MEMORANDUM OF UNDERSTANDING

Costa Mesa

Between The Representatives
Of The Costa Mesa Police Association
And The City of Costa Mesa

2014
2018

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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 Association (hereinafter referred to as "ASSOCIATION" or "CMPA") as the exclusive representative and the agent for collective bargaining purposes of the sworn police officers employed in the Costa Mesa Police Department in the job classifications set forth below, excluding all non-sworn employees of said 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, the City Council will consider the MOU in accordance with Ordinance 12-7, the COIN Ordinance and thereafter 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, "sick-outs," 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 July 1, 2014, and expire in the payperiod that includes June 30, 2018.

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.

The pay rates for the classifications covered by this Agreement shall be increased by: 1) 3% effective the first payroll period inclusive of the City Council adoption of the 2014-2018 MOU; 2) an additional 3% effective the first full pay period inclusive of July 1, 2016; and, 3) an additional 3% effective the first full pay period inclusive of July 1, 2017.

ARTICLE 4 - HEALTH INSURANCE

4.1 The City shall continue to provide the amounts 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 MOU 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 Effective January 1, 2008, the City's contribution amount increased to $631 per month.

4.3 **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 except for the following reasons:

- 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.
- Disciplinary actions will not apply to this article/qualification i.e. suspensions without pay.

4.4 **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 increased to $97 in 2008. Starting calendar year 2009, the calculated adjustments have been based upon the medical care component of the CONSUMER PRICE INDEX-URBAN (CPIU). During 2013, the amount increased to $115 and will increase to $119 in 2014. The amount of the deduction from the flex bucket is annually adjusted pursuant to Government Code § 22892(b)(F)(2).

The City and CMPA 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.

ARTICLE 5 - RETIREMENT

5.1 **CalPERS** - Unit members who do not meet the definition of "new member" under the California Public Employees' Pension Reform Act of 2013 (PEPRA) (those unit members shall be referred to as "classic members") are enrolled in the Local Safety retirement benefit of "3% at 50" pursuant to Government Code § 21362.2.

5.2 Classic members shall individually pay 100% of their statutorily required member contribution equal to 9% of pensionable income to CalPERS, effective as follows: 1) effective the first payroll period commencing on or after City Council adoption of the 2014-2018 MOU, classic members shall pay a portion of their member contribution equal to 3% of pensionable income to CalPERS; 2) effective the first full pay period on or after July 1, 2016, classic members shall pay an additional 3% of pensionable income to CalPERS; and, 3) effective the first full pay period on or after July 1, 2017, classic members shall pay an additional 3% of pensionable income to CalPERS.

5.3 Classic members covered by this Agreement shall contribute 5% of the employee's pensionable income towards the employer retirement contribution, effective the first payroll period commencing on or after City Council adoption of the 2014-2018 MOU pursuant to California Government Code § 20516(a). To the extent permitted by CalPERS and the IRS regulations, this contribution shall be implemented through payroll deductions on a pre-tax basis.

5.4 **There shall be no sunset date to any provision in this Article 5.**

5.5 **The California Public Employees' Pension Reform Act of 2013 (PEPRA)** - As it may from time to time exist, the PEPRA shall in its entirety be given full force and effect. Any provision in the 2014-2018 MOU which contradicts any provision of the PEPRA, shall be deemed null and void, with the contrary

PEPRA provision(s) being given full force and effect. Therefore, no provision of PEPRA shall be deemed to impair any provision of the 2014-2018 MOU or any MOU, Agreement, Rule or Regulation predating the 2014-2018 MOU. PEPRA includes, but is not limited to, the provisions described below:

Unit members hired on and after January 1, 2013, who are deemed to be a "new member" as defined in Government Code § 7522.04(f), shall individually pay an initial Member CALPERS contribution rate of 50% of the normal cost rate for the Defined Benefit Plan in which said "new member" is enrolled, rounded to the nearest quarter of 1%, **or the current contribution rate of similarly situated employees, whichever is greater**, pursuant to Government Code section 7522.30.

