

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF OXNARD
AND
OXNARD PEACE OFFICERS' ASSOCIATION**

I. Introduction

- A. The purpose of this Memorandum of Understanding (MOU) is to memorialize the wages, employee benefits, and other terms and conditions of employment of employees in the Police Unit (Unit) of representation (regular employees in the classifications listed in Exhibit "A") (Unit employees) which have been negotiated and agreed upon between duly authorized representatives of the City Manager of the City of Oxnard (City) and the Oxnard Peace Officers' Association (OPOA) and which are recommended to the City Council for ratification. This MOU shall be effective September 8, 2007, and shall remain in full force and effect through September 5, 2008.
- B. The matters presented herein, determined through extensive negotiations between representatives of City and OPOA, are considered equitable to City, OPOA and the affected employees and will be supported by City, OPOA and the affected employees.
- C. The following items, together with those wages, hours, and other terms and conditions of employment as expressly set forth in previous Memoranda of Understanding between City and the OPOA, which are not changed by this MOU, shall constitute the wages, hours, and other terms and conditions of employment until such matters are changed or otherwise modified which, in no event, shall occur prior to the expiration of this MOU, except as otherwise provided herein. There shall be no change or modification in wages, hours, or other terms and conditions of employment by City without first meeting and conferring in good faith with the OPOA to the extent required by law.

II. Management Rights and Responsibilities

The sole purpose of this provision is to clarify those rights presently possessed by management so that City and OPOA will have a better and clearer understanding of their respective rights. City reserves, retains, and is vested with, solely and exclusively, all rights of management as provided by law which existed prior to the execution of this MOU. These sole and exclusive rights of management shall include but not be limited to, the following rights:

- A. To manage City generally and to determine issues of policy.
- B. To determine the existence or non-existence of facts which are the basis of a management decision.
- C. To determine the necessity and organization of any service or activity conducted by City and to expand or diminish services.

- D. To determine the nature, manner, means and technology, and extent of services to be provided to the public.
- E. To determine methods of financing City functions and operations.
- F. To determine types of equipment or technology to be used.
- G. To determine and/or change the facilities, methods, technology, means, organizational structure and composition of the work force and allocate and assign work by which to conduct City operations.
- H. To determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions.
- I. To assign work to and schedule employees (including but not limited to temporary light-duty assignments) in accordance with requirements as determined by City.
- J. To lay off employees from duties because of lack of work or lack of funds, or under conditions where continued work would be ineffective or non-productive, pursuant to the Oxnard City Code and City of Oxnard Personnel Rules and Regulations.
- K. To establish and modify productivity and performance standards.
- L. To discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for cause, in accordance with the Oxnard City Code and City of Oxnard Personnel Rules and Regulations, Oxnard Police Department rules and regulations and standard operating procedures in existence at the time of the execution of this MOU and subject to all appeal rights set forth therein.
- M. To determine minimum qualifications, skills, abilities, knowledge, selection procedures and standards, job classifications and to reclassify and promote employees in accordance with this MOU, the Oxnard City Code and City of Oxnard Personnel Rules and Regulations and applicable resolutions.
- N. To establish and modify reasonable employee performance standards and to require compliance therewith.
- O. To maintain order and efficiency in City facilities and operations.
- P. To establish and promulgate and/or modify rules and regulations to maintain order, safety and health in City which do not contravene this MOU.
- Q. To take any and all necessary action to carry out the mission of City in emergencies.

III. Compensation

A. Wages

1. Effective September 8, 2007, base wages of Unit employees shall be increased by three percent (3.0%).
2. Effective March 8, 2008, base wages of Unit employees shall be increased by two percent (2.0%).
3. Effective July 12, 2008, base wages of Unit employees shall be increased by one and eighty-eight one hundredths percent (1.88%).

