

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING made and entered into this 1st day of July, **2012**.

BY AND BETWEEN

CITY OF SAN DIEGO

AND

SAN DIEGO POLICE OFFICERS
ASSOCIATION

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ARTICLE 1

PARTIES TO AGREEMENT

This Memorandum of Understanding (MOU) is **made and** entered into on **July 1, 2012**, by and between the **City of San Diego (City)**, and the San Diego Police Officers Association (**POA**).

ARTICLE 2

RECOGNITION

City formally recognizes POA as the exclusive representative for all employees in the Police Unit **and Police Management Unit**. This MOU applies to all classifications listed below except as the units may be amended in accordance with City's Employee-Employer Relations Policy.

Police Unit:

Police Recruit

Police Officer I

Police Officer II

Police Officer III

Police Detective

Police Agent (**Terminal**)

Police Sergeant

Community Relations assistant to the Police Chief

Police Management Unit:

Police Lieutenant

Police Captain

ARTICLE 3

IMPLEMENTATION

This MOU constitutes a mutual recommendation by the **Parties** to the **San Diego City Council (City Council)** and/or the Civil Service Commission. This MOU **will** be of no force or effect until ratified and approved as appropriate by City Council and/or Civil Service Commission.

ARTICLE 4

TERM OF AGREEMENT

The term of this MOU **will** commence at 12:01 a.m. on July 1, **2012**. This MOU

will expire and otherwise be fully terminated at **11:59 p.m.** on June 30, 2013.

ARTICLE 5

RENEGOTIATION

- A. In the event POA or City desires to meet and confer in good faith on the provisions of the successor MOU, it **will** serve upon the other party not later than January 16, **2013**, its written request to commence meeting and conferring in good faith.
- B. Not later than February 6, **2013**, the **Parties will** commence the meet and confer process and POA **will** provide City with its initial proposals for a successor MOU. City **will** provide POA with its initial proposals for successor MOU, at the next meeting of the **Parties** which **will be** at least five (5) working days (Monday-Friday) after POA **provides its** proposals.
- C. **City contends that the Deferred Retirement Option Plan (DROP) is an employment benefit subject to modification through the meet and confer process. Despite POA's disagreement with this contention, the Parties agree that, during the term of this MOU, they will meet and confer over proposals to modify DROP to make DROP "cost free" to City. The Parties acknowledge that City's proposals will modify DROP to make DROP "cost free" as defined by City and may include any and all aspects of DROP, including but not limited to, all of the DROP alternative plan design proposals set forth in a study by Buck Consultants presented by City to POA on March 14, 2012, or any variations of the alternative proposals which changes numbers or percentages reflected in the Buck study. However, by agreeing to meet and confer regarding proposals to modify DROP, POA is not waiving its right to challenge any proposed modification to DROP on the basis that it may impair a constitutionally protected, individually vested pension benefit, or on any other ground. POA further reserves its right to argue, despite any contrary assertion by City, that the current unmodified DROP is, in fact, "cost free" within the meaning of reasonable actuarial principles and appropriate margins of error. Moreover, in agreeing to meet and confer regarding proposals to modify DROP, neither Party is waiving its rights to make any legal arguments or pursue any legal action related to any proposed DROP modification.**

In the event City and POA reach agreement on any modifications to DROP, these modifications will become effective on the date agreed upon. In the event the Parties fail to reach an agreement, any impasse hearing related to DROP will be conducted in accordance with Council Policy 300-06 on a date to be agreed upon by the Parties but in no event before January 1, 2013. However, any impasse hearing related to the

Parties' meet and confer over DROP, including the aspects of DROP described above, will be separate from and not combined with any issues remaining for impasse in connection with the Parties' meet and confer process for a new MOU for Fiscal Year 2014.

D. At the option of City, the **Parties** will meet and confer over any City proposed changes to the Long Term Disability (LTD) plan.

ARTICLE 6

SCOPE OF REPRESENTATION

The scope of representation of POA includes all matters relating to employment conditions and employer/employee relations including, but not limited to, wages, hours, and other terms and conditions of employment as provided for and defined by the Meyers-Milias-Brown Act (MMBA), at California Government Code **section 3500, et seq.**

ARTICLE 7

PROVISIONS OF LAW

If any section, subsection, subdivision, sentence, clause or phrase of this MOU is for any reason held by a court of competent jurisdiction to be illegal, **the decision will not affect the remaining portion of the MOU.**

ARTICLE 8

HOLIDAYS

A. Fixed Holidays.

1. Fixed Holidays will be:

- a.** January 1;
- b.** Third Monday in January, known as "Dr. Martin Luther King Jr.'s Birthday;"
- c.** Third Monday in February, known as "**Presidents' Day;**"
- d.** March 31, known as "Cesar Chavez Day;"
- e.** Last Monday in May, known as "Memorial Day;"
- f.** July 4;
- g.** First Monday in September known as "Labor Day;"

- h. November 11, known as “Veteran’s Day;”
 - i. Fourth Thursday in November, known as “Thanksgiving Day;”
 - j. December 25; and
 - k. Every day appointed by City Council for a public fast, thanksgiving or holiday.
2. If January 1, March 31, July 4, November 11, or December 25 falls upon a Sunday, the Monday following is the City-observed holiday. **If any of the dates listed in this section** fall on a Saturday, the preceding Friday is the City-observed holiday. An employee who is eligible for overtime compensation pursuant to the Fair Labor Standards Act (FLSA) **will** receive overtime compensation for all hours worked on the actual holiday when the employee performs required work on that day. In such instances, holiday overtime will not be paid on the day the holiday is observed by City.
3. The following **is an example** of the holiday pay procedures for POA-represented employees if the actual holiday falls on a Sunday and City-observed holiday falls on a Monday:
- a. Officers who work both the City-observed holiday (July 5) and Sunday, July 4, will receive holiday overtime on July 4. Officers who are regularly scheduled to work on July 4 may elect to take this day as a “holiday” if approved by a supervisor.
 - b. Officers who have Monday, July 5 off and are regularly scheduled to work on July 4 will treat Sunday as the holiday and receive overtime for that day, or take the day as a “holiday” if approved by a supervisor.
 - c. Officers who work on July 5, the City-observed holiday, and volunteer to work on July 4 (scheduled day off) for overtime, will receive holiday credit on July 5 and regular overtime pay on July 4.
 - d. Officers who work on July 5 and are off on July 4, are eligible to receive a holiday credit if required to take the day off on July 5, or receive holiday overtime if the officer is required to work.
 - e. If an officer is scheduled to work on both July 4 and July 5, the officer will only be entitled to receive holiday credit for one day, not both.

B. Floating Holiday.

1. In each fiscal year covered by the term of this MOU, each eligible employee available for a duty assignment on July 1 (as defined in Personnel **Manual Index Code H-2**) **will** accrue credit for ten (10) hours of holiday time. Each employee accruing such time **will schedule his or her floating holiday to**

comply with the following conditions:

2. Employee must schedule **the floating holiday** prior to June 1;
3. **The floating holiday** must be a one-time absence and it must be used before the last day of the last full pay period in June; and
4. **The floating holiday must be taken at** a time convenient to the employee's appointing authority.

C. Working on a Fixed City Holiday.

Employees who are scheduled to, or work, a ten (10) or more hour shift (excluding overtime) on a fixed City holiday **will** be credited with two (2) additional hours of holiday time **equal to the number of hours in their shift for use on another day**, in addition to the eight (8) standard holiday hours pay plus overtime for all hours of the regular shift (e.g. ten (10) or twelve (12) hours of premium time depending upon their regular shift) for working the holiday.

ARTICLE 9

MANAGEMENT'S RIGHTS

- A. The rights of City include, but are not limited to:
1. The exclusive right to determine the mission of its constituent departments, commissions, and boards;
 2. Set standards of service;
 3. Determine procedures and standards of selection for employment and promotion;
 4. Direct its employees;
 5. Take disciplinary action for just cause;
 6. Relieve its employees from duty because of lack of work or for other legitimate reasons;
 7. Maintain the efficiency of government operations;
 8. Determine the methods, means, technology and personnel by which government operations are to be conducted;
 9. Determine the content of job classifications;
 10. Take all necessary actions to carry out its mission in emergencies; and

11. Exercise complete control and discretion over its organization and technology of performing its work.

B. The exercise of **these** rights **does** not preclude employees or their representatives from meeting and conferring or meeting and consulting as required by law with City representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.

ARTICLE 10

NO DISCRIMINATION POLICY

It is agreed that neither City nor POA **will** discriminate against any employee **based on any of the protected classes or categories listed in City's Equal Employment Opportunity (EEO) Policy – Annual Statement** or POA membership or activity. It is further agreed that no employee will be discriminated against because of exercising his or her rights specified in the Employee-Employer Relations Policy. POA and City agree that they support the current policies of City as to affirmative action and Equal Employment Opportunity, and City further agrees to meet and confer as required by state law on any changes in these policies.

ARTICLE 11

EXCHANGE OF DAYS OFF BETWEEN EMPLOYEES

It **is** the policy of the San Diego Police Department (**Department**) to allow employees of the same rank to exchange days off under the following conditions:

- A. Both parties to the exchange must be willing to take the exchange and must have the approval of the immediate supervisors concerned.
- B. Generally speaking, exchanges of days off will be kept within the division, section, watch, and detail unless, on an individual basis, the commands of the parties to the exchange otherwise agree.
- C. When practical, requests for an exchange of days off **should** be made in writing at least five (**5**) **working** days prior to the first day of exchange.
- D. An officer must report for the exchanged days off and with the exception of illness, **an** officer who otherwise fails to report **will** be carried absent without leave.
- E. To avoid administrative problems, **an** exchange of days off must be made within the same payroll period by both parties.
- F. These exchanges must be made in accordance with the FLSA, when applicable.

ARTICLE 12

INFORMATION ON NEW EMPLOYEES

- A. Whenever City hires a Police Recruit or sworn Police Officer as a new employee, it will inform POA in writing of such employment, giving the name, date of hire and job classification of the new employee.
- B. City agrees to use its best efforts to inform POA in all instances when an employee represented by POA retires from City, giving the name, job classification and date of retirement.

ARTICLE 13

FLEXIBLE BENEFITS PLAN

- A. An **Internal Revenue Service (IRS)** qualified cafeteria-style benefits program **called the Flexible Benefits Plan (FBP)** is offered to all eligible employees. The FBP provides a variety of tax-free benefit options. “Eligible employee” means any employee in one-half, three-quarter, or full-time status. “Eligible employee” excludes all employees in an hourly status. Eligible employees must have no less than forty (40) hours of compensated time during each pay period in order to receive City-paid benefits. If an eligible employee has less than forty (40) hours of compensated time during a pay period, the eligible employee will have the right to continue **his or her** benefits by paying City the full cost to continue any or all of the employee’s benefits during that period. In the case of Family Medical Leave Act (FMLA) approved absences, City will continue to pay for the employee’s health, life and dental insurance for up to twelve (12) weeks per year in accordance with FMLA requirements.
- B. City’s contribution to the FBP, effective July 1, 2010, will be based on the level of health insurance coverage selected by the eligible employee. City’s contribution to FBP will be prorated according to the percentage of time worked if the employee works less than full-time status.
 - 1. The FBP annual value for Fiscal Year **2013 for employees in the Police Unit** will be as follows:
 - a. Health Waiver (for employees who have other comprehensive health coverage) - \$1,500.
 - b. Employee only – \$3,837.
 - c. Employee and Children – \$5,814.
 - d. Employee and Spouse/Domestic Partner – \$6,280.
 - e. Employee and Spouse/Domestic Partner & Children – \$7,588.

C. The FBP annual value for Fiscal Year 2013 for employees in the Police Management Unit will be as follows:

- 1. Health Waiver (for employees who have other comprehensive health coverage) - \$4,500.**
- 2. Employee only – \$6,837.**
- 3. Employee and Children – \$8,814.**
- 4. Employee and Spouse/Domestic Partner – \$9,280.**
- 5. Employee and Spouse/Domestic Partner & Children – \$10,588.**

D. The benefits available through FBP and the respective annual costs **of the benefits** are reflected in the Flexible Benefits Summary Highlights booklet provided to each employee each year of the MOU. POA will be allowed to offer two (2) Association for Los Angeles Deputy Sheriffs (ALADS) HMO plans in Fiscal Year **2013**. It will be POA's and/or ALADS' responsibility to inform the participants and City of cost changes to be effective for January 1 coverage. Such notice must be provided to City's Risk Management no later than October 1 of the year prior to the coverage effective date in order for changes to be made to City's OneSD system for deductions from participants' paychecks beginning December.

E. It is the intent of the **Parties** that all plans offered in the FBP comply with all applicable state and federal laws, including IRS regulations as interpreted by City Attorney. All disputes over interpretation of **this Article** will be submitted to the appropriate agencies for interpretation.

F. The employee must select a health insurance **plan** unless the employee has other comprehensive health insurance.

G. **Eligible employees are credited with** City's contribution **on a biweekly basis** as taxable earnings. To allow employees to receive Flexible Benefit allowance on a pre-tax basis, employees may designate a specific amount of pre-tax money (**IRS restrictions apply**) to be withheld from their paycheck for health, dental and vision coverage and/or to reimburse eligible out-of-pocket **Dental/Medical/Vision (DMV) or Dependent Care** expenses.

H. These payroll deductions must be designated during the open enrollment period, are irrevocable, **are subject to IRS regulations**, and monies are forfeited if not used within the fiscal year.

I. Eligible employees are required to enroll for their benefits each year during the designated open enrollment period. If an employee fails to complete enrollment within the open enrollment period, the employee's current options (or comparable plan if unavailable) will be automatically continued at the same

level for the next year as if the employee had elected to keep them. Employees agree that City may make a payroll deduction for all elected benefit options. All payroll deductions, including DMV and Dependent Care reimbursement, will continue and may not be eligible to be stopped until the following open enrollment period.

- J. It is agreed that POA fees for its prepaid insurance plans will be remitted by the Risk Management in the aggregate amount according to the following procedure: Risk Management will audit and balance the enrollment and remit to POA, or its designee, the aggregate amount shown as soon as feasible within City Comptroller guidelines for processing Requests for Direct Payment. POA will be responsible for collecting premiums from employees that were not collected due to the employee's non-pay status.**
- K. The Parties agree to meet and discuss potential changes to health, dental and vision plans for POA represented employees. The Parties will discuss options to lower costs to POA members, to include options for POA to become the exclusive provider for health, dental and vision plans for POA members and/or consolidation of City health plans. Potential options will be jointly determined no later than December 1, 2012. Any option must conform to all applicable laws, including tax laws.**

ARTICLE 14

INDUSTRIAL LEAVE

Industrial Leave benefits will be administered in accordance with **Administrative Regulation (AR) 63.00**. **City will administer benefits** for industrial injuries incurred **by employees covered by this MOU** in accordance with California Labor Code section 4850.

ARTICLE 15

EDUCATIONAL INCENTIVE

City agrees to continue the existing Educational Incentive Program as described in Department Procedure No. 5.13 except as set out below.

- A.** Effective July 1, 2007, the benefit for Advanced POST Certificate shall be eight and one-half percent (8.5%) of employee's base rate, and the benefit for Intermediate POST Certificate shall be six percent (6%) of employee's base rate. These amounts are not cumulative.
- B.** Effective July 1, 2009, for the purpose of this Article only, those sworn officers in the classifications of Police Officer I, Police Officer II ("A," "C," and "D" steps

only) and who possess an Advanced POST **Certificate will** receive \$3.10 per hour. Police Officer I, Police Officer II (“A,” “C,” and “D” steps only) and who possess an Intermediate **POST Certificate will** receive \$2.19 per hour. These calculations are based upon the Advanced and Intermediate POST percentages respectively, times the “E” Step salary of Police Officer II.

- C. Employees possessing the Advanced POST Certificate who have completed at least sixty (60) college semester units or fifteen (15) years of service as a sworn officer with City will not be required to re-qualify to be eligible for the Educational Incentive Payment. Employees who have completed less than sixty (60) college units or fifteen (15) years of service will be required to re-qualify in accordance with Police Department Procedure No. 5.13. Employees with an Intermediate POST Certificate with fifteen years of service as a sworn officer or who meet applicable educational requirement **will** not be required to re-qualify.
- D. POA agrees to establish and actively support a community service program.

ARTICLE 16

BILINGUAL PAY

A. Ongoing Bilingual Services.

City agrees to continue a program which will provide ongoing extra compensation for employees whose job assignment requires ability to communicate orally in Spanish, Tagalog, Somali, Korean, American Sign Language, Chinese, Indochinese, Russian, Arabic, or Farsi languages as well as English. Participants in this program, who are certified by **Personnel**, and who are otherwise eligible, **will** receive three and one-half percent (3.5%) of employee’s base rate while in the job assignment requiring this additional skill. A claim by an individual of arbitrary denial of bilingual pay is grievable.

B. Incidental Bilingual Services.

1. City agrees to provide bilingual compensation for the entire pay period for those eligible individuals who are requested or directed by a supervisor, manager, or **Communications** to provide translator services in a non-English language other than a language eligible for ongoing bilingual compensation (Spanish, Tagalog, Somali, Korean, American Sign Language, Chinese, Indochinese, Russian, Arabic or Farsi languages).
2. A statement attached to the **Personnel Change Notice** from a supervisor will serve as certification for bilingual pay for the pay period.
3. For the purpose of defining “incidental bilingual services rendered,” any language other than English may qualify for incidental bilingual compensation.