If necessary, effective the first full pay period on or after July 1, 2017, unit members who are "new members" shall also contribute a portion of the employee's pensionable income toward the employer's retirement contribution to cause their total member and employer contribution to equal 14% of pensionable income. Unit members who are "new members" shall be enrolled in the PEPRA provided for 2.7% @ 57 retirement formula (Govt. Code § 7522.25(e)).

Unit members who are "new members" on and after January 1, 2013, shall have "final compensation" measured by the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months (Section 7522.32(a).), and their retirement benefits shall be calculated based on "pensionable compensation" (Section 7522.10) rather than "compensation earnable" (Section 20636).

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

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. 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.

ARTICLE 8 - BENEFIT REVIEW COMMITTEE

The Association shall maintain two representatives 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 classifications of Police Officer, Senior Police Officer, and Police Sergeant 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.

A. Intermediate Certificate - Provides compensation at a rate which is 5% above basic monthly salary as provided on the basic salary schedule to qualifying officers.

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.

3. Possession of an Intermediate 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. Advanced Certificate - Provides compensation at a rate which is 10% above basic monthly salary step as provided on the basic salary schedule to qualifying officers.

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.

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 *the Human Resources Division* so that the appropriate incentive award can be granted. If the employee has not, in the opinion of the department director, 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

11.1 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 employee's department director and approved by the Assistant CEO/Administrative Services Director. **An employee requesting tuition reimbursement must obtain prior approval before enrollment per Administrative Regulation 2.1**. 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.

11.2 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 *Chief of* Police or designee.

ARTICLE 12 - OVERTIME

12.1 Employees will be compensated only for overtime authorized in advance by an appropriate supervisor. Generally, overtime shall be discouraged unless absolutely necessary. An employee may, with

the Chief of Police's (or designee's) approval, accumulate compensatory time to be taken during subsequent pay periods, with departmental approval, up to a maximum accumulation of *eighty (80)* hours for each employee. Compensatory time off will be granted upon a reasonable request of the employee, and pursuant to the provisions of Police Manual Section 175 et. al. No more than 40 hours of compensatory time may be taken at any one time. An employee may cash out up to 40 hours of compensatory time on any given pay period. Effective the first payroll period commencing on or after adoption by the City Council of the 2014-2018 MOU, employees having compensatory time in excess of eighty (80) hours will receive a 1-time MOU implementation cash-out of all compensatory time in excess of eighty (80) hours.

12.2 Employees will not be eligible for overtime compensation during the same 24-hour day in which they have taken or utilized paid leave time (i.e. vacation, sick, holiday, compensatory time) unless the employee receives prior approval from the Department director or designee. If the employee has utilized less than a full shift of paid leave time, he or she will only be compensated for overtime pay (11/2) when they exceed their regularly scheduled hours during that work day or shift.

12.3 The Chief of Police has discretion over the establishment of an overtime policy and procedure that will be implemented if compensatory time off requests reduce staffing below minimum staffing levels. The Chief agrees to meet and consult with CMPA before implementing this overtime policy and procedure.

12.4 A written request for Compensatory Time Off (CTO) shall be made and approved no later than 24 hours prior to the requested time off. The Watch Commander/Team Sergeant of the individual requesting C.T.O. shall approve or deny the request. This policy is subject to suspension in emergency situations or at the discretion of the Chief of Police or his/her designee. Employees assigned to rotating shifts may not submit a CTO request more than 30 calendar days in advance of the shift rotation in which the CTO day off would fall.

12.5 The practice of shift trading shall be voluntary on behalf of each employee involved in the trade. The trade must be due to the employee's desire or need to attend to a personal matter and not due to the department's operations. The employee providing the trade shall not have his/her compensable hours increased as a result of the trade; nor shall the employee receiving the trade have his/her compensable hours decreased as a result of the trade. Any hours worked beyond the normal workday will be credited to the individual actually doing the work. "Paybacks" of shift trades are the obligation of the two employees involved in the trade. Paybacks are to be completed within the shift deployment of the initial shift trade. Any dispute as to paybacks is to be resolved by the involved employees, and under no circumstances will the department be obligated for any further compensation whatsoever to any of the involved employees. The department is not responsible in any manner for hours owed to employees by other employees that leave the employment of the City or are assigned other duties. Shift trades are not subject to the grievance procedure. If one individual fails to appear for the other (regardless of the reason), the person who was "traded in" will be listed as absent without leave and may be subject to disciplinary action. A record of all initial shift trades and "paybacks" shall be maintained by the involved employees on forms provided by the department ("Shift Trade Log").