B. Retirement

1. City shall continue to cause the pensions of all Unit employees who are local police officers, as defined in California Government Code section 20425, to be covered by the three percent (3%) at age 50 retirement formula set forth in California Government Code section 21362.2.
2. City shall continue to cause the pensions of all Unit employees, who are miscellaneous members of the Public Employees' Retirement System, to be calculated based upon the two percent (2%) at age 55 retirement formula set forth in California Government Code section 21354.
3. City shall make available to Unit employees a retirement medical savings plan allowing for voluntary individual contributions to a defined contribution medical retirement plan.

C. Annual Leave

1. City shall provide annual leave benefits to Unit employees as follows:
 - a. Full-time regular Unit employees shall accrue annual leave for each biweekly period of service or major fraction thereof based upon years of service as set forth in the following table:

YEARS OF SERVICE	BIWEEKLY ANNUAL LEAVE ACCRUAL	MAXIMUM ANNUAL LEAVE ACCRUAL
Less than 5	10.11	800
5 to 10 years	11.66	920
Greater than 10	13.21	1040

- b. (1) If a Unit employee actually works on New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Cesar Chavez Birthday, Memorial Day, Fourth of July, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving, and/or Christmas Day such employee shall receive, in addition to his or her regular compensation and the annual leave entitlements, premium pay at the rate of one-half times the employee's regular rate of pay for each regularly scheduled shift hour worked.
- (2) If a Unit employee actually works on Christmas Eve and/or New Year's Eve such employee shall receive, in addition to his or her regular compensation and the annual leave entitlements described below, premium pay at the rate of one-half times the employee's regular rate of pay for one-half of the regularly scheduled shift hours worked.
- c. Except as provided below, if a Unit employee accrues the maximum level of annual leave, such employee shall no longer be entitled to accrue additional annual leave until such time as his/her accrued annual leave is below the applicable maximum. However, a Unit employee shall be allowed to accrue annual leave beyond the maximum level for an additional five biweekly pay periods under the following conditions:
- (1) The employee must first file with the Police Business Office a request to accrue annual leave above the maximum level for an additional five biweekly pay periods. The employee may submit such a request only on one occasion during any calendar year.
- (2) During the extended five biweekly pay periods, the employee shall submit a request with his or her supervisor to use sufficient annual leave benefits so as to cause the amount of accrued annual leave to be less than the maximum.
- (3) The Police Chief or designee shall make every effort to enable the employee to utilize the annual leave benefits in the manner requested or in a manner otherwise acceptable to the employee.
- (4) If the employee has not been afforded an opportunity to use a sufficient amount of the requested annual leave during the extended five biweekly pay periods so as to cause his or her accrued annual leave to be less than the maximum, he or she shall continue to accrue annual leave benefits until such time as he or she has failed to take advantage of a reasonable opportunity, as initially determined by the Police Chief or designee, to use sufficient annual leave benefits so as to cause his or her accrued annual leave to be less than the maximum.

- d. A Unit employee may redeem accrued annual leave for cash once during each calendar year by submitting a written request to the General Accounting Division (Finance/Payroll) during the month of July or December according to the following table. The payment shall be at his/her then current hourly rate of pay including any longevity pay, educational and incentive pay and bi-lingual pay being earned as of the effective date of the payment.

YEARS OF SERVICE	MAXIMUM ANNUAL LEAVE REDEMPTION HOURS
Greater than 5	40 hours
Greater than 10	80 hours
Greater than 15	120 hours

- e. If a Unit employee separates from service, the employee shall be paid for accrued annual leave to which the Unit employee is otherwise entitled at his/her then current hourly rate of pay including any longevity pay, educational and incentive pay and bilingual pay being earned as of the effective date of separation from City service.
 - f. City may designate, on a work unit basis, specific days which that work unit will be closed for service, and may then require employees assigned to that work unit to use accumulated annual leave hours to receive full pay while absent from work on those days. In the alternative, City may grant the request of any such employee to be reassigned to a different work unit on any such day.
2. Sick leave benefits accrued by Unit employees as of February 5, 2000, shall be addressed as follows:
- a. Such current sick leave accruals may be used to receive a leave of absence with pay for illnesses or injuries of the employee under the same circumstance and with the same limitations as existed prior to January 1, 2000.
 - b. Such current sick leave accruals may be used as donations to a sick leave bank established by City for another City employee.
 - c. City will redeem fifty percent of such current unused or unredeemed sick leave accruals, not to exceed 600 hours, upon any separation from service to those employees with a minimum of five years of regular full-time service, at time of separation, at his/her then current hourly rate of pay including any longevity pay,

educational and incentive pay and bilingual pay being earned as of the effective date of separation from City service.

