



MEMORANDUM OF UNDERSTANDING

**BETWEEN REPRESENTATIVES OF THE
ESCONDIDO POLICE OFFICERS' ASSOCIATION
- SWORN PERSONNEL -
AND THE CITY OF ESCONDIDO**

JANUARY 1, 2010 - DECEMBER 31, 2011

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MEMORANDUM OF UNDERSTANDING

Escondido Police Officers' Association - Sworn Personnel

January 1, **2010** through December 31, **2011**

ARTICLE 1 GENERAL

Section 1.01 **Effective Date**

Unless otherwise indicated, all proposed changes shall be effective January 1, 2010.

Section 1.02 Intent

It is the intent of this Memorandum to provide for the continuation of the harmonious relationship between the City of Escondido and the Escondido Police Officers' Association.

Section 1.03 Purpose

It is the purpose of this Memorandum to provide a document setting forth the understanding reached by meeting and conferring in good faith on wages, hours, and other terms and conditions of employment for members of the Escondido Police Officers' Association with the City of Escondido.

Section 1.04 Parties to the Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between the City of Escondido (hereinafter referred to as "City") and the Escondido Police Officers' Association (hereinafter referred to as "EPOA" or "Association").

Section 1.05 Recognition

The Escondido Police Officers' Association, pursuant to the Employer-Employee Relations Resolution adopted by the Escondido City Council on March 19, 1980, and in accordance with the procedures therein, was formally acknowledged on June 23, 1980, as a recognized Employee Organization for the bargaining unit and comprised the following classifications:

- A. Police Officer
- B. Police Sergeant

Section 1.06 Employee Rights

Employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, including but not limited to wages, hours and other terms and

conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations. (See *Relyea v. Ventura Co. Fire* (1992) 2 Cal. App. 4th 875.) No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against by the City or by any employee organization because of their exercise of these rights. No employee shall be prohibited from exercising their right to resign from City employment at any time and nothing in this policy shall be construed as to abrogate that right. In addition, employees of the City shall have the right to the redress of grievances and complaints as set forth in Section 6.02 of this MOU. (Rule P-10)

A maximum of four (4) EPOA representatives can attend Meet and Confer sessions on work time with advanced approval by the supervisor.

Section 1.07 Management Rights

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 the 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 governmental operations; determine the methods, means 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 the technology of performing its work.

The exercise of such rights shall not preclude employees or their representatives from consulting with management representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment. (Rule P-10)

ARTICLE 2 SALARIES AND COMPENSATION

Section 2.01 General

All salary increases, including annual salary adjustments, when granted, shall be based on merit.

Section 2.02 Salary

Effective July 1, 1998, a Step 7 was added to the Police Officer salary table, maintaining the 5 percent (5%) differential for Step 6. Police Officers will become eligible for Step 7 on the beginning of the pay period closest to their 10th anniversary in the position of Police Officer with the City of Escondido. However, effective January 1, 2009, step increases shall be suspended where eligibility for the increase occurs on or after January 1, 2009.

During the term of this MOU, the City Manager may, in his/her sole discretion, activate all or part of the Section 2.02 step increases that have been suspended. The discretionary exercise of any such decision shall be prospective only from and after the date that such discretionary determination is rendered. Any such discretionary decision, whether or not resulting in activation of all or part of the Section 2.02 step increases that have been

suspended, shall not be subject to administrative or civil challenge. Date of eligibility for any step increase provided for by discretionary City Manager determination, shall be based upon the affected officer(s) anniversary date(s).

At the discretion of the Chief of Police, lateral police officers, upon appointment to the position of Police Officer and commensurate with their law enforcement experience, may receive up to five years longevity credit to be applied to the 10-year experience requirement for Step 7. Lateral police officers will become eligible for Step 7 on the beginning of the pay period closest to attaining the 10-year experience requirement (service with the City of Escondido.) The additional longevity, as may be granted by the Chief of Police, applies to no other benefits offered within this MOU. However, this longevity credit option shall be suspended as to all laterals hired on or after January 1, 2009.

Salary is based on 2,080 hours a year.

Salary Comparison Studies:

The City and the Police Officers' Association agree to a method to formulate a reasonable salary comparison figure for use in studies where salary comparisons are made with other law enforcement agencies.

A weighted salary comparison figure will be derived by:

- Calculating the number of Police Officers at Step 6 or below
- Calculating the number of Police Officers at Step 7
- Applying the percentage ratio of Officers at each level to the current hourly rates for Step 6 and Step 7
- Combining the Step 6 and 7 ratios to create a total weighted hourly rate

Section 2.03 Field Training Officer Assignment Pay

Field Training Officer Assignment Pay shall be an additional 5.0% to the base rate of pay.

Section 2.04 Bilingual Pay

Effective December 5, 2004, the City agrees to change the amount of compensation for certified bilingual officers and sergeants to \$200.00 per month. An additional \$75.00 per month shall be paid for written bilingual skills. The City reserves the right to establish eligible languages and the criteria for eligibility for this skill pay and shall verify through testing procedures developed by the City, that employees are eligible and qualified. **This bilingual pay benefit shall only be authorized with the written approval of the Department Head.**

Section 2.05 P.O.S.T. Incentive Pay

Effective pay period beginning March 9, 2008, P.O.S.T Incentive Pay for both officers and sergeants will be:

Intermediate Certificate: 4%
Advanced Certificate: 5.25%

Police Sergeants holding a P.O.S.T. Supervisory Certificate will receive 1% (2% effective pay period beginning March 9, 2008), of base pay per month in addition to the P.O.S.T. Incentive Pay for Intermediate and/or Advanced certification.

P.O.S.T. Educational Achievement Supplement

The City agrees to an Educational Achievement Supplement to P.O.S.T. Incentive Pay. Effective January 1, 2006, the Educational Achievement Supplement will be provided to those officers and sergeants holding the P.O.S.T. Intermediate Certificate and having completed probation with the Escondido Police Department. The Educational Achievement Supplement will be paid in addition to the incumbent's P.O.S.T. Certification Pay. The Educational Achievement Supplement will only apply when the educational achievement is greater than the requirements of the incumbent position.

Associates Degree 1% of base pay per month
Baccalaureate Degree 2% of base pay per month

Effective January 1, 2009 initial eligibility for any provision in this Section 2.05, shall be suspended. The amount of compensation (if any) being received prior to January 1, 2009, shall not be affected.

Section 2.06 Uniform Allowance

The uniform allowance shall be paid on the dates and in the amounts shown below:

March 1 (during the pay period which includes March 1) \$350.00
September 1 (during the pay period which includes September 1) \$350.00

However, there shall be no uniform allowance distributions made during the 2010 and 2011 calendar years. The amounts withheld, shall not be reimbursed on or after the 2012 calendar year. Uniform allowance distributions shall recommence effective with the March 1, 2012 payroll period. Nonetheless, the one (1) time \$700.00 stipend provided to newly hired officers, shall continue to be provided during the term of this MOU.

The City and the Bargaining Unit agree to the following language relative to the provision of Uniform Allowance for newly hired employees:

The City agrees to grant the entire annual uniform allowance to new employees within twenty (20) days of the date of hire subject to the following conditions:

In the event a new employee terminates for any reason during the first six (6) months of employment, they shall be liable to reimburse the City of the Uniform Allowance according to the following schedule:

0 – 3 months	100% reimbursement
3 – 6 months	50% reimbursement
6 months or more	None

Motorcycle Safety Equipment - The City agrees to provide helmet, motorcycle pants, gloves, and boots for officers assigned to motorcycle duty.

Face Shields - The City agrees to provide face shields for all officers' helmets.

Magazines - The City agrees to issue magazines and cases to all uniformed officers.

Detective Equipment - The City agrees to provide departmentally approved weapons and nylon gear to those officers and sergeants assigned to the Detective Divisions. Replacement of damaged equipment will continue for those officers currently assigned to the Detective Division (Rule P-10).

Section 2.07 Motorcycle Maintenance

Effective January 1, 2001, officers assigned to motorcycle duty shall receive an additional three and one half (3.5) hours each week worked to compensate for motorcycle cleaning and maintenance. Said time shall be counted as hours worked for overtime compensation purposes; this level of compensation is affirmed by the Bargaining Unit as appropriate to meet FLSA requirements.