12.6 Fills for overtime shifts shall first be available to full-time members of the Division having the overtime and within the same classification, Police Officer for Police Officer (includes: Police Officer, *and* Senior Police Officer) and Sergeant for Sergeant. Superior ranking officers may fill a lower ranking position if it has not been filled a minimum of 48 hours prior to the start of the scheduled shift, or if it is the only available means of filling the vacancy. Superior ranking employees may only voluntarily fill an overtime shift vacancy in their immediate subordinate rank (e.g. Sergeant may fill for an Officer vacancy).

12.7 Members of the Department may sign up for overtime outside their Division; however, they may be bumped out of the overtime assignment up to forty eight (48) hours before the shift begins by a full time member of the Division with the need for the overtime.

12.8 A bumping employee shall attempt to notify the bumped employee by telephone, and he or she shall also provide a written memo to the bumped employee's Department mail box or office. The bumping employee shall also notify and provide a copy of the written memo to the acting Watch Commander or Bureau Commander. The acting Watch Commander or Bureau Commander shall make a notation of the bump in the respective schedule books and retain a copy of the written memo.

12.9 Employees who sign up for overtime outside their Division shall contact the acting Watch Commander or Bureau Commander within twenty-four (24) hours prior to the commencement of the overtime shift which they have signed up for to determine if they have been bumped.

12.10 All overtime which exceeds forty (40) hours shall be posted on the overtime board appropriate for the Division/Bureau. The overtime will be available to be filled based on the above defined process.

12.11 Once an employee has signed up to work an overtime shift, it is that employee's responsibility to ensure the shift is filled. Employees may only remove their name from a shift they have volunteered to work if they have found a replacement or they receive prior approval from a ranking supervisor.

ARTICLE 13 - SPECIALTY ASSIGNMENT PAY

13.1 The City and Association recognize that special assignments out of the scope of the covered classifications of Police Officer, Senior Police Officer, and Police Sergeant 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. According to California Code of Regulations Sections 571(a) and (b) the premium and special pays herein will be reported to CalPERS as special compensation.

13.2 **FIELD TRAINING OFFICER PAY** - The City will continue paying selected Police Officers Field Training Officer (FTO) assignment pay (*12.5%* of base salary) on an as needed basis who meet the Department established standards. This FTO assignment pay will be paid while the employee is assigned and scheduled to provide training. The minimum period of time an employee will be authorized to receive the pay is one (1) shift.

13.3 **UNIFORM ASSIGNMENT PAY** - Employees in the classifications of Senior Police Officer and Police Sergeant 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. All Police Officers who are receiving Uniform Assignment Pay upon the effective date of this agreement shall continue to receive such pay. Uniform pay shall also be applicable to employees in the Police Officer classification who are regularly assigned to uniform automobile/motorcycle patrol or traffic enforcement after three years of service with the City of Costa Mesa.

13.4 **MOTORCYCLE ASSIGNMENT PAY** - Employees in the classifications of Police Officer, Senior Police Officer, and Police Sergeant when assigned motorcycle duty shall receive 5% over his or her assigned rate per shift. Additionally, one motorcycle trainer shall receive 5% incentive pay while in temporary assignment to perform routine safety checks. Each employee assigned to motorcycle duty shall maintain his or her motorcycle in an acceptable state as determined by Police Management and will be

compensated three hours at time and a half at the top step base salary for the Senior Police Officer classification each payperiod for the motorcycle maintenance.

13.5 **CANINE ASSIGNMENT** - Employees assigned to canine duty, and who are responsible for an active duty canine will receive 7 hours paid at a rate of time and one half each pay period in a manner consistent with current practice if the employee is assigned to care for and feed the animal. The parties have determined that this is an accurate estimate of how many off-duty hours are actually worked, and have agreed that this is a reasonable amount of time to cover the time spent to care for and feed the animal.

