include working less than eight hours. At no time will an employee be sent home, and be required to return and finish the next shift.
- M.6.2.7 When Institutional needs determine that less staff is needed at the facility, employees working mandatory overtime will have the first option to leave in descending order of seniority beginning with the most senior mandated employee(s).
- M.6.2.8 Each employee shall have two byes to be used per fiscal year to use at his or her discretion during each fiscal year this contract is in effect. When an employee exercises a bye, they are not required to work mandatory overtime, but will remain in the same position on the mandatory overtime list. Employees are not allowed to carry over byes from fiscal year to fiscal year. Management reserves the right to deny a bye for a good and compelling reason.
- M.6.2.9 An employee shall not be mandated to work overtime after the employee's last scheduled shift if they are scheduled annual / vacation leave or compensatory time off the following day, or where they are scheduled leave immediately following their days off.
- M.6.2.10 No employee shall be mandated to work overtime on the last day of their work week prior to their regular days off.

### M.6.3 VOLUNTARY OVERTIME

- M.6.3.1 Assignment of employees to work voluntary overtime shall be awarded to the volunteering employee with the most State seniority within the same classification of the position to be filled. If there are no volunteers within the classification, the voluntary overtime will be awarded to those remaining volunteers based on State seniority. However, within twenty-four hours prior to the start of a shift, voluntary overtime is offered on a first come first serve basis. After the employee works two or more hours of voluntary overtime the employee moves to the bottom of the mandatory overtime list.

Employees who are assigned to work voluntary overtime shall have the opportunity to work for at least two hours

M.6.3.2 The employer shall maintain a voluntary overtime list of employees in the order of state seniority for each shift by classification. The list is a non-rotating list from most senior to least senior. Each list shall be available for review and shall include the employee's name, shift, classification, days off, state seniority date and last voluntary overtime date. The last voluntary overtime date is only used to move the employee on the mandatory list.

M.6.3.3 When unplanned or unscheduled overtime is required, it shall be offered first to the employees who are on duty.

## M.7 WORKING OUT OF CLASS

M.7.1 Employees who are assigned to a position of a higher salary classification for more than four (4) days in any pay period, who meet the minimum qualifications of said position, shall receive five percent (5%) additional compensation over and above that employee's present rate of pay for the hours worked in the higher salary classification. Time worked out of class shall be documented to the nearest tenth of an hour. It shall be the responsibility of the supervisor to identify those hours worked out of classification for pay purposes.

M.7.2 At the Department of Correctional Services no employee shall be required to work out of his/her classification if such employee does not have the requisite qualifications to perform such work, nor shall any employee be required to work out of classification for the purpose of avoiding pay, to the employee, the salary for the higher salary classification.

M.7.3 New hires shall not be allowed to work out of his/her classification until their original probation period is successfully completed, except in either of these two (2) situations: (1) Emergency situations as provided in Section M.1.4, or (2) new hires who have been trained and endorsed in writing by a first line supervisor outside the bargaining unit, and approved by the appropriate department head.

M.7.4 The Department of Correctional Services will implement a policy which will require the documentation of working out of classification experience, so appropriate work experience records can be presented to the promotion boards for review and consideration.

## M.8 PROMOTION BOARDS

M.8.1 Candidates eligible to appear before the Promotion Board will meet the minimum qualifications and requirements. All qualified candidates will be interviewed. No employee will be interviewed, who has not submitted an application.

M.8.2 The Promotion Board will consist of not less than three (3) members, one of which shall be a member from another facility/program. This Board will be utilized to promote Corrections Officers and Corrections Corporals.

