

MEMORANDUM **OF UNDERSTANDING**



*Between The Representatives of
The Costa Mesa Police Management Association
And the City of Costa Mesa*

2007
2010

TABLE OF CONTENTS

PAGE

ARTICLE 1	RECOGNITION/PREAMBLE	3
ARTICLE 2	TERM OF AGREEMENT	4
ARTICLE 3	BASIC SALARIES AND WAGES	4
ARTICLE 4	HEALTH INSURANCE	5
ARTICLE 5	RETIREMENT	6
ARTICLE 6	RETIREMENT SUPPLEMENT	6
ARTICLE 7	RETIREE MEDICAL & 401 (a) DEFERRED COMPENSATION PLAN	7
ARTICLE 8	BENEFIT REVIEW COMMITTEE	7
ARTICLE 9	DRUG TESTING POLICY	7
ARTICLE 10	P.O.S.T. INCENTIVE PROGRAM	8
ARTICLE 11	TUITION REIMBURSEMENT & PROFESSIONAL DEVELOPMENT	9
ARTICLE 12	EXECUTIVE LEAVE	10
ARTICLE 13	AUTOMOBILE AVAILABILITY	10
ARTICLE 14	SPECIALTY ASSIGNMENT PAY	10
ARTICLE 15	VACATION LEAVE	12
ARTICLE 16	SICK LEAVE INCENTIVE PROGRAM	14
ARTICLE 17	BEREAVEMENT LEAVE	15
ARTICLE 18	LONG TERM DISABILITY	15
ARTICLE 19	LAYOFF PROCEDURES	15
ARTICLE 20	DISCIPLINARY PROCEDURES	16
ARTICLE 21	GRIEVANCE PROCEDURES	23
ARTICLE 22	AMERICANS WITH DISABILITIES ACT (ADA)	27
ARTICLE 23	HOLIDAY PAY	27
ARTICLE 24	UNIFORM MAINTENANCE ALLOWANCE	28
ARTICLE 25	SENIORITY	29
ARTICLE 26	WORK SCHEDULES	29
ARTICLE 27	PROHIBITION OF TOBACCO	29
ARTICLE 28	PHYSICAL FITNESS COMMITTEE	29
ARTICLE 29	MEET AND CONFER	29

ARTICLE 1 - RECOGNITION/PREAMBLE

1.1 By resolution of the City Council of the City of Costa Mesa, and pursuant to the provisions of the Meyers-Milias-Brown Act, California Government Code Section 3500, et seq., the City of Costa Mesa (hereinafter referred to as "CITY") recognizes the Costa Mesa Police Management Association (hereinafter referred to as "ASSOCIATION" or "CMPMA") as the exclusive representative and the agent for collective bargaining purposes of sworn Police Captains and Police Lieutenants employed in the Costa Mesa Police Department.

1.2 This Memorandum of Understanding ("M.O.U.") has been prepared by representatives of the City and representatives of the Association who have met and conferred in good faith, examining a number of proposals and counter proposals concerning wages, hours of employment, working conditions, fringe benefits and other terms and conditions of employment for the sworn officers of the Costa Mesa Police Department as defined herein. The Parties to this M.O.U. are the City and the Association, which are jointly recognized and referred to herein below as the "PARTIES."

1.3 It is the mutual understanding of the City and the Association that this M.O.U. shall be submitted to the Costa Mesa City Council upon the joint recommendations of the Parties that the terms and conditions of this M.O.U. be adopted and that said City Council will take such action as may be needed to implement this agreement and its provisions.

1.4 The City and the Association hereby acknowledge that the terms of this M.O.U. may not cover all terms of employment relating to wages, hours and conditions of employment at the City of Costa Mesa. These parties further acknowledge that any term or condition of employment which is not expressly covered herein, but is expressly covered by existing ordinances, resolutions, policies and regulations of the City, including the Personnel Rules and Regulations presently in effect, shall be controlled by the existing provisions of said ordinances, resolutions, policies, and regulations to the extent that said policies and regulations do not change, abrogate, modify or amend any express term of this M.O.U. All other terms and conditions of employment in effect at the time of execution of this MOU shall remain status quo during the term hereof, unless such a term or condition is excepted from collective bargaining and the scope of representation as set forth in California Government Code 3504 or constitutes an emergency matter as set forth in California Government Code 3504.5.

1.5 The City and the Association agree that all material terms and conditions of previous M.O.U.'s have been complied with, and are hereby discharged and superseded by the adoption of this M.O.U.

1.6 If any portion of this M.O.U. is found to be unlawful, in conflict or inconsistent with existing laws, regulations, or ordinances; or determined to be invalid or unenforceable by an administrative or judicial tribunal with competent jurisdiction, such portion or part of the M.O.U. shall be superseded and not enforced. The remainder of this M.O.U. shall continue in full force and effect, and shall be enforced through the term of the agreement pursuant to Government Code Section 3500, et seq.

1.7 For the term of this M.O.U. neither the City nor the Association shall be compelled to meet and confer with the each other concerning any issue which is expressly agreed to herein. Each Party to the M.O.U. hereby expressly waives its right to demand that the other Party meet and confer concerning any issue expressly agreed to herein. However, nothing in this M.O.U. shall prohibit these Parties from meeting and conferring over any expressly agreed issue herein, if, and only if, both Parties hereto mutually agree to do so.

1.8 Continuous, uninterrupted and efficient service to the community by the City and its employees, and orderly employer-employee relations are essential considerations of this M.O.U. Accordingly, the Association agrees, on behalf of itself and its members, individually and collectively, that there shall not be any strikes, non-informational picketing, boycotting, work stoppages, slow-down strikes, or any other concerted job action or refusal to render services, including overtime or any other curtailment or restriction of work and service at any time during the term of this M.O.U.

1.9 The Association recognizes its duty and obligation to comply with the provisions of Section 1.8 of this M.O.U., and shall make every reasonable effort to assure that all employees covered by this M.O.U. similarly do so. In the event of any concerted activity by employees in contravention to the provisions or intent of Section 1.8, the Association hereby agrees to direct its members to cease any such actions or activities forthwith. No employee covered by this M.O.U. shall be entitled to any benefits or wages whatsoever while engaged in any activities or actions prohibited by Section 1.8 of the M.O.U.

ARTICLE 2 - TERM OF AGREEMENT

The term of this MOU will commence on September 1, 2007, and expire in the payperiod, which includes August 31, 2010.

ARTICLE 3 - BASIC SALARIES AND WAGES

3.1 Employees covered by this Agreement shall be compensated at the established monthly base salary rates under the Basic Pay Schedule for covered employees. All positions under this Schedule shall be assigned a range number established by the City Council resolution.

3.2 The City will adjust the monthly base salary for members of the Association based upon the following:

First Year of the Agreement - Effective the pay period that includes September 1, 2007, the City will adjust the monthly base salary for members of the Association by the median (average for Police Captain) fair wage increase, utilizing the "traditional" total compensation calculation. This results in an adjustment of 7.01% for the first year for Police Lieutenants and 4.03% for Police Captains. *Effective the payperiod which includes September 1, 2007, the City will revise the Basic Salary Schedule to reflect salary ranges with seven steps. Represented employees will be eligible for a merit increase to step 6 on their regularly scheduled anniversary/evaluation date.*

Second Year of the Agreement - Effective the pay period that includes September 1, 2008; the City will adjust salaries utilizing the "traditional" total compensation. *Effective the payperiod, which includes September 1, 2008, represented employees, will be eligible for a merit increase to step 7.*

Third Year of the Agreement - Effective the pay period that includes September 1, 2009; the City will adjust salaries utilizing the "traditional" total compensation calculation.

