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MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING made and entered into this 1st day of July, 2003.

BY AND BETWEEN

CITY OF SAN DIEGO

AND

**SAN DIEGO POLICE OFFICERS
ASSOCIATION**

**FINAL VERSION
May 9, 2003**

TABLE OF CONTENTS

Article 1 - Parties to Agreement
Article 2 - Recognition
Article 3 - Implementation.....
Article 4 - Term of Agreement
Article 5 - Renegotiation
Article 6 - Scope of Representation
Article 7 - Constitutionality
Article 8 - Holidays.....
Article 9 - Management's Rights Reserved.....
Article 10 - No Discrimination Policy
Article 11 - Exchange of Days Off Between Employees
Article 12 - Information on New Employees
Article 13 - Flexible Benefits Plan
Article 14 - Industrial Leave
Article 15 - Educational Incentive.....
Article 16 - Bilingual Pay
Article 17 - Flat Badges
Article 18 - Annual Leave
Article 19 - Sick Leave and Annual Leave Reimbursement
Article 20 - Board of Directors
Article 21 - Formal Representation
Article 22 - P.O.A. Access
Article 23 - Out-of-Class Assignments
Article 24 - Grievance Procedure
Article 25 - Salaries
Article 26 - Uniforms and Safety Equipment
Article 27 - Personnel Rules and Regulations
Article 28 - Field Training Officer Pay
Article 29 - Call Back Pay
Article 30 - Court Pay
Article 31 - Court Stand-By.....
Article 32 - Overtime.....
Article 33 - Work Schedules
Article 34 - Starting Salary
Article 35 - P.O.A. Representation
Article 36 - Payroll Deduction.....
Article 37 - Employee Representation.....
Article 38 - Departmental Procedures - Advance Notice
Article 39 - Tuition Refund Plan
Article 40 - Flight Pay
Article 41 - Officer Rights
Article 42 - Copies of the Agreement.....

Article 43 - Seniority
Article 44 - Retirement Contribution.....
Article 45 - Long Term Disability Plan
Article 46 - Continuation of Wages, Hours, and Fringe Benefits
Article 47 - Probation Period
Article 48 - Detectives
Article 49 - Transportation Incentives
Article 50 - Preferred Shift Selection
Article 51 - Motorcycle Pay
Article 52 - Reasonable Notice
Article 53 - Police Officer III Study
Article 54 - Conduct of Elections
Article 55 - SWAT Pay
Article 56 - Core Instructor Pay
Article 57 - Drug and Alcohol Testing Program
Article 58 - Catastrophic Leave Plan
Article 59 - Side Letters.....
Article 60 - F.I.T. Program
Article 61 - Special Pay for Administrative Assignments
Article 62 - Shift Differential
Article 63 - Premium Pays.....
Article 64 – Public Safety Officers Procedural
 Bill of Rights.....
Article 65 – Presidential Leave.....

SUBJECT INDEX

Annual Leave (Article 18)	
Advanced Post Pay (Article 15)	
Bilingual Pay (Article 16)	
Board of Directors (Article 20)	
Call Back Pay (Article 29)	
Catastrophic Leave Plan (Article 58)	
Conduct of Elections (Article 54).....	
Constitutionality (Article 7)	
Continuation of Wages, Hours, and Fringe Benefits (Article 46)	
Copies of the Agreement (Article 42)	
Core Instructor Pay (Article 56)	
Court Pay (Article 30)	
Court Stand-By (Article 31)	
Departmental Procedures - Advance Notice (Article 38)	
Detectives (Article 48)	
Drug and Alcohol Testing Program (Article 57)	
Educational Incentive (Article 15)	
Employee Representation (Article 37)	
Exchange Of Days Off Between Employees (Article 11)	
Field Training Officer Pay (Article 28)	
F.I.T. Program (Article 60)	
Flat Badges (Article 17)	
Flexible Benefits Plan (Article 13)	
Flight Pay (Article 40)	
Formal Representation (Article 21)	
4/10 Plan (Article 33)	
Grievance Procedure (Article 24)	
Holidays (Article 8)	
Implementation (Article 3)	
Industrial Leave (Article 14).....	
Information on New Employees (Article 12)	
Intermediate P.O.S.T. Pay (Article 15)	
Long Term Disability Plan (Article 45).....	
Management's Rights Reserved (Article 9)	
Motorcycle Pay (Article 51)	
No Discrimination Policy (Article 10)	
Officer Rights (Article 41)	
Out-Of-Class Assignments (Article 23)	
Overtime (Article 32)	
Parties to Agreement (Article 1).....	
Payroll Deduction (Article 36)	
Personnel Rules and Regulations (Article 27)	
P.O.A. Access (Article 22)	
P.O.A. Representation (Article 35)	

Police Officer III Study (Article 53)

P.O.S.T. Incentive Pay (Article 15)

Preferred Shift Selection (Article 50)

Premium Pays (Article 63).....

Presidential Leave (Article 65).....

Probation Period (Article 47).....

Public Safety Officer Procedural Bill of Rights (Article 64)..

Reasonable Notice (Article 52)

Recognition (Article 2)

Renegotiation (Article 5)

Retirement Contribution (Article 44)

Salaries (Article 25)

Scope of Representation (Article 6)

Seniority (Article 43)

Shift Differential (Article 62)

Sick Leave and Annual Leave Reimbursement (Article 19)

Side Letters (Article 59)

Special Pay for Administrative Assignments (Article 61)

Starting Salary (Article 34)

SWAT Pay (Article 55)

Term of Agreement (Article 4)

Transportation Incentives (Article 49)

Tuition Refund Plan (Article 39)

Uniforms and Safety Equipment (Article 26)

Work Schedules (Article 33)

ARTICLE 1

PARTIES TO AGREEMENT

This Agreement is made and entered into this 1st day of July, 2003, by and between Authorized Management Representatives (hereinafter referred to as “Management”), of the City of San Diego (hereinafter referred to as the “City”), and the Board of Directors of the San Diego Police Officers Association Incorporated (hereinafter referred to as “P.O.A.” or the “Association”).

ARTICLE 2

RECOGNITION

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

Police Recruit
Police Officer I
Police Officer II
Police Agent
Police Sergeant
Police Lieutenant
Community Relations Assistant to the Police Chief

During the term of this agreement, the City and the POA agree to jointly support a request to the Civil Service Commission for the creation of the following new classes:

Police Officer III
Police Detective

ARTICLE 3

IMPLEMENTATION

This Agreement constitutes a mutual recommendation by the parties hereto to the City Council and/or the Civil Service Commission. This Agreement shall be of no force or effect until ratified and approved as appropriate by the City Council and/or Civil Service Commission.

ARTICLE 4

TERM OF AGREEMENT

The term of this Memorandum of Understanding shall commence at 12:01 a.m., on July 1, 2003. This Memorandum of Understanding shall expire and otherwise be fully terminated at 12:00 a.m. (midnight), on June 30, 2005.

ARTICLE 5

RENEGOTIATION

Section 1.

In the event P.O.A. desires to meet and confer in good faith on the provisions of the successor agreement, it shall serve upon the City not later than February 2, 2005, its written request to commence meeting and conferring in good faith, as well as full and entire written proposals for such successor agreements with the exception of salary proposals which shall be presented no later than February 23, 2005. Upon receipt of such written notice and proposals, meet and confer shall begin no later than April 1, 2005.

Section 2.

The City will notify P.O.A. by March 8, 2005, of its proposal for a successor agreement except in the matter of salaries or other economic provisions. Upon receipt of such notice of proposals, meet and confer shall begin no later than April 1, 2005. Notwithstanding the above, if federal or state governments take action that has direct effect upon the areas which fall within meet and confer, the City may submit proposals concerning these areas at later dates.

Section 3.

Nothing herein shall prevent either party from requesting that this procedure begin in January, 2005.

ARTICLE 6

SCOPE OF REPRESENTATION

The scope of representation of the Police Officer's Association shall include all matters relating to employment conditions and employer/employee relations including (but not limited to) wages, hours, and other terms and conditions of employment as provided for and defined by the Meyers-Milias-Brown Act, Section 3500, et seq, California Government Code.

ARTICLE 7

CONSTITUTIONALITY

If any section, subsection, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portion of the Agreement.

ARTICLE 8

HOLIDAYS

A. Fixed Holidays will be:

1. January 1;
2. Third Monday in January, known as “Dr. Martin Luther King Jr. ’s Birthday”;
3. Third Monday in February, known as “Washington’s Birthday”;
4. March 31st, known as “Cesar Chavez Day”
5. Last Monday in May, known as “Memorial Day”;
6. July 4;
7. First Monday in September known as “Labor Day”;
8. November 11, known as “Veteran’s Day”;
9. Fourth Thursday in November, known as “Thanksgiving Day”;
10. December 25; and
11. Every day appointed by the City Council for a public fast, Thanksgiving or holiday.

If January 1st, March 31st, July 4th, November 11th, or December 25th falls upon a Sunday, the Monday following is the City-observed holiday, and if they fall on a Saturday, the preceding Friday is the City-observed holiday. An employee who is eligible for overtime compensation pursuant to FLSA, shall receive overtime compensation for all hours worked on the actual holiday when the employee performs required work on that day. In such instances, holiday overtime will not be paid on the day the holiday is observed by the City.

B. Floating Holiday

In each fiscal year covered by the term of this Memorandum of Understanding, each eligible employee available for a duty assignment on July 1, (as defined in Personnel Regulation H-2) shall accrue credit for ten (10) hours of holiday time. Each employee accruing such time shall comply with the following conditions:

- A. Employee must schedule prior to June 1;
- B. It must be a one time absence and it must be used before the last day of the last full pay period in June; and
- C. At a time convenient to the employee’s appointing authority.

C. Working on a Fixed City Holiday

Employees who are scheduled to or work a ten (10) or more hour shift (excluding overtime), on a fixed City holiday shall be credited with two (2) additional hours of holiday time, in addition to the eight (8) standard holiday hours pay plus overtime for

all hours of the regular shift (e.g. 10 or 12 hours of premium time depending upon their regular shift) for working the holiday.

ARTICLE 9

MANAGEMENT'S RIGHTS RESERVED

The rights of the City include but are not limited to the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine procedures and standards of selection for employment and promotion; direct its employees, take disciplinary action for just cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of government operations; determine the methods, means, technology and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. The exercise of such rights shall not preclude employees or their representatives from meeting and conferring or meeting and consulting as required by law with Management representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.

ARTICLE 10

NO DISCRIMINATION POLICY

It is agreed that neither the City nor the Association shall discriminate against any employee because of race, national origin, age, sex, handicap or Association membership or activity. It is further agreed that no employee will be discriminated against because of exercising his/her rights specified in the Employer-Employee Relations Policy. The Association and Management agree that they support the current policies of the City of San Diego as to affirmative action and Equal Employment Opportunity, and the City further agrees to meet and confer as required by State law on any changes in these policies.

ARTICLE 11

EXCHANGE OF DAYS OFF BETWEEN EMPLOYEES

It shall be the policy of the San Diego Police Department to allow employees of the same rank to exchange days off under the following conditions:

1. Both parties to the exchange must be willing to take the exchange and must have the approval of the immediate supervisors concerned.
2. Generally speaking, exchanges of days off will be kept within the division, section, watch, and/or detail unless, on an individual basis the commands of the parties to the exchange otherwise agree.
3. When practical, requests for exchange of days off shall be made in writing at least five days prior to the first day of exchange.
4. An officer must report for the exchanged days off and with the exception of illness, the officer who otherwise fails to report shall be carried absent without leave.
5. To avoid administrative problems, exchange of days off must be made within the same payroll period by both parties.
6. These exchanges must be made in accordance with the Fair Labor Standards Act, when applicable.

ARTICLE 12

INFORMATION ON NEW EMPLOYEES

Whenever the City hires a Police Recruit or sworn Police Officer as a new employee, it will inform the Association in writing of such employment, giving the name, date of hire and job classification of the new employee.

The City agrees to use its best efforts to inform the Association in all instances when an employee represented by the Association retires from the City, giving the name, job classification and date of retirement.

ARTICLE 13

FLEXIBLE BENEFITS PLAN

An IRS qualified cafeteria-style benefits program is offered to all eligible employees called Flexible Benefits Plan (FBP). This plan provides a variety of tax-free benefit options. Eligible employee means any employee in a one-half, three quarter, or full-time status. Eligible employee excludes all employees in an hourly status. Eligible employees must have no less than 40 hours of compensated time during each pay period in order to receive City paid benefits. If an eligible employee has less than 40 hours of compensated time during a pay period, the eligible employee will have the right to continue their benefits by paying the City the full cost to continue any or all of the employee's benefits during that period. In the case of FMLA approved absences, the City will continue to pay for the employee's health, life, dental, vision and cancer/intensive care protection insurance for up to 12 weeks per year in accordance with FMLA requirements.

The City's contribution to the Flexible Benefits Plan ,effective July 1, 2003, will increase by \$400 for a total of \$5,125. Effective July 1, 2004, the City's contribution to the Flexible Benefits Plan will increase by \$450 for a total of \$5,575.

On or about April 1, 2004, and on or about April 1, 2005, or earlier if mutually agreed, the parties will exchange plan changes and rates for the parties' respective plan offerings.

Notes:

1. It is the intent of the parties that all plans offered in the Flexible Benefits_Plan comply with all applicable State and federal laws, including IRS Regulations, as interpreted by the City Attorney. All disputes over interpretation of the above shall be submitted to the appropriate agencies for interpretation.
2. The employee must select a life insurance and health insurance (unless covered under another comprehensive health plan). An employee may opt out of City health insurance if he/she has other comprehensive health insurance by selecting the "waiver" option.
3. With the remaining FBP monies, eligible employees may select from other optional benefits including dental, vision, cancer/intensive care protection, 401(k), Dental/Medical/Vision and Dependent Care reimbursement and/or cash payment. All eligible employees will be eligible for the City's dental and vision plans. Eligible employees that are members of the POA will also be eligible to select a dental and/or vision plan offered by POA.
4. After selecting required health and life insurance coverages, employees who are unable to enroll in their desired dental plan may purchase such benefit by making an "out-of-pocket" payment for the cost difference. Only dental coverage may be obtained in this manner. Such "out-of-pocket" contribution must be made at the

time of Open Enrollment and is nonrefundable.

5. In addition to designating flexible benefit monies to pay for Dental/Medical/Vision or Dependent Care reimbursements, employees may designate a specific amount of pre-tax money (some restrictions may apply) to be withheld from their paychecks to reimburse eligible out-of-pocket medical, dental, vision or dependent care expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, and monies are forfeited if not used within the fiscal year.
6. Eligible employees are required to enroll for their benefits each year during the designated open enrollment period. If an employee fails to complete enrollment within the open enrollment period, the employee's current options for health (or comparable plan if unavailable), including dependent health offset, and life, will be automatically continued at the same level for the next year as if the employee had elected to keep them. All other benefit options will be cancelled. Any monies remaining from the FBP allotment will be paid out as taxable cash. All payroll deductions, including DMV and Dependent Care reimbursement, will continue and may not be eligible to be stopped until the following open enrollment period.
7. The City agrees that it will not arbitrarily or unreasonably deny POA the opportunity to offer insurance plans to employees. Such coverage must include coverage at an equal or better level than that offered through the City's health plans. POA agrees to inform Employee Assistance Program (EAP) of any changes to the mental health coverage and/or provider in order for EAP to give input on the proposed changes to ensure that City employees are receiving adequate mental health coverage through their selected health plan. POA agrees to indemnify the City against any and all claims arising out of POA administration of POA plans.
8. Both parties agree to begin discussions regarding the implementation of a joint management/labor benefits committee in an effort to mutually agree upon the benefit plans to be offered to active/retired employees thus eliminating the separate POA plans. Until such time, Management and the POA agree to meet and confer without impasse and with mutual consent on the nature and scope of the committee.

ARTICLE 14

INDUSTRIAL LEAVE

For a claim filed based on a work related illness or injury occurring on or after July 1, 1994, the City will implement the following changes to the Industrial Leave Policy. The actual policy [A.R. 63.00 attached] should be consulted for detailed language.

- Industrial Leave payments will not be granted for any injury which occurs as a result of a motor vehicle accident where the injured employee did not have available safety restraints in use, with the exception of Police Officers if such failure is consistent with prudent police practices, training, and department policies.
- Industrial Leave benefits will be terminated when an employee misses a medical appointment designed to determine the employees work status, upon the determination that the failure to attend the appointment was not excusable.

A.R. 63.00

1. PURPOSE

To establish regulations and guidelines regarding the City of San Diego's Industrial Leave Program.

2. SCOPE

This regulation applies to all City of San Diego employees, including those represented by bargaining agents. If a conflict occurs between this regulation and an existing Memorandum of Understanding for represented employees, the Memorandum of Understanding shall prevail.