By and through the Association, those unit members assigned to motorcycle duty agree that the above additional hours provided each week are reasonably necessary to provide for the cleaning and maintenance of the assigned motorcycle and that these additional “hours worked” are intended to compensate unit members assigned to motorcycle duty for all off duty hours spent cleaning and maintaining their assigned motorcycle, in compliance with the FLSA and interpretive cases and rulings.

The parties acknowledge that the FLSA, which governs the entitlement to compensation for motorcycle cleaning and maintenance, entitles the parties to agree to a reasonable number of hours per month for the performance of off duty maintenance and cleaning duties. The hours derived at in this agreement were determined after an actual inquiry of the officers assigned to motorcycle duty, as addressed by *Leever v. City of Carson City*, 360 F.3d 1014 (9th Cir. 2004.) It is the intent of the parties through the provisions of this section to fully comply with the requirements of the FLSA. In addition, all parties believe that this section of the MOU does comply with the requirements of the FLSA.

Section 2.08 Canine Unit

Effective January 1, 1999, the City and the Bargaining Unit Department agree to provide officers assigned Canine Handling Duty compensation in the form of four (4) hours of overtime compensation for every week assigned such duty. This level of compensation is affirmed by the Bargaining Unit as appropriate to meet FLSA requirements.

By and through the Association, those unit members assigned to canine duty agree that the above additional hours provided each week are reasonably necessary to provide for the care and maintenance of the assigned canine and that these additional “hours worked” are intended to compensate unit members assigned to canine duty for all off duty hours spent caring for and maintaining their assigned canine, in compliance with the FLSA and interpretive cases and rulings.

The parties acknowledge that the FLSA, which governs the entitlement to compensation for canine care and maintenance, entitles the parties to agree to a reasonable number of hours per month for the performance of off duty care and maintenance duties. The hours derived at in this agreement were determined after an actual inquiry of the officers assigned to canine duty, as addressed by *Leever v. City of Carson City*, 360 F.3d 1014 (9th Cir. 2004.) It is the intent of the parties through the provisions of this section to fully comply with the requirements of the FLSA. In addition, all parties believe that this section of the MOU does comply with the requirements of the FLSA.

Section 2.09 Out-of-Class Compensation

An employee shall receive out-of-class compensation when working in a job class assignment higher than the current appointed class for a period in excess of 127.5 hours worked in the higher classification. An employee shall receive pay at 5% above their regular rate or the Step 1 of the out-of-class position, whichever is greater, commencing on the 127.6 hour of working out-of-class and for a period of no longer than six months at any one time.

Section 2.10 Tuition Reimbursement

Within budgetary limitations, and subject to the criteria and limitations listed below, the City will reimburse 100% of tuition and related expenses, up to \$1,500 per employee per fiscal year for tuition fees.

Professional development courses through non-traditional higher-education settings (e.g. professional law enforcement courses) are eligible for tuition reimbursement when such courses are approved in advance by Police Administration and taken on the employee’s personal time. Tuition reimbursement shall be limited to \$500 per year, which shall be a portion of the \$1500 maximum annual tuition reimbursement allowed.

All provisions of this Section 2.10 have been suspended and shall remain suspended effective January 1, 2009.

Eligibility Criteria

1. Course content is closely related to the employee's current classification and is designed to improve job performance, or would assist the employee in preparing for a promotional opportunity.
2. To receive reimbursement, it is encouraged that the employee pursue any approved courses or courses of study at an educational institution.

3. Reimbursement shall be 100% of amount of tuition fees.
4. Course is completed with a minimum grade of "C" (2.0) or its equivalent or by evidence of satisfactory completion.
5. Course is given by a school accredited by the Western Association of Schools and Colleges, accredited by the North Central Association of Schools and Colleges, accredited by an organization equivalent to the two previously listed organizations, approved by the Council for Private Post Secondary and Vocational Education, or by an accredited high school.

Tuition and Related Expenses

The following are eligible expenses within the meaning of "Tuition and Related Expenses":

1. Tuition and/or class fees and/or registration fees charged by an educational institution;
2. Books required for the course;
3. Miscellaneous mandatory charges such as health service and/or identification cards. (Parking charges are not considered required expenses and will not be reimbursed).
4. Transportation will be reimbursed as follows:

When private vehicles are used and attendance is required by the City, mileage shall be paid at the rate authorized by IRS regulations.

Approval Process

Upon submittal, the Police Chief will note the recommendation and forward the application to the Human Resources Department for approval.

Exception Review

Applications which are not approved by the Chief of Police and the Human Resources Director may be submitted to the Tuition Review Committee.

The Tuition Review Committee will consist of:

City Manager or his designee

Human Resources Director

Police Chief

One other **Department Head** (selected on a rotating basis)

By special request, the above-mentioned committee may also be petitioned for 100% reimbursement.

Limitations

Employees will not be reimbursed for that portion of tuition, books and mandatory fees which is reimbursed by a Federal or State benefit, grant, scholarship or other reimbursement program.

Reimbursement Procedure

Upon preliminary approval and successful completion of approved courses, employees may request reimbursement as follows:

1. Complete tuition reimbursement form.
2. Submit proof of payment of reimbursable items.
3. Submit school transcript indicating the grade achieved for the completed course.

Section 2.11 Compensatory Time

At the employee's option, overtime earned after 40 hours in a week may be compensated by time off at the rate of time and one-half the hours worked.

Compensatory time off is subject to the needs of service and may not be taken without 24 hours prior approval by the employee's supervisor for a single shift or less, or 72 hours prior approval by the employee's supervisor for consecutive compensatory hours in excess of a full shift. Compensatory time shall not be granted in increments of less than 30 minutes.

The administration of compensatory time off shall be pursuant to the principles set forth in *Mortensen v. County of Sacramento* (9th Cir., May 24, 2004). Additionally, the following specific guidelines shall apply to use of compensatory time off:

1. An employee who has requested the use of compensatory time off shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the Police Department. A "reasonable period" shall be one year from the time of the initial request (see paragraph 3, below).
2. A non-rebuttable presumption exists that use of compensatory time off would constitute an undue disruption upon the operations of the Police Department, where the use of compensatory time off would cause Department-determined minimum staffing levels for any particular shift, to fall below said **staffing** level, and/or would result in an overtime expenditure.
3. If the Department is reasonably unable to schedule and grant use of compensatory time off within one year from the time of an initial request to utilize compensatory time off then the requested time shall be converted to cash and distributed.
4. The availability of another employee to work for a CTO applicant where the use of CTO would otherwise cause staffing to be below the designated minimum

staffing level, shall not be a factor in determining whether or not the Department shall grant CTO usage.

There shall be an opportunity for a cash payout of all or a portion of accrued compensatory time at the request and discretion of the employee **twice (2x) per year at shift change. (See Exhibit A.) This cash payout option shall be limited during the 2010 and 2011 calendar years to a total unit of representation cash payout of 1,750 hours each calendar year. Effective January 1, 2012, the cash payout limitation shall terminate.**

Compensatory time balances shall not exceed 80 hours, but may be maintained on an indefinite basis. When the maximum accrual balance is reached, cash payment for overtime will be automatic. Compensatory time balances shall be "cashed out" only at the time of termination.

Section 2.12 Shift Differential

Effective May 1, 2005, officers and sergeants normally assigned to Swing and Mid Shifts will receive a shift differential of 2% of base pay per hour for all hours worked while assigned to the shift. Officers and sergeants normally assigned to Graveyard Shift will receive a shift differential of 4% of base pay per hour for all hours worked while assigned to the shift.

Section 2.13 Investigative Pay

Effective January 1, 2001, officers and sergeants assigned to the Investigations Division as their regular duty assignment will receive an additional 5% to the base rate of pay. At the discretion of the Chief of Police, officers and sergeants assigned in other investigative functions within the Police Department may also receive the additional 5% to the base rate of pay. Investigative pay is only effective during the time the employee is regularly assigned to said division or fulfilling an investigative assignment as designated by the Chief of Police and will cease upon reassignment to a non-investigation duty.

Section 2.14 Tactical Operations Unit Pay

Effective January 1, 2005, officers and sergeants assigned to the Tactical Operations Unit shall receive incentive pay of \$75.00 per month.

Section 2.15 – Impact of Suspending Specified Items of Compensation

As set forth above, various compensation provisions set forth in Sections 2.02 SALARY, 2.05 P.O.S.T INCENTIVE PAY/P.O.S.T EDUCATIONAL ACHIEVEMENT SUPPLEMENT, and 2.10 TUITION REIMBURSEMENT, are suspended effective January 1, 2009. The amount(s) of compensation being received prior to January 1, 2009, shall not be effected.