3.3 **TWO PHASES** - The City and the Association have agreed upon a basis of compensation, which is revenue sensitive and recognizes mutual interests. The City will adjust the salary range for the Police

Captain and Police Lieutenant classifications. The basis of compensation for these classifications includes implementation of *two* phases:

Phase I - The City will use the median salary of the benchmark survey public safety agencies for the top step of Police Lieutenant (Fountain Valley, Huntington Beach, Irvine, Newport Beach, Santa Ana and the Orange County Sheriff's Department comprise the agencies used in the survey) to determine a median fair wage. The City will use the average salary of the benchmark survey public safety agencies for the top step of Police Captain (Fountain Valley, Huntington Beach, Irvine, Newport Beach, Santa Ana and the Orange County Sheriff's Department comprise the agencies used in the survey) to determine an average fair wage. It is agreed that the median/average will be defined as the average of the number 3 and 4 agencies for total compensation, excluding the City of Costa Mesa. Total compensation is defined to include top-step base salary, employer-paid member retirement contribution, medical, dental, life, long-term disability, retirement supplement costs, and P.O.S.T./education/performance incentive pay, if applicable. The City will use Costa Mesa's actuarial cost (9.083%) for the PERS 3%@50 retirement enhancement in all of the total compensation calculations for any agency within the established marketplace that has that benefit (Fountain Valley, Huntington Beach, Irvine, Newport Beach, Santa Ana and Orange County Sheriff).

Phase II - The parties to this agreement have discussed and acknowledge that fiscal stability and the City's ability to continue operations and to pay salary/benefits are mutual interests. In an effort to insure that these occur, the following language is to be used when the City experiences a "financial hardship." In lieu of the prior Affordability Formula from the 2004-2007 MOU based upon the Chapman Economic Forecast Report (Table 13) and an annual CPI (Urban Wage Earners in LA/OC calculation), it is agreed that if the City experiences a decrease of 3% or more in the combined revenue totals for Sales Tax, Property Tax and Transient Occupancy Tax (all indicators of the health of the local economy), the MOU shall be re-opened for the purpose of wage/salary discussions regarding the City's corresponding ability to pay.

The financial number used to determine the three revenue stream factors shall be the City's audited numbers. Audited numbers are typically available in August or September. As the annual cycle of this MOU begins on September 1st, if the provisions of this Section must be invoked, any adjustment (decrease) in salary will be on a prospective basis, not retroactive.

ARTICLE 4 - HEALTH INSURANCE

4.1 The City shall continue to provide the amount listed below as payment of insurance or benefit premiums for employees covered by this Agreement, pursuant to the rules controlling IRS Section 125 Benefit Plan, and in compliance with the rules controlling any individual plan. The current core benefits under the M.O.U. include life and long term disability insurance. Medical insurance provided by the Public Employees' Medical Health Care Act (PEMHCA) is a required core benefit. A City employee can elect to waive this coverage if the employee is covered by other insurance such as his or her spouse's medical insurance.

4.2 **QUALIFICATION FOR FLEX CONTRIBUTION** - Employees must receive compensation for the entire payperiod to receive the flexible benefit contribution amount. Use of accrued leave qualifies as compensation for this purpose. Employees will be ineligible for the flexible benefit contribution if the employee records absence without pay hours within the payperiod. Disciplinary actions will not apply to

this article/qualification i.e. suspensions without pay. If an employee exhausts his/her accrued leaves prior to the end of the payperiod, he/she shall receive the flex contribution for that payperiod.

4.3 **DISCONTINUANCE OF MEDICAL PLAN WAIVER** - *In 1994, the City began deducting \$16 per pay period from employees "flex bucket" allocation consistent with the Public Employees' Medical and Hospital Care Act requirement that employees and retirees receive an equal contribution from the city toward the medical plan. In addition, employees who chose to waive medical coverage ("waivered employees") were also charged the \$16 per pay period for equity reasons as an administrative fee. Over the years, the Government Code (PERS Law) increased the \$16 amount and the employees, retirees and "waivered employees" were required to deduct the new amounts from the flex buckets each month. The amount increased to \$32.20 in 2004, \$48.40 in 2005, \$64.60 in 2006, \$80.80 in 2007 and will increase to \$97 in 2008.*

The City and CMPMA mutually agree that there is no continuing need that waivered employees need to be tied to the PEMHCA deduction. Therefore, effective the pay period including July 1, 2007, employees who have provided proof of other medical insurance in accordance with the City's requirements, will be eligible to receive the full flex bucket contribution, without a reduction for medical coverage waiver. This provision acknowledges that this issue is resolved in its entirety and no retroactive adjustments will be made regarding the waiver program.

4.4 **FLEX BENEFIT CONTRIBUTION ALLOCATION** - *The City currently \$526 per month towards each lieutenant's flexible benefit account and \$1,370 per month towards each captain's account. Effective January 1, 2008, the captain's flexible benefit account will be reduced by \$370 per month, and this amount will be included in base salary. The City will then contribute \$1,000 per month total toward each captain's flexible benefit account. This is an exclusive one-time provision and there will be no other movement of flexible benefit into salary. The City will agree to discuss future options or opportunities regarding reductions in the allocation of flex contributions to total compensation.*

ARTICLE 5 - RETIREMENT

The California Public Employees Retirement System (CalPERS) Local Safety retirement benefit of "3% at 50" Program provides retirement benefits to eligible safety employees. The City shall pay each affected employee's California PERS normal member contribution into each affected employee's account with PERS, and include this payment within the employee's compensation earnable that is reported to PERS. The City pays the employees' 9% contribution to the retirement program and this amount shall be added to the base salary as defined in Article 3.1.

ARTICLE 6 - RETIREMENT SUPPLEMENT

The City will continue to provide the retirement supplement to all retirees currently receiving the supplement. The value of the retirement supplement contribution was reported to CalPERS as special compensation.

ARTICLE 7 - RETIREE MEDICAL & 401 (a) DEFERRED COMPENSATION PLAN

7.1 **RETIREE MEDICAL** - Consistent with the Costa Mesa City Council Policy 300-1, effective August 19, 2003, the Council Policy established a new *Defined Contribution Retirement Health Savings Plan* (Plan). The Plan went into effect January 1, 2004. The purpose of the Plan was to establish a tax protected savings program for every full-time employee that will:

- Provide a retiree medical benefit for employees hired after January 1, 2004 who will not be eligible for the health insurance contribution under the Council Policy 300-1.
- Provide a supplemental benefit to the City contribution under Council Policy 300-1 for current employees (hired before January 1, 2004).

The program will require mandatory participation by all full-time employees. Employees will make a monthly contribution to the plan equal to 1% of their base monthly salary, which will be matched by a 1% salary monthly contribution from the City into employees' accounts. The account assets that accumulate, plus investment earnings, will be used in retirement to pay health insurance premiums and other eligible out-of-pocket medical expenses such as deductibles, co-payments, vision care or dental care. Employee contributions plus vested employer contributions will be portable if an employee should leave employment with Costa Mesa prior to retirement.

7.2 **401(A) DEFERRED COMPENSATION PLAN** - *The 401(a) deferred compensation plan provides Police Captains with a tax-deferred savings plan for future financial planning. The City will provide a .5% per pay period employer contribution for any executive whose management group elects to participate in the 401(a) plan. The employer contribution will be reflected in that executive's annual total compensation calculation. However, the City will not provide an employer contribution to the current 457 deferred compensation plan and the executive must make all 457 contributions up to the maximum amount specified by the Internal Revenue Service (IRS) and the individual providers' plans.*

ARTICLE 8 - BENEFIT REVIEW COMMITTEE

CMPMA shall maintain *one* representative on the City's Benefit Review Committee. The Committee continually evaluates the City's benefit programs and makes recommendations on plan changes, benefit levels, payroll deductions and the addition or deletion of plans. Participation on the Benefit Review Committee meets the City's obligation to negotiate with the associations on changes to the City's group benefit plans unless an association determines that such changes are detrimental to the interest of its members.