D. Insurance

1. Health Insurance Premiums

- a. City shall continue to contribute the amount required under California Government Code section 22892 towards the payment of premiums under City's health insurance plan on behalf of each Unit employee and, to the extent required by law, each eligible retiree.
- b. City shall continue to contribute \$131.02 biweekly per Unit employee towards City's health insurance reimbursement plan (Cafeteria Plan).
- c. City shall continue to contribute \$30.83 biweekly per Unit employee towards City's dental insurance reimbursement plan (Cafeteria Plan).
- d. City and OPOA acknowledge that the Cafeteria Plan is primarily designed to provide health and dental insurance benefits to Unit employees. Nonetheless, if a Unit employee provides acceptable verification of alternative health insurance coverage to City, the Unit employee may receive a cash payment to the extent that when added to the employee's other insurance selections the cash payment does not exceed the available Cafeteria Plan dollars provided by City.
- e. To the extent legally possible all deductions for insurance premiums will not be taxable in accordance with Section 125 of Internal Revenue Service regulations. Any monies not used by Unit employees to pay for City and/or OPOA-sponsored insurance programs shall be paid to Unit employees biweekly.
- f. Cafeteria Plan monies shall be subject to applicable State and federal taxes, but shall not be considered wages for retirement purposes or retirement calculations.
- g. As soon as practical following the ratification of this MOU by the Oxnard City Council, the City will extend all entitled benefits as allowed by law to the domestic partner of a Unit employee.

2. Life Insurance

City shall continue to pay one hundred percent of the current premium for employee-only coverage under the existing level of benefits for life insurance for Unit employees.

3. Dental Insurance

City shall continue to provide one or more family dental insurance plans. Unit employees must be enrolled in a dental insurance program provided by City. Unit

employees shall be eligible to enroll in the Delta Premier Care Program, the Delta Care Program or other dental programs offered by City.

4. Long-Term Disability Insurance

City shall continue to pay six dollars biweekly for an OPOA-administered long-term disability (LTD) insurance plan for Unit employees. OPOA shall hold City harmless on any issue related to the LTD insurance plan.

E. Physical Fitness

1. Benefit

- a. Effective September 13, 2003, City shall provide OPOA the following annual sum to be utilized by OPOA toward the payment of membership fees for a physical fitness program available to Unit employees at qualified health clubs previously approved by the City Manager. This amount shall not exceed \$300 per Unit employee who enrolls in that program, nor shall the amount exceed \$30,000 for the Unit or the actual membership fees paid, whichever is less.
- b. Any of these funds not utilized for Unit employees enrolled in health clubs during the term of this MOU, but in no event more than \$5,000, may be utilized for the purchase of equipment to be placed in the designated physical fitness area at the Public Safety Building subject to approval by the Police Chief.
- c. City agrees that other physical fitness programs at other local facilities may be made available for use by Unit employees, subject to approval by the City Manager after submittal to the City Manager by OPOA of a proposed agreement between OPOA and a facility. Such additional program shall be subject to the same terms and conditions, and shall be charged to the Unit employee dollar maximum specified in subparagraph III.E.1.a.
- d. The payment of this sum by City is contingent upon each Unit employee executing a formal waiver releasing City and OPOA from any liability for any injuries or other claims for damages resulting from participation in the program.
- e. OPOA shall perform all acts necessary to cause to be provided to City access to the relevant records of the health clubs for the purpose of evaluating the overall performance of Unit employees who participate in the program; provided, however, that in affording access to City, the individual identity of each participant shall remain anonymous.