3. DEFINITIONS:

- 3.1 Disability - the inability to perform the usual duties of one's classification.
- 3.2 Emergency - a sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; a pressing necessity.
- 3.3 Gross Negligence - the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of oneself or another; such a gross want of care and regard for one's own well-being or the rights of others as to justify the presumption of willfulness and wantonness.
- 3.4 Hospitalization - the status of being admitted to a hospital institution on an inpatient basis.

3.5 Light Duty - work status with limitations as provided in the City's Light Duty Program.

3.6 Physician - as defined under 3209.3 of the California Labor Code.

4. POLICY:

4.1 General:

City-wide safety program exists to prevent accidents and resulting injuries involving employees. Continuing efforts are made to eliminate, guard against, or protect employees from physical hazards in the work environment. Several types of benefits are available to employees who sustain disabilities arising out of their employment. The specific benefits available depend on the circumstances in each case.

This A.R. sets forth only the eligibility requirements and benefits for industrial leave. Procedures are set forth for industrial leave and in part for other programs available for injured employees. Employees may be eligible for benefits under the Workers' Compensation Act or the City's Annual Leave or Sick Leave Programs. Eligibility and benefits under the Workers' Compensation Act are established in State law (Division 4 of the California Labor Code). Eligibility and benefits under the City's Annual Leave and Sick Leave Programs are set forth in the Personnel Regulations, Index Code I-2 and I-3.

Nothing herein contained shall be deemed to affect the employee's entitlement to medical, surgical and hospital treatment as provided in Division 4 of the California Labor Code nor be deemed to affect the employee's entitlement to receive such temporary disability payments as also provided in Division 4. These rules define the granting of industrial leave only. Industrial leave is not within the jurisdiction of the California Labor Code nor the adjudication of the Workers' Compensation Appeals Board.

4.2 Eligibility for Industrial Leave:

Employees shall be eligible for industrial leave benefits subject to the following provisions:

- a. The employee is unable to perform his or her assigned duties and is entitled to Worker's Compensation Temporary Disability under the provisions of Division 4 of the California Labor Code.
- b. The employee reported the injury or illness to his or her supervisor within 24 hours of the incident, except under extenuating circumstances. Extenuating circumstances under which an employee may report an injury beyond the 24 hour limit shall include but not be limited to a report at the time the employee

realizes the injury is disabling and the medical evidence is consistent with the claim.

- c. Medical treatment is provided and maintained by a licensed physician acceptable to the City's Worker's Compensation Administration.
- d. The employee is medically incapacitated from the performance of light duty, or light duty is not available.
- e. Except in circumstances of obvious emergency, the disability did not result from the failure to:
 - 1. Wear prescribed safety or personal protective clothing or equipment.
 - 2. Use provided safeguards or safety equipment.
 - 3. Follow safety rules and regulations, or other departmental work rules.
 - 4. Wear available safety restraints, i.e., lap and shoulder restraints, when involved in a vehicular accident, with the exception of Police Officers if such failure to use restraints is consistent with prudent police practices, training, and department policy.
- f. The disability did not result from an aggravation or recurrence of:
 - 1. A pre-employment, non-service-connected medical condition or disability (either physical and/or mental), even if such condition is aggravated by on-the-job experience. It is the intent that industrial leave will not be approved when competent medical authority determines the disability to be a result of aggravation of, or caused by, a pre-employment or non-industrial medical condition.
 - 2. A medical condition for which the employee has received a Compromise and Release settlement pursuant to Division 4 of the Labor Code.
 - 3. An injury or illness previously denied industrial leave.
- g. The employee's gross negligence or willful misconduct was not the proximate cause of the disability.
- h. The request for industrial leave is submitted in form and detail as prescribed by Risk Management, is recommended for approval by the appointing authority, and is approved by the City's Worker's Compensation Administration.
- i. The employee fulfills his or her responsibility as outlined in this Administrative Regulation.

4.3 Industrial Leave Benefits

- a. The Industrial Leave Benefit shall be the employee's normal compensation, less current deductions for state and federal tax withholdings. The injured employee shall be prohibited from amending his or her claim of deductions from the date of injury until after they have returned to work and industrial leave benefits have discontinued.
 1. The term "normal compensation" includes extra compensation for night or unusual schedule work shifts, motorcycle pay, emergency ordnance disposal pay, and educational incentive pay, which the employee was receiving at the time of the injury, but does not include overtime, standby, or out-of-class pay.
 2. Employees may receive normal merit increases while on industrial leave if they are otherwise eligible as provided in Personnel Manual Index Code H-8.
- b. Industrial leave is granted in lieu of Workers' Compensation Temporary Disability.
- c. An employee cannot supplement industrial leave payments with accrued sick leave, annual leave, or compensatory time off.
- d. Employees shall earn annual leave credits while on industrial leave as if they were working. Employees shall be eligible to accrue and utilize annual and sick leave in accordance with the rules governing the accrual and usage of annual and sick leave respectively. (See Personnel Manual I-2 and I-3.)
- e. The City shall continue to make the contribution towards the employee's health and life insurance coverage as if the employee was working.
- f. Duration of Industrial Leave:
 1. An employee's maximum industrial leave benefit shall be the number of hours equivalent to the employee's scheduled work year.
 2. Industrial leave shall commence on the first workday following the injury or illness for which the employee is medically disabled from working.
EXCEPTION: As applied to employees in the Fire Fighter Unit, industrial leave shall commence on the first work period after that on which the employee is medically disabled from working.
 3. An injury shall be deemed to continue through any recurrence or aggravation to the original injury. Claimed recurrences, aggravations, or sequelae of any injury approved for industrial leave shall be charged to the balance, if any, of the maximum allowance of such leave for the original injury.

4. Industrial leave will terminate when one of the following occurs:
 - a. The employee fails to follow the advice of the treating physician and pursue a course of treatment which will lead to recovery in as short a period of time as possible.
 - b. The employee's condition becomes medically permanent and stationary.
 - c. It is medically determined that the employee will never be capable of performing the duties of his or her classification.
 - d. The employee no longer qualifies for industrial leave.
 - e. The employee is engaged in outside employment which would medically impede recovery and prolong his/her return to work.
 - f. The employee uses the maximum benefits available.
 - g. Employee, without an acceptable excuse, fails to appear at a medical examination scheduled by the Workers' Compensation Division of Risk Management to determine the employee's ability to return to work.
5. If industrial leave is terminated upon the basis of medical evidence and at a later date, the City relies on further medical evidence which is inconsistent with the earlier medical evidence, the employee shall receive industrial leave benefits which are consistent with the subsequent report relied on by the City.
6. Industrial leave provides only the benefits enumerated herein.
7. Return to Duty:
 - a. The employee shall return to duty when ordered by the department head, based upon medical reports and other reliable information.
 - b. Determination of the proper time for the employee's return to duty will be based on reliable medical advice.
 - c. In cases of suspected malingering, when it appears that the employee and/or the employee's personal physician are not cooperating toward return to limited or full duty within a reasonable period of recovery, the department head or the Workers' Compensation Administration will order an investigation and take proper action.
 - d. If further remedial action is indicated, the employee must follow a course of treatment which will enable return to full employment at the earliest possible time. This does not mean that the employee should be carried on

industrial leave until completely able to perform every duty of the position. All reasonable efforts shall be made to return the employee to work, even in a light-duty status, as soon as, based upon authoritative medical advice, it is safe to do so.

- e. Prior to soliciting information from an employee's treating physician concerning that employee's ability to return from industrial leave to a selective placement position, the treating physician shall be furnished with a written statement describing the duties of such selective placement position. The City will allow the treating physician five (5) days to respond in writing. If the treating physician fails to respond in writing within five (5) days, the City may receive information from the treating physician orally. The City may extend the time for response for good and sufficient reason.

5. PROCEDURE

Responsibilities Action

Employee

- 5.1 Each employee is responsible for reporting the job related injury or illness to his or her supervisor within 24 hours of the incident, except under extenuating circumstances. The initial report should be made to the employee's immediate supervisor, or if unavailable, to the next supervisor in the chain of command. The initial report may be made verbally, but must be followed by completion as soon as possible of the necessary forms outlined below.
- 5.2 For injuries which result in absence from work at any time following the day of the injury, the employee must complete Form CS-14-25B, Request for Leave of Absence for on-the-job disability, within 24 hours of the disability and have the attending physician complete the appropriate portion of the form. If, because of injuries, the employee is physically unable to comply with this requirement, it shall be the supervisor's responsibility to complete and submit the form for the employee.
- 5.3 The employee must complete Form ES-1531A, Employee-Employer Report of Occupational Injury or Illness.
- 5.4 The employee and others concerned, shall provide the department head, City Manager or his representative with any additional evidence necessary to elaborate on or substantiate injury and medical reports.
- 5.5 When necessary, the employee must report as soon as possible to a licensed physician.
 - a. In doubtful and/or controversial cases, the employee shall be required to

report to a physician who is acceptable to the Workers' Compensation Administration.

- b. The employee, if dissatisfied with the treatment received from the first approved physician, has the right to ask for a change of physicians; however, the physician selected must always be acceptable to the Workers' Compensation Administration.

- 5.6 The employee must obtain a medical diagnosis and prognosis for light duty with all applicable work restrictions, since industrial leave cannot be granted if light duty is available and can be performed.
- 5.7 The employee must follow a course of treatment which will lead to recovery in as short a period of time as possible.
- 5.8 If requested during prolonged disability, a fully completed set of Form CS-14-25B, including the physician's certification, shall be provided by the employee for each pay period in order to obtain up-to-date medical information.
- 5.9 Each employee is responsible to cooperate with Risk Management in their function of determining eligibility and returning the employee to work.

Operating Department Supervisor

- 5.10 Each supervisor concerned must thoroughly investigate each accident within 24 hours after it is reported and complete the applicable "Employee Injury Investigation Report". The supervisor must also fill out the supervisor's portion of the Employee-Employer Report of Occupational Injury or Illness, and make sure the employee completes the employee portion of both that form and the Request for Leave of Absence form. All required forms must be promptly forwarded to the appointing authority for processing.

Operating Department - Appointing Authority

- 5.11 To make sure that the injury is promptly and thoroughly investigated, shall recommend whether or not industrial leave should be granted, shall determine the availability of light duty, and shall forward all required forms to the Workers' Compensation Administration within one workday of receipt from the supervisor.
- 5.12 To promptly notify the Workers' Compensation Administration of any potentially controversial case, and all instances of suspected malingering, or where the cause of injury is doubtful.
- 5.13 To cooperate in determining eligibility and returning the employee to duty.

Operating Department - Payroll

- 5.14 The day of injury is to be reported on time sheets as a day of work. Necessary leave due to disability shall start with the first part or full scheduled workday of required absence after the day of injury.
- 5.15 Necessary leave for medical treatment or granted because of recurrence, aggravation, or sequelae of an injury previously approved for industrial leave shall be charged to the balance, if any, of the one-year maximum allowance of such leave for said original injury.
- 5.16 Any holiday falling during a period of industrial leave shall be charged as industrial leave and not be paid as a holiday. Industrial leave will be charged rather than holiday if industrial leave is paid the scheduled workday before or after the holiday. If an employee is scheduled to work on a holiday and is injured, the holiday credit will be granted.
- 5.17 In those cases where the appointing authority recommends industrial leave, the employee's absence will be charged to industrial leave pending a determination of eligibility by the Workers' Compensation Administration. If the employee is later determined to be ineligible by the Workers' Compensation Administration, the employee will be required to reimburse the City for the number of industrial leave hours used. Reimbursement will be made by charging the employee's accumulated sick leave, annual leave and/or compensatory time credits. If sufficient leave credits are unavailable, the employee will be required to make a direct monetary reimbursement to the City.
- 5.18 In those cases where the appointing authority does not recommend industrial leave, the employee's absence shall be deemed sick leave to the extent the employee has sick leave credits pending a determination of eligibility by the Workers' Compensation Administration. However, the employee may decline to use sick leave and, with the approval of the appointing authority, may instead take other leave or compensatory time off to which the employee may be entitled. In the event paid leave is not utilized, the employee may receive Workers' Compensation temporary disability to the extent he or she may be entitled under Division 4 of the California Labor Code.

If it is subsequently determined that the employee is eligible for industrial leave, the industrial leave shall be deemed to commence pursuant to Section 4.3(f)(2) of this Regulation, and any sick leave, compensatory time off or other leave credits expended shall be restored to the employee's balance. In the event temporary disability has been paid, the employee shall be paid the difference between temporary disability and the industrial leave amount.

- 5.19 The use of sick leave or annual leave credits may be requested if the requirements for industrial leave are not met, or in cases where the employee has exhausted the maximum industrial leave credits. The employee's sick leave or annual leave credits will not be charged for the amount of temporary disability payments made under Workers' Compensation Act provisions.

An employee shall not receive payment in excess of full salary through a combination of Workers' Compensation temporary disability payments and paid sick leave or annual leave or compensatory time off.

- 5.20 When sick leave is used for an on-the-job injury, the employee's sick leave account will be reimbursed in hours, by the equivalent amount due from temporary disability payments.
- 5.21 If a disabled employee is receiving Workers' Compensation temporary disability benefits, but is not receiving payment for industrial leave, or annual leave, the appropriate payroll symbol is "green C". It is unnecessary for an employee in this status to request a leave of absence from the Civil Service Commission since the City has a legal obligation under Workers' Compensation laws to return the employee to gainful employment.
- 5.22 Leave without pay (payroll symbol "red A") may be used if the employee is not receiving Workers' Compensation benefits, annual leave, sick leave, industrial leave, or compensatory time credits. Employees in this status must request a leave of absence from the Civil Service Commission if their absence extends for more than 30 calendar days.
- 5.23 When sick leave, annual leave or leave without pay is used under these circumstances, a set of Form CS-14-25B shall be completed, routed and processed in the same manner as for industrial leave.

Workers' Compensation Administration

- 5.24 All requests for industrial leave will be reviewed by the Workers' Compensation Administration for a decision on whether the circumstances qualify the employee for industrial leave, under the requirements of this Administrative Regulation.
- 5.25 Workers' Compensation Administration shall inform the employee and the department as to the employee's eligibility for industrial leave.
- 5.26 Denial of industrial leave shall be in writing, shall contain information as to the specific reason for the denial, and shall clearly indicate the appeal procedure.
- 5.27 Workers' Compensation Administration shall inform each applicant for industrial leave of his/her responsibilities under the Industrial Leave Program and of the right to appeal the denial of industrial leave.
- 5.28 When it appears from competent medical advice that a disability is permanent, and precludes the employee from returning to his or her regular job classification, the Workers' Compensation Administration will refer the

employee to its Rehabilitation Unit for consideration of vocational rehabilitation. All officials concerned will cooperate actively to assist the employee in rehabilitation consistent with proper position classification and compensation. The Rehabilitation Unit, in addition to providing vocational evaluation, training, and other assistance to the eligible employee, will initiate with the Personnel Department and appointing authority, consideration of class transfer, voluntary demotion and other appropriate personnel actions as alternatives to employee termination or disability retirement.

6. APPEAL PROCEDURE

Responsibilities	Action
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Employee

- 6.1 An employee may appeal the denial of industrial leave by the Workers' Compensation Administration. The appeal shall be in writing, submitted to the City Manager within ten (10) working days of receipt of the notice of denial and shall state the specific reasons for the employee's appeal and the issues upon which the appeal is based.

City Manager

- 6.2 The City Manager or his designee shall review the entire case and announce an intended decision indicating his rationale. In the event of an intended denial, the City Manager or his designee shall arrange a meeting in which the affected employee may present his or her appeal. The employee shall have the opportunity to confront the information relied on by the City Manager or his designee and submit additional information as desired for consideration by the City Manager or his designee. Such meeting shall be as informal as is compatible with justice.
- 6.3 The City Manager or his designee shall render a decision which shall be final and shall include the reasons for the decision.
- 6.4 The City Manager may grant the employee an extension of time beyond the appropriate appeal period if it is determined that the employee is so disabled as to be physically unable to perfect the appeal within the allocated time.

ARTICLE 15

EDUCATIONAL INCENTIVE

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

Effective December 20, 2003, the benefit for the Advanced POST Certificate shall be 6.0% of employee's base rate and 3.5% of employee's base rate, for the Intermediate POST Certificate. Effective April 30, 2005, the benefit for Advanced POST Certificate shall be 7.5% of employee's base rate; the benefit for the Intermediate POST Certificate shall be 5% of employee's base rate.

For the purpose of this Article only, those sworn officers in the classifications of the Police Officer I and Police Officer II ("A", "C" and "D" steps only) and who possess an Advanced POST Certificate shall receive \$1.81 per hour; and shall receive \$1.06 per hour for possession of an Intermediate POST Certificate. Effective April 30, 2005, the hourly rate for an Advanced POST Certificate for these classifications shall be \$2.42 cents per hour; and the hourly rate for an Intermediate POST Certificate for these classifications shall be \$1.62 per hour.