ARTICLE 9 - DRUG TESTING POLICY

The Costa Mesa Police Department Drug Testing Policy was implemented for all sworn positions in July 1993. The testing permits reasonable suspicion testing for permanent staff and random testing for probationary employees. Specific technical details of the policy that were agreed upon by Police - Management and the Association in conjunction with Risk Management remain effective as part of this MOU, and are incorporated herein by reference.

ARTICLE 10 - P.O.S.T. INCENTIVE PROGRAM

10.1 Full-time employees employed in the classification of Police Lieutenant *and Police Captain* are eligible to participate in this P.O.S.T. Certificate Program upon meeting the following criteria. According to California Code of Regulations Sections 571(a) and (b) the special pay herein will be reported to CalPERS as special compensation *and will be included as an element of total compensation in the annual calculation.*

A. Advanced Certificate - Police Lieutenant

Provides compensation at a rate which is 10% above basic monthly salary step as provided on the basic salary schedule to qualifying lieutenants.

Criteria:

1. The minimum sworn police experience as determined by the State of California Commission on Police Officer Standards and Training (P.O.S.T.).
2. Successful completion of initial probation as a sworn officer with the Costa Mesa Police Department.
3. Possession of an Advanced Certificate from the State of California Commission on Police Officer Standards and Training.
4. Have completed a minimum of 24 hours of P.O.S.T. approved schooling or equivalent every two years.
5. Make application and obtain departmental approval.

B. Management Certificate – Police Captain

Provides compensation at a rate which is 5% above basic monthly salary step as provided on the basic salary schedule to qualifying captains.

Criteria:

1. *The minimum sworn police experience as determined by the State of California Commission on Police Officer Standards and Training (P.O.S.T.).*
2. *Possess ten years of sworn police supervisory experience.*
3. *Possession of the Management Certificate from the State of California Commission on Police Officer Standards and Training.*
4. *Have completed a minimum of 24 hours of P.O.S.T. approved schooling or equivalent every two years.*
5. *Make application and obtain departmental approval.*

10.2 The acceptance or rejection of any application of any employee for this incentive program shall be the responsibility of the Chief of Police. The Chief of Police, in considering the application of an employee for an incentive under the P.O.S.T. Certificate Program, shall examine the officer's length of service, P.O.S.T. Certificate Award, *and* training records, to determine if the employee has, in his/her opinion, successfully met the minimum standards outlined. If the Chief of Police determines that the minimum qualifications have been met then he or she shall forward a personnel action form to Personnel so that the appropriate incentive award can be granted. If the employee has not, in the opinion of the Chief of Police, successfully met these requirements, the application shall be rejected.

10.3 The Chief of Police shall have the final responsibility of granting any award under this Program for which application is made, after considering the application and other relevant factors, including determinations, relevant documents and recommendations. An award may be granted, rejected or removed at any time.

ARTICLE 11 - TUITION REIMBURSEMENT & PROFESSIONAL DEVELOPMENT

11.1 ***TUITION REIMBURSEMENT*** - Tuition and/or textbook costs required to complete job-related educational courses which are taken by an employee and which pertain directly to his or her City employment, may be reimbursed to the employee if reimbursement is recommended by the Chief of Police and approved by the Administrative Services Director. *The employee participating must achieve a passing grade of a "C" or better, Credit/No Credit or a Certificate of Completion and should see that the Human Resources Manager receives a copy, where appropriate, of the employee's grade(s) before any reimbursement.*

The City will reimburse up to a maximum of \$1,250 per fiscal year for qualifying educational expenses. It is the intent of the parties that any units/degrees submitted are accredited by Western Association of Schools and Colleges (WASC, www.wascweb.org), Council for Higher Education Accreditation (CHEA, www.chea.org/directories), or pre-approved by the Police Chief or designee.

11.2 ***PROFESSIONAL DEVELOPMENT FOR POLICE CAPTAINS*** - *The City agrees to reimburse Police Captains up to \$1,000 per fiscal year for activities, materials, equipment or fees that will aid in their individual professional development. The reimbursement options include: education fees that exceed the City's annual \$1,000 tuition reimbursement limit; direct purchase of qualifying computer equipment defined in Administrative Regulation 2.20; and annual payments for the Executive Computer Loan Guarantee Program up to the maximum of \$1,000 per fiscal year for Police Captains.*

The Chief of Police and Administrative Services Director must approve participation in the activities and/or purchase of the materials/equipment in advance. Claims for reimbursement must be accompanied by documentation that an eligible expense has been incurred during the fiscal year for the executive employee only. Any portion of the reimbursement amount not incurred within the fiscal year shall remain City funds unless prior approval has been received by the City Manager. Requests to carry forward unencumbered amounts to the next fiscal year must receive approval by the City Manager prior to the end of the fiscal year. All payments will be in the form of reimbursement and no executive employee will directly receive cash for this benefit. Reimbursements, which are subject to taxation, will be processed through the payroll system. The Finance Department shall administer this program in accordance to the stated purpose and will provide the appropriate forms and procedures. This reimbursement program does not prohibit individual departments from continuing to budget funds for executive staff attendance at professional conferences and seminars, for the payment of professional

membership dues, and/or for the purchase of books, journals and written materials that are job-related and will enhance an executive's knowledge or expertise.

11.3 EXECUTIVE COMPUTER LOAN GUARANTEE PROGRAM - Police Captains who have passed probation are eligible to participate in the Executive Computer Loan Guarantee Program. The City shall specify the minimum equipment configuration and it is the employee who is responsible to negotiate the price for the equipment and to bring a copy of the order/quote to the MIS Division for approval before loan application and purchase. The executive must apply for a loan with the Costa Mesa Federal Credit Union that will be subject to all Credit Union lending practices. The City will agree to guarantee the loan for the executive, which thereby will lower the interest rate on the loan.

Loan payments must be by payroll deduction. Each loan payment period shall not exceed 30 months and the aggregate value of the loan(s) shall not exceed \$3,500 per executive. As a condition of the program, terminating executives participating in the program must satisfy any outstanding amounts of the loan with the final paycheck. The City will continue to provide the software necessary for executives to have remote access to the City's servers and compatibility to City software. In order for an executive to receive a loan under the program for equipment upgrades or purchase of new equipment components that meet the City-approved minimum configuration, the executive must certify that he/she already owns the remaining components required to meet the minimum equipment configuration. Equipment purchased under this program becomes the property of the executive. No more than once a year an executive may request reimbursement for payments under the Executive Computer Loan Guarantee Program along with Credit Union verification that the payments have been made by the employee. Police Captains may request up to \$1,000 per fiscal year under the Executive Professional Development Reimbursement Program.

ARTICLE 12 - EXECUTIVE LEAVE

Pursuant to Section 13(a)(1) of the Fair Labor Standards Act, it is mutually agreed that Police Lieutenants and Police Captains are exempt from both the minimum wage and overtime provisions of the Fair Labor Standards Act. The City will also grant each Police Lieutenant and Police Captain 80 hours of Executive Leave each calendar year. The Executive Leave hours are subject to the same carry forward limitations and benefit provisions as detailed in Administrative Regulation 2.19.

ARTICLE 13 - AUTOMOBILE AVAILABILITY

The City agrees that there will be automobiles available for *Police Captains and* Police Lieutenants within the Police Department vehicle fleet. Use of the vehicles will comply with the City's Vehicle Use Policy (Administrative Regulation 5.5).

ARTICLE 14 - SPECIALTY ASSIGNMENT PAY

14.1 The City and Association recognize that special assignments out of the scope of the covered classifications of Police Lieutenant will at times be required for the efficient operation of the department, and therefore these special assignments and their associated specialty assignment compensation are listed below. The premium and special pays herein will be reported to CalPERS as special compensation.

14.2 **UNIFORM ASSIGNMENT PAY** - Employees in the classifications of Police Lieutenant who are regularly assigned to uniform automobile/motorcycle patrol, helicopter bureau or traffic enforcement shall receive uniform assignment pay (2.5% of base salary). Employees, assigned to patrol or traffic enforcement for less than 14 consecutive days shall not be eligible for Uniform Assignment Pay.