4. City reserves the right to establish criteria which will enable candidates in this program to qualify for the extra compensation.
5. POA's request for City to consider expanding the number of languages recognized as eligible for continuing bilingual pay will be referred to the Multilingual Task Force for study and recommendations.
6. Employees **are** required to be periodically re-tested in order to ensure that their bilingual skills are current. In order to continue receiving bilingual pay, employees must pass a re-test on their non-English language. The re-test will be administered on City time by the Personnel Department. City may re-test an employee once every three **(3)** years thereafter.

ARTICLE 17

BADGES

A. Flat Badges.

City agrees to provide flat badges for sale by Department to employees. The flat badge remains the property of City and, at the time of employee termination, the badge must be returned to the Department without reimbursement to the employee. However, if the employee is retiring and eligible for a retired badge, the Department will exchange the flat badge for a retired flat badge.

B. Retired Badges.

1. Upon a service or disability retirement, an eligible officer has the following options:
 - a. If the officer has only a breast badge, City will have the officer's name tag and original breast badge encased in acrylic at no cost to the officer. In lieu of having the badge encased, the officer can have the breast badge modified to or exchanged for a breast badge with a retired scroll in place of the badge number.
 - b. If the officer has both a breast and flat badge, the officer has the following choices:
 - 1) City will have the officer's name tag and original breast badge encased in acrylic at no cost to the officer and have his **or** her flat badge exchanged for or modified to a retirement badge.
 - 2) City will have the officer's name tag and original flat badge encased in acrylic at no cost to the officer and have his or her breast badge exchanged for or modified to a retired badge.

- 3) City will have both the breast and flat badge exchanged for or modified to a retired badge.
2. Officers who do not have a flat badge for exchange or encasement have the option to purchase a retired flat badge.
3. In addition to paragraph **B.1.a and B.1.b.**, City will provide to POA, at no cost, a flat badge of appropriate rank, to POA for purposes of ceremonial presentation to the individual, by POA, upon retirement.

ARTICLE 18

ANNUAL LEAVE

- A. Employees covered by this MOU **will** accumulate annual leave time as follows (references to number of years are to fully completed years of service):
 1. 1-5 years of employment 5.24 hours per pay period
 2. 6-15 years of employment 6.77 hours per pay period
 3. 16 or more years 8.31 hours per pay period
- B. Appointing Authorities are responsible for arranging annual leave so that adequate personnel are available to carry on necessary City work.
- C. As far as is practicable, employees should be permitted to schedule annual leave at times most acceptable to the employee. Scheduled annual leave **will** be selected by employees within each division, watch, bureau, section, or unit, as is applicable, based upon their seniority by rank within the Department. Employees who are transferred at their request, or promoted, may be required to modify their scheduled annual leave.
- D. Employees should be encouraged to take regular annual leave but they **will** not be required to take time off against their will. Any leave days in excess of the authorized number earned for that year may be taken only at the convenience of the Department.
- E.
 1. The maximum accumulation of annual leave for employees hired before **July 1, 1994**, with less than fifteen (15) years of service is six hundred (600) hours. Annual leave credits may be accumulated over the six hundred (600) hours limit until an employee's annual "accrual date" (which is normally the day and month when originally hired). The maximum accumulation of annual leave for employees with fifteen (15) or more years of service is seven hundred (700) hours.
 2. For employees hired on or after July 1, 1994, the maximum accumulation of annual leave is three hundred fifty (350) hours.

3. If, on **an** employee's anniversary date, an employee's leave balance exceeds the applicable cap, accrual of additional annual leave, whether in hours or cash equivalent, will cease. However, once an employee's annual leave balance falls below the applicable cap, accrual of annual leave will resume. Employees **will** be provided reasonable opportunity to take time off to **ensure leave accrual is not interrupted**. In unique situations when workload does not permit **an employee to take** time off, Department will have discretion to grant a ninety-day extension to **the employee to use** excess leave before **the** cease to accrue will be implemented.
- F. Department annual leave periods will be divided into one-week increments. Annual leave schedules **are** comprised of fifty-two (52) one-week increments for each separate rank per division, watch, bureau, section, or unit, providing, however, that the Department may establish an equitable formula relative to Lieutenants and above to accommodate command staffing when a conflict exists in annual leave scheduling. Employees may elect to take annual leave in increments of one day or longer. Employees will annually be required to select a vacation period in advance on the basis of seniority within their division, watch, bureau, section or unit. The initial selection of leave **will** be the full regular annual leave or the first segment of **the leave**. After the initial selection has been completed by all employees, those seeking to take more than one segment of leave **can** select their second segment from those periods remaining. Those employees desiring a third leave segment **will** select their third choice after those choosing a second segment have completed their selection, etc. Each Departmental unit will establish an equitable formula to predetermine the limit or the number of officers that will be allowed to use annual leave credit during each leave period. The limit may be lowered for the few selected periods of anticipated heavy police work load, i.e., July 4 **and** Labor Day weekend.
- G. All employees, upon separation, **are** entitled to receive pay for unused annual leave credits.
- H. Leave provisions included under item **I** and **J** below will be accounted for separately.
- I. Pre-approved annual leave, sick leave or compensatory time off properly used for personal, family, or dependent illnesses **will** not be subject to disciplinary action.
- J. Approved unscheduled annual or sick leave properly used for family, dependent, or **domestic partner** illnesses **will** be considered as a separate category when reviewing employee performance with regard to attendance and absenteeism issues. Should **City**, for good and sufficient reasons, determine that an employee is abusing this leave provision, **City** may request a bona fide doctor's statement from the employee to substantiate illness.
- K. Each fiscal year, employees may receive a maximum payment-in-lieu of annual leave of 125 hours.

L. Benefits While on Special Leave Without Pay (SLWOP).

1. All benefits while on SLWOP will be coordinated or offset by benefits the employee receives under any other City program, including but not limited to LTD and FMLA.
2. After one year on SLWOP, City may charge the employee a 2% administrative fee or offer continuation of benefits under COBRA.
3. Employees will not be eligible to purchase City-sponsored Supplemental Life Insurance while on SLWOP.

M. The Department can grant so-called "Red A" leave, which is approved unpaid leave, at Management's sole discretion, per Personnel Manual Index Code I-7.

ARTICLE 19

SICK LEAVE AND ANNUAL LEAVE REIMBURSEMENT

An eligible employee, upon retirement, or upon termination (other than death or discharge, including termination with eligibility for a deferred retirement), may request that payment for sick leave and annual leave reimbursement be paid in either: (a) one full payment; or (b) one full payment at a specified date within the same calendar year of retirement.

A. Unused Sick Leave (for employees hired prior to July 1, 1975 only).

An employee hired prior to July 1, 1975, will be reimbursed for his or her unused accumulated sick leave credit at his or her rate of pay at termination, in a lump sum, subject to the following conditions:

1. Upon retirement or death, the employee is entitled to reimbursement for sick leave at fifty percent (50%) of his or her rate of pay.
2. Upon termination, the employee is entitled to reimbursement for sick leave at twenty-five percent (25%) of his or her rate of pay.

B. Unused sick leave is not paid if an employee is terminated for cause.

ARTICLE 20

BOARD OF DIRECTORS

A. Board of Directors.

POA Board of Directors may represent employees in the processing of grievances subject to the rules and procedures outlined in Section B. Within thirty (30) days of the effective date of this MOU, POA will furnish City

with a written list identifying by name and assigned work areas and including shift assignments all members of the Board. **The list will** be kept current by POA.

B. Handling Grievances.

1. When an employee **has a grievance, he or she may request that** a Board member, with permission of his or her supervisor, investigate **the** grievance in his or her assigned work area and assist in its preparation and presentation. If no Board member is assigned to the employee's work area or if the Board member assigned **to the employee's work area** is not available at the time the grievant makes his **or** her request, another Board member may investigate the grievance.
2. After notifying and receiving approval of the immediate supervisor, a Board member **will** be allowed reasonable time off during working hours, without loss of time or pay to investigate, **to** prepare and present the grievances. The immediate supervisor will authorize the Board member to leave his or her work **assignment** unless compelling circumstances require refusal of such permission. **In that** case, the immediate supervisor **will** inform the Board member of the reasons **release time was denied** and establish an alternate time when the Board member can reasonably be expected to be released from his or her work assignment.
3. When a Board member **needs** to contact an employee at his or her work location, the Board member **will** first contact the immediate supervisor of that employee, advise **the supervisor** of the nature of the business, and obtain the permission of the supervisor to meet with the employee. The immediate supervisor will make the employee available promptly unless compelling circumstances prohibit the employee's availability, in which case the supervisor will notify the Board member when he or she can reasonably expect to contact the employee.
4. A Board member's interview or discussions with an employee on City time will be handled expeditiously.
5. **The Department will provide POA prior notice before a Board member is** transferred or changed to a different work shift. **The requirement of** prior notice to POA **will** not be construed as limiting City in its prerogatives to transfer or change the work shift of a Board member.

C. Board of Directors Meetings.

Members of the Board **will** be permitted to attend, while on duty, meetings of the Board of Directors.

ARTICLE 21

FORMAL REPRESENTATION

- A. POA may select three **(3)** representatives to attend scheduled meetings with the Management on subjects within the scope of representation during regular work hours without loss of compensation, except for annual meet and confer sessions concerning economic matters, when **nine (9)** POA representatives may be released from the on-duty work schedules.
1. In addition, POA may also select a representative to attend City Council, Council Committees, **Retirement Board**, and Civil Service Commission hearings during regular work hours, without loss of compensation, when subjects within the scope of representation are being discussed.
 2. Normally, requests for such release **will** be made of the Chief of Police **or his or her designee** at least two **(2)** working days in advance of **the** meetings, provided further that:
 - a. Names of all designated representatives will be given to the Chief of Police or his or her designee at the time the request is made.
 - b. No representative **will** leave **his or her** duty station or assignment without specific approval of the Chief of Police **or his or her designee**.
 - c. **All meetings are** subject to scheduling by City in a manner consistent with **the** operating needs and work schedules.
- B. POA maintains an Employee Representative Program. The purpose of the program is to provide sworn employees with appropriate representation and assistance during disciplinary actions and in matters which may lead to discipline. The members of the program are personnel from throughout the Department who have volunteered to serve, and have been trained in the duties of employee representatives. Employee representatives may appear with employees during:
1. Any investigatory, fact-finding, or appeal meeting which may result in suspension (except emergency suspension), discharge, demotion, or disciplinary transfer; or
 2. The required discussion or the appeal of any document, including **an Annual Performance Evaluation** that does not meet standards or is a Supplemental Performance **Report**, written warning, or reprimand which may be made part of the employee's permanent record, and/or which may be used as a basis for subsequent discipline.
- C. Employee representatives may also assist employees in preparing written reports, including Department reports, where information contained in them

may be used as a basis for punitive or disciplinary action against an employee. The Department and POA have agreed that the employee representatives will notify their supervisors each time they are assigned a matter for representation. Representatives are allowed two **(2)** hours of on-duty time to prepare for participation in interviews, interrogations, and appeal hearings for each case to which they are assigned. This preparation time is in addition to any on-duty time actually spent in the interview, interrogation or appeal meeting. All supervisors should note that the two-hour authorized preparation time is provided to the employee representatives only, not to the employees being represented.

- D. The Department fully supports the Employee Representative Program. Therefore, supervisors are encouraged to cooperate as much as possible with the representatives in scheduling employee interviews, counseling sessions, and hearings of any appeals of disciplinary actions. In addition, supervisors should provide representatives with all the information **the representatives** request to which they are entitled by law and by Department **policy** and **procedure** which **the representatives** need to perform their duties. All information obtained by the representatives during the course of their duties **as representative** will be maintained in the strictest confidence. Because they are acting as agents of POA's attorneys while representing employees, the information gained by the representatives is protected by the attorney/client privilege and its disclosure is prohibited.
- E. POA may designate up to forty (40) Employee Representatives and **will** provide the Assistant Chief in charge of personnel service with a current list of representatives.
- F. **Effective July 1, 2012, four (4) hours of release time, per quarter, is authorized for POA's trustee representative for the purpose of attending San Diego Employees Retiree Medical Trust board meetings. No overtime is authorized. Additional release time may be granted subject to the approval of the Human Resources Director.**

ARTICLE 22

POA ACCESS

- A. Authorized POA representatives who are not City employees (such as business agents or attorneys) **will** be granted access to work locations in which employees covered by **this MOU** are employed, for the purpose of conducting grievance investigations and observing working conditions.
- B. Authorized POA representatives **seeking** access to work locations **will** first request **access** from the appropriate Department Management representative, at which time the representative **will** inform **the** Department Management representative of the purpose of the visit. The Department Management

representative may deny access to a work location if, in his or her judgment, it is **determined** that a visit will unduly interfere with the operations of the department or facility. In **that** event, **the** Department Management representative will recommend an alternative time for the visit.

- C. **Within thirty (30) days of the effective date of this MOU**, POA will provide Department Management a written list of all authorized representatives. **The** list **will** be kept current by POA. Access to work locations under **this MOU** will be granted only to representatives on the current list.
- D. Authorized POA representatives **will** be given access to non-security work locations during working hours to conduct grievance investigations and to observe working conditions on the condition that POA representatives will comply with the regulations established in this Article, and POA representatives **will** not interfere with work operations of any **City department**. Representatives have the right to meet with employees during coffee, rest, or lunch breaks at City facilities **that** may be available.

ARTICLE 23

OUT-OF-CLASS ASSIGNMENTS

- A. **Policy.** The following applies to all out-of-class assignments:
1. The term “out-of-class assignment” (**OCA**) means the temporary transfer of an employee to a vacant position or to a position where the incumbent of the position is unable to perform the duties **of the position because** of absence or disability. This **OCA** position must be officially allocated by the Civil Service Commission to a class other than the one presently occupied by the employee. The class may be at a higher, lower, or the same pay rate as the class the employee presently occupies. However, the employee **will** continue **to be paid at his or her current** pay rate.
 2. Acceptable reasons for **OCA** are:
 - a. Non-availability of properly classified employees to fill a temporary vacancy to which the regular incumbent is expected to return.
 - b. Assignment to light duty when required by City’s examining physician or a doctor designated by the Workers’ Compensation unit.
 - c. The temporary filling of a vacant position, for which there is no permanent incumbent, pending certification of eligibles. For purposes of this regulation, a vacancy will be deemed to exist upon reclassification of an existing position.

- d. The temporary filling of a vacant position for in-service training, or in connection with a formalized training program for the purpose of improving opportunities for promotion. Training assignments must be approved by the Personnel Director regardless of duration. Appointments made in accordance with City's career advancement program, as outlined in Personnel Manual Index Code D-3, are not **OCA** and are not eligible for extra compensation.
3. An **OCA** may be made, if in the opinion of the Appointing Authority, such action is necessary for the proper functioning of the Department. However, after filling a vacancy by an **OCA** assignment, the Appointing Authority is not required to fill the vacancy caused by such assignment.
 - a. Appointing Authorities may select any employee in non-represented classes and in classifications in the Police, Administrative Support and Field Service, Professional, Supervisory, and Technical representation units to fill an **OCA**, using eligible lists, availability, training, seniority, and other relevant factors as guidelines.
 - b. **OCA will** not exceed sixty (60) consecutive calendar days nor **will** a series of **OCA** to any one vacant position exceed sixty (60) calendar days without approval by the Personnel Director. **OCA will** not be made **to** avoid filling a position **with** a limited or permanent appointment.

B. Eligibility For Additional Compensation.

1. Employees **will** receive compensation for **OCA** to higher classes only when the assignment has been continuous for thirty (30) days. Compensation begins on the **thirty-first (31st)** continuous day and from that day forward. The **first (1st)** through **thirtieth (30th)** days are paid at the employee's regular rate of pay.
2. Employees **will** be compensated for **OCA** at the rate of the higher paid class after thirty (30) cumulative days. Compensation would begin on the **thirty-first (31st)** day assigned. To calculate when this standard has been met for employees on alternate work schedules, thirty (30) cumulative days is equal to one hundred-seventy-six (176) regular (non-overtime) hours worked out-of-class in a single classification. **OCA** will accrue on a fiscal year basis and **will** not be carried forward into the next fiscal year, except in the circumstances cited in City Memorandum entitled "Policy on Out-of-Class Assignments" dated July 16, 1997.

C. Procedure.

1. The Appointing Authority **will** forward Form CS-71 (**Out-Of-Class Assignment**) to the Personnel Director, no later than the first day of each **OCA** for which additional compensation will be paid.

2. The payroll procedure for determining an employee's pay for an **OCA** will be the same as that used when an employee is promoted to the same class from an eligible list established by a promotional examination.

ARTICLE 24

GRIEVANCE PROCEDURE

The purpose of this grievance procedure is to provide employees covered by this MOU the broadest possible opportunity to resolve work-related problems through an effective administrative procedure. POA and City recognize a mutual obligation to faithfully uphold the spirit and purpose of the grievance procedure.