Employees possessing the Advanced POST Certificate who have completed at least 60 college semester units or 15 years of service as a sworn officer with the City will not be required to re-qualify to be eligible for the Educational Incentive Payment. Employees who have completed less than 60 college units or 15 years of service will be required to re-qualify in accordance with Police Department Procedure No. 5.13. Employees with an intermediate POST Certificate with fifteen years of service as a sworn officer or who meet applicable educational requirement shall not be required to re-qualify.

The Police Officers Association agrees to establish and actively support a community service program.

ARTICLE 16

BILINGUAL PAY

Ongoing Bilingual Services

The City agrees to continue a program which will provide ongoing extra compensation for employees whose job assignment requires ability to communicate orally in Spanish, Tagalog, Somali, Korean, American Sign Language, Chinese or Indochinese languages as well as English. Participants in this program, who are certified by their appointing authority, and who are otherwise eligible, shall receive 3.5% of employee's base rate while in the job assignment requiring this additional skill. A claim by an individual of arbitrary denial of bilingual pay is grievable.

Incidental Bilingual Services

Management agrees to provide bilingual compensation for the entire pay period for those eligible individuals who are requested or directed by a supervisor, manager or communications to provide translator services in a non-English language other than a language eligible for ongoing Bilingual compensation [Spanish, Tagalog, Somali, Korean, American Sign Language, Chinese, Indochinese languages].

A statement attached to the PCN from a supervisor will serve as certification for bilingual pay for the pay period.

For the purpose of defining incidental bilingual services rendered, any language other than English may qualify for incidental bilingual compensation.

Notes:

The City reserves the right to establish criteria which will enable candidates in this program to qualify for the extra compensation.

SDPOA's request for management to consider expanding the number of languages recognized as eligible for continuing bilingual pay will be referred to the Multilingual Task Force for study and recommendations.

ARTICLE 17

BADGES

1. FLAT BADGES

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

2. RETIRED BADGES

Upon a service or disability retirement, an eligible officer has the following options:

- A. If the officer has only a breast badge, the City will have the officer's name tag and original breast badge encased in acrylic at no cost to the officer. In lieu of having the badge encased, the officer can have the breast badge transformed into or exchanged for a breast badge with a retired scroll in place of the badge number.
- B. If the officer has both a breast and flat badge, the officer has the following choices:
 - 1. the City will have the officer's name tag and original breast badge encased in acrylic at no cost to the officer and have his/her flat badge exchanged for or transformed into a retirement badge.
 - 2. the City will have the officer's name tag and original flat badge encased in acrylic at no cost to the officer and have his/her breast badge exchanged for or transformed into a retired badge.
 - 3. the City will have both the breast and flat badge exchanged for or transformed into a retired badge.

Officers who do not have a flat badge for exchange or encasement have the option to purchase a retired flat badge.

- C. In addition to paragraph 2, A & B directly above, the City will provide to the POA, at no cost, a flat badge of appropriate rank, to the POA for purposes of ceremonial presentation to the individual, by the POA, upon retirement.

ARTICLE 18

ANNUAL LEAVE

1. Employees covered by this agreement shall accumulate annual leave time as follows:
 - A. 1-5 years of employment 5.24 hours per pay period
 - B. 6-15 years of employment 6.77 hours per pay period
 - C. 16 or more years 8.31 hours per pay period
2. Appointing authorities are responsible for arranging annual leave so that adequate personnel are available to carry on necessary City Work.
3. Insofar as is practicable, employees should be permitted to schedule annual leave at times most acceptable to the employee. Scheduled annual leave shall be selected by employees within each division, watch, bureau, section, or unit, as is applicable, based upon their seniority by rank within the Department. Employees who are transferred at their request, or promoted, may be required to modify their scheduled annual leave.
4. Employees should be encouraged to take regular annual leave but they shall not be required to take time off against their will. Any leave days in excess of the authorized number earned for that year may be taken only at the convenience of the Department.
5.
 - A. The maximum accumulation of annual leave for employees hired before 7/1/94 with less than 15 years of service is 600 hours. Annual leave credits may be accumulated over the 600 hours limit until an employee's annual "accrual date" (which is normally the day and month when originally hired). The maximum accumulation of annual leave for employees with 15 or more years of service is 700 hours.
 - B. For employees hired on or after July 1, 1994, the maximum accumulation of annual leave is 350 hours.
 - C. Effective July 1, 1997, if, on their anniversary date, an employee's leave balance exceeds the applicable cap, accrual of additional annual leave will cease. However, once an employee's annual leave balance falls below the applicable cap, accrual of annual leave will resume. Employees shall be provided reasonable opportunity to take time off. In unique situations when workload does not permit time off, Management will have discretion to grant a ninety day extension to use excess leave before cease to accrue will be implemented.
6. Department annual leave periods will be divided into one-week increments. Annual leave schedules shall be comprised of 52 one-week increments for each separate rank

per division, watch, bureau, section or unit, providing, however, that the Department may establish an equitable formula relative to Lieutenants and above to accommodate command staffing when a conflict exists in annual leave scheduling. Employees may elect to take annual leave in increments of one day or longer. Employees will annually be required to select a vacation period in advance on the basis of seniority within their division, watch, bureau, section or unit. The initial selection of leave shall be the full regular annual leave or the first segment thereof. After the initial selection has been completed by all employees, those seeking to take more than one segment of leave shall select their second segment from those periods remaining. Those employees desiring a third leave segment shall select their third choice after those choosing a second segment have completed their selection, etc. Each Departmental unit will establish an equitable formula to predetermine the limit or the number of officers that will be allowed to use annual leave credit during each leave period. The limit may be lowered for the few selected periods of anticipated heavy police work load; i.e., July 4, Labor Day weekend.

7. All employees, upon separation, shall be entitled to receive pay for unused annual leave credits.
8. Leave provisions included under item 9 and 10 below will be accounted for separately.
9. Pre-approved annual leave, sick leave or compensatory time off properly used for personal, family or dependent illnesses should not be subject to disciplinary action.
10. Approved unscheduled annual or sick leave properly used for family, dependent or significant other co-tenant illnesses shall be considered as a separate category when reviewing employee performance with regard to attendance and/or absenteeism issues. Should the City, for good and sufficient reasons, determine that an employee is abusing this leave provision, the City may request a bona fide doctor's statement from the employee to substantiate illness.
11. Each fiscal year, employees may receive a maximum payment-in-lieu of annual leave of 125 hours.
12. Benefits while on Special Leave Without Pay [SLWOP]
 - A. All benefits while on SLWOP will be coordinated and/or offset by benefits the employee receives under any other City program, including but not limited to Long Term Disability, and Family Medical Leave.
 - B. After one year on SLWOP, the City may charge the employer 2% administrative fee and/or offer continuation of benefits under COBRA.
 - C. Employees will not be eligible to purchase City sponsored Supplemental Life Insurance while on SLWOP.

ARTICLE 19

SICK LEAVE AND ANNUAL LEAVE REIMBURSEMENT

An eligible employee, upon retirement, or upon termination (other than death or discharge, including termination with eligibility for a deferred retirement), may request that payment for sick leave and annual leave reimbursement be paid in either (a) one full payment; or (b) one full payment at a specified date within 365 days; or (c) three annual payments over a three year period; or (d) five annual payments over a five year period. Consistent with current requirements of the Internal Revenue Code, the total amount of the payment regardless of the option chosen is taxable in the year the employee retires or terminates.

ARTICLE 20

BOARD OF DIRECTORS

Section 1. Board of Directors

The P.O.A. Board of Directors may represent employees in the processing of grievances subject to the rules and procedures outlined in Section 2. P.O.A. shall, within thirty (30) days of the effective date of this Agreement, furnish the Management Team with a written list identifying by name and assigned work areas and including shift assignments all members of the Board and the list shall be kept current by P.O.A.

Section 2. Handling Grievances

- A. When requested by an employee, a Board member, with permission of his or her supervisor, may investigate any grievance in his or her assigned work area and assist in its preparation and presentation. If no Board member is assigned to the employee's work area or if the Board member so assigned is not available at the time the grievant makes his/her request, another Board member may investigate the grievance.
- B. After notifying and receiving approval of the immediate supervisor, a Board member shall be allowed reasonable time off during working hours, without loss of time or pay to investigate, prepare and present such grievances. The immediate supervisor will authorize the Board member to leave his or her work unless compelling circumstances require refusal of such permission, in which case the immediate supervisor shall inform the Board member of the reasons for the denial and establish an alternate time when the Board member can reasonably be expected to be released from his or her work assignment.
- C. When a Board member desires to contact an employee at his or her work location, the Board member shall first contact the immediate supervisor of that employee, advise of the nature of the business, and obtain the permission of the supervisor to meet with the employee. The immediate supervisor will make the employee available promptly unless compelling circumstances prohibit the employee's availability, in which case the supervisor will notify the Board member when he or she can reasonably expect to contact the employee.
- D. A Board member's interview or discussions with an employee on City time will be handled expeditiously.
- E. A Board member shall not be transferred, or changed to a different work shift without prior notice to P.O.A. A prior notice to P.O.A. shall not be construed as limiting Management in its prerogatives to transfer or change the work shift of a Board member.

Section 3. Board of Directors Meetings

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

ARTICLE 21

FORMAL REPRESENTATION

- I. The P.O.A may select three representatives to attend scheduled meetings with the Management Team or other Management officials on subjects within the scope of representation during regular work hours without loss of compensation, except for annual meet and confer sessions concerning economic matters, when seven P.O.A. representatives may be released from the on-duty work schedules.

In addition, the P.O.A. may also select a representative to attend City Council, Council Committees and Civil Service Commission hearings, during regular work hours, without loss of compensation, where subjects within the scope of representation are being discussed.

Normally, requests for such release shall be made of the Chief of Police at least two working days in advance of such meetings; provided further, that:

1. Names of all such representatives shall be given to the Chief of Police at the time the request is made.
 2. No representative shall leave the duty station or assignment without specific approval of the Chief of Police.
 3. That any such meeting is subject to scheduling by the City in a manner consistent with operating needs and work schedules.
- II. The Police Officers Association maintains an Employee Representative Program. The purpose of the program is to provide sworn employees with appropriate representation and assistance during the disciplinary actions and in matters which may lead to discipline. The members of the program are personnel from throughout the Department who have volunteered to serve, and have been trained in the duties of employee representatives. Employee representatives may appear with employees during:
 1. Any investigatory, fact-finding, or appeal meeting which may result in suspension (except emergency suspension), discharge, demotion, or disciplinary transfer; or
 2. The required discussion or the appeal of any document, including an "Unacceptable" or "Below Standard" performance evaluation, written warning, or reprimand which may be made part of the employee's permanent record, and/or which may be used as a basis for subsequent discipline.

Employee representatives may also assist employees in preparing written reports, including Department reports, where information contained in them may be used as a basis for punitive or disciplinary action against an employee. The Department and the

P.O.A. have agreed that the employee representatives will notify their supervisors each time they are assigned a matter for representation. Representatives are allowed two hours of on-duty time to prepare for participation in interviews, interrogations, and appeal hearings for each case to which they are assigned. This preparation time is in addition to any on-duty time actually spent in the interview, interrogation or appeal meeting. All supervisors should note that the two-hour authorized preparation time is provided to the employee representatives only, not to the employees being represented.

The Department fully supports the Employee Representative Program. Therefore, supervisors are encouraged to cooperate as much as possible with the representatives in scheduling employee interviews, counseling sessions, and hearings of any appeals of disciplinary actions. In addition, supervisors should provide representatives with all the information they request to which they are entitled by law and by Department Policy and Procedure which they need to perform their duties. All such information obtained by the representatives during the course of their duties will be maintained in the strictest confidence. Because they are acting as agents of the P.O.A.'s attorneys while representing employees, the information gained by the representatives is protected by the attorney/client privilege and its disclosure is prohibited.

The P.O.A. may designate up to 40 Employee Representatives and shall provide the Assistant Chief in charge of personnel service with a current list of representatives.

ARTICLE 22

P.O.A. ACCESS

Authorized P.O.A. representatives who are not City employees (such as business agents or attorneys) may be granted access to work locations in which employees covered hereby are employed, for the purpose of conducting grievance investigations and observing working conditions.

Authorized P.O.A. representatives desiring such access to such work locations shall first request entrance from the appropriate Management representative, at which time the authorized representative shall inform said Management representative of the purpose of the visit. Said Management representative may deny access to work location if, in his or her judgment, it is deemed that a visit will unduly interfere with the operations of the department or facility thereof, in which event said Management representative will recommend an alternative time for the visit.

P.O.A. shall, within thirty (30) days of the effective date of this Memorandum, give to Management a written list of all authorized representatives, which list shall thereafter be kept current by P.O.A. Access to work locations hereunder will be granted only to representatives on the current list.

Authorized P.O.A. representatives shall be given access to non-security work locations during working hours to conduct grievance investigations and observe working conditions on the condition that P.O.A. representatives will comply with the regulations established in this Article, and the P.O.A. representatives shall not interfere with work operations of any Department of the City. Representatives have the right to meet with employees during coffee, rest or lunch break at City facilities as may be available.

ARTICLE 23

OUT-OF-CLASS ASSIGNMENTS

I. AUTHORITY:

A. City Charter Section 123. LIMITATION ON APPOINTMENTS AND TRANSFERS.

B. Municipal Code Section 22.1001. ACTING OFFICERS: whenever any office or position in the administrative service under his control is vacant, or whenever the incumbent of any such office or position is unable to perform the duties thereof, by reason of absence or disability, the City Manager, except as otherwise provided by ordinance, may designate some other officer or employee to perform the duties thereof in an acting capacity. But when such designation is made by reason of a vacancy in the Classified Service, it shall be subject to the same time limitations as applies to temporary appointments.

II. POLICY: The following applies to all out-of-class assignments:

A. The term “out-of-class assignment” shall mean the temporary transfer of an employee to a vacant position or to a position where the incumbent of the position is unable to perform the duties thereof by reason of absence or disability. This position must be officially allocated by the Civil Service Commission to a class other than the one presently occupied by the employee. The class may be at a higher, lower, or the same pay rate as the class the employee presently occupies. However, the employee shall continue at the same pay rate.

B. Acceptable reasons for out-of-class assignments are:

1. Non-availability of properly classified employees to fill a temporary vacancy to which the regular incumbent is expected to return.
2. Assignment to light duty when required by the City’s examining physician or a doctor designated by the Workers’ Compensation unit.
3. The temporary filling of a vacant position, for which there is no permanent incumbent, pending certification of eligibles. For purposes of this regulation, a vacancy will be deemed to exist upon reclassification of an existing position.
4. The temporary filling of a vacant position for in-service training, or in connection with a formalized training program for the purpose of improving opportunities for promotion. Training assignments must be approved by the Personnel Director regardless of duration. Appointments made in accordance with the City’s career advancement program, as outlined in Personnel Manual Index Code D-3, are not out-of-class assignments and are not eligible for extra

compensation.

- C. An out-of-class assignment may be made, if in the opinion of the appointing authority, such action is necessary for the proper functioning of the department. However, after filling a vacancy by an out-of-class assignment, the appointing authority is not required to fill the vacancy caused by such assignment.
1. Appointing authorities may select any employee in non-represented classes and in classifications in the Police, Administrative Support and Field Service, Professional, Supervisory, and Technical representation units to fill an out-of-class assignment, using eligible lists, availability, training, seniority, and other relevant factors as guidelines.
 2. Out-of-class assignments shall not exceed sixty consecutive calendar days nor shall a series of out-of-class assignments to any one vacant position exceed sixty calendar days without approval by the Personnel Director. Out-of-class assignments shall not be made for the purpose of avoiding filling a position by a limited or permanent appointment.

III. ELIGIBILITY FOR ADDITIONAL COMPENSATION:

Employees shall receive compensation for Out-of-Class assignments to higher classes only when the assignment has been continuous for 30 days. Compensation begins on the 31st continuous day and from that day forward. The 1st through 30th day are paid at the employee's regular rate of pay.

Alternately, employees shall be compensated for out of class assignments at the rate of the higher paid class after 30 cumulative days. Compensation would begin on the 31st day assigned. To calculate when this standard has been met for employees on alternate work schedules, 30 cumulative days is equal to 176 regular (non-overtime) hours worked out-of-class in a single classification. Out-of-class assignments will accrue on a fiscal year basis and shall not be carried forward into the next fiscal year.

IV. PROCEDURE:

- A. The appointing authority shall forward Form CS-71 (OUT-OF-CLASS ASSIGNMENT) to the Personnel Director, no later than the first day of each out-of-class assignment for which additional compensation will be paid.
- B. The payroll procedure for determining an employee's pay for an out-of-class assignment shall be the same as that used when an employee is promoted to the same class from an eligible list established by a promotional examination.