13.6 **BILINGUAL PAY** - Applicable only to employees in the job classifications determined by the Chief Executive Officer 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 department director to utilize bilingual skills, which includes Spanish, Vietnamese, *American Sign Language (ASL)* and any other language approved by the Assistant CEO/Administrative Services Director must be certified by their department director and may be tested by *Human Resources* 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 ½% 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 of Spanish 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.

13.7 **HAZARD PAY** - $100 per month hazard pay shall be applicable to each of two (2) officers assigned to undertake hazardous materials duty when assigned to the Drug Lab Clean-Up Task Force and when they are on-call. The hazard pay shall be payable the first payperiod following the month so assigned.

13.8 The City will continue payment of the assignment of special pay as set forth in Articles 13.2 through 13.7 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 14 - VACATION LEAVE

14.1 VACATIONS

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.

2. Regular full-time employees in the classified services with an average work-week of forty (40) hours, employed by the City prior to adoption by the City Council of the 2014-2018 MOU, shall receive annual vacations with pay in accordance with the following provisions ("Tier 1"):

   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.

3. Regular full-time employees in the classified services with an average work-week of forty (40) hours, employed by the City on and after adoption by the City Council of the 2014-2018 MOU, shall receive annual vacations with pay in accordance with the following provisions ("Tier 2"):

a. Upon being hired by the City and through completion of less than three (3) years of continuous full-time service, such employee shall earn eighty (80) working hours per year.

b. Upon completion of three (3) years of continuous full-time service, but less than seven (7) years of continuous full-time service, such employee shall earn one hundred twenty (120) working hours per year.

c. Upon completion of seven (7) years of continuous full-time service, but less than thirteen (13) years of continuous full-time service, such employee shall earn one hundred forty (140) working hours per year.

d. Upon completion of thirteen (13) years of continuous full-time service, but less than fifteen (15) years of continuous full-time service, such employee shall earn one hundred sixty (160) working hours per year.

e. Upon completion of fifteen (15) years of continuous full-time service, but less than twenty (20) years of continuous full-time service, such employee shall earn one hundred eighty (180) working hours per year.

f. Upon completion of twenty (20) years of continuous full-time service, such employee shall earn two hundred (200) working hours per year.

4. Vacation Accrual Implementation and Ceiling- Effective 12 months after adoption by the City Council of the 2014-2018 MOU, the accrual of vacation hours will be capped at the following maximum levels based upon an employee's years of service as follows:

Tier 1

Years of Service	Annual Accrual 40-Hour	Maximum Accrual 40-Hour
1-2	*92.0*	*184.0*
3-4	*116.0*	*232.0*
5-9	*140.0*	*280.0*
10-14	*164.0*	*320.0*
15-19	*188.0*	*320.0*
20+	*212.0*	*320.0*

Tier 2

Years of Service	Annual Accrual 40-Hour	Maximum Accrual 40-Hour
0-2	80.0	160.0
3-6	120.0	240.0
7-12	140.0	280.0
13-14	160.0	320.0
15-19	180.0	320.0
20+	200.0	320.0

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 Chief of Police must deny it due to the operational needs of the City and/or Department, an exception may be granted by the Chief of Police with a written explanation from the employee's supervisor and advance approval from the Chief Executive Officer. 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 Chief of Police due to the operational needs of the City/Department, an exception for a "Cash-Out" may be granted by the Chief of with a written explanation from the employee's supervisor and advance approval from the Chief Executive Officer.

Implementation of Vacation Accrual Ceiling – In order to provide a grace period in relation to the vacation accrual implementation and ceiling, at any time prior to the effective date of the new maximum accrual limitations set forth above, employees will have the option of a 1-time MOU implementation cash-out, at which time employees may elect a cash-out of accrued Vacation Leave down to a maximum accrual of 240 hours. Employees will not be required to use any Vacation Leave in order to elect this 1-time MOU implementation cash-out.

Vacation Leave Cash Outs – Each fiscal year, employees will have the following cash-out options: 1) One eighty (80) hour cash-out any time during the fiscal year, regardless of the employee's maximum accrual and regardless of the employee's Vacation Leave usage; and, 2) Up to four cash-outs per fiscal year, any time during the fiscal year (irrespective of quarter), based on a "2 for 1" usage ratio, up to a maximum of 80-hours for each cash out. For example, if an employee uses 10 hours of Vacation Leave, the employee could cash out up to 20 hours of Vacation Leave; in order for an employee to cash-out the maximum of 80-hours Vacation Leave, the employee would need to use 40 hours of Vacation Leave.