14.3 **BILINGUAL PAY** - Applicable only to employees in the job classifications determined by the City Manager and when so assigned using their bilingual abilities as part of their regular job assignment: 5% of the top step base salary for the Senior Police Officer classification. Employees who are approved and assigned by their Chief of Police to utilize bilingual skills, which includes Spanish, Vietnamese, *American Sign Language (ASL)* and any other language approved by the Administrative Services Director, must be certified by the Chief of Police and may be tested by *the Human Resources Division* annually to verify their language proficiency in order to maintain eligibility for said compensation. The City shall establish a second level of proficiency, designed for employees who are capable of “speaking only” and shall receive 2.5% of the top step base salary for the Senior Police Officer classification. Testing procedures will be determined and administered by the City. This level of proficiency is not intended to replace “higher” level of proficiency nor to “demote” employees currently receiving that level of benefit, providing they maintain appropriate proficiency.

The following standard of spoken Spanish, *Vietnamese*, or *American Sign Language* is followed for the 2.5% Certification:

- A. The applicant has the ability to create with language, recombining and adapting learned material to express personal meaning and can handle simple situations and transactions in the course of his/her work such as explanation of procedures, obtaining personal information, instructions to victims and onlookers, among others.
- B. The applicant is able to maintain simple face-to-face conversations, asking and answering questions regarding everyday survival on topics most related to self and immediate work environment; courtesy requirements, and personal needs during the course of routine calls not likely to be of a life or death nature.
- C. The applicant can be understood with some repetition by a sympathetic native speaker.
- D. The applicant demonstrates mastery of work-related vocabulary including: time, days of the week, months, family members, parts of the body, motions and states, greetings, home and community, food and beverages, alphabet and numbers, vehicles, simple commands, interrogatory words, etc.
- E. Accuracy is required in the present tense and gender distinctions.
- F. Core vocabulary of 300-600 words.

The 5% Certification requires:

- A. Accuracy in present and past tenses.
- B. Core vocabulary of 600-1200 words.
- C. Exhibits good pronunciation, stress, and intonation skills as judged by the ability to be understood with little repetition or confusion by native speaker.
- D. Ability to interview the victim of a crime or accident or other situation involving a native speaker and conduct simple interrogations and investigations which could be of a life or death nature.
- E. Ability to understand description, narration, main ideas and details on a variety of topics beyond the immediate situation.

14.4 The City will continue payment of the assignment of special pay as set forth in Articles 14.2 through 14.3 above in the event of an industrial injury (as is done for salary, leaves and benefits) in accordance with the City's Personnel Rules and Regulations.

ARTICLE 15 - VACATION LEAVE

15.1 The purpose of annual vacation leave is to enable each eligible employee to spend a reasonable amount of time away from his or her job and to return to work refreshed. Any leave of absence without pay shall not accrue vacation leave for each full pay period of such absence.

15.2 Regular full-time employees in the classified services with an average work-week of forty (40) hours shall receive annual vacations with pay in accordance with the following provisions:

- A. After continuous full-time service amounting to one (1) year or more, an employee shall have earned paid vacation at the rate of ninety-two (92) working hours per year.
- B. Upon completion of three (3) years of continuous full-time service, but less than five (5) years of continuous full-time service, such employee shall earn one hundred sixteen (116) working hours per year.
- C. Upon completion of five (5) years of continuous full-time service, but less than ten (10) years of continuous full-time service, such employee shall earn one hundred forty (140) working hours per year.
- D. Upon completion of ten (10) years of continuous full-time service, but less than fifteen (15) years of continuous full-time service, such employee shall earn one hundred sixty-four (164) working hours per year.
- E. Upon completion of fifteen (15) years of continuous full-time service such employee shall earn one hundred eighty-eight (188) working hours per year.
- F. *Upon completion of twenty (20) years of continuous full-time service, such employee shall earn two hundred twelve (212) working hours per year (effective September 1, 2009).*
- G. *Employees shall be allowed to accrue a maximum of 424 hours of Vacation time. If an employee's vacation hours reach this maximum, his/her accrual will be frozen until such time that his/her accrual drops below the maximum. There will be no payoff for vacation hours beyond the employee's current accrual maximum.*

15.3 **ACCUMULATION OF VACATION LEAVE** - Accumulation of vacation leave in excess of that earned in a calendar year is allowable upon approval of the department director as authorized by the City Manager by means of an Administrative Regulation. *The current provisions of Administrative Regulation 2.22 will remain in effect until September 1, 2009.*

Vacation Accrual Ceiling- Effective with the pay period that begins on September 1, 2009, the accrual of vacation hours will be capped at the following maximum levels based upon an employee's years of service as follows:

<u>Years of Service</u>	<u>Annual Accrual 40-Hour</u>	<u>Maximum Accrual 40-Hour</u>
1-2	92.0	184.0
3-4	116.0	232.0
5-9	140.0	280.0
10-14	164.0	328.0
15-19	188.0	376.0
20+	212.0	424.0

Once the maximum accrual is reached, the employee will stop accruing additional Vacation Leave. Annual vacation accruals will re-commence in the next pay period following the use of vacation leave which reduces the balance below the maximum allowed. It is the responsibility of the employee to manage accrued vacation time off to not exceed the cap or maximum amount allowed per the chart above.

Scheduling of Vacation Leave - It is the employee's responsibility to request, schedule and use vacation time to avoid exceeding the maximums. However, in the event the maximum is reached, the City has the right to schedule the employee off in order to reduce the accrued hours to be within the cap.

Employees must submit vacation requests in a timely manner in accordance with the Department requirement and as appropriate for the employee's Departmental operational needs.

Departments which have 24 hours a day/7 days a week operations have established request procedures that require significant advance notice so all vacation requests may be coordinated as fairly as possible based upon the operational needs of the Department and or Division.

Departmental Needs & Exception -When an employee submits a timely vacation leave request and the Supervisor and/or the Department Director must deny it due to the operational needs of the City and/or Department, an exception may be granted by the Department Head with a written explanation from the employee's supervisor and advance approval from the City Manager. If such an exception is granted, a cash-out of the excess, accrued vacation time in excess of the maximum amount allowed will be processed for the pay period in question. There will be no approvals for Vacation Leave Accrual beyond the Maximum Accrual Level.

Should a scheduled Vacation Leave have to be cancelled by the Department Head due to the operational needs of the City/Department, an exception for a "Cash-Out" may be granted by the Department Head with a written explanation from the employee's supervisor and advance approval from the City Manager.

Implementation of Vacation Accrual Ceiling - In order to provide a grace period for employees to plan the use of Vacation Leave so Vacation Leave banks are reduced to a manageable level for the employee, a one-time cash-out of up to 40 hours of accrued Vacation Leave time prior to September 1, 2009.

As such, between the effective date of this Memorandum of Understanding and September 1, 2009, all employees have the responsibility for submitting vacation leave requests and utilizing leave time in a manner that allows them to not reach the Vacation Accrual Ceiling on September 1, 2009.

All employees who are at the Maximum Accrual Level or who may reach the Maximum Accrual Level shall utilize the "Cash-Out" and/or "Vacation Leave" options so as to NOT exceed the Vacation Accrual Ceiling. Other than exceptions granted based upon City and/or Departmental needs as approved by both the Department Director and the City Manager, there will no other cash-out of Vacation Leave time beyond the Maximum Accrual rates that have been established.

ARTICLE 16 - SICK LEAVE INCENTIVE PROGRAM

16.1 Employees may accumulate up to a maximum of 480 hours of sick leave credit in a Primary Sick Leave Bank assigned to each employee. Upon reaching the maximum level, the biweekly benefit of 3.69 sick leave hours (4.00 hours, or 104 hours per payroll calendar year effective September 1, 2008), will be distributed in the following manner:

- A. At the employee's option, one-half of the benefit will be:
 - 1. Converted for credit, at the current rate of pay, towards payment of the individual's Post-Retirement Medical Funding Plan. These funds will be used to pay premiums in said plan upon retirement from the City.
- OR -
 - 2. Paid as monetary compensation to the employee at the employee's then current hourly base rate of pay.
- OR -
 - 3. Converted into vacation hours.