ARTICLE 24

GRIEVANCE PROCEDURE

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

I. Policy

- A. Employees have the right to use this grievance procedure without fear of reprisal. No negative employment action will be taken against any employee as a result of the use of this grievance procedure.
- B. Employees may represent themselves or select whomever they wish to represent them at any or all steps in the grievance procedure.
 - 1. The employee has the right to the assistance of a P.O.A representative in the investigation, preparation, and presentation of a written grievance.
 - 2. Employees may have no more than one City employee and one non-City employee as representatives for grievance hearings.
 - 3. Notwithstanding any other provision of this agreement, an employee may not select a supervisor in the direct chain of command, as a representative, except that a supervisor may select another supervisor as a representative.
- C. Grievances may be initiated by the employee, or by a formally recognized employee organization, on the employee's behalf or by the recognized employee organization for this unit on its own behalf, on matters that directly involve the interpretation or application of the specific terms or provisions of this Memorandum of Understanding. If an employee chooses to have representation on any formal grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of this Memorandum of Understanding, such representation must come from P.O.A.
- D. The employee's or employee organization's first contact regarding job and working conditions is with the immediate supervisor and supervisors shall attempt to settle grievances informally at this level.
- E. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting in his/her own behalf on City time will not lose pay. In scheduling the time, place and duration of any grievance meeting, the employee, a P.O.A. Representative and Management will give due consideration to all the participant's responsibilities in the essential operations of the department.

Management has the unequivocal right to schedule hearings as convenient. Hearings may or may not be held during an employee's normal shift. No overtime pay will be given to the grievant. Representatives, witnesses, or other participants will receive overtime pay if ordered to be present by the appointing authority.

F. Waivers and Time Limits.

1. Failure by Management to reply to the employee's grievance within the time limits specified automatically processes the grievance to the next level.
 2. Any level of review, or any time limits established in this procedure, may be waived or extended for good cause and only by mutual agreement confirmed in writing.
 3. If an employee fails to appeal from one level to the next level, within the time limits established in this grievance procedure, the grievance shall be considered settled on the basis of the last decision and the grievance shall not be subject to further appeal or reconsideration.
 4. By mutual agreement, the grievance may revert to a prior level for reconsideration.
 5. If a grievant fails to appear for a scheduled grievance meeting, such failure without excuse approved by the appointing authority shall entitle Management to decide on the grievance without the presence of the grievant, or to schedule another meeting at the level (in which case the time requirements for hearing and decision are automatically waived). Failure to appear at two meetings on the same grievance without an approved excuse automatically terminates that grievance and it is deemed denied. The grievance shall then not be subject to further appeal or reconsideration.
 6. When a grievant is on approved leave the time limits established in this procedure shall be suspended for the period of the leave.
 7. No grievance shall be finally dismissed for an unexcused failure to appear at a scheduled hearing unless the grievant had been given 24 hours notice of the hearing.
- G. P.O.A. agrees to pursue all claims of violation of this MOU through the grievance procedure. Resort to other remedies shall not be pursued until all steps of the grievance procedure have been exhausted. If P.O.A. reasonably feels that an employee has suffered immediate and irreparable harm, the City and P.O.A. agree that the Association may directly contact the City Manager's Office to seek a resolution prior to pursuing remedies outside the City. Such contact will be considered to exhaust the grievance procedure in these cases.

II. Definitions

- A. A grievance is a claim or charge of misunderstanding, or difference in interpretation, or violation of provisions of the Civil Service Rules, the Personnel Manual, this Memorandum of Understanding, or management policy or regulations including but not limited to Administrative and Departmental Regulations, which affect wages, hours or other terms and conditions of employment.
- B. Actions which are covered in the City Rights Article of this Memorandum are not grievable, but this shall not preclude employees or their representatives from consulting with Management about the practical consequences such actions may have on wages, hours, and other terms and conditions of employment. In addition, actions covered by another appeals process as described in the Civil Service Rules, Personnel Manual, or this Memorandum are not grievable and shall not be processed through this Grievance Procedure.
- C. If the grievance system is abused by an unreasonable number of submittals by one individual or group obviously designed to thwart orderly processing or if the grievances are patently irrelevant, or incomprehensible, they shall be rejected as “nongrievable” and returned to the grievant.
- D. Wherever applicable, the term “working days” means the actual work days of the individual on whom the time limits are imposed.

III. Procedures

A. General

- 1. Management of the department has the responsibility to inform an employee of any limitation of a given level of Management’s authority to fully resolve the grievance. In this regard, Management shall:
 - a. Supply the employee with the necessary information to process the grievance to the proper agency or authority.
 - b. Advise an employee when any matter under submission is determined by Management as not grievable according to the definitions in Section II above. The “grievance” paperwork submitted by the employee shall be returned to the employee along with a memorandum explaining why the matter is not grievable and what alternative procedures, if any, the employee may follow to process his/her complaint.
- 2. When a group of identical grievances develop, only one grievance form shall be submitted. The grievants may select not more than two (2) spokespersons who thereafter will be their representative “grievants.” The acceptance of the decision by the spokespersons at any step (or final decision if the grievance moves to the fifth step) will be binding on all parties.

3. A grievance shall be recognized if it is brought to the attention of the immediate supervisor either formally or informally within ten (10) working days of the incident's occurrence.
4. If the grievance is between the employee and the immediate supervisor, or where an upper level supervisor has made a decision on the subject of the dispute, the initial step may be to the level above the level making the decision. The upper level supervisor shall have the discretion to remand the grievance to a lower level supervisor as the initial grievance step. Such remand shall be in writing.
5. To be recognized, a grievance must state the nature of the problem and the remedy sought by the employee or P.O.A. In the event that the grievance is rejected for failure to clearly identify the problem or remedy, it may be amended by the grievant or P.O.A.

B. Steps.

- Step 1: At the employee's or employee organization's sole option, grievances may be presented to the supervisor either orally or in writing. If the complaint is presented orally, the procedure is informal and may be settled by an oral answer given within five (5) working days. If the grievance is presented in writing, the procedure is formal and the answer must be given in writing within five (5) working days after submission. The written grievance must be clearly and precisely detailed including the specific grounds for the grievance, a listing of MOU articles or other City procedures that were allegedly violated, and the remedies sought. Grievances that fail to meet these requirements shall not be disqualified, but shall be returned to the grievant for compliance with the foregoing requirements. In such cases, the written answer must be given within five (5) working days after resubmission of the grievance.
- Step 2: If the problem cannot be solved at Step 1, the employee or employee organization may present the complaint in writing to the second level supervisor (if not done at Step 1) within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Management representative shall give a written decision to the employee and the P.O.A. representative.
- Step 3: If the problem is not resolved at Step 2, the employee or employee organization may submit the grievance to the division head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the division head shall give written decision to the employee or P.O.A. representative. In smaller departments, this step is deleted.
- Step 4: If the problem cannot be solved in Step 3, the employee or employee

organization may present the grievance to the Department Head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Department Head or his/her designee shall give a written decision to the employee or P.O.A. representative. In nonmanagerial departments this shall constitute the final resolution of a grievance involving management policy or regulations.

Step 5: Final Resolution of Grievance: If the grievance is still in dispute after Step 4, the employee or employee organization may request a further hearing, which at the discretion of the Management Team will take place before the Civil Service Commission, on matters over which the Commission has authority, or before the City Manager or his designee, by submitting the grievance within five (5) working days. (If it is determined that the hearing should be held before the Civil Service Commission, a fact-finding hearing to define the issues in the grievance will be held by the Personnel Director with the employee and/or employee organization, prior to the date set for the Commission hearing. The grievance may be settled during such fact-finding hearing, if a mutually acceptable solution is developed.) The decision of the Commission shall be issued at its next regularly scheduled meeting following the hearing by the Personnel Director. In grievances answered by the Manager, a hearing shall be held and a written response given within thirty (30) days from the date of receipt of the appeal from the fourth step. If the City Manager's office does not render a decision within forty five (45) days, and if there is no waiver of the time limits, the grievance will be decided in favor of the grievant. The employee or employee organization may only request a hearing before the Civil Service Commission in matters solely involving Civil Service Rules or the Personnel Manual.

Step 6: Grievances arising out of the disagreement on interpretation or application of this Memorandum shall follow the City-wide grievance procedure. The P.O.A. may formally request to continue the grievance, not later than ten (10) days following receipt of the answer at the final step of the grievance procedure (provided it was heard by the City Manager), by serving written notice upon the Management Team. The Management Team will refer the grievance to the City Council for hearing and decision.

ARTICLE 25

SALARIES

A. It is agreed that the salaries of the employees in the unit represented by P.O.A. will be increased for Fiscal Years 2004 and 2005 as follows:

July 1, 2003:	2%
December 20, 2003	2%
July 1, 2004:	4%
December 18, 2004:	3%

B. In the salary schedules for new employees, B step will be eliminated for new hires beginning 7/1/94. Employees hired on or after 7/1/94 will move from "A" step to "C" step after one [1] year for initial appointments as well as subsequent promotions, transfers, or other appointments. This represents an increase of approximately 10%. Current employees will continue with the present five step salary schedule.

C. Police Lieutenant

1. The base pay of this class will be increased in an amount equal to the current value of all premiums currently paid to all members of this class divided by the number of current positions. This will be effective July 1, 1998 and will include the July 1998 increases to Detective and FTO pay.
2. FLSA Exempt Classes - Pursuant to the provisions of the Fair Labor Standards Act (FLSA) the classification of Police Lieutenant is ineligible for premium overtime and shall not be subject to the overtime provisions of this MOU.

ARTICLE 26

UNIFORMS AND SAFETY EQUIPMENT

I. Department Issued Equipment.

A. The City shall issue to each sworn officer:

1. Handgun and Ammunition
2. Safety Helmet and Face Shield
3. Baton and Baton Holder
4. Badge
5. Protective vest and Cover
6. Mace and Mace Holder
7. Flashlight
8. Department Identification Card
9. Name Tag
10. OPN's and Holder
11. Whistle
12. Raincoat and Rain Boots
13. Handcuffs and Case

B. The City shall issue to each sworn officer assigned to the motorcycle squad:

1. Department of Transportation approved safety helmet every two (2) years or sooner should there be a defect or damage to the helmet.
2. The City shall issue to each motor officer, on an as needed basis, the following equipment:
 - a. Protective Gloves
 - b. Protective Goggles
 - c. Face/Dust mask

Each officer issued equipment in accordance with paragraphs A and B, shall be responsible for that equipment and shall surrender such equipment to the City upon demand.

II. Police Officer's Uniform and Equipment

A. Initial Requirement. Each Employee in this bargaining unit shall be required to obtain and maintain and in a manner acceptable to the City the following items:

Items Required

- Pants
- Tie

Belt
Shirt, Short or Long Sleeve
Belt and Holster
Ammunition Pouch or Speed-loaders and Pouch
Pistol Belt Keepers (4)

- B. Maintenance and Upkeep. The City shall also pay those sworn members of the Police Department who have completed 12 months as a Police Officer I as of September 1, and who are available for duty assignments on September 1, the sum of \$900.00 for the maintenance and replacement of the uniforms and equipment described in Paragraph A. Sworn officers of the Police Department who have completed 12 months as a Police Officer I as of September 1, but who are on leaves of absence, including injury leave, shall be eligible for this payment upon their return to duty. Police Officers who complete 12 months as a Police Officer I after September 1, shall receive the sum of \$900.00 as of the day they complete 12 months as a Police Officer I. No Police Officer shall receive more than \$900.00 during the Fiscal Year for “maintenance and upkeep” of the uniforms and equipment described in Paragraph A.
- C. In addition to the uniform and equipment allowance set out in II. B. above, officers assigned to the mounted horse patrol shall receive reimbursement of \$840.00 for the reimbursement of the initial purchase of uniforms and equipment so authorized by the Department upon assignment. The City shall also pay those sworn officers assigned to the mounted horse patrol the sum of \$425.00 on the regular paycheck on or before September 1, for the maintenance and replacement of said equipment in subsequent years. Employees receiving the initial reimbursement shall not receive the maintenance allowance in the same fiscal year.
- D. In addition to the uniform and equipment allowance set out in II. B. above, officers assigned to SWAT duty shall receive the sum of \$400.00 for the reimbursement of the initial purchase of uniforms and equipment so authorized by the department upon assignment. The City shall also pay those sworn officers assigned to SWAT duty the sum of \$300.00 on the regular paycheck on or before September 1, for the maintenance and replacement of said uniforms and equipment. Employees receiving the initial reimbursement shall not receive the maintenance allowance in the same fiscal year.
- E. In addition to the uniform and equipment allowance set out in II. B. above, officers assigned to the Harbor Patrol and permanent members of the Beach Enforcement Team shall receive reimbursement of \$350.00 for the initial purchase of uniforms and equipment so authorized by the Department upon assignment. The City shall also pay those sworn officers assigned to the Harbor Patrol and permanent members of the Beach Enforcement Team the sum of \$150.00 on the regular paycheck on or before September 1, for the maintenance and replacement of said equipment. Employees receiving the initial reimbursement shall not receive the maintenance allowance in the same year.

- F. In addition to the uniform and equipment allowance set out in II. B. above, members of the Canine Unit shall receive an additional \$300 on the regular paycheck on or before September 1, for the replacement and maintenance of their uniforms.
- G. In addition to the uniform and equipment allowance set out in 26.II.B above, members of the Bike Patrol shall receive \$200 reimbursement for the initial purchase of uniform and equipment. Officers who have already received this reimbursement shall not be eligible for an additional reimbursement. The City shall also pay those sworn officers permanently assigned to the dedicated Bike Patrol Unit on September 1, the sum of \$150 for the maintenance and replacement of said equipment.
- H. Effective July 1, 2003, Core Instructors assigned to the Regional Academy, as determined by the Chief of Police, shall receive an additional initial uniform allowance of \$200, and an additional \$100, on or before September 1, for the replacement and maintenance of their uniforms. This allowance is in addition to the uniform and equipment allowance set out in II.B above.

III. Motorcycle Officers

- A. Each sworn officer of the Police Department who is assigned to the motorcycle squad shall provide and use the following items:
 - 1. Motorcycle boots
 - 2. Motorcycle breeches
 - 3. Gloves - riding
 - 4. Gloves - gauntlet
 - 5. Leather jacket
 - 6. Safety glasses - clear
 - 7. Safety glasses - sun
- B. The City shall pay those sworn officers of the Police Department who are assigned to the motorcycle squad on September 1, the sum of \$425 for the maintenance and replacement of the equipment described in Paragraph A.
- C. Upon initial assignment to the motorcycle squad, each officer so assigned will receive the sum of \$750.00 for the initial purchase of equipment described in Paragraph A. Employees receiving this initial reimbursement shall not receive the benefits in III.B. above in the same fiscal year.

IV. Administration

- A. Sworn officers reporting for duty are expected to have uniforms and equipment as described in Sections I, II and III (Section III applies only to sworn officers assigned to the motorcycle squad). Failure to have and/or use any of these items may result in discipline of the employee.

- B. The Police Officers Association agrees that the City of San Diego has discharged the City's obligation pursuant to Section 6401 of the Labor Code to provide the safety equipment for police officers as set forth in Sections 50081.1 of the Government Code.

- V. The parties hereto agree that if, during the term of this agreement, a change is proposed in the basic uniform, the parties will meet and confer on the effects of such a change.

ARTICLE 27

PERSONNEL RULES AND REGULATIONS

The following information is provided as a resource summarizing elements of Civil Service Rule X, Leaves of Absence Section 3.4.

ANNUAL LEAVE - WORKERS' COMPENSATION: Those employees who are absent from duty because of a temporary disability which is defined as industrial under the Workers' Compensation Act, but who are not granted industrial leave may use annual leave credits; provided however, that any such employee who receives a temporary disability allowance, as provided by the Workers' Compensation Law, must reimburse the City Auditor and Comptroller in the amount of the authorized compensation, in which case, only that amount of the employee's accumulated annual leave credits as when added to said disability allowance will result in a payment of not more than the employee's full salary or wages shall be charged against said accumulated annual leave credits.

Section 4. SICK AND EMERGENCY LEAVES:

[1] **SICK LEAVE INTENT, DEFINITION, PROVISIONS:** The intent of this section is to allow continued use of sick leave credits accrued prior to September 4, 1981, for those employees who are unable on account of illness or injury to perform the duties of their positions or who would expose fellow workers or the public to contagious disease and are thereby forced to be absent from employment, and to provide necessary time off from work for medical and dental care, subject to administrative regulations designed to prevent malingering or abuse of these privileges.

(a) **SICK LEAVE DEFINITION:** Sick leave is defined as the necessary absence from duty of an employee on account of illness, injury, or exposure to contagious disease suffered by the employee, or the serious disability of the employee while on a scheduled leave, or absence authorized for medical or dental care.