2. Performance Standards

City and OPOA agree to implement a Physical Fitness and Wellness Program (Program) to be developed by a committee comprised of representatives of the Police Department and OPOA. City and OPOA shall make every effort to develop this

Program as soon as possible. Sworn Unit employees hired after July 1, 1998, shall adhere to this Program as a condition of continued employment for the first ten years of employment as a sworn officer. For all other Unit employees, participation in the Program shall be on a voluntary basis.

F. Bilingual Pay

1. Bilingual Program

City shall maintain its current Bilingual Program which shall include the following minimum requirements for receipt of compensation under this program:

- a. Consideration of the need for these bilingual skills to provide services to the community in the course of carrying out usual job duties;
- b. An understanding and sensitivity to cultural aspects associated with effectively communicating with diverse populations; and
- c. A specified testing process to determine competency.

2. Compensation

A regular full-time employee who qualifies under the Bilingual Program shall receive bilingual pay at the rate of:

- a. Seventy dollars biweekly for Spanish language ability. Effective July 12, 2008, the bilingual pay for Spanish language ability shall increase to \$125 biweekly.
- b. Thirty-five dollars biweekly for bilingual services in a designated language other than English or Spanish. Effective July 12, 2008, the bilingual pay for bilingual services in a designated language other than English or Spanish shall increase to \$62.50 biweekly.

IV. Hours of Work

During the term of this MOU the current temporary 3/12 work schedule for Unit employees assigned to patrol shall continue on a trial basis.

V. Alcohol and Drug Testing

City and OPOA agree to implement the Alcohol and Drug Testing Policy and Procedure attached as Exhibit B with respect to all sworn Unit employees hired on or after July 1, 1998, and all sworn Unit employees assigned to the narcotics units and/or the special enforcement unit.

VI. Affirmative Action

City and OPOA agree that the prior amendment to the MOU for the period of July 1, 1988, through the last pay period beginning in December 1990 providing for affirmative action is hereby rescinded.

VII. OPOA Business

- A. OPOA members shall be authorized to utilize a maximum of 600 hours per year of paid release time from duty for the conduct of usual and normal OPOA activities relating to the employer-employee relationship. For purposes of this paragraph, a reasonable amount of time spent managing/supervising the OPOA Christmas tree lot shall be considered to be an authorized OPOA activity. Time spent in labor negotiations shall not be included in this 600-hour allocation.
- B. OPOA shall maintain complete, accurate and current records of release time so utilized and shall submit a monthly record to the Police Chief or his/her designee. No member shall utilize release time for OPOA activities without prior authorization of the commanding officer.
- C. If an OPOA member uses release time under this paragraph to receive training and such training is creditable by Police Officer Standards and Training (e.g., Advance Officer Training), City may claim credit for such training.

VIII. Standby

City shall provide standby pay for those employees subject to call back after regularly scheduled work hours in the amount of \$2.00 per hour.

IX. Contributions to Retiree Medical Trust Fund

City shall continue to contribute to a Retiree Medical Trust Fund maintained by OPOA on behalf of Unit employees to provide for medical insurance subsidies after retirement an amount equal to four percent (4.0%) of total annual compensation for all Unit employees, including base wage and all items of remuneration that increase when base wages increase. For the twelve month period between September 8, 2007 and September 5, 2008, the amounts to be contributed to the Trust Fund shall be \$1,347,611 annually. The payments to this Trust Fund shall be on a per-pay-period basis representing a pay period payment of \$51,831.

X. Longevity Pay

Effective September 10, 2005, City shall provide longevity pay benefits to each Unit employee who has successfully completed the following lengths of service with City in the following percentages of base salary:

LENGTH OF SERVICE COMPLETED	PERCENTAGE OF BASE SALARY
5 years, but less than 10	1%
10 years, but less than 15	4%
15 years, but less than 20	5%
20 years, but less than 25	6%
25 years or more	7%

XI. Educational Incentive Pay:

- a. Each Unit employee who has earned an Associate Degree from an accredited college or university shall receive an incentive award equal to five percent (5%) of the employee's base wages.
- b. Effective July 12, 2008, each Unit employee who has earned an Intermediate POST Certificate from the California Commission of Peace Officers' Standards and Training shall receive an incentive award equal to five percent (5%) of the employee's base wages.
- c. A Unit employee who has earned both an Associate Degree and an Intermediate POST Certificate shall only be entitled to receive the five percent (5%) incentive pay for one of those accomplishments, not both.
- d. Each Unit employee who has earned a Bachelor's Degree from an accredited college or university shall receive an incentive award equal to ten percent (10%) of the employee's base wages.
- e. Effective July 12, 2008, each Unit employee who has earned an Advanced POST Certificate from the California Commission of Peace Officers' Standards and Training shall receive an incentive award equal to ten percent (10%) of the employee's base wages.
- f. A Unit employee who has earned both a Bachelor's Degree and an Advanced POST Certificate shall only be entitled to receive the ten percent (10%) incentive pay for one of those accomplishments, not both.
- g. The pay awards described above are not cumulative. Therefore, an employee with a qualifying Associate Degree and a qualifying Bachelor's Degree will receive the award for the Bachelor's Degree, and an employee with a qualifying Intermediate POST Certificate and a qualifying Advanced POST Certificate will receive the award only for the Advanced POST Certificate.

XII. Detective Assignment Pay

Effective July 12, 2008, each Unit employee assigned to serve as a Detective in the Investigation Bureau shall receive assignment pay equal to five percent (5%) of his or her base wages.

XIII. Training Officer Assignment Pay

Effective July 12, 2008, each Unit employee assigned to serve as a Field Training Officer or a Communications Training Officer shall receive assignment pay in the amount of \$125 per pay period.

In addition, each such employee shall receive twenty (20) hours per fiscal year as compensatory time off to be credited at the rate of ten (10) hours semiannually to the employee's compensatory leave accrual. An employee so appointed for less than a full year shall be credited with a pro rata amount for each month of service as a training officer. A month of service shall mean eighty (80) scheduled hours or more per month serving in that appointment.

XIV. Night Differential

All sworn Unit employees shall receive night differential pay in an amount equal to five percent (5%) of the Unit employee's base wages whenever fifty percent (50%) of the Unit employee's regularly scheduled work shift occurs between 6:00 p.m. and 6:00 a.m.

XV. Promotional Appointment

The Police Chief shall not make promotions from an existing eligibility list when there are no vacant positions for the classification in question prior to the original expiration date of the list.

XVI. City of Oxnard Employee Thrift Plan

City shall enable Unit employees to participate in the City of Oxnard Employee Thrift Plan.

XVII. Comprehensive MOU

During the term of this MOU, City and OPOA shall continue to make every effort to develop a comprehensive memorandum of understanding covering all wages, hours, and terms and conditions of employment of employees represented by OPOA. The intent and purpose of this process is to develop a comprehensive MOU not to modify existing or previously negotiated memoranda of understanding.

XVIII. Personnel Rules and Regulations

- A. During the term of this MOU, City and OPOA shall meet and confer in good faith with regard to modification of the City of Oxnard Personnel Rules and Regulations, provided, however, that City may not implement any changes with regard to these Personnel Rules and Regulations during the term of this MOU without the concurrence of OPOA unless those changes apply to all City employees uniformly.

- B. Any changes made by City regarding the “rule of three” for appointments or promotions are subject to the meet and confer process described above and shall not be effective as such changes apply to Unit employees until following the expiration of this MOU.

XVIX. Lateral Transfer Program

The Lateral Transfer Program is currently set forth in Oxnard Police Department Policy Manual Section 1003 (Policy). The contents of that Policy, as presently stated, are incorporated herein by reference as though set forth in full.

XX. Mandated Overtime

A. Anticipated Overtime

1. The following procedure addresses City’s need to mandate overtime work with reference to anticipated overtime needs. Whenever the Police Chief or designee identifies a need for overtime staffing, Police Chief will seek Unit employee volunteers in the following order:
 - a. Volunteers within the specific work unit
 - b. Volunteer part-time employees
 - c. Volunteers from other work units

2. Once the above process has been exhausted and the overtime staffing needs have not been met, overtime work will be mandated for employees within the specific work unit according to an employee’s availability, seniority, current overtime commitment and equity.

3. Each division of the unit can formulate an overtime policy that is consistent with this MOU. Those divisions that do not contain sworn officers, but do require the use of officer overtime, will limit the use to not more than 25% of the division’s overtime commitment.

B. Emergency Overtime

As a general rule, mandated overtime is a prerogative the Police Chief may exercise during emergency circumstances. An emergency is defined as a situation that is out of the norm requiring immediate staffing to insure the public safety and minimum staffing or in preparation of events requiring additional resources. Emergency circumstances are usually temporary in nature and of short duration. Should an emergency require prolonged attention, Police Chief shall seek other reasonable alternatives to overtime work as soon as practical.

XXI. Rights of Nonsworn Employees Represented by OPOA in Disciplinary Matters

Nonsworn employees represented by OPOA have the following rights in investigations which either City or the nonsworn employee believe could lead to punitive action, such as action which may lead to discharge, demotion, suspension, reduction in salary, transfer for purposes of punishment or written reprimand.

A. Any interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, or during the normal waking hours for the employee, unless the seriousness of the investigation requires otherwise. If such interview does occur during off-duty time of the employee being interviewed, the employee shall be compensated for such off-duty time in accordance with the regular Police Department procedures, and the employee shall not be released from employment for any worked missed.

B. The employee under investigation shall be informed prior to such interview of the rank, name and command of the employee in charge of the interview, the interviewing employees, and all other persons to be present during the interview. All questions directed to the employee interviewed shall be asked by and through no more than two persons at one time.

C. The employee under investigation shall be informed of the nature of the investigation prior to any interview.

D. The interview shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The employee interviewed shall be allowed to attend to his/her own personal physical necessities.

E. The employee being interviewed shall not be subjected to offensive language or threatened with punitive action, except that an employee refusing to respond to questions or report for an interview shall be informed that failure to answer questions directly related to the investigation or not reporting for an interview may result in punitive action. No promise of reward shall be made as an inducement for an employee to answer any question.

F. City shall not cause the employee interviewed to be subjected to visits by the press or news media without his/her express consent nor shall his/her home address or photograph be given to the press or news media without his/her express consent.

G. The complete interview of an employee may be recorded. If a tape recording is made of the interview, the employee shall have access to the tape if any further proceedings are

contemplated or prior to any further interview at a subsequent time. The employee 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 Police Department to be confidential. No notes or reports which are deemed to be confidential may be entered in the employee's personnel file. The employee being interviewed shall have the right to bring his/her own recording device and record any and all aspects of the interview.

H. If prior to or during the interview of an employee the Police Department deems that the employee may be charged with criminal offenses, he/she shall be immediately informed of his/her constitutional rights.

I. Upon filing of a formal written statement of charges, or whenever an interview focuses on matters which are likely to result in punitive action against any employee, that employee, at his/her request, shall have the right to be represented by a representative of his/her choice who may be present at all times during such interview. 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 employee under investigation for noncriminal matters.

J. No employee shall be loaned or temporarily assigned to a location or duty assignment if an employee of his/her program would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

K. No employee 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 MOU section, or the exercise of any rights under any existing administrative grievance procedure. No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by the Police Department without providing the employee with an opportunity for administrative appeal.

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

M. An employee shall have thirty days within which to file a written response to any adverse comment entered in his/her personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

N. No employee shall be compelled to submit to a polygraph examination against his/her will. No disciplinary action or other recrimination shall be taken against an employee refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the employee refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial,

or proceeding, judicial or administrative, to the effect that the employee refused to take a polygraph examination.

O. No employee shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his/her property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his/her 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/her official duties, or is necessary for City to ascertain the desirability of assigning the employee to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

P. No employee shall have his/her locker, or other space for storage that may be assigned to him/her searched except in his/her presence, or with his/her consent, or unless a valid search warrant has been obtained or where he/she has been notified that search will be conducted. This section shall apply to lockers or other space for storage that are owned or leased by City.

XXII. Reserve Officer Deployment

A. Level One reserve officers have completed a certified police reserve officer academy and have successfully completed the field training program of the Police Department. These Level One reserve officers may be assigned to ride as a second officer with a regular sworn officer, and perform special assignments or details. The deployment of Level One reserve officers will be limited to:

1. Festivals
2. Football games
3. Investigations (follow-up type contacts by telephone and/or in person).
4. Bike detail, consistent with Police Department policy.
5. Stake-out assignments with direct supervision of a regular sworn officer.
6. Station detail (teleserve, juvenile detention)
7. Emergency situations (earthquake, riot)
8. Special assignments or details under the supervision of a regular sworn officer or supervisor.
9. Taking reports of priority 3 burglaries, thefts or vandalism, or automobile accidents.

B. Watch Commanders and supervisors shall not use Level One reserve officers to staff overtime positions that are used to insure minimum staffing. Level One reserve officers shall not be assigned as one- and two-officer, general-duty patrol or beat units.

C. Level One reserve officers shall not be used as follows:

1. Routinely and without direct supervision of a regular sworn officer, interview or interrogate suspects.
2. Act as primary investigating officer for the purpose of prosecution or file cases with prosecutors, except when assisting officers or detectives with follow-up investigations.

3. Take active enforcement action inconsistent with his/her immediate assignments, except to report such incidents to his/her supervising officer or to communications.

4. Replace regular sworn officers in overtime assignments except those assignments where exclusively regular sworn officers have been routinely used and unless regular sworn personnel have been afforded the opportunity to decline the overtime work.

XXIII. Non-Tobacco Use Policy

A. All Unit employees hired as of September 13, 2003 shall be required to sign a “Statement of Acceptance” to refrain from using tobacco products as a term and condition of employment.

B. All Unit employees represented by OPOA prior to the ratification date of September 13, 2003 shall refrain from using tobacco products while on-duty or on City premises. For the purposes of this section, the term “on-duty” shall be interpreted to mean the hours the employee is working. These hours will be inclusive of breaks and lunch periods, irrespective of whether the employee is compensated for breaks and/or lunch periods.

C. Violation of the Non-Tobacco Use Policy shall provide basis for City to initiate progressive disciplinary action, if subsequent violations occur within one year of a prior offense.

D. This Section XXIII will not be implemented until applicable to all sworn peace officers employed by City.

XXIV. Labor Management Committee

A. City and OPOA shall establish an OPOA/Police Management Committee (Committee) consisting of up to four representatives of OPOA and an equal number of representatives of Police Department management. The purpose of the Committee shall be to examine internal Police Department operations as they affect employees’ working conditions and other matters of mutual concern.

B. The Committee’s operating procedures, including frequency and scheduling of meetings, shall be determined by the Committee members.

C. Agreements reached by the Committee members regarding internal Police Department operations shall be reduced to writing and be binding on City and OPOA. In the absence of agreement, City and OPOA shall be governed by law.

XXV. Additional Provisions

A. Promotional Process

City and OPOA agree that if City and OPOA are involved in judicial or grievance proceedings relating to the issues of work schedules or the promotional selection process, neither City nor OPOA shall in any way refer to the terms “schedule” or “selection procedures” that are set forth in paragraphs I and M of the “Management Rights” provision to assert or imply that the other party has conceded or surrendered any lawful rights which either City or OPOA believes it possessed prior to the inclusion of the “Management Rights” provision in the MOU.

B. Eligibility List Duration

The normal duration of an eligible list for any position/classification in the Unit will be twelve months. The eligible list for any position/classification in the Unit may be extended by City for a maximum of six months upon implementation of a hiring freeze for that position/classification. The frozen list only will be used to fill vacancies that occurred during its initial twelve month effective time frame. Any vacancy occurring subsequent to that twelve month period shall be filled from the ensuing eligible list even if the list is created after the vacancies occur.

C. Field Training Officers and Communications Training Officers

City may develop and implement a compensation plan for Field Training Officers and Communications Training Officers during the term of this MOU.

D. Disciplinary Action Appeals

The Disciplinary Action Appeals Procedure applicable to Unit employees shall be as set forth in Exhibit C attached hereto.

C. Multi-Agency Dispatch Center

No change in any existing term and condition of employment within the lawful scope of representation of OPOA may occur as a result of that process unless if City desires to develop a multi-agency dispatch center, City shall meet and confer in good faith with OPOA, mutually agreed by City and OPOA.

D. Employee Selection—Acting Assignments

1. If a certified eligible list exists, the Police Chief may select from the top three candidates on the list.
2. If a certified eligible list does not exist, the Police Chief may select from the top three most senior qualified employees who declare an interest in the assignment.

XXVI. Term

This MOU shall be in full force and effect from September 8, 2007 through September 5, 2008.

EXHIBIT “A”

Police Officer I/II
Police Officer III
Police Sergeant
Public Safety Dispatcher I
Public Safety Dispatcher II
Public Safety Dispatcher III
Police Service Officer
Senior Police Service Officer
Teleserve Officer

EXHIBIT “B”

**ALCOHOL AND DRUG TESTING POLICY
AND PROCEDURES**

Police Department to develop Standard Operating Procedure to be attached to this MOU as Exhibit B.

EXHIBIT “C”

DISCIPLINARY ACTION APPEALS PROCEDURE

A. Definition of Disciplinary Action

A “Disciplinary Action” is any suspension, demotion, discharge or restriction of access to overtime of regular non-probationary Unit employees taken for punitive reasons.

B. Opportunity to Respond and Appeal

Within five calendar days of receipt of an intent to impose disciplinary action, a Unit employee shall be accorded a prompt opportunity to respond orally or in writing to the person proposing the disciplinary action and to the charges constituting the bases for the action.

C. Advisory Arbitration

1. Within ten calendar days of the receipt of a notice imposing a disciplinary action, a Unit employee may file a request for advisory arbitration with the City Manager or his/her designee to appeal the disciplinary action.
2. City Manager and Unit employee, or their designated representatives, shall agree on an advisory arbitrator. If they are not able to agree on an arbitrator within a reasonable time, either the City Manager or the Unit employee may request the State Mediation and Conciliation Service to submit a list of seven arbitrators who have had experience in public sector employee relations. The City Manager and Unit employee shall select the arbitrator by alternately striking names from a list until one name remains. The identity of the first person striking the first name shall be determined by a coin flip or other random means. Unless agreement is reached on the name of a specific arbitrator, the last name remaining on the list shall become the advisory arbitrator.
3. The arbitrator so selected shall conduct a hearing as expeditiously as possible at a time and place convenient to the City Manager and Unit employee.
4. Upon conclusion of the hearing, the arbitrator shall submit findings and an advisory recommendation to the City Manager and Unit employee.
5. Within forty-five calendar days of the receipt of the written findings, conclusions and advisory recommendation, the City Manager shall determine whether or not to adopt the recommendation of the arbitrator. If the City Manager does not adopt the advisory recommendation of the arbitrator and the City Manager’s decision is to impose discipline that has a greater negative financial impact on the Unit employee than the advisory recommendation, than the City Manager shall have reviewed the entire evidentiary record of the arbitration proceedings before imposing such new and more severe discipline.

6. The cost of the arbitrator shall be borne by City.
7. The time limits expressed herein may be modified by mutual written agreement of the City Manager and Unit employee.

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