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 Chief of Police and the Chief Executive Officer, there will no other cash-out of Vacation Leave time beyond the Maximum Accrual rates that have been established.

14.2 The City shall establish a vacation bank to be administered by the CMPA Board of Directors. The bank will be comprised of hours voluntarily donated by Association members.

ARTICLE 15 - SICK LEAVE INCENTIVE PROGRAM

15.1 Employees may accumulate up to a maximum of 192 hours of sick leave credit in their SICK LEAVE BANK. Upon reaching the maximum level, the biweekly benefit of 3.69 sick leave hours may be cashed out at 100% of the employee's regular rate of pay.

15.2 Separate and distinct from the below described primary and secondary sick leave banks (which shall be phased out), effective the first payroll period commencing on or after adoption by the City Council of the 2014-2018 MOU, there shall be established what shall be referenced as "THE SICK LEAVE BANK." Effective the first payroll period commencing on or after adoption by the City Council of the 2014-2018 MOU, each employee will be credited with 96 hours in their SICK LEAVE BANK. Thereafter, each employee shall earn 3.69 hours of sick leave per pay period, up to the maximum accrual of 192 hours.

The employee eligible to utilize sick leave shall have the option of the sick leave usage being deducted from either THE SICK LEAVE BANK or from the primary/secondary sick leave bank as described below. The sick leave hours in THE SICK LEAVE BANK shall have no cash value, and shall not be convertible to cash or to any other form of compensation. The sick leave hours in THE SICK LEAVE BANK may be converted to service credit upon retirement, at the rate of 1 day = 0.004 years of service credit.

15.3 THE PRIMARY AND SECONDARY SICK LEAVE ACCOUNTS. Unit members hired on and after adoption by the City Council of the 2014-2018 MOU shall not be eligible to participate in primary and/or secondary sick leave banks. As regards unit members having primary and/or secondary sick leave banks prior to adoption by the City Council of the 2014-2018 MOU, the following governing rules shall apply:

A. Unit members having primary and/or secondary sick leave banks prior to adoption by the City Council of the 2014-2018 MOU will have an 18-month grace period, through July 1, 2017, to elect whether to retire, and at such time will be able to cash out up to one half of the sick leave accumulated in his/her Primary Sick Leave Bank.

B. Effective on and after adoption by the City Council of the 2014-2018 MOU, there shall be no augmentation of the primary and/or secondary sick leave banks, i.e., no additional sick leave hours will be added to these banks.

C. Following the 18-month grace period described above, the hours in the primary and/or secondary sick leave banks shall have no cash value and shall not be converted to cash or any other form of compensation. The hours in the primary and/or secondary sick leave banks may be converted to service credit upon retirement, at the rate of 1 day = 0.004 years of service credit.

15.4 For lateral employees hired on or after City Council adoption of the 2014-2018 MOU, such employees will be immediately credited with up to 80 hours in their SICK LEAVE BANK. Upon being hired by the City of Costa Mesa, and provided the lateral employees had sick leave accruals (that were not cashed out) at the time of leaving their former agency, the lateral employees will be credited with the corresponding sick leave accruals, up to a maximum of 80 hours. For example, if a lateral employee had 20 sick leave hours on the books at his/her former agency, he/she would be immediately credited with 20 hours at Costa Mesa.

15.5 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 can choose to apply all credited sick leave time (in the primary, secondary, and/or SICK LEAVE BANK) towards his or her service credit.

ARTICLE 16 - 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 17 - LONG TERM DISABILITY

17.1 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.

17.2 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.

ARTICLE 18 - 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 Assistant CEO/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 19 - DISCIPLINARY PROCEDURES

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

19.2 **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. 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 contenders, 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, Chief Executive Officer, department manager or supervisor.

AA. *Engaging in* 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.

19.3 **TYPES OF DISCIPLINE** - The following procedures shall be followed when, in the judgment of the department director, an employee has committed an act or omission that justifies disciplinary action. Except for written warnings/reprimands, the department director 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 Assistant CEO/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 department director shall give the employee a copy and forward a copy to the Assistant CEO/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: A department director 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 department director shall advise the Assistant CEO/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. Unless extended by approval of the City Manager or *designee* on written recommendation of the department head, 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 Assistant CEO/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 department head 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 Assistant CEO/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 Assistant CEO/Administrative Services Director in writing of his/her intention to dismiss an employee prior to taking such action. In dismissing an employee, the department head shall prepare a written notice and shall give a copy of said notice of dismissal to the employee and forward a copy to the Assistant CEO/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.

19.4 **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.

19.5 **EMPLOYEE'S RESPONSE** - An employee's opportunity to respond to the department director 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 department head's information leading to the discipline proposal. An employee may elect not to respond, thereby waiving any further predisciplinary response.

The *Chief of Police* 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.

19.6 **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 nonprobationary 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 *Chief of Police*'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 Assistant CEO/Administrative Services Director and received and date stamped 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 Assistant CEO/Administrative Services Director, an advisory arbitration appeal hearing shall be established as follows:

A. The employee shall file a written request with the Assistant CEO/Administrative Services Director 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. CMPA 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 CMPA 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 Assistant CEO/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 department head.

L. The hearing officer's opinion and recommendation shall be filed with the Chief Executive Officer or *designee*, with a copy sent to the appealing employee, and the Assistant CEO/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 Chief Executive Officer 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 Chief Executive Officer or *designee* shall be final and conclusive. Copies of the Chief Executive Officer's s or *designee* 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 Chief Executive Officer 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 Chief Executive Officer or *designee*, the time of such discipline shall relate back to the date the employee was disciplined or after delivery of the Chief Executive Officer's or *designee*'s decision if discipline was stayed pending the arbitration hearing. If the Chief Executive Officer'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 Chief Executive Officer'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 Section1094.6 of California's Code of Civil Procedure.

19.7 A permanent Sworn Police Officer/Sergeant 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 Assistant CEO/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 Assistant CEO/Administrative Services Director a time for an appeal hearing before the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 20 - GRIEVANCE PROCEDURES

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

20.2 **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.

20.3 **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. *The supervisor shall respond with a decision within ten (10) calendar days after meeting with grievant.*

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, may request and be granted an interview with the division manager, if one exists, in order to further discuss the grievance. *The division manager shall respond with a decision within ten (10) calendar days after meeting with grievant.*

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 department head 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 Assistant CEO/Administrative Services Director 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. CMPA 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 CMPA 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 Assistant CEO/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 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.

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 department head.

O. The hearing officer's opinion and recommendation shall be filed with the Chief Executive officer, with a copy sent to the charged employee, and the Assistant CEO/Administrative Services Director and shall set forth his/her findings and recommendations.

P. The Chief Executive Officer 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 Chief Executive Officer or *designee* shall be final and conclusive. Copies of the Chief Executive Officer'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 Chief Executive Officer 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 department head 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 CMPA.

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 21 - AMERICANS WITH DISABILITIES ACT (ADA)

21.1 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.

21.2 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.

21.3 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 22 - SENIOR POLICE OFFICER CLASSIFICATION

22.1 Senior Police Officers will retain the classification of Senior Police Officer until promotion, demotion or retirement.

22.2 Existing Corporals will retain the classification of Corporal, while in Patrol or until promotion, demotion or retirement. It is the intent of the parties that the above classifications be phased out and mutually agreed that no promotions into these classifications be made.

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 comp time, 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. 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 Operation 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 Operation 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 Officer (including Senior Police Officer), and Sergeant, is based on time in grade in the respective rank.

ARTICLE 26 - WORK SCHEDULES

The Chief of Police with the approval of the Chief Executive Officer shall have the ability to implement alternate regular work schedules, provided that the Chief of Police and the CMPA mutually agree upon such schedule. If no agreement can be made between CMPA and the Chief, then the existing four-day work week, ten hour day (4-10) remains in effect. Seniority will determine the order in which employees select their yearly work schedules.