- B. The remaining one-half benefit will be placed in the employee's Secondary Sick Leave Bank.

16.2 **PRIMARY SICK LEAVE BANK** - Hours in this bank may be used in accordance with the rules regarding sick leave use in general.

16.3 **SECONDARY SICK LEAVE BANK** - If an employee has a Secondary Sick Leave Bank, hours in that bank will be used first in accordance with the rules regarding sick leave use up to 40 hours per calendar year. Hours in this bank may also be used in the event of a verified non-industrial disability which has resulted in an absence from duty of 60 consecutive calendar days. In this event, sick leave in the Secondary Sick Leave Bank may be used for additional consecutive absences resulting from the disability; or it may be used to supplement LTD should the employee qualify for long term disability benefits. Additionally, an amount of sick leave equal to the hours used from the Primary Bank for said disability may be transferred from the secondary Bank to the Primary provided that such transfer shall not result in there being in excess of 480 hours in the Primary Bank.

16.4 Upon either separation from the City of Costa Mesa, with a minimum of 20 years of continuous honorable service; or upon eligibility for retirement benefits (defined as having applied for and receiving retirement benefits), the employee shall have the option of:

- A. Being paid at his/her then current hourly rate for one-half of the sick leave accumulated in his/her Primary Sick Leave Bank, and one-half of the accumulated sick leave in the Secondary Sick Leave Bank, or,
- B. The employee can choose to apply all credited time (both Banks) towards his or her service credit.

ARTICLE 17 - BEREAVEMENT LEAVE

A maximum of three (3) days of paid leave may be used by an employee in the event of a death in his/her immediate family or the immediate family of his/her spouse. "Immediate family" (*grandparent, father, mother, brother, sister, wife, husband, or child of employee or spouse*) shall be as defined in the Personnel Rules and Regulations regarding the use of sick leave under the M.O.U. This leave may be used in conjunction with the use of sick leave, but the term of absence for any one illness/death shall not exceed five (5) working days. Paid leave under this section shall not accumulate and shall not be carried over into a subsequent calendar year.

ARTICLE 18 - LONG TERM DISABILITY

18.1 An employee is eligible for Long Term Disability ("LTD") benefits under the LTD Plan after sixty (60) calendar days of employment with the City. The City will eliminate the requirement that accumulated vacation, CTO, and sick leave be exhausted prior to LTD eligibility. Once eligible for LTD, an employee may exercise the option of using accumulated vacation, CTO and sick leave in his or her Secondary Sick Leave Bank to supplement LTD payments up to an amount not to exceed 100% of monthly salary.

18.2 A permanent separation from service for disability reasons shall be termed a "medical retirement" whether or not such separated employee receives benefits from either the Retirement or LTD Plan.

18.3 For Police Captains, the LTD premium will be based upon the top-step of the highest paid division manager in the classified service. Any amount necessary to maintain benefit premiums in excess of the City contribution specified above shall be borne entirely by the executive employee.

ARTICLE 19 - LAYOFF PROCEDURES

Because of material change in duties or organization of the Costa Mesa Police Department, or shortage of work or funds, employees covered by this M.O.U. may be laid off. Thirty (30) calendar days before the effective date of a layoff, the appointing authority shall notify the Administrative Services Director of the intended action with reasons therefore. Any Employee who is laid off shall be considered for re-employment as provided by the Personnel Rules and Regulations.

ARTICLE 20 - DISCIPLINARY PROCEDURES

20.1 Any conflict or discrepancy between this Article and Rule 14 of the Personnel Rules and Regulations shall be clarified in accordance with this Article.

20.2 **BASIS FOR DISCIPLINARY ACTION** - The tenure of every City employee shall be based on reasonable standards of personal conduct and job performance. Failure to meet such standards shall be grounds for appropriate disciplinary action, which shall be commensurate with the seriousness of the offense and with consideration of the employee's prior performance record. Disciplinary action shall be based upon any of the following grounds:

- A. Fraud in securing employment or making a materially false statement on an application for employment or on any supporting documents furnished with or made a part of any application.
- B. Incompetence such as failure to comply with the minimum standards for an employee's position for a significant period of time.
- C. Neglect of duty, such as failure to perform the duties required of an employee's position.
- D. Willful disobedience and insubordination such as a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position.
- E. Dishonesty involving or affecting employment.
- F. Being under the influence of alcohol or intoxicating drugs while on duty without a prescription. Unauthorized use of alcohol or any intoxicating drugs while on duty, or bringing alcohol or controlled substances onto any City work area, including work areas, which are located away from the City Hall or Police Headquarters if the employee is on duty, without authorization from management.
- G. Addiction to or abuse of alcoholic beverages, narcotics or any habit forming drug, in violation of the City's drug testing policy.
- H. Inexcusable absence without leave.
- I. Conviction of a felony or conviction of a misdemeanor. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or misdemeanor is deemed to be a conviction within the meaning of this section.
- J. Discourteous treatment of the public.
- K. Improper or unauthorized use of City property.
- L. Violation of the rules and regulations of the Police Department.
- M. Any act or conduct undertaken which is of such a nature that it causes discredit to fall upon the City, the employee's department or division, whether during or outside of duty hours.

- N. Failure to maintain proper conduct during working hours causing discredit to the employee's department or division.
- O. Fighting, threats of bodily harm or causing an assault on a fellow worker without justification.
- P. Misuse of City records or information obtained for use outside the scope of their employment.
- Q. Falsification of City records, including the intentional omission of relevant or required information.
- R. Willful destruction of City property
- S. Abuse of sick leave.
- T. Knowingly failing to follow the procedures governing grievances when pursuing a grievance.
- U. Inattention to duty, tardiness, carelessness or negligence in the care and handling of City property, private property in their care or Departmental business.
- V. The employee's failure to resolve a physical or mental infirmity(s) or defect(s), when it is within the capacity of the employee to do so and when so directed by his/her supervisor.
- W. Outside employment, which conflicts with the employee's position or the mission of the Department, and is not specifically authorized by the Chief of Police.
- X. Acceptance from any source of a reward, gift or other form of remuneration in addition to the employee's regular compensation, as a personal benefit to the employee for actions performed in the normal course of the employee's assigned duties. This does not include items of recognition, such as commendation, certificates and other such incidents of office which may be presented to officers in recognition of superior performance or a job well done, so long as the presentation does not include any sort of payment or compensation for the performance of the officer's duty.
- Y. Falsification of any City report or record, or of any report or record required to be, or, filed by the employee or which the employee causes to be filed.
- Z. Violation of any of the provisions of the City Code, ordinances, resolutions, or any rules, regulations or policies which may be prescribed by the City Council, City Manager, department manager or supervisor.
- AA. Political activities precluded by State or Federal law.
- BB. Other acts which are incompatible with service to the public.
- CC. Violation of the City's harassment policy.

20.3 **TYPES OF DISCIPLINE** - The following procedures shall be followed when, in the judgment of the Chief of Police, an employee has committed an act or omission that justifies disciplinary action. Except for written warnings/reprimands, the Chief of Police or his/her designee shall advise employees of contemplated disciplinary actions in writing and allow the employees reasonable opportunity to respond to such charges prior to taking action.

When life, or employee safety, is endangered, or the self-control of an employee is questionable, a supervisor shall take immediate action to reduce or eliminate the danger or to establish control. In case of an emergency, an employee shall have all of the rights set forth herein, except, in the discretion of the appointing authority, an employee may be placed on administrative leave with pay pending predisciplinary procedures. In such a circumstance the Administrative Services Director must be contacted immediately.