A. Definitions.

1. **A grievance subject to this Grievance Procedure is any disagreement concerning the interpretation or application of this MOU, including whether a matter covered by Article 46 has been interpreted or applied against POA or an employee in a manner violating that Article.**
2. **Actions which are covered in City Management Rights Article of this MOU are not grievable, but this will not preclude employees or their representatives from consulting with Management about the practical consequences such actions may have on wages, hours, and other terms and conditions of employment. In addition, actions covered by another appeals process as described in the Civil Service Rules, Personnel Manual, or this MOU are not grievable and will not be processed through this Grievance Procedure.**
3. **If the grievance system is abused by an unreasonable number of submittals by one individual or group obviously designed to thwart orderly processing or if the grievances are patently irrelevant, or incomprehensible, they will be rejected as "nongrievable" and returned to the grievant.**
4. **Wherever applicable, the term "working days" means the actual work days of the individual on whom the time limits are imposed.**

B. Policy.

1. **Employees have the right to use this Grievance Procedure without fear of reprisal. No negative employment action will be taken against any employee as a result of the use of this grievance procedure.**
2. **Employees may represent themselves or select whomever they wish to represent them at any or all steps in the grievance procedure.**

- a. The employee has the right to the assistance of a POA representative in the investigation, preparation, and presentation of a written grievance.
 - b. Employees may have no more than one City employee and one non-City employee as representatives for grievance hearings.
 - c. Notwithstanding any other provision of this MOU, an employee may not select a supervisor in the direct chain of command, as a representative, except that a supervisor may select another supervisor as a representative.
3. Grievances may be initiated by the employee, or by a formally recognized employee organization, on the employee's behalf or by the recognized employee organization for this unit on its own behalf, on matters that directly involve the interpretation or application of the specific terms or provisions of this MOU. If an employee chooses to have representation on any formal grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of this MOU, such representation must come from POA.
4. The employee's or employee organization's first contact regarding job and working conditions is with the immediate supervisor and supervisors **will** attempt to settle grievances informally at this level.
5. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting **on** his or her own behalf on City time will not lose pay. In scheduling the time, place, and duration of any grievance meeting, the employee, a POA representative and Management will give due consideration to all the participant's responsibilities in the essential operations of the **Department**. Management has the unequivocal right to schedule hearings as convenient. Hearings may or may not be held during an employee's normal shift. No overtime pay will be given to the grievant. Representatives, witnesses, or other participants will receive overtime pay if ordered to be present by the **Appointing Authority**.
6. Waivers and Time Limits.
 - a. Failure by Management to reply to the employee's grievance within the time limits specified automatically processes the grievance to the next level.
 - b. Any level of review, or any time limits established in this procedure, may be waived or extended for good cause and only by mutual agreement confirmed in writing.
 - c. If an employee fails to appeal from one level to the next level, within the time limits established in this grievance procedure, the grievance **will** be

considered settled on the basis of the last decision and the grievance **will** not be subject to further appeal or reconsideration.

- d. By mutual agreement, the grievance may revert to a prior level for reconsideration.
- e. If a grievant fails to appear for a scheduled grievance meeting, such failure without excuse approved by the **Appointing Authority will** entitle Management to decide on the grievance without the presence of the grievant, or to schedule another meeting at the level (in which case the time requirements for hearing and decision are automatically waived). Failure to appear at two **(2)** meetings on the same grievance without an approved excuse automatically terminates **the** grievance and it is deemed denied. The grievance **will** not be subject to further appeal or reconsideration.
- f. When a grievant is on approved leave the time limits established in this procedure **will** be suspended for the period of the leave.
- g. No grievance **will** be finally dismissed for an unexcused failure to appear at a scheduled hearing unless the grievant had been given twenty-four (24) hours notice of the hearing.
- h. POA agrees to pursue all claims of violation of this MOU through the **Grievance Procedure**. Resort to other remedies **will** not be pursued until all steps of the grievance procedure have been exhausted. If POA reasonably feels that an employee has suffered immediate and irreparable harm, City and POA agree that POA may directly contact **the Mayor or his or her designee, the Human Resource Director**, to seek a resolution prior to pursuing remedies outside City. **Contacting the Mayor or his or her designee, the Human Resource Director**, will be considered to exhaust the **Grievance Procedure** in these cases.

C. Procedures.

1. General.

- a. Management of the **Department** has the responsibility to inform an employee of any limitation of a given level of Management's authority to fully resolve the grievance. In this regard, Management **will**:
 - 1) Supply the employee with the necessary information to process the grievance to the proper agency or authority.
 - 2) Advise an employee when any matter under submission is determined by Management as not grievable according to the definitions in section **A** above. The "grievance" paperwork submitted by the employee **will** be returned to the employee along with a memorandum explaining

why the matter is not grievable and what alternative procedures, if any, the employee may follow to process his **or** her grievance.

- b. When a group of identical grievances develop, only one grievance form **will** be submitted. The grievants may select not more than two (2) spokespersons who thereafter will be their representative “grievants.” The acceptance of **a** decision by the spokespersons at any step (or final decision if the grievance moves to **Step 5**) will be binding on all parties.
- c. A grievance **will** be recognized if it is brought to the attention of the immediate supervisor either formally or informally within ten (10) working days of the incident’s occurrence.
- d. If the grievance is between the employee and **his or her** immediate supervisor, or where an upper level supervisor has made a decision on the subject of the dispute, **Step 1** may be to the level above the level making the decision. The upper level supervisor **has** the discretion to remand the grievance to a lower level supervisor as **Step 1**. **All** remands **will** be in writing.
- e. To be recognized, a grievance must state the nature of the problem and the remedy sought by the employee or POA. In the event that the grievance is rejected for failure to clearly identify the problem or remedy, it may be amended by the grievant or POA.
- f. **Members holding the rank of Police Captain will submit any grievance directly to Step 3.**

2. Steps.

- a. Step 1: At the employee’s or employee organization’s sole option, grievances may be presented to the supervisor either orally or in writing. If the grievance is presented orally, the procedure is informal and may be settled by an oral answer given within five (5) working days. If the grievance is presented in writing, the procedure is formal and the answer must be given in writing within five (5) working days after submission. The written grievance must be clearly and precisely detailed including the specific grounds for the grievance, a listing of MOU articles allegedly violated not the remedies sought. Grievances that fail to meet these requirements **will** not be disqualified, but **will** be returned to the grievant for compliance with the foregoing requirements. In such cases, the written answer must be given within five (5) working days after resubmission of the grievance.
- b. Step 2: If the problem cannot be solved at Step 1, the employee or employee organization may present the complaint in writing to the second level supervisor (if not done at Step 1) within five (5) working days.

Within ten (10) working days of the receipt of the grievance, a hearing **will** be held and the Management representative **will** give a written decision to the employee and POA representative.

- c. Step 3: If the problem is not resolved at Step 2, the employee or employee organization may submit the grievance to the division head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing **will** be held and the division head **will** give written decision to the employee or POA representative. In smaller departments, this step is deleted.
- d. Step 4: If the problem cannot be solved in Step 3, the employee or employee organization may present the grievance to the Department Head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing **will** be held and the Department Head or **his or her** designee **will** give a written decision to the employee or POA representative. In non-managerial departments this **will** constitute the final resolution of a grievance involving management policy or regulations.
- e. Step 5: Final Resolution of Grievance: If the grievance is still in dispute after Step 4, the employee or employee organization may request a further hearing, which at the discretion of the Management Team will take place before the Civil Service Commission, on matters over which the Commission has authority, or before **the Mayor** or **his or her** designee, by submitting the grievance within five (5) working days. (If it is determined that the hearing should be held before the Civil Service Commission, a fact-finding hearing to define the issues in the grievance will be held by the Personnel Director with the employee and/or employee organization, prior to the date set for the Commission hearing. The grievance may be settled during such fact-finding hearing, if a mutually acceptable solution is developed.) The decision of the Commission **will** be issued at its next regularly scheduled meeting following the hearing by the Personnel Director. In grievances answered by the **Mayor or his or her designee**, a hearing **will** be held and a written response given within thirty (30) days from the date of receipt of the appeal from **Step 4**. If **the Mayor's** office does not render a decision within forty five (45) days, and if there is no waiver of the time limits, the grievance will precede to Step 6. The employee or employee organization may only request a hearing before the Civil Service Commission in matters solely involving Civil Service Rules or the Personnel Manual.
- f. Step 6: Grievances arising out of the disagreement on interpretation or application of this **MOU will** follow City-wide grievance procedure. POA may formally request to continue the grievance, not later than ten (10) days following receipt of the answer at the final step of the grievance procedure (provided it was heard by the **Mayor or his or her designee**),

by serving written notice upon the Management Team. The Management Team will refer the grievance to City Council for hearing and decision. City council **will** have six months from the date that POA serves written notice on the Management Team of its desire to have the grievance heard before City Council within which to calendar the grievance for hearing. If City Council does not calendar the matter for consideration within the six **(6)** month period, then the grievance **will** be considered granted.

ARTICLE 25

SALARIES

- A. The **Parties** agree that there will be no net increase (or improvement) or decrease (or reduction) in salary and benefits for Fiscal Year **2013**. The **Parties** acknowledge that this provision does not include layoffs.
- B. The salary schedule for Fiscal Year **2013** will be the same as the salary schedule for Fiscal Year **2012**.
- C. In the salary schedules for new employees, B step will be eliminated for new hires beginning **July 1, 1994**. Employees hired on or after **July 1, 1994**, will move from “A” step to “C” step after one **(1)** year for initial appointments as well as subsequent promotions, transfers, or other appointments. This represents an increase of approximately **ten percent (10%)**. Current employees will continue with the present five step salary schedule.
- D. FLSA Exempt Classes – Pursuant to the provisions of the FLSA the classification of Police Lieutenant **and Police Captain are** ineligible for premium overtime and **will** not be subject to the overtime provisions of this MOU.

ARTICLE 26

UNIFORMS AND SAFETY EQUIPMENT

A. Department Issued Equipment.

- 1. City **will** issue to each sworn officer:
 - a. Handgun and Ammunition;
 - b. Safety Helmet and Face Shield;
 - c. Baton and Baton Holder;
 - d. Badge;
 - e. Protective Vest and Cover;

- f. Mace and Mace Holder;
- g. Flashlight;
- h. Department Identification Card;
- i. Name Tag;
- j. OPN's and Holder;
- k. Whistle;
- l. Raincoat and Rain Boots; **and**
- m. Handcuffs and Case.

B. Police Officer's Uniform and Equipment.

1. Initial Requirement.

- a. Each Employee in this bargaining unit **will** be required to obtain and maintain, in a manner acceptable to City, the following items:
 - 1) Pants;
 - 2) Tie;
 - 3) Belt;
 - 4) Shirt, Short or Long Sleeve;
 - 5) Belt and Holster;
 - 6) Ammunition Pouch or Speed-loaders and Pouch; **and**
 - 7) Pistol Belt Keepers (4).
- b. Prior to the start of the Academy, City will provide each recruit and lateral hire the amount of \$500.00 to assist in the purchase of required uniforms and equipment.

- 2. Maintenance and Upkeep.** City **will** also pay those sworn members of the Department who have completed twelve (12) months as a Police Officer I as of September 1, and who are available for duty assignments on September 1, the sum of \$900.00 for the maintenance and replacement of the uniforms and equipment described in Paragraph **B.1**. Sworn officers of the Department who have completed **twelve (12)** months as a Police Officer I as of September 1, but who are on leaves of absence, including injury leave, **will** be eligible for this payment upon their return to duty. Police Officers who complete **twelve**

(12) months as a Police Officer I after September 1, **will** receive the sum of \$900.00 as of the day they complete twelve (12) months as a Police Officer I. No Police Officer **will** receive more than \$900.00 during the fiscal year for “maintenance and upkeep” of the uniforms and equipment described in Paragraph **B.1**.

3. In addition to the uniform and equipment allowance set out in **B.2**, officers assigned to **Special Weapons and Tactics (SWAT)** duty **will** receive the sum of \$400.00 for the reimbursement of the initial purchase of uniforms and equipment so authorized by the Department upon assignment. City **will** also pay those sworn officers assigned to SWAT duty the sum of \$300.00 on the regular paycheck on or before September 1, for the maintenance and replacement of **their** uniforms and equipment. Employees receiving the initial reimbursement **will** not receive the maintenance allowance in the same fiscal year.
4. In addition to the uniform and equipment allowance set out in **B.2**, officers assigned to the Harbor Patrol and permanent members of the Beach Enforcement Team **will** receive reimbursement of \$350.00 for the initial purchase of uniforms and equipment authorized by the Department upon assignment. City **will** also pay sworn officers assigned to the Harbor Patrol and permanent members of the Beach Enforcement Team the sum of \$150.00 on the regular paycheck on or before September 1, for the maintenance and replacement of **their** equipment. Employees receiving the initial reimbursement **will** not receive the maintenance allowance in the same year.
5. In addition to the uniform and equipment allowance set out in **B.2**, officers assigned to the Canine Unit **will** receive reimbursement of \$350.00 for the initial purchase of uniforms and equipment authorized by the Department upon assignment to the unit. Members of the Canine Unit **will** also receive an additional \$300.00 on the regular paycheck on or before September 1, for the replacement and maintenance of their uniforms.
6. In addition to the uniform and equipment allowance set out in **B.2**, members of the Bike Patrol **will** receive \$200.00 reimbursement for the initial purchase of uniform and equipment. Officers who have already received this reimbursement **are** not eligible for an additional reimbursement. City **will** also pay those sworn officers permanently assigned to the dedicated Bike Patrol Unit on September 1, the sum of \$150.00 for the maintenance and replacement of said equipment.
7. Core Instructors assigned to the Regional Academy, as determined by the Chief of Police, **will** receive an additional initial uniform allowance of \$200.00, and an additional \$100.00 on or before September 1, for the replacement and maintenance of their uniforms. This allowance is in addition to the uniform and equipment allowance set out in **B.2**.

8. In addition to the uniform allowance and equipment allowance set out in **B.2**, any sworn officer appointed to the Color Guard Team will be compensated \$800.00 for the initial purchase of the necessary Color Guard uniform items.
9. In addition to the initial \$800.00 uniform allowance, all members of the Color Guard Team in good standing will receive a \$200.00 annual uniform maintenance fee in addition to the annual Department Uniform reimbursement each September. However, no Color Guard member **will** receive the \$200.00 uniform maintenance within twelve (12) months of receiving the initial \$800.00 uniform compensation.

C. Motorcycle Officers.

1. Each sworn officer of the Department who is assigned to the motorcycle squad **will buy** and use the following items:
 - a. Motorcycle boots;
 - b. Motorcycle breeches;
 - c. Gloves – riding;
 - d. Gloves – gauntlet;
 - e. Leather jacket;
 - f. Safety glasses – clear; **and**
 - g. Safety glasses – sun.
2. **City will issue to each sworn officer assigned to the motorcycle squad:**
 - a. **Department of Transportation approved safety helmet every two (2) years or sooner should there be a defect or damage to the helmet.**
 - b. **City will issue to each motor officer, on an as needed basis, the following equipment:**
 - 1) **Protective Gloves;**
 - 2) **Protective Goggles; and**
 - 3) **Face/Dust mask.**
 - c. **Each officer issued equipment in accordance with paragraphs a and b, will be responsible for that equipment and will surrender such equipment to City upon demand.**

3. **On September 1 of each year, City will pay** sworn officers of the Department who are assigned to the motorcycle squad \$425.00 for the maintenance and replacement of the equipment described in Paragraph 1.
4. Upon initial assignment to the motorcycle squad, each officer will receive \$750.00 for the initial purchase of equipment described in Paragraph 1. Employees receiving this initial reimbursement **will** not receive the benefits in C.3. in the same fiscal year.

D. Administration.

1. Sworn officers reporting for duty are expected to have uniforms and equipment as described in Sections **A, B, and C** (Section **C** applies only to sworn officers assigned to the motorcycle squad). Failure to have and use any of these items may result in discipline of the employee.
 2. POA agrees that City has discharged City's obligation pursuant to **California Labor Code** section 6401 to provide the safety equipment for police officers as set forth in **California Government Code** section 50081.1.
- E.** The **Parties to this MOU** agree that if, during the term of this MOU, a change is proposed in the basic uniform, the **Parties** will meet and confer on the effects of such a change.

ARTICLE 27

PERSONNEL RULES AND REGULATIONS

The following information is provided as a resource summarizing elements of Civil Service Rule X, Leaves of Absence:

- A.** Section 3(4). **ANNUAL LEAVE – WORKERS’ COMPENSATION:** Those employees who are absent from duty because of a temporary disability which is defined as industrial under the Workers’ Compensation Act, but who are not granted industrial leave may use annual leave credits; provided, however, that any such employee who receives a temporary disability allowance, as provided by the Workers’ Compensation Law, must reimburse City Auditor and Comptroller in the amount of the authorized compensation, in which case, only that amount of the employee’s accumulated annual leave credits as when added to said disability allowance will result in a payment of not more than the employee’s full salary or wages shall be charged against said accumulated annual leave credits.
- B.** Section 4. **SICK AND EMERGENCY LEAVES:**
- (1) **SICK LEAVE INTENT, DEFINITION, PROVISIONS:** The intent of this section is to allow continued use of sick leave credits accrued prior to September

4, 1981, for those employees who are unable on account of illness or injury to perform the duties of their positions or who would expose fellow workers or the public to contagious disease and are thereby forced to be absent from employment, and to provide necessary time off from work for medical and dental care, subject to administrative regulations designed to prevent malingering or abuse of these privileges.

- a. **SICK LEAVE DEFINITION:** Sick leave is defined as the necessary absence from duty of an employee on account of illness, injury, or exposure to contagious disease suffered by the employee, or the serious disability of the employee while on a scheduled leave, or absence authorized for medical or dental care.
- b. **SICK LEAVE – WORKERS’ COMPENSATION:** Those employees who are absent from duty because of a temporary disability which is defined as industrial under the Workers Compensation Act, but who are not granted industrial leave may use sick leave credit; provided, however, that any such employee who receives a temporary disability allowance, as provided under the Workers’ Compensation Law, must reimburse City Auditor and Comptroller in the amount of the authorized compensation; in which case, only that amount of the employee’s accumulated sick leave credits as when added to said disability allowance will result in a payment of not more than the employee’s full salary or wages **will** be charged against said accumulated sick leave credits.