(b) **SICK LEAVE - WORKERS' COMPENSATION:** Those employees who are absent from duty because of a temporary disability which is defined as industrial under the Workers' Compensation Act, but who are not granted industrial leave may use sick leave credit; provided however, that any such employee who receives a temporary disability allowance, as provided under the Workers' Compensation Law, must reimburse the City Auditor and Comptroller in the amount of the authorized compensation; in which case, only that amount of the employee's accumulated sick leave credits as when added to said disability allowance will result in a payment of not more than the employee's full salary or wages shall be charged against said accumulated sick leave credits.

[2] **EMERGENCY LEAVE INTENT, DEFINITION, PROVISIONS:** The intent of this Section is to allow continued use on a limited basis, of sick leave credits accrued prior

to September 4, 1981, by an employee who is confronted with serious emergency illness, injury, or death in the employee's immediate family.

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

Section 7. MILITARY LEAVE: In addition to the leaves of absence provided in this rule, City officers or employees who are also members of the armed services or militia or organized reserves of this State or Nation, shall be entitled to the leaves of absence and the employment rights and privileges provided by the Military and Veterans' Code of the State of California. City officers or employees who have had not less than one year of regular City employment immediately prior to the beginning of requested military leave, shall receive their City compensation during the military leave, not to exceed a period of 30 calendar days in any fiscal year. Effective July 1, 2003, it is agreed that the City and POA will provide flexibility in the interpretation of Military Compensation for any employee who is on temporary military leave of absence and who has not been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day upon which the leave begins, shall be entitled to receive his or her salary or compensation as such public employee for the first 30 calendar days or 174 hours of any such absence. Pay for such purposes shall not exceed 30 days or 174 hours in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of said public employee in the recognized military service shall be counted as public agency service. No policies governing Military Leave (Personnel Manual Section I-10) shall be changed to accommodate for this salary flexibility.

Section 8. COMPULSORY LEAVE: If, in the opinion of the department head, an employee is incapacitated for work on account of illness or injury, such employee may be required, for a period not to exceed two workdays, to absent himself from duty. If said incapacity may reasonably be expected to extend beyond two workdays, the department head shall require the employee to undergo an examination by a physician designated or approved by the commission. If the report of the physician shows the employee to be in an unfit condition to work, the appointing authority shall have the right, subject to Commission approval, to compel such employee to take sufficient leave of absence, not to exceed one year of leave without pay, so as to become fit for the proper performance of assigned duties.

Section 9. SPECIAL LEAVE WITHOUT PAY: An employee whose work record has

been satisfactory and who, for any reason considered good by the appointing authority and the Commission, desires to secure leave from regular duties, may be granted special leave of absence without pay for a period not exceeding one year. For good cause, such leave may be extended, upon approval of the appointing authority and the Commission. When such leave is granted to enable an employee to take a position in the Unclassified Service, the Commission, may upon request, grant a leave of absence for the period of actual service of the employee in such Unclassified position. An employee asking for special leave without pay shall submit a request on prescribed forms with a transmittal letter, stating the reasons for the request. The appointing authority who endorses such request shall recommend and the Commission shall determine whether the employee shall be entitled to the same position upon return from such leave or whether the employee's name shall be placed on the eligible list for the class or classes as determined by the Commission. If appropriate, the employee's return shall be subject to passing the prescribed City medical examination.

Section 10. COURT LEAVE: An employee, other than one paid on an hourly basis, who is required by court order to serve as a juror, or as a witness who is not a party to a court action, shall be granted leave for such purpose upon presentation of proof of the period of his required attendance to the appointing authority and the Personnel Director. The employee shall receive full pay for the time he serves on court duty, provided the money which he receives as a juror or witness is deposited with the City Auditor for credit to the proper fund. Request for such leave shall be made upon leave of absence forms.

Section 11. SPECIAL MEETINGS: Officers and employees may be granted special permission, without loss of pay, to attend professional or technical institutes or conferences, or other meetings as may contribute to the effectiveness of their service to the City. Such special permission is subject to the approval of the appointing authority or the City Council, whichever is applicable. Evidence of such special permission to attend said conferences or meetings shall be furnished promptly by the department head to the Personnel Director. Officers and employees granted said special permission shall be considered to be in duty status.

ARTICLE 28

FIELD TRAINING OFFICER PAY

The City agrees to continue a program which will provide extra compensation for employees whose job assignment involves full-time Field Training Officer duties (including Sergeants), as defined by the Chief, relative to the Police Academy trainees. Effective July 1, 2003, participants in this program shall receive 5% of employee's base rate while designated as a Field Training Officer capacity.

ARTICLE 29

CALL-BACK PAY

- A. An employee who has been released from work and has left the work premises shall, if called back to duty from home or any other non-work location, be paid for the reasonable estimate of the time required to travel from and to his/her residence and the work areas and for the time actually worked. The total time of call-back pay, including travel time, shall not be less than four (4) hours.

- B. This provision does not apply to instances when an employee is already present at the work station and is required by a supervisor to start work early or to continue work following the end of shift. This provision also does not apply to a meeting scheduled after the employee's shift, and which is contiguous with the shift. In such instances, the employee will receive compensation only for the time actually worked or spent in the meeting after his/her shift.

ARTICLE 30

COURT PAY

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

- A. The employee shall receive compensation at the rate of time and one-half of his/her regular base rate for all time actually spent in court (minimum of four hours), excluding court recess time.
- B. If an employee is scheduled to appear in court up to two hours prior to the beginning of his/her shift, the employee's schedule may be adjusted to correspond with the court appearance. The intent of this change is to align the beginning of the shift with Court appearances and minimize the incidence of Court pay for hours not actually spent on Court duty. If an employee is ordered by his/her immediate supervisor, duty lieutenant or Communications to work beyond the regular number of hours per day on the adjusted shift, the four hour minimum would apply, plus relevant overtime for the shift extension. However, the four hour minimum would not apply in situations in which an employee was directed to work beyond the adjusted shift as a result of a self-initiated action, i.e. a vehicle or person stopped and detained, an arrest, etc.
- C. Eligibility restrictions described in Article 29, Section B, shall also apply to the minimum requirements described in Section A above.
- D. If the employee makes a court appearance during the morning session and at least part of the afternoon session, after he/she has just completed working a night shift, and if the employee is scheduled to work the next succeeding night shift, the employee shall have the option of receiving time and one-half compensation for the actual court appearance time or having the succeeding scheduled night shift off as compensatory time. If an employee is scheduled off on his/her next shift following such court appearance, he/she may not exercise the second option.
- E. Compensatory overtime shall begin at the time indicated on the subpoena unless the officer is otherwise notified by a superior.
- F. During FY 1995, the Police Department, in cooperation with local Court administrators, may implement procedures to minimize the scheduling of Court appearances on Police officers' days off.

ARTICLE 31

COURT STAND-BY

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

The parties agree to maintain current practices regarding standby hours and associated discretionary time off.

ARTICLE 32

OVERTIME

It is agreed that premium compensation at the rate of one and one-half times the base rate shall be paid to employees in the classifications of Police Recruit, Police Officer I, Police Officer II, Police Agent, Community Relations Assistant to the Police Chief, and Police Sergeant, under the following conditions:

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

An employee's work shift refers to the hours of work during the normally scheduled work day, and may be permanently adjusted with at least 72 hours notice without the necessity of paying premium pay as described above, provided that the employee does not work a total number of hours greater than the normally scheduled hours. An employee's days off cannot be changed solely to avoid paying overtime. Management may, by providing at least five [5] days notice to affected employee, change an employee's permanent days off. When unforeseen special events or emergencies arise necessitating they be required to work their scheduled days off, they will be paid overtime, or, at their election, be assigned other days off as a substitution. As a general policy officers will not be required to work more than seven consecutive days unless it is an emergency. "Special Events or Emergencies" will be defined as unforeseen crime problems, natural or man-made disasters, special events of which the department had little or no knowledge, e.g., presidential visits, and events requiring unusually large numbers of personnel.

Notwithstanding the terms of the F.L.S.A., an employee's hours and/or days off may be changed on a temporary basis with or without 72 hours or five days notice, when the employee voluntarily waives those requirements. Voluntary is defined as acting freely without any coercion, stated or implied. (Management may request that the employee sign a form denoting such schedule alternations).

The terms "Permanent" or "permanently" shall mean a change no more than once within the span of a shift.

2. When an employee is required under subpoena to appear in court during non-duty hours, he/she shall receive premium pay for all such court time with a four (4) hour minimum of compensation in each such instance. Employees will not receive a second four (4) hour minimum of premium pay for subpoenas requiring appearances within four (4) hours of a first subpoena appearance time (e.g., a 10:30 a.m. subpoena following an 8:15 a.m. subpoena on the same date). Only actual time above the first four (4) hour minimum will be compensated with premium pay in such cases.

However, pursuant to Article 30, B, an employee's schedule may be adjusted to correspond to a Court appearance, eliminating the need for overtime pay. When an employee is directed to telephone a specific court or agency at a designated time during non-duty hours for the purpose of a telephonic hearing, and he/she does not have to place the call from a designated location, he/she shall receive premium pay for such time with a thirty (30) minute minimum of compensation for each such instance.

3. Eligibility restrictions described in Article 29, Section B, shall also apply to the minimum requirements described in above sections 1 and 2.
4. When an employee's shift is extended beyond its normal ending time, he/she shall receive premium pay for the time of the shift extension.
5. If an employee is scheduled or directed by the Department to work on a designated City holiday he/she shall receive pay at premium compensation for the time worked and shall also receive ten (10) hours of compensating time for the holiday. An employee scheduled to be off work on a City holiday and who is called back to work on that day shall receive premium pay for the time worked, if otherwise eligible, and also eight (8) hours of compensating time for the holiday.
6. For all overtime earned, the members of the unit shall receive either compensatory time off or pay, at the discretion of the Police Chief. Employees shall be allowed to accrue 80 hours of compensatory time off. By the end of the fiscal year, however, compensatory time balances must not be in excess of 45 hours.
7. Motor Unit and Canine Unit

The City agrees to pay employees assigned to the Motorcycle Unit two additional hours of compensation each 40-hour work week at premium rate overtime to compensate for time spent cleaning, preparing, and maintaining their equipment. Employees assigned to the Canine Unit will be paid 3.5 additional hours of compensation each 40-hour work week at premium rate overtime for similar activities. The parties agree that this is a reasonable amount of time for such activities. If an employee, due to extraordinary circumstances, spends more than the agreed to time on these activities, the employee may request additional overtime. This must be pre-approved. Effective July 1, 2000, Lieutenants are ineligible to receive the Motor Unit and Canine Unit pays described above.

ARTICLE 33

WORK SCHEDULES

The City and the Police Officers Association agree that the work schedules of those Police Officers assigned in the Patrol and Traffic Divisions assigned in the five day work week schedule will be as follows:

- A. All officers on a five-day work schedule will report to work at the scheduled start of their assigned shift. Officers who are scheduled to work at the hour daylight savings time either begins or ends will not have their hours adjusted to avoid working overtime. Officers will report at their scheduled time and work a regular, full ten-hour shift.
- B. All officers may receive thirty minutes during their assigned shift as a meal break during which time they may report as Code 7. This period is unpaid.
- C. An officer's conduct while on Code 7 for a meal break shall be governed by Department Instruction 6.32.
- D. During this thirty minute break, officers will be available to respond to emergency calls.
- E. If an officer's break is interrupted by an emergency call, the break will be resumed after the call is completed.
- F. In the case that an officer is unable to take a total of thirty minutes for a meal break during the assigned shift, the officer will be paid premium rate overtime for this thirty minute period. This request for overtime will be submitted through the normal procedures.
- G. Effective July 1, 2003, the 4/10 plan applied to patrol and traffic assignments will be applied to all sworn positions below the rank of Captain. Said 4/10 plan shall include a thirty (30) minute paid lunch break.

ARTICLE 34

STARTING SALARY

The parties incorporate Personnel Manual Section H-9, "Starting Salary Upon Appointment" in this agreement, except that employees promoted from the class of Police Officer I to Police Officer II shall receive at least the base salary of "C" step of the Police Officer II class.

ARTICLE 35

P.O.A. REPRESENTATION

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

ARTICLE 36

PAYROLL DEDUCTION

1. It is mutually agreed that the City will, during the term of this agreement, deduct P.O.A. dues from the salary of each employee covered hereby who files with the City a written Employee Payroll Deduction Authorization requesting that such deduction be made. Remittance of the aggregate amount of all such dues shall be made to the P.O.A. by Management as soon as possible after the dues have been deducted from the salaries of employees.

All employees will be required to provide authorization to the City Auditor to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility). Employees shall not have to change financial institutions if their financial institution is not compatible with the wire transfer. The effective date of this requirement will be determined by the City during the term of this agreement.

ARTICLE 37

EMPLOYEE REPRESENTATION

- A. An employee may request a representative, not to exceed one City employee and one non- City employee, to be present: (1) at any investigatory or fact-finding meeting which may result in suspension, discharge, demotion, or transfer for purposes of punishment, except in cases requiring immediate removal or suspension as defined in Civil Service Rule XI, Sections 4 and 6, and Personnel Manual Section L-2; (2) during the required discussion of any document, including an “Unsatisfactory,” “Improvement Needed” Performance Evaluation or written reprimand, which is to be made part of the employee’s permanent record and/or which may be used as a basis for subsequent discipline with the following provisions:
1. An employee shall not select a “City employee representative” who is subject to the same investigation or fact finding including any employee who is a witness to the event which is the subject of the investigation or fact finding.
 2. An employee may not select an employee in direct chain of command as their “City employee representative.”
- B. In all other instances, Management has the right to counsel employees as it deems appropriate without employee representation being present.
- C. It is the intention of the parties that this article shall be interpreted consistent with the Peace Officer’s Bill of Rights. (Sec. 3300, et seq., Cal. Gov. Code.)
- D. An officer subject to interrogation by a single departmental representative may have a sole representative. If the interrogation is conducted by more than one departmental representative, an officer may be represented as provided for in paragraph A.

ARTICLE 38

DEPARTMENTAL PROCEDURES - ADVANCE NOTICE

It is recognized that from time to time the department may in its discretion issue departmental procedures in writing which pertain to matters not within the scope of representation. In order, however, to promote communications between the department and the Association, the department agrees to direct a copy of proposed written departmental procedures to the Association prior to official publication. Nothing in this article is intended to require or obligate, directly or indirectly, the department to meet and confer on any subject contained as proposed departmental procedures which is not within the scope of representation. It is understood that the purpose of this article is to enable the Association to review any proposed written departmental procedure in advance of publication and render comments as may be appropriate. Further, nothing in this article shall limit or otherwise restrict the department from immediately publishing departmental procedures which in the determination of the department are of an emergency nature.

ARTICLE 39

TUITION REFUND PLAN

A. PURPOSE

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

B. ELIGIBILITY RULES

1. Eligible employees will be reimbursed 100% of tuition and fees for textbooks and supplies under certain conditions, up to a limit of \$900 per fiscal year. Reimbursement will be made for professional and technical courses offered by accredited colleges, universities, business, trade or correspondence schools, as part of an educational plan which has been approved by the Police Chief or his/her designee.
 - a. Taxation of reimbursements will be made based on Internal Revenue Service (IRS) regulations.
 - b. The Auditor and Comptroller will be responsible for determining which reimbursements are taxable income in accordance with IRS regulations.
2. Tuition Reimbursement is an employee benefit, whereas attendance at training is available at management's discretion. Tuition Reimbursement will not be available for related employee travel expenses. Tuition Reimbursement course attendance must occur on the employee's personal time, not on City time. Travel costs are potentially reimbursable when related to attendance at training. Training may be attended on City time.
3. One day seminars are considered training and are ineligible for Tuition Reimbursement. A semester course can be paid for by Tuition Reimbursement.
4. Conditions under which reimbursement may be approved are as follows:
 - a. The course work must relate to the applicant's present position or must be beneficial to the employee's City related professional development, or must enhance career advancement potential within the City of San Diego, as follows:

- (1) An improvement in skills or knowledge required by the present position;
 - (2) Preparing the employee for significant technological changes occurring in his/her City related career field;
 - (3) Preparing the employee for changes in duties due to the different use of a position or class;
 - (4) Preparing the employee for the assumption of new and different duties as a result of a recent promotional appointment;
 - (5) Preparing the employee for promotional opportunities within the employee's present career series with the City, supported by a logical educational plan of accomplishment approved by the Police Chief or his/her designee.
 - (6) Preparing the employee for career-enhancing promotional opportunities or transfer opportunities into a different City career series.
- b. An educational plan must be approved by the Police Chief or his/her designee prior to course enrollment. This plan must include:
- (1) Intended degree to be achieved or continuing professional education requirements to be satisfied.
 - (2) Major area of study.
 - (3) Core courses and number of electives required by the educational institution.
 - (4) Additional information as required by the Police Chief or his/her designee.
- c. Reimbursement will be made for all core courses and for electives taken to fulfill degree requirements. Core courses should take priority, and the majority of them should be completed prior to enrolling in elective courses.
- d. Reimbursement will be made for courses taken to satisfy professional continuing education certificate and/or licensing requirements. These courses must directly relate to the employee's City career.
- e. Individual semester classes directly related to the employee's current position with the City are potentially reimbursable.
- f. Requests for reimbursements must be approved by the Police Chief or his/her designee before enrollment in the Course.
- g. Reimbursement will be made for tuition fees and/or required textbooks and a reasonable amount of supplies (as determined by the Police Chief or his/her designee) verified by receipts upon completion of the course with a grade of at

least “C”, “Satisfactory”, “Pass” (for Pass/Fail courses), or the equivalent.

- h. The employee must have completed six months of City service in a budgeted City position prior to starting the course. Tuition Reimbursement is not available for hourly employees.
- i. The minimum amount of tuition reimbursement which will be approved for any employee is \$5 per course.
- j. The employee must not be receiving funds for the same course from any other source, such as Veteran’s benefits, scholarships, etc.
- k. Tuition fees for City sponsored courses for which academic credit is granted by an accredited college or university shall be reimbursable under this program, subject to the limits described above.

C. REQUESTS AND REIMBURSEMENT - PROCEDURE

- 1. Employee meeting the eligibility rules fills out the Form PEA- 1523, “Request for Approval of Tuition Reimbursement”, in four copies, prior to enrollment in the class. The form is available from In-Service Training Section. A central supply is maintained in City Operations Building - Store No. 4.
- 2. The completed form is presented to the employee’s Police Chief or his/her designee.
- 3. Upon approval, the original is forwarded to the Financial Management Department - Organization Effectiveness Program for statistical analysis. One copy is returned to the employee, and two copies are retained by the employee’s In-Service Training Section.
- 4. Upon completing the course, the employee will furnish the In Service Training Section with receipts of payments made and evidence of satisfactory completion.
- 5. The In-Service Training Section will then process a “Request for Direct Payment” Form AC-468 (rev. 8/74) to provide for reimbursement to the employee. Original receipts, proof of passing grades, approved education plan and two copies of form PEA-1523 must be attached.
- 6. At the end of each calendar year, the Auditor’s Department will include the taxable tuition reimbursement dollars received on the employees W-2.

D. EXCEPTIONS

- 1. Management and SDPOA agree to form a standing committee comprised of two (2) SDPOA representatives and two (2) Management representatives to meet approximately twice yearly for the purpose of reviewing prospective exceptions

and establishing an initial list of Tuition Reimbursement exceptions. Exceptions must receive prospective approval. Disagreements will be referred to the Labor Relations Manager and SDPOA for discussion.

ARTICLE 40

FLIGHT PAY

Those members of the San Diego Police Department who are authorized to fly the Department's aircraft and who are additionally designated as a "Primary Pilot" shall receive approximately 11.5% of employee's base pay, effective July 1, 2003. During the term of this agreement, there shall be no less than two primary pilots.

Any officer relieving a primary pilot shall also receive flight pay for the period served in that capacity.

Effective July 1, 2003, Air Support Trainers shall receive approximately 3.5% of employee's base pay.

Effective July 1, 2000, the cost of the required FAA pilot physical shall be reimbursed by the City.

ARTICLE 41

OFFICER RIGHTS

- I. Public Safety Officers Procedural Bill of Rights (Cal. Gov. Code, Sec. 3300)
 - A. The parties hereto recognize that all members of the Police Unit are covered by the provisions and decisional interpretations of the Public Safety Officers Procedural Bill of Rights. (Bill of Rights.)
 - B. Officers may, with the approval of the POA Board of Directors, bring an action in Superior Court without exhausting the administrative remedies described in this Article, in those instances where it is alleged that a specific violation of the Public Safety Officers Procedural Bill of Rights has occurred and it is alleged that the remedies contained in this Article are inadequate.

II. Definitions

- A. For purposes of this Article, the following definitions shall apply:
 1. Punitive action - shall be defined as those actions which may directly lead to dismissal, demotion, suspension, reduction in salary, written reprimand, written warning, transfer for purposes of punishment, or less than satisfactory performance evaluation.
 2. Interrogation - shall mean any inquiry concerning the actions or conduct of an officer which may lead to punitive action or criminal allegation.
 3. Investigation - shall mean the process of conducting inquiry(ies) into the actions or conduct of an officer(s) from the moment it is reasonably apparent that such inquiry(ies) may lead to punitive action or criminal allegations directed toward an officer or officers.

III. Civil Service Appeals

- A. Officers may, in addition to other rights to administrative appeals and/or hearings set out herein, appeal any punitive action which is covered by provisions of City Civil Service Rules to the Civil Service Commission in accordance with those rules.
- B. Where a punitive transfer action has taken place in conjunction with a disciplinary action over which the Civil Service Commission has jurisdiction the parties hereto agree that the Commission may rule on the propriety of the matter before it and that the Police Department will be bound on the matter of the punitive transfer by the findings of the Commission.

IV. Investigations

- A. Any officer(s) under investigation shall receive at least three days notice prior to an interrogation except where such delay will hamper the gathering of evidence as determined by an Assistant Chief. At the time an officer is advised that an interrogation is planned the said officer will be advised of the subject of the interrogation and that he/she has a right to obtain representation.

The actual scheduling of the interrogation will be subject to the reasonable accommodation of the schedules of the subject officer and his/her representative.

- B. Investigations of shooting incidents involving officers and any incident involving the actions or conduct of an officer(s) where personnel from the Internal Affairs Unit are called to the scene of the incident will be reported to the Police Officers Association immediately. The Association will provide a telephone number to the Police Department and it shall be the responsibility of the duty lieutenant to telephone the number and report the general nature of the incident.

C. Officers who are removed from the normal duties of the job during the pendency of an investigation shall not be so removed for longer than thirty (30) calendar days except where the business necessities of the Department require the removal from duties to extend beyond 30 days. Under circumstances of such an extension, the involved officer shall have the right to a hearing before an Assistant Chief concerning the business necessities alleged and shall have the opportunity to argue and present evidence to contradict those business necessities. This hearing is an informal opportunity for the officer to present to the Chief of Police regarding why the extension should not be granted. This is not to be confused with an evidentiary hearing afforded officers pursuant to the Public Safety Officer Procedural Bill of Rights for punitive action.

V. Intra-Department Hearings

- A. Scope - The herein described intra-departmental hearing procedures shall be available to officers as follows:

1. Dismissal
2. Suspension
3. Demotion - in rank or classification
4. Reduction in compensation (as defined in Index Code L-2 of the Personnel Manual); does not include loss of overtime due to transfer or loss of a take-home car due to assignment)

5. Written reprimand
6. Written warning
7. Less than satisfactory performance evaluation
8. Punitive Transfers
9. Officers entitled to appeal any action to the Civil Service Commission shall retain such right notwithstanding the use of intra-departmental appeal procedures and may elect either or both procedures without prejudice to the other.
10. The intra-department hearing procedures shall be available to officers of all ranks and without regard to permanent or probationary status.

B. Procedure - hearings regarding punitive actions shall be conducted as follows:

1. The hearing officer shall be the Chief of Police or his/her designee of not less than the rank of Assistant Chief, except that for hearings regarding notes of counseling and written warnings, a Captain may be the designated hearing officer. Such hearing officer shall have had no role in the original decision to take punitive actions.
2. Each officer requesting to appeal a matter shall have ten (10) working days to file an appeal with the office of the Chief of Police.
3. The appeal hearing shall be recorded in such a manner as to permit a transcript to be made. All parties shall have access to the original recordation, a duplicate copy and/or any transcript.
4. The officer shall have the right to present evidence, cross-examine witnesses and require the attendance of any witnesses who are city employees.
5. At the conclusion of the hearing the hearing officer shall render a written decision which shall state the facts found to be true and the decision of the hearing officer based upon those facts.
6. Officers who have reached permanent status may appeal a decision of the hearing officer in matters set out in Section A, 4 and 5 hereof, to the Office of the City Manager within ten (10) working days of receipt of the decision. Such appeal will consist solely of a review of the written record and/or audio tapes developed at prior steps of the appeal. The City Manager or representative shall issue findings within 30 working days of receipt of the full and entire appeal package.

C. Denial of Promotion on Grounds Other Than Merit - Any officer denied promotion

on grounds other than merit may appeal such denial as set out herein. The appeal request shall state the grounds other than merit by way of factual allegations. At the conclusion of the hearing, one of the following decisions may be reached:

1. The grounds specified in the appeal are sufficiently job related to constitute grounds based on merit;
2. The allegations in the appeal are not supported by the evidence;
3. The grounds specified in the appeal are supported by the evidence and are not job related, in which case the decision of non-promotion will be adjusted to place the aggrieved employee in the next available opening in the classification or to reverse the original promotional decision if feasible.

A denial of an appeal under this section is appealable to the Office of the City Manager in the manner set out in this Article.

D. Other Negative Material - Any officer who has material negative to his/her employment relationship or a satisfactory performance evaluation containing negative comments placed in his/her personnel file may appeal the placement of such material to a ranking officer of not less than the rank of Captain.

1. For the purposes of this section and this article, Personnel file shall mean any file or repository of material kept for the purpose of making employment related decisions concerning an officer.

VI. Other Policies, Practices and Procedures

- A. During the term of this agreement, no policies, practices or procedures of the City or the Police Department which affect wages, hours or working conditions and which specifically affect investigations, or the procedures for conducting appeals and hearings shall be changed in any way without the agreement of the parties.
- B. During the term of this agreement, the City agrees not to implement or adopt any changes in policy or procedure which adversely affects or diminishes the procedural or substantive rights of officers contained in this article, the Personnel Manual, the Charter of the City of San Diego, any applicable state or federal law, or the Constitutions of the State of California or the United States except by mutual agreement of the parties.

Furthermore, the City agrees not to meet and confer over any proposed changes to the above-described rights during the term of this agreement except by mutual agreement of the parties.

VII. Miscellaneous Provisions.

- A. Conformity with Bill of Rights - All provisions of this article are to be read to

expand and/or complement rights which officers enjoy under the Public Safety Officer Procedural Bill of Rights. The parties hereto do not intend to limit or reduce those statutory rights in any way.

- B. Personnel Files - Any employee who has any material adverse to his/her employment relationship placed in a personnel file shall be allowed to file a complete written response to the material within 30 days of being notified of its placement in the file. The Police Department will notify an individual of the placement of such material in the file by certified mail within 30 days of its placement. Should there be a failure to notify, the material will be considered void and removed from the personnel file. The rights to protection of the personnel file established herein shall survive the termination of the employee should such material be placed into the file without the knowledge of the employee or after his/her termination.
- C. Upon separation of a probationary officer who is terminated for less than satisfactory performance or failure to meet employment standards, the City will release to any person or entity seeking information only the name of the officer, the dates of employment, classification and "failed probation". The only exception will be proper process of the court and a waiver signed by the affected employee. Such separation will not be considered disciplinary in nature.
- D. Formal reprimands without further penalty more than two (2) years old, and those with additional penalty more than five (5) years old, will not be considered for purposes of promotion, transfer, special assignments and disciplinary actions except as to disciplinary actions, when such reprimands show patterns of specific similar police misconduct as defined in the Departmental Rules and Regulations and Department Instructions. All officers shall have the right to review their Departmental and Divisional Personnel Jackets and identify all such documents. Upon concurrence of the commanding officer that such documents have been appropriately identified, they will be placed in an envelope, sealed and initialed by the officer. The envelope will be placed in the officer's Department personnel file and will be opened only in the event the officer is in the future subject to discipline.
- E. Upon the adoption of this article, the appropriate provisions of policies, practices and procedures of the City and/or Police Department shall be amended to conform herewith. However, should there be a failure to so amend or should any such policies, practices or procedures conflict with the provisions of this article, this article shall prevail.

NOTE: The City and POA agree to negotiate in good faith modifications to the Police Department Discipline Procedures. Therefore, this article is exempt from any and all "zipper clauses" in this M.O.U. that would otherwise preclude meeting and conferring on changes to articles in this agreement.

ARTICLE 42

COPIES OF THE AGREEMENT

The Association may obtain copies of this agreement from the City by reimbursing the City for their cost.

ARTICLE 43

SENIORITY

- A. Seniority: Seniority shall be computed according to the length of last continuous service in the class or subdivision thereof, or an equal or higher ranking class. Ties shall be broken by first considering the length of total City service, and then at the discretion of the appointing authority.

- B. Job Rights: Subject to the provisions of Rules VI and IX, a permanent employee whose layoff is imminent shall have the right of transfer to any vacant position in the same class or subdivision thereof in any other department. If there is no such vacancy, said employee shall have the right of competition for retention in equal and the next successively lower classes in which he or she has served satisfactorily.

ARTICLE 44

RETIREMENT

1. The City agrees that it will apply an amount that is approximately equal to 7.3% of the base salary of employees in the Unit represented by P.O.A. into the City Retirement System, thereby reducing the amount deducted from employees' paychecks as the employees' retirement contribution by that amount. Effective July 5, 2002, this pickup was increased from 7.3% to 9%. Effective July 5, 2003, this pickup is increased from 9% to 10%. These increases to remain in effect until the Employee Contribution Reserve is exhausted. The employee, upon termination, will have no vested right in the amount so contributed by the City. Substitution of this portion of the employees' contribution by a City payment will not decrease the total amount applied towards the required retirement contribution, and will not affect retirement benefits. Provided, however, such payment shall not exceed any employee's total contribution to the system.
2. Federal law mandates that all employees be covered by a qualified retirement plan or by Social Security effective July 1, 1991. This impacts the classification of Police Recruit since they do not participate in any retirement system while in the Academy. Due to this mandate, it is agreed for the classification of Police Recruit that participation in a version of the Supplemental Pension Savings Plan is mandatory until becoming sworn and being enrolled in the City Retirement System.
3. 1981 Pension Plan: Effective July 1, 1991, for the purpose of benefit calculation only, 1981 Plan service will be made equivalent to CERS service.
4. C.O.L.A.: Effective July 1, 1992, and thereafter, the COLA for individuals who retired prior to October 6, 1980, will be increased from 1.5% to 2.0%.
5. IRS 414(H)(2)

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

6. 1997 Benefit Changes

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

- A. Effective August 1, 1997, a Post Retirement Health Benefit is established for

Health Eligible Retirees and Non Health Eligible Retirees. A Health Eligible Retiree is any retired Member who: (1) was on the active payroll of the City of San Diego on or after October 5, 1980; and (2) retired on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System.

Health Eligible Retirees may choose to participate in a City sponsored health insurance plan or any other health insurance plan of their choice. The Retirement System will pay or reimburse the applicable Medicare-eligible or non-Medicare eligible retiree-only premium up to but not to exceed the cost of the retiree-only premium for the highest cost HMO plan which is also a City sponsored health insurance plan made available to Health Eligible Retirees. (Currently this is the Blue Cross California Care health insurance plan.)

Additionally, the Retirement System will reimburse the Part B Supplemental Medical Expense Premium for those Health Eligible Retirees enrolled in Medicare.

Effective August 1, 1997, the “sliding scale” health benefit with a \$2,000 cap is eliminated and replaced with the Post Retirement Health Benefit for Health Eligible Retirees.

The City agrees that it will not diminish the benefits contained in its current retiree HMO plans without mutual agreement with the exclusive bargaining representatives; nor convert to a blended premium for active employees and retirees without mutual agreement with the exclusive bargaining representatives.

- B. The Disability Income Offset provision is eliminated. There will be no reduction retirement benefits if the retiree has other income.
- C. A five year purchase of service credit provision is established effective January 1, 1997. Under this provision, the Member may purchase up to five years of service credit by paying both employee and employer contributions in an amount and manner determined by the San Diego City Employees Retirement System Board to make the System whole for such time. In addition, members retiring on or after January 1, 1997, may purchase probationary periods, military and veterans code leaves, waiting periods for the 1981 Pension Plan, actual time worked hourly or part time, special leaves without pay occurring prior to January 1, 1997, the difference in time between part time and full time prior to January 1, 1997, long term disability, vocational rehabilitation maintenance (VRMA) and temporary total disability (TTD), FMLA periods, special leaves of absence with job to be saved periods and any preceding reinstatement by the Civil Service Commission following a termination appeal.
- D. A Deferred Retirement Option Plan (DROP) is established effective April 1, 1997. DROP provides an alternative form of benefit accrual while allowing a Member to continue working for the City. During the DROP period, a DROP Member retains all rights, privileges and benefits of being an active City employee, except as

specifically modified in the DROP Plan Document, and is subject to the same terms and conditions of employment including disciplinary actions up to and including termination. The Member continues to be eligible for the active employee Flex Benefits Program for the classification and is not eligible for “retiree” health benefits until such time as the Member completes or terminates the DROP period. Under DROP, a monthly service retirement allowance along with any COLA increases, Supplemental Benefit checks and any adjustments to such payments applicable to retirements effective on the date the Member entered the DROP are deposited into a trust account. These SDCERS benefits are calculated as if the Member were retiring on the date the Member enters the DROP. The Member’s contributions to the Retirement System cease. The Member and the City each contribute 3.05% of the Member’s salary each pay period that the Member participates in the DROP. The Member’s contribution is made on a pre-tax basis pursuant to Internal Revenue Code Section 414(h)(2). These monies are placed in a trust account and are distributed to the DROP participant upon termination of employment or completion of the DROP period whichever occurs first. No withdrawals may be made from the DROP account until the Member completes or terminates his or her DROP period. Interest will be credited to the Member’s DROP account in the same manner and at the same rate that interest is credited to employee CERS accounts. The Member is 100% vested in the DROP from its inception.

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

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

- E. For retirements effective on or after January 1, 1997, the 50% continuance is available to the spouse to whom the Member was married on the date of retirement. The requirement that the member be married to his or her spouse at least one year prior to retirement for the spouse to receive the 50% continuance is eliminated.
- F. The surviving spouse of a Member who is killed while in the performance of duty is entitled to continued health coverage as provided in California Labor Code Section 4856.
- G. The modified special death benefit provided to the surviving spouse of a Member killed in the line of duty is amended to eliminate the requirement that the benefit be discontinued if the spouse remarries. Any benefit terminated to such spouse as a result of remarriage shall be reinstated effective January 1, 1997.

7. A retirement allowance cap of 90% of Final Compensation (high one year salary) is established for Police Safety Members.
8. 2000 Retirement Benefit Changes

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

A. Formula Change For Calculation of SDCERS Monthly Retirement Benefit

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

Retirement Age	Retirement Calculation Factor effective 1/01/97-6/30/00 [Current]	Retirement Calculation Factor effective 7/01/00 [New]
50	2.50%	3.00%
51	2.60%	3.00%
52	2.70%	3.00%
53	2.80%	3.00%
54	2.90%	3.00%
55+	2.99%	3.00%

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

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

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

B. Police Safety Member’s SDCERS Contribution Rate Change

- (1) On July 1, 2001, Police Safety Members’ contribution rates to SDCERS will be increased by 0.53%.

- (2) Effective July 1, 2000, Police Safety Members' Contribution rates will increase by an additional 0.16% to pay for the cost of providing the choice of Retirement Calculation Factors described above. The additional 0.16% increase will be paid from the Employee Benefit Reserve described in SDMC Section 24.1507 until the Reserve is exhausted.

C. Eligibility for Industrial Disability Retirement Change

A Police Safety Member may be eligible for an industrial disability retirement if it has been medically determined that the Police Safety Member has become psychologically or mentally incapable of performing his or her normal and customary duties as a result of a violent attack on the member with deadly force, such as a shooting or stabbing that causes great bodily injury, and that resulted in a nervous or mental disorder. The violent attack must occur on or after July 1, 2000, and such application for industrial disability retirement must be submitted before July 1, 2005. This provision shall sunset on June 30, 2005, and no such applications may be made after that date.

9. Health Eligible Retiree Benefits

The City and POA, having met and conferred, have agreed to benefit improvements to the City Employees Retirement System for Health Eligible Retirees.

1. Effective July 1, 2002, a Health Eligible Retiree, as defined in the Municipal Code, will have the applicable Medicare eligible or Non-Medicare eligible insurance premiums paid for the Health Eligible Retiree-only insurance, or the Health Eligible Retiree will be reimbursed the actual cost incurred from the Medicare eligible or non-Medicare eligible retiree-only premium up to the maximum amount allowed in the Municipal Code Division 12. Municipal Code Division 12 will be amended to set the maximum amounts to be paid on behalf of or reimbursed to a Health Eligible Retiree for retiree-only Medicare eligible or non-Medicare eligible health insurance premiums based on the premium for the City-sponsored PPO plan for Fiscal Year (FY) 2003 and annually adjusted thereafter based on the Centers for Medicare & Medicaid Services, Office of the Actuary, projected increase for National Health Expenditures for the full year period ending in the January preceding the start of the new plan year; such adjustment shall not exceed 10% of such Medicare-eligible or non-Medicare eligible retiree-only premium. Pursuant to this provision the based monthly maximums are established for FY 2003 as follows:
 - a) For non-Medicare eligible retirees: \$489.16
 - b) For Medicare eligible retirees: \$460.67

10. 2003 Retirement Changes

Effective July 1, 2003, the City and the POA agree to participate in a joint study of possible revisions to the standard for an Industrial Disability Retirement including the relationship to standards applicable to PERS and the County Retirement Act. The studies shall, if possible, include representatives from other safety groups.

Effective July 1, 2003, the City agrees to meet statutory subrogation provisions as a pilot program for the term of the agreement.

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

On or before January 1, 2004, the POA shall have the right to notice the City in writing of the intent to implement a medical expense reimbursement plan to provide a tax-favored benefit to retirees in accordance with the Plan's Trust document. The POA notice shall specify the proposed date of implementation, which shall be no later than January 1, 2005. The notice shall include a copy of the trust document and other pertinent operational documents that are sufficient for the City to determine compliance with IRS regulations. It is understood that the trust shall be established, governed and administered by the trust and POA. The City shall not be responsible for the trust and appropriate hold harmless and indemnity provisions shall be endorsed by the POA prior to implementation. All costs associated with the formation and administration of the trust shall be borne by the POA or trust as appropriate by IRS regulations. Once the City has approved the trust, the City agrees to implement payroll withholding from all employees in the bargaining unit in an amount designated by the trust and approved by the POA for deposit to the trust. The POA will not authorize payroll withholding from employees on a unit wide mandatory basis that has not been approved by the POA membership in the bargaining unit covered by this contract. Membership approval shall be determined by a majority of ballots cast following the notice of election.

ARTICLE 45

LONG TERM DISABILITY PLAN

- A. The City will continue to offer a Long Term Disability Income Plan to eligible members of the Police Unit. This Article generally describes the benefits available under this Plan. Specific provisions are set forth in the Plan on file with the City Clerk. To apply for this benefit employees must be disabled (unable to work as a result of injury, accident, illness or pregnancy), subject to medical disablement certification. Benefits do not start for 30 calendar days from the date of disability and continue for the next 12 months. The benefit is 70% of basic biweekly earnings, less all other income benefits while totally disabled. To qualify for benefits you must file a claim on an approved form available from the Risk Management Department or the Police Personnel Office. The claim must be submitted within 60 days of disability date, or within 60 days of the date an employee is first aware of the disabling condition. If a claim is denied, the employee may appeal the decision to the City Manager or his designee within 10 working days.

This Article is not a complete description of the Plan and is intended only to supplement the Plan Document on file with the City Clerk and Risk Management Department.

- B. The City agrees to meet and confer with the P.O.A. prior to making any changes in this Plan.
- C. The City and P.O.A. agree to establish a committee to discuss the administration and implementation of this Plan. This committee will consist of three representatives of the P.O.A. and a representative of the City Manager, the Police Chief, and the Risk Management Director. The P.O.A. may present individual cases for review by the committee and the Risk Management Department may present the reasons for denial of claims in these cases. The committee will review the case and present an advisory recommendation to the City Manager. The decision of the City Manager will be final.
- D. Add a new section to Article V, Benefits, as follows:

Right of Recovery and Reimbursement. The City of San Diego has the right to recovery and subrogate from and against Third Parties or persons, as well as their agents or insurers, any payments made by the plan.

This additional language should help to clarify the existing procedures for subrogating third party claims.

- E. Amend Article II, Section 2.05, Eligible Employee, to read as follows:

All other employees will join the plan twelve (12) consecutive months after they first become eligible employees. The twelve (12) month eligibility waiting period need

only be satisfied once. It must be repeated only in the event of termination of employment relationship and subsequent rehire.

F. Amend Article III, Section 3.01, Participation, to read as follows:

Or leave of absence is due to Total Disability as defined in Section 4.01. If participation ceases as a result of a leave of absence, eligibility will begin again upon return to work. There is no requirement for repeating the twelve (12) month eligibility.

These changes would eliminate the current requirement for employees to serve a second one-year eligibility period following a leave of absence.

G. Add a definition under Article II, Definitions, as follows:

Third Party means any person or organization who causes illness or injury to any participant who is covered under a City sponsored health or dental plan or this plan and/or any of the Third Party's insurers including liability, homeowners and auto insurance contracts.

H. Add to Article III, 3.01:

Participation shall cease upon the effective date of retirement.

Changes effective July 1, 1994

For claims filed based on a disability which arises on or after July 1, 1994, the City will implement the following changes in the LTD plan. The actual provisions of the Plan Document should be consulted for detailed language, and additional changes, related to mental or nervous disorders.

- The Plan will not pay benefits to any employee whose disability was caused by his or her employment with the City of San Diego.
- Participation in the Plan shall cease upon the effective date of retirement.
- The parties agree to study the feasibility of the City contracting with a private provider of Long Term Disability benefits.

FLEXIBLE BENEFITS

- The City will pay the Participant's flexible benefits for a maximum of one year while on Long Term Disability and thereafter will refer the employee to COBRA for extension of appropriate coverages.
- The City shall pay the Participant's flexible benefits while the Participant is receiving Long Term Disability benefits even if the LTD benefit is 100% offset by other income benefits.

- Participants who are in a Long Term Disability status during the City's annual open enrollment for its Flexible Benefits Plan shall be enrolled in Flexible Benefits as required during open enrollment. Participants shall keep their current health and life insurance coverage, while receiving Long Term Disability. Participants will be allowed to change health care plans provided the health care plans so stipulate.

Changes effective July 1, 1996

The parties agree to jointly study alternative approaches to providing Long Term Disability as a tax-free benefit with an intent to provide the same level of benefit at no additional cost to the City.

ARTICLE 46

CONTINUATION OF WAGES, HOURS AND FRINGE BENEFITS

- A. The provisions of this agreement, together with those provisions of wages, hours and working conditions subject to meet and confer currently in existence and not changed by this agreement shall not be revised to adversely affect the employees in this unit during the term of this agreement.

The parties agree to meet and confer during the term of this agreement on the following subjects, if the City provides notice of its desire to do so:

Policy on Take Home Vehicles

The POA understands that the City's inclusion of the Take-Home Vehicle Policy as a subject of meet and confer is not intended by the City to be a waiver of any rights the City may have to determine such assignments outside the formal meet and confer process.

POA agrees that, should the City introduce a proposal to amend the City Charter in a manner that would change the reporting relationship of the Personnel Director from the Civil Service Commission to the City Manager, that POA will promptly meet and confer, at any time during the term of this agreement, regarding any aspects of that proposal that would effect wages, hour and terms and conditions of employment.

POA further agrees that should the City introduce a proposal to amend the City Charter in a manner that would permit the City to privatize functions which are currently performed by City employees, that POA will promptly meet and confer, at any time during the term of this agreement, regarding any aspects of that proposal that would effect wages, hours and terms and conditions of employment.

- B. Any claim of a violation of this provision shall be pursued solely through the grievance procedure.
- C. Nothing herein shall affect or impair the rights, if any, of the City or Association granted pursuant to Section 3504.5 of the California Government Code.
- D. This Article shall not apply to any policy, procedure or practice established by a member of the unit which was not approved by a superior authority. Those policies, procedures and practices established by a member of the unit and known by an unclassified police manager shall be deemed to be approved.
- E. The parties acknowledge that this Article in no way diminishes the exercise of

management rights as provided for in Article 9.

- F. Paragraph A of this Article shall not apply to any enactment of any Police Review Board or Commission. However, the policies and procedures of this Board or Commission shall be subject to meet and confer to the extent required by the Meyers-Milias-Brown Act.

ARTICLE 47

PROBATION PERIOD

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

ARTICLE 48

DETECTIVES

All members of the Police unit in the classifications of Police Officer II, and Police Sergeant, assigned to positions as Detective, as designated by the Police Chief, shall receive an additional 5% of their base rate, effective July 1, 2003.

Any of the above classifications assigned to the Juvenile Intervention Unit (not including the School Task Force) shall be eligible to receive detective pay at 5% of their base rate, effective July 1, 2003.

Effective July 1, 2003, the POA and the City agree to jointly submit a proposal to the Civil Service Commission to create a Detective classification. It is agreed that the proposal for a new Detective class will be created for the types of positions currently filled by the incumbents in the Police Officer II classification on a detective assignment.

Effective July 1, 2003, Detectives will work a 4 day, 10 hour per day work schedule, which will include a half-hour paid lunch.

ARTICLE 49

TRANSPORTATION INCENTIVES

- A. Employees who utilize the Concourse Parkade and pay on a monthly basis will be charged 50% of the prevailing general public monthly rate. Participation in this program is limited, and available on a first-come first serve basis.

Employees participating in the Employee Transportation Incentive Program (ETIP) shall pay 50% of the public daily rate, for up to 52 instances per year.

- B. The City will provide 75% reimbursement up to \$90.00 to those employees who wish to purchase monthly passes for transportation on the public bus and/or trolley, and commuter rail service. Such passes will be for the exclusive use of the employee/purchaser. The City will provide an equal amount to employees who utilize the bay ferry and to employees participating in a City approved vanpool program . Employees must utilize these subsidized transportation services to commute to and from work at least three days a week to be eligible for reimbursement.
- C. The City will provide reimbursement to employees who utilize the Concourse Parkade and carry riders. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.

ARTICLE 50

PREFERRED SHIFT SELECTION

All uniformed police officers with 12 or more years of service on the Department are eligible to receive their preference of shift assignment within the area in which they are working, provided their last performance rating is satisfactory or better.

All preferential assignments shall be considered permanent, however, the employee shall have the option of requesting a change in his/her preference of assignment to be effective at any shift change. Any request for preferred shift selection, either initially or for change, shall be made in writing to the area captain at least 30 days prior to a shift change. Exercise of this privilege can only be made at a shift change or by command approval.

While the employee may request a choice of area of assignment, it shall be the responsibility of the appropriate commands to assure that preferential shift assignments are designated equitably throughout all area commands.

It is the intent of the Police Chief to keep this policy in effect as long as it is feasible to do so. This right may be revoked whenever it is deemed to be in the best interest of the Department.

ARTICLE 51

MOTORCYCLE PAY

Effective July 1, 2004, members of the unit shall receive an additional 3.5% of employee's base rate when assigned to two-wheel motorcycles.

ARTICLE 52

REASONABLE NOTICE

Section 1.

Reasonable written notice shall be given to the P.O.A. if affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council, Retirement Board, or by the Civil Service Commission or by department heads and assistant department heads, and the P.O.A. shall be given the opportunity to meet with such body or person prior to adoption.

Section 2.

In cases of emergency pursuant to the City Charter, when the City determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with the P.O.A., the City Council or the Board or Commission of the City shall provide such notice and the opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

ARTICLE 53

POLICE OFFICER III

Effective July 1, 2003, the POA and the City agree to jointly submit a proposal by July 1, 2003 to the Civil Service Commission to create a Police Officer III and a Detective classification.

The parties propose that the Police Officer III classification be created as a lead classification and will perform higher level duties, not already encompassed in the Police Officer II classification, such as acting as the lead in:

- Crime analyses
- Writing search warrants
- Schedule training for the entire command
- Crime Scene preservation
- Critical incident management
- Mentoring less senior staff

It is agreed that all duties currently being performed by Police Officer I, and Police Officer II classes such as crime analyses; writing search warrants; crime preservation; and mentoring less senior staff will continue to be appropriate duties for these classifications.

It is agreed that once created the Police Officer III classification will be assigned to positions in patrol and specialized assignments identified by management.

ARTICLE 54

CONDUCT OF ELECTIONS

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

ARTICLE 55

SWAT PAY

Effective July 1, 2003, employees in the classifications of Police Officer II, Police Agent, Police Sergeant, and Police Lieutenant assigned to the Special Weapons and Tactics unit (SWAT) shall receive an additional 3.5% of employee's base pay.

In addition, SWAT officers that are members of the Special Response Team (SRT) shall receive an additional 3.5% of employee base pay, Snipers will also be eligible to receive this pay.

ARTICLE 56

CORE INSTRUCTOR PAY

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

ARTICLE 57

DRUG AND ALCOHOL SCREENING

Effective July 1, 1991, it is mutually agreed that random drug/alcohol testing program shall be implemented to include all sworn personnel.

I. Procedures

- A. The Police Personnel Director will administer the Drug Screening Program.
- B. All officers will be tested twice every 18 months through the provision of a urine sample which will be screened for the presence of specific drugs.
- C. The drug screening shall be conducted to detect only the following drug groups:
 - 1. Amphetamines/Methamphetamines (e.g. Speed, Crystal)
 - 2. Benzodiazepines (e.g. Valium, Librium, Oxazepam, Serax, Dalmane, Ativan)
 - 3. Barbiturates (e.g. Amobarbital, Butobarbital, Pentobarbital, Phenobarbital, Secobarbital)
 - 4. Cocaine
 - 5. Methadone
 - 6. Ethanol
 - 7. Opiates (e.g. Codeine, Heroin, Morphine)
 - 8. Phencyclidine (PCP)
 - 9. THC (Marijuana)
 - 10. Hallucinogenics (e.g. LSD)
- D. Officers will be assigned a confidential number for testing purposes. Numbers will be selected on a random basis, using a secured computer program.
- E. Officers may provide appropriate documentation of legally prescribed drugs. Such documentation shall be included in the review of test results.

II. Sample Collection

- A. Medical Contractor's personnel will be responsible for obtaining the urine sample from the officer being tested.
- B. Medical Contractor's personnel will be available for test processing between 0800 and 0200 hours, 5 days a week, to allow officers to be tested during normal work hours. (Hours vary at some Medical Contractor locations.)
- C. Medical Contractor's personnel will not observe as the sample is being given.
- D. Officers to be tested will be notified at the start of their shift. They will present themselves for testing at the earliest possible time during the shift, and no later than 4 hours after being notified that they are to be tested. Refusals or failures to complete the test as required will be referred by the Police Personnel Director to the Command for investigation and appropriate discipline up to and including termination. Officers who fail to appear for testing will be scheduled to test their next working day.
- E. At the Medical Contractor's site, the officer being tested will:
 - 1. Identify himself/herself by presenting his/her S.D.P.D. identification or California driver's license.
 - 2. Complete requested paperwork.
 - 3. Remove jackets, bags or other bulky items of clothing prior to entering the testing area.
 - 4. Provide a urine sample.
 - a. Officers will be required to stay within the Medical Contractor's facility until the required sample is given.
 - b. Sample must be at least 45 ml, the minimum amount required for testing purposes.
- F. At the Medical Contractor's site, the Medical Assistant (MA) will:
 - 1. a. Have the officer wash his/her hands and provide him/her with a pair of gloves. Washing hands and wearing gloves is required when providing the specimen. Failure or refusal to do so will be documented by the MA.
 - b. Direct the officer being tested to a private lavatory.
 - 2. Assure that the lavatory is secured in accordance with established City procedures.
 - 3. Wait outside of the lavatory for the sample.

4. Upon receipt of the urine sample, and in the presence of the officer, the MA will:
 - a. Split the sample into two unused separate containers which will be referred to as test sample and control sample.
 - b. Seal the containers.
5. Complete the appropriate chain-of-custody forms for the samples.
6. Refrigerate both the test sample and control sample until picked up by the laboratory courier.

III. Screening Procedure

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

E. Alcohol Test

1. The standard for alcohol testing will be the converted urinalysis equivalent of a blood alcohol level of 0.02 percent.
2. An alcohol testing level of 0.02 percent will be treated as a “positive” result. Any measurable amount of alcohol shall be cause for mandatory referral of the officer to the City’s Employee Assistance Program.

IV. Reporting Test Results

- A. Test results will be provided to the City Personnel Department’s Random Drug Testing Coordinator by the Medical Contractor.
- B. The officer will be notified of his/her test results in writing without delay.
- C. If test results are positive, the Assistant Chief of Professional Responsibility will be notified, and will be responsible for initiating an investigation.

V. Independent Testing

- A. If the test results are positive, the affected officer shall have the right to require independent testing of the control sample. That request must be made to the Assistant Chief of Professional Responsibility by the officer within thirty (30) calendar days of receipt of the notice of drug test results indicating that the officer’s drug test was positive and a representative from the department is being contacted. The right of the officer to independent testing of the control sample shall include:
 1. The right to designate the laboratory, which must be a S.A.M.H.S.A. certified laboratory.
 2. The right to designate the type of test to be conducted in order to identify substances that will cause a positive finding for the test sample.
 3. The designation of the test to be performed shall be communicated by the affected officer directly to the laboratory selected and shall be a confidential communication protected by the expert consultant privilege which shall extend to all communications between or on behalf of the affected officer and the independent test laboratory and its personnel. The privilege is waived if V.B is applicable.
- B. If in any proceedings involving an appeal from a notice of adverse action based upon a positive drug test sample, the employee intends to challenge the accuracy of the results of the test sample or intends to introduce in evidence, whether during direct examination, cross-examination, or rebuttal, any evidence whether

testimonial or documentary which results from the affected officer's demand for independent testing, the affected officer shall, without delay, and prior to any appeal hearing, including the Skelly meeting, furnish to the Department a copy of all reports setting forth a result of the testing of the control sample. If the reports are not provided prior to the Skelly meeting, the reports may not be used in any future appeal hearing.

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

VI. Program Records

- A. All drug testing information relating to individual officers is strictly confidential.
- B. All records related to the program shall be maintained as directed by the Police Personnel Director.

VII. Use of Test Results

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

ARTICLE 58

CATASTROPHIC LEAVE PLAN

PURPOSE

Establish a City of San Diego administered Catastrophic Leave Bank permitting City employees to assist other City employees who face extended leaves without pay due to a catastrophic occurrence in their lives. For the purpose of this plan, a catastrophic occurrence is defined as any event that would qualify the employee under the Family Medical Leave Act as determined by the City Manager. Catastrophic Leave determinations are non-grievable.

PROCEDURES

- A. 1. The employee must have exhausted or expect to exhaust his/her accrued leave (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a leave bank.

If an employee is diagnosed as terminally ill, a leave bank may be established without meeting this requirement. In such cases, the donated leave will be paid out at termination. A recipient's total annual leave balance including donated leave cannot exceed 2080 hours.

2. The employee has received approval for an unpaid leave of absence from his/her Department Head.
- B. Requests to establish a Catastrophic Leave Bank for receipt of donations will be processed by the City Manager's Office.
1. An eligible employee will submit a completed "Request to Establish Catastrophic Leave Bank" form to the Labor Relations Manager, accompanied by:
- a. A medical statement from the attending physician, including a brief statement of the nature of the illness or injury and an estimated time the employee will be unable to work, or other appropriate documentation supporting the request.
 - b. Evidence of the Department Head's approval of leave of absence.
- C. Donations of annual leave may be made to an employee eligible for catastrophic leave. The Donor Department will be billed for the dollar amount of the Donor's Annual Leave donation.
1. Donations of leave will be strictly voluntary; the identity of leave donors will be held in absolute confidence.

2. Employees may only donate accrued annual leave.
3. Donations may be made in whole hour increments. There is no tax benefit to the donor.
4. Donors must have an overall annual leave balance of 160 hours remaining after donated time has been deducted.
5. Once donated to an individual, donated leave cannot be reclaimed by the donor.
6. Employees wishing to donate time shall complete a “Confidential Authorization for Catastrophic Leave Donation” form and submit to their Department Payroll Specialist who will:
 - a. verify that donating employee has the minimum required leave balance (160 hours),
 - b. convert the donated time to dollars at the hourly rate of the donor and subtract from designated leave category, and
 - c. forward to the Labor Relations Manager for tracking and submission to the Auditor- Comptroller.

Donation authorization forms which do not contain all requested information shall not be processed.

- D. Upon receipt of donation authorizations, the Auditor-Comptroller shall take the following action:
 1. Convert donated dollars as computed above to hours at the hourly rate of the recipient, and add to recipient’s annual leave balance. Recipient will be taxed for the leave when taken.
 2. Retain a confidential file of donation authorizations.
 3. All deductions (e.g. health premiums, parking, credit union, union dues, etc.) which have previously been authorized by the recipient will be made unless notified in writing by the recipient to cancel deductions.
- E. Donated time is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.
 1. Donated time does not alter the employment rights of the City or the recipient, nor extend or alter limitations otherwise applicable to Leaves of Absence or Annual Leave, except as noted in this Article.

2. Employees who are utilizing donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Section I-2, Annual Leave.

ARTICLE 59

SIDE LETTERS

Effective July 1, 1994, all side letters not represented by the current Memorandum of Understanding expire. The current M.O.U. as printed will represent all M.O.U. agreements between POA and the City.

ARTICLE 60

F.I.T. PROGRAM

The parties agree that the FIT Program will be modified as follows:

- 1) A central component and goal of the FIT Program will be the development of a "FIT Plan" for each participating officer. The FIT plan will be developed by the FIT Core Instructor after a consultation with and assessment of each participating officer and their job duties.
- 2) The activities and circumstances listed in Sections A and B below will not normally be included within the scope of the FIT program, and therefore any off-duty injury resulting from these activities and/or under these circumstances would not normally be covered under City Workers' Compensation programs.

However, if as a result of the job task analysis conducted by the FIT Core Instructor it is determined that an activity in Section A is critically linked and/or appropriate to the physical demands of a particular job, and is included in an employee's FIT Plan, the otherwise excluded activity may be considered within the scope of the FIT program for that employee and any injuries resulting from this activity may be covered by City Workers' Compensation programs. Absent a FIT Plan, under no circumstances would an activity or situation in Section A be considered within the scope of the FIT program.

Under no circumstances would a physical activity and/or situations listed under Section B below be properly considered within the scope of the FIT program and covered under City Workers' Compensation programs.

- 3) The lists below are not intended to be comprehensive and exclusive of all other activities. There may be additional exercise activities which involve extraordinary risk and strain, and which are inconsistent with the FIT program objectives of general physical fitness and cardiovascular health through a program of traditional, low risk, structured exercise, that would be properly considered in the A or B categories below and subject to the attendant conditions.

The traditional, low-risk, structured exercise activities which are intended to be the foundation of the FIT Program include those listed in Category C below. Injuries associated with these exercise activities, unless medically excluded, would be presumptively assumed to be job related.

- A] • Ocean Swimming
- Any exercise activity conducted outside the United States (unless specifically included in the employee's FIT contract)
 - Any activities performed by an officer who has been medically exempted from any element of the FIT program

- The following weight lifting activities:
- Squats
- Clean and Jerk
- Dead Lifts
- Bent-over-rowing
- Leg Lunges

- B] • Downhill Skiing
- Water Skiing
 - Parasailing
 - Platform Diving
 - Rock or Mountain Climbing
 - Skate Boarding
 - Snow Boarding
 - Boogie Boarding
 - Surfing
 - Body Surfing
 - Whitewater Rafting
 - Off-road Mountain Biking (exclusive of conditions in Section C)
 - Roller Blading
 - Contact Martial Arts (unless directly associated with a POST class)
 - Competitive Events of any type
 - Jet Skiing
 - Bungee Jumping
 - Sky Diving
 - Any activity conducted while impaired by alcohol or drugs

C] Aerobic Activity

- Aerobic Dance
- Cycling (stationary or outside)
- Off road Mountain Biking on established public rights-of-way designed for pedestrian and vehicular traffic, i.e. bike paths in Mission Trails Park or San Clemente Canyon Park
- Running
- Step Aerobics
- Stair Stepping
- Swimming (pool laps)
- Walking

Muscular Strength & Endurance

- Calisthenics
- Push-ups
- Sit-ups (crunches)
- Pull-ups
- Chin-ups

- Arm Dips
- Others

Weight Training

- Biceps Curls
- Triceps Extensions
- Bench Press
- Flies
- Leg Extensions
- Leg Curls
- Others

ARTICLE 61

SPECIAL PAY FOR ADMINISTRATIVE ASSIGNMENTS

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

ARTICLE 62

SHIFT DIFFERENTIAL

Effective July 1, December 20, 2003, PO IIs (E-step), Sergeants, and Agents, who are assigned to Third Watch, or the majority of their regularly scheduled work shift falls after 2100 hours shall receive additional compensation of 5.3% of the employee's base rate. PO IIs, Sergeants, and Agents, who are assigned to Second Watch or the majority of their regularly scheduled work shift falls after 1800 hours shall receive additional compensation of 3.8% of the employee's base rate. In addition, the Lieutenants assigned to the Watch Commander's Office and Communications will be eligible for this shift differential.

Effective July 1, December 20, 2003, those sworn officers in the classifications of Police Recruit, Police Officer I and Police Officer II ("A", "C" and "D" steps only) who are assigned to Third Watch, or the majority of their regularly scheduled work shift falls after 2100 hours shall receive additional compensation of one dollar and fifty-four cents per hour (\$1.60), and those sworn officers in the classifications of Police Recruit, Police Officer I and Police Officer II ("A", "C" and "D" steps only) who are assigned to Second Watch or the majority of their regularly scheduled work shift falls after 1800 hours shall receive additional compensation of one dollar and ten cents (\$1.15) per hour.

ARTICLE 63

PREMIUM PAYS

Mounted Patrol:

Effective July 1, 2003, members of the Mounted Patrol unit shall receive 3.5% of employee's base rate while assigned to the unit.

Effective July 1, 2003, Mounted Patrol Trainers shall receive 3.5% of employee's base rate while assigned as a Mounted Patrol Trainer.

Community Relations Officers:

Effective July 1, 2003, Community Relations Officers shall receive 3.5% of employee's base rate while assigned as a Community Relations Officer.

Emergency Negotiators:

Effective July 1, 2003, Emergency Negotiators shall receive 3.5% of employee's base rate while assigned as Emergency Negotiators.

K-9 Trainers:

Effective July 1, 2003, K-9 Trainers shall receive 3.5% of employee's base rate while assigned as a K-9 Trainer.

K-9 Officers:

Effective July 1, 2004, K-9 handlers assigned a dog shall receive 3.5% of employee's base rate while assigned to the unit.

Accident Investigation Bureau:

Effective July 1, 2000, members of the AIB unit who have successfully completed the POST Traffic Collision Reconstruction Course shall receive an additional 4% of their base rate.

Harbor Unit:

Effective July 1, 2004, full-time members of the Harbor Unit shall receive 4% of base pay, while assigned to the Harbor Unit.

Effective July 1, 2003, officers working as trainers, as determined by the Chief of Police, shall receive 3.5% of employee's base rate while assigned as and performing the duties of a trainer in the manner specified by the department.

ARTICLE 64

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT

The City agrees to include the following language of the Public Safety Officers Procedural Bill of Rights (PSOPBOR) Act in the MOU. The parties entered into this agreement with the understanding that any legislative changes to the PSOPBOR made during the term of the contract will be applicable to the parties but will not cause the City to update this Article of the MOU, for purposes of republishing the MOU, during the term of the contract.

GOVERNMENT CODE SECTION 3300-3312

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

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

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking

hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public

safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters. This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any pre-disciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's pre-disciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2

of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3306.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefore by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

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

3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

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

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

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties attorney, or both pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to

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

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

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

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

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

ARTICLE 65

Presidential Leave

The parties agree to a Presidential Leave Program for the President of POA with the following elements:

1. The President will remain a full-time City employee receiving a salary equal to the salary the President is receiving at the time he or she takes office. This amount will reflect the base pay the President receives as calculated for retirement purposes and will not include any add-ons that are not part of the retirement calculation. During Presidential Leave, the President will receive raises commensurate to the raises of employees in his or her classification.
2. The President will maintain all the rights and benefits of a City employee. During normal work hours the President shall be subject to all applicable provisions of law, including all the policies and procedures of the City, all terms and conditions contained in this Memorandum of Understanding, and the affidavit of adherence referenced in paragraph 7 below. Normal work hours means 8:00 a.m. to 5:00 p.m. Monday through Friday, or an equivalent schedule approved in advance by the City Manager.
3. The President will be covered by the City's Workers' Compensation Plan for any injuries incurred while the President is performing representational activities during normal work hours as defined in paragraph 2 above. Worker's compensation benefits will not cover travel time to and from the President's home to his or her primary workplace, or to and from social activities from any location, but will cover travel time to or from representational meetings during normal work hours.
4. POA will indemnify, defend, and hold harmless the City, and its employees and agents, for any liabilities, including costs and attorneys' fees, resulting from any conduct by the President in violation of any federal, state, or local law, or any City policy or procedure, including but not limited to Council Policies, Administrative Regulations, Personnel Regulations, Administrative Manuals, or Department Directives, Policies and Procedures.
5. POA will indemnify, defend, and hold harmless the City, and its employees and agents, for any liabilities resulting from the City's not withholding employment taxes pursuant to the Federal Insurance Contributions Act (FICA) from the President's wages, including but not limited to the obligation to pay those employment taxes determined to be due (both the employee and City portions), interest on the late payment of those taxes, penalties for failure to timely file, pay, withhold and remit the taxes, plus costs and attorneys' fees
6. An employee on approved Presidential Leave will submit his/her bi-weekly time card in a timely manner to the Labor Relations Manager or his/her designee for authorization signature. The bi-weekly time card will then be forwarded to the

Manager's Payroll Specialist for processing and transmission to Personnel for review and the Auditor and Comptroller for payment.

- 7, The Union President may enter Presidential Leave by providing a notice of such election to the City Manager/Labor Relations Office and executing an affidavit of adherence to the provisions of Presidential Leave outlined above.

IN WITNESS THEREOF, the undersigned agree to submit this Memorandum of Understanding, effective July 1, 2003 – June 30, 2005, to the appropriate bodies.

Date: May 8, 2003

**SAN DIEGO POLICE
OFFICERS ASSOCIATION**

CITY OF SAN DIEGO