The following are the applicable types of discipline:

- A. Warning/Reprimand: If the warning/reprimand is in writing, the Chief of Police shall give the employee a copy and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. A written warning/reprimand shall contain a description of the events, which necessitated the action, the specific expectations of change or improvement to be demonstrated by the employee, and notice of further adverse action, which might be taken against the employee in the event a change in the employee's conduct or performance does not occur. The reprimanded employee shall have the right to attach a written rebuttal to this warning/reprimand.
- B. Suspension: The Chief of Police may suspend an employee with or without pay from his/her position. Any placement of an employee on administrative leave pending predisciplinary response by the employee shall be with pay. The appointing authority shall advise the Administrative Services Director in writing of such intended action and shall give a copy of the statement to the employee. The written statement shall contain a description of the events which necessitated the suspension, a statement of the charges, notification that the employee may review and be provided with the materials leading to the suspension, the right of the employee to meet with the appointing authority and/or to respond in writing within a reasonable time frame to the charges, and notice of further action in the event a change by the employee does not occur. The minimum period of suspension shall be forty (40) hours. Unless extended by approval of the City Manager or Assistant City Manager on written recommendation of the Chief of Police, the maximum period of suspension shall be thirty (30) calendar days. These procedures are predisciplinary in nature.
- C. Demotion or Reduction in Pay: The Chief of Police shall advise the Administrative Services Director in writing of his/her intention to demote or reduce the salary of an employee prior to taking such action. In demoting an employee or reducing his/her salary, the Chief of Police shall prepare a written notice and shall give a copy of said notice for demotion or reduction in pay to the employee and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. The written statement shall contain a description of the events which necessitated the demotion, a statement of the charges, notification that the employee may review and be provided with the materials leading to the demotion, the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable time frame to the charges, and notice of possible further action in the event a change or improvement by the employee does not occur. These procedures are predisciplinary in nature.

- D. Dismissal: The Chief of Police shall advise the Administrative Services Director in writing of his/her intention to dismiss an employee prior to taking such action. In dismissing an employee, the Chief of Police shall prepare a written notice and shall give a copy of said notice of dismissal to the employee and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. The written statement shall contain a description of the events which necessitated the dismissal, a statement of the charges, notification that the employee may review and be provided with the materials leading to the dismissal, and the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable time frame to giving the employee notice of the charges. These procedures are predisciplinary in nature.

20.4 **NOTICES** - Written notices will be given to the employee in person whenever possible and the employee's signature obtained to indicate receipt. In the absence of personal service, the notice may be sent by registered mail.

20.5 **EMPLOYEE'S RESPONSE** - An employee's opportunity to respond to the appointing authority is not intended to be an adversarial hearing. An employee has the right to have a representative of his/her own choosing at the meeting. The employee need not be accorded the opportunity to cross-examine a departments' witnesses, nor to present a formal case in opposition to the proposed discipline. However, the limited nature of this response does not obviate the appointing authority's responsibility to initiate further investigation if the employee's version of the facts raises doubts as to the accuracy of the Chief of Police's information leading to the discipline proposal. An employee may elect not to respond, thereby waiving any further predisciplinary response.

The appointing authority will evaluate the proposed discipline in light of the employee's response, if any. Within five (5) working days of the employee's response, or other deadline for response established by the parties, the decision of the appointing authority will be transmitted in writing to the employee. Service of the decision will be in person or by registered mail.

20.6 **APPEAL PROCEDURES** - Any permanent employee in the classified service shall have the right to appeal any termination, suspension of over twenty (20) hours, reduction in salary, or non-probationary demotion. The appeal process shall not be applicable to those positions which may be deemed exempt or to probationary employees. This appeal process shall not be applicable to verbal and written reprimands, suspensions of twenty (20) hours or less, performance evaluations and denial of merit increases.

An employee desiring to appeal the appointing authority's decision shall have ten (10) calendar days after receipt of the response to file an appeal. The employee's request for appeal must be addressed to the Administrative Services Director and received in the Administrative Services Department and date stamped by the Administrative Services Department within the 10-day period.

If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the appointing authority shall be considered conclusive and shall take effect as prescribed. If, within the 10-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Administrative Services Department, an advisory arbitration appeal hearing shall be established as follows:

- A. The employee shall file a written request with the Administrative Services Department for advisory arbitration.

- B. At the initiation of this M.O.U. and the beginning of each subsequent calendar year, a list of registered arbitrators will be certified by the parties. CMPMA and the City shall each submit the names of five (5) arbitrators to complete a listing of ten (10) arbitrators. The arbitrators shall be registered with the American Arbitration Association, California State Conciliation Service or some other agreed upon recognized reputable source. Within seven (7) calendar days of the employee's request for an arbitration appeals hearing, each party may strike three or less names from the established list. If the employee or CMPMA fails to strike within thirty (30) calendar days, the employee is considered to have abandoned the appeal. If a mutual agreement cannot be reached between the parties as to the selection of an arbitrator from the remaining names, the matter will be heard by the listed arbitrator who is first available to hear the matter within the time frames of the process. The party to have the first opportunity to strike a name from the list of ten arbitrators shall be determined by lot. The priority of striking of names from the arbitrator list shall then alternate from one party to the other each time advisory arbitration is invoked by the same parties.
- C. The selected arbitrator shall serve as the hearing officer.
- D. Where practicable, the date for a hearing shall not be less than 20 calendar days, nor more than 60 calendar days, from the date of the filing of the appeal with the Administrative Services Director. The parties may however stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing and the identity of the hearing officer to whom the matter has been assigned.
- E. All hearings shall be private, however, the employee may request to open the hearing to the public.
- F. Subpoenas and subpoenas duces tecum pertaining to a hearing shall be issued at the request of either party to the Hearing Officer, not less than seven (7) calendar days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.
- G. The hearing need not be conducted in accordance with technical rules relating to evidence, civil procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.
- H. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the employee does not

testify in his/her own behalf, he/she may be called and examined by an opposing party, as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary.

- I. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
 1. The party imposing discipline shall be permitted to make an opening statement;
 2. The appealing party shall then be permitted to make an opening statement;
 3. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence;
 4. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof, the employee bears the burden of producing evidence for any affirmative defenses asserted;
 5. The parties may then, in order, respectively offer rebutting evidence, unless the hearing officer for good reason permits them to offer evidence upon their original case;
 6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- J. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on a preponderance of evidence presented. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her opinion as soon after the conclusion of the hearing as possible and in no event later than 30 days after conclusion of the hearing, absent a stipulation from the parties that a longer period of time is warranted. His/her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.
- K. The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee. He/she may not recommend discipline more stringent than that issued by the Chief of Police.
- L. The hearing officer's opinion and recommendation shall be filed with the City Manager or *designee*, with a copy sent to the appealing employee, and the Administrative Services Director and shall set forth his/her findings and recommendations. If it is a dismissal hearing and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the date the employee is recommended to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.

- M. The City Manager or *designee* shall then review the hearing officer's opinion and recommendation and render a decision on the appeal within thirty days of the filing of said opinion and recommendation. The decision of the City Manager or *designee* shall be final and conclusive. Copies of the City Manager's or *designee's* decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager or *designee*. A copy of said decision shall also be served upon the parties and the employee by first class mail.
- N. Each party shall bear equally the cost of facilities, fees and expenses of the hearing officer if the officer is not an employee of the City. These fees also include the fee of the court reporter and the costs of preparing the transcripts of the hearing. Each party shall bear the cost of its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee. This process may not apply to mutual settlements by the parties which result in an arbitration fee.
- O. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Manager or *designee*, the time of such discipline shall relate back to the date the employee was disciplined or after delivery of the City Manager's or *designee's* decision if discipline was stayed pending the arbitration hearing. If the City Manager's or *designee's* decision results in a reduction or elimination of a loss of pay which was previously recommended by the employee's appointing authority, the pay loss shall be restored to the employee.
- P. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this section, including the appeal of the City Manager's or *designee's* final determination into the California Court System, which must be made in accordance to the time standards and procedures established by Section 1094.6 of California's Code of Civil Procedure.