(2) EMERGENCY LEAVE: INTENT, DEFINITION, PROVISIONS: The intent of this Section is to allow continued use on a limited basis, of sick leave credits accrued prior to September 4, 1981, by an employee who is confronted with serious emergency illness, injury, or death in the employee’s immediate family.

- a. Emergency leave is defined as the necessary absence from duty of an employee because of emergency illness of a member of the employee’s immediate family requiring the attendance of the employee upon said member until professional or other attendance can be obtained, or the absence from duty of an employee because of the death of an immediate family member.
- b. An eligible employee may be granted emergency leave with pay chargeable to accumulated sick leave credits not to exceed a total of five **(5)** workdays for each instance of emergency illness or death in the employee’s immediate family. In the case of illness followed by death, an employee may be granted a maximum of ten **(10)** consecutive workdays of emergency leave chargeable to sick leave credits.

C. Section 7. MILITARY LEAVE:

1. In addition to the leaves of absence provided in this rule, City officers or employees who are also members of the armed services or militia or organized reserves of this State or Nation, **will** be entitled to the leaves of absence and the employment rights and privileges provided by the **Title 38, United States Code (USC) Employment and Reemployment Rights of Members of the Uniformed Services, Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, and the Military and Veterans' Code of the State of California (unless superseded by United States Code). Military service is defined in Title 38, USC section 4303 (13).**
2. City officers or employees who have had not less than one **(1)** year of regular City employment immediately prior to the beginning of requested military leave, **will** receive their **regular** City compensation during the military leave, not to exceed a period of thirty (30) **calendar** days in any fiscal year. **City** and POA will provide flexibility in the interpretation of Military Compensation for any employee who is on temporary military leave of absence and who has been in the service of the public agency from which the leave is taken for a period of not less than one **(1)** year immediately prior to the day upon which the leave begins, **will** be entitled to receive his or her salary or compensation as such public employee for the first thirty (30) calendar days or one hundred seventy four (174) hours of any such absence. Pay for such purposes **will** not exceed thirty (30) days or one hundred seventy four (174) hours in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of said public employee in the recognized military service **will** be counted as public agency service. No policies governing Military Leave (Personnel Manual **Index Code I-10**) **will** be changed to accommodate for this salary flexibility. **Military leave hours will accrue on a fiscal year basis and will not carry forward into the next fiscal year.**
3. **With reasonable notification to their supervisor no less than twenty-one (21) days prior to the start of their military obligation, unless exceptional circumstances beyond the control of the employee and originating from the employee's military unit, City officers or employees have the option to use military leave, annual leave, compensatory time, or special leave without pay for this leave, or at management's discretion to request that their schedule be adjusted. The Department will take all reasonable steps necessary to ensure that an officer's or employee's schedule is adjusted to facilitate such leave.**

4. Prior to using of military leave, the employee will submit Form CS-14-25A (Request for Leave of Absence) showing Military Leave.

- D. Section 8. COMPULSORY LEAVE:** If, in the opinion of the department head, an employee is incapacitated for work on account of illness or injury, such employee may be required, for a period not to exceed two **(2)** workdays, to absent himself from duty. If said incapacity may reasonably be expected to extend beyond two **(2)** workdays, the department head shall require the employee to undergo an examination by a physician designated or approved by the Commission. If the report of the physician shows the employee to be in an unfit condition to work, the appointing authority shall have the right, subject to Commission approval, to compel such employee to take sufficient leave of absence, not to exceed one **(1)** year of leave without pay, so as to become fit for the proper performance of assigned duties.
- E. Section 9. SPECIAL LEAVE WITHOUT PAY:** An employee whose work record has been satisfactory and who, for any reason considered good by the appointing authority and the Commission, desires to secure leave from regular duties, may be granted special leave of absence without pay for a period not exceeding one **(1)** year. For good cause, such leave may be extended, upon approval of the appointing authority and the Commission. When such leave is granted to enable an employee to take a position in the Unclassified Service, the Commission may, upon request, grant a leave of absence for the period of actual service of the employee in such Unclassified position. An employee asking for special leave without pay, shall submit a request on prescribed forms with a transmittal letter, stating the reasons for the request. The Appointing Authority who endorses such request shall recommend and the Commission shall determine whether the employee shall be entitled to the same position upon return from such leave or whether the employee's name shall be placed on the eligible list for the class or classes as determined by the Commission. If appropriate, the employee's return shall be subject to passing the prescribed City medical examination.
- F. Section 10. COURT LEAVE:** An employee, other than one paid on an hourly basis, who is required by court order to serve as a juror, or as a witness who is not a party to a court action, shall be granted leave for such purpose upon presentation of proof of the period of his required attendance to the appointing authority and the Personnel Director. The employee shall receive full pay for the time he serves on court duty. Request for such leave shall be made upon leave of absence forms.
- G. Section 11. SPECIAL MEETINGS:** Officers and employees may be granted special permission, without loss of pay, to attend professional or technical institutes or conferences, or other meetings as may contribute to the effectiveness of their service to City. Such special permission is subject to the approval of the appointing authority or City Council, whichever is applicable. Evidence of such special permission to attend said conferences or meetings shall

be furnished promptly by the department head to the Personnel Director. Officers and employees granted said special permission shall be considered to be in duty status.

ARTICLE 28

FIELD TRAINING OFFICER PAY

- A. City agrees to continue a program which will provide extra compensation for employees whose job assignment involves full-time Field Training Officer (FTO) duties (including Sergeants), as defined by the Chief of Police or his or her **designee**, relative to the Police Academy trainees. Participants in this program **will** receive **five percent (5%)** of the employee's base rate while designated in a FTO capacity.
- B. The Department agrees to maintain at least one hundred (100) FTOs and the **number** of FTOs beyond one hundred (100) will be determined at the discretion of the Chief of Police. In determining the total number of FTO Sergeants, the Department will generally use the formula of one (1) FTO Sergeant per watch per service area.

ARTICLE 29

CALL-BACK PAY

- A. An employee who has been released from work and has left the **workplace will**, if called back to duty from home or any other non-work location, be paid for the reasonable estimate of the time required to travel from and to his **or** her residence and the **workplace** and for the time actually worked. The total time of call-back pay, including travel time, **will** not be less than four (4) hours.
- B. This provision does not apply to instances when an employee is already present at the **workplace** and is required by a supervisor to start work early or to continue work following the end of shift. This provision also does not apply to a meeting scheduled after the employee's shift, and which is contiguous with the shift. In **those** instances, the employee will receive compensation only for the time actually worked or spent in the meeting after his **or** her shift.

ARTICLE 30

COURT PAY

Employees eligible for premium overtime that are required, as a result of their employment responsibilities, to make court appearances during otherwise off-duty hours, **will** be treated as follows:

- A. The employee **will** receive compensation at premium overtime of his or her regular base rate for all time actually spent in court (minimum of four **(4)** hours), excluding court recess time.
- B. If an employee is scheduled to appear in court up to two **(2)** hours prior to the beginning of his **or** her shift, the employee's schedule may be adjusted to correspond with the court appearance. The intent of this change is to align the beginning of the shift with court appearances and minimize the incidence of court pay for hours not actually spent on court duty. If an employee is ordered by his **or** her immediate supervisor, duty lieutenant or Communications to work beyond the regular number of hours per day on the adjusted shift, the four-hour **(4)** minimum applies, plus relevant overtime for the shift extension. The four-hour **(4)** minimum **does** not apply in situations in which an employee was directed to work beyond the adjusted shift as a result of a self-initiated action, i.e. a vehicle or person stopped and detained, an arrest, etc.
- C. Eligibility restrictions described in Section B also **applies** to the minimum requirements described in Section A above.
- D. If the employee makes a court appearance during the morning session and at least part of the afternoon session, after he **or** she has just completed working a night shift, and if the employee is scheduled to work the next succeeding night shift, the employee **will** have the option of receiving premium overtime for the actual court appearance time or having the succeeding scheduled night shift off as compensatory time. If an employee is scheduled off on his **or** her next shift following a court appearance, he **or** she may not exercise the second option.
- E. Compensatory overtime **will** begin at the time indicated on the subpoena unless the officer is otherwise notified by a superior.

ARTICLE 31

STAND-BY COMPENSATION

A. Court Stand-By.

When an employee is under subpoena to appear in court during his **or** her non-duty hours, the employee **will** go to the court and stand by until called by the court and **will** receive pay at a premium rate of one and one-half times the basic rate for stand-by time, or, with the concurrence of the subpoenaing party, remain standing by at another location where he **or** she may be reached by the court by telephone. If an employee stands by at another location, no pay **will** be received for such stand-by time. No employee **will** be required to stand-by without compensation without his **or** her consent.

B. Non-Court Stand-by.

In order to ensure operational effectiveness, the Department may require or request its employees to be available to return to work during the off-duty hours. When this condition occurs, the employee is deemed to be on stand-by. When employees are on stand-by, they must be available by telephone or other electronic communication device and able to return to duty within one (1) hour of receiving a request to do so. The determination for the need to place an officer on stand-by-time is at the sole discretion of the Department.

C. Employees who are required or agree to be on stand-by will be compensated as follows:

1. For every three hundred (300) hours of stand-by time accrued, employees will be awarded one (1) day of discretionary leave time.
2. Employees may accrue up to ten (10) days of discretionary leave per fiscal year (July 1 – June 30).
3. All discretionary days accrued must be taken within six (6) months of the date they were approved. The employee's commanding officer can extend the six (6) month deadline at **his or her** discretion.
4. If an employee has not already accrued the maximum ten (10) discretionary days by the end of the fiscal year, any remaining discretionary hours, up to three-hundred (300), may be carried forward into the next fiscal year.
5. Employees who are required or agree to be on stand-by on their scheduled day off **will** accrue up to twenty-four (24) hours on stand-by time.
6. Employees who are required or agree to be on stand-by during their scheduled workday may accrue up to fourteen (14) hours of stand-by time during the time they are not working.

ARTICLE 32

OVERTIME

It is agreed that premium compensation at the rate of one and one-half (**1.5**) times the base rate **will** be paid to employees in the classifications of Police Recruit, Police Officer I, Police Officer II, Police Officer III, Police Agent, **Police** Detective, and Police Sergeant, under the following conditions:

- A. When an employee is called back to work from a non-duty status, he or she **will** receive premium pay for all such call-back time worked, with a four (4) hour minimum of compensation in each such instance, notwithstanding the usual starting time of the work shift.

1. An employee's "work shift" refers to the hours of work of the **employee's** normally scheduled work day. **The work shift** may be permanently adjusted if **the employee is given** at least **seventy-two (72) hours notice of the change. If seventy-two (72) hours notice of the change is given**, paying premium pay as described above **is not required**, provided that the employee does not work a total number of hours greater than his **or her** normally scheduled hours. An employee's days off cannot be changed solely to avoid paying overtime. Department Management may, by providing at least five (5) calendar days notice to **an** affected employee, change an employee's permanent days off. When unforeseen special events or emergencies arise necessitating **that an employee** be required to work **on his or her** scheduled days off, he **or she** will be paid overtime, or, at **his or her** election, be assigned other days off as a substitution. As a general policy, officers will not be required to work more than seven (**7**) consecutive days unless it is an emergency. "Special Events" or "Emergencies" will be defined as unforeseen crime problems, natural or man-made disasters, special events of which the **Department** had little or no knowledge, e.g., presidential visits, and events requiring unusually large numbers of personnel.
 2. Notwithstanding the terms of the FLSA, an employee's hours and/or days off may be changed on a temporary basis with or without seventy-two (72) hours or five (5) **calendar** days notice, when the employee voluntarily waives those requirements. "Voluntary" is defined as acting freely without any coercion, stated, or implied. (Department Management may request that the employee sign a form denoting such schedule alternations).
 3. The terms "**permanent**" or "**permanently**" means a change no more than once within the span of a shift.
- B.** When an employee is required under subpoena to appear in court during non-duty hours, he **or she will** receive premium pay for court time with a four (4) hour minimum of compensation in each such instance. Employees will not receive a second four (4) hour minimum of premium pay for subpoenas requiring appearances within four (4) hours of a first subpoena appearance time (e.g., a 10:30 a.m. subpoena following an 8:15 a.m. subpoena on the same date). Only actual time above the first four (4) hour minimum will be compensated with premium pay in such cases. However, pursuant to Article 30.B, an employee's schedule may be adjusted to correspond to a court appearance, eliminating the need for overtime pay. When an employee is directed to telephone a specific court or agency at a designated time during non-duty hours for the purpose of a telephonic hearing, and he **or she** does not have to place the call from a designated location, he **or she will** receive premium pay for such time with a thirty (30) minute minimum of compensation for each instance.
- C.** Eligibility restrictions described in Article 29.B, **will** also apply to the minimum requirements described in above sections 1 and 2.

- D. When an employee's shift is extended beyond its normal ending time, he **or** she **will** receive premium pay for the **actual** time **worked beyond the employee's regular shift hours**.
- E. If an employee is scheduled or directed by the Department to work on a designated City holiday, he **or** she **will** receive pay at premium compensation for the time worked and **will** also receive ten (10) hours of compensating time for the holiday. An employee **that observes** the City holiday **will receive holiday pay equal to his or her normal assigned shift**. **If they are** called back to work on that **City holiday they will receive an additional amount of** premium pay for time worked **with a four (4) hour minimum**.
- F. For all overtime earned, all employees of the bargaining unit **will** receive either compensatory time off or pay, at the sole discretion of the **Chief of Police**. The **Chief of Police** may, at any time, determine that all overtime will be pay only. However, all previously accrued compensatory time must be honored under the terms of this MOU. Employees will not receive compensatory time off where the **Department** is reimbursed by another governmental agency for overtime worked by employees.
- G. The **Parties** agree that overtime worked may be paid for by City as compensatory time off at the rate of time and one half for each hour worked. Compensatory time earned and accrued through overtime work will be banked in a leave bank of up to a maximum of **eighty (80) hours**. This leave bank will carry over to the next fiscal year, but will not exceed **eighty (80) hours** total.
- H. **Use of Compensatory Time.**

The following terms will control compensatory time off:

1. Compensatory time off request will be honored if the request for compensatory time off is made seven (7) calendar days or more prior to the day requested for leave.
2. Requests for use of compensatory time off to be used the day before the following Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, and Christmas Day will be honored if the request is made thirty (30) calendar days or more prior to the day requested for leave.
3. The **Parties** agree to meet when circumstance arise that create safety concerns regarding staffing levels resulting from compensatory time off requests during special events or circumstances, and to resolve the safety concern by an appropriate agreement.

I. **Motor Unit and Canine Unit.**

City agrees to provide employees assigned to the Canine Unit **three point five (3.5)** additional hours of compensation each **forty hour (40)** work week at

premium rate overtime for **time spent cleaning, preparing, and maintaining their equipment.** City agrees that **employees assigned to the Motors Unit will be released from work for two (2) hours during their scheduled shift each week for cleaning, preparing, and maintaining their equipment.** This time will be scheduled on a day that is conducive to the employee's schedule. The Parties agree that this is a reasonable amount of time for such activities. If an employee, due to extraordinary circumstances, spends more than the agreed to time on these activities, **an employee assigned to the Canine Unit may request additional overtime and an employee assigned to the Motor Unit may request to be released for additional time during their scheduled shift.** This must be pre-approved. **Captains and Lieutenants** are ineligible to receive the Motor Unit and Canine Unit pays described above.

ARTICLE 33

WORK SCHEDULES

Effective July 1, 2003, the 4/10 plan will be applied to all sworn positions below the rank of Captain. The 4/10 plan includes a thirty-minute (30) paid lunch break.

- A. All officers on a **4/10** work schedule will report to work at the scheduled start of their assigned shift. Officers who are scheduled to work at the hour daylight savings time either begins or ends will not have their hours adjusted to avoid working overtime. Officers will report at their scheduled time and work a regular, full ten-hour **(10)** shift.
- B. All officers may receive thirty **(30)** minutes during their assigned shift as a meal break during which time they may report as Code 7. This period is unpaid.
- C. An officer's conduct while on Code 7 for a meal break **is** governed by Department Instruction 6.32.
- D. During this **thirty-minute (30)** break, officers will be available to respond to emergency calls.
- E. If an officer's break is interrupted by an emergency call, the break will be resumed after the call is completed.
- F. **If an officer is unable to take a total of thirty (30) minutes for a meal break during his or her assigned shift, the officer will be paid premium rate overtime for this thirty (30) minute period.** This request for overtime will be submitted through the normal procedures.

ARTICLE 34

STARTING SALARY

The **Parties** incorporate Personnel Manual **Index Code H-9**, Starting Salary Upon Appointment, in this MOU, except that employees promoted from the class of Police Officer I to Police Officer II **will** receive at least the base salary of “C” step of the Police Officer II class.

ARTICLE 35

POA REPRESENTATION

Department Management will support a request to the Civil Service Commission for a Leave of Absence **Without Pay** for two (2) POA members for the same period of time, unless there is compelling reason to not support a “job to be saved” type leave. In the latter case, City will meet and confer with POA in advance of any objection **to the leave without pay request**.

