

# Memorandum of Understanding FY 2023 - 2024

This **MEMORANDUM OF UNDERSTANDING (MOU)** was made and entered into at 12:01 am on **July 1, 2022**, and shall expire and otherwise be fully terminated at 11:59 pm on **June 30, 2024**.

By and Between:

**The City of San Diego**

and

**San Diego Police Officers Association**

The City of  
**SAN DIEGO**



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## **MEMORANDUM OF UNDERSTANDING**

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This MEMORANDUM OF UNDERSTANDING made and entered into this 1<sup>st</sup> day of July 2022.

**BY AND BETWEEN**

**CITY OF SAN DIEGO**

**AND**

**SAN DIEGO POLICE OFFICERS ASSOCIATION**

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## TABLE OF CONTENTS

---

Article 1 – Parties to Agreement .....	1
Article 2 – Recognition .....	1
Article 3 – Implementation .....	1
Article 4 – Term of Agreement .....	1
Article 5 – Renegotiation .....	1
Article 6 – Scope of Representation .....	2
Article 7 – Provisions of Law .....	2
Article 8 – Holidays .....	2
Article 9 – Management’s Rights .....	4
Article 10 – No Discrimination Policy .....	5
Article 11 – Exchange of Days Off Between Employees .....	5
Article 12 – Information on New Employees .....	5
Article 13 – Flexible Benefits Plan .....	6
Article 14 – Industrial Leave .....	11
Article 15 – Educational Incentive .....	11
Article 16 – Bilingual Pay .....	11
Article 17 – Badges .....	12
Article 18 – Annual Leave .....	13
Article 19 – Annual Leave Reimbursement .....	17
Article 20 – Board of Directors .....	17
Article 21 – Formal Representation .....	18
Article 22 – POA Access .....	19
Article 23 – Out-of-Class Assignments .....	20
Article 24 – Grievance Procedure .....	22
Article 25 – Salaries .....	26
Article 26 – Uniforms and Safety Equipment .....	27
Article 27 – Personnel Rules and Regulations .....	31
Article 28 – Field Training Officer Pay .....	34
Article 29 – Call-Back Pay .....	35
Article 30 – Court Pay .....	35
Article 31 – Stand-By Compensation .....	36
Article 32 – Overtime .....	37
Article 33 – Work Schedules .....	40
Article 34 – Starting Salary/Wage .....	40
Article 35 – POA Representation .....	40
Article 36 – Payroll Electronic Deposit .....	41
Article 37 – Employee Representation .....	41
Article 38 – Departmental Procedures – Advance Notice .....	42
Article 39 – Tuition Reimbursement .....	42
Article 40 – Flight Pay .....	42
Article 41 – Public Safety Officers Procedural Bill of Rights (POBOR) Procedures .....	43
Article 42 – Copies of the MOU .....	48
Article 43 – Seniority .....	48
Article 44 – Retirement .....	49
Article 45 – Long Term Disability Plan .....	54
Article 46 – Reopeners .....	55
Article 47 – Probation Period .....	56
Article 48 – Wellness .....	56

Article 49 – Transportation Incentives .....	57
Article 50 – Preferred Shift Selection .....	58
Article 51 – Light Duty .....	59
Article 52 – Modification and Waiver .....	60
Article 53 – Overpayment to City Employees and Repayment of Funds .....	60
Article 54 – Conduct of Elections .....	61
Article 56 – Core Instructor Pay .....	61
Article 57 – Random Drug Testing .....	61
Article 58 – Leave-Sharing Plans .....	66
Article 59 – Side Letters .....	72
Article 60 – Mileage Reimbursement .....	73
Article 61 – Special Pay for Administrative Assignments .....	73
Article 62 – Shift Differential .....	73
Article 63 – Specialty Pays .....	73
Article 64 – Public Safety Officers Procedural Bill of Rights Act .....	74
Article 65 – Emergency Contact Information .....	82
Article 66 – Labor-Management Committee .....	83
Article 67 – Line of Duty Death .....	83
Article 68 – Effect of MOU .....	83
Article 69 – Bereavement Leave .....	83
Article 70 – Dues Deduction .....	84
Article 71 – Use of City Email .....	85
Article 72 – Volunteers .....	85
Article 73 – Use of Technology .....	86
Article 74 – Discretionary Leave .....	86
Article 75 – Police Management Incentive Pay .....	87
Article 76 – Flexible Work Arrangements .....	87
 Appendix A – Interim Defined Contribution Plan .....	 88
Appendix B – Exhibits A, B, and C to FY 2011 Salary Ordinance .....	92
Appendix C – Side Letter Agreement – Establishment of the Interim Disability and Death Benefits Plan for Employees Initially Hired On or After July 20, 2012, dated July 22, 2019..	92

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## SUBJECT INDEX

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<a href="#">Annual Leave (Article 18)</a>	13
<a href="#">Annual Leave Reimbursement (Article 19)</a>	17
<a href="#">Badges (Article 17)</a>	12
<a href="#">Bereavement Leave (Article 69)</a>	83
<a href="#">Bilingual Pay (Article 16)</a>	11
<a href="#">Board of Directors (Article 20)</a>	17
<a href="#">Call-Back Pay (Article 29)</a>	35
<a href="#">Conduct of Elections (Article 54)</a>	61
<a href="#">Copies of the MOU (Article 42)</a>	48
<a href="#">Core Instructor Pay (Article 56)</a>	61
<a href="#">Cost Of Living Annuity (Article 44)</a>	53
<a href="#">Court Pay (Article 30)</a>	35
<a href="#">Departmental Procedures – Advance Notice (Article 38)</a>	41
<a href="#">Discretionary Leave (Article 74)</a>	86
<a href="#">DROP (Article 44)</a>	50
<a href="#">Dues Deduction (Article 70)</a>	84
<a href="#">Educational Incentive (Article 15)</a>	11
<a href="#">Effect of MOU (Article 68)</a>	83
<a href="#">Emergency Contact Information (Article 65)</a>	82
<a href="#">Employee Representation (Article 37)</a>	41
<a href="#">Exchange Of Days Off Between Employees (Article 11)</a>	5
<a href="#">Field Training Officer Pay (Article 28)</a>	34
<a href="#">Fiscal Year 2022 Salary Ordinance–Exhibits A, B, and C (Appendix B)</a>	86
<a href="#">Flexible Benefits Plan (Article 13)</a>	6
<a href="#">Flexible Work Arrangements (Article 76)</a>	87
<a href="#">Flight Pay (Article 40)</a>	42
<a href="#">Formal Representation (Article 21)</a>	18
<a href="#">Grievance Procedure (Article 24)</a>	22
<a href="#">Holidays (Article 8)</a>	2
<a href="#">Implementation (Article 3)</a>	1
<a href="#">Industrial Leave (Article 14)</a>	11
<a href="#">Information on New Employees (Article 12)</a>	5
<a href="#">Labor-Management Committee (Article 66)</a>	83
<a href="#">Leave-Sharing Plans (Article 58)</a>	66
<a href="#">Light Duty (Article 51)</a>	59
<a href="#">Line of Duty Death (Article 67)</a>	89
<a href="#">Long Term Disability Plan (Article 45)</a>	62
<a href="#">Management’s Rights (Article 9)</a>	6
<a href="#">Mileage Reimbursement (Article 60)</a>	73
<a href="#">Military Leave (Article 27)</a>	33
<a href="#">Modification and Waiver (Article 52)</a>	60
<a href="#">No Discrimination Policy (Article 10)</a>	5
<a href="#">Out-Of-Class Assignments (Article 23)</a>	20
<a href="#">Overpayment to City Employees (Article 53)</a>	60
<a href="#">Overtime (Article 32)</a>	37
<a href="#">Parties to Agreement (Article 1)</a>	1
<a href="#">Payroll Electronic Deposit (Article 36)</a>	41
<a href="#">Personnel Rules and Regulations (Article 27)</a>	31

<a href="#"><u>POA Access (Article 22)</u></a>	19
<a href="#"><u>POA Representation (Article 35)</u></a>	40
<a href="#"><u>Police Management Incentive Pay (Article 75)</u></a>	87
<a href="#"><u>Preferred Shift Selection (Article 50)</u></a>	58
<a href="#"><u>Probation (Article 38, 47)</u></a>	42, 56
<a href="#"><u>Provisions of Law (Article 7)</u></a>	2
<a href="#"><u>Public Safety Officers Procedural Bill of Rights (POBOR) Procedures (Article 41)</u></a>	42
<a href="#"><u>Public Safety Officers Procedural Bill of Rights Act (Article 64)</u></a>	74
<a href="#"><u>Random Drug Testing (Article 57)</u></a>	61
<a href="#"><u>Recognition (Article 2)</u></a>	1
<a href="#"><u>Repayment of Funds (Article 53)</u></a>	58
<a href="#"><u>Renegotiation (Article 5)</u></a>	1
<a href="#"><u>Reopeners (Article 46)</u></a>	55
<a href="#"><u>Retirement (Article 44)</u></a>	49
<a href="#"><u>Interim Defined Contribution Plan (Appendix A)</u></a>	86
<a href="#"><u>Salaries (Article 25)</u></a>	26
<a href="#"><u>Seniority (Article 43)</u></a>	48
<a href="#"><u>Scope of Representation (Article 6)</u></a>	2
<a href="#"><u>Shift Differential (Article 62)</u></a>	73
<a href="#"><u>Side Letters (Article 59)</u></a>	72
<a href="#"><u>Special Pay for Administrative Assignments (Article 61)</u></a>	73
<a href="#"><u>Specialty Pays (Article 63)</u></a>	73
<a href="#"><u>Stand-By Compensation (Article 31)</u></a>	36
<a href="#"><u>Starting Salary/Wage (Article 34)</u></a>	40
<a href="#"><u>Term of Agreement (Article 4)</u></a>	1
<a href="#"><u>Transportation Incentives (Article 49)</u></a>	57
<a href="#"><u>Tuition Reimbursement Plan (Article 39)</u></a>	42
<a href="#"><u>Uniforms and Safety Equipment (Article 26)</u></a>	27
<a href="#"><u>Use of City Email (Article 71)</u></a>	85
<a href="#"><u>Use of Technology (Article 73)</u></a>	86
<a href="#"><u>Volunteers (Article 72)</u></a>	85
<a href="#"><u>Wellness (Article 48)</u></a>	56
<a href="#"><u>Work Schedules (Article 33)</u></a>	40

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## **ARTICLE 1: Parties to the Agreement**

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

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## **ARTICLE 2: Recognition**

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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

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## **ARTICLE 3: Implementation**

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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.

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## **ARTICLE 4: Term of Agreement**

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The term of this MOU will commence at 12:01 a.m. on July 1, 2022. This MOU will expire and otherwise be fully terminated at 11:59 p.m. on June 30, 2024.

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## **ARTICLE 5: Renegotiation**

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In the event POA or City desires to meet and confer in good faith on the provisions of a successor MOU, it will serve upon the City or POA respectively no later than November 20, 2023 its written request to commence meeting and conferring in good faith.

- A.** No later than February 9, 2024, the City and POA will commence the meet and confer process and City will provide POA with its initial proposals for a successor MOU. POA will provide City with its initial proposals for successor MOU at the next meeting of

the Parties which will be at least five working days (Monday–Friday) after POA provides its proposals.

- B.** The City will request the City Council to schedule an impasse hearing if necessary after 5:00 p.m. on a regular work day in order to permit POA Bargaining Unit members the opportunity to attend and testify.
- C.** POA will make it a goal to provide the City with its final offer by April 1, 2024. The City will make it a goal to provide POA its final offer by April 12, 2024. POA agrees to provide the City a written statement of its positions regarding any issues should there be an impasse.

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## **ARTICLE 6:**

### **Scope of Representation**

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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–Milius–Brown Act (MMBA), at California Government Code section 3500, *et seq.*

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## **ARTICLE 7:**

### **Provisions of Law**

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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.

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## **ARTICLE 8:**

### **Holidays**

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**A. City Holidays.**

- 1.** The City recognizes the following holidays, which are referred to in this Article as fixed or actual holidays:
  - 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 on a Sunday, the following Monday is the City-observed holiday. And if any of these dates falls on a Saturday, the preceding Friday is the City-observed holiday.

**B. Payment for Holiday Worked.**

- 1. **Holiday Worked Premium Pay:** An employee, who is regularly scheduled to work on an actual holiday or a City-observed holiday and performs work, will receive overtime compensation, of time and one half, for all hours worked on the actual holiday or the City-observed holiday, but not both. The employee will also receive straight time pay equal to the amount of hours of one work day as holiday compensation. An employee may not collect Holiday Worked Premium Pay for both the actual holiday and the City-observed holiday.
- 2. **Holiday Worked Day Off Pay:** An employee, who is not regularly scheduled to work an actual holiday or City-observed holiday, but works either day, will receive time and one half pay for all hours worked on the actual or City-observed holiday in excess of the employee’s 40-hour work week.

**C. Payment for Actual or City-Observed Holiday Not Worked.**

- 1. **Holiday Scheduled Pay:** An employee, who is regularly scheduled to work on an actual holiday or City-observed holiday, but elects to take the day off with supervisor approval or is directed to take the day off, will receive straight time pay equal to the amount of hours of one regular work day. An employee may not collect Holiday Scheduled Pay for both the actual holiday and the City-observed holiday. An employee, who is not scheduled to work on an actual holiday or a City-observed holiday and does not work, is not entitled to Holiday Scheduled Pay.
- 2. **Holiday Credit On Day Off:** Notwithstanding paragraph C.1 above, when an actual holiday or City-observed holiday falls on an employee’s regularly scheduled day off, the employee will receive pay for eight hours at their straight time rate of pay or an equal amount of compensatory time off. An employee may not collect Holiday Credit On Day Off for both the actual holiday and the City-observed holiday.

**D. Special Rules for City-Observed Holidays.**

The following rules apply when the actual holiday and the City-observed holiday are different days:

- a. Officers, who have the City-observed holiday off and are regularly scheduled to work on the actual holiday, will treat the actual holiday as the holiday for purposes of collecting “Holiday Worked Premium Pay.” In the alternative, officers may take the day off as a “Holiday Scheduled” and receive straight time pay, if approved by a supervisor.