20.7 A permanent Police Lieutenant shall have the right to appeal a probationary demotion, suspensions of 20 hours or less, written reprimands, or job reassignment in the following manner:

- A. The appointing authority shall cause to be served on the employee affected, by registered mail or personal delivery, a statement signed by the appointing authority of the specific action against the employee. This statement shall clearly inform the employee that he/she has the right, within five (5) working days after receipt of this notice, to request an informal hearing on the action by filing the request with the Administrative Services Director.
- B. If within the five (5) day appeal period the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the City shall be considered conclusive and shall take effect as prescribed.
- C. If within the five (5) day appeal period the employee involved files a written notice of appeal with the Administrative Services Director a time for an appeal hearing before the City Manager or *designee* shall be established. The date for a hearing shall not be less than ten (10) days, not more than thirty (30) days, from the date of the filing of the appeal, unless the parties stipulate to a different date. All interested parties shall be notified in writing of the date, time, and place of the hearing at least seven (7) calendar days prior to the hearing.

- D. The City Manager or *designee* shall conduct an informal hearing on the appeal. Each party shall have the opportunity to present all relevant information in support of its respective position. These proceedings may be electronically recorded and either party shall have the right to cause them to be reported by a certified shorthand reporter at the party's expense.
- E. Within ten (10) working days after the conclusion of the hearing, the City Manager or *designee* shall deliver to the employee a final written decision, and serve same by first class mail upon the employee, which shall either: (a) affirm the decision; (b) modify it by: (1) holding that certain charges were not established by a preponderance of the evidence, and/or (2) reducing the penalty, or (3) overturn the decision in its entirety. Said decision shall be final and binding on the parties and the employee, subject to their right to seek judicial review pursuant to 1094.5 and 1094.6 of the California Code of Civil Procedure.

ARTICLE 21 - GRIEVANCE PROCEDURES

21.1 The following guidelines supersede Sections 3 and 4 of Rule 25, Grievance Procedure, of the City's Personnel Rules and Regulations.

21.2 **DEFINITION** - A "grievance" is a formal, written allegation by a grievant that he/she has been adversely affected in the terms and conditions of his or her employment by violation, misinterpretation or misapplication of the specific provisions of the Memorandum of Understanding and/or provisions of the Personnel Rules and Regulations. Other matters for which a special method of review is provided by law, ordinance, resolution, or by administrative regulations and procedures of the City, are not within the scope of this procedure. This procedure is not to be used in lieu of the Discipline Appeals Procedure.

21.3 PROCEDURE

- A. **Informal Resolution:** Every effort shall be made to resolve a grievance through discussion between the employee and his/her immediate supervisor. It is the spirit and intent of this procedure that all grievances are settled quickly and fairly without any discrimination against employees who may seek to resolve a grievance by invoking this procedure. Every effort should be made to find an acceptable solution at the lowest level of supervision. Within fifteen (15) calendar days after a grievant knew, or by reasonable diligence should have known, of the condition upon which a grievance may be based, the grievant shall attempt to resolve it by an informal conference with the grievant's immediate supervisor.
- B. If the problem cannot be resolved between the employee and the supervisor, the employee may, within seven (7) calendar days from the date of receiving the answer from his/her supervisor, the grievant may request and be granted an interview with the division manager, if one exists, in order to further discuss the grievance.
- C. If the division head and employee cannot reach a solution to the grievance, the employee may, within seven (7) calendar days from the date of receiving the answer from the division manager, request, in writing, and be granted an interview with the Chief of Police.

- D. The Chief of Police shall render his/her decision in writing within fifteen (15) calendar days of receiving the grievance. If the Chief of Police and employee are unable to arrive at a satisfactory solution, the employee may, within ten (10) calendar days from the date of the decision by the Chief of Police, submit a written request with the Administrative Services Department for advisory arbitration.
- E. At the initiation of this MOU and the beginning of each calendar year, a list of registered arbitrators will be certified. CMPMA and the City shall each submit the names of five (5) arbitrators to complete a listing of ten (10) arbitrators. The arbitrators shall be registered with the American Arbitration Association, California State Conciliation Service or some other agreed upon recognized reputable source. Within seven (7) calendar days of the employee's request for an arbitration appeals hearing, each party may strike up to three names from the established list. If the employee or CMPMA fails to strike within thirty (30) calendar days, the employee is considered to have abandoned the appeal. If a mutual agreement cannot be reached between the parties as to the selection of an arbitrator from the remaining names, the matter will be heard by the listed arbitrator who is first available to hear the matter within the time frames of the process. The party to have the first opportunity to strike a name from the list of ten arbitrators shall be determined by lot. The priority for striking names from the arbitrator list shall then alternate from one party to the other each time advisory arbitration is invoked by these parties.
- F. The selected arbitrator shall serve as the hearing officer.
- G. Where practicable, the date for a hearing shall not be less than 20 calendar days, nor more than 60 calendar days, from the date of the filing of the appeal with the Administrative Services Director. The parties may however stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing and the identity of the hearing officer to whom the matter has been assigned.
- H. All hearings shall be private, however, the employee may request that the hearing be open to the public.
- I. Subpoenas and subpoenas duces tecums pertaining to a hearing shall be issued at the request of either party to the Hearing Officer, not less than seven (7) calendar days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.
- J. The hearing need not be conducted in accordance with technical rules relating to evidence, civil procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.

- K. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the employee does not testify in his/her own behalf, he/she may be called and examined by an opposing party as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary.
- L. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
1. The party appealing the grievance shall be permitted to make an opening statement;
 2. The City's representative shall then be permitted to make an opening statement;
 3. The party appealing the grievance shall produce the evidence on his/her part; the employee bears the burden of proof and burden of producing evidence;
 4. The City's representative may then open his/her defense and offer his/her evidence in support thereof, the City bears the burden of producing evidence for any affirmative defenses asserted;
 5. The parties may then, in order, respectively offer rebutting evidence, unless the hearing officer for good reason, permits them to offer evidence upon their original case;
 6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- M. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on a preponderance of evidence presented. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her opinion as soon after the conclusion of the hearing as possible and in no event later than 30 days after the conclusion of the hearing, absent a stipulation from the parties that a longer period of time is warranted. His/her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.
- N. The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the action invoked against the employee. He/she may not recommend more stringent than that issued by the Chief of Police.

- O. The hearing officer's opinion and recommendation shall be filed with the City Manager or *designee*, with a copy sent to the charged employee, and the Administrative Services Director and shall set forth his/her findings and recommendations.
- P. The City Manager or *designee* shall then review the hearing officer's opinion and recommendation and render a decision on the appeal within thirty days of the filing of said opinion and recommendation. The decision of the City Manager or *designee* shall be final and conclusive. Copies of the City Manager's or *designee's* decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, and a copy of said decision shall also be served upon the parties and the employee by first class mail.
- Q. Each party shall bear equally the cost of facilities, fees and expenses of the hearing officer if the officer is not an employee of the City. These fees also, include the fee of the court reporter and the costs of preparing the transcripts of the hearing. Each party shall bear the cost of its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee. This process shall not apply to mutual settlements by the parties, which result in an arbitration fee.
- R. If the time limits for processing the employee's grievance at any step defined above should elapse, the grievance shall be considered withdrawn. Time limits may be extended by mutual consent. If the City fails to respond within the prescribed time limits, the grievance will be deemed to have been denied and the employee may go to the next step. If the City Manager or *designee* fails to respond within the prescribed time limit, the grievance will be deemed to have been denied and the employee will be deemed to have exhausted his/her administrative remedy.
- S. The employee may request the assistance of another person of his/her own choosing in preparing and presenting his/her appeal at any level of review. In the event the employee desires the presence of a representative who is an employee of the City, he/she shall make such request through the assisting employee's supervisor and the supervisor shall make the necessary arrangements for the employee representative to be present.
- T. The employee and/or his/her representative may use a reasonable amount of work time as determined by the appropriate supervisor or Chief of Police in presenting the appeal. However, no employee shall absent himself/herself without first being excused by his/her supervisor.
- U. No employee shall be required to be represented by an employee organization in processing a grievance.
- V. Employees shall be assured freedom from reprisal for using the grievance procedures by both the City and CMPMA.
- W. The settlement terms of a grievance, which is processed by an employee individually or by an informally recognized, employee representative shall not conflict with the express provisions of this M.O.U.