ARTICLE 36

PAYROLL ELECTRONIC DEPOSIT

All employees will be required to provide authorization to City **Comptroller** to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility). Employees **will not be required** to change financial institutions if their financial institution is not compatible with the **Automated Clearing House (ACH)** transfer.

ARTICLE 37

EMPLOYEE REPRESENTATION

- A. An employee may request a representative, not to exceed one **(1)** City employee and one non-City employee, to be present: (1) at any investigatory or fact-finding meeting which may result in suspension, discharge, demotion, or transfer for purposes of punishment, except in cases requiring immediate removal or suspension as defined in Civil Service Rule XI, sections 4 and 6, and Personnel Manual **Index Code L-2 II.(C)**; (2) **an employee may also request representation** during the required discussion of any document, including a **Supplemental Performance Report** or written reprimand, which is to be made part of the employee’s permanent record and which may be used as a basis for subsequent discipline with the following provisions:
1. An employee **cannot** select a “City employee representative” who is subject to the same investigation or fact-finding, including any employee who is a witness to the event which is the subject of the investigation or fact-finding.

2. An employee may not select an employee **who is in the employee's** direct chain of command as **his or her** "City employee representative."
- B. In all other instances, Department Management has the right to counsel employees as it deems appropriate without employee representation being present.
- C. **This Article is to** be interpreted consistent with the Public Safety Officers Procedural Bill of Rights (**California Government Code sections 3300, et seq.**) (**POBOR**).
- D. An officer subject to interrogation by a single **Departmental** representative may have a sole representative. If the interrogation is conducted by more than one **(1) Departmental** representative, an officer may be represented as provided for in Paragraph A.

ARTICLE 38

DEPARTMENTAL PROCEDURES – ADVANCE NOTICE

The **Department** may, in its discretion issue **Departmental Procedures** in writing which pertain to matters not within the scope of representation. In order to promote communications between the **Department** and **POA**, the **Department** agrees to direct a copy of proposed written **Departmental Procedures** to **POA** prior to official publication **of the Procedures**. Nothing in this **Article** is intended to require or obligate, directly or indirectly, the **Department** to meet and confer on any subject contained as proposed **Departmental Procedures** which is not within the scope of representation. The purpose of this **Article** is to enable **POA** to review any proposed written **Departmental Procedure** in advance of publication and **provide** comments as may be appropriate. Nothing in this **Article** limits or otherwise restricts the **Department** from immediately publishing departmental procedures which in the determination of the **Department** are of an emergency nature.

ARTICLE 39

TUITION REFUND PLAN

A. Purpose.

1. To encourage and financially assist employees to continue their education so **they may** improve **their** job knowledge, skills, and capabilities **in** their present job and to prepare for advancement within City employment.
2. To assist City, through employee development, in achieving maximum use of human resources in attaining **Departmental** objectives including Equal Opportunity goals.

B. Eligibility Rules.

1. Eligible employees will be reimbursed **one hundred percent (100%)** of tuition and fees for textbooks and supplies under certain conditions, up to a limit of **\$1,000.00** per fiscal year. Reimbursement will be made for professional and technical courses offered by accredited colleges, universities, business, trade or correspondence schools, as part of an educational plan which has been approved by the **Chief of Police** or his **or** her designee.
 - a. Taxation of reimbursements will be made based on IRS regulations.
 - b. City Comptroller will be responsible for determining which reimbursements are taxable income in accordance with IRS regulations.
2. Tuition Reimbursement is an employee benefit, whereas attendance at training is available at Department Management's discretion. Tuition Reimbursement will not be available for related employee travel expenses. Tuition Reimbursement course attendance must occur on the employee's personal time, not on City time. Travel costs are potentially reimbursable when related to attendance at training. Training may be attended on City time.
3. One day seminars are considered training and are ineligible for Tuition Reimbursement. A semester course can be paid for by Tuition Reimbursement.
4. Conditions under which reimbursement may be approved are as follows:
 - a. The course work must relate to the applicant's present position or must be beneficial to the employee's City related professional development, or must enhance career advancement potential within City, as follows:
 - 1) An improvement in skills or knowledge required by the present position;
 - 2) Preparing the employee for significant technological changes occurring in his **or** her City related career field;
 - 3) Preparing the employee for changes in duties due to the different use of a position or class;
 - 4) Preparing the employee for the assumption of new and different duties as a result of a recent promotional appointment;
 - 5) Preparing the employee for promotional opportunities within the employee's present career series with City, supported by a logical educational plan of accomplishment approved by the **Chief of Police** or his **or** her designee; **or**

- 6) Preparing the employee for career-enhancing promotional opportunities or transfer opportunities into a different City career series.
- b. An educational plan must be approved by the **Chief of Police** or his or her designee prior to course enrollment. This plan must include:
 - 1) Intended degree to be achieved or continuing professional education requirements to be satisfied;
 - 2) Major area of study;
 - 3) Core courses and number of electives required by the educational institution; **or**
 - 4) Additional information as required by the **Chief of Police** or his or her designee.
- c. Reimbursement will be made for all core courses and for electives taken to fulfill degree requirements. Core courses should take priority, and the majority of them should be completed prior to enrolling in elective courses.
- d. Reimbursement will be made for courses taken to satisfy professional continuing education certificate and licensing requirements. These courses must directly relate to the employee's City career.
- e. Individual semester classes directly related to the employee's current position with City are potentially reimbursable.
- f. Requests for reimbursements must be approved by the **Chief of Police** or his or her designee before enrollment in the Course.
- g. Reimbursement will be made for tuition fees and/or required textbooks and a reasonable amount of supplies (as determined by the **Chief of Police** or his or her designee) verified by receipts upon completion of the course with a grade of at least "C," "Satisfactory," "Pass" (for Pass/Fail courses), or the equivalent.
- h. The employee must have completed six (**6**) months of City service in a budgeted City position prior to starting the course. Tuition Reimbursement is not available for hourly employees.
- i. The minimum amount of tuition reimbursement which will be approved for any employee is **\$5.00** per course.
- j. The employee must not be receiving funds for the same course from any other source, such as scholarships, with the exception of Veteran's benefits.

- k. Tuition fees for City sponsored courses for which academic credit is granted by an accredited college or university **will** be reimbursable under this program, subject to the limits described above.

C. Requests and Reimbursement - Procedure.

1. **An** employee meeting the eligibility rules fills out the “Tuition Reimbursement Request Form” or CM-1578 or both, as required, “Request for Approval of Tuition Reimbursement,” in four copies, prior to enrollment in the class. The form is available from In-Service Training Section. A central supply is maintained in City Operations Building - Store No. 4. The employee submits the original CM-1578, (Tuition Reimbursement Request Form), and the **Department** Educational Plan for approval to In-Service Training prior to the class start date.
2. The completed form is presented to the employee’s **Chief of Police** or his or her designee.
3. The In-Service Training Unit will manage the Educational Plan and submit a complete package to Financial Management for appropriate review, approval and submission to the Auditor for reimbursement payment. Two **(2)** copies of the completed package are retained at In-Service Training. The program manager (**Administrative** Aide II) keeps one **copy**; the other **copy** is retained in the employee’s training file.
4. Upon completing the course, the employee will furnish the In-Service Training Section with the original receipts of payments made, and proof of passing grades or evidence of satisfactory completion.

D. Exceptions.

Department Management and POA agree to form a standing committee comprised of two (2) POA representatives and two (2) Department Management representatives to meet approximately twice yearly for the purpose of reviewing prospective exceptions and establishing an initial list of Tuition Reimbursement exceptions. Exceptions must receive prospective approval. Disagreements will be referred to the Human Resources Director and POA for discussion.

ARTICLE 40

FLIGHT PAY

- A.** Those members of the Department who are authorized to fly the Department’s aircraft and who are additionally designated as a “Primary

Pilot” **will** receive approximately eleven and one-half percent (11.5%) of employee’s base pay **as special assignment pay**. During the term of this MOU, there **will** be no less than two **(2)** primary pilots.

- B. Any officer relieving a primary pilot **will** also receive flight pay for the period served in that capacity.
- C. Air Support Trainers **will** receive approximately three and one-half percent (3.5%) of employee’s base pay.
- D. The cost of the required FAA pilot physical **will** be reimbursed by City.

ARTICLE 41

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) PROCEDURES

A. POBOR.

1. The **Parties** hereto recognize that all members of the Police Unit **and Police Management Unit** are covered by the provisions and decisional interpretations of the **POBOR**.
2. Officers may, with the approval of **POA** Board of Directors, bring an action in Superior Court without exhausting the administrative remedies described in this Article, in those instances where it is alleged that a specific violation of the **POBOR** has occurred and it is alleged that the remedies contained in this Article are inadequate.

B. Definitions.

For purposes of this Article, the following definitions apply:

1. “Punitive action” **means** those actions which may directly lead to dismissal, demotion, suspension, reduction in salary, written reprimand, written warning, transfer for purposes of punishment, or an evaluation in which the employee is not meeting performance standards.
2. “Interrogation” **means** any inquiry concerning the actions or conduct of an officer which may lead to punitive action or criminal allegation.
3. “Investigation” **means** the process of conducting **an inquiry or inquiries** into the actions or conduct of an officer **or officers** from the moment it is reasonably apparent that **the inquiry or inquiries** may lead to punitive action or criminal allegations directed toward an officer or officers.

C. Civil Service Appeals.

1. Officers may, in addition to other rights to administrative appeals and hearings set out in **this MOU**, appeal any punitive action which is covered by provisions of City Civil Service Rules to the Civil Service Commission in accordance with those rules.
2. Where a punitive transfer action has taken place in conjunction with a disciplinary action over which the Civil Service Commission has jurisdiction, the **Parties to this MOU** agree that the Commission may rule on the propriety of the matter before it and that the Department will be bound on the matter of the punitive transfer by the findings of the **Civil Service Commission**.

D. Investigations.

1. Any officer **or officers** under investigation **will** receive at least three **(3) working** days notice prior to an interrogation except where **a** delay will hamper the gathering of evidence as determined by an Assistant Chief. At the time an officer is advised that an interrogation is planned, the officer will be advised of the subject of the interrogation and **told** that **he or she** has a right to obtain representation.
2. The actual scheduling of the interrogation **is** subject to the reasonable accommodation of the schedules of the subject officer and **his or her** representative.
3. Investigations of shooting incidents involving officers and any incident involving the actions or conduct of an officer **or officers** where personnel from the Internal Affairs Unit are called to the scene of the incident will be reported to **POA** immediately. **POA** will provide a telephone number to the Department and it **is** the responsibility of the duty lieutenant to telephone **POA's** number and report the general nature of the incident.
4. Officers who are removed from the normal duties of the job during the pendency of an investigation **will** not be removed for longer than thirty (30) calendar days except where the business necessities of the Department require the removal from duties to extend beyond thirty (30) days. **If the investigation requires** an extension, the involved officer **has** the right to a hearing before an Assistant Chief concerning the business necessities alleged and **will** have the opportunity to argue and present evidence to contradict those business necessities. This hearing is an informal opportunity for the officer to present to the Chief of Police **or his or her designee of not less than the rank of Assistant Chief** regarding why the extension should not be granted. This is not to be confused with **the** evidentiary hearing afforded officers pursuant to the **POBOR** for punitive action.

E. Intra-Department Hearings.

1. **Scope.** The intra-departmental hearing procedures **described in this MOU** are available to officers as follows:
 - a. Dismissal;
 - b. Suspension;
 - c. Demotion - in rank or classification;
 - d. Reduction in compensation (as defined in **Personnel Manual** Index Code L-2); does not include loss of overtime due to transfer or loss of a take-home car due to assignment);
 - e. Written reprimand;
 - f. Written warning;
 - g. Performance evaluation in which the employee is not meeting performance standards; **or**
 - h. Punitive Transfers.
 - i. Officers entitled to appeal any action to the Civil Service Commission **will** retain **that** right notwithstanding the use of intra-departmental appeal procedures and may elect either or both procedures without prejudice to the other.
 - j. The intra-department hearing procedures **are** available only to officers who have permanent status with **City**. For probationary officers, see Article 41.I below.
2. **Procedure.** Hearings regarding punitive actions **will** be conducted as follows:
 - a. The hearing officer **will** be the Chief of Police or **his or her** designee of not less than the rank of Assistant Chief, except that for hearings regarding notes of counseling and written warnings **not brought by a Police Captain**, a **Police Captain** may be the designated hearing officer. The hearing officer **cannot be an individual who** had a role in the original decision to take punitive actions.
 - b. Each officer requesting to appeal a matter **has** ten (10) working days to file an appeal with the office of the Chief of Police.
 - c. The appeal hearing **will** be recorded in a manner **that** permits a transcript to be made. All parties **will** have access to the original recordation, a duplicate copy and any transcript.

- d. The officer **has** the right to present evidence, cross-examine witnesses, and require the attendance of any witnesses who are city employees.
- e. At the conclusion of the hearing, the hearing officer **will** render a written decision which states the facts found to be true and the decision of the hearing officer based upon those facts.
- f. Officers who have reached permanent status may appeal a decision of the hearing officer in matters set out in **section E.1.d and E.1.e of this Article**, to the **Human Resources Department** within ten (10) working days of receipt of the decision. Such appeal will consist solely of a review of the written record and/or audio tapes developed at prior steps of the appeal. **Mayor or his or her designee, the Human Resources Director, will** issue findings within thirty (30) working days of receipt of the full and entire appeal package.

3. Denial of Promotion on Grounds Other Than Merit.

a. General Guidelines.

- 1) In every promotional process there are more qualified candidates than there are available positions **for** promotion. This **Article** is not intended to address the inevitable non-promotion of an otherwise qualified candidate for which there is no right of appeal under this **Article**.
- 2) During the promotional process, the Chief of Police **will** receive a list of certified candidates who are eligible for promotion from **City Personnel Department**. All candidates on the certified list are considered equally qualified for purposes of promotion. The Chief of Police has complete discretion to select anyone from the certified list. It is acknowledged that the entire promotional process is merit based.
- 3) Any officer denied promotion on grounds other than merit may appeal **the denial through the process** set out in **this MOU**. However, the fact that an otherwise qualified candidate whose name appeared on the certified list was not selected is not, in and of itself, a ground for appeal. Officers not on the certified list have no standing to appeal under the **Article**.

F. Prima Facie Case.

Prior to any appeal being heard, a written appeal **will** set forth a prima facie case stating the grounds the appellant was **given as the reason for non-selection** denied a promotion on grounds other than merit. The written appeal must be submitted to the Chief **of Police's** office within twenty (20) working days of the alleged violation. In order to meet the threshold prima facie showing for an appeal hearing, the appellant must make specific factual assertions of

conduct, other than matters over which the **Appointing Authority** has discretion in making selections based on merit, which if true, would violate appellant's protected rights. The initial determination of whether a prima facie case has been sufficiently stated **will** be determined by the Chief of Police or **his or her** designee not lower than the rank of Assistant Chief with a written decision issued within twenty (20) working days from submission of the **appeal**. However, a decision denying an appeal hearing based on an insufficient prima facie case may be appealed to the **Human Resources Department**. The appeal **will** be submitted to the **Human Resources Department** in writing within ten (10) working days of receipt of the denial.

G. Denial of Promotion Hearing.

1. The Department **will** maintain a record of the hearing and provide appellant with a copy of any written or audio recording. The cost of a court reporter **will** be at the expense of the party requesting the reporter.
2. The hearing **is** limited in scope to the specific factual assertions made in the appellant's written prima facie showing. The appellant **has** the right to call and examine witnesses and present evidence. Prior to the hearing, the appellant **will** provide the hearing officer with a proposed witness list. The hearing officer **will** preside over the hearing and **has** authority to rule on the appropriateness and relevance of witnesses to be called, **the** admissibility of evidence and all other procedural matters.
3. The hearing will be heard by the **Human Resources Department**.
4. The hearing officer **will** issue findings of fact and a decision within thirty (30) days of the hearing to deny the appeal or to grant an appropriate and lawful remedy.

H. Other Negative Material.

1. Any officer who has material negative to **his or her** employment relationship or a performance evaluation containing negative comments (other than a Supplemental Performance Report) placed in **his or her** personnel file may appeal the placement of **the adverse** material to a ranking officer of not less than the rank of Captain.
2. **Personnel Files.** Any employee who has any material adverse to **his or her** employment relationship placed in a personnel file **will be allowed to file a complete written response to the material within thirty (30) calendar days of being notified of its placement in the file. The Department will notify an individual of the placement of the material in the file by certified mail within thirty (30) calendar days of its placement. If the Department fails to notify, the material will be considered void and removed from the personnel file. The rights**

to protection of the personnel file established in this MOU survive the termination of the employee should such material be placed into the file without the knowledge of the employee or after his or her termination.

3. For the purposes of this section and this Article, "Personnel file" will mean any file or repository of material kept for the purpose of making employment related decisions concerning an officer.

I. Separation of Probationary Employees.

1. Within fourteen (14) calendar days after the Department separates a probationary employee, unless extended by mutual agreement, the Department will provide one informal and non-evidentiary post-separation hearing, to be conducted by an Assistant Chief or his or her designee. A reasonable number of witnesses may be presented. The Department will serve the decision within **seven (7)** calendar days. There is no appeal from the Department's decision at this hearing, and the Department's decision is not subject to the Grievance Procedure.
2. **Upon separation of a probationary officer who is terminated for less than satisfactory performance or failure to meet employment standards, City will release to any person or entity seeking information only the name of the officer, the dates of employment, classification and "failed probation." The only exception will be proper process of the court and a waiver signed by the affected employee. Such separation will not be considered disciplinary in nature.**

J. Other Policies, Practices and Procedures.

1. During the term of this MOU, no policies, practices or procedures of **City** or the Department which affect wages, hours, or **other terms and conditions of employment** and which specifically affect investigations, or the procedures for conducting appeals and hearings **will** be changed in any way without the **mutual** agreement of the **Parties**.
2. During the term of this MOU, **City** agrees not to implement or adopt any changes in policy or procedure which adversely affects or diminishes the procedural or substantive rights of officers contained in this Article, the Personnel Manual, the **San Diego Charter (Charter)** of **City**, any applicable state or federal law, or the Constitutions of the State of California or the United States except by mutual agreement of the **Parties**.