Caveat: Government Code § 20636 defines “compensation earnable” for purposes of CalPERS final compensation computations, as including “pay rate” and “special compensation.” To the extent that any of the matters of compensation set forth in MOU Section 2 are defined by the Government Code and by Chapter 2, Division 1 of Title 2 of the California Code of Regulations, Subchapter 1, Article 5 Member Contributions (Section 571) DEFINITION OF SPECIAL

COMPENSATION, as special compensation that must be reported to CalPERS if contained in a written labor policy or agreement, the withholding of eligibility for any one or more items of special compensation may result in a CalPERS determination that as to unit members already receiving "special compensation," no such item be reported to CalPERS as special compensation. This caution is based upon Government Code § 20636(c)(2) which provides in pertinent part that:

"Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, *to similarly situated members of a group or class of employment that is in addition to pay rate* [see also, Regulation 571(b)(2)]."

Therefore, the parties understand that the City makes no representation as to whether or not the above proposals to suspend certain forms of compensation shall cause any one or more items of compensation (special or otherwise) as that term is defined by the CalPERS (Public Employees' Retirement System,) to be excluded from calculating final compensation for any one or more unit members. However, the parties will of course, have an interest in seeking a CalPERS determination of the above issue, prior to concluding the meet and confer process. It is not the City's intent to adversely impact special compensation amounts being received prior to January 1, 2009, and the reportability of such, to CalPERS.

ARTICLE 3 WORK SCHEDULE AND OVERTIME COMPENSATION

Section 3.01 Work Period

For purposes of compliance with the Fair Labor Standards Act, a "7K Exemption" is declared effective as of April 15, 1985. Effective January 1, 2002, a 14 day, 80-hour work period is established.

For the purposes of this Memorandum of Understanding, overtime shall be calculated on the basis of hours worked in excess of 40 hours in a seven (7) day period for those working the 14 day work period and in accordance with Section 3.02 of this MOU.

Section 3.02 Work Schedule

The work schedule is to be based on a 40-hour work week. The normal work week shall be four consecutive 10-hour work days, with three days off. Notwithstanding the above, when public or operational necessity or efficiency of the services are deemed by the City to require an other than normal work week, work day, or work schedule, such will be prescribed by the City.

Section 3.03 Overtime Definitions

NORMAL WORKDAY:

A Normal Workday, for the purposes of calculating overtime, shall be ten (10) hours in length. Hours worked for this purpose shall include vacation time off, holiday time off, sick leave, or any authorized time off. Training time, range time, court time, or other hours suffered to work

during the normal scheduled workday shall be counted as part of the Normal Workday. Vacation, holiday, sick leave, or any authorized time off shall be deducted from the appropriate leave balances and pay will be granted at the rate of 10 hours for a full day.

EXTENDED DAY:

Time worked as an Extended Day is work generated as part of the scheduled "Normal Workday" activity and immediately preceding or following the "Normal Workday." Extended Day hours shall be paid at straight time up to 40 hours in a seven (7) day period; and at time and one-half the "Regular Rate of Pay" thereafter.

CALLBACK:

Any time worked excluding "Special Detail" (prearranged working time) outside the schedule "Normal Workday" and not within the meaning of "Extended Day." "Callback" time shall be paid at the rate of a minimum of three (3) hours pay or actual time worked, whichever is greater, at time and one-half of the "Regular Rate of Pay."

OFF DUTY CONSULTATION CALL:

Officers and sergeants assigned as investigators, or assigned to special details as defined by the Chief of Police, when off duty, will be compensated with overtime pay in increments of 15 minutes when contacted by on-duty personnel regarding specific cases. Such contact shall be authorized by the contacting officer's supervisor.

COURT TIME:

Time spent in preparation to appear in court, travel to and from court, and actual time spent in appearing or waiting to appear while at a court facility. Travel time shall be that time needed to reasonably travel from and return to the Escondido Police Department. Court time shall consist of "Court Time on Duty" and "Court Time Off Duty" as defined and subject to the compensation set forth below:

Court Time On Duty:

Court time on duty shall mean court time occurring during the "Normal Workday," "Normal Workday Overtime," or immediately following the "Normal Workday," and shall be compensated as such.

Court Time Off Duty:

Court time off duty shall mean any court time occurring at any time not included within the definition of "Court Time On Duty" and shall be compensated by payment of an amount equal to three (3) hours or actual time worked, whichever is greater, at time and one-half of the "Regular Rate of Pay." Effective January 1, 2001, compensation shall be increased to four (4) hours or actual time worked, whichever is greater.

TRAINING:

Time spent involved in a training function which is prearranged and required by the Escondido Police Department. Training time will be counted as hours worked for "Normal Workday" except that time spent outside the scheduled working hours. Training scheduled by the department outside the "Normal Workday" shall be compensated at the rate prescribed as "Callback." Training scheduled immediately preceding or following the "Normal Workday" shall be paid at the rate prescribed for the "Extended Day." For the purpose only of clarifying an existing management prerogative, the Department may at its sole discretion, and in compliance with federal and state law, reschedule time off during the work period.

OUT-OF-TOWN TRAVEL TIME:

- A. One-day Trip - Such travel time is normally considered work time. However, travel time between home and an airport or railroad station which is comparable to normal commuting time, and duty free meal time, shall not be counted as time worked.
- B. Overnight Trips - (1) An employee traveling at the behest of the employer as a passenger on a public conveyance or in an automobile is considered to be working (except for regular meal period or sleep time), to the extent the travel time occurs during any portion of the employee's "Normal Workday", whether or not the travel occurs during normal working hours on an otherwise regular day off.

(2) If the employee is required by the employer to drive an automobile as contrasted to being a passenger, all such time is work time except during bona fide meal or sleep time. If an employee is offered public transportation but requests and is given permission to drive his/her car instead, the employer may count as hours worked either the time spent driving the car or the time that would have qualified as work time if the employee had used the public conveyance, whichever is less.

SPECIAL DETAIL:

Prearranged working time outside the scheduled "Normal Workday." "Special Detail" time shall be compensated at a rate of a minimum of two (2) hours pay or actual time worked, whichever is greater, at time and one-half of the "Regular Rate of Pay." However, "Special Detail" time worked contiguous to the "Normal Workday" shall be paid at the "Extended Day" rate.

MINIMUM STAFF:

Time worked outside the schedule for "Normal Workdays" in order to maintain a minimum level of staffing. "Minimum Staff" time will be compensated at the rate of a minimum of two (2) hours pay or actual time worked, whichever is greater, at time and one-half of the "Regular Rate of Pay." For the purpose only of clarifying an existing management prerogative, the department administration may at its discretion establish minimum staffing levels.

REGULAR RATE OF PAY:

For the purpose of this agreement, the term "Regular Rate of Pay" shall mean that established by statute or regulation by the Department of Labor which applies to local governmental jurisdictions. All overtime, except as expressly agreed upon, shall be paid at the "Regular Rate of Pay."

Section 3.04 Attendance

Except as the City Manager requires to the contrary, all offices of the City shall be open for business from 8:00 a.m. until 5:00 p.m. on all days except Saturdays, Sundays and the designated holidays as set forth in this MOU.

All departments shall keep daily attendance records of employees which shall be reported to the Finance Department in the form and on the dates specified.

Employees shall, except as these rules provide to the contrary, work at least 42 hours per week. An employee whose duties require an irregular work schedule shall work according to a schedule recommended by their supervisor and/or Chief of Police and approved by the City Manager.

All employees shall be on duty at the times required by these rules with respect to hours, days of work and leave. However, an employee who is absent without leave and who fails to return to duty within 24 hours after receiving written notice to do so shall be deemed to have resigned from their position. Such employee automatically waives all rights under the Municipal Code and this MOU.

Section 3.05 Shift Trades

Employees of the same rank shall be allowed to exchange days off under the following conditions:

1. Both parties to the exchange must be willing to make 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 5 days prior to the first day of the 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. No exchange will result in overtime based on acceptance of the exchanged shift.

7. These exchanges must be made in accordance with the Fair Labor Standards Act, when applicable.

ARTICLE 4 BENEFIT PACKAGE

Section 4.01 Health Insurance - See Exhibit B

Section 4.02 Dental Insurance

The City shall pay the employee-only portion of their dental insurance plan premium through December 31, **2011**.