- M.8.3 At least ten (10) calendar days prior to the convening of the Promotion Board, a dated notice shall be posted on bulletin boards to communicate the following information:
- 1) The date of the Promotion Board.
  - 2) The classification (rank) to be interviewed.
  - 3) The date and place of any testing or examinations for the classification (rank) being interviewed.
- M.8.4 The Promotion Board will rank all candidates who were selected by the Board for promotability.
- M.8.5 All candidates shall be informed of their ranking, in writing, ten (10) work days after the conclusion of the Promotion Board. Promotion Board ranking shall be made available for review to the affected candidates upon request.
- M.8.6 Vacancies in the rank interviewed for shall be filled, within twenty one (21) calendar days, in compliance with the promotion list, subject to appropriate administrative approval.
- M.8.7 An employee who turns down an offer of promotion will have his/her name removed from the current list.
- M.8.8 Promotion Boards will be held at least twice a year, or as needed.
- M.8.9 All effective promotions shall be posted on the appropriate bulletin boards and read at roll call.
- M.9 HOSTAGE LEAVE
- M.9.1 In the event employees of the Department of Correctional Services have been determined, by the Director or other appropriate official, to have been taken hostage, the employee may be eligible for a paid leave of absence up to ninety (90) days. The Director or Designee of the Director will determine the number of days allowed, after consultation with the Department's Medical Team and/or a consulting Psychologist or Psychiatrist. If the employee is not in agreement with the decision, they may obtain a second opinion, at the employee's expense. If there is a conflict in the Department and the employee's second opinion, a third opinion can be obtained, at Department expense. The third opinion, gained from an independent and mutually agreed upon professional, will be final and non-grievable. Such paid leave shall not be charged against the employee's sick leave account.
- M.10 WORK RULES
- M.10.1 An employee shall not be required to staff a post for a period of longer than two (2) hours if that post is as a roving patrol, tower duty, or yard duty, where the vehicle used in conjunction with the post is without air conditioning and where the employee does not have access to an approved area with air conditioning when the temperature reaches 88 degrees Fahrenheit or above. When outside temperature is below 25 degrees



Fahrenheit (to include wind chill), employees assigned to outside posts will be given access to heated areas.

#### M.11 BIDDING ON OPEN POST/JOBS

M.11.1 The Employer agrees to allow employees, in the Protective Services Bargaining Unit, and Department of Correctional Services employees working in areas where their job assignments are involved in a normal rotation cycle to, one time each fiscal year, either, (1) Bid out of normal rotation, and accept new days off, or (2) Bid out of normal rotation, on the employee's assigned shift, and retain current days off. Employees will be afforded an additional bid, per fiscal year, to bid for days off only. When the employee is successful in bidding for a change, movement to the new assignment will take place as soon as appropriate.

M.11.2 All open post/job assignments will be posted within ten (10) calendar days after the assignment becomes vacant. The opening will be left posted for seven (7) calendar days, opening and closing will be those same seven (7) calendar days. The posting will include the appropriate job location, open post/job vacancy, shift, days off and classification, where applicable. Job postings will include a closing date and all applicants will submit an application or bid to the appropriate authority by the closing date as posted.

M.11.3 Initial placement of a job assignment upon hire shall not be considered a bid.

M.11.4 At the time of bidding for exempt posts, holidays concerning that post will be designated, on the bid sheet, as holidays worked or holidays not worked on that post.

#### M.12 ANNUAL VACATION SCHEDULING

M.12.1 Each facility or work unit will post a vacation request schedule once a year beginning November 1st, for a period of thirty (30) days, for vacation preferred between January 1st and December 31st of the following year. Each employee shall have the opportunity to select, based entirely upon their state seniority, the entire amount or any part of vacation time earned in the current year, prior to the schedule being filled in by the next senior person. To receive priority, vacation leave requests must be for three (3) consecutive work days or more. Vacation leave requests for less than three (3) consecutive work days will be considered, but with no priority. Upon completion of current year scheduling, employees may be allowed to schedule any carry over vacation, on a first come, first served basis.

M.12.2 The facility will prepare and maintain the vacation schedule in a book in the shift supervisor's office, which shall be made available to the employees to view, at any time, upon request. The results of vacation scheduling for the bargaining unit members will be posted no later than thirty (30) days after December 1<sup>st</sup> of each year.

M.12.3 Once the schedule has been approved, an employee's vacation period will not be changed by the Agency, except during periods of emergency or by mutual consent of the Agency and employee. Employee initiated actions, such as bidding or promotion,

which causes changes in days off and/or shift, may be cause for adjustment in vacation schedule depending upon staffing levels. In such cases, the employee will be permitted to select alternative vacation periods, which will not affect the security of the facility.