K. Miscellaneous Provisions.

1. Conformity with POBOR. All provisions of this Article are to be read to expand or complement rights which officers enjoy under the **POBOR**. The

Parties to this MOU do not intend to limit or reduce those statutory rights in any way.

2. Formal reprimands without further penalty more than two (2) years old, and those with additional penalty more than five (5) years old, will not be considered for purposes of promotion, transfer, special assignments and disciplinary actions except as to disciplinary actions, when **the** reprimands show patterns of specific similar police misconduct as defined in the Departmental Rules and Regulations and Department Instructions. All officers **will** have the right to review their Departmental and Divisional Personnel Jackets and identify all **the** documents. Upon concurrence of the commanding officer that such documents have been appropriately identified, they will be placed in an envelope, sealed and initialed by the officer. The envelope will be placed in the officer's Department personnel file and will be opened only in the event the officer is subject to discipline **in the future**.
3. Upon the adoption of this Article, the appropriate provisions of policies, practices, and procedures of City and Department **will** be amended to conform **with this MOU**. **If City or Department fail to make appropriate amendments** to policies, practices, or procedures **or if the policies, practices, or procedures** conflict with this Article, this Article **will** prevail.

ARTICLE 42

COPIES OF THE MOU

POA may obtain copies of this MOU from City by reimbursing City for their cost. **This MOU will be posted on City's website in a location easily accessible to all POA Members.**

ARTICLE 43

SENIORITY

- A. Seniority. Seniority **will** be computed according to the length of last continuous service in the class **of the class**, or **of** an equal or higher ranking class. Ties **will** be broken by first considering the length of total City service, and then at the discretion of the Appointing Authority.
- B. Job Rights. Subject to the provisions of Rules VI and IX, a permanent employee whose layoff is imminent **will** have the right of transfer to any vacant position in the same class or subdivision thereof in any other department. If there is no such vacancy, said employee **will** have the right of competition for retention in equal and the next successively lower classes in which he or she has served satisfactorily. The **Parties** acknowledge that there are no "subdivision" classifications in this bargaining unit.

ARTICLE 44

RETIREMENT

- A. Federal law mandates that all employees be covered by a qualified retirement plan or by Social Security effective July 1, 1991. This impacts the classification of Police Recruit as Police Recruits do not participate in any retirement system while in the Academy. Due to this mandate, it is agreed for the classification of Police Recruit that participation in a version of the Supplemental Pension Savings Plan is mandatory until becoming sworn and being enrolled in **City Retirement System**.
- B. 1981 Pension Plan: Effective July 1, 1991, for the purpose of benefit calculation only, the 1981 Plan service will be made equivalent to San Diego City Employees' Retirement System (SDCERS) service.
- C. Internal Revenue Code section 414(H)(2).

Beginning July 1, 1993, **City** agrees to implement Internal Revenue Code section 414(H)(2) for all members in the unit, allowing employee contributions to the Retirement System to be made pre-tax, contingent upon "safe harbor" limitations not being exceeded.

D. 1997 Benefit Changes.

City and POA, having met and conferred, have agreed to benefit improvements to **City Employees Retirement System**. **City Council** has approved these changes by adoption of Ordinance No. O-18383 Adopted on February 25, 1997 and Ordinance No. O-18392 on March 31, 1997; subsequently the improvements were approved by a majority vote of System Members in April 1997. Those changes include the following:

1. Effective August 1, 1997, a Post Retirement Health Benefit is established for Health Eligible Retirees and Non-Health Eligible Retirees. A Health Eligible Retiree is any retired Member who: (1) was on the active payroll of **City** on or after October 5, 1980; (2) retired on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System.
 - a. Health Eligible Retirees may choose to participate in a City sponsored health insurance plan or any other health insurance plan of their choice. The Retirement System will pay or reimburse the applicable Medicare-eligible or non-Medicare eligible retiree-only premium up to but not to exceed the cost of the retiree-only premium for the highest cost HMO plan which is also a City sponsored health insurance plan made available to Health Eligible Retirees.

Revenue Code section 414(h)(2). These monies are placed in a trust account and are distributed to the DROP participant upon termination of employment or completion of the DROP period whichever occurs first. No withdrawals may be made from the DROP account until the Member completes or terminates his or her DROP period. Interest will be credited to the Member's DROP account in the same manner and at the same rate that interest is credited to employee SDCERS accounts. The Member is one hundred percent (100%) vested in the DROP from its inception.

A DROP participant who becomes disabled may apply for conversion of their deferred retirement allowance to a disability allowance calculated at the date of entry into the DROP, and the employee **will** retain all of the DROP and matching contributions. A Member who participates in DROP irrevocably designates a specific consecutive period of months for participation, not to exceed sixty (60) months. The Member must terminate City service at the end of the designated period.

At the completion of the DROP period, the DROP account will be distributed as a lump sum, or in any other manner permitted by the IRS as soon as those options are developed by the Retirement Administration.

5. For retirements effective on or after January 1, 1997, the fifty percent (50%) continuance is available to the spouse to whom the Member was married on the date of retirement. The requirement that the member be married to his or her spouse at least one year prior to retirement for the spouse to receive the fifty percent (50%) continuance is eliminated.
 6. The surviving spouse of a Member who is killed while in the performance of duty is entitled to continued health coverage as provided in California Labor Code Section 4856. (Please refer to Article 67, Line of Duty Death).
 7. The modified special death benefit provided to the surviving spouse of a Member killed in the line of duty is amended to eliminate the requirement that the benefit be discontinued if the spouse remarries. Any benefit terminated to such spouse as a result of remarriage **will** be reinstated effective January 1, 1997.
- E. A retirement allowance cap of ninety percent (90%) of Final Compensation (high one year salary) is established for Police Safety Members.

F. 2000 Retirement Benefit Changes.

City and POA, having met and conferred, and having participated in the settlement of a class action lawsuit challenging the calculation of "compensation earnable" have agreed to benefit changes to SDCERS. The benefit changes resulting from this class action settlement were approved by the CERS active and retired membership in June, 2000.

1. Formula Change for Calculation of SDCERS Monthly Retirement Benefit.

The Retirement Calculation Factor to be applied to the Police Safety Member's high one year salary at specified ages may be increased from the current levels to those shown below for all retirements effective on or after July 1, 2000, if the Police Safety Member selects this option.

Retirement Age	Factor effective 1/01/97-6/30/00 [Current]	Factor effective 07/01/00 [New]
50	2.50%	3.00%
51	2.60%	3.00%
52	2.70%	3.00%
53	2.80%	3.00%
54	2.90%	3.00%
55+	2.99%	3.00%

Member Option: Pursuant to the class action settlement, a Police Safety Member may choose, upon application for retirement, one of the following two options:

- a. The Retirement Calculation Factor in effect on July 1, 2000 with no change in the Police Safety Member's Final Compensation OR
- b. A ten percent (10%) increase in the Police Safety Member's Final Compensation, with the Police Safety Member's Unmodified Service Retirement Allowance calculated using the Retirement Calculation Factor in effect on June 30, 2000.

This election must be made with SDCERS at the time of application for retirement.

2. Police Safety Member's SDCERS Contribution Rate Change.

- a. On July 1, 2001, Police Safety Members' contribution rates to SDCERS will be increased by zero point five three percent (0.53%).
- b. Effective July 1, 2000, Police Safety Members' Contribution rates will increase by an additional zero point sixteen percent (0.16%) to pay for the

cost of providing the choice of Retirement Calculation Factors described above. The additional zero point sixteen percent (0.16%) increase will be paid from the Employee Benefit Reserve described in **San Diego Municipal Code** section 24.1507 until the Reserve is exhausted.

3. Eligibility for Industrial Disability Retirement Change.

- a. A Police Safety Member may be eligible for an industrial disability retirement if it has been medically determined that the Police Safety Member has become psychologically or mentally incapable of performing his or her normal and customary duties as a result of a violent attack on the member with deadly force, such as a shooting or stabbing that causes great bodily injury, and that resulted in a nervous or mental disorder. This provision **will** sunset on June 30, 2010, and no such applications may be made after that date.
- b. **City agrees to take the following actions necessary to restore Section F.3.a:**
 - 1) **Step 1. Contact SDCERS and request a Charter Section 143.1 vote of the Members.**
 - 2) **Step 2. Upon a successful vote under Step 1, initiate a Charter Section 143.1 vote of the electorate for the June 2016 election or the next Citywide election whichever is sooner.**
 - 3) **Step 3. Implement change after necessary Municipal Code provisions have been adopted by City Council.**

G. 2003 Benefit Changes.

Effective July 1, 2003, **City** agrees to amend the Municipal Code to provide Safety Member retirement status for Police Recruits on day one of the police academy.

H. 2009 Benefit Changes.

1. A Safety Member, who is employed as a sworn officer of **City** Police Department and is hired by **City** on or after July 1, 2009, **will** not be entitled to a Retirement Calculation Factor of three percent (3%) unless and until the Safety Member reaches the age of fifty-five years with at least ten years of Creditable Service. A Safety Member, who is employed as a sworn officer of **City** Police Department and is hired by **City** on or after July 1, 2009, **will** have the option to retire at the age of fifty (**50**) years after twenty (**20**) years of Creditable Service with a proportionately reduced Retirement Calculation Factor, as set forth in the following table.

Retirement Age	Factor effective 07/01/09 for sworn City Police Officers hired on or after July 1, 2009
50	2.50%
51	2.60%
52	2.70%
53	2.80%
54	2.90%
55+	3.00%

2. During the Fiscal Year 2010 negotiations, **City** imposed the following:

Effective July 1, 2009, a Police Safety Member must be age **fifty-five (55)** or older to participate in DROP. The DROP annuity option will be eliminated for all employees who enter DROP on or after July 1, 2009, when a POA member transitions from DROP-active status to DROP-retired status. The SDCERS has notified **City** that the foregoing modifications to DROP require a vote of employees pursuant to Charter section 143.1.

3. Effective July 1, 2009, interest will be credited to a POA Member's DROP account at a rate determined by the SDCERS Board.

I. New Retirement Factor Computation for Safety Members, Hired On or After January 1, 2012, as sworn officers of City Police Department.

A Safety Member, who is employed as a sworn officer of **City** Police Department and is hired by **City** on or after January 1, 2012, **will** not be entitled to a Retirement Calculation Factor of three percent (3%) unless and until the Safety Member reaches the age of fifty-five (55) years with at least ten (**10**) years of Creditable Service. A Safety Member, who is employed as a sworn officer of **City** Police Department and is hired by **City** on or after January 1, 2012, **will** have the option to retire at the age of fifty (50) years after twenty years of Creditable Service with a proportionately reduced Unmodified Service Retirement Allowance, as follows: Retirement Calculation Factor is 2.5 percent at age **fifty (50)**; 2.6 percent at age **fifty one (51)**; 2.7 percent at age **fifty two (52)**; 2.8 percent at age **fifty three (53)**; 2.9 percent at age **fifty four (54)**; and 3.0 percent at age **fifty five (55)**. For purposes of determining retirement allowance for these Safety Members, "Final Compensation" **will** be defined as the average of the Safety Member's three highest years of Base Compensation at any time during his or her Membership in the System.

J. Elimination of Cost of Living Annuity Benefit for POA Bargaining Unit Members Hired On or After August 1, 2012.

Employees in POA bargaining units hired on or after August 1, 2012, or as soon thereafter as administratively feasible, will not be eligible or required to make “cost of living contributions” to the Retirement System, as defined in San Diego Municipal Code section 24.1506(b), and will not be eligible to receive the cost of living annuity, as defined in San Diego Municipal Code section 24.0103.

ARTICLE 45

LONG TERM DISABILITY PLAN

- A.** City will continue to offer a **LTD** Income Plan to eligible members of the Police Unit and Police Management Unit. This Article generally describes the benefits available under this **LTD Income** Plan. Specific provisions are set forth in the **LTD Income** Plan on file with **City Clerk**. To apply for this benefit employees must be disabled (unable to work as a result of injury, accident, illness or pregnancy), subject to medical disablement certification. Benefits do not start for thirty (30) calendar days from the date of disability and continue for the next twelve (12) months. The benefit is seventy percent (70%) of basic biweekly earnings, less all other income benefits while totally disabled. To qualify for benefits you must file a claim on an approved form available from the Risk Management or the Police Personnel Office. The claim must be submitted within sixty (60) days of disability date, or within sixty (60) days of the date an employee is first aware of the disabling condition. If a claim is denied, the employee may appeal the decision to **Mayor** or his **or her** designee within ten (10) working days.
- B.** City agrees to meet and confer with **POA** prior to making any changes in this Plan.
- C.** When **City** proposes a revised LTD plan, the **Parties will** reopen negotiations on this subject.

ARTICLE 46

REOPENERS

- A.** The provisions of this MOU, together with those provisions of wages, hours and **other terms and conditions of employment** subject to meet and confer currently in existence and not changed by this MOU **will** not be revised to adversely affect the employees in this unit during the term of this MOU.

- B. POA agrees that, should **City** introduce a proposal to amend Charter in a manner that would change the reporting relationship of the Personnel Director from the Civil Service Commission to the **Mayor**, that POA will promptly meet and confer, at any time during the term of this MOU, regarding any aspects of that proposal that would affect wages, hours, or **other** terms and conditions of employment.
- C. Any claim of a violation of this provision **will** be pursued solely through the grievance procedure.
- D. Nothing **in this MOU** affects or impairs the rights, if any, of **City** or POA granted pursuant to **California Government Code** section 3504.5.
- E. This Article **does** not apply to any policy, procedure, or practice established by a member of the unit which was not approved by a superior authority. Those policies, procedures and practices established by a member of the unit and known by an unclassified police manager **are** deemed to be approved.
- F. The **Parties** acknowledge that this Article in no way diminishes the exercise of **Management's Rights** as provided for in Article 9.
- G. Paragraph A of this Article **does** not apply to any enactment of any Police Review Board or Commission. However, the policies and procedures of this Board or Commission **are** subject to meet and confer to the extent required by the MMBA.
- H. Department Management and POA agree to meet and confer on issues regarding the qualifications for an industrial disability requirement and related issues which are subject to meet and confer. The meet and confer **will** commence upon request of **POA**.

ARTICLE 47

PROBATION PERIOD

All new employees will be subject to a twelve (12) month probation period which **will** commence upon appointment as a sworn member of the Department.

ARTICLE 48

WELLNESS

During the term of this Agreement, City will fund \$35,000 to be used for the maintenance or purchase of weight machines and/or similar equipment. The Parties will discuss and mutually agree on the expenditure of these funds through the Labor-Management Committee.

ARTICLE 49

TRANSPORTATION INCENTIVES

City intends to make modifications to the Transportation Alternative Program (TAP) during the term of this MOU. City agrees to meet and confer, as required by law, over any changes which have a significant or adverse impact to wages, hours, and **other** terms and conditions of employment. The specific changes are being drafted and **will** be presented to **POA** as soon as is practicable. Pending review of **the** changes, the following provisions **will** continue to apply:

- A. Employees who **use** the Concourse Parkade and pay on a monthly basis will be charged fifty percent (50%) of the prevailing general public monthly rate.
- B. Employees participating in the **TAP will** pay fifty percent (50%) of the public daily rate, for up to fifty-two (52) instances per year. **Participation in this program is limited, and available on a first-come first serve basis.**
- C. City will provide a seventy five percent (75%) reimbursement up to **\$100.00** per month to those employees who wish to purchase monthly passes for transportation on the public bus, trolley, and commuter rail service. **Transportation** passes will be for the exclusive use of the employee/purchaser. City will provide an equal amount to employees who **use** the **San Diego Bay** ferry and to employees participating in a City approved vanpool program. Employees must **use** these subsidized transportation services to commute to and from work at least three days **per** week to be eligible for reimbursement. **Payments for passes are made payable to City Treasurer no later than the 12th day of the current month for the next month's pass. Payment is loaded on to issued Compass Cards.**
- D. City will provide reimbursement to employees who use the Concourse Parkade and carry riders. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.

ARTICLE 50

PREFERRED SHIFT SELECTION

- A. All uniformed police officers with twelve (12) or more years of service on the Department are eligible to receive their preference of shift assignment within the area in which they are working, provided the employee is meeting performance standards. **There will be two (2) preferred shift officer positions per service area per watch in every patrol division, except Northwestern. Northwestern patrol division will have one (1) preferred shift officer per service area per watch. There will be two (2) preferred shift officer positions per watch in traffic division.**

- B. All preferential assignments **are** considered permanent; however, the employee **has** the option of requesting a change in **his or her** preference of assignment to be effective at any shift change. Any request for preferred shift selection, either initially or for change, **will** be made in writing to the area captain at least thirty (30) **calendar** days prior to a shift change. Exercise of this privilege can only be made at a shift change or by command approval.
- C. While the employee may request a choice of area of assignment, it is the responsibility of the appropriate commands to assure that preferential shift assignments are designated equitably throughout all area commands.
- D. The Department **will** make reasonable efforts to allow each preferred shift position at least one shift that includes Saturday and Sunday off during the calendar year.
- E. It is the intent of the **Chief of Police** to keep this policy in effect as long as it is feasible to do so. This right may be revoked by the **Chief of Police** whenever it is deemed to be in the best interest of the Department.