- X. A group grievance may be filed when one (1) set of circumstances or occurrences affects more than one (1) employee in the same manner or to the same extent. The group may file one (1) document, which all members of the group have read and signed. Members of the group shall be limited to those who have signed the grievance. The resolution of a group grievance may not be consistent among all employees in the group grievance due to differences in the circumstances or occurrences that brought about the grievance.
- Y. A group grievance affecting all members of an employee organization may be brought by the employee organization itself. In such case the procedure shall be commenced directly at the Chief of Police level within fifteen (15) working days after authorized representatives of the employee organization knew or by reasonable diligence should have known of the condition giving rise to the grievance and shall be subject to all applicable time limitations and the provisions set forth above.

ARTICLE 22 - AMERICANS WITH DISABILITIES ACT (ADA)

22.1 Because the ADA requires accommodations for individuals protected under the Act, and because these accommodations must be determined on an individual case-by-case basis, the parties agree that the provisions of this agreement may be disregarded in order for the City to avoid discrimination relative to hiring, promotion, granting permanency, transfer, layoff, reassignment, termination, rehire, rates of pay, job and duty classification, seniority, leaves, fringe benefits, training opportunities, hours of work or other terms and privileges of employment.

22.2 The Association recognizes that the City has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. The Association will be notified of these proposed accommodations prior to implementation by the City.

22.3 Any accommodation provided to an individual protected by the ADA shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in the grievance/arbitration procedure.

ARTICLE 23 - HOLIDAY PAY

23.1 Employees covered by this agreement shall be entitled to receive twelve (96 hours) holidays during the calendar year. The following dates and such other days or portion of days as may be designated by the City Council shall be observed as holidays on which City Hall will close: January 1, New Year's Day; third Monday in January, Martin Luther King's Birthday; third Monday in February, Washington's Birthday; last Monday in May, Memorial Day observance; July 4, Independence Day; first Monday in September, Labor Day; November 11, Veteran's Day observance; fourth Thursday in November, Thanksgiving; the Friday immediately following Thanksgiving; and December 25, Christmas Day. February 12, Lincoln's Birthday, and September 9, California's Admission Day, shall be recognized as holiday observances on which City Hall will remain open. In the event any of the above holidays fall on Saturday, the preceding Friday will be observed. In the event any of the above holidays fall on Sunday, the following Monday will be observed.

23.2 Employees may elect to use available holiday time for additional time off, or they may cash out available holiday time for pay to a maximum of 96 hours per calendar year.

23.3 Prior to the beginning of each calendar year, employees must irrevocably elect for the next year to either take time off for holidays or cash out holiday pay. Employees who choose the cash out option will receive the holiday pay bank of 96 hours beginning the first payperiod for the new payroll year. The holiday pay bank may be cashed out at anytime during the year. At the end of the payroll year any remaining holiday pay will be cashed out unless the employee previously elects to have it applied as accrued vacation. Throughout the payroll year, if an employee, who has selected Option 1, decides to take a holiday off, they must use either vacation or executive leave, not holiday time.

23.4 Those employees who choose to take time off in lieu of the holidays will receive a bank of 120 hours. Those employees who choose to take time off for the holidays-will not have a holiday leave bank. They will be required to record on their timesheets the hours that correspond with their regular workday shift and schedule (i.e., those on the 4/10 schedule, will record 10 hours for holiday time). The hours will be available the first payperiod of the new payroll year. Those employees who elect this option must, as in the past, make a request at least four (4) working days prior to the requested time off. Approval of the time off request will be based upon available staffing needs and the needs of the employee. At the end of the payroll year, any remaining hours will be carried over to the next payroll year (however, the subsequent year's bank, or cash out, shall be reduced by the number of hours carried over).

23.5 If an employee separates from the service of the City and has used or been paid for holiday pay in advance of the date(s) or day(s) the holidays actually occurred, the City will deduct the cash value for holiday benefits already paid, but unearned at the time of separation from the final paycheck.

23.6 At the end of the calendar year any remaining holiday pay will be cashed out unless the employee elects to have it applied as accrued vacation.

23.7 Employees hired after January 1 of each year are eligible for a pro-rata amount of holiday pay during the calendar year.

ARTICLE 24 - UNIFORM MAINTENANCE ALLOWANCE

24.1 The City provides uniforms or uniform allowance for employees represented by the Association. The City will continue to replace, repair and maintain uniforms worn in the line of duty. The average cost of the uniforms/uniform allowances are reported as special compensation for retirement calculation purposes *and is currently reported as \$17 per payperiod (2007)*.

24.2 Officers not currently assigned to the Patrol Division will have a complete uniform for duty wear. The officers may replace worn equipment or uniforms in the same manner as officers assigned to the Patrol Division in addition to the \$500.00 annual clothing allowance currently paid to employees working plain clothes assignments.

ARTICLE 25 - SENIORITY

Seniority is a privileged status attained by length of continuous and uninterrupted service in the respective classification. Seniority for Police Lieutenant, is based on time in grade.

ARTICLE 26 - WORK SCHEDULES

The current work schedule for uniformed personnel and detectives is the four day work week, ten hour day, (4/10). This schedule will be in effect for the duration of the M.O.U. unless mutually modified pursuant to the Meet and Confer process. Seniority will determine the order in which employees select their yearly work schedules.

The annual selection of schedules and shifts/watch (watch is synonymous with shift) for Patrol and Traffic personnel shall begin upon the completion of the rotation selection and shall conclude as soon as practical November 30, preceding the January starting date of the new shifts.

ARTICLE 27 - PROHIBITION OF TOBACCO

The on-duty use of tobacco (cigarettes, cigars and related tobacco products) is prohibited for all represented employees.

ARTICLE 28 - PHYSICAL FITNESS COMMITTEE

The City proposes a joint committee of CMPA, CMPMA and Human Resources members to explore physical fitness testing with a medical component before September 2008. The goals of the committee will be to encourage and maintain good physical condition appropriate to the position and to evaluate fitness testing and make other program recommendations.

ARTICLE 29 - MEET AND CONFER

29.1 The City agrees to give the Association notice of the obligation to meet and confer within two weeks upon the adoption of any state or federal law or regulation, or after the passage of any Act or decision of any court of competent jurisdiction that has significant financial impact upon the City.

29.2 The City proposes during the term of the agreement to reopen for the purposes of meeting and conferring with CMPMA in the event the City furnishes to the Costa Mesa Police Association a new and/or an increased benefit that is held in common with CMPMA members.

29.3 The parties agree to meet and confer on wages, hours and other terms and conditions of employment to be effective on or about September 1, 2010.

REPRESENTATIVES OF THE COSTA MESA
POLICE MANAGEMENT ASSOCIATION

RONALD A. SMITH
Police Captain

LESTER H. GOGERTY
Police Captain

ALLEN D. HUGGINS
Police Lieutenant

TIMOTHY J. SCHENNUM
Police Lieutenant

REPRESENTATIVES OF THE CITY OF
COSTA MESA

STEPHEN N. MANDOKI
Administrative Services Director

TERRI L. CASSIDY
Human Resources Manager

COLLEEN O'DONOGHUE
Assistant Finance Director

LANCE M. NAKAMOTO
Human Resources Administrator