ARTICLE 27 - SCHEDULING

27.1 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, preceding the January starting date of the new shifts. All classifications represented in this M.O.U. will make a selection as soon as practical, but in no case to exceed 24 hours after a request by the supervisor(s) overseeing the process. If a published schedule requires modification during the initial selection process, then the entire selection process will be repeated. Both parties acknowledge the provisions identified in this article are not all inclusive and Management retains the right to establish any other rules for the selection of work schedules not identified within this M.O.U.

27.2 Seniority rights in each job classification determine the order of annual shift, schedule and vacation selection. Employees who elect to make an approved shift or schedule trade with another employee assume the seniority of the employee with whom they traded, for shift purposes only, for the length of the trade.

27.3 Priority for vacation selection is based upon the employee's seniority on the watch (i.e. AM/Days/PM/Relief) in which the vacation will occur. Management retains the right to determine the number of personnel that may be allowed on vacation on any particular shift or assignment

27.4 Any new work schedule(s) or shift introduced into an existing schedule during the year, will be available for selection by those working in that same assignment in order of seniority. A "new" work schedule or shift as defined in this section shall not include "short shift" positions that exist within an existing schedule that may have not been filled initially, but became available during the calendar year due to increased staffing. Assignments are defined as the Bureau, Detail, or Patrol Area in which the new work schedule was introduced. Any subsequent vacancies that occur due to this selection process will also be made available in order of seniority within the same assignment in which the vacancy occurs. Management retains the right to assign the least senior employee to any shift left vacant by the selection process.

27.5 If a mid-shift vacancy occurs within an existing work schedule, management retains the right to assign personnel as needed. A "short shift" position that existed within an existing schedule that was not filled initially, but became available during the calendar year due to increased staffing is considered a mid-shift vacancy. At the next scheduled rotation any such vacancy, which remains available for selection will be made available to personnel in the same Patrol Area (if the vacancy is in Patrol) and on the same shift (i.e. AM/Day/PM/Relief) for all uniform personnel.

27.6 In the case of a mid-shift vacancy due to a promotion, the following rules will apply:

- Patrol Sergeant: The vacated work schedule (and any subsequent vacancies created by this process) will be available for selection by any other sergeant on that shift (i.e. AM/Day/PM) in order of seniority.

27.7 Management retains the right to assign the least senior Sergeant to any work schedule left vacant by the above selection process. Refer to Police Department Policy Manual Section 1988 for mid-year vacancies involving a one for one planned rotation exchange.

27.8 Management retains the right to determine what work schedules will be made available for selection based upon available staffing levels. Management also retains the right to assign personnel, in recognition of their respective seniority, to vacant work schedules as necessary to fill staffing needs.

27.9 No employee will be forced to work the A.M. shift for a full calendar year. If the selection process creates this situation, then management retains the right to adjust schedule selections as necessary based upon seniority.

27.10 All personnel in the represented classifications are subject to overtime draft as needed.

27.11 Employees who work the PM and AM shifts which overlap during a scheduled shift change, will be compensated for each full shift as scheduled, (at straight time). If an employee is approved to take time-off on either or both of these shifts, they shall use the same numbers of leave hours as they would have been compensated for. An employee may use Z-Time to account for the time taken off during the overlapping hours.

27.12 Employees whose work shift is affected by the change of Day Light Savings Time or Standard Time changes or shift changes, will be compensated for the full shift as scheduled. If hours worked are in excess of the scheduled shift, they will be compensated for actual hours worked.

ARTICLE 28 - PROHIBITION OF TOBACCO

The on-duty use of tobacco (cigarettes, cigars, e-cigarettes ["vaping"] and related tobacco products and technologies) is prohibited for all represented employees. *This provision* applies to employees hired after the approval of the MOU dated September 1, 2004.

ARTICLE 29 - MEET AND CONFER

31.1 **ACT OR DECISION IMPACTING TERMS** - 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, and which is anticipated by the City to have an impact upon matters within the scope of negotiations.

REPRESENTATIVES OF THE COSTA MESA POLICE ASSOCIATION

ROB DIMEL
CMPA President

DAVID SEVILLA
CMPA Vice President

NICOLE BROWN
CMPA Negotiations Team Member

REPRESENTATIVES OF THE CITY OF COSTA MESA

TAMARA LETOURNEAU
ASSISTANT CEO

LANCE NAKAMOTO
Human Resources Manager