ARTICLE 51

MOTORCYCLE PAY

Members of the unit **will** receive an additional three and one-half percent (3.5%) of employee's base rate when assigned to two-wheel motorcycles.

ARTICLE 52

MODIFICATION AND WAIVER

- A. Reasonable written notice **will** be given to **POA** if affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted **or changed** by **City Council**, Retirement Board, Civil Service Commission, or by **Department Heads** and **Assistant Department Heads**, and **POA** will be given the opportunity to meet with **the appropriate** body or person prior to adoption **of any change, as required by law**.
- B. In cases of emergency pursuant to Charter, when **City** determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with **POA**, **City Council** or the **board** or **commission** of **City responsible for the changes will** provide such notice **to POA** and **an opportunity to meet** at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

ARTICLE 53

OVERPAYMENTS TO CITY EMPLOYEES AND REPAYMENT OF FUNDS

A. Overpayment.

1. If it has been discovered that an overpayment or unauthorized payment has been made to a City employee, it is the responsibility of the department to notify the employee in writing and supply the employee with the documentation used to determine the overpayment.
2. If the employee contends that any portion or the entire amount is not owed, he or she may request a meeting with the appointing authority to attempt to resolve the disagreement. If the dispute about the payment originates in another department, the employee has a right to request a meeting with the appointing authority in that department. The department will notify the employee that he or she may have a representative attend such meeting(s) with him or her. If the dispute regarding overpayment arises from the interpretation of a personnel regulation or administrative regulation, the employee may grieve this matter directly to the Department Head level.

B. Repayment of Funds.

1. An employee will pay no penalties, fees or interest as a result of the overpayment. The employee will have the right to select one of the three following options for the repayment of the funds:
 - a. Lump sum payment with the date mutually established by the employee and the department (lump sum payments must be made if the total amount due is five percent (5%) or less than the employee's biweekly salary);
 - b. Biweekly installment payments through payroll deduction (installment payments must be a minimum of \$10.00 and repayment must be completed within twenty six (26) pay periods);
or
 - c. Any other repayment arrangement mutually agreed upon between City and the employee.
2. The final agreement on the repayment will be committed to writing, with the lump sum payment date, or the biweekly amount and the beginning and ending date of the installment plan identified. Disputes over repayment of funds which were overpaid to an

employee through no fault of the employee, will not be a factor in employee performance reports or discipline.

C. Referral to Collections.

A department may refer an employee to the Treasurer, Collections Section only when the employee, after being duly notified of the overpayment and having had the opportunity to review the relevant documentation, refuses to agree to a repayment of the amount owed. The employee will be notified of the referral and informed that the Collections Section will proceed with collection as it would for any other debtor.

ARTICLE 54

CONDUCT OF ELECTIONS

The **Parties** agree that **POA** may make use of intra-departmental mail systems **and** mail slots, from time to time, to conduct POA elections or votes on issues among its members. There **will** be no interference with the conduct of this POA business by management of the Department or **City**.

ARTICLE 55

SWAT PAY

- A. Employees in the classifications of Police Officer II, Police Officer III, Police Agent, Police Sergeant, and Police Lieutenant assigned to the SWAT will receive an additional three and one-half percent (3.5%) of employee's base pay.**
- B. SWAT officers that are members of the Special Response Team (SRT) will receive an additional three and one-half percent (3.5%) of employee base pay. Snipers will also be eligible to receive this **additional** pay.**

ARTICLE 56

CORE INSTRUCTOR PAY

All Core Instructors assigned to the Training Development Division **will** receive special assignment pay which is equal in salary range to Police Sergeant. **Core Instructors will** retain their current pay step in the higher salary range and would be eligible for merit increases at their normal review dates. Further, all Core Instructors would continue to be eligible to receive the **training** pay differential **as outlined in Article 28.**

ARTICLE 57

DRUG AND ALCOHOL TESTING PROGRAM

A random Drug and Alcohol Testing Program has been implemented and applies to all sworn personnel.

A. Procedures.

1. The **Chief of Police or his or her designee** will administer the Drug and Alcohol Testing Program.
2. All officers will be tested twice every eighteen (18) months **by urinalysis**, which will be screened for the presence of specific drugs.
3. The drug screening **will** be conducted to detect only the following drug groups:
 - a. Amphetamines/Methamphetamines (e.g. Speed, Crystal);
 - b. Benzodiazepines (e.g. Valium, Librium, Oxazepam, Serax, Dalmane, Ativan);
 - c. Barbiturates (e.g. Amobarbital, Butabarbital, Pentobarbital, Phenobarbital, Secobarbital);
 - d. Cocaine;
 - e. Methadone;
 - f. Ethanol;
 - g. Opiates (e.g. Codeine, Heroin, Morphine);
 - h. Phencyclidine (PCP);
 - i. THC (Marijuana); **and**
 - j. Hallucinogenics (e.g. LSD).
4. Officers will be assigned a confidential number for testing purposes. Numbers will be selected on a random basis, using a secured computer program.
5. Officers may provide appropriate documentation of legally-prescribed **medications**. The documentation **will** be included in the review of test results **by the testing facility**.

B. Sample Collection.

1. Medical Contractor's (**MC**) personnel will be responsible for obtaining the urine sample from the officer being tested.
2. **MC's** personnel will be available for test processing between **8:00 a.m.** and **2:00 a.m.** hours, five (5) days **per** week, to allow officers to be tested during normal work hours. (Hours vary at some **MC** locations.)
3. **MC's** personnel will not observe **the officer** as the sample is being given.
4. Officers to be tested will be notified at the start of their shift. They will present themselves for testing at the earliest possible time during the shift, and no later than **four (4)** hours after being notified that they are to be tested. Refusals or failures to complete the test as required will be referred by the **Chief of Police or his or her designee** to the Command for investigation and appropriate discipline up to and including termination. Officers who fail to appear for testing will be scheduled to test their next working day.
5. At the **MC's** site, the officer being tested will:
 - a. Identify himself **or** herself by presenting **his or her Department** identification or California driver's license.
 - b. Complete requested paperwork.
 - c. Remove jackets, bags or other bulky items of clothing prior to entering the testing area.
 - d. Provide a urine sample.
 - 1) Officers will be required to stay within the **MC's** facility until the required sample is given.
 - 2) Sample must be at least 45 ml, the minimum amount required for testing purposes.
6. At the **MC's** site, the Medical Assistant (MA) will:
 - a. Have the officer wash **his or her** hands and provide **the officer** with a pair of gloves. Washing hands and wearing gloves is required when providing the specimen. Failure or refusal to do so will be documented by the MA.
 - b. Direct the officer being tested to a private lavatory.
 - c. Assure that the lavatory is secured in accordance with established City procedures.

- d. Wait outside the lavatory for the sample.
- e. Upon receipt of the urine sample, and in the presence of the officer, the MA will:
 - 1) Split the sample into two unused separate containers which will be referred to as test sample and control sample.
 - 2) Seal the containers.
- f. Complete the appropriate chain-of-custody forms for the samples.
- g. Refrigerate both the test sample and **the** control sample until **the samples are** picked up by the laboratory courier.

C. Screening Procedure.

1. The initial screening of all collected samples will generally be conducted within **forty-eight (48)** hours of receipt by a City-designated Laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).
2. Initial screening of urine samples will be conducted using a testing methodology based primarily upon an “Enzyme Immunoassay” or other testing methodology of equivalent quality and acceptability.
3. If a confirmation test is **required**, it will be conducted by Gas Chromatography/Mass Spectrometry (GC/MS) testing or other testing methodology of equivalent quality and acceptability.
4. Upon receipt of a sample for testing, the designated laboratory will:
 - a. Check the container to ensure it is not damaged, and that the seal is intact.
 - b. Complete the appropriate chain-of-custody forms for the sample.
 - c. Conduct the initial testing of the sample using an “Enzyme Immunoassay” technique or other testing methodology of equivalent quality and acceptability.
 - d. If the sample tests “negative,” all urine samples will be discarded.
 - e. If the sample tests “positive,” a confirmation test will be performed for the specific drug **or drugs** found in the sample during the initial test.
 - f. If the confirmation test confirms the presence of drugs, any remainder of the test sample and the entire control sample will be retained in a locked freezer for a minimum of one **(1)** year.

- g. If the confirmation test is “negative,” the whole test will be considered negative **and all urine samples will be destroyed.**

5. Alcohol Test.

- a. The standard for alcohol testing will be the converted urinalysis equivalent of a blood alcohol level of 0.02 percent.
- b. An alcohol testing level of 0.02 percent will be treated as a “positive” result **and may be cause for disciplinary action.** Any measurable amount of alcohol **will** be cause for mandatory referral of the officer to City’s Employee Assistance Program.

D. Reporting Test Results.

- 1. Test results will be provided to Personnel Department’s Medical **Program Administrator by the MC.**
- 2. The officer will be notified of his or her test results in writing without delay.
- 3. If test results are positive, the Executive Assistant Chief of Internal Affairs will be notified, and will be responsible for initiating an investigation.

E. Independent Testing.

- 1. If the test results are positive, the affected officer has the right to require independent testing of the control sample. The request must be made to the Executive Assistant Chief of Internal Affairs by the officer within thirty (30) calendar days of receipt of the notice of drug test results indicating that the officer’s drug test was positive and a representative from the Department is being contacted. The right of the officer to independent testing of the control sample includes:
 - a. The right to designate the laboratory, which must be a SAMHSA certified laboratory.
 - b. The right to designate the type of test to be conducted in order to identify substances that will cause a positive finding for the test sample.
 - c. The designation of the test to be performed **will** be communicated by the affected officer directly to the laboratory selected and **is** a confidential communication protected by the **medical privacy** privilege which extends to all communications between or on behalf of the affected officer and the independent test laboratory and its personnel. The privilege is waived if **section F.2** is applicable.
- 2. If, in any proceedings involving an appeal from a notice of adverse action based upon a positive drug test sample, the employee intends to challenge the

accuracy of the results of the test sample or intends to introduce into evidence, whether during direct examination, cross-examination, or rebuttal, any evidence whether testimonial or documentary which results from the affected officer's demand for independent testing, the affected officer **will**, without delay, and prior to any appeal hearing, including the Skelly meeting, furnish to the Department a copy of all reports setting forth **the** result of the testing of the control sample. If the reports are not provided prior to the Skelly meeting, the reports may not be used in any future appeal hearing.

3. If testing is done to confirm the presence of the drug **or drugs** identified in the original test, it **will** be done in accordance with SAMHSA's Mandatory Guidelines regarding Retesting of a Specimen, **which provides the amount of sample necessary** for a retest is not subject to a specific cut-off requirement but must provide data sufficient to confirm the presence of the drug or metabolite.
4. The officer and **his or her** representative **will** make all necessary arrangements for transport and preservation of the control sample to the independent testing laboratory designated by the affected officer. **He or she will** first inform City's Random Drug Testing Coordinator, who in turn will initially contact City's Laboratory to provide for release of the sample to the officer's courier.
5. All costs associated with independent testing **will** be borne by the officer.

F. Program Records.

1. All drug testing information relating to individual officers is strictly confidential.
2. All records related to the **Drug and Alcohol Testing Program will** be maintained as directed by the Personnel Director.

G. Use of Test Results.

The Random Drug **Testing** Program **is** considered an administrative matter, and the results of this test **will** not be used in any criminal action. However, if additional information is available through other means to support criminal action against an employee, the Department **will** not be precluded from taking further action.

ARTICLE 58

CATASTROPHIC LEAVE PLAN

A. Purpose.

Establish a City-administered Catastrophic Leave Bank (**Leave Bank**) permitting City employees to assist other City employees who face extended leaves without pay due to a catastrophic occurrence in their lives. For the purpose of this plan, a “catastrophic occurrence” is defined as any event that would qualify the employee under the **FMLA** as determined by **Mayor or his or her designee**. Catastrophic Leave determinations are non-grievable.

B. Procedures.

1. The employee must have exhausted or expect to exhaust **his or her** accrued leave (to be verified by the **Department payroll specialist**), as a result of a qualifying event in order to establish a **Leave Bank**.
 - a. If an employee is diagnosed as terminally ill, a **Leave Bank** may be established without meeting this requirement. In such cases, the donated leave will be paid out **when the employee leaves work due to illness**. A recipient’s total annual leave balance, including donated leave cannot exceed 2080 hours.
 - b. The employee has received approval for an unpaid leave of absence from his or her **Department Head**.
2. Requests to establish a **Leave Bank** for receipt of donations will be processed by the **Human Resources Department**.
 - a. An eligible employee will submit a completed “Request to Establish Catastrophic Leave Bank” form to the **Human Resources Director**, accompanied by:
 - 1) A medical statement from the attending physician, including a brief statement of the nature of the illness or injury and an estimated time the employee will be unable to work, or other appropriate documentation supporting the request **in accordance with state and federal law**.
 - 2) Evidence of the **Department Head’s** approval of leave of absence.
3. Donations of annual leave may be made to an employee eligible for catastrophic leave. The **donor department** will be billed for the dollar amount of the **donor’s annual leave donation**.

- a. Donations of leave will be strictly voluntary; the identity of **Leave Bank** donors will be held in absolute confidence.
 - b. Employees may only donate accrued annual leave.
 - c. Donations **must** be made in whole hour increments. There is no tax benefit to the donor.
 - d. Donors must have an overall annual leave balance of one-hundred and sixty (160) hours remaining after donated time has been deducted.
 - e. Once donated to an individual, donated leave cannot be reclaimed by the donor.
 - f. Employees wishing to donate time **will** complete a “Confidential Authorization for Catastrophic Leave Donation” form and submit **it** to their **department** Payroll Specialist, who will:
 - 1) Verify that **the** donating employee has the minimum required leave balance **of** one hundred sixty (160) hours;
 - 2) Convert the donated time to dollars at the hourly rate of the donor and subtract **the donated time** from **the donor’s** designated leave category; and
 - 3) Forward **the donation authorization form** to the Human Resources Director for tracking and submission to the **City** Comptroller.
 - 4) Donation authorization forms which do not contain all requested information **will** not be processed.
4. Upon receipt of donation authorizations, the **City** Comptroller will take the following action:
 - a. Convert donated dollars as computed above **into** hours at the hourly rate of the recipient, and add **the donated hours** to **the** recipient’s annual leave balance. Recipient will be taxed for the leave when **it is** taken.
 - b. Retain a confidential file of donation authorizations.
 - c. All deductions (e.g. health premiums, parking, credit union, union dues, etc.) which have previously been authorized by the recipient will be made unless notified in writing by the recipient to cancel deductions.
 5. Donated time is treated as annual leave accrued by the recipient of the donation. Payments up to eighty (80) hours per pay period will be made to the recipient until the donated leave has been exhausted.

- a. Donated time does not alter the employment rights of **City** or the recipient, nor extend or alter limitations otherwise applicable to leaves of absence or **annual leave**, except as noted in this Article.
- b. Employees who are **using** donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual **Index Code I-2, Annual Leave**.

ARTICLE 59

SIDE LETTERS

Effective July 1, 2007, all side letters signed by both **Parties** not specifically referenced by the current MOU **will** expire and be of no further force and effect. The current MOU as printed will represent all agreements between POA and **City**. **All agreements, including Department level agreements, from July 2, 2007 to June 30, 2012, will remain in effect. Effective July 1, 2012, any additional agreements must be made in writing between City and POA with the approval of the Mayor or his or her designee, the Human Resources Director, and the POA President or his or her designee.**

ARTICLE 60

MILEAGE REIMBURSEMENT

“C” Mileage reimbursement will be paid in accordance with the current IRS Standard Mileage Rates for business reimbursement.

ARTICLE 61

SPECIAL PAY FOR ADMINISTRATIVE ASSIGNMENTS

Police Sergeants assigned to specialized administrative assignments as designated specifically by the **Chief of Police will** receive an additional **five percent (5%)** of their base rate, effective July 1, 2003.

ARTICLE 62

SHIFT DIFFERENTIAL

- A. Police Officer III's, Sergeants, Detectives, and Agents, who are assigned to Third Watch, or if the majority of their regularly scheduled work shift falls after 2100 hours **will** receive additional compensation of five point three percent (5.3%) of the employee's base rate. Police Officer III's, Sergeants, Detectives, and Agents, who are assigned to Second Watch or if the majority of their regularly scheduled

work shift falls after 1800 hours **will** receive additional compensation of three point eight percent (3.8%) of the employee's base rate. In addition, the Lieutenants assigned to the Watch Commander's Office and Communications will be eligible for this shift differential.

- B. Police Officer II's ("A," "C," "D," and "E" Steps), Police Officer Is and Recruits** who are assigned to Third Watch, or if the majority of their regularly scheduled work shift falls after 2100 hours, **will** receive additional compensation based on five point three percent (5.3%) of Police Officer II's ("E" Step) base rate. Police Officer II's ("A," "C," "D," and "E" steps), Police Officer I's and Recruits who are assigned to Second Watch, or if the majority of their regularly scheduled work shift falls after 1800 hours, **will** receive additional compensation based on three point eight percent (3.8%) of Police Officer II's ("E" Step) base rate.