- M.12.4 State seniority will be the prime consideration in determining choice of vacation time.
- M.12.5 The purpose of this section is to guarantee that all hours spent away from work during this time period will be charged against accrued vacation, unless the parties mutually agree to substitute compensatory time for any portion of the time period.
- M.12.6 Employees must submit a written request to cancel scheduled vacation, to the immediate supervisor outside the bargaining unit, no later than seven (7) calendar days prior to the start of the vacation to be canceled. To retain any portion of scheduled vacation, the employee must take at least two (2) consecutive work days of scheduled vacation.
- M.12.7 OTHER LEAVE REQUEST - When an employee requests vacation or compensatory leave, approval or denial will be given at least seven (7) calendar days prior to the date the leave is to be taken. Applications for leave will be accepted up to thirty (30) days in advance of the date requested.
- M.12.8 With employee and Employer agreement, employees may take reasonable amounts of compensatory time off.

#### M.13 DISCIPLINARY ACTION

- M.13.1 When a Department of Corrections employee has been charged with a criminal offense that is directly related to the workplace which could reasonably be expected to result in a significant disruption of the workplace, the Department of Corrections Director, in consultation with the DCS Human Resources Administrator, may suspend the employee without pay until there is a trial court disposition of the criminal charges. A final disposition of the pending charges is not necessary prior to discipline, but may be considered by an arbitrator or hearing officer if a grievance is filed. The employee reserves the right to file a grievance on the Agency Director's decision to suspend.
- M.13.2 When an incident calls for the application of discipline, the discipline may be imposed only once for that incident.
- M.13.3 Disciplinary action shall consist of only one form of discipline, subject to progressive disciplinary standards.
- M.13.4 In no case will an employee be charged with a disciplinary violation when the employee behavior was known by the immediate supervisor and occurred more than 180 calendar days prior to the initiation of the disciplinary process. In the case of an outside investigation, the 180 calendar days does not commence running until the completion of the outside investigation.

Discipline shall not be imposed on an employee who failed to follow an actual unlawful order or direction.

M. 14      ADVANCE CALL-IN

M.14.1      In cases of unscheduled absences, essential employees as determined by the twenty-four hour facility shall provide at least two (2) hours advance call-in notice prior to the start of their shift. The shift supervisor on duty receiving the advance call-in shall secure the necessary staffing requirements.

M.15      EMPLOYEE DRUG AND ALCOHOL TESTING

PURPOSE: To preserve Department security and to protect the personal safety of fellow employees, volunteers, offenders, and the general public, employees, contract personnel, and volunteers shall not be permitted to perform their duties or enter upon the premises of departmental facilities or offices while under the influence of alcohol, the illegal use of drugs, and/or controlled substances.

APPLICABILITY: All employees of the Department, however, employees with commercial driver's licenses will be subject to testing as specified by the Federal Department of Transportation.

PROCEDURES FOR DRUG TESTING:

Rights and Privacy: The rights and privacy of employees shall be safeguarded to the maximum extent possible. All records and/or results generated in compliance with this procedure will be confidential. Under no circumstances shall the employee be required to provide their social security numbers or home address to the drug collection site. All information and reports concerning such incidents are to be maintained in the strictest of confidence ensuring that the alleged substance abuse is not discussed at or outside the workplace. Any breach of confidentiality is subject to severe disciplinary actions.

Testing for Controlled Substances: The contracted, independent licensed vendor determines information needed to be provided by the employee, which could include any over the counter medication or other therapeutic prescribed medication. Unless the employee challenges the result of the test, the employee shall provide requested information to the contracted vendor only.

Method of Testing: Gas Chromatography/Mass Spectrometry urinalysis testing shall be the only method of testing to be conducted by the contracted, licensed vendor. Chain of Custody of the urine sample is documented. If needed, a second test is permissible, but will be done from the original sample. If the test results are positive, and the employee wants to challenge the test results, it will be at the employee's expense. If the results of the re-test are negative, the test results will be considered negative.

Controlled Substances Tested: THC, cocaine, opiates, phencyclidine (PCP), amphetamines/methamphetamine, benzodiazepine, barbiturates, LSD, and any derivatives from these controlled substances.

Alcohol Testing: There shall be no random testing for alcohol use. Employees may only be tested with reasonable suspicion under the agency's current practice.

Work Time for Test Administration of Drug Testing: Employee shall be considered on work time pertaining to the administration of alcohol/drug testing, including overtime. All time used under this testing process shall be considered time worked for purposes of wages and overtime.

General Testing Guidelines: The Department shall ensure that all employees are informed of the detrimental impact of drugs and alcohol as it affects them at the work place. Substance abuse educational material will be provided to all employees annually by the Human Resources Division.

1. The following situations/conditions may require tests to be conducted of employees. For employees, failure or refusal to submit to such tests could result in disciplinary action being initiated:
  - a. pre-employment
  - b. reasonable suspicion (which can include critical incident, e.g., work accident, physical altercation; possession of alcohol or drugs,)
  - c. random
  - d. if applicable, return to duty
  - e. follow up
2. Department Test Coordinator, designated Human Resources Division contact, is notified of all reasonable suspicion by the work site coordinator, that are requested of an employee and whether the test was done or not. (Work site coordinator, an employee designated by the Facility/Program Administrator with mutual agreement by the Human Resources Administrator. No bargaining unit member shall be designated as a work site coordinator)
3. Reasonable Suspicion Alcohol and Drug Testing: Reports of reasonable suspicion go immediately to the Work Site Coordinator who notifies the Facility/Program Administrator or designee, and will be documented. The affected employee is relieved from duty and shall immediately meet with the Facility/Program Administrator or designee to discuss the matter, assess the situation, and to determine the appropriate course of action, which may not necessarily require a substance abuse test. Appropriate course of action could include:
  - a. supplemental training
  - b. supervisory counseling
  - c. EAP referral, or treatment referral to a licensed substance abuse professional
  - d. Performance Improvement Plan
  - e. Depending on the situation, possible disciplinary action could be ensued.

It is not the intent of the Employer to take disciplinary action as a direct consequence of receiving a confirmed positive result. However, nothing prohibits the employee from being subject to disciplinary action for inappropriate or illegal

acts performed while under the influence of the illegal use of a controlled substance.

The agency may take disciplinary action only for just cause, with consideration to mitigating information, as a result of the employee's inability to perform required duties.

The employee retains his/her grievance rights provided for in the FOP 88 Labor Agreement.

4. Random Testing: All employees are subject to a random drug test with a computerized generated list identifying the persons to be tested by the independent, licensed testing vendor contracted with the Department.
5. Commercial Drivers (CD) Testing: Employees required to hold Commercial Driver's License (CDL) are subject to the Federal Department of Transportation Guidelines, with the contracted independent, licensed vendor conducting the tests.
6. Critical Incident Testing occurs when actions of an employee cause serious physical injury or death of a person by misuse of a firearm, or other serious incidents.
7. Return to Duty Alcohol/Drug Testing occurs when an employee has been tested for alcohol or drugs with positive results, that employee will need to submit to testing prior to returning to work.
8. Follow Up Drug Testing – Upon request by the Facility/Program Administrator or designee, an employee, who has a verified positive result for a controlled substance listed in the 'Controlled Substance Tested' section, will need to submit to follow up testing. The employer shall have the right to follow up testing once within the following six months from the date of employee's last positive test results.

If the Facility/Program Administrator or designee's decision is to pursue a substance abuse test, then arrangements are made with an independent, licensed vendor contracted with the Department.

The employee who is subject to the alcohol/drug testing will remain readily available. Key documents are to be signed by the employee and the Facility/Program Administrator or designee.

Upon request, an employee may have an available employee representative present if being requested to undergo an alcohol/drug test.

Should a false accusation be made that an employee is suspected of substance abuse, then the accuser may be subject to disciplinary action.

Employee's Opportunity to Discuss Results of a Positive Test: An employee has the opportunity to discuss the positive results with the Independent Contracted Vendor. The independent vendor can determine if additional follow up is needed, with the expense borne by the employee. For

any employee requested re-test, the re-test shall be from the same original sample, by the same contracted vendor and if the retest is negative, the agency shall reimburse the employee for that particular re-test, by no later than the end of the following pay period.

Reports/Documentation: Each person involved in the reporting, supervising or investigation of allegations of substance abuse shall provide a written report to the Facility/Program Administrator/Department Test Coordinator during the work period in which their involvement took place. Reports shall list all facts being considered, including circumstances leading up to the test. If disciplinary action is pursued, then reports and/or information supporting reasonable suspicion shall be made available to the employee.

Agency/Employee Options to Positive Test Results: Employees may be allowed a leave of absence for treatment on an in-patient or outpatient basis. Employees participating in rehabilitation programs shall be entitled to use their accumulated vacation, holiday, comp time, and other accrued leave time. Nothing herein shall be construed to diminish any rights which may apply under the ADA, FMLA, or other relevant laws.

The Agency shall make reasonable efforts to reassign employees who are participating in an outpatient rehabilitation program to duties when their job description or temporarily reassign to another position for which he/she is qualified, until the employee is able to return to regularly assigned duties, with such return subject to the employee following the rehabilitation treatment program. If such, then the Department Test Coordinator has a file copy of the employee's diagnosis, prognosis and treatment plan.

Training & Educational Materials: The Agency will provide needed education to all of its employees – supervisors and front line staff – on its Random/Substance Abuse Drug Testing Policy, including but not limited to the following information:

- Conduct that is prohibited
- Situations when employees may be tested for alcohol/controlled substances
- Information on the testing procedures for alcohol/controlled substances
- Information on what constitutes a refusal to submit to a test
- Consequences for policy violations
- Information on effects of alcohol/controlled substances
- Upon request, an employee's right to an available union representative under the policy.

THE FOLLOWING SECTIONS ARE FACILITY SPECIFIC AND APPLY ONLY TO THE SPECIFIC FACILITY INDICATED AND SHALL NOT APPLY TO ANY OTHER FACILITY – (changes to facility specific language can only be negotiated by union members of the facility and final acceptance by a vote of the union members of the specific facility)

M.NCCW NCCW (Nebraska Correctional Center for Women in York, Nebraska)

M.NCCW.1 FEMALE ONLY CORPORAL POST/JOB ASSIGNMENTS

M.NCCW.1.1 The following subsections apply to all female corporals in the Protective Services Bargaining Unit (PSBU) at NCCW only. If any language within this entire section conflicts with any language within the entire labor agreement, the

language within this section M.NCCW and its subsections shall be applied in place of other language elsewhere in this Contract.

- a. FEMALE ONLY CORPORAL POST/JOB ASSIGNMENT POSITIONED WITHIN THE NORMAL ROTATION WITH OTHER CORPORALS (FCNR): This post/job assignment is assigned to a specific shift with the other corporals assigned to a normal rotation; but, it does not rotate with any other corporal post/job assignments. The female assigned to a FCNR shall be for one (1) year and non-rotating. The one (1) year begins from the date the employee is assigned to the FCNR.

M.NCCW.1.2 Post/Job Assignment: The female employee assigned to the FCNR shall have the right to maintain their post/job assignment permanently or by their choice to be removed from their post/job assignment by notifying the Employer in writing 60 calendar days prior to the end of the post/job assignment.

- a. If the female employee chooses not to remain in a FCNR the employee may bid into a post/job assignment within the last sixty (60) calendar days to the completion of their post/job assignment. The female employee will accept the post/job assignment and the days off assigned to the post/job assignment.
- b. If no post/job assignment is open, the employer shall open the vacating FCNR for bid; if female bids on the vacant FCNR the employer shall move the female employee vacating the female FCNR to the now open post/job assignment. If no female bids on the FCNR the employer shall assign the least senior female to the open FCNR and move the female employee vacating the FCNR to the now open post/job assignment.
- c. After completing the one year FCNR requirement, the employee may choose to maintain their current FCNR and not be subject to another one year requirement. The employee may bid to a rotating or non-rotating post/job assignment or a different FCNR at any time. But, if the employee bids into different FCNR, the one year requirement is applicable to the new FCNR.

M.NCCW.1.3 Vacancy: When a vacancy occurs in any FCNR a posting shall be open to eligible female employees within the classification for bids. If no female employee bids for the FCNR, the employer shall assign the least senior female corporal not currently assigned to any FCNR to the open FCNR.

M.NCCW.1.4 Mandatory Procedure: Employees assigned to a FCNR shall be placed on the same continuous rotating mandatory list with other employees working normal rotation and non-rotating post/job assignments. When a female is required for the on-coming shift and there is not enough females assigned to the next shift and no female employee volunteers, the next female on the top of the continuous rotating mandatory list shall be mandated to work. This may include skipping males that are ahead of the female employee.

THE FOLLOWING SECTIONS APPLY TO ALL EMPLOYEES OF THE PSBU

- M.NCCW.2 Retention Reassignment Request: In the event an employee does not have any bids remaining for the fiscal year and there is a post/job assignment or days off open for bid the employee wants, the employee may submit a formal written request to the employer to obtain the post/job assignment or days off.
- a. The only means the request shall be granted is if the employee is the only employee submitting a request and no employee bids for the same post/job assignment or days off. This must be done only during the time the post/job assignment or days off are open during the bidding process.
- M.NCCW.3 Within seven (7) calendar days after the closing date of the posting, the name of the employee being awarded the bid or that no bids were submitted shall be posted and available for view electronically.
- M.NCCW.4 New Hire Employee: These employees shall not have bidding rights until successful completion of pre-service and facility training.
- a. The employee shall select a post/job assignment that open and closed without receiving any bids; this shall become their permanent post/job assignment. This will not be considered as using a bid.
  - b. The employee may be assigned into temporary post/job assignment(s) until a post/job assignment becomes available.



## APPENDIX P - DEPARTMENT OF ADMINISTRATIVE SERVICES

### UNIFORMS

- P.1 The basic uniform issued to an employee shall be stated in the Standard of Operations of the Agency. Uniforms for all security personnel shall be the same. No item listed under P2 or purchased under P3 shall be used for outside employment or any other unofficial business.
- P.2 DAS shall furnish the following items as standard uniforms for all DAS security personnel covered by this labor contract:
- a. Trousers - four (4) pair
  - b. Shirts - six (6) long or short sleeve to be determined at the employee's discretion
  - c. Security Patches - one (1) for each shirt as necessary
  - d. Shoes - 1 pair
  - e. Belt - 1
  - f. Tie - 3
  - g. Badges - 2
  - h. Nameplates - 2 and rank designations
  - i. Jacket - 1 (for each security guard having to perform duties outside)
  - j. Additional uniform accessories, such as radio/belt swivel, belt/key holder, belt keepers, flashlight holder, etc., will be issued in accordance with individual duty requirements.
- P.3 DAS shall make arrangements for an employee to purchase, at his/her own expense, additional uniform items as listed in E2 at a cost comparable to that paid by DAS. DAS shall replace or repair any portion of the uniform which has become worn out or has been damaged in the line of duty.
- P.4 DAS agrees to consult with representatives of the Union prior to changing the existing uniforms of any of the facilities under DAS's responsibility or prior to establishing uniform requirements at any facility not presently having uniforms.
- P.5 All uniform materials issued are washable in standard automatic home-type machines with minimum care. Such routine cleaning of uniforms is the responsibility of each employee. Each employee shall try on each uniform component immediately upon issuance and, within 30 days, notify his/her supervisor if the uniform needs to be altered or returned to the vendor. Alterations after this time period will be the responsibility of the employee.
- P.6 All uniform components issued by the Department of Administrative Services remain the property of the State of Nebraska and shall be turned in by the employee to the employee's immediate supervisor either when damaged or in need of replacement or upon the termination of employment.
- P.7 A copy of the applicable operating procedures manual shall be available for each employee to review. Bargaining unit employees will have an opportunity for input into the development of operating procedures manuals.

- P.8 DAS shall furnish the uniforms, patches, alternations, cleaning, and replacement of all uniforms worn by Transportation Services Bureau (TSB) garage and maintenance employees.
- P.9 IMServices (computer processing unit) will post, in a 24 hour accessible area, a list of employees in the order of being called for overtime, also indicating the next person required to work overtime.

APPENDIX Q - NEBRASKA MILITARY DEPARTMENT

SECURITY SPECIALIST

Q.1 The initial issue and replacement of basic uniform and equipment, for the Military Department State Security Specialists, shall be prescribed in agency policies and procured only if appropriate federal funds are available.

Q.2 **MEAL PERIODS**

For those military security specialist employees whose scheduled work day is ordinarily eight (8) hours, a meal period shall be considered time worked, as those employees are considered on duty from the beginning of their shift until they finish their shift.

In witness whereof, the parties hereto have set their hands this 24<sup>th</sup> day of May, 2019.

FOR THE UNION

FOR THE STATE


Fraternal Order of Police  
Nebraska Protective Services, Lodge 88  
(FOP 88)

  
Pete Ricketts, Governor  
State of Nebraska

  
Gary Young, Chief Negotiator

  
William J. Wood, Chief Negotiator  
Employee Relations Administrator  
State of Nebraska

  
Michael Chipman, President

  
Sean Davis  
Employee Relations Representative  
State of Nebraska

  
Tammy Benson, Administrative Assistant  
Employee Relations  
State of Nebraska

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## LETTER OF AGREEMENT

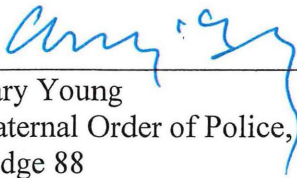


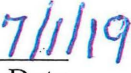
THIS LETTER OF AGREEMENT is made and entered into between the Fraternal Order of Police, Lodge 88 (FOP) and the State of Nebraska (State) to clarify provisions to the 2019-2021 Labor Contract (Labor Contract) between the parties concerning grammatical and other corrections of certain Sections of the Labor Contract.

The parties agree to make the following three changes to the Labor Contract between the Fraternal Order of Police, Lodge 88 and the State of Nebraska signed on May 24, 2019. These changes, where applicable, shall be noted in this Letter of Agreement, and notations made within the signed Labor Contract at the specified Sections to indicate that effect.

In Article 4, Section 4.1, there is a duplicated Section 4.2 present after the sentence stating, "A grievance is a written complaint alleging a violation involving the application and interpretation of the provisions of this labor contract." That duplicated Section 4.2 shall be stricken.

In Article 7, Section 7.7.1, the last paragraph states, "Food Service Aides, Food Service Assistants, and Food Service Cooks who work between 6:00 p.m. and 6:00 a.m. shall receive shift differential at the second shift rates for all hours worked between those hours. Food Service Aides, Food Service Assistants, and Food Service Cooks who work at least three (3) consecutive hours and have any hours worked between the 6:00 p.m. and 6:00 a.m. time frame shall be guaranteed a minimum of three (3) hours of 2<sup>nd</sup> shift differential pay. For employees who start their shift between 6:00 p.m. and 6:00 a.m. and do not work three (3) consecutive hours, they will be paid 2<sup>nd</sup> shift differential for only the hours worked. As these employees do not work traditional shifts, the employing agency, in consultation with the union, shall designate the assigned shift of each food service position." This paragraph shall be stricken.

In Article 11, Sections 11.2, 11.2.1, 11.2.2, 11.3, and 11.3.1, as well as in Appendix A—Pay Lines, any reference to the classification "Military Security Trainee" or "Military Officer Trainee" shall forthwith be referred to and noted as "Military Security Officer Trainee." Furthermore, any future reference to this classification in Labor Contracts, Letters of Agreement, and other written documents shall be under this title.

|   |   |
|---|---|
|  |   |
| Gary Young  | William J. Wood, Chief Negotiator   |
| Fraternal Order of Police,  | Administrative Services, Employee Relations   |
| Lodge 88  | State of Nebraska   |
|  |  |
| Date  | Date  |