

RESOLUTION NO. 20-7949

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DOWNEY
ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF DOWNEY AND THE DOWNEY POLICE MANAGEMENT
ASSOCIATION (JULY 1, 2020 – JUNE 30, 2023)**

WHEREAS, the City of Downey, hereinafter referred to as "City," and the City of Downey Police Management Association hereinafter referred to as "DPMA" have met and conferred in accordance with the requirements of the Meyers-Milias-Brown Act and Employee Relations Ordinance 1118; and

WHEREAS, the City and the DPMA have memorialized the Agreement in a written Memorandum of Understanding.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DOWNEY DOES
HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. The Memorandum of Understanding between the City and the DPMA, attached hereto, is hereby approved in substantially the form thereof together with any additions thereto or changes therein deemed necessary or advisable by the City Manager.

SECTION 2. The Assistant City Manager and Director of Human Resources are authorized to sign the Memorandum of Understanding.


SECTION 3. The City Clerk shall certify to the adoption of this resolution.

APPROVED AND ADOPTED this 23rd day of June, 2020.




BLANCA PACHECO, Mayor

ATTEST:


MARIA ALICIA DUARTE, CMC
City Clerk

I HEREBY CERTIFY that the foregoing Resolution was adopted by the City Council of the City of Downey at a regular meeting held on the 23rd day of June, 2020, by the following vote, to wit:

AYES:	Council Members:	Ashton, Rodriguez, Saab, Frometa, Mayor Pacheco
NOES:	Council Member:	None.
ABSENT:	Council Member:	None.
ABSTAIN:	Council Member:	None.


MARIA ALICIA DUARTE, CMC
City Clerk

MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF DOWNEY
AND
THE DOWNEY POLICE MANAGEMENT ASSOCIATION

July 1, 2020 – June 30, 2023

Table of Contents

ARTICLE I	1
RECOGNITION	1
ARTICLE II	1
NON-DISCRIMINATION	1
ARTICLE III	2
BASIC COMPENSATION PLAN.....	2
Section 1. Salary Increases.	2
Section 2. Salary Ranges.....	2
Section 3. Eligibility for Merit Salary Advancement.	2
Section 4. Longevity.....	3
Section 5. Education Incentive Pay.....	4
Section 6. Calculating the Value of Special Compensation.....	4
Section 7. Court Time/Call in Pay.	5
Section 8. Uniforms, Maintenance Allowance and Reporting to CalPERS.....	6
Section 9. Standby Compensation - Weekend.....	6
Section 10. Bilingual Pay	7
Section 11. Acting Captain Pay.....	7
Section 12. Range Qualification Pay.....	7
ARTICLE IV.....	7
WORK WEEK.....	7
Section 1. Regular Work Week	7
Section 2. Regular Work Week Schedule	7
Section 3. Changes in Regular Work Week Schedule	8
ARTICLE V.....	8
OVERTIME (COMPENSATORY TIME).....	8
Section 1. Compensation for Overtime	8
Section 2. Overtime Policy	8
Section 3. Exclusions	9
ARTICLE VI.....	9
HOLIDAYS	9
ARTICLE VII.....	10
VACATION	10
Section 1. Accruals	10
Section 2. Accrual Limits.....	10
Section 3. Accrual Calculation	11
Section 4. Accrual upon Separation from Employment.....	11
ARTICLE VIII.....	11
LEAVES OF ABSENCE.....	11
Section 1. Leaves of Absence Without Pay	11
Section 2. Notice of Return to Work.....	11
Section 3. Outside Employment While on Leave	11
Section 4. Sick Leave.....	11

Section 5. Bereavement Leave.....	13
Section 6. Workers' Compensation Injury on Duty.....	14
Section 7. Employee Disability Leave.....	14
Section 8. Military Leave.....	15
Section 9. Jury Duty.....	15
Section 10. Executive Leave.....	15
Section 11. Physical Fitness Leave.....	15
ARTICLE IX.....	16
FRINGE BENEFIT ADMINISTRATION.....	16
Section 1. Administration.....	16
Section 2. Selection and Funding.....	16
Section 3. Changes.....	16
ARTICLE X.....	16
MEDICAL, DENTAL AND LIFE INSURANCE.....	16
Section 1. Medical Insurance.....	16
Section 2. Employee Waiver of Medical Coverage.....	17
Section 3. Dental Insurance.....	17
Section 4. Life Insurance.....	18
Section 5. Long-Term Disability Insurance.....	18
ARTICLE XI.....	18
RETIREMENT.....	18
Section 1. California Public Employees' Retirement System Coverage.....	18
Section 2. Retirement Formulas and Contributions.....	18
Section 3. City Contribution to Retiree Retirement Health Savings (RHS) Plan.....	20
ARTICLE XII.....	22
TUITION REIMBURSEMENT.....	22
Section 1. Reimbursement Rates.....	22
ARTICLE XIII.....	22
PROBATIONARY PERIOD.....	22
Section 1. Length of Probation/Extensions.....	22
Section 2. Process for Retention/Termination.....	22
Section 3. First of the Month.....	22
ARTICLE XIV.....	22
SENIORITY.....	22
Section 1. Definition.....	22
Section 2. Probationary Employees Excluded.....	23
Section 3. Layoff and Recall.....	23
Section 4. Bumping Rights.....	23
ARTICLE XV.....	23
CITY RIGHTS.....	23
Section 1. Management Rights.....	23
Section 2. Impact of Management Rights.....	24
Section 3. Health and Safety.....	24
ARTICLE XVI.....	24
EMPLOYEE ORGANIZATION RIGHTS AND RESPONSIBILITIES.....	24