ARTICLE 63

SPECIALTY PAYS

A. Community Relations Officers.

Community Relations Officers **will** receive **additional compensation of three and one-half percent (3.5%)** of employee's base rate while assigned as a Community Relations Officer.

B. Emergency Negotiators.

Emergency Negotiators will receive **additional compensation of three and one-half percent (3.5%)** of employee's base rate while assigned as Emergency Negotiators.

C. K-9 Trainers.

K-9 Trainers **will** receive **additional compensation of three and one-half percent (3.5%)** of employee's base rate while assigned as a K-9 Trainer.

D. K-9 Officers.

K-9 handlers assigned a dog will receive **additional compensation of three and one-half percent (3.5%)** of employee's base rate while assigned to the unit.

E. Accident Investigation Bureau.

Members of the **Accident Investigation Bureau (AIB)** unit who have successfully completed the POST Traffic Collision Reconstruction Course **will** receive an additional **compensation of four percent (4%)** of their base rate.

F. Harbor Unit.

1. Full-time members of the Harbor Unit **will** receive **additional compensation of** four percent (4%) of base pay, while assigned to the Harbor Unit.
2. Selected Harbor-trained officers **who maintain their skill level through Department-paid training will** continue to receive **additional compensation of** four percent (4%) of their base pay. The number of officers to receive this pay will be based upon the discretion of the Department Management.

G. Trainer Pay.

Officers working as trainers, as determined by the Chief of Police, **while assigned as and performing the duties of a trainer in the manner specified by the Department** will receive **additional compensation of** three and one-half percent (3.5%) of employee's base rate.

ARTICLE 64

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT

City agrees to include the following language of the **POBOR** Act in the MOU. The **Parties** enter into this MOU with the understanding that any legislative or case law changes to the **POBOR** made during the term of the contract will be applicable to the **Parties** but will not cause City to update this Article of the MOU, for purposes of republishing the MOU, during the term of the contract.

GOVERNMENT CODE

SECTION 3300-3312

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code. The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary

that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.
- (b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.
3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.
- (a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.
- (b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.
- (c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
- (d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.
- (e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question.

The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

- (f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:
 - (1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.
 - (2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.
 - (3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.
 - (4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.
- (g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.
- (h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

- (i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters. This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.
 - (j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.
3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.
- (b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.
 - (c) No Chief of Police may be removed by a public agency, or appointing authority, without providing the Chief of Police with written notice and the reason or reasons therefore and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a Chief of Police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

- (d) (1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed **discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.**
- (2)(A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
- (B) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
- (C) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (D) If the investigation involves more than one employee and requires a reasonable extension.
- (E) If the investigation involves an employee who is incapacitated or otherwise unavailable.
- (F) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.
- (G) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
- (H) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

- (e) Where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.
 - (f) If, after investigation and any pre-disciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.
 - (g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:
 - (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
 - (2) One of the following conditions exist:
 - (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
 - (B) The evidence resulted from the public safety officer's pre-disciplinary response or procedure.
 - (h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.
- 3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.
3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.
3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such

written response shall be attached to, and shall accompany, the adverse comment.

3306.5.

- (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.
- (b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.
- (c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.
- (d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

3307.

- (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

- (b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3307.5.

- (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.
- (b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3309.5.

- (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.
- (b) **Nothing in subdivision (h) of Section 111181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.**
- (c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.
- (d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary **injunction**, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the **party's** attorney, or both pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.
- (e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages.

Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

3312. Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

- (a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
- (b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
- (c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

3313. In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test

claim, the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

ARTICLE 65

EMPLOYEE ORGANIZATIONAL LEAVE

The **Parties** agree to reopen negotiations on the issue of Employee Organizational Leave after further legal analysis on the tax limitations on this proposal and after the **Parties** agree on how POA will fund it.

ARTICLE 66

LABOR-MANAGEMENT COMMITTEE

A Labor-Management Committee is hereby created, which **will** consist of the President of POA and **his or her** designee, and two **(2)** Board members of POA, and two representatives designated by the Chief of Police, and **the** Human Resources Director or his or her designee. The Committee will meet quarterly for the purpose of informally resolving open issues, and improving communication between the parties. Any agreements reached at the Committee meetings will be reduced to writing and signed off by parties.

ARTICLE 67

LINE OF DUTY DEATH

City will pay for the reasonable burial and interment expenses for the family of any officer killed in the line of duty, not to exceed \$5,000.00. **City** will also provide an additional \$5,000.00 to an officer's family to use at their discretion. **City** will pay for the highest cost HMO health plan for the surviving spouse and eligible dependents of any officer killed in the line of duty by external violence or physical force, or as a result of an accident or injury caused by external violence or physical force and suffered in the line of duty.

ARTICLE 68

EFFECT OF MOU

This MOU **has** no effect or impact on any litigation pending between POA and City, or any other current litigation concerning its members (including former members) or their rights. This MOU **has** no effect or impact on any pending claims, including denied claims where the statute of limitations has not run.

ARTICLE 69

BEREAVEMENT LEAVE

Paid Bereavement Leave of up to three (3) days is available upon the death of an employee's spouse, father, mother, brother, sister, son, daughter (**son or daughter to include: step-, foster, or adopted**), or state-registered domestic partner, with a limit of one eligible death per fiscal year. **Proof of death (death certificate, obituary, funeral program, etc.) must be provided in order to receive Bereavement Leave, which is in addition to Annual Leave. Proof must be submitted within thirty (30) calendar days of when the employee returns to work.**

ARTICLE 70

AGENCY SHOP AND DUES DEDUCTION

A. Police Unit.

1. Definition and Purpose.

- a. "Agency Shop" means an arrangement that requires an employee, as a condition of continued employment, either to join POA or to pay POA a service fee or agency fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of POA. This MOU is intended to be consistent with and conform to the provisions of the MMBA and the PERB Regulations relating to agency fee agreements.
- b. City and POA mutually understand and agree that all affected employees have the right to join or not join POA. It is the purpose of this Article to establish fair and equitable procedures for the implementation of any Agency Shop arrangement and to protect the rights and privileges of the employees, POA, and City.

2. Employee and POA Rights and Responsibilities.

a. Employees' Responsibilities.

Within thirty (30) days of their employment by City or mailing of the initial Hudson letter in a bargaining unit covered by an Agency Shop arrangement, all employees (except management employees pursuant to Government Code 3502.5(e)) will have the choice of either becoming a member of POA, or of being a non-member and paying an agency fee or conscientious objector fee. City will notify POA within forty-five (45) days of the identity of

these new employees. Members of the Police Management Unit are not subject to the agency fee provision pursuant to Government Code Section 3502.5 (e).

1) Employee's Right To Conscientious Objections.

- a) An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations will not be required to join or financially support any public employee organization as a condition of employment. The employee will be required, in lieu of periodic dues, initiation fees, or agency fees, to pay sums equal to the dues, initiation fees or agency fees, to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list designated by Section 2(a)(ii) of this MOU.
- b) Declaration of or applications for religious exemption, with supporting documentation, will be submitted to POA and will be processed promptly. If the application for religious exemption is challenged by POA, the deduction to the designated charity will commence but will be held in escrow by POA pending POA's resolution of the challenge. Charitable contributions made by employees who are eligible conscientious objectors as a substitute for the payment of dues or an agency fee will be made by regular payroll deduction or by proof of payments to a nonreligious, non-labor charitable fund on a monthly basis to POA as a condition of continued exemption from the requirement of financial support to POA.

2) Designation of Nonreligious, Nonlabor Charitable Funds.

- a) Employees who are eligible conscientious objectors as described in Section A.2.(a)(1) must designate one of the following nonreligious, non-labor charitable funds to which his or her contributions in lieu of dues or agency fees will be paid:
 - i. Wounded Warrior Project
 - ii. Nice Guys San Diego
 - iii. Susan G. Komen for the Cure

b. POA's Responsibilities.

- 1) **Notice to City of Dues and Agency Fees.** POA will provide a biweekly transmittal file detailing by employee the amount of dues and agency fees to be deducted.
- 2) **Notice to Fee Payers.**
 - a) **In accordance with state law and regulations, including PERB Regulation 32992, POA must provide agency fee payers an annual explanation of what the fee is used for and sufficient financial information to enable the agency fee payer to determine the appropriateness of the fee (Hudson Notice). POA must provide agency fee payers a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, not chosen by POA, and must provide an escrow account to hold amounts in dispute while challenges are pending.**
 - b) **POA will provide City copies of its Hudson Notice concurrently with POA's distribution to agency fee payers.**
- 3) **Notice of Employees.**
 - a) **POA will provide newly hired employees in the Police Unit with an authorization notice advising them that all unit members must join POA, pay an agency fee to POA, or execute a written declaration setting forth a bona fide religious exemption from this requirement. The notice will include a form for the employee's signature authorizing payroll deduction of POA dues, or an agency fee, or a charitable contribution equal to the agency fee. Affected employees will have thirty (30) calendar days from the date of receipt of this notice and authorization to fully execute and return it to POA. If the employee fails to execute the form, the agency fee will be deducted from the employee's paycheck.**
 - b) **POA will provide City copies of the authorization notice each time it is changed, but no less frequently than with the delivery of its annual Hudson Notice.**

B. Police Management Unit.

1. **Since the MMBA (Government Code section 3502.5(e)) prohibits requiring management employees to pay an agency fee,**

Lieutenants and Captains are not required to do so but may continue to authorize voluntary dues deduction.

2. Dues will be for a specified amount and will be made only upon the voluntary written authorization of employees in the Police Management Unit. The authorization or cancellation of fees will be made upon clearly marked cards provided from the employee to POA.

C. Deductions/Remittance of Dues and Fees.

1. POA voluntary dues or agency fees will be deducted by City from the salaries of employees over twenty six (26) pay periods subject to Section VI (B) of the Employee-Employer Relations Policy. Payment of voluntary dues or agency fees will be by regular payroll deductions only. Remittance of the aggregate amount of all voluntary dues and agency fees will be made to POA by City bi-weekly at the conclusion of each pay period in which dues and agency fees and deductions were made. Remittances will be made by City and sent to:

**San Diego Police Officers Association
8388 Vickers Street
San Diego, CA 92111**

2. If an improper deduction is made, upon proof of the improper deduction, POA will promptly refund the full amount directly to the employee. Dues deductions, once initiated, will continue until the employee's authorization is revoked in writing by the employee. An employee may only revoke a dues deduction authorization by delivering the written notice of revocation to POA.
3. **Sufficiency of Employee's Earnings:** The employee's earnings must be sufficient, after all other legally required but not voluntary deductions, are made to cover the amount of the dues or fees authorized. When an employee is in an unpaid status for an entire pay period, no withholding will be made to cover that pay period from future earnings nor will the employee deposit (with City) the amount that would have been withheld if the employee had been in a pay status during that period. In the case of an employee who is in an unpaid status during part of a pay period, whose salary is insufficient to cover the full withholding, no deduction will be made. All other legally required deductions, including health care deductions, will have priority over dues and agency fees.

D. Notice to POA.

City will provide a biweekly census file of POA represented employees by bargaining unit to POA.

E. Indemnification.

1. Any dispute concerning the amount of the voluntary dues or agency service fee or the responsibilities of POA with respect to agency fee payers is not be subject to the grievance procedures contained in a comprehensive MOU between the Parties. POA will indemnify, defend and hold harmless City, its officials, representatives, and agents from and against any liability arising from any claims, demands, or other action relating to City's compliance with this Article. In addition, POA will refund to City any amounts paid to it in error after City provides POA supporting evidence of the error.
2. In the event that the agency fee arrangement is terminated by a lawful vote of the employees in the unit, a modified agency fee will be in effect for current employees for the duration of this MOU, and each person hired to fill a position in the bargaining unit will, as a condition of employment in that position, be required to become a member of POA or pay a service fee.

F. Provisions of Law.

POA agrees to comply with all applicable state and federal laws and regulations relating to agency fee arrangements, including California Government Code section 3502.5 and PERB Regulations sections 32990 through 32997. If any part or provision of this Article is in conflict with any federal or state laws, or is otherwise held to be invalid or unenforceable by any tribunal of competent jurisdiction, that part or provision will be suspended or superseded by the applicable laws and the remainder of this Article will not be affected by the stricter provision.

- G. City will not oppose POA's efforts to pursue the establishment of additional lawful benefits for its members including but not limited to affiliated institutions with all privileges and powers authorized by state and federal law.**
- H. In the event of any concerted action authorized by POA which encourages employees to withhold their services to City, City Council has the right, by resolution, to immediately cease the collection and remittance of dues and other deductions to POA.**

Before invoking its rights under this paragraph, City will notify POA of its intention and meet to discuss the matter if requested to do so by POA.

- I. City and POA will discuss and develop any additional terms or conditions necessary for the agency fee or voluntary dues deduction or implementation.**

ARTICLE 71

USE OF CITY EMAIL

Authorized POA representatives **will** be permitted to use City's email system subject to authorization by Department Management, for the sole purpose of directing employees to information contained on POA's website or for other matters pertaining to Employer/Employee relations.

ARTICLE 72

VOLUNTEERS

- A. City's Volunteer Program is governed by City Council Policy 300-01.**
- B. A "volunteer" is defined as an individual or groups of individuals who offer themselves for some service or undertaking without being compensated pay by City.**
- C. In accordance with City Policy No. 300-01, City will continue to optimize the use of volunteers where it is economically feasible, by developing volunteer opportunities throughout City. Unless the Parties meet and confer during the term of the MOU, volunteers are to be used only to supplement and complement the work performed by City personnel and without decreasing bargaining unit work or displacing existing City personnel.**
- D. Parties understand that departments participating in City's Volunteer Program will use volunteers to perform a number of tasks necessary to support volunteer programs. Projects performed by volunteers include the following:**
 - 1. Retired Senior Volunteer Patrol – senior citizens who perform license plate reading to recover vehicles, conduct "You Are Not Alone" checks, support schools to develop child safety fingerprint programs, provides McGruff Crime Dog Prevention programs, assist with business security surveys, support Speed Surveys and Radar trailers and may provide support at front counters.**

- 2. Volunteers in Policing assist patrol, investigative, and administrative commands, speak to community groups and seniors on crime prevention and support Crime Prevention Through Environmental Design for local businesses.**
- 3. Crisis Interventionist volunteers respond to traumatic incidents and help console and provide guidance and run the Community Access Phone System (CAPS).**

ARTICLE 73

ME TOO CLAUSE TO SUNSET ON JUNE 30, 2013

City agrees that, if, during the term of this MOU, any other employee labor organization is given a general salary increase or any other economic enhancement to their overall compensation, or has any compensation reduction they have incurred or concession they have made restored to them, then City will extend that same economic benefit to POA-represented employees on the same terms and on the same effective date. The Parties agree that this “Me-Too Clause” will remain in effect during Fiscal Year 2013 and will sunset on June 30, 2013.

ARTICLE 74

DISCRETIONARY LEAVE FOR FISCAL YEAR 2013

- A. All full time bargaining unit members will receive a one-time sixteen (16) hours of discretionary leave for use during Fiscal Year 2013 and the discretionary leave identified in this Section has no eligibility requirements except as set forth in this Section. Three-quarter time employees will receive twelve (12) hours of discretionary leave for use during Fiscal Year 2013. Half-time employees will receive eight (8) hours of discretionary leave for use during Fiscal Year 2013.**
- B. Each employee will schedule his or her discretionary leave hours in the same manner as annual leave is presently scheduled pursuant to Article 18 of this MOU.**
- C. All leave granted under this Article must be used by June 30, 2013 or it will be forfeited. The one-time sixteen (16) hours of discretionary leave under this Article will sunset on June 30, 2013.**

D. The sunset provision of Section C above does not amend, modify, or alter any discretionary leave that may be granted under AR 95.91 (Employee Recognition and Rewards Program).

IN WITNESS THEREOF, the undersigned agree to submit this tentative Memorandum of Understanding, effective July 1, **2012** – June 30, **2013**, to their respective constituents for approval.

Date: _____

SAN DIEGO POLICE
OFFICERS ASSOCIATION

CITY OF SAN DIEGO (OFFICE
OF THE MAYOR)

(Signature on File – Available Upon Request)
Brad Fields, Lead Negotiator

(Signature on File – Available Upon Request)
Timothy Davis, Lead Negotiator

(Signature on File – Available Upon Request)
Brian R. Marvel, President

(Signature on File – Available Upon Request)
Scott Chadwick, Human Resources
Director

(Signature on File – Available Upon Request)
Jeff Jordon, Vice President

(Signature on File – Available Upon Request)
Jennifer Carbuccia, Labor Relations
Deputy Director

Tom Bostedt, Secretary

Shelley Zimmerman, Assistant Chief of
Police

(Signature on File – Available Upon Request)
Randy Levitt, Treasurer

Paul Cooper, Assistant to the Chief of
Police

Paul Hubka

Valerie Van Deweghe, Risk
Management Deputy Director

Mike Pidgeon

(Signature on File – Available Upon Request)
Marcelle Rossman, Financial Operations
Manager, Comptroller

Paul Paxton

(Signature on File – Available Upon Request)
John O’Neill, Labor Relations Officer

(Signature on File – Available Upon Request)
Mike Fender

Rob Lewis

For the City of San Diego, I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2012.

TIMOTHY L. DAVIS:

By:
TIMOTHY L. DAVIS, ESQ.,
BURKE, WILLIAMS & SORENSEN, LLP

____(*Signature on File – Available Upon Request*)____

SIGNED

DATE _____