- b. Officers, who work on the City-observed holiday, as a regularly scheduled day, and volunteer to work on the actual holiday, which is not a regularly scheduled day, will receive straight time pay on the actual holiday and Holiday Worked Premium Pay on the City-observed holiday.

E. Floating Holiday.

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 hours of holiday time. Each employee accruing such time will schedule their floating holiday to comply with the following conditions:

1. Employee must schedule the floating holiday prior to June 1;
2. Employees have until June 30<sup>th</sup> to use the floating holiday; and
3. The floating holiday must be taken at a time convenient to the employee's appointing authority.

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## **ARTICLE 9: Management Rights**

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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.

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**ARTICLE 10:**  
**No Discrimination Policy**

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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 their 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.

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**ARTICLE 11:**  
**Exchange of Days Off Between Employees**

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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 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.

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**ARTICLE 12:**  
**Information on New Employees**

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- 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. The City will use its best efforts to inform POA in all instances when an employee represented by POA retires from the City, and will provide POA with the employee's name, job classification and the date of retirement.

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## ARTICLE 13: Flexible Benefits Plan

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### A. General Nature of Plan and Eligibility

1. The City offers an IRS-qualified cafeteria-style benefits program called the Flexible Benefits Plan (FBP) to all eligible employees. Under the FBP, an annual dollar value is set for each eligible employee who may use these “FBP credits” for a variety of tax-free benefit or cash-in-lieu options, or take these FBP Credits as taxable cash under certain circumstances.
2. An “eligible employee” means any employee in one-half, three-quarter, or full-time status. Employees in non-standard hour positions are not eligible to participate in the FBP.
3. **“Hired” for purposes of determining FBP credits is based on the employee’s most recent hire date with the City. If an employee experiences a break in service and is then rehired, the rehire date would be considered the most recent hire date.**
4. During the annual open enrollment process for the FBP, eligible employees are required to acknowledge that no amount of FBP Credits is included in “Base Compensation” under the SDCERS defined benefit pension plan. Employees are also required to acknowledge that the FBP credits allocated to them for the fiscal year will be paid out over 24 of 26 pay periods, as a lump sum benefit for all hours worked during each month within the year. For months that have three pay cycles, the middle paycheck will not include any FBP transactions. If an employee separates from City employment, the FBP credits payable through their last day on the City payroll will be added to their final paycheck.

### B. FBP Options for Eligible Employees Hired Before July 1, 2021

1. For eligible employees hired before July 1, 2021, total Flex Credits of \$7,605 (Waiver) and \$9,942 (Employee Only) for Police Unit and Police Management are available with the customary cash-back option. This option allows the maximum cash-back opportunity for employees who waive medical insurance or cover only themselves. However, beginning July 1, 2021, there is also a new option for employees who wish to cover a Spouse or Domestic Partner, Children or Family, where more Flex Credits will be available to them for these tiers of coverage but they will have no cash-back option and no amounts can be deposited into their 401(k) account. Eligible employees hired before July 1, 2021, may change the option they select (Option No. 1 – Cash-Back; Option No. 2 – No Cash-Back) from one year to the next at the time of open enrollment.
2. Option No. 1 to Choose \$7,605 (Waiver) and \$9,942 (Employee Only) for Police Unit and Police Management in FBP Credits and Take Cash-Back

During open enrollment, employees hired before July 1, 2021 who wish to maximize the cash available to them from their total \$7,605 (Waiver) and \$9,942 (Employee Only) for Police Unit and Police Management in FBP Credits, must select either the Waiver or an Employee-Only Medical Coverage Option from the FBP component plan offerings.

An employee may select the “Waiver” option to opt out of any medical insurance offering under the FBP without providing the City with proof of other medical insurance coverage. After selecting Life Insurance and the Health Waiver or Employee Only Health Coverage, the employee may allocate their remaining Flex Credits: to pay for other FBP insurance offerings; to be deposited to their 401(k) account; to fund an FSA account for dental/medical/vision reimbursements or child/dependent care; or to be returned to them over 24 pay periods as taxable cash.

**3. Option No. 2 to Choose Increased Medical Insurance for Employee-Plus Tiers and Not Take Any Cash-Back From FBP Credits**

During open enrollment, employees hired before July 1, 2021, who choose a medical insurance option and cover one or more dependents, will have the option to get more Flex Credits to cover themselves plus a spouse, domestic partner, children or family as follows:

<b>Effective July 1, 2022 until December 31, 2022</b>	
	<b>Police Unit and Police Management</b>
Employee and Children	\$13,500
Employee and Spouse/Domestic Partner	\$15,000
Family	\$19,000

<b>Effective January 1, 2023</b>	
	<b>Police Unit and Police Management</b>
<b>Employee and Children</b>	<b>\$14,850</b>
<b>Employee and Spouse/Domestic Partner</b>	<b>\$16, 950</b>
<b>Family</b>	<b>\$24,850</b>

Once an employee has selected one of the above-described tiers for medical coverage, any remaining FBP credits may be used to pay for other FBP insurance offerings or to fund an FSA account for dental/medical/vision reimbursements or child/dependent care. However, no FBP Credits remaining after selecting required or optional coverages or funding FSA accounts may be deposited to their 401(k) account or be taken as cash-back.

**C. FBP Options for Eligible Employees Hired On or After July 1, 2021**

- For eligible employees hired on or after July 1, 2021, there will be two options available under City’s FBP: (1) a \$1,000 cash-back option for an employee who provides proof of qualifying medical coverage outside the FBP and selects the waiver; or, (2) a no-cash-back option which provides FBP Credits in varying amounts for Employee Only and for Employee-Plus tiers.

2. Option No. 1 to Choose \$1,000 in Cash In Exchange for Waiver of Medical Insurance With Proof of Alternative Qualifying Medical Coverage

This option is an eligible opt-out arrangement under City's FBP. It is the *only* means for an eligible employee to have \$1,000 in taxable cash paid out to them in increments over 24 pay periods of the year so long as they remain employed and eligible. However, an employee who chooses this option is also forfeiting the opportunity to have thousands of additional Flex Credits available for other qualifying benefit opportunities under the FBP.

During open enrollment, this eligible opt-out arrangement allows an eligible employee to decline medical benefits coverage under the FBP for the upcoming Plan Year and instead receive a \$1,000 cash payment. An eligible employee can waive coverage without restriction, but to receive the \$1,000 cash payment, the eligible employee must provide during open enrollment reasonable evidence of enrollment in "minimum essential coverage" under another employer-sponsored group medical plan (a spouse's plan, for example), or under a qualifying government program, which covers the employee and their tax dependents for the upcoming Plan Year. Individual coverage, including insurance purchased through the Affordable Care Act (ACA) Exchange, will not qualify as minimum essential coverage under the eligible opt-out arrangement. If an eligible employee selects the Waiver and certifies that they have and will maintain qualifying coverage for themselves and their tax dependents during the Plan Year, the City will pay the \$1,000 "waiver" cash over 24 pay periods if the employee remains employed and eligible. However, the employee's failure to have or maintain this minimum essential coverage outside the FBP will disqualify the employee from eligibility in City's opt-out arrangement and no cash payments will be made or continue to be made.

To elect and enroll in this opt-out arrangement, an eligible employee must complete and execute an online Election Form and file the completed form -- together with the employee's certification that they and their tax dependents have (or will have) other minimum essential coverage (other than individual coverage) during the Plan Year -- with the City's Risk Management Department during open enrollment before the Plan Year begins for which the opt-out election is to be effective. Once made, an employee's election to participate in this opt-out arrangement is irrevocable until the end of the Plan Year unless the employee is entitled to change their election under the FBP due to a mid-year election change event as described under section 3.07 of the City's FBP.

An eligible employee must provide the certification of other minimum essential coverage (other than individual coverage) annually during each open enrollment period. An employee who elected to participate in this \$1,000 cash-back opt-out arrangement will no longer be eligible to receive cash payments: (1) after the last day of employment if the employee terminates employment with the City; (2) if the employee is no longer eligible to participate in the FBP; (3) if the employee enrolls in a medical plan offered under City's FBP; or (4) if the employee ceases to maintain minimum essential coverage for them and their tax dependents under another employer-sponsored group medical plan or qualifying governmental program.

An eligible employee who elects the \$1,000 cash-back waiver under this opt-out arrangement will have no remaining FBP Credits to "spend" on other FBP component plan offerings. However, the employee may elect benefits offered through these other

component plans by paying for the cost of those benefits with pre-tax salary reduction contributions.

3. Option No. 2 to Choose A Medical Insurance Option and Use Remaining FBP Credits For Other Benefits But Take No Cash-Back

All eligible employees hired on or after July 1, 2021, who choose a medical insurance option, will have the following Flex Credits available. Once the employee selects a medical plan offered under the FBP for Employee Only or for one of the Employee-Plus tiers below, the employee may use the remaining Flex Credits for other insurance plans offered under the FBP (life, dental, vision), or to fund a flexible spending account (FSA) for dental/medical/vision reimbursements or child/dependent care. However, no FBP credits remaining may be deposited to their 401(k) account or be taken as cash-back. An eligible employee who has other medical coverage outside the FBP may still select the lowest cost Employee Only medical insurance option and then use the remaining Flex Credits for other benefits but no cash-back.

Effective July 1, 2022 until December 31, 2022	
	Police Unit and Police Management
Employee Only	\$7,600
Employee and Children	\$13,500
Employee and Spouse/Domestic Partner	\$15,000
Family	\$19,000

Effective January 1, 2023	
	Police Unit and Police Management
Employee Only	\$7,600
Employee and Children	\$14,850
Employee and Spouse/Domestic Partner	\$16,950
Family	\$24,850

For employees hired on or after July 1, 2021, only Eligible Employees who elected the "Waiver" under the Option No. 1 "opt-out arrangement" can receive FBP credits in cash-back payments.

Any unused Flex Credits will be forfeited at year-end and cannot be carried over from year-to-year.

- D. For calendar year 2022, the Parties agrees to exchange premium rates for the Parties' respective plan offerings on or about October 1, 2022. For calendar year 2023 and thereafter during the term of this MOU, the Parties will exchange premium rates on or about August 1 of each year or earlier if mutually agreed.
- E. The benefits available through the FBP and the respective annual costs of the benefits are reflected in the Benefits **Info and Costs** booklet **published** each year.

F. Notes.

1. It is the intent of the Parties that all component plans offered under the FBP comply with all applicable state and federal laws, including IRS regulations as interpreted by the City Attorney. All disputes over interpretation of this Article shall be submitted to the appropriate agencies for interpretation.
2. Eligible employees who do not have sufficient Flex Credits to enroll in insurance plans offered under the City's FBP, will have appropriate amounts withheld from their paychecks to pay for the cost of coverage they select.
3. Eligible employees may designate a specific amount of pre-tax money (IRS restrictions apply) to be withheld from their paycheck to reimburse eligible out-of-pocket Health Care Spending Account (HCSA) and Dependent Care Spending Account (DCSA) expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, and are subject to IRS regulations. These amounts are forfeited if not used within the year or during the grace period described in the Flexible Benefits Plan document.
4. 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 for medical, dental, and vision coverage (or a comparable plan if that option is unavailable), including dependent coverage and life insurance, will be automatically continued at the same level for the next year as if the employee had elected to keep them. All other benefit options will be cancelled. Employees agree that City may make a payroll deduction for employee and/or dependent medical and life insurance coverage if the FBP Credits are insufficient to pay for the benefit options selected by the employee. Any FBP Credits remaining from the FBP allotment will be paid out as a taxable cash payment if a cash-back option is otherwise available to the employee. All payroll deductions, including HCSA and DCSA reimbursements, will continue and may not be stopped until the following open enrollment period, except when a qualifying event occurs as defined in the FBP document.
5. POA will be allowed to offer two Association for Los Angeles Deputy Sheriffs (ALADS) HMO plans. 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 **August 1** of the year prior to the coverage effective date in order for changes to be made to City's payroll system for deductions from participants' paychecks beginning December.
6. POA agrees to indemnify the City against any and all claims arising out of the administration of POA's benefits plans.
7. Audit and Inspection of Records.

The City Auditor is authorized to audit all necessary documents pertaining to the health insurance plans offered by POA, and POA is authorized to audit the City's health plans to the extent that documents are requested and provided pursuant to state and federal public information laws.



8. POA will be given the opportunity to answer questions about the FBP and its plan offerings during open enrollment and in New Employee Orientation sessions.
- G. The City will be changing the plan year of the City's Flexible Benefits Plan from a fiscal year basis to a calendar year basis effective January 1, 2023:**
1. A first open enrollment will be held in June 2022 for short plan year. (Health plan coverage effective dates will be August 1, 2022 through December 31, 2022).
  2. A second open enrollment will be held in November 2022 for a new calendar year plan. (Health plan coverage effective dates will be January 1, 2023 through December 31, 2023).
  3. Thereafter, open enrollment would be held once a year in the fall for the calendar year plans (effective dates January 1 through December 31), with rate renewals for 12-month coverage periods.
- H. The City has discretion to conduct an audit of employees' dependents at any time of it's choosing to ensure that it is providing coverage to employees' dependents on a tax-free basis as required by the Internal Revenue Code.**

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#### **ARTICLE 14: Industrial Leave**

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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.

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#### **ARTICLE 15: Educational Incentive**

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

- A. The benefit for Advanced POST Certificate shall be 8.5% of employee's base rate, and the benefit for Intermediate POST Certificate shall be 6% of employee's base rate. These amounts are not cumulative.**

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) the benefit for Advanced POST Certificate and Intermediate POST Certificate will be based upon the Advanced and Intermediate POST percentages respectively, times the "E" Step wage of Police Officer II. POA agrees to establish and actively support a community service program.

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#### **ARTICLE 16: Bilingual Pay**

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- 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 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 (those who are not currently receiving ongoing bilingual pay for any language) who are requested or directed by a supervisor, manager, or Communications to provide translator services in a non-English language.
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 years thereafter.
7. The Parties may discuss the testing process at the POA Labor Management Committee and a representative from Personnel may be invited to participate during those discussions.

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**ARTICLE 17:**  
**Badges**

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**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 their 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 their 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.

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## **ARTICLE 18:**

### **Annual Leave**

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- 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.

1. The maximum accumulation of annual leave for employees hired before July 1, 1994, with less than 15 years of service is 600 hours. Annual leave credits may be accumulated over the 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 15 or more years of service is 700 hours.
  2. For employees hired on or after July 1, 1994, the maximum accumulation of annual leave is 450 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 90-day extension to the employee to use excess leave before the cease to accrue will be implemented.
- E. Department annual leave periods will be divided into one-week increments. Annual leave schedules are comprised of 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 workload, i.e., July 4 and Labor Day weekend.
- F. All employees, upon separation, are entitled to receive pay for unused annual leave credits.
- G. Leave provisions included under item I and J below will be accounted for separately.
- H. 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.
- I. 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.

## J. Pay-In-Lieu

1. Effective for all calendar years beginning on and after January 1, 2019, employees may convert up to 125 hours of annual leave to cash as pay-in-lieu each calendar year, subject to the following rules:
  - a. If an employee fails to elect by December 31<sup>st</sup> of the preceding calendar year to receive any of the annual leave hours they will earn in the following calendar year as pay-in-lieu, their annual leave will accrue in accordance with the applicable [Personnel Regulation, Index Code I-2](#).
  - b. If an employee irrevocably elects by December 31<sup>st</sup> of the preceding calendar year to receive a portion of the annual leave hours they will earn in the following calendar year, not to exceed 125 hours total for the calendar year, as pay-in-lieu, the City will create an account where the employee's designated pay-in-lieu accruals will be credited. This account will be referred to as a "pay-in-lieu bucket" ("PIL Bucket") and will be kept separate from the employee's annual leave accrual account or "annual leave bucket" ("AL Bucket"). The employee's election must designate the amount of their annual leave being earned each pay period which they wish to have credited to the PIL Bucket; this designation may be stated as an even percentage (e.g., 10%, 20%, 30%, 40%, etc.) of the leave earned during each pay period up to 100%. Starting with the first pay period of the calendar year, the PIL Bucket will be credited with the designated amount of the employee's annual leave each pay period until the employee's full election amount is reached, not to exceed 125 hours. Any annual leave being earned in a pay period which is not credited to the employee's PIL Bucket will be credited to the employee's AL Bucket. The balance available in the employee's PIL Bucket, if any, will be specified on their timecard and paystub. In addition, the employee's anniversary date and AL cap will also be displayed on the employee's timecard.
  - c. An employee must make an irrevocable election by December 31<sup>st</sup> of the preceding calendar year if the employee wishes to participate in the pay-in-lieu of annual leave program for the following calendar year. Elections will not carry over from one calendar year to the next calendar year. An employee who fails to elect by December 31<sup>st</sup> of the preceding calendar year to participate in the pay-in-lieu of annual leave program for the following year will be deemed to have elected not to participate, and they will be prohibited from receiving any pay-in-lieu during that year except as, and only to the extent, permitted under Section D.
  - d. At least 60 days in advance of this annual December 31<sup>st</sup> deadline, the City will provide employees with notice and an explanation regarding the need for an irrevocable election as well as the relevant form for making the election. At the same time, the City will remind employees of the citywide cap maximums and how the pay-in-lieu election affects that cap.
  - e. All pay-in-lieu hours which accumulate in the employee's PIL bucket must be paid out to the employee in the calendar year in which these hours are earned. Pay-outs will be either employee-initiated or City-initiated. An employee may make up to two requests during the calendar year for a payout from their PIL Bucket. The timing of either request is entirely up to the employee and

payment will occur as designated on the City approved form. However, an employee cannot request the pay-out of any pay-in-lieu hours until those hours have been earned and accrued in their PIL bucket. Since no PIL hours may be carried over to the following year, the City will initiate a pay-out of all hours accrued in the employee's PIL Bucket no later than the final paycheck issued in the calendar year regardless of the number of pay periods in the calendar year and regardless of the number of hours.

2. When pay-in-lieu is cashed out, it will be paid based on the employee's rate of pay at the time it is paid. All pay-in-lieu pay-outs are taxable income, subject to all applicable withholdings and payroll deductions.
3. Existing caps on the accrual of annual leave will remain in effect. However, any hours up to the 125-hour maximum which an employee allocates to their PIL bucket for the ensuing calendar year will not count toward the calculation of this cap.
4. Effective for calendar years beginning on and after January 1, 2019, an employee's election with regard to pay-in-lieu shall be irrevocable except in the event of an unforeseeable financial emergency subject to the following rules:
  - a. In the event of an unforeseeable emergency, as defined in subsection b, an employee may apply to the Risk Management Department to receive pay-in-lieu of annual leave accrued on or after January 1, 2019, but limited to the amount that is reasonably necessary to satisfy the emergency need, including any amounts that may be necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated as a result of the cash out. If the Risk Management Department approves an employee's application, the City will pay the employee the pay-in-lieu amount the Risk Management Department deems necessary to meet the emergency need.

"Unforeseeable emergency" means a severe financial hardship of the employee resulting from an illness or accident of the employee, the employee's spouse, or the employee's dependent (as defined in Internal Revenue Code section 152, and, without regard to Internal Revenue Code sections 152(b)(1), (b)(2), and (d)(1)(B)); loss of the employee's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a direct result of events beyond the control of the employee. For example, the imminent foreclosure or eviction from the employee's home may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or dependent (as defined in Internal Revenue Code section 152, and, without regard to Internal Revenue Code sections 152(b)(1), (b)(2), and (d)(1)(B)) of the employee may also constitute an unforeseeable emergency.

Neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. Pay-in-lieu of annual leave on account of an unforeseeable emergency will not be paid to the extent that such an emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the employee's assets, to the extent liquidation of such assets would not itself cause severe financial hardship. For this purpose, an employee cannot receive any pay-in-lieu of annual leave on account of an unforeseeable emergency to the extent that they have unused amounts accrued in their PIL Bucket, if any.

**K. 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.
- L. 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](#).

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**ARTICLE 19:**  
**Annual Leave Reimbursement**

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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 will have any remaining annual leave hours cashed out on their last payroll payment.

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## **ARTICLE 20:**

### **Board of Directors**

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#### **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 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 their supervisor, investigate the grievance in their 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 their 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 their 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 their work assignment.
3. When a Board member needs to contact an employee at their 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 they 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.



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## **ARTICLE 21:**

### **Formal Representation**

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- A.** POA may select three 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 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 their designee at least two 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 their designee at the time the request is made.
    - b.** No representative will leave their duty station or assignment without specific approval of the Chief of Police or their 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 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 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 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.

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## **ARTICLE 22:**

### **POA Access**

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- 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 their 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 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.

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## ARTICLE 23: Out-of-Class Assignments

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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 their 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 60 consecutive calendar days nor will a series of OCA to any one vacant position exceed 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 30 days. Compensation begins on the 31<sup>st</sup> continuous day and from that day forward. The first through 30<sup>th</sup> 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 30 cumulative days. Compensation would begin on the 31<sup>st</sup> day assigned. To calculate when this standard has been met for employees on alternate work schedules 30 cumulative days is equal to 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.

- D.** Employees will be compensated for out-of-class assignments when temporarily assigned to the same higher-level class (job) for 31 or more consecutive days or after 30 cumulative days in the assignment. Employees who meet these criteria will be paid for all time spent beginning on day 31. No payment will be received for the first 30 days. Payment will be made from day 31 forward while the employee is in the out-of-class assignment. To calculate when this standard has been met for employees on alternate work schedules, 30 cumulative days is equal to 176 regular (non-overtime) hours worked out-of-class in a single classification.

Employees who are performing and compensated for out-of-class assignments both the last scheduled workday before and the first scheduled workday after a fixed holiday shall be compensated for the holiday at the out-of-class rate. Out-of-class assignments shall not be made to avoid filling a position and should be offered on an equal and rotational basis using eligible lists, availability, training, seniority, and other relevant factors as guidelines.

Out-of-Class Assignment days will accrue on a fiscal year basis and will not be carried over to the next fiscal year except on the following circumstances:

1. An employee that is in a single and continuous OCA assignment, which begins towards the end of the fiscal year and continues into the next fiscal year, will be entitled to the higher rate for those hours incurred beyond the OCA hours requirement. Any additional OCA hours in that new fiscal year will be paid.
2. An employee that is in a single and continuous OCA assignment, which begins towards the end of the fiscal year and continues into the next fiscal year, and already eligible to and is receiving the higher rate OCA pay for this assignment, the total hours incurred in the last fiscal year will be counted towards meeting the OCA hours

requirement for the current as well as subsequent assignments in the same class in the new fiscal year.

3. An employee that is in a single and continuous OCA assignment, which begins towards the end of the fiscal year and continues into the next fiscal year, and the total OCA hours incurred in this assignment is equal to but does not exceed the OCA hours requirement, the total OCA hours incurred in the last assignment will be counted towards meeting the OCA hours requirement for the same class in the new fiscal year, even though part of the assignment fell under the prior fiscal year.

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## **ARTICLE 24: Grievance Procedure**

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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 “non-grievable” 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 their 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 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 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 their designee, the Human Resource Director, to seek a resolution prior to pursuing remedies outside City. Contacting the Mayor or their 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 their grievance.
- b. When a group of identical grievances develop, only one grievance form will be submitted. The grievants may select not more than two 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 working days of the incident's occurrence.
- d. If the grievance is between the employee and their 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 working days. If the grievance is presented in writing, the procedure is formal and the answer must be given in writing within five 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 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 working days. Within ten 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 working days. Within ten 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 working days. Within ten working days of the receipt of the grievance, a hearing will be held and the Department Head or their 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 their designee, by submitting the grievance within five 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 their designee, a hearing will be held and a written response given within 30 days from the date of receipt of the appeal from Step 4. If the Mayor's office does not render a decision within 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 days following receipt of the answer at the final step of the grievance procedure (provided it was heard by the Mayor or their 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-month period, then the grievance will be considered granted.

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## **ARTICLE 25:** **Salaries/Wages**

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- A. Effective July 1, **2022**, or the first full pay period following City Council approval of this MOU, whichever is later, there will be a general wage increase of **5%** for all employees covered by this MOU. The Fiscal Year **2023** wage tables for the classifications covered by this MOU will be modified to reflect this increase.
- B. **Effective July 1, 2023, there will be a general wage increase of 5% for all employees covered by this MOU. The Fiscal Year 2024 wage tables for the classifications covered by this MOU will be modified to reflect this increase.**
- C. In the salary/wage 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 year for initial appointments as well as subsequent promotions, transfers, or other appointments. This represents an increase of approximately ten percent. Current employees will continue with the present five step salary/wage 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.
- E. **Effective the first full pay period following July 1, 2022, there will be an add-on pay of 5% for employees covered by this MOU who have 20 or more years of sworn service. Years of sworn service is defined as continuous time served as a sworn police officer with the City or with any another law enforcement agency.**

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## **ARTICLE 26:** **Uniforms and Safety Equipment**

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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. Whistle;
- k. Raincoat and Rain Boots; and
- l. 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).

2. Initial Equipment and Uniform Allowance

- a. Police Recruits  
Effective Fiscal Year 2016, City will provide each Police Recruit an equipment and uniform allowance of \$1,000 upon entry into the Academy and \$1,500 upon

successful graduation from the academy so long as the recruit is still employed by the City. These amounts are not included in "Base Compensation" under the SDCERS Plan.

b. Lateral hires

1. Police Officers with California POST Certificate  
Lateral hires with a valid CA POST certificate that do not have to complete the Police Academy prior to being sworn-in by the Chief of Police will be provided an equipment and uniform allowance of \$1,500 upon hire.
2. Police Officers without California POST Certificate  
Lateral hires without a valid California POST certificate whom must complete the Police Academy to earn their CA POST certification will be provided an equipment and uniform allowance of \$1,000 upon entry into the Academy and \$1,500 upon successful graduation from the academy so long as they are still employed by the City.

c. Re-Hires

1. A Police Recruit or Police Officer that leaves City employment and is re-hired at a later date will receive the eligible initial equipment and uniform allowance(s) in B.2 in full.
2. A Police Recruit or Police Officer who maintains city employment but transfers out of a POA represented classification and is re-hired at a later date is only eligible for the increase, if any, from previous initial equipment and uniform allowances received.

3. Maintenance and Upkeep.

- a. City will also pay those sworn members of the Department who have completed 12 months as a Police Officer I as of August 1, and who are available for duty assignments on August 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 12 months as a Police Officer I as of August 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 12 months as a Police Officer I after August 1, will receive the sum of \$900.00 as of the day they complete 12 months as a Police Officer I. No sworn member will receive more than \$900.00 during the fiscal year for "maintenance and upkeep" of the uniforms and equipment described in Paragraph B.1., except as provided in Paragraph b., below.
- b. Effective Fiscal Year 2016, employees covered by this MOU with eight or more years of service as a sworn police officer as of August 1, will receive an additional uniform/equipment/cleaning allowance of \$2,100, on the second paycheck in September.
  1. For laterals, years of service includes continuous time served as a sworn police officer at another law enforcement agency and/or the City. The Parties may discuss the qualifications to be considered a sworn police officer at the POA Labor Management Committee.

2. For employees covered by this MOU who were Police Recruits for the City, years of service includes the time served as a Police Recruit.
3. Twice a year, the City will review an employee's years of service to determine eligibility for this allowance. The City will determine an employee's eligibility based on an employee's years of service as of August 1 and March 1. If an employee is first eligible as of August 15, the City will pay the annual allowance on the second paycheck in September. If an employee is eligible as of March 15, the City will pay the annual allowance on the second paycheck in April. An employee covered by this MOU will receive this allowance only once per calendar year.
4. These amounts are not included in "Base Compensation" under the SDCERS Plan.
4. 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 second paycheck in September, 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.
5. 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 second paycheck in September for the maintenance and replacement of their equipment. Employees receiving the initial reimbursement will not receive the maintenance allowance in the same year.
6. In addition to the uniform and equipment allowance set out in B.2, permanent members assigned to the Neighborhood Policing Division **including the Neighborhood Policing teams, Crime Prevention Teams and HOT teams** will receive reimbursement of \$350.00 for the initial purchase of uniforms and equipment authorized by the Department upon assignment **and an additional annual \$150.00** on the second paycheck in September, for the maintenance and replacement of **Class C uniforms**. Employees receiving the initial reimbursement will not receive the maintenance allowance in the same **Fiscal Year**.  
  
**Only officers transferring within the Neighborhood Policing Division to an assignment with a different uniform during the same Fiscal Year, and after the previous assignment uniform allowance has been paid, may receive an additional initial allowance of \$350.00, if assigned for the first time, or \$150.00 for maintenance, if previously assigned.**
7. 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 second paycheck in September, for the replacement and maintenance of their uniforms.

8. 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 the second paycheck in September, the sum of \$150.00 for the maintenance and replacement of said equipment.
9. 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 the second paycheck in September, for the replacement and maintenance of their uniforms. This allowance is in addition to the uniform and equipment allowance set out in B.2.
10. In addition to the uniform allowance and equipment allowance set out in B.2, any sworn officer appointed to the **Honor** Guard Team will be compensated \$800.00 for the initial purchase of the necessary **Honor** Guard uniform items.
11. In addition to the initial \$800.00 uniform allowance, all members of the **Honor** 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 **Honor** Guard member will receive the \$200.00 uniform maintenance within 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 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 the second paycheck in September, 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.

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## **ARTICLE 27:**

### **Personnel Rules and Regulations**

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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 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 consecutive workdays of emergency leave chargeable to sick leave credits.

**C. Section 7. MILITARY LEAVE:**

1. Employees who provide service in the “Uniformed Services,” meaning the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency, are entitled to the rights and benefits provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), codified at 38 U.S.C. sections 4301 through 4335, and as amended in the future.

These employees are also entitled to the leaves of absence provided by the California Military and Veteran’s Code , as stated in Civil Service Rule X, codified at San Diego Municipal Code section 23.1107, and [Personnel Manual Index Code I-10](#), Military Leave.

2. City officers or employees who have had not less than one 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 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 year immediately prior to the day upon which the leave begins, will be entitled to receive their salary or compensation as such public employee for the first 30 calendar days or 174 hours of any such absence. Pay for such purposes will not exceed 30 days or 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 wage or compensation 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 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. The employee will provide advance written or verbal notice to the department, unless giving notice is impossible, unreasonable, or precluded by military necessity.
5. City officers or employees who have had not less than one 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 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 year immediately prior to the day upon which the leave begins, will be entitled to receive their salary or compensation as such public employee for the first 30 calendar days or 174 hours of any such absence. Pay for such purposes will not exceed 30 days or 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 or compensation flexibility. Military leave hours will accrue on a fiscal year basis and will not carry forward into the next fiscal year.
6. With reasonable notification to their supervisor no less than 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.

- 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 workdays, to absent himself from duty. If said incapacity may reasonably be expected to extend beyond two 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 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 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 **their** 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.

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## **ARTICLE 28:**

### **Field Training Officer Pay**

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- 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 their designee, relative to the Police

Academy trainees. Participants in this program will receive **10%** of the employee's base rate while designated in a FTO capacity.

- B. The Department agrees to maintain at least 100 FTOs and the number of FTOs beyond 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 FTO Sergeant per watch per service area.

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### **ARTICLE 29: Call-Back Pay**

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- 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 their 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 hours. This section does not allow for stacking of pay for multiple calls back to duty within a single four-hour period.
- 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 their shift.

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### **ARTICLE 30: Court Pay**

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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 their regular base rate for all time actually spent in court (minimum of four hours), excluding court recess time.
- B. If an employee is scheduled to appear in court up to two hours prior to the beginning of their 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 their immediate supervisor, duty lieutenant or Communications to work beyond the regular number of hours per day on the adjusted shift, the four-hour minimum applies, plus relevant overtime for the shift extension. The four-hour 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 they have 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 their next shift following a court appearance, they 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.

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## **ARTICLE 31:**

### **Standby-By Compensation**

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#### **A. Court Stand-By.**

When an employee is under subpoena to appear in court during their 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 they 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 their 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 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 300 hours of stand-by time accrued, employees will be awarded one day of discretionary leave time.
2. Employees may accrue up to ten days of discretionary leave per fiscal year (July 1 – June 30).
3. All discretionary days accrued must be taken within six months of the date they were approved. The employee's commanding officer can extend the six month deadline at their discretion.
4. If an employee has not already accrued the maximum ten discretionary days by the end of the fiscal year, any remaining discretionary hours, up to 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 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 14 hours of stand-by time during the time they are not working.

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## ARTICLE 32: Overtime

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- A. Consistent with [Personnel Regulations Index Code H-4](#), full-time employees in classifications of Police Recruit, Police Officer I, Police Officer II, Police Officer III, Police Agent, Police Detective, and Police Sergeant are eligible for contract rate overtime in accordance with the provisions of this MOU. Contract rate overtime is defined as “Premium Rate Overtime,” in [Personnel Manual Index Code H-4](#) which is compensation at one and one-half times the employee’s base rate of pay, under any of the following circumstances and conditions:
1. Beyond the scheduled number of hours in the employee’s workday. **When an employee’s shift is extended beyond its normal ending time, they will receive premium pay for the actual time worked beyond the employee’s regular shift hours.**
  2. On days other than those designated in the employee’s scheduled workweek.
  3. On a Saturday or Sunday unless those days are part of the employee’s scheduled workweek.
  4. On a City recognized holiday. **If an employee is scheduled to work or directed by the Department to work on a fixed City holiday, they will receive pay at time and one half for the actual time worked on the holiday and will also receive ten hours of straight time pay for the holiday. An employee that observes the City holiday will receive straight time pay equal to their normal assigned shift. If they are called back to work on that City holiday they will receive time and one half pay for time worked with a four-hour minimum.**
  5. In excess of 40 hours in their workweek. For purposes of this provision compensated leave and compensatory time off taken during the workweek does not count as hours actually worked in the Fair Labor Standards Act Calculation.

**B. Call-Back Pay.**

When an employee is called back to work from a non-duty status, they will receive premium pay for all call-back time worked, with a four-hour minimum of compensation in each instance, notwithstanding the usual starting time of the work shift. **In addition to the provisions set forth in Article 29 of this MOU, the following rules apply to Call-Back Pay:**

1. An employee’s “work shift” refers to the hours of work of the employee’s normally scheduled workday. The work shift may be permanently adjusted if the employee is given at least 72 hours’ notice of the change. If 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 their normally scheduled hours. An employee’s days off cannot be changed solely to avoid paying overtime. Department Management may, by providing at least five 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 their scheduled days off, they will be paid overtime, or, at their election, be assigned other days off as a substitution. As a general policy, officers will not be required to work more than seven 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. An employee’s hours and/or days off may be changed on a temporary basis with or without 72 hours or five 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.

**C. Court Pay.**

When an employee is required under subpoena to appear in court during non-duty hours, they will receive premium pay for court time with a four-hour minimum of compensation in each such instance. Employees will not receive a second four hour minimum of premium pay for subpoenas requiring appearances within four 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 hour minimum will be compensated with premium pay in such cases. However, pursuant to Article 30 **of this MOU**, 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 they do not have to place the call from a designated location, they will receive premium pay for such time with a 30-minute minimum of compensation for each instance.

**D. Motor Unit and Canine Unit.**

City agrees to provide employees assigned to the Canine Unit 3.5 additional hours of compensation each 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 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 pay described above.

**E. Fair Labor Standards Act (FLSA).**

Effective July 10, 2021 or August 7, 2021, following City Council approval, whichever is later, employees represented by POA who are eligible for **overtime** will work a 28-day work period in accordance with section 207k of the FLSA. These employees who work more than 171 hours in any 28-day work period will be paid premium overtime for their hours worked in excess of 171 according to the FLSA. Any change to the FLSA work period may only be done by mutual agreement.

**F. Dual Calculation Method.**

City uses a “dual calculation method” to determine overtime compensation. When an employee is eligible for overtime compensation, the City calculates the overtime compensation required to be paid under this MOU and the overtime compensation required to be paid under the FLSA. After comparing the two amounts, the City pays the employee the higher overtime compensation.

**G. Compensatory Time.**

1. Overtime will be paid or Compensatory Time Off (CTO) given at the discretion of the Department Director or designee subject to the availability of funds and workload considerations. Compensatory time earned and accrued through overtime work will be banked in a leave bank up to a maximum of 80 hours. **Effective as soon as administratively practicable following the effective date of this MOU or December 24, 2022, whichever date is earlier, employees who request and receive approval for CTO will receive 1.5 hours of CTO for every hour of overtime worked up to the maximum of 80 hours of CTO. However, before any overtime compensation earned in accordance with the FLSA is converted to CTO, the City has discretion to pay out to the employee that portion of the overtime compensation that must be included in the calculation of “regular rate of pay” under the FLSA but that is greater than the base rate of pay and applicable add-ons, as long as this discretion is exercised in accordance with the FLSA and applicable regulations. The City also has discretion to delay an employee’s request to convert overtime compensation to CTO to allow for the City’s administrative process of determining which rate of overtime compensation applies, in accordance with paragraph F above.**
2. An employee may only use or cash out CTO during the calendar year in which it is earned.
3. All accrued and unused CTO balances will be cashed out on the last pay day of each calendar year so that the employee’s CTO account is reduced to a zero balance.
4. Employees may use or cash out CTO accrued at any time during the calendar year, prior to the last full pay period of the calendar year. No unused CTO hours may be carried over to a subsequent calendar year. No CTO can be elected for overtime worked during the last pay period of the calendar year.
  - a. No unused CTO hours may be carried over to a subsequent calendar year.
  - b. No CTO can be elected for overtime worked during the last pay period of the calendar year.
  - c. No CTO may be used or cashed out for the pay period the employee is suspended without pay.
  - d. Any employee who has 40 or more accrued hours of comp time which is cashed out on the last pay date of the year will be permitted to use up to 20 hours of preferred annual leave from the date of the last pay date through the end of February in the next calendar year subject to the terms of the MOU.
5. Employees will not have the option to take CTO instead of cash when the Department is reimbursed by another governmental agency for Overtime worked by the employee.

Overtime earned in accordance with the FLSA will be paid in the pay period in which it is earned.

#### **H. Use of Compensatory Time.**

The following terms will control **CTO**:

1. **CTO** requests will be honored if the request for **CTO** is made seven calendar days or more prior to the day requested for leave.
2. Requests for use of **CTO** to be used the day before the following Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, and Christmas Day will be honored if the request is made 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 **CTO** requests during special events or circumstances, and to resolve the safety concern by an appropriate agreement.

#### **I. Mandatory Overtime.**

When the department deems it necessary to use officers on Overtime to meet daily staffing levels, it shall attempt to fill positions with volunteers. In the event that the Department needs to implement mandatory overtime over a substantial period of time, the Department will discuss with POA a plan in which officers are selected.

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### **ARTICLE 33: Work Schedules**

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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 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 shift.
- B. All officers will receive 30 minutes during their assigned shift as a meal break during which time they may report as Code 7.
- C. An officer's conduct while on Code 7 for a meal break is governed by Department Procedure 6.14.
- D. While on Code 7, officers will be available to respond to emergency calls.
- E. If an officer's Code 7 is interrupted by an emergency call, the Code 7 will be resumed after the call is completed.

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### **ARTICLE 34: Starting Salary/Wage**

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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 wage of “C” step of the Police Officer II class.

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### **ARTICLE 35:**

### **POA Representation**

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Department Management will support a request to the Civil Service Commission for a Leave of Absence Without Pay for two 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.

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### **ARTICLE 36:**

### **Payroll**

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- A. All employees who choose to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility) will be required to provide authorization to the Department of Finance. Employees will not be required to change financial institutions if their financial institution is not compatible with the Automated Clearing House (ACH) transfer.
- B. Employees are required to enter their own time; if unavailable to do so, a Department Payroll Specialist can enter the time if they are provided written documentation indicating hours worked and approved by Supervisor. Employees’ time is required to be approved by their direct Supervisor and/or designee in their absence. Exceptions can be made for entering time on behalf of an employee or approving employee time on behalf of a Supervisor only for circumstances for that specific pay period and should not be an on-going practice. Department Payroll Specialists can approve time for Supervisors, who do not have current access to approve in the system, under “exceptional” circumstances as authorized by Department of Finance. In these circumstances, Department Payroll Specialists must be provided written documentation approved by the Supervisor.
- C. Employees must adhere to the Employee Time Entry and Approval deadlines. Any overtime hours not entered and approved by the payroll deadlines may not be paid until the following payday.
- D. All employees who choose to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility) will be required to provide authorization to the Department of Finance.
- E. Employees will be notified of any changes to their submitted timecard by the Department.

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### **ARTICLE 37:**

### **Employee Representation**

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- A. An employee may request a representative, not to exceed one City employee and one non-City employee, to be present: (1) at any investigatory 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, including any employee who is a witness to the event which is the subject of the investigation.
  2. An employee may not select an employee who is in the employee's direct chain of command as their "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 Departmental representative, an officer may be represented as provided for in Paragraph A.

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### **ARTICLE 38:**

#### **Departmental Procedures – Advance Notice**

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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.

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### **ARTICLE 39:**

#### **Tuition Reimbursement Plan**

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The City agrees to provide tuition reimbursement in the amount of \$2,000 annually. [Administrative Regulation \(A.R.\) 70.30](#) governs the administration of this program. **Notwithstanding section 4.3.10 of Administrative Regulation 70.30 Tuition Refund Plan, to receive reimbursement, the employee must not receive funds for the same course from any other source, such as scholarships, etc., with the exception of Veteran's benefits.**

**During the term of this MOU, employees may apply for loan repayment up to \$2,000, which will be treated as taxable income in accordance with federal tax laws. This loan repayment must apply to either a Bachelor's or Master's Degree previously earned by the employee.**

This loan repayment benefit is limited to 100 employees a year. Employees are eligible for this benefit on the completion of Police Officer I probation. If there are more than 100 employees eligible for the student loan repayment benefit a waiting list will be maintained and the benefit will be determined by department seniority without regard to rank. If there are employees on the waiting list, the maximum benefit any employee may receive is \$10,000. The parties will meet and confer on the implementation timeline and process of this loan repayment benefit.

The maximum amount that an employee can receive under this Article will be \$2,000 annually.

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#### **ARTICLE 40: Flight Pay**

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- 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 11.5% of employee's base pay as special assignment pay. During the term of this MOU, there will be no less than two primary pilots. Effective the first full pay period in Fiscal Year 2019, Primary Pilot's special assignment pay shall increase to 15% of employee's base pay.
- B. Effective the first full pay period in Fiscal Year 2016, the City will provide up to \$5,000 tuition reimbursement for Tactical Flight Officer's (TFOs) who are actively working towards their pilot's license as a prerequisite to become an Airborne Law Enforcement ("ABLE") Pilot. This tuition reimbursement is subject to the conditions set forth in [Administrative Regulations 70.30](#). This tuition reimbursement is in addition to any tuition reimbursement available under Article 39 of this MOU. Total tuition reimbursement under these two Articles is \$6,000 per fiscal year. Under Article 39, there is no guarantee that the Department will subsequently hire a TFO who is pursuing a pilot's license as an ABLE Pilot.
- C. Effective the first full pay period in Fiscal Year 2019, TFOs will receive specialty pay equal to 5% of employee's base pay.
- D. Effective the first full pay period in Fiscal Year 2019, Sergeants assigned to the unit who are receiving neither TFO specialty pay nor Primary Pilots pay will receive 5% Administrative Assignment Pay.
- E. Any officer relieving a primary pilot will also receive flight pay for the period served in that capacity.
- F. Air Support Trainers will receive approximately 3.5% of employee's base pay.
- G. The cost of the required FAA pilot physical will be reimbursed by City.

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#### **ARTICLE 41: Public Safety Officers Procedural Bill of Rights (POBOR) Procedures**

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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 wages, 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 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 they have 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 their 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 30 calendar days except where the business necessities of the Department require the removal from duties to extend beyond 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 their 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 their 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 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 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 their designee, the Human Resources Director, will issue findings within 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.
  - b. Written Statement Requesting Appeal.

**An officer requesting an appeal following a denial of promotion on grounds other than merit must present a written statement with the Chief of Police setting forth facts sufficient to state the grounds the appellant was given as the reason for non-selection denied a promotion on grounds other than merit. The written**

**factual statement requesting an appeal** must be submitted to the Chief of Police's office within 20 working days of the alleged violation. In order to meet the threshold **factual showing in the request** 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 **an officer has presented sufficient facts to support that they were denied promotion on grounds other than merit** will be determined by the Chief of Police or **their** designee not lower than the rank of Assistant Chief with a written decision issued within 20 working days from submission of the appeal. **If the request to appeal is granted, the then appeal hearing will be scheduled with the Chief of Police within 20 working days from submission of the appeal.** However, a decision denying an appeal hearing may be appealed to the **Mayor or designee**. The appeal will be submitted to the **Mayor or designee** in writing within ten working days of receipt of the denial **from the Chief of Police or designee**.

c. **Appeal Hearing on the Denial of Promotion on Grounds Other Than Merit.**

1. The Department will maintain a record of the **appeal** 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 **appeal** hearing is limited in scope to the specific factual assertions made in the appellant's written **statement requesting an appeal**. **The appellant may submit additional documentation in advance of the appeal hearing or during the appeal hearing for the hearing officer to consider. During the appeal hearing, the Department will present their decision for the denial of promotion on grounds other than merit to the hearing officer.** 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 **appeal** hearing will be heard by the **Mayor or designee** .
4. The hearing officer will issue findings of fact and a decision within 30 calendar days of the hearing to deny the appeal or to grant an appropriate and lawful remedy.

F. **Other Negative Material.**

1. Any officer who has material negative to their employment relationship or a performance evaluation containing negative comments (other than a Supplemental Performance Report) placed in their 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 their employment relationship placed in a personnel file will be allowed to file a complete written response to the material within 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 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 their 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.

G. Separation of Probationary Employees.

1. Within 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 their designee. A reasonable number of witnesses may be presented. The Department will serve the decision within seven 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.

H. 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.

I. 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 years old, and those with additional penalty more than five 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 Files 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.

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## **ARTICLE 42: Copies of the MOU**

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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.

City agrees to send electronic link to the POA MOU to the Police Department and the Department will email the link out to all Officers.

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## **ARTICLE 43: Seniority**

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- 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 they have served satisfactorily. The Parties acknowledge that there are no "subdivision" classifications in this bargaining unit.

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## **ARTICLE 44: Retirement**

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The following Paragraphs A and C are included in this MOU for historical purposes only and have no force and effect during the term of this MOU.

- 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. Effective July 1, 2013, Police Recruits participate in the SPSP-H Plan, as amended by the City Council by Ordinance O-20275, adopted July 19, 2013, until they are sworn officers and become eligible for the defined benefit plan.
- C. 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.
- D. 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.

E. 1997 Benefit Changes.

The following paragraph E.1. is provided solely for historical purposes and has no effect. City and POA, having met and conferred, have agreed to benefit improvements to San Diego City Employees Retirement System (SDCERS). The 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 Retiree Health Benefit is established for 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 but before April 1, 2012, 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.
  - b. Additionally, the Retirement System will reimburse the Part B Supplemental Medical Expense Premium for those Health Eligible Retirees enrolled in Medicare.
  - c. City agrees that it will not diminish the benefits contained in its current retiree HMO plans without mutual agreement with the exclusive bargaining representatives; nor convert to a blended premium for active employees and retirees without mutual agreement with the exclusive bargaining representatives.
2. The Disability Income Offset provision is eliminated. There will be no reduction of retirement benefits if the retiree has other income.
3. A five-year purchase of service credit provision is established effective January 1, 1997 for employees hired before July 1, 2005. Under this provision, the eligible Member may purchase up to five years of service credit by paying both employee and employer contributions in an amount and manner determined by the San Diego City Employees' Retirement System Board to make the System whole for such time. In addition,

eligible Members retiring on or after January 1, 1997, may purchase probationary periods, military and veterans code leaves, waiting periods for the 1981 Pension Plan, actual time worked hourly or part time, special leaves without pay occurring prior to January 1, 1997, the difference in time between part time and full time prior to January 1, 1997, long term disability, vocational rehabilitation maintenance (VRMA) and temporary total disability (TTD), FMLA periods, special leaves of absence with job to be saved periods and any preceding reinstatement by the Civil Service Commission following a termination appeal.

4. A Deferred Retirement Option Plan (DROP) is established effective April 1, 1997. DROP provides an alternative form of benefit accrual while allowing a Member to continue working for City. During the DROP period, a DROP Member retains all rights, privileges and benefits of being an active City employee, except as specifically modified in the DROP Plan (SDMC Chapter 2, Article 4, Division 14), and is subject to the same terms and conditions of employment including disciplinary actions up to and including termination. The Member continues to be eligible for the active employee Flex Benefits Program for the classification and is not eligible for "retiree" health benefits until the Member terminates City employment. Under DROP, a monthly service retirement allowance along with any COLA increases, Supplemental Benefit checks and any adjustments to such payments applicable to retirements effective on the date the Member entered the DROP are credited to the member's DROP Account in the SDCERS Trust Fund. These SDCERS benefits are calculated as if the Member were retiring on the date the Member enters the DROP. The Member's contributions to the Retirement System cease. The Member and City each contribute 3.05% of the Member's Base Compensation, as defined in Municipal Code section 24.0103, each pay period that the Member participates in the DROP. The Member's contribution is made on a pre-tax basis pursuant to Internal Revenue Code section 414(h)(2). These amounts are credited to the Member's DROP Account in the SDCERS Trust Account and are distributed to the DROP participant upon termination of employment. No withdrawals may be made from the DROP Account until the Member terminates City employment. Interest is credited to the Member's DROP account at a rate determined by the SDCERS Board. The Member is 100% vested in their DROP Account from its inception.

A DROP participant who becomes disabled may apply for conversion of their deferred retirement allowance to a disability retirement 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 60 months. The Member must terminate City service at the end of the designated period.

At the completion of the DROP period, and after the Member terminates City employment, 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 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 their spouse at least one year prior to retirement for the spouse to receive the 50% continuance is eliminated.

- F. A retirement allowance cap of ninety 90% of Final Compensation, as defined in Municipal Code section 24.0103, is established for eligible Police Safety Members, except as provided in paragraph I below.

G. 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 Final Compensation, as defined in Municipal Code section 24.0103, 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 hired before July 1, 2009, 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 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. The following paragraphs 2.b. through 2.c. are included in this MOU for historical purposes only and have no force and effect during the term of this MOU.
- b. On July 1, 2001, Police Safety Members’ contribution rates to SDCERS will be increased by 0.53%.

- c. Effective July 1, 2000, Police Safety Members' Contribution rates will increase by an additional 0.16% to pay for the cost of providing the choice of Retirement Calculation Factors described above. The additional 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 their 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.
- b. To receive the industrial disability retirement, the attach on the Police Safety Member must have occurred either before July 1, 2010; or on or after December 10, 2018.

H. 2003 Benefit Changes.

This paragraph is included in this MOU for historical purposes only and has no force and effect during the term of this MOU.

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.

I. 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 but before July 1, 2013, will not be entitled to a Retirement Calculation Factor of 3% unless and until the Safety Member reaches age 55 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 age 50 after 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. Effective July 1, 2009, interest will be credited to a POA Member's DROP account at a rate determined by the SDCERS Board.

**J. New Retirement Factor Computation for Safety Members, Hired On or After January 1, 2012 but before July 1, 2013, 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 3% unless and until the Safety Member reaches age 55 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 age of 50 after 20 years of Creditable Service with a proportionately reduced Unmodified Service Retirement Allowance, as follows: Retirement Calculation Factor is 2.5% at age 50; 2.6% at age 51; 2.7% at age 52; 2.8% at age 53; 2.9% at age 54; and 3.0% at age 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 their Membership in the System.

**K. Benefit Changes After July 1, 2013.**

Effective July 1, 2013, Police Recruits will receive a defined contribution retirement plan, the SPSP-H Plan, which is being used as an Interim Defined Contribution Retirement Plan for benefited employees while the City negotiates a permanent plan. The mandatory employee and matching employer contributions are 11% of compensation. Under this plan, employee contributions are post-tax and both employer and employee contributions are immediately 100% vested. Once a Permanent Defined Contribution Retirement Plan is in place for new benefited employees, eligibility for any death and disability benefits offered for employees in the permanent plan will apply retroactively to July 1, 2013.

Effective July 1, 2013, the maximum amount of retirement benefit payable to a sworn police officer, who is hired on or after July 1, 2013 and who is a participant under the Defined Benefit Pension Plan, shall be an amount equivalent to 80% of the average of the participant's highest consecutive 36 months of Base Compensation at age 55 as defined by Section 70.1. The maximum set by this provision shall decrease by 3% for each year that the participant retires before age 55.

- L. Each Party reserves its rights regarding the impacts of the invalidity of Proposition B, including any effect on employees in POA Bargaining Units. However, subject to any future resolution specific to the impacts of the invalidation of Proposition B, including any effect on employees in POA Bargaining Units, all sworn police officers hired after July 1, 2013 will continue to participate in SDCERS as Safety Members under the Tier V benefit.

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

As provided in SDMC section 24.1507(c), employees in POA bargaining units initially hired after July 31, 2012 are not eligible or required to make "cost of living annuity contributions" to the Retirement System, as defined in San Diego Municipal Code section 24.1507, and will not be eligible to receive the cost of living annuity when they retire.

**N. Other Benefits**

1. 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).
2. 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.

**O. Retiree Health Benefits**

Notwithstanding any provision in this MOU to the contrary, the retiree health benefits for employees who retire on or after April 1, 2012 are determined by the City's MOU (including amendment with POA), which the City Council adopted by San Diego Ordinance O-20135 (February 17, 2012) and amended by San Diego Ordinance O-20173 (June 26, 2012), and Chapter 2, Article 9 of the San Diego Municipal Code.

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**ARTICLE 45:  
Long-Term Disability Plan**

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- 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 30 calendar days from the date of disability and continue for the next 12 months. The benefit is 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 60 days of disability date, or within 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 their designee within ten working days.
- B. City agrees to meet and confer with POA prior to making any changes in this Plan.
- C. City will issue a RFP to fully insure and administer the LTD Program by an outside vendor. The parties will meet and confer over any impacts as a result of the implementation a new LTD program.
- D. The parties agree to continue to meet and confer over City's LTD Program and administration of the program by an outside vendor.

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**ARTICLE 46:  
Reopeners**

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- 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.
- I. The parties acknowledge that four of the City's recognized employee organizations have filed a consolidated unfair labor practice charge with the California Public Employment Relations Board (PERB) related to Proposition B (PERB litigation). The parties acknowledge that the City and the four employee organizations involved in the PERB litigation have the right, under California Government Code section 3509.5 and other applicable law, to exhaust all appeals if aggrieved as a result of a final decision by PERB. This right includes filing a writ of extraordinary relief with the California Court of Appeal and taking any other action in any court of competent jurisdiction that is authorized by law. Nothing in this MOU is intended to waive that right. If, in the PERB litigation, a court of competent jurisdiction, following exhaustion of all appeals, issues a final order or decision declaring Proposition B to be unlawful or invalid, in whole or in part, the parties to this MOU agree to reopen negotiations, upon request by a party, on that provision or aspect of Proposition B declared to be unlawful or invalid. If, in the PERB litigation, a court of competent jurisdiction, following exhaustion of all appeals, issues a final order or decision declaring Proposition B to be lawfully adopted, the parties to this MOU agree to reopen negotiations, upon request by a party, on any provisions or aspects of Proposition B not yet implemented. The parties agree that, regardless of the outcome of the PERB litigation or exercise of this reopener, the provisions regarding limitations to base compensation and to other pensionable pay components set forth in Article 25 will remain in effect.
- J. The Parties agree to incorporate the Side Letter Agreement – "Establishment of the Interim Disability and Death Benefits Plan for Employees Initially Hired On or After July 20, 2012" by reference into this MOU as noted in Appendix C.

- K. The City will not conduct or have conducted a total compensation survey of the largest municipal/government organizations within the County of San Diego, and within the State of California, as determined by the City in time for the initiation of bargaining for the reopener in Fiscal Year 2022.
- L. The City has determined that its Flexible Benefits Plan is not a “bona fide” plan under the FLSA. As a result, the City is currently including an employee’s entire flex credit allocation, when eligible, into the regular rate calculation for purpose of computing overtime premiums. The City will notify POA when the City determines it is legally eligible, under the FLSA, to exclude the flex credit allocations not paid out as a cash distribution from the regular rate calculation. Such notice will serve as a reopener of the overtime compensation Article of the MOU.

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#### **ARTICLE 47: Probation Period**

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

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#### **ARTICLE 48: Wellness**

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During the term of this Agreement, City will fund \$35,000 on an annual basis 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.

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#### **ARTICLE 49: Transportation Incentives**

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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, Central Library, Civic Center Plaza, Mission Hills Library, Horton Plaza or any other facility as designated by the Mayor, and pay on a biweekly basis will be charged 25 percent of the prevailing general public monthly rate.
  - 1. The City will provide reimbursement to employees who have a monthly parking pass and use the Concourse Parkade, Civic Center Plaza, Central Library, Mission Hills Library, Horton Plaza, or other facilities designated by the Mayor, and carpool with other City employees. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.
  - 2. The City may expand parking opportunities to other facilities designated by the Mayor. The City will engage POA in any impact bargaining required under the MMBA, related to new parking opportunities.
  - 3. Management agrees to make its best effort to negotiate with Parking Facility Providers reduced rates comparable to those at the Concourse for employees assigned to City facilities.
- B. As part of the Transportation Alternative Program (TAP), the City will provide the following transportation subsidies, up to a maximum of \$100.00 per month per employee, to those employees who wish to purchase monthly transit passes. The City will provide an equivalent reimbursement, subject to the \$100 monthly cap, for the use of the San Diego Bay Ferry or a City-approved vanpool program. Transit passes will be for the exclusive use of the employee/purchaser. Employees must use these subsidized transportation services to commute to and from work at least three days per week to be eligible for subsidized passes or reimbursements, employees may not participate concurrently in the City's discounted monthly parking program. Only one transportation-related benefit may be received in any one month. Enrollment in transit passes takes place through the SAP Portal no later than the 12<sup>th</sup> day of the current month for the next month's pass, with associated fares and fees pre-paid monthly through automatic payroll deduction. Employees in violation of these provisions will have their transportation incentives discontinued.
  - 1. The following transit passes are subsidized at 75%, subject to the \$100 monthly subsidy cap, and provided in accordance with the following terms:
    - a. The monthly Adult 2-Zone Coaster Pass and Adult 3-Zone Coaster Pass
    - b. The SDM Coaster pass (3-Zone Senior Coaster Pass)
    - c. The Senior/Disabled SDM Regional Pass
    - d. The Youth Regional Pass

- e. The Adult Regional Rapid Express/Premium Pass
  - f. The Senior/Disabled SDM Regional Rapid Express Pass
2. All Trolley/Local Bus Route Pass(Adult Regional) is subsidized at 75%, subject to the \$100 monthly reimbursement cap.
  3. The City will offer discounted All Trolley/Local Bus Route (Adult Regional) Passes and Adult Rapid Express/Premium Passes through a contractual agreement with San Diego Metropolitan Transit System's (MTS) ECO Program. Through this program, employees can pre-purchase the ECO pass at a 75% subsidy. Enrollment in ECO passes takes place through the SAP Portal and will occur each year in May through the term of the MOU. Restrictions issued by MTS for this ECO pass for the term of this MOU include:
    - a. No refunds
    - b. No opting out of months
    - c. Employees are responsible for registering and replacing a lost **PRONTO** Card
  4. A City approved vanpool program is subsidized at 75%, subject to the \$100 monthly reimbursement cap.
  5. Use of the San Diego Bay Ferry is subsidized at 75%, subject to the \$100 monthly reimbursement cap.
  6. Employees participating in TAP shall pay 50 percent of the public daily rate at the Concourse Parkade, Central Library, Civic Center Plaza, Mission Hills Library, Horton Plaza, or any other facility as designated by the Mayor, for up to 52 occurrences per year. Parking at the City facilities is limited and is available to employees on a first-come, first-served basis.
  7. If MTS discontinues or modifies the employer discount program during the term of this MOU, the City will meet and confer before it adjusts the costs of the program, but in no event will the reimbursement be less than 75%, subject to the \$100 monthly cap.

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## **ARTICLE 50:**

### **Preferred Shift Selection**

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- A. All uniformed police officers with ten 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 preferred shift officer positions per service area per watch in every patrol division, except Northwestern. Northwestern patrol division will have one preferred shift officer per service area per watch. There will be two 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 their 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 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. Each patrol division shall maintain an interest list for preferred shift assignments. Openings to preferred shift assignments shall be filled by seniority within each patrol division from officers who have placed their name on the preferred shift interest list.
- D. 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.
- E. 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.
- F. 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.

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## **ARTICLE 51: Light Duty**

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This process is being implemented in order to comply with [Administrative Regulation 75.40](#) as related to a sworn employee who is determined by a medical diagnosis to have a permanent disability that will preclude them from returning to full duty in the employee's job classification.

The parties agree to the following:

1. To initiate the following procedures:
  - a. Sworn personnel who are determined to be Permanent and Stationary and/or Qualified Injured Workers (QIW) will be advised of the options which may be available to them:
    - i. Transfer to another City position for which they qualify;
    - ii. Apply for retirement;
    - iii. Request a Special Leave of absence;
    - iv. Resign.

At the time the employee is notified of the options listed above, they will also receive a 30-working day notice that their employment in the sworn classification will end. Police Department Management is willing to agree to an extension of this time period until such time as the employee's application for retirement has been processed and concluded, so long as the employee applies for such retirement within 30 working days, and so long as no delays in processing the retirement are caused by the employee or their representative. The employee may continue to work during this process so long as they are able to perform in a light duty assignment.

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## **ARTICLE 52: Modification and Waiver**

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- 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.

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### **ARTICLE 53:**

### **Overpayments to City Employees and Repayment of Funds**

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**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, they 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 they may have a representative attend such meeting(s) with them. 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 or
  - b. Biweekly installment payments through payroll deduction (installment payments must be a minimum of \$10.00 and repayment must be completed within 26 pay periods); or
  - c. Any other repayment arrangement mutually agreed upon between City and the employee but not to exceed a repayment plan of five calendar years.
- 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.

If an employee leaves City employment with an outstanding repayment plan, the employee will be invoiced for any remaining balance owed. 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.

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**ARTICLE 54:  
Conduct of Elections**

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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.

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**ARTICLE 56:  
Core Instructor Pay**

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All Core Instructors assigned to the Training Development Division will receive special assignment pay which is equal in wage range to Police Sergeant. Core Instructors will retain their current pay step in the higher wage 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.

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**ARTICLE 57:  
Random Drug Testing**

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A Random Drug Testing Program has been implemented and applies to all sworn personnel. "Employee" refers to members of the Bargaining Unit.

**A. Procedures.**

1. The Chief of Police or their designee and Personnel's Medical Program Administrator will administer the Random Drug and Alcohol Testing Program.
2. Employees will be tested twice every 18 months for alcohol by way of breath alcohol test, and for the presence of specific drugs by way of urinalysis.
3. The City will test for alcohol, 6-acetylmorphine, amphetamine/methamphetamine, barbiturates, benzodiazepines, cocaine metabolite (benzoylecgonine), codeine/morphine, hydrocodone/hydromorphone, marijuana metabolites (THCA), MDMA/MDA, methadone, oxycodone/oxymorphone, phencyclidine, in accordance with Substance Abuse and Mental Health Services Administration (SAMHSA)

guidelines. See: <https://www.govinfo.gov/content/pkg/FR-2017-01-23/pdf/2017-00979.pdf> (Page 22)

4. Screening and confirmation cut off levels will be based on SAMHSA guidelines.
5. The City may make modifications to the list of drugs tested consistent with SAMHSA guidelines or as requested by the City only after meet and confer with POA.
6. Employees will be assigned a confidential number for testing purposes. Numbers will be selected on a random basis, using a secured computer program.
7. Employees may provide appropriate documentation of legally-prescribed medications. The documentation shall be included in the review of test results by the testing facility.

**B. Sample Collection.**

1. Designated medical personnel will be responsible for administering the breath alcohol test and obtaining the urine sample from the Employee being tested.
2. Designated medical personnel will be available for testing between 8:00 a.m. and 12:00 a.m. hours, seven days per week, to allow Employees to be tested during normal work hours.
3. Medical personnel will not observe the Employee as the sample is being given.
4. Employees to be tested will be notified in person at the start of their shift but no later than one and a half hours after their shift begins. In instances where the Employee cannot be notified within the timeframe above due to being on an emergency response, the employee's name shall be withdrawn for that day's testing and put back in rotation for a future test and not counted in the 18-month provision listed in paragraph A(2) above. Employees shall present themselves for testing at the earliest possible time during the shift, but no later than four hours after being notified that they are to be tested.
5. At the testing site, the Employee being tested will:
  - a. Identify themselves by presenting one of the following: their Department identification, City of San Diego employee identification, or valid driver license.
  - b. Complete requested paperwork.
  - c. Remove jackets, bags or other bulky items of clothing prior to entering the lavatory to give a urine sample.
  - d. Participate in a breath alcohol test and provide a urine sample.
    1. Employees will be required to stay within the urine collection area until the required sample is given.
    2. Urine sample must be at least 45 ml, the minimum amount required for testing purposes.

3. Refusals or failures to complete the breath alcohol test or urine test as required will be referred by the Chief of Police or their designee to the Command for investigation and appropriate discipline up to and including termination. Employees who fail to appear for testing will be scheduled to test their next working day.
6. At the urine collection area, the medical personnel will:
    - a. Have the Employees wash their hands. Washing hands is required when providing the specimen. Failure or refusal to do so will be documented by the medical personnel.
    - b. Direct the Employees being tested to a private lavatory.
    - c. Place a colored dye in the toilet.
    - d. Wait outside the lavatory for the sample.
    - e. Upon receipt of the urine sample, and in the presence of the Employee, the medical personnel will:
      1. Split the sample into two separate containers.
      2. Seal the containers.
      3. Direct the Employee to sign and initial the chain-of-custody forms and documents.
    - f. Complete the appropriate **chain of custody** forms and procedures for the samples.
    - g. Arrange transportation of both samples to the laboratory by an approved courier.
  7. In the breath alcohol test room:
    - a. The breath alcohol test should be conducted in a room that provides privacy to the employee being tested.
    - b. The technician must open an individually sealed, disposable mouthpiece in view of the employee and attach it to the Evidential Breath Testing Device (EBT).
    - c. After the testing procedures are explained to the Employee, the Employee and the technician must complete, date, and sign the City of San Diego's Breath Alcohol Testing Form.
    - d. The technician will instruct the Employee to blow forcefully into the mouthpiece to obtain a reading. Following the screening test, the technician must show the Employee the result displayed on the EBT or the printed result.
- C. Drug Screening Procedure.
1. The screening of all collected samples will generally be 48 hours by a City-designated laboratory certified by SAMHSA.

2. Initial screening of urine samples will be conducted using a testing methodology such as the “Enzyme Immunoassay” or other technique.
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 the samples for testing, the designated laboratory will:
  - a. Check the container to ensure they are not damaged, and that the seals are intact.
  - b. Complete the appropriate chain-of-custody forms for the samples.
  - c. Conduct the initial testing of the samples using the “Enzyme Immunoassay” or other technique.
  - d. If the sample tests “negative,” all urine samples will be discarded.
  - e. If the urine sample tests “positive,” a confirmation test will be conducted.
    1. The confirmation test will be determined by the specific drug found in the sample during the initial screening.
    2. The confirmation test will be conducted using the GC/MS or other alternate technique.
  - f. If the confirmation test confirms the presence of drugs, both samples will be retained in a locked freezer for a minimum of one year.
  - g. If the confirmation test is “negative,” the whole test will be considered negative and all urine samples will be destroyed.
  - h. A dilute specimen with level of detection for drugs will be subjected to a confirmation test and may be determined as a positive result.
  - i. **The City will do a repeat collection when recommended by the Medical Review Officer following SAMHSA guidelines.**
5. Alcohol Test.
  - a. If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required, and the test will be reported to the Personnel Department as a negative test.
  - b. If the result of the screening test indicates an alcohol concentration of 0.02 or greater, a confirmation test must be conducted.
  - c. The confirmation test is conducted using the same procedures as the EBT screening test. If the initial and confirmation test results are not identical, the confirmation test result is deemed to be the final result.
  - d. If the result of the screening test is positive, the medical provider is to inform the Personnel Department’s Medical Administrator of the results.



- e. A positive breath alcohol test level of 0.02 or greater will be treated as a “positive” result and may be cause for disciplinary action.

**D. Reporting Test Results.**

1. Test results will be provided to the Personnel Department’s Medical Program Administrator via the City’s contracted medical provider.
2. If the test results are “negative,” the Employee will be notified **in writing** of their test results **without delay**.
3. If test results are positive for legally-prescribed medications, Personnel will request that the Employee provide written substantiation from their private doctor prescribing the medications. Written documentation from the Employee’s private doctor is to be submitted to Personnel within seven business days from the date Personnel contacts the Employee. The Executive Assistant Chief of Internal Affairs will be notified and will be responsible for initiating an investigation.
4. If test results are positive for alcohol (0.02 or above), illegal drugs, or inadequately explained legal medications, the Department’s Executive Assistant Chief will be notified and will be responsible for initiating an investigation. Disciplinary action may be imposed. Alternatively, the disciplinary action may be held in abeyance, and a Condition of Continued Employment (CCE) may be offered by City to an employee at the City’s discretion. Any CCE will be held in a sealed envelope in the Employee’s departmental personnel file. A copy of the CCE will be forwarded to Personnel’s Medical Program Administrator for the duration of the CCE . Violation of the CCE may result in termination of employment. Upon request of the Employee or discovery by the designated department representative, the discipline related to the positive alcohol or drug test will be removed upon successful completion of the CCE.

**E. Independent Testing.**

1. If the drug screening test results are positive, the affected Employee has the right to request that the split sample be sent for independent testing. The request must be made to the Assistant Chief of Internal Affairs by the Employee within 30 calendar days of receipt of the notice of positive drug test results.
2. The testing will be conducted at a SAMHSA-certified laboratory designated by the affected Employee and at the expense of the Employee. Payment for the independent testing may be made by the employee or the employee’s designee, including the SDPOA, the employee’s representative, or the employee’s attorney. The process of the independent testing will not occur until the payment is received by the medical provider from the employee or employee’s designee. The employee or employee’s designee will submit payment to the medical provider within one business day of the request for an independent test.
3. The split sample will be transported by approved courier to the testing laboratory. The results of the split sample test will be provided to the employee or the employee’s designee only and not to any other person and/or entity, absent written consent and approval from the employee or the employee’s designee.

**F. Program Records.**

1. All alcohol/drug testing information relating to individual Employees is strictly confidential.
2. Records related to a positive test result shall be maintained as directed by the Executive Assistant Chief and 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 Police Department will not be precluded from taking further action.

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**ARTICLE 58:  
Leave-Sharing Plans**

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**A. Catastrophic Leave Plan Program Description**

**1. Purpose and Scope**

Establish a City of San Diego-administered Catastrophic 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 for a leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Americans with Disabilities Act (ADA), other local, state, or federally protected leave, and other extraordinary circumstances as determined by the Human Resources Director or designee. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

Employees who are entitled to annual leave are eligible to request a Catastrophic Leave Bank from their date of hire. Catastrophic Leave determinations are non-grievable.

Catastrophic leave coverage shall be extended to events affecting registered domestic partners provided that a City of San Diego Affidavit of Domestic Partnership has been submitted.

**2. Procedures**

- a. The Employee initiates a request for a Catastrophic Leave Bank to be established in accordance with this policy.
  1. The employee must have exhausted or expect to exhaust their accrued leave, from both the employee’s annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department Payroll Specialist), as a result of a qualifying event in order to establish a Catastrophic Leave Bank.
    - i. A recipient’s total annual leave balance including donated leave cannot exceed 2,080 hours.

2. The employee must receive approval for an unpaid leave of absence from their Department Head.
- b. Requests to establish a Catastrophic Leave Bank to receive donations will be processed by the Human Resources Department.
  1. An eligible employee must submit a completed “Request to Establish Catastrophic Leave Bank” form to the Human Resources Department, accompanied by:
    - i. A signed statement by the employee which includes a brief description of the nature and need for the leave and an estimated time the employee will be out of the workplace, or other appropriate documentation supporting the request. Clarifying documentation may be requested by the Human Resources Department. Any employee who misrepresents information on the signed statement provided to the Human Resources Department may be subject to discipline, up to and including termination.
    - ii. Evidence of the Department Head’s approval of the leave of absence.
    - iii. Employees must also identify, on the Request to Establish Catastrophic Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the Catastrophic Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Catastrophic Leave Bank is approved by the Human Resources Department.
- c. Donations of annual leave may be made to an employee eligible for Catastrophic Leave. The donor’s annual leave donation will be deducted from the donor department in the amount donated.
  1. Donations of leave are strictly voluntary; the City will maintain the identity of Catastrophic Leave Bank donors in absolute confidence.
  2. Employees may only donate accrued annual leave.
  3. Donations must be made in whole-hour increments.
  4. Donation authorization requests that do not contain all requested information will not be processed.
  5. Donors must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
  6. Once donated to the Catastrophic Leave Bank, donated leave cannot be returned to the donor.
  7. Employees who wish to donate leave must submit an electronic request through the Leave Administration section of the City’s SAP System. Employees without access to the City’s Active Directory may complete a “Confidential

Authorization for Catastrophic Leave Donation” form and submit it to the Human Resources Department.

- d. Upon receipt of donation authorizations forms, the City’s SAP System will:
  1. Verify that the donating employee has the minimum required leave balance of 160 hours.
  2. Convert the donated dollars as computed above to hours at the recipient’s hourly rate. The donor will be taxed for the leave when it is donated to the recipient.
  3. Ensure that all deductions (e.g. health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified their Payroll Specialist in writing to cancel deductions.
  4. Subtract the donated time from the donor’s designated leave category; and
  5. Add the donated hours to the recipient’s Catastrophic Leave – Annual Leave (CatLv-AL) bucket.
- e. An employee who receives donated Catastrophic Leave hours under this Catastrophic Leave Plan may either take the donated Catastrophic Leave as compensated time off, or may request to receive a cash payment via SAP of the Donated Catastrophic Leave, but may not re-donate that time to a Catastrophic Leave Bank, Medical Leave Bank, or Child Care Annual Leave Exchange bucket for use by another employee.
- f. Donated Catastrophic Leave is treated as annual leave accrued by the recipient of the donation, but the recipient will not be taxed on the donated annual leave.
- g. When donated Catastrophic Leave hours are taken as cash payment, the employee may take up to the amount of Catastrophic Leave hours available in their established Catastrophic Leave Bank at the time the employee processes their request for cash payment in the City’s SAP System. Catastrophic Leave hours are cashed-out on a prospective basis only.
- h. When donated Catastrophic Leave hours are taken as annual leave for purposes of taking compensated time off, instead of through a cash payment, the employee may take up to 80 hours per pay period until the donated leave has been exhausted.
  1. Donated Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.
  2. Employees using donated leave hours will continue to accrue annual leave in accordance with [Personnel Manual Index Code I-2, Annual Leave](#).
  3. Donated Leave can only be used on a going forward basis.

3. Notification of the creation of a Catastrophic Leave Bank to potential donors is the responsibility of the employee, not the department. An employee may use City e-mail for a one-time notification to other City employees regarding the creation of their Catastrophic Leave Bank. Such e-mail should not contain confidential health information (e.g. details of their medical condition). Any disclosure of confidential health information made by the employee using City e-mail releases the City from any violation of medical privacy laws. All policies and procedures regarding ethical conduct, and the use of email, apply to such notices sent by employees. Employees are encouraged to only send e-mails to employees they know and refrain from sending "e-mail blasts" (officewide or citywide e-mails) that may be viewed as a nuisance to a reasonable person. Employees may also work with their recognized employee organizations to disseminate their request for leave donation. If requested by the employee in the Request for Establishing Catastrophic Leave Bank form, the City will publicize on the Leave Administration section of the City's SAP System, the employee requestor's name, and the dates the Catastrophic Leave Bank opens and closes.

## B. Medical Leave-Sharing Plan Program Description.

### 1. Purpose and Scope.

The City of San Diego offers a Medical Leave-Sharing Plan and Leave Bank (Medical Leave Bank) to give City employees the ability to assist other City employees who face extended leaves without pay due to a major health crisis, whether their own, or that of a family member. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

Employees who are entitled to annual leave are eligible to request a Medical Leave Bank from their date of hire. Medical Leave Sharing determinations are non-grievable.

For purposes of this plan, a "major health crisis" is defined as: (1) the employee's own medically certified "serious health condition," as defined by the federal Family and Medical Leave Act, (2) the medically-certified "serious health condition" of the employee's spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), (3) the medically-certified "serious health condition" of the employee's registered domestic partner, or (4) the death of the employee's spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), or employee's registered domestic partner (provided that a City of San Diego Affidavit of Domestic Partnership has been submitted). The determination of whether a major health crisis exists is made by the Human Resources Department Director or designee.

### 2. Procedures.

- a. Employee initiates a request for a Medical Leave Bank to be established in accordance with this policy.
  1. The employee must have exhausted or expect to exhaust their accrued leave, from both the employee's annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department Payroll Specialist), as a result of a qualifying event in order to establish a Leave Bank.

- i. If an employee is diagnosed as terminally ill, a Medical 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.
    - ii. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.
  - 2. The employee must receive approval for an unpaid leave of absence from their Department Head.
- b. Requests to establish a Medical Leave Bank to receive donations will be processed by the Human Resources Department.
  - 1. An eligible employee must submit a completed "Request to Establish Medical Leave Bank" form to the Human Resources Department, accompanied by:
    - i. A medical statement from the attending physician, including a brief statement describing 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.
    - ii. Evidence of the Department Head's approval of the leave of absence.
    - iii. Employees must also identify, on the Request to Establish Medical Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the Medical Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Medical Leave Bank is approved by the Human Resources Department.
- c. Donations of annual leave may be made to an employee eligible for medical leave because of a major health crisis, as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.
  - 1. Donations of leave are strictly voluntary; the City will maintain the identity of Medical Leave Bank donors in absolute confidence.
  - 2. Employees may only donate accrued annual leave.
  - 3. Donations must be made in whole-hour increments.
  - 4. Donation authorization requests that do not contain all requested information will not be processed.
  - 5. The donor will not be taxed on the value of the leave they donate, but also cannot claim an expense, loss deduction, or charitable contribution for the donated leave.
  - 6. Donors must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.

7. Once donated to the Medical Leave Bank, donated leave cannot be returned to the donor.
  8. Employees who wish to donate leave must submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Medical Leave Donation" form and submit it to the Human Resources Department.
- d. Upon receipt of donation authorization forms, the City's SAP System will:
1. Verify that the donating employee has the minimum required leave balance of 160 hours.
  2. Convert the donated dollars as computed above to hours at the recipient's hourly rate. The recipient will be taxed for the leave when it is taken.
  3. Ensure that all deductions (e.g. health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified their Payroll Specialist in writing to cancel deductions.
  4. Subtract the donated time from the donor's designated leave category.
  5. Add the donated hours to the recipient's annual leave balance.
- e. Donated Medical Leave is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.
1. Donated Medical Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.
  2. 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](#).
  3. Donated Medical Leave can only be used on a going forward basis.
3. Notification of the creation of a Medical Leave Bank to potential donors is the responsibility of the employee, not the department. No City equipment, including the e-mail system, may be used to disseminate information about a Medical Leave Bank. Employees may work with their recognized employee organizations to disseminate the request for leave through means other than the City e-mail system. However, if requested by the employee in the Request for Establishing Medical Leave Bank form, the City will publicize on the Leave Administration section of the City's SAP System, the employee requestor's name, and the dates the Medical Leave Bank opens and closes.

#### C. Child Care Annual Leave Exchange

Annual Leave may be transferred between employees represented who jointly parent a child (which includes a biological, adopted, or foster child, a stepchild, or a legal ward, and is under 18 years old or has a mental or physical disability and is incapable of self-care), for the purpose of the birth of the child or joint adoption of the child, or for child care purposes, in accordance with the City's policies, upon the request of both the receiving employee and the transferring employee, and upon approval of the employees' appointing authority, under the following conditions:

1. The receiving employee is required to be absent from work due to the birth of the employee's child or due to the joint adoption of a child, or for child care purposes.
  2. Each transfer must be for a minimum of eight hours and in whole hour increments thereafter.
  3. The transferring employee must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
  4. The total annual leave received by an employee for the purposes of the Child Care Annual Leave Exchange bucket shall normally not exceed 350 hours per fiscal year; however, if approved by the employee's appointing authority, the total vacation credits may be up to 700 hours. Total annual leave hours in excess of 700 hours will be considered on a case-by-case basis by the Appointing Authority.
  5. The transfers are irrevocable and will be placed in a separate bucket for Child Care Annual Leave Exchange. The transferred annual leave hours received by the employee for purposes of the Child Care Annual Leave Exchange will not count towards the employee's maximum accumulation of annual leave that is provided for in [Personnel Manual Index Code I-2](#). The transferred annual leave cannot be used for pay-in-lieu cash outs. The transferring employee will be taxed for the leave when it is transferred to the receiving employee.
  6. The transfers shall be administered according to the rules and regulations promulgated by the City beginning on January 1, 2020.
- D. Any unused annual leave under this Article will be paid out upon the employee's separation from the City.

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## **ARTICLE 59: Side Letters**

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Effective July 1, 2021, 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. Effective July 1, 2021, any additional agreements must be made in writing between City and POA with the approval of the Mayor or their designee, the Human Resources Director, and the POA President or their designee.

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## **ARTICLE 60: Mileage Reimbursement**

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



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**ARTICLE 61:**  
**Special pay for Administrative Assignments**

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

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**ARTICLE 62:**  
**Shift Differential**

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- A. Police Officer III's, Sergeants, and Detectives, 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 5.3% of the employee's base rate. Police Officer III's, Sergeants, and Detectives, 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 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 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 3.8% of Police Officer II's ("E" Step) base rate.

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**ARTICLE 63:**  
**Specialty Pays**

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A. Community Relations Officers.

Community Relations Officers will receive additional compensation of 3.5% of employee's base rate while assigned as a Community Relations Officer.

B. Emergency Negotiators.

Emergency Negotiators will receive additional compensation of 3.5% of employee's base rate while assigned as Emergency Negotiators.

C. K-9 Trainers.

K-9 Trainers will receive additional compensation of 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 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 4% of their base rate.

**F. Harbor Unit.**

1. Full-time members of the Harbor Unit will receive additional compensation of 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 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 3.5% of employee's base rate.

**H. Motorcycle Pay**

Members of the unit will receive an additional 3.5% of employee's base rate when assigned to two-wheel motorcycles.

**I. SWAT Pay**

1. 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 3.5% of employee's base pay.
2. SWAT officers that are members of the Special Response Team (SRT) will receive an additional 3.5% of employee base pay. Snipers will also be eligible to receive this additional pay.

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**ARTICLE 64:**  
**Public Safety Officers Procedural Bill of Rights Act**

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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.

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## **ARTICLE 65:**

### **Emergency Contact Information**

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The City and POA agree that employees should keep the City updated on any changes to the employee's home and personal cellular telephone number, any personal email addresses on file with the City, and the employee's home address. This information is necessary for the City to ensure employees receive any and all communications from the City, and that any contact information the City provides POA pursuant to Government Code section 3558 or any other provision in this MOU is accurate. To assist in this endeavor, employees are required to update any changes in the above referenced contact information that is on file with the City by using the Employee Self-Service Portal within 14 calendar days of such a change.

In accordance with Government Code section 6254.3(c), the City will not provide POA with the home telephone number, personal cellular telephone number, personal email address, or birth date of any employee who has made a request to the City through the Employee Self-Service Portal in SAP regarding non-disclosure of said information.

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**ARTICLE 66:**  
**Labor-Management Committee**

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A Labor-Management Committee is hereby created, which will consist of the President of POA and their designee, and two Board members of POA, and two representatives designated by the Chief of Police, and the Human Resources Director or their designee. The Committee will meet monthly 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.

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**ARTICLE 67:**  
**Line of Duty Death**

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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 \$10,000.00. City will also provide an additional \$10,000.00 to the family of an officer killed in the line of duty, 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.

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**ARTICLE 68:**  
**Effect of MOU**

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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.

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**ARTICLE 69:**  
**Bereavement Leave**

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Paid Bereavement Leave totaling 50 hours (regardless of the number of eligible deaths) each full-time employee for use during each fiscal year of this MOU upon the death of an employee's spouse or state-registered domestic partner, **parent** (biological, adoptive, in-law), sibling (biological, step, foster, or adopted), child (biological, step, foster, adopted, miscarried, stillborn), grandparent, **grandparent-in-law** and grandchild (biological, adopted). Bereavement Leave is not authorized for the death of a relative that occurred before the employee's hire date with the City of San Diego. Bereavement Leave must be taken within 12 months of the eligible death, not to exceed 50 hours total per eligible death. Unused bereavement leave during a fiscal year does not carry over to the next fiscal year. Proof of death (death certificate, obituary notice, funeral program, etc.) or proof of miscarriage/stillbirth (a note from a healthcare provider) must be submitted within 30 calendar days of when the employee returns to work. If such proof is not submitted within the specified timeframe, the bereavement leave will revert to available compensated leave, or unpaid leave, at the employee's discretion. The number of hours of Bereavement Leave is prorated for employees working 3/4 time (37.5 hours) and 1/2 time (25 hours).

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## **ARTICLE 70: Dues Deduction**

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### **A. Police Management Unit.**

Dues will be for a specified amount and will be made based on the information provided by POA of employees in the Police Management Unit certified by POA as having affirmatively consented to or authorized dues deductions. The authorization or cancellation of dues will be made based on the information provided by POA.

### **B. Deductions/Remittance of Dues.**

1. POA dues will be deducted by City from the salaries of employees, certified by POA, over 26 pay periods to the extent permitted by law. Payment of dues will be by regular payroll deductions only. Remittance of the aggregate amount of all dues will be made to POA by City biweekly at the conclusion of each pay period in which dues 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. POA will maintain records of employee authorizations for dues deductions. POA will provide the City with information regarding the amount of dues deductions and the list of POA employees who have affirmatively consented to or authorized dues deductions. The City shall not request POA to provide a copy of any member employees' authorization unless a dispute arises about the existence or terms of the authorization. To the extent required by the Government Code, or otherwise required by law, the City will rely on the information provided by POA in processing dues deductions for POA employees. POA is responsible for providing the City with timely information regarding changes to member employees' dues deductions.
3. 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.
4. Sufficiency of Employee's Earnings: The employee's earnings must be sufficient, after all other legally required deductions are made, to cover the amount of the dues 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 the 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.

### **C. Notice to POA.**

Biweekly, an electronic file from the City will be provided to POA containing the information currently furnished on each POA member.

**D. Indemnification.**

Any dispute concerning the amount of the dues deductions is not 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.

**E. Provisions of Law.**

POA agrees to comply with all applicable state and federal laws and regulations relating to dues deductions. 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.

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

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**ARTICLE 71:  
Use of City Email**

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

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**ARTICLE 72:  
Volunteers**

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- 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).

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### **ARTICLE 73: Use of Technology**

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During the term of this MOU, the City will roll-out new technologies and innovative platforms to improve operational efficiencies and to deliver digital services to better flex with the changing landscape of the needs of public facing services. The City will provide notice to POA and at the request of POA will meet and confer, as necessary, in accordance with the Meyers-Milias-Brown Act prior to implementation.

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### **ARTICLE 74: Discretionary Leave**

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- A.** Effective July 1, 2022, all full-time employees will receive 40 hours of discretionary leave for use during each fiscal year of this MOU 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 30 hours of discretionary leave for use during each fiscal year of this MOU. Half-time employees will receive eight hours of discretionary leave for use during each fiscal year of this MOU.
- B.** If an employee requests use of discretionary leave under this Article 30 days in advance and receives approval, the discretionary leave will be granted unless doing so would require backfill on overtime. Once approved, the Department will not revoke the approved discretionary leave. The Department may also authorize use of discretionary leave under this Article if an employee is sick. The Department is not required to grant use of this leave when to do so would require backfilling on overtime. As an alternative, each employee may schedule their discretionary leave hours in the same manner as annual leave is presently scheduled pursuant to the departmental annual leave guidelines.
- C.** All discretionary leave granted under this Article must be used by May 31st of each fiscal year or it will be forfeited. The discretionary leave under this article does not have any cash value.



- D. 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).

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## **ARTICLE 75:**

### **Police Management Incentive Pay**

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Effective July 1, 2021, in recognition of on-call and other operational responsibilities for Police Management positions (i.e. Police Lieutenant and higher) **employees in eligible classifications on July 1 of each fiscal year** will receive an annual \$3,000 cash incentive pay.

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## **ARTICLE 76:**

### **Flexible Work Arrangements**

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- A. To better adapt to the changing landscape of the workplace, the City supports, where appropriate, flexible work locations and flexible work schedules to promote the City's Climate Action Plan and to optimize the use of City facilities and equipment. Based on a Department's operational needs and the job duties of a specific classification, flexible work schedules, referred to as "Flexible Work Arrangements", may be made available to employees. Flexible Work Arrangement will only be used upon mutual agreement of the City and employee.
1. Alternative Work Schedules - Schedule alternatives to the traditional eight-hour day, five-day work week, such as the 4/10 or 44/36 schedules and flexible hours within a Department's core hours.
- B. For this Flexible Work Arrangement options described in section A above, the City will not be required to provide a five working days' notice prior to changing a flexible work schedule. 24 hours advance notice will be provided by the Department to the employee, unless extenuating circumstances warrant an immediate return, to return their original work schedule. All Departments and employees that participate in any Flexible Work Arrangements will enter into a Flexible Work Agreement. The Flexible Work Agreement is approved at the discretion of the Department appointing authority based on operational needs and feasibility. Flexible Work Arrangements may be modified by the Department at its sole discretion at any time for any reason. This section is not subject to the grievance procedure.
- C. **The City's Telework Program is for employees whose job duties are operationally feasible to perform off-site. The Program may be applied differently across a classification depending on operational needs. Participation in the Telework Program is at the discretion of an employee's department and voluntary for employees whose job duties do not require their physical presence at a City office or facility and can be successfully performed remotely. Eligible employees may apply to telework and review of the telework application is based on operational needs and feasibility. In the event the Telework Program Agreement is denied, modified, or terminated, the employee will be provided a written explanation of the action. Employees are not entitled to Telework under the Program.**

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## **Appendix A**

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**COALITION  
AND  
CITY OF SAN DIEGO**

**FY2013 PROPOSITION B IMPLEMENTATION NEGOTIATIONS  
TENTATIVE AGREEMENT**

The San Diego Municipal Employees Association, International Association of Fire Fighters, Local 145 ("Local 145"), International Brotherhood of Teamsters, Local 911, Deputy City Attorneys Association of San Diego and Local 127 American Federation of State, County, and Municipal Employees (collectively the "Coalition"), and City of San Diego ("City") have negotiated and reached a tentative agreement on certain terms for an Interim Defined Contribution (DC) Plan on August 16, 2012. Negotiations between the Coalition and City (collectively the "Parties") continue over a Permanent DC Plan.

In accordance with Ground Rule 5, the Parties agree that final approval of the tentative agreement is subject to approval of the City Council.

**TERMS FOR INTERIM DC PLAN**

**INTRODUCTION**

1. The purpose of this proposal is to provide a means for an Interim DC Plan to be established expeditiously to accommodate the City's hiring needs without undermining the time otherwise needed for a good faith meet and confer process over the terms of a Permanent DC Plan with disability/death benefit features pursuant to Proposition B. Non-safety employees initially hired after July 19, 2012, who are excluded from SDCERS, will not participate in the 2009 401(a) Plan.
2. The Parties acknowledge and agree that, by entering into this agreement on terms for an Interim DC Plan neither party is prevented from making different proposals during negotiations on the Permanent DC Plan over any aspect of the DC Plan, including the vehicle, vesting schedule for City contributions, the definition of compensation which could include a cap on eligible compensation, the death benefit, disability benefit, and/or the percentage for employer and employee contributions

**SPSP-H VEHICLE**

3. The SPSP-H Plan (as proposed and modified by this agreement) will be used for purposes of this Interim DC Plan. The City also agrees that any and all "reservation of City's rights" as stated in the SPSP-H Plan document, which relate to employees' rights or benefits under the Plan, is limited by the City's obligations under an agreement for an Interim DC Plan, as well as its obligations under the Meyers-Millas-Brown-Act ("MMBA").



#### CITY CONTRIBUTIONS

4. Effective October 2, 2012, the City's total mandatory contribution for each Eligible Class Employee as defined in SPSP-H Plan document Article I, section 1.15, subdivision (a)(ii) will be 9.2% for non-safety employees and 11% for safety employees under the Interim DC Plan. These percentages will apply to all compensation as defined in Article I, section 1.10 of the Plan document. For the purpose of this agreement, Eligible Class Employees excludes all hourly employees.
5. The SPSP-H Plan document will also be amended to expand the definition of compensation to include pay in lieu of compensatory time and pay in lieu of cycle time.

#### EMPLOYEE CONTRIBUTIONS

6. Effective October 2, 2012, the total mandatory post-tax contribution for each Eligible Class Employee will be 9.2% for non-safety employees and 11% for safety employees under this Interim DC Plan. These percentages will apply to all compensation as defined in Article I, section 1.10 of the SPSP-H Plan document and as amended under paragraph 5 above.

#### VESTING

7. The employee will be 100% vested at all times in all amounts held in his or her SPSP-H account whether contributed by the employee or by the City.

#### DEATH/DISABILITY

8. The City agrees that the terms of the disability/death benefit adopted in conjunction with a Permanent DC Plan will be made retroactively applicable to any Eligible Class Employee or his/her beneficiary(ies) who suffers a qualifying event during the period of time when this Interim DC Plan is in effect. By this provision, the City agrees to extend to any such Eligible Class Employee or beneficiary the full benefits and rights which would otherwise have been available to him or her had the disability/death benefit adopted in conjunction with a Permanent DC Plan been in effect when the incident giving rise to the Eligible Class Employee's disability or death occurs.

#### NO UNILATERAL CHANGES

9. No benefits or monies received by employees may be altered by the City during this Interim DC Plan. The Parties acknowledge that negotiations are continuing over a Permanent DC Plan. After the effective date of the Permanent DC Plan the terms may change as set forth in paragraph 2.

RESERVATION OF RIGHTS

10. Each union is participating in this proposal for an Interim DC Plan under continuing protest and objection and while expressly reserving its claims which include but are not limited to the following: (a) Proposition B is unlawful as applied to represented employees due to the City's violation of the MMBA; (b) the City's insistence on altering the terms and conditions of employment for new hires due to the chaptering of Proposition B – and after unilateral imposition of a hiring freeze – is unlawful because each Union has an MOU in effect, which was adopted and made final and binding by the City Council on June 18, 2012, and these MOUs establish the terms and conditions of employment for all new hires through June 30, 2013.

MAKE-WHOLE

11. The parties acknowledge that this agreement for an Interim DC Plan may eventually be impacted by any order or decision in pending consolidated unfair practice cases before PERB once such order or decision becomes final after the exhaustion of all appeals under Government Code section 3509.5.

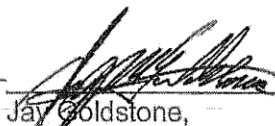
FOR THE CITY



\_\_\_\_\_  
Timothy Davis  
Lead Negotiator, City of San Diego

9/5/2012

\_\_\_\_\_  
Date



\_\_\_\_\_  
Jay Goldstone,  
COO, City of San Diego

\_\_\_\_\_  
Date

FOR MEA



9/5/12

\_\_\_\_\_  
Date

FOR LOCAL 145



9/5/12  
\_\_\_\_\_  
Date

COALITION AND CITY OF SAN DIEGO  
FY2013 PROPOSITION B IMPLEMENTATION NEGOTIATIONS  
TENTATIVE AGREEMENT

FOR LOCAL 127

Jim Byrd 9.5.12  
Date

FOR LOCAL 911

Christy Yodanis 9-5-2012  
Date

FOR DCAA

Michael Anderson 9.5.12  
Date

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## **Appendix B**

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**Exhibits A, B, and C to FY 2022 Salary Ordinance**

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## **Appendix C**


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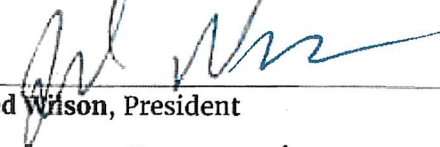
**Side Letter Agreement – Establishment of the Interim Disability and Death Benefits Plan for Employees Initially Hired On or After July 20, 2012, dated July 22, 2019.**

**<https://www.sandiego.gov/sites/default/files/poa-interim-death-disability-plan.pdf>**

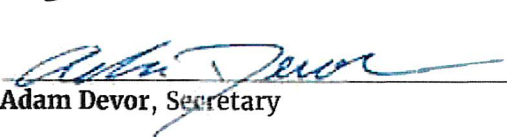
IN WITNESS THEREOF, the undersigned agree to submit this tentative Memorandum of Understanding, effective July 1, 2021 – June 30, 2024, to their respective constituents for approval.

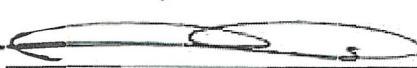
**SAN DIEGO POLICE OFFICERS  
ASSOCIATION**

  
\_\_\_\_\_  
**Bradley M. Fields, Lead Negotiator**

  
\_\_\_\_\_  
**Jared Wilson, President**

  
\_\_\_\_\_  
**Jeremy Muff, Vice President**

  
\_\_\_\_\_  
**Adam Devor, Secretary**

  
\_\_\_\_\_  
**Joseph Clark, Treasurer**

  
\_\_\_\_\_  
**Brian Avea, Director**


  
\_\_\_\_\_  
**Jack Schaeffer, Director**

  
\_\_\_\_\_  
**Frank White, Director**

  
\_\_\_\_\_  
**Michael Weaver, Director**


  
\_\_\_\_\_  
**David Ramirez, Director**


**CITY OF SAN DIEGO**

  
\_\_\_\_\_  
**Timothy L. Davis, Lead Negotiator**

  
\_\_\_\_\_  
**David Nisleit, Chief of Police**

  
\_\_\_\_\_  
**Terence Charlot, Assistant Chief**

  
\_\_\_\_\_  
**Julie Rasco, Director, Human Resources**

  
\_\_\_\_\_  
**Abegaile Serafico, Senior HRO, Human Resources**

Approved as to form on June 27, 2022  
MARA W. ELLIOTT, City Attorney

By:   
\_\_\_\_\_  
Miguel Merrell  
Deputy City Attorney