Section 4.03 Retirement Benefits

Effective by October 1, 2004, or as close as possible to this date, pending administrative processing by CalPERS, the City shall provide the CalPERS Section 21362.2, 3 percent @ 50 Formula retirement benefit.

Effective June 25, 1989, the City shall provide the One-Year Highest compensation PERS benefit.

Effective January 1, 1998, the City shall provide the Fourth Level of 1959 Survivors' Benefit (Section 21382.5).

Effective January 1, 1996, or as soon thereafter as administratively possible, the City shall provide the Credit for Unused Sick Leave Benefit (Section 20862.8).

Effective July 12, 1998, the City shall provide PERS Section 21024 Military Service Credit as Public Service benefit.

Effective July 1, 1999, or as close as possible to this date pending administrative processing by PERS, the City shall provide PERS Section 20692 Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period.

Effective July 1, 2001, the City shall provide PERS Section 21458 Pre-Retirement Optional Settlement 2 Death benefit.

The parties shall jointly participate in the City's Pension Review Ad Hoc Task Force, one purpose of which shall be the addressing of the adoption of a second tier retirement formula, and of modifications to the method of calculating retirement benefits for those future employees subject to a second tier retirement formula. The Task Force shall consist of representatives from each bargaining unit and from the City, and shall be constituted and commence meetings in February 2010.

Section 4.04 Life Insurance

Effective January 1, 1991, the City shall provide for the benefit of each employee, life and accidental death and dismemberment insurance in the amount of \$25,000 (\$50,000 effective

April 1, 2008) , and \$1,000 dependent coverage (with the exception of a spouse who is also a City employee) in accordance with current life insurance company rules and regulations.

Employees may opt to purchase at employee's expense supplemental group term life insurance via payroll deduction, in accord with the group carrier guidelines.

Section 4.05 Voluntary Benefits

The City can offer voluntary benefits to employees at any time.

Section 4.06 Medicare Coverage

Effective January 1, 2005, employees hired by the City prior to 1986 desiring Medicare coverage will be responsible for the 1.45% employee share Medicare cost and the City will provide the employer-matching share of 1.45%. (This percentage is subject to change by Medicare.)

Section 4.07 Domestic Partner Benefits

Consistent with Federal/State Law, the City will provide Domestic Partner benefits.

ARTICLE 5 PAID LEAVE

Section 5.01 Holidays

Holidays:

Every permanent, permanent part-time, and every probationary employee in the personnel system, shall not be required to be on duty on holidays unless the employee's services are needed and required in the interests of the public health, safety or general welfare, in which latter event, any such employee shall be entitled to an in lieu holiday or overtime pay, in accordance with this MOU. (Amended 3-80)

DESIGNATED HOLIDAYS

New Year's Day

Martin Luther King Day

Presidents' Day

Memorial Day

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Day After Thanksgiving

Christmas Day

(Amended 7-80)

For employees whose regular work schedule is Monday through Friday, when a holiday falls on a Sunday, it is observed on the Monday immediately following. When a holiday falls on a Saturday, it shall be observed on the preceding Friday. For employees whose regular work schedule rotates on a 7-day cycle, the actual holiday is the recognized holiday for holiday compensation purposes.

Holiday Pay:

Effective concurrent with City Council adoption of this MOU, the following provisions shall be applicable to use of holiday pay. The following provisions shall sunset at midnight on December 31, 2011, with the “floating holiday pay” provisions effective immediately preceding Council adoption of this 2010-11 MOU, being reinstated, but subject to modification pursuant to the 2012 meet and confer process.

The 2010-11 provisions are:

- 1. Commencing with and including the 2010 Presidents Day designated holiday, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day, ten (10) hours for each listed holiday shall be placed into a “furlough holiday bank” at the rate of 3.0769 hours per payroll period during the 2010 and 2011 calendar years (a total of 160 holiday hours). Earned and accumulated designated holiday hours are subject to use pursuant to these provisions *but shall have no cash value. Accordingly, at no time, either during an affected Association member’s employment or upon separation for any reason, or otherwise, shall earned accumulated designated holiday hours be convertible to cash.* However, holiday hours represented by New Year’s Day and Martin Luther King Day, shall be added to the “Pre-2010 Holiday Bank Utilization” described below and shall be subject to the rules governing use of said “Pre-2010 Holiday Bank.”**
- 2. Application for use of earned and accumulated “furlough holiday bank” hours shall be governed by the practices described in Section 2.11 Compensatory Time. *However, use of “furlough holiday bank” hours shall be denied if such usage would cause Department-determined minimum staffing levels for any particular shift, to fall below said minimum staffing level, and/or would result in an overtime expenditure.***
- 3. Subject to the above rules and regulations governing use of “furlough holiday bank” hours, “furlough holiday bank” hours existing at midnight on December 31, 2011, shall be available for use through and including December 31, 2013. Any “furlough holiday bank” hours remaining unused on December 31, 2013, shall be extinguished with no cash value.**
- 4. During the 2010 and 2011 calendar years, any affected employee working a shift that falls on a “designated holiday,” shall be compensated at straight time for hours worked (unless the hours worked otherwise entitle the officer**

to overtime separate and distinct from having worked on a designated holiday.)

5. Where an affected employee was scheduled to work on a designated holiday and applies for and is granted use of ten (10) earned and accumulated “furlough holiday bank” time, shall be compensated with ten (10) hours of straight time during the payroll period within which the “furlough holiday bank” hours were utilized, and the “furlough holiday bank” shall be debited in the amount of ten (10) hours.
6. Subject to the “Pre-2010 Holiday Bank Utilization” described below and the adding of New Year’s Day and Martin Luther King Day holiday hours to said account for use as described therein, any and all of the holiday pay provisions and/or practices set forth in this MOU and which pre-date the City Council adoption of this 2010-11 MOU, shall be of no force and effect, but shall be reinstated effective January 1, 2012, subject to later modification pursuant to the meet and confer process for the 2012 calendar year.

The following provisions (A and B) are ineffective and suspended during the term of this MOU:

Employees whose regularly scheduled workday or workshift falls on a holiday and who worked such a holiday shall receive compensation as follows:

- A. Time and one-half for time worked, and, at the employee's option:
 1. Compensatory time off on a straight-time basis subject to the needs of the service and the prior approval of the employee's supervisor; or
 2. Straight-time pay for time worked.
- B. Employees whose regularly scheduled workday or workshift falls on a holiday and who call in sick on the holiday, or a part thereof, shall receive straight-time sick pay for those hours scheduled to work but not actually worked due to illness, and shall receive straight-time floating holiday hours.

Floating Holiday Pay:

Effective concurrent with City Council adoption of this Memorandum of Understanding, the floating holiday pay provided for herein shall be deposited into the “furlough holiday bank” described above under the subheading of Holiday Pay. All rules governing use of the above described “furlough holiday bank” shall be equally applicable to those hours within the “furlough holiday bank” which represent “floating holiday” hours. As with other hours included within the “furlough holiday bank,” deposited floating holiday hours shall have no cash value at any time. The pre-existing provisions governing this floating holiday provision shall be reinstated effective January 1, 2012, subject to later modification pursuant to the meet and confer process for the 2012 calendar year.

The following provision is ineffective and suspended during the term of this MOU:

The City agrees to provide four (4) hours of Holiday Pay in lieu of the past practice of granting an informal four (4) hours off during the holiday season. This additional Holiday Pay shall be added to the employee's Floating Holiday Bank each year during the first pay period in October.

Pre-2010 Holiday Bank Utilization

Concurrent with City Council adoption of this 2010-11 MOU, the “floating holiday bank” existing prior to the date of said Council adoption, and including the 2010 and 2011 New Year’s Day and Martin Luther King Day holiday hours shall be “limited” in that no cash distributions shall be allowed from said earned and accumulated existing holiday bank time in excess of 3,300 hours in the unit of representation per each calendar year 2010 and 2011. Computation of the 3,300 hours per calendar year shall commence on January 1, 2010 and January 1, 2011. Any employee separating from City employment during the term of the 2010-11 MOU, shall be compensated for said pre-existing earned and accumulated holiday bank time, but only to the extent allowed by rules, regulations, policies and practices applicable to employment-separation related cash distribution of said holiday bank time.

Holiday and Furlough Holiday Bank Reopeners

It is agreed and acknowledged by the parties that the principle purpose of the City in providing for the “holiday bank” concept during the 2010-11 calendar years is to provide economic savings to the City by an elimination of holiday cash value and/or in premium holiday payment to employees working on designated holidays. Therefore, it is agreed by the parties that every six (6) months starting from the date of City Council adoption of this 2010-11 MOU, representatives of the City shall be authorized to reopen this MOU if the City determines that the anticipated per annum holiday and floating holiday fiscal savings of \$550,000 related to creation and use of the above “furlough holiday bank” are not reasonably likely to be realized.

Section 5.02 Vacation

Annual Vacation Leave:

All probationary, permanent part-time, and permanent employees in the service shall be entitled to annual full or prorated vacation leave with pay except part-time, temporary, and temporary seasonal employees in accordance with the part-time compensation plan. (Amended 3-80)

Earned Vacation:

Each eligible employee shall accumulate annual vacation from the date of hire at the rate applicable to their employment status as follows (Amended 1-84):

First 5 years of service	=	3.91 hours a pay period for 26.0893 pay periods
5 – 10 years of service	=	5.53 hours a pay period for 26.0893 pay periods
10 – 15 years of service	=	7.17 hours a pay period for 26.0893 pay periods

15 years and over = 8.80 hours a pay period for 26.0893 pay periods

Effective July 1, 2007: Upon approval of the Chief of Police, Lateral Transfer Police Officers hired by the Escondido Police Department may be eligible to accrue vacation leave time at the rate of 5.53 hours per pay period (5-10 years) based on five years of full-time previous sworn law enforcement experience credit. The officer would be eligible to advance to the next vacation accrual rate level (10-15 years) after five years of service with the Escondido Police Department.

Lateral Transfer Officers with less than five years of other full-time sworn law enforcement experience, and upon approval of the Chief of Police, may be eligible to accrue vacation leave time based on their previous full-time law enforcement experience credit plus any service time with the Escondido Police Department. For example:

Upon hire, if a Lateral Transfer Police Officer has three years previous sworn law enforcement experience credit, the officer may begin to accrue vacation time at a rate of 3.91 hours per pay period (0-5 years). After two years of service with the Escondido Police Department (for a total of five years of law enforcement experience credit), the employee would then be eligible to advance to the next vacation accrual level, or 5.53 hours a pay period (5-10 years). After five additional years of service (seven total years with the Escondido Police Department), the officer would advance to 7.17 hours of vacation time per pay period (10-15 years).

Vacation Periods:

Vacation may be taken the first day following the completion of 12 months and may never be used in units of less than one hour. (Amended 3-80, Biweekly Accumulation)

- A. The times during an accrual year at which an employee may take their vacation shall be determined by the Chief of Police with due regard for the wishes of the employee and particular regard for the needs of the personnel system. If the requirements are such that an employee cannot take all of their accrued vacation within an accrual year, the balance may be carried forward to the next year. However, no Police service safety employee may at any time accumulate more than 30 months vacation credit. Vacation credit shall be forfeited if not taken within a 30-month period. For the purposes of this paragraph, accrual year shall commence on the entrance-on-duty anniversary date. (Amended 7-85)
- B. When an eligible employee intends to defer any portion of their accrued vacation to a succeeding 12-month period, subject to the provisions of this MOU, it shall be their obligation to advise their Chief of Police of that intent and the reasons therefore.
- C. No legal holiday that falls during an employee's vacation may be charged against the employee as vacation, and the leave shall be extended accordingly.
- D. Regardless of length of probationary service, employees who terminate shall be paid in a lump sum for all allowable accrued vacation leave earned prior to the effective date of termination.

- E. Allowable, accrued terminal vacation pay shall be computed on a prorated basis, taking into consideration the number of hours worked in the last pay period of employment.

Section 5.03 Sick Leave

Sick Leave-Personal Use:

Sick leave with pay shall be granted to all probationary, permanent part-time, and permanent employees within the personnel system. Sick leave shall not be considered as a right which an employee may use at their discretion, but shall be allowed only in case of necessity and actual personal sickness or disability.

In order to receive compensation while absent on sick leave, the employee shall notify their immediate superior or their Chief of Police prior to or within two hours of the time set for beginning their daily duties. In the event that an employee has applied for sick leave use for four or more consecutive scheduled working days, the City may require a physician's certification as to the existence of an illness or injury that prevents the employee from working, and an approval of the employee's intended return to work. The City Manager may, however, require such certification or evidence the City deems necessary regarding sick leave use at any time. (Amended 7-80)

"Evidence" as used in the prior sentence includes but is not limited to:

- A. An opinion from the treating physician as to the expected convalescent period, if any.
- B. Specific physical restrictions, if any, which bear on the employee's ability to perform his/her usual and customary duties or modified work assignments.
- C. A second opinion on the employee's condition from a physician or physicians of the City's choice (and at City expense) based upon independent medical evaluation(s) and/or review of the employee's physician's report. (Amended 1-83)

Sick Leave-Accrual Rate:

Sick leave shall be earned at the rate of eight hours for each calendar month of service and is earned also while on sick leave. Unused sick leave shall be accumulated indefinitely. (Rule P-3)

Family Assistance-Bereavement Leave:

All currently benefited employees' annual Sick Leave accrual may be used for Sick Leave, Family Sick Leave, Maternity/Paternity Leave, and Bereavement Leave for members of their immediate family. The immediate family shall consist of a member of the employee's immediate family or individuals whose relationship to the employee is that of a dependent or near dependent, member of the immediate household, or a person who is significant to the employee. In each such case the City Manager shall grant such sick leave only when, in his opinion, the relationship of the sick or disabled person to the employee warrants such use of sick leave. In addition to family sick leave, an additional five days of bereavement leave shall be provided if required, all of which is to be charged against the employee's accrued sick leave. Exceptions to

exceed the above family leave provisions are subject to consideration by the City Manager on a case-by-case basis. In no event shall an employee be granted sick leave time to oversee children who are not ill (babysitting).

Sick Leave-Termination:

Employees who terminate for any reason, including retirement, shall not receive cash payment for accrued sick leave. All eligibility for sick leave with pay shall be cancelled upon separation of the employee from the City Service. Provided that such separation is by layoff, this accumulated eligibility may be restored to the employee in whole or in part by the City Manager upon reemployment. (Amended 3-80)

Sick Leave-Authorized Vacation:

Employees who are on authorized vacation and become ill, or otherwise disabled through accident not a result of vicious habits or intemperance, may charge such sickness or disablement to credited sick leave, provided a doctor's certificate is presented to Human Resources.

Leave-Conversion:

Commencing July 1, 1997, sick leave accrual will be convertible on the basis that any unused sick leave accrued in any given year can be converted to vacation on a ratio of two sick hours for one hour of vacation.

Section 5.04 Military/FMLA Leave

Military/FMLA Leave:

Military/FMLA leave shall be granted in accordance with the provisions of Federal and State laws. All employees entitled to Military/FMLA Leave shall give the City Manager an opportunity within the limits of Military regulations to determine when such leave shall be taken.

Upon verification of military orders, employees who are members of the military reserve or National Guard who have been called to active duty during national security, after the standard Military Leave Policy, shall receive the difference between the amount the employee would have received from their regular City gross biweekly wage (not including overtime) and the amount the employee receives from the military.

Health benefits will be continued for the employee and family. An employee would continue to pay their respective portion of the benefit programs (including any premiums for family coverage,) unless benefits are waived.

Compensation:

Every employee ordered to take Military Leave who would have been required to work for and be paid by the City at the same time Military Leave is ordered shall receive their salary or compensation as an employee of the City in accordance with the provisions of State and Federal law.

Section 5.05 Jury and Witness Leave

Jury Duty:

Any employee who is called or required to serve as a trial juror shall be entitled to absent themselves from their duties with the City during the period of such service or while necessarily being present in court as a result of such call. Under such circumstances, the employee shall be paid their full salary and any payment received by them from the court for such duty. Employees shall provide the Human Resources Director with a copy of the call to jury duty and other documentary evidence of service as required by the City.

Witness Leave:

Any employee who is called or required to serve as a witness shall be entitled to absent themselves from their duties with the City during the period of such service or while necessarily being present in court as a result of a proper subpoena. Under such circumstances, the employee shall be paid the difference between their full salary and any payment received by them, except travel and subsistence pay, for such duty. Witness leave will not be granted to employees who are litigants in civil cases or defendants in criminal cases. Employees shall provide the Human Resources Director with a copy of the legal subpoena and other documentary evidence of service as required by the City. (Rule P-6)

Section 5.06 Leave of Absence Without Pay

Leave of Absence Without Pay:

The City Manager may grant a permanent or probationary employee leave of absence without pay, seniority, or benefit accruals not to exceed six months. For special educational purposes, however, the City Manager may grant leaves of absence not to exceed one year, without pay, provided such study is related to City employment. When such special educational leave of absence is granted, the employee must agree in writing that they will return to regular, full-time employment with the City for a minimum of one year. No such leave shall be granted except upon written request of the employee, setting forth the reason for the request, and the approval will be in writing. Upon expiration of a regularly approved leave or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report promptly at its expiration, or within a reasonable time after notice to return to duty, shall be cause for discharge. (Amended 3-80)

Upon receiving five days prior notice, the Chief of Police, may grant a regular employee in good standing, leave of absence without pay not to exceed 10 work days in a calendar month, without the employee having to first exhaust current leave balances. Such leaves shall be reported to the Human Resources Director.

When an employee is in a leave of absence without pay status due to having exhausted all accrued sick leave and vacation credit, their revised hire date or date of promotion for purposes of merit increases, sick leave and vacation credit, will be the number of calendar days absent added to their former hire or promotion date, whenever such leave exceeds 30 working days. In

the event of leave of absence due to injury or illness, after all sick leave is exhausted, utilization of accrued vacation, compensatory time and/or floating holidays shall be at the option of the employee.

Maternity/Paternity FMLA/CFRA Leave:

Employees shall be granted maternity/paternity FMLA/CFRA leave in accordance with the following provisions:

- A. In all cases of pregnancy, the employee shall furnish the City a statement from her physician giving the anticipated date of delivery and the opinion of the physician as to her ability to perform her normal work assignment. Such statement shall be furnished as soon as practicable after a determination of the pregnancy has been made.
- B. A pregnant employee will be permitted to work as long as she is able to safely perform the duties of her position as recommended by the statement of her physician.
- C. An employee will be permitted to return to work when she is able to safely perform the duties of her position as recommended by the statement of her physician, based upon examination of her after childbirth. An employee must give notice two weeks prior to the date she wants to return to work. If she does not give two weeks notice prior to the date she wants to return to work, the department shall not be required to return her to work until two weeks after she has given such notice.
- D. A pregnant employee shall be allowed to be absent for the period during which in the opinion of her attending physician and, where necessary, the City physician, she is temporarily disabled because of pregnancy, miscarriage, abortion, childbirth and recovery there from, **in accordance with federal and/or state leave laws.**
- E. The City may, at its option, and at City cost, require an independent medical opinion concerning the employee's ability to safely perform her duties.
- F. **A pregnant employee shall be entitled to use all accumulated paid leave time (sick leave – up to the annual accrual, holiday, vacation) for maternity leave and such additional leave of absence without pay, seniority and accrual of benefits in accordance with federal and/or state leave laws.**
- G. In the case of adoption and paternity/FMLA/CFRA leave, **leave shall be in accordance with federal and/or state leave laws.**

Section 5.07 Donated Leave

City Manager's Administrative Directive No. 24 outlines a policy which allows employees to transfer vacation to another employee who is experiencing unusual or extenuating personal circumstances and requires additional leave.

For the purposes of this MOU, when an employee is unable to work and thus receiving donated leave, they are to be considered assigned to day shift for pay purposes.

Section 5.08 Payments to Industrially Disabled Full-Time Employees Pursuant to Labor Code Section 4850

Consistent with Labor Code Section 4850, full-time employees are paid full salary in lieu of temporary disability payments when they suffer an industrial injury. Current administrative policy establishes a minimum of 90 days of payments pursuant to Section 4850 in those cases where an employee's industrial disability will result in disability retirement from CalPERS. This section affirms the current administrative policy. In no event should an employee receive more than one year of full salary of Section 4850 payments.

ARTICLE 6 WORKING CONDITIONS

Section 6.01 Physical Fitness Program

The City and the Police Officers' Association agree to change the manner in which the physical fitness program for Police personnel is conducted. The change in the program is not intended to adversely affect Police personnel, nor any benefits they may currently experience relating to maintaining their physical fitness.

Police Department personnel are strongly encouraged to maintain their physical fitness to ensure the ability to perform the essential job functions of a law enforcement officer, with or without reasonable accommodation.

Good physical fitness reduces the incidences of injuries and illness associated with lost time and the burden of long-term illness/disease. Police Department personnel are encouraged to participate in fitness activities to achieve and maintain physical fitness levels.

The following activities are recommended for such fitness:

- Walking
- Jogging
- Walk/jogging
- Swimming
- Stationary cycling
- Stationary rowing machines
- Stationary cross-country type skiing machines
- Cardio-strength programs
- Low-impact aerobic dance and Jazzercise
- Treadmill
- Weight-lifting with approved training certificate as directed by the Chief of Police
- Martial arts training as approved by the Chief of Police or Designee

The City reserves the right to determine an employee's physical fitness relating to job performance and may require an employee to undergo a physical fitness for duty examination. Results from any such examination provided to the City will be shared with the employee. It is the City's goal to ensure Police Officers and Sergeants are able to perform the essential job functions of their job, with or without reasonable accommodation.

Employees who may be injured while performing the above recommended exercise activities shall report the injury/illness to the City as soon as possible. All such injury/illnesses claims will be handled in accordance with the State of California Workers' Compensation Laws.

Section 6.02 Grievance Procedure

SUBSECTION 1. Grievance Procedure: In the belief that the resolution of grievances is a constructive management action, a grievance procedure is hereby established. Such a procedure will give permanent employees assurance that the City recognizes their right to be heard and assist them in achieving job satisfaction. The purpose of this procedure is to provide a just and equitable method for the resolution of grievances or complaints without prejudice, coercion or reprisal.

SUBSECTION 2. Definitions:

- A. A complaint is defined as an allegation or charge against a party that an error or wrong has been committed, and is identified as a complaint when communicated to the supervisor or other appropriate designated representative. (Amended 7-80)
- B. The complaint procedure is defined as the orderly process by which a determination is made as to whether or not a wrong has been committed.
- C. A grievance is an expressed claim by an employee that the City has violated, misinterpreted or misapplied an obligation to the employee as such obligation to the employee is expressed and written in the City personnel ordinance, rules and regulations, and administrative directives, and is identified as a grievance when communicated to the supervisor or other appropriate designated representative. (Amended 7-80)
- D. The grievance procedure is the process by which the validity of a grievance is determined.
- E. The term employee includes employees wherever applicable within this procedure.
- F. The term days, when used in this procedure, shall mean calendar days.
- G. A representative is a person who, at the request of the employee or management, is invited to participate in grievance conferences.
- H. A general grievance is defined as an expressed written claim by the employee organization that the City has violated, misinterpreted or misapplied a provision in a current memorandum of understanding which concerns items or procedures relating to the relationship between the City and the employee organization as a corporate body.
- I. The general grievance procedure is the process by which the validity of a grievance is determined.

SUBSECTION 3. General Provisions:

- A. No retribution or prejudice shall be suffered by employees making use of the grievance or complaint procedures; provided, however, no act or behavior which would otherwise subject an employee to discipline shall exclude the employee from discipline simply on the basis that a complaint or grievance is filed pertaining to that act or behavior. (Amended 7-80)
- B. The time limits established herein may be extended to a date certain by mutual written agreement.
- C. If management, at any step of the procedure, fails to respond within the prescribed time limit specified, the employee may process their grievance or complaint at the next step.
- D. If the employee, at any step of the procedure, fails to appeal the decision on a grievance or complaint within the prescribed time limit specified, such decision shall be deemed accepted and shall not be subject to further appeal or consideration.
- E. By mutual written agreement, a grievance may revert to a prior level for reconsideration.
- F. The employee shall be present at all steps of the grievance or complaint procedure.
- G. All communications, notices and papers required to be in writing shall be served personally or by the United States Postal Service.
- H. Management shall inform an employee of any limitation on the authority of the management representative to fully resolve the grievance.
- I. The employee is assured the right to consult with their supervisor, the Chief of Police or their designee, or the Human Resources Director, without prejudice, concerning the manner, form and/or procedure for filing a grievance.

SUBSECTION 4. Representation Rights:

- A. The employee has the right to the assistance of a representative of their choice in the investigation, preparation and presentation of a grievance.
 - 1. Representation may occur at any stage of the grievance procedure; provided, however, that prior to calling for representation at step one of the procedure the employee shall discuss their grievance with the supervisor. Upon conclusion of the discussion, the employee may request a continuation of the informal grievance process (step one), to a mutually agreeable time within five days, to have the assistance of a representative.
 - 2. If the employee elects another employee as their representative, such representative shall not be released during working hours without the approval of their supervisor.

3. The supervisor shall grant a reasonable amount of time off, provided such would not unreasonably interfere with or delay City work.
- B. Grievance conferences (between management and the employee) will normally be conducted during regular working hours at a mutually convenient time.
- C. The investigation of a grievance during working hours by an employee and their representative, if any, shall be in accordance with the following:
1. Prior to entering any job site, the representative shall obtain the approval of the job site supervisor.
 2. There shall be no solicitation of grievances or employee organization membership.
 3. The investigation shall be conducted in a reasonable amount of time and expeditiously with due regard for the work requirements of the City.
 4. Where the investigation commences prior to the end of the regular workday and continues beyond the close of the regular workday, time spent after the close of the regular workday shall be the employee(s) own time.
 5. Entry will not be permitted if it would unreasonably interfere with or delay City work.
 6. All safety regulations relating to the presence or conduct of persons at the job site shall be complied with.
- D. The name of the representative of the employee or management shall be given to the other party not less than 48 hours prior to any grievance conference.

SUBSECTION 5. Complaint Procedure:

A. Step One:

1. The employee shall inform their supervisor of their complaint within ten (10) days after the employee knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the complaint. Failure to complete this procedure will bar further consideration of the complaint.
2. The supervisor shall, within five (5) days after receipt of the complaint, have a discussion with the employee concerning the complaint.
3. The supervisor shall, within five (5) days of the discussion, render a verbal decision to the employee.

B. Step Two:

1. Within five (5) days from receipt of the verbal decision from the supervisor, the employee, if they wish to appeal the decision, shall notify the Chief of Police of their intent to appeal the decision. Failure to complete this procedure will bar further consideration of the complaint.
2. The Chief of Police or their designated representative shall, within five (5) days of the notification as required above, have a discussion with the employee concerning the complaint.
3. The Chief of Police or their designated representative shall, within five (5) days of the discussion, render a verbal decision to the employee.

C. Step Three:

1. Within five (5) days from the receipt of the verbal decision from the Chief of Police, the employee, if they wish to appeal the decision, shall notify the City Manager of their intent to appeal the decision. Failure to complete this procedure will bar further consideration of the complaint.
2. The City Manager or his designated representative shall, within five (5) days of the notification as required above, have a discussion with the employee concerning the complaint.
3. The City Manager or his designated representative shall, within five (5) days of the discussion, render a verbal decision to the employee.

D. Nothing in this section shall prohibit more expeditious handling of the complaint.

SUBSECTION 6. Grievance Procedure:

A. Step One - Informal Grievance:

1. The employee shall inform their supervisor of their grievance within ten (10) days after the employee knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the grievance. Failure to complete this procedure will bar further consideration of the grievance.
2. The supervisor shall, within five (5) days after receipt of the grievance, have a discussion with the employee concerning the grievance.
3. The supervisor shall, within five (5) days of the discussion, render a verbal decision to the employee.

B. Step Two - Formal Grievance:

1. Within ten (10) days from the receipt of the verbal decision from the supervisor, the employee, if they wish to appeal the decision shall submit a formal written

grievance to their supervisor. The grievance shall be submitted on forms provided by the City's Personnel Office and in conformance with the procedures stated thereon. Failure to complete this procedure will bar further consideration of the grievance.

2. The supervisor shall, within five (5) days of receipt of the grievance, schedule a grievance conference at a mutually agreeable time. A representative of the employee and/or management may attend this conference in accordance with Subsection 4 of this procedure.
3. The supervisor shall, within five (5) days of the grievance conference, render a written decision to the employee with a copy of the original grievance.

C. Step Three - Appeal:

1. Within five (5) days from receipt of the written decision from the supervisor, the employee, if they wish to appeal the decision, shall submit an appeal to the Chief of Police. The appeal shall be submitted on forms provided by the City's Personnel Office and in conformance with the procedures stated thereon, and include the supervisor's response, if any. Failure to complete this procedure will bar further consideration of the grievance.
2. The Chief of Police or their designee shall, within five (5) days of receipt of the appeal, schedule a grievance conference at a mutually agreeable time. A representative of the employee and/or management may attend this conference in accordance with Subsection 4 of this procedure.
3. The Chief of Police or their designee shall, within five (5) days of the grievance conference, render a written decision to the employee with a copy of the appeals documents.

D. Step Four - Administrative Appeal:

1. Within five (5) days from receipt of the written decision from the Chief of Police or their designee, the employee, if they wish to appeal the decision, shall submit an appeal to the City Manager. The appeal shall be submitted on forms provided by the City's Personnel Office and in conformance with the procedures stated thereon, and include the original grievance and management's response, if any. Failure to complete this procedure will bar further consideration of the grievance.
2. The City Manager or his designee shall, within seven (7) days of receipt of the appeal, schedule a grievance conference at a mutually agreeable time. A representative of the employee and/or management may attend this conference in accordance with Subsection 4 of this procedure.
3. The City Manager or his designee shall, within seven (7) days of the grievance conference, render a written decision to the employee with a copy of all appeal documents.

4. The City Manager may, at his option, render a written decision based on the documents submitted for their review without the grievance conference within the time frame set forth above. If he does so, the employee may discuss this decision with the City Manager at a mutually convenient time, provided they request such meeting within seven (7) days of receipt of the City Manager's decision.
 5. The decision of the City Manager shall be final, except where the grievance has resulted from a disciplinary action, in which case the employee may appeal their case to the Personnel Board of Review as permitted in the Personnel Rules & Regulations.
- E. Nothing in this section shall prohibit more expeditious handling of the grievance.

SUBSECTION 7. General Grievances:

- A. In order to provide an effective mechanism whereby disagreements between the employee organization and Management concerning items or procedures relating to the relationship between the City and the employee organization may be effectively resolved, the following general grievance procedure is hereby established:
1. Where the employee organization has reason to believe that management is not correctly interpreting or applying a relevant provision of a current Memorandum of Understanding, the employee organization may file a general grievance by requesting in writing that a meeting be held with the authorized representatives of the City who have authority to make effective recommendations for the resolution of the matter. Such written request shall set forth in detail the facts giving rise to the general grievance and shall set forth the proposed resolution sought. Within fifteen (15) days of receipt of the general grievance, management will schedule a meeting at a mutually agreeable time for the purpose of discussing and attempting to resolve the disagreement.
 2. Within fifteen (15) days of this meeting, management will submit its decision in writing to the employee organization.
 3. If the employee organization is not satisfied with the decision, they may submit a request for hearing before the City Council. Such request for hearing must be submitted within fifteen (15) days of receipt of management's decision and shall include in detail the facts giving rise to the general grievance and all supporting documentation necessary for City Council consideration.
 4. Management shall calendar on the City Council agenda such request and supporting documentation within thirty (30) days.
 5. It shall be the option of the City Council to:
 - a. Refuse to hear the appeal, or make a decision on the documentation submitted; or

- b. Hold a hearing after which they shall make a decision.
- 6. The decision of the City Council shall be final.

SUBSECTION 8. Grievance Documents:

No documents relating to the grievance process shall be filed in the employee's personnel file. However, this shall not apply to any document setting forth a disciplinary action which is not challenged or is sustained after an appeal. (Rule P-9)

Section 6.03 Drug-Free Workplace

The Association has consulted with its membership for purposes of ratifying the implementation of the Drug-Free Workplace and Locker policies.

Section 6.04 Probationary Testing Period

The probationary testing period for individuals hired in the police officer classification, shall be twelve (12) months, regardless of the hired police officer being a lateral hire or being an individual only having prior experience as a police academy graduate.

Any such probationary testing period shall be subject to an extension for an additional six (6) months so long as the Chief of Police or designee files a notice of probationary extension with both the subject employee and the Human Resources Department, not less than five (5) calendar days prior to the date of expiration of the initial probationary testing period.

ARTICLE 7 AMERICANS WITH DISABILITIES ACT (ADA)

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

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

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

Prior to disregarding any provision of this agreement in order to undertake required accommodations for an individual protected by the Act, the City will provide the Bargaining Unit

with written notice of its intent to disregard the provision, and if requested will allow the Bargaining Unit the opportunity to discuss options to disregarding the agreement.

ARTICLE 8 401k PLAN

The City and the Association agree to provide availability of, on behalf of employees, a 401(k) Plan. Administrative costs will be the responsibility of the City.

Effective July 1, 2005, the City contribution will be \$100.00 per month to a 401(k) plan on behalf of the Bargaining Unit members. However, effective January 1, 2009 the City funding of the plan shall be suspended.

ARTICLE 9 GENERAL FUND-BASED MOU REOPENER

In addition to any other reopener in this MOU, the following reopener shall be effective concurrent with City Council adoption of the 2010-11 MOU:

This Memorandum of Understanding shall be subject to a reopener only on issues of pay and/or benefits at direction of the City Council, upon adoption by the City Council of a Resolution evidencing a finding by the Council that any or all of the following events have occurred during the term of this MOU:

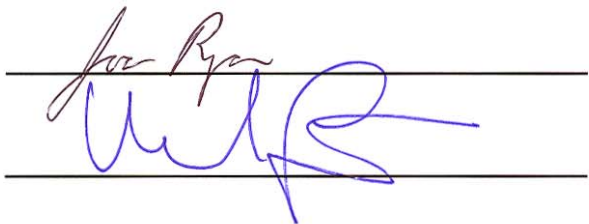
- a. 16.65% or greater reduction in general fund revenues during each fiscal year for the period July 1 through December compared to the immediately preceding same period of time; and/or the period January 1 through June 30 and the same preceding period of time. The decline, if any, shall be measured by receipts during the applicable period of time, (Revenue reductions attributed to state withholding of local funds, shall be included in measuring the 16.65% reduction.)**
- b. A determination by the City Council to implement this Section a. or b. shall not be subject to administrative or judicial challenge.**

Dated 2-24-10

For the City of Escondido:



Matt DeHaven



Dated 2-24-10

For the Escondido Police Officers' Association
Sworn Personnel:



Bruce A. Menten



Michael A. Omi



EXHIBIT A



CITY OF ESCONDIDO
Memorandum

September 11, 1998

TO: Mark Wisley, President Escondido Police Officers Association

FROM: Jack Anderson, Deputy City Manager

SUBJECT: Clarification of the Application of Shift Differential

The POA has expressed concern over the manner in which the shift differential as described in the current MOU is being applied. In letters of August 20 to Captain Moles and September 2 to me, you express a desire for these issues to be clarified through a meet and confer process. The City has agreed to meet with the POA to attempt to resolve the POA's concerns.

The language in the current MOU resulted from the negotiation process in July 1997 and was agreed upon by both parties. The intent of the parties was apparently unclear, thus the need for this side letter. This letter shall become an addendum to the MOU for ongoing definition of the application of shift differential.

Shift Differential:

Current MOU language:

Section 2.13: "Effective July 1, 1998 (or the pay period closest thereto) Police Officers and Sergeants normally assigned to Swing Shift will receive a shift differential of \$.50 per hour. Police Officers and Sergeants normally assigned to Graveyard Shift will receive a shift differential of \$1.00 per hour. Officers and Sergeants normally assigned to a shift in which differential pay is received shall receive compensation for such shifts based on the differential pay."

Clarification:

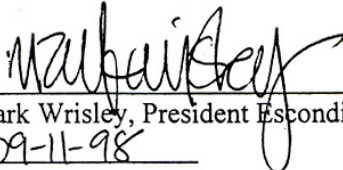
1. Shift differential shall be effective for all paid time worked by an Officer/Sergeant whose normally assigned shift is compensated by Shift Differential.
2. Officers/Sergeants temporarily assigned to a work schedule in which the shift premium is in effect shall receive shift differential pay for all time worked on the temporary assignment.

Ex. "A"

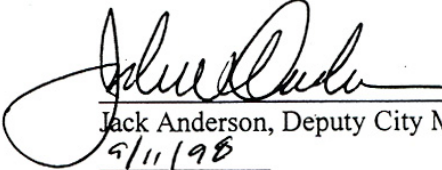
Mark Wrisley, Escondido POA
September 11, 1998
Page 2

3. Officer-initiated shift trades as defined in Section 3.04 of the MOU shall not be compensated with shift differential pay unless the trade results in a new shift assignment eligible for differential.
4. Compensatory Time shall be banked hour-for-hour in accordance with the provisions of the MOU.
5. Compensatory time bank hours may be paid in cash to the Officer/Sergeant in accordance with Section 2.11 of the MOU with pay out of banked time to take place the last pay period of each shift change period. Such payoff shall be based on the Officer's/Sergeant's current assignment and pay rate at the time of the pay off.
6. Vacation and/or Sick Leave pay shall be accrued hour-for-hour and will be compensated in accordance with the Officer's/Sergeant's current assignment and pay rate at the time of usage.
7. Officers/Sergeants assigned to light duty due to a non-work-related injury, shall receive the rate of pay appropriate for the assigned light-duty shift.
8. Workers' Compensation time shall be paid in accordance with Workers' Compensation law.
9. This clarification to the Shift Differential provisions of the current MOU shall take effect September 6, 1998.

Agreement with the provisions as written:



Mark Wrisley, President Escondido POA
09-11-98
Date



Jack Anderson, Deputy City Manager
9/11/98
Date

EXHIBIT B
HEALTH INSURANCE

- I. It is agreed that during the term of this Memorandum of Understanding, the Association and City agree to delegate to the Health Insurance Committee (HIC), subject to the ultimate authority and decision of the City Council which may overrule any decision and shall not be bound by any recommendation of the HIC, the authority to manage the City's Health Benefits Program.

Membership on the HIC, as established in Rule 19 of the Personnel Rules and Regulations, be as follows:

Each bargaining unit with at least twenty-five (25) or more eligible employees shall have one representative on the HIC committee. The City's unclassified group shall provide a number of representatives equal to the total number of representatives provided by all bargaining units.

- II. Medical coverage provided by the City will continue to be the lowest cost medical plan as recommended by the Health Insurance Committee and approved by the City Council, and

For the contract year 2010, effective January 1, 2010, employee participation in medical coverage shall be:

Employee only	\$13.38 per month
Employee + one	\$26.74 per month
Family coverage	\$40.12 per month

The 2011 employee participation rates shall be determined in accord with the formulas utilized in this Exhibit B for setting the employee participation rates.

The proportional percentage change in premium each year for the base level of coverage (e.g. Kaiser) after changes in Plan Design by the HIC shall be represented in employee premium participation. (The following participation amounts shall be amended as soon as is reasonably possible.)

The City reserves the right to document, to the City's satisfaction, the status of each employee.

In the event that a majority of the Health Insurance Committee ("HIC") recommends to the City Council changes in the Health Benefit Plans that either provide the same level of benefit coverage for less cost or greater level of benefit coverage for the same or similar costs, the City will meet and confer with the Bargaining Unit as to implementation of the economic impact of the proposed changes.

III. The City and the Association agree to a plan to generate cost savings for health insurance premiums in cases where employees are eligible for coverage under an alternate health insurance plan. Employees may waive a level of insurance coverage for themselves and/or their eligible dependents if they are covered under an alternate health insurance plan. If an employee waives insurance coverage at any level, savings result. To recognize the savings, the City and bargaining unit agree to rebate to the employee the amount of \$75.00 per month.

Proof of alternate health coverage is required by completing the enrollment/waiver form. Employees will be allowed to enroll during open enrollment or other times during the year as allowed by state/federal law.

Employees who are married or in a state-registered domestic partner relationship with another City employee will receive one (1) \$75.00 rebate and may decide which spouse/domestic partner will receive the rebate. If the spouse/domestic partner is a non-sworn police employee and receives \$600.00 flex dollars, neither the employee nor their spouse/domestic partner is eligible for the \$75.00 rebate.

Employees will make contributions to health insurance coverage based on the insurance carrier selected.

EXHIBIT "C"
Escondido Police Officers Association
Sworn Police Bargaining Unit
SALARY RANGES

EFFECTIVE JANUARY 1, 2007

<u>Union Code</u>	<u>Job Description</u>	<u>Base</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
POL	Police Officer	4,547	4,775	5,014	5,264	5,527	5,804	6,094
POL	Police Officer Trainee	4,125	4,331	-	-	-	-	-
POL	Police Sergeant	6,094	6,399	6,719	7,055	7,407	7,778	-