Section 1. Dues Deductions	24
Section 2. Indemnification	24
ARTICLE XVII	25
NO STRIKE - NO LOCKOUT PROHIBITED CONDUCT	25
Section 1. No Job Action	25
Section 2. No Lockout	25
Section 3. Consequence for Prohibited Conduct.....	25
Section 4. Suspension of Employee Organization Rights	25
Section 5. Association Responsibility	25
Section 6. Hold Harmless.....	25
ARTICLE XVIII	25
GRIEVANCE PROCEDURE	25
Section 1. Grievance.....	25
Section 2. Conduct of the Grievance Procedure	26
Section 3. Grievance Procedure Steps	26
ARTICLE XIX	27
APPEAL PROCEDURE	27
ARTICLE XX	30
APPEAL PROCEDURE	30
ARTICLE XXI	31
MISCELLANEOUS	31
Section 1. Third Party Legal Actions	31
Section 2. Substance Abuse Policy.....	32
Section 3. Industrial Disability Retirement Procedures.....	33
ARTICLE XXII	34
SOLE AND ENTIRE MEMORANDUM OF UNDERSTANDING	34
ARTICLE XXIII	34
WAIVER OF BARGAINING DURING TERM OF THIS AGREEMENT	34
ARTICLE XXIV	34
REOPENER	34
ARTICLE XXV	35
EMERGENCY WAIVER PROVISION.....	35
ARTICLE XXVI	35
SEPARABILITY	35
ARTICLE XXVII	36
TERM OF MEMORANDUM OF UNDERSTANDING.....	36
ARTICLE XXVIII	36
RATIFICATION AND EXECUTION	36
EXHIBIT A	37
CLASSIFICATIONS REPRESENTED BY THE DOWNEY POLICE MANAGEMENT ASSOCIATION	37
PAY SCHEDULE	37

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF DOWNEY AND
THE DOWNEY POLICE MANAGEMENT ASSOCIATION**

ARTICLE I

RECOGNITION

Pursuant to the provisions of the Employee Relations Ordinance of the City of Downey, the City of Downey (hereinafter called the "City") has recognized the Downey Police Management Association (hereinafter called the "Association") as the majority representative of sworn personnel members of the Downey Police Management Association including all employees in classifications listed on Exhibit A, excluding all other personnel of the Police Department. The City has recognized the Downey Police Management Association for the purpose of meeting its obligations under the Meyers-Milias-Brown Act, Government Code Section 3500 et seq, and the Employee Relations Ordinance of the City when City rules, regulations or laws affecting wages, hours or other terms and conditions of employment are amended or changed.

ARTICLE II

NON-DISCRIMINATION

Section 1. The parties mutually recognize and agree to protect the rights of all employees hereby to join and/or participate in protected Association activities or to refrain from joining or participating in protected activities in accordance with the Employee Relations Ordinance and Government Code Sections 3500 to 3511.

Section 2. The City and the Association agree that they shall not discriminate against any employee because of race, color, sex, age, national origin, political or religious opinions or affiliations. The City and the Association shall reopen any provisions of this Agreement for the purpose of complying with any final order of a federal or state agency or court of competent jurisdiction requiring a modification or change in any provision or provisions of this Agreement in compliance with State or Federal anti-discrimination laws.

Section 3. Whenever the masculine gender is used in this Memorandum of Understanding, it shall be understood to include the feminine gender.

Section 4. The City and Association agree to comply with applicable State and Federal laws and regulations regarding employment of the disabled.

ARTICLE III

BASIC COMPENSATION PLAN

Section 1. Salary Increases.

A. All employees covered by this Memorandum of Understanding shall receive the following salary increases as referenced in Exhibit A:

1. Effective the start of the pay period that includes July 1, 2020, a two percent (2%) across the board pay range increase [two percent (2%) base salary increase].
2. Effective the start of the pay period that includes July 1, 2021, a two percent (2%) across the board pay range increase [two percent (2%) base salary increase].
3. Effective the start of the pay period that includes July 1, 2022, a two percent (2%) across the board pay range increase [two percent (2%) base salary increase].

Section 2. Salary Ranges. Salary ranges shall be established to reflect the relative value of classifications covered by this Memorandum of Understanding. The salary ranges will have a spread of approximately twenty-two percent (22%) from the minimum to maximum figures with no set steps in between.

A. Description of Schedules. The Pay Plan consists of a set of monthly salary schedules. Each schedule is designated by a schedule number, as approved by Council resolution.

B. Hourly Equivalent Calculation. For payroll purposes, the hourly equivalent of a rate which includes all forms of pay shall be computed by dividing twelve (12) times the monthly rate by fifty-two (52) times the number of working hours per week (forty (40)).

Section 3. Eligibility for Merit Salary Advancement.

A. Progression within the Salary Range. The minimum salary in the range would be appropriate for a new employee who minimally satisfied job requirements. The top of the range is reserved for employees who perform at the highest level of proficiency expected.

Employees, both upon appointment and during the course of their employment, may receive any salary amount not to exceed the maximum of their range. Generally, a new employee is not considered for a merit increase before twelve (12) months of employment. Thereafter, employees will be reviewed for merit salary increases annually in conjunction with the employee's anniversary date. However, employees will not be considered for merit increases after reaching the end of the respective salary range. Employees may be granted merit salary adjustments more frequently than every twelve (12) months with prior City Manager approval.

The sole consideration in the granting of merit increases shall be job performance as indicated in a detailed corresponding Management Performance Evaluation Report. The

following shall apply in the granting of such merit salary increases.

1. Merit salary adjustments for Captains and Lieutenants shall be made upon recommendation and approval of the Chief of Police.
2. Merit adjustments must be approved by the City Manager. The Chief of Police will provide their evaluation and proposed merit adjustment to the City Manager prior to giving it to the employee.
3. The amount of merit salary adjustment shall be directly related to the employee's progress in satisfying performance expectations. Generally, employees rated as having satisfactory performance will receive a minimum increase of five and one-half percent (5.5%). Adjustments up to ten percent (10%) within the salary range are permitted. Also, while salary adjustments will normally involve increases, reductions may be made in instances of unsatisfactory performance.
4. After an employee reaches the top of the salary range, the level of proficiency appropriate to that salary rate must be maintained or the employee's salary may drop below the maximum. This may occur through a direct salary reduction or the employee may not be granted increases which may be possible due to adjustments in the range.
5. Salary ranges for Police Captain and Police Lieutenant shall be adjusted at such time as the City grants cost-of-living adjustments to the rank-and-file employees unless the City Council directs to the contrary. The amount of such cost-of-living adjustments granted to the management classifications will be no less than that granted to the Police Officers' Association. In such instances where salary ranges are increased for cost-of-living purposes, the individual employee salaries will be increased in proportion to the amount of the range adjustment, provided that for reasons of unsatisfactory performance an individual employee may be denied such an adjustment. All salary range adjustments shall require the adoption of a resolution by the City Council.

Section 4. Longevity.

A. Eligibility for Longevity Pay. As early as at least July 1, 2011, Police Lieutenants who have completed five (5), ten (10), and twenty (20) years of service with the City of Downey have and shall continue to receive longevity pay adjustments as follows:

Effective December 23, 2002, years of service served as a POST certified Peace Officer in another agency shall apply toward longevity eligibility as though earned in Downey.

<u>Service</u>	<u>Compensation Adjustment</u>
5 years	2.75%
10 years	5.5%
20 years	8.4020%

Effective the pay period that includes September 10, 2019

<u>Service</u>	<u>Compensation Adjustment</u>
5 years	2.75%
10 years	5.5%
20 years	8.4020%
25 Years	11.402%

B. Police Captains. Effective the pay period that includes September 10, 2019, Police Captains with twenty-five (25) years of service shall be eligible to receive a longevity pay adjustment of three percent (3%).

C. Twenty-five (25) year longevity pay shall be excluded from the compounding method of calculation outlined in article III, Section 6. Calculating the Value of Special Compensation (Spec Comp.).

Section 5. Education Incentive Pay. Employees covered by this Agreement shall receive additional compensation at the following rates upon attainment of the applicable educational level.

A. Associate's degree and/or an Intermediate Peace Officers Standards and Training (POST) Certificate - seven and one-half percent (7.5%).

B. Bachelor's degree or Advanced POST Certificate - eleven percent (11.0%).

C. Degrees stated above may be substituted by equivalent college units at a rate of sixty (60) semester units for an Associate's degree or ninety (90) quarter units, and one hundred twenty (120) semester units for a Bachelor's degree or one hundred eighty (180) quarter units. Equivalent Bachelor's degree units must have a minimum of forty (40) upper division semester units or sixty (60) quarter units.

D. Employees covered by this Agreement shall receive one and two-hundredth percent (1.02%) additional compensation if the employee has been awarded the POST Police Management Certificate.

Section 6. Calculating the Value of Special Compensation (Spec Comp). Beginning or earlier than July 1, 2011, the value of the following special compensation items are calculated using a compounding method that calculates them in the following order: (1) Longevity Pay; (2) Education Incentive Pay; (3) POST Management Certificate Pay. Any other special compensation items are not included in the compounding calculation.

If the employee receives one or more of the special compensation items subject to compounding referenced above, the one that is highest in the order above is calculated first, as the applicable percent of the base hourly rate of pay. For each additional special compensation item on the list above, the value shall be determined by multiplying the next one received in the above order as a percentage of the base hourly rate of pay plus the value of the special compensation items already calculated under this method.

An example of the calculation method for a Police Lieutenant who works eighty (80) hours in a two week pay period is as follows:

Employee Base Hourly Rate \$66.1972	Reportable Earnings @ 80 hrs.	\$5,295.78
1. Longevity Pay (8.4020%)	Spec Comp Earnings	\$ 444.95
2. AA Education Incentive (7.5 %)	Spec Comp Earnings	\$ 430.55
3. POST Mgmt Certificate (1.02%)	Spec Comp Earnings	\$ 62.95

Section 7. Court Time/Call in Pay.

A. Court time is time required to be spent by Police Lieutenants in response to a subpoena, a coroner's inquest, a hearing or trial on a civil action on behalf of the City, or criminal case at a time other than that regularly required of such employee for his employment, for the purpose of testifying as to knowledge acquired in the course of his employment with the City. This definition shall apply to subpoenas issued for taking of depositions. Employees who are off duty on sick leave benefits, as described in Article VIII, Section 4, of this Agreement, or Workers' Compensation as described in Article VIII, Section 6, or when testifying at any grievance, City Council or other hearing on behalf of himself, another employee or the Association, shall not accrue additional time or compensation as court time.

B. Compensation for Court Time. Any off duty Police Lieutenant shall be compensated at the rate of time and one-half (1.5) as follows:

1. Criminal Witness: He shall be paid at the applicable hourly rate or with the approval of the Chief of Police he may in lieu of pay accumulate any portion of his court time and take an equivalent leave of absence. The accumulation of court time to be used as leave of absence shall be limited to the number of hours earned that have not otherwise been compensated at the employee's applicable hourly rate of pay.
2. Civil Witness (in line of duty): Any such officer shall receive his regular salary (and expenses, if any) for time at court and to and from court while testifying in any civil case on behalf of the City.
3. Payments: Payments under this Section shall be on the regular payday following such court appearance. The Chief of Police shall make a report to the Director of Finance prior to each pay date, listing the employees earning benefits under this Section. Such report shall indicate the court time each employee earned in the previous pay period and whether he has elected to receive equivalent time as leave of absence pay when appearing as a witness.
4. Standby Compensation: Minimum standby time for court assignments shall be compensated at the rate of time and one-half (1.5) as follows:
 - a. Two (2) hours pay for the morning standby.

- b. Two (2) hours pay for the afternoon standby.

If the employee is called into court, or called in for duty, he shall be paid three (3) hours or the actual number of hours in court or worked, whichever is greater.

Section 8. Uniforms, Maintenance Allowance and Reporting to CalPERS.

A. The City provides uniforms for employees represented by the Association. The City will continue to replace and maintain uniforms worn in the line of duty. Required uniforms of Police Management personnel which become worn may, at the discretion of the Chief of Police, be surveyed and replaced as necessary. The Chief of Police shall permit maximum discretion of the employees in the selection of items of the uniform provided, however, that the officer shall meet uniform standards within ten (10) working days after notice. Uniforms shall be maintained in accordance with Section 5.0 of the Manual of the Downey Police Department.

B. The average annual cost incurred by the City for the purchase and/or rental and maintenance of employee uniforms will be reported as special compensation pursuant to Section 571 (a)(5) of the CalPERS regulations. Effective the start of the pay period that includes July 1, 2011, the amount reportable for the purchase and/or rental, and maintenance of uniforms is \$534.87 per employee. This amount is based on the average annual cost paid for by the City for sworn police employees over the previous three fiscal years (FY 2014-15, FY 2015-16, and FY 2016-17). The annual amount shall be reported at the rate of \$20.57 per bi-weekly pay period.

C. Employees covered by this Memorandum of Understanding receive a uniform allowance payable at a rate of six dollars and seventy-three cents (\$6.73) per bi-weekly pay period for an annual total of one hundred seventy-five dollars (\$175.00) per year. The bi-weekly payment and reporting of uniform allowance is necessary for compliance with CalPERS regulations.

D. In accordance with the Public Employees' Pension Reform Act (PEPRA), an employee hired on or after January 1, 2013 and classified as a "new member" within PEPRA is not eligible to have uniform allowance reported to CalPERS as special compensation.

Section 9. Standby Compensation - Weekend.

A. Duty Chief Compensation - Police Captains. A Police Captain designated by the Chief of Police to be a weekend duty chief or to be on standby from 5:00 p.m. on Friday to 8:00 a.m. on Monday, shall be compensated for standby time by receiving fifteen (15) hours compensatory time. Any Police Captain who is designated to be the Duty Supervisor or to be on standby during a holiday (defined as the time period starting with the end of the shift prior to the holiday to the beginning of the shift following the holiday), shall be compensated by receiving five (5) hours compensatory time. Police Captains may request to have accrued compensation time cashed out.

B. Duty Supervisor - Police Lieutenants. A Police Lieutenant who is designated by management to be the Duty Supervisor or to be on standby from 5:00 p.m. on Friday to 8:00 a.m. on Monday shall be compensated for standby time at fifteen (15) hours compensatory time.

Any Police Lieutenant who is designated to be the Duty Supervisor or to be on standby during a holiday (defined as the time period starting with the end of the shift prior to the holiday to the beginning of the shift following the holiday, shall be compensated by receiving five (5) hours compensatory time. The Duty Supervisor designated by management to be on standby shall be required to carry a beeper and answer all calls from the department in a timely manner.

Section 10. Bilingual Pay. Effective the first pay period following adoption of this Memorandum of Understanding, employees required to speak or translate Spanish as part of their regular duties will be compensated seventy dollars (\$70.00) per bi-weekly pay period in addition to their regular salary. The Chief of Police has the authority and discretion to assign and/or remove this bonus up to budget authority. To be eligible for this assignment, the employee must pass a conversational examination administered by a certified interpreter or an employee who has been certified by the Human Resources Director to administer such examination. An employee must recertify at least every eighteen (18) months to maintain his eligibility for this pay.

Section 11. Acting Captain Pay. A Police Lieutenant is eligible to receive five and one-half percent (5.5%) additional compensation when assigned to serve in an acting capacity as a Police Captain. The department shall not fill a vacant Captain position with an Acting Captain for more than thirty (30) calendar days. Serving in an acting capacity shall not be used as a basis for, or in support of, a request for reclassification.

Section 12. Range Qualification Pay. All sworn personnel are encouraged to attend a variety of ranges throughout the year. Unit personnel who attend a handgun qualification while off duty shall be compensated for no more than one (1) handgun qualification per calendar month, unless specifically ordered to attend an additional qualification(s) by a supervisor.

Unit personnel required to qualify with the AR-15 who attend a qualification while off duty, shall be compensated for no more than one (1) AR-15 qualification per quarter of the calendar year, unless specifically ordered to attend an additional qualification(s) by a supervisor.

Unit personnel who attend range qualifications in accordance with the guidelines listed above shall be paid the greater of: One and one-half (1.5) hours at time and one-half (1.5) per qualification or the actual number of hours required to qualify paid at time and one-half (1.5).

ARTICLE IV

WORK WEEK

Section 1. Regular Work Week. The regular work week for employees covered by this Agreement shall be forty (40) hours per week in a seven (7) day work period, Monday through Sunday.

Section 2. Regular Work Week Schedule. In order to provide for the public safety and efficiency of operation, the Chief of Police shall have the authority to allocate resources and establish work schedules of employees in work periods of five (5) or four (4) days. For sworn personnel, the regular work week shall consist of four (4) ten-hour work days with lunch

included. If, in the opinion of the Chief of Police, restructuring of the regular work day or work week becomes necessary for the purpose of promoting efficiency, nothing herein shall be construed as preventing the Chief of Police from restructuring the regular work day or week of individual employees.

Section 3. Changes in Regular Work Week Schedule. If, in the opinion of the Chief of Police, it should become necessary to establish schedules departing from the regular work day or work week, the Chief of Police shall give written notice of such change as far in advance as is reasonably practical. If the change is other than on an individual basis, the City shall meet and confer with the Association regarding the impact of the decision prior to implementing a general change.

Section 4. Field Operations Work Schedule and 7(k) Exemption. The parties have agreed to an 11 hour and 25 minute work schedule for uniformed police patrol Lieutenants under the following conditions:

A. This work schedule consists of employees working four (4) consecutive work days of eleven hours and twenty-five minutes in the first week and three (3) consecutive work days of eleven hours and twenty-five minutes in the second week. This schedule shall be inclusive of paid breaks and meal periods.

B. Employees who work in administration, the detective bureau, and other non-patrol assignments will continue to work their current 4/10 work schedule and the 11 hour and 25 minute work schedule will not apply to those positions.

C. The parties agree that the City has adopted the 14 day 7(k) partial overtime exemption in accordance with 29 U.S.C. section 207 (k) of the Fair Labor Standards Act (FLSA). The work period for all uniformed police patrol Lieutenants begins at 12:01 a.m. Monday and ends fourteen (14) days later at 12:00 a.m.

ARTICLE V

OVERTIME (COMPENSATORY TIME)

Section 1. Compensation for Overtime. All authorized overtime for employees shall be paid at time and one-half (1.5) the regular rate of pay for such employees. All non-statutory overtime shall be paid at one and one half times the regular rate of pay, as defined in the FLSA, except that cash received by employees who opt out of health insurance shall not be included in those calculations. Overtime shall be paid on all hours worked in excess of their scheduled shift. All paid leave shall be counted as hours worked. Employees may elect to accumulate up to four hundred eighty (480) hours of compensatory time off (CTO) in lieu of taking overtime pay. The City shall pay off all CTO hours in excess of three hundred (300) hours as of February 1st of each year.

Section 2. Overtime Policy. It is the policy of the City that overtime work is to be discouraged. However, in cases of emergency or whenever public interest or necessity requires, any department or division head may require any employee in such department or division to perform overtime work. The projects and types of work for which overtime may be authorized

shall be approved in advance by the City Manager; except, in the event of emergency, overtime may be authorized by the Chief of Police or his designee.

Section 3. Exclusions. Police Captains are specifically excluded from overtime compensation of any type.

ARTICLE VI

HOLIDAYS

Section 1. Holidays. Employees covered by this Agreement shall receive eleven (11) holidays each year, which shall be compensated as follows:

PERSONNEL ON A 10-HOUR SHIFT

A. If an employee is required to work on a scheduled holiday, he will receive the ten (10) hours of holiday pay. In addition, the employee will receive fifteen (15) hours of compensation for having worked on the holiday. The fifteen (15) additional hours of holiday compensation may be taken in the form of compensatory time off.

B. If a scheduled holiday falls on the employee's regular day off, he will receive ten (10) hours of compensatory time off. No additional holiday compensation will be provided.

C. If an employee, having obtained prior authorization, takes a scheduled holiday off, he will receive ten (10) hours of holiday pay for the day off and no additional compensation.

PERSONNEL ON A 9-80 SCHEDULE

A. If an employee is required to work on a scheduled holiday that falls on a regularly scheduled work day, he will receive the nine (9) hours of holiday pay. In addition, the employee will receive thirteen and one-half (13.5) hours of compensation for having worked the holiday. The thirteen and one-half (13.5) additional hours of holiday compensation may be taken in the form of compensatory time off.

B. If a scheduled holiday falls on the employee's regular day off, he will receive nine (9) hours of compensatory time off. No additional holiday compensation will be provided.

C. If an employee, having obtained prior authorization, takes a scheduled holiday off, he will receive nine (9) hours of holiday pay for the day off and no additional compensation.

D. If the holiday falls on the scheduled eight-hour day, the eight (8) hour shift benefit described below shall apply.

PERSONNEL ON AN 8-HOUR SHIFT

A. If an employee is required to work on a scheduled holiday; he will receive the eight (8) hours of holiday pay. In addition, the employee will receive twelve (12) hours of

compensation for having worked on the holiday. The twelve (12) additional hours may be taken in the form of compensatory time off.

B. If a scheduled holiday falls on an employee's regular day off, he will receive eight (8) hours of compensatory time off. No additional holiday compensation will be provided.

C. If an employee, having obtained prior authorization, takes a scheduled holiday off, he will receive eight (8) hours of holiday credit for the day off and no additional compensation.

Section 2. Holidays Provided. The eleven (11) holidays are as follows:

1. New Year's Day
2. Martin Luther King Birthday
3. Washington's Birthday (President's Day)
4. Memorial Day
5. Independence Day
6. Labor Day
7. Veteran's Day
8. Thanksgiving Day
9. Day After Thanksgiving
10. Day Before Christmas
11. Christmas Day

ARTICLE VII

VACATION

Section 1. Accruals. Police management employees covered by this Agreement shall accrue vacation leave with pay on the following scheduled basis:

<u>Years of Service</u>	<u>Hours per Year</u>
0-5	120
6-10	136
11+	160

Section 2. Accrual Limits. Vacation shall be taken at the convenience of the City with the approval of the department head. Where possible, such vacation should be taken annually and not accumulated from year to year. All eligible employees, however, shall only be allowed to accumulate vacation up to an amount equal to two (2) times their annual accrual rate ("Maximum Accrual"). Once Maximum Accrual is reached, the employee shall not accrue additional vacation until the amount of accumulated vacation is reduced to a level below Maximum Accrual. If the employee is prohibited by the supervisor from taking the employee's vacation because of staffing shortages or operational need, the employee shall be paid for the period of vacation requested but denied (and consequently worked by the employee). Such vacation shall be approved by the Chief of Police or designee and paid at the employee's regular rate of pay in effect during the period of vacation requested.

Section 3. Accrual Calculation. Vacation shall be accrued on a pay period basis by dividing twenty six (26) into the number of hours per year to which the employee is eligible to receive based upon the employee's years of service with the City.

Section 4. Accrual upon Separation from Employment. When an employee who is entitled to receive vacation under this Article separates from City service, either by retirement, permanent layoff, or termination, the employee shall be paid for unused earned vacation at the hourly rate of pay in effect at the time of separation.

ARTICLE VIII

LEAVES OF ABSENCE

Section 1. Leaves of Absence Without Pay. The City Manager and/or the City Council may grant a permanent employee a leave of absence for a specific purpose without pay for a period not to exceed up to one (1) year. No such leave shall be granted except upon written request of the employee. Approval shall be in writing and a copy filed with the Human Resources Office of the City. Upon expiration of a regularly approved leave, the employee shall be reinstated in the position held at the time the leave was granted. The employee shall report promptly upon the expiration of any leave granted. Failure to report within a twenty-four (24) hour period after expiration of the leave shall be considered a voluntary resignation, provided that the employee may appeal this automatic termination through the grievance procedure as though it were a non-voluntary termination. Except as may be provided by law, no employment or fringe benefits such as, but not limited to, sick leave, vacation, health insurance, retirement or any other benefit shall accrue to any employee during leave of absence without pay.

Section 2. Notice of Return to Work. An employee on leave of absence must give the City at least seven (7) days written notice of the employee's intent to return to work.

Section 3. Outside Employment While on Leave. An employee who engages in outside employment during said leave of absence without prior approval of the City Manager shall be subject to termination. Any employee who falsified a reason for the request for said leave of absence or any extension of such leave of absence may be terminated for falsifying such request.

Section 4. Sick Leave.

A. Sick Leave Accruals. Sick leave shall be accrued at the rate of 4.615 hours per bi-weekly pay period for a total of one hundred twenty (120) hours per year for full-time employees without limit on accumulation. Sick leave shall not be considered to be a privilege which an employee may use at his discretion, but rather shall be allowed only for the purposes specified below in Section B.

B. Use of Sick Leave. The first three (3) shifts or hours equivalent (e.g. 30 hours for employees assigned to a 4/10 work schedule or twenty-four (24) hours for an employee on a 5/8 hour work schedule) of paid sick leave taken each twelve (12) month period, for any authorized purpose, will be considered sick leave used pursuant to the Healthy Workplaces, Healthy

Families Act of 2014 (California Labor Code sections 245-249). The twelve (12) month period is July 1 through June 30. For employees hired on or after July 1, the twelve (12) month period is the twelve (12) month period beginning on the employee's hire date, until the following July 1, at which point the employee's 12-month period will begin the start of the pay period which includes July 1 to the pay period that includes June 30.

1. Employees can use sick leave for themselves for preventative care (such as for flu shots or physical exams) or care of an existing health condition.
2. Employees can use sick leave for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee's child, parent, spouse or registered domestic partner. Only the first three (3) shifts or hours equivalent of sick leave an employee uses in a twelve (12) month period can be used for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee's sibling, parents-in-law, grandparent or grandchild, or
3. Employees can use sick leave for specified purposes if they are victims of domestic violence, sexual assault or stalking as set forth in California Labor Code section 230(f) and 230.1(a).

C. In order to receive compensation while absent on sick leave, the employee shall notify a designated supervisor at least one-half (.5) an hour prior to the start of designated duty. In all instances, if an employee is incapacitated, notification shall be waived until a reasonable period has elapsed. For any such absence, the employee shall file a written statement with the City Manager stating the cause of the absence. When the absence is for three (3) work days or more, the Chief of Police may require a physician's certificate verifying inability to work before said leave shall be approved by the City Manager.

D. The right to benefits under the sick leave plan shall continue only during the period that the employee is employed by the City. This plan shall not give any employee the right to be retained in the service of the City, or any right of claim to sickness disability benefits after separation from the service of the City.

E. Notwithstanding anything contained in this Section, no employee shall be entitled to receive any payment or other compensation from the City while absent from duty by reason of injuries or disability received as a result in engaging in employment other than employment by the City for monetary gain or other compensation, or by reason of engaging in business or activity for monetary gain or other compensation other than business or activity connected with City employment.

F. At the written request of the appointing authority, the City Manager may require an employee to submit to an examination by the City's physician, and if the results of the examination indicate the employee is unable to perform his duties, or in the performance of his duties exposes others to infection, the employee shall be placed on sick leave without privilege of reinstatement until adequate medical evidence is submitted that the employee is competent to perform his duties or will not subject others to infection. Any employee so examined shall have the right to submit the reports of a competent medical authority of his own selection, and at his own expense, in addition to the report submitted by the City physician. In the event of a conflict of opinion and/or recommendation of the two physicians, a third physician shall be

selected by the first two physicians and the final decision shall be made by the City Manager based upon the medical evidence submitted to him.

G. Unused Sick Leave Deposited into City Retirement Health Savings Plan. Upon retirement of an eligible employee, one hundred percent (100%) of the employee's unused accumulated sick up to the maximum amount of nineteen hundred (1,900) hours shall be deposited into the City Retirement Health Savings Plan.

H. Accrued sick leave shall be valued for the purpose of Section G above for employees hired on or after June 30, 1974, only on the following basis:

1. Sick leave earned on or after July 1, 1974, shall be calculated at the rate prevailing at the end of the fiscal year in which it was earned.
2. Sick leave taken shall be deducted from the oldest, lowest value accrued sick leave first, provided, however, when an employee takes sick leave, the employee shall receive for each day of sick leave one (1) day's pay at the employee's rate of pay in effect at the time of taking sick leave. For covered employees hired prior to June 30, 1974; and/or retirees with twenty (20) years of City service, or retirees with a physical disability, or a psychological disability resulting from a direct consequence of a violent act, sick leave shall be converted at the prevailing rate.

I. Employees who have accrued three-hundred sixty (360) hours of sick leave may convert each two (2) hours of accumulated sick leave to one (1) additional hour of vacation, providing that not more than eighty (80) hours of additional vacation days may be so converted in any one (1) fiscal year. Employees who have made conversions during the past two (2) years may reverse the conversions made for those years provided that the employee has sufficient vacation hours.

J. Sick Leave Payoff upon Layoff. In the event of a permanent or indefinite layoff, an employee with ten (10) years of continuous service with the City shall be entitled to the benefit as specified in G above. If such employee resigns after receiving official notification of his impending layoff, he shall be eligible for the above benefit.

Section 5. Bereavement Leave.

A. An employee who has suffered a death of an immediate family member, may be allowed bereavement leave with pay not to exceed six (6) work days per incident on the basis of one-half (.5) work day for each month of regular employment, which is deducted from accumulated sick leave. Immediate family members shall include and be limited to the employee's mother, father, brother, sister, spouse, child, grandchildren, grandparents and current parents-in-law.

B. All such claims for bereavement leave are subject to verification by the Chief of Police or their designee.

Section 6. Workers' Compensation Injury on Duty. Employees covered by this Agreement shall be entitled to all rights provided under Section 4850 of the Labor Code.

Section 7. Employee Disability Leave.

A. An employee that has at least one (1) year of continuous service with the City and who has exhausted all accrued leave (vacation, sick-leave, comp time) due to non-industrial illness or injury can be advanced sick leave time at the rate of seventy-five percent (75%) of the employee's regular salary according to the following table:

Maximum Time Allowance (Hours)

Years of Service	Total Hours
1 through 5	360
6 through 10	544
Over 10	720

B. Application for disability leave shall be made by the employee to the City Manager through the Chief of Police, accompanied by full medical justification from a physician chosen by the City at the direction of the City. Failure to submit to such an examination shall be a basis for terminating disability leave. If the City Manager approves the application, he shall notify the employee of such approval in writing.

C. After the employee returns to work, the employee shall reimburse the City for the value of the advanced sick-leave time by having the employee's sick leave accrual for sick-leave reduced by one-half (.5) of the time used for such employee disability leave at a minimum rate of one-half (.5) day of sick leave per month or may contribute vacation leave to accelerate the employee's reimbursement to the City for providing the benefits under this Article.

D. When the value of the advanced sick-leave has been reimbursed as set forth above, the employee shall be eligible to apply for additional disability leave; provided that no employee shall receive more than the "total" set forth above for his length of service, during his entire employment with the City.

E. Grounds for termination of disability leave by the City Manager shall include, but not be limited to, the following reasons:

1. The employee has recovered from his illness or injury.
2. The leave is being used as a pre-retirement leave for purpose of postponing retirement or pension.
3. The disability leave was procured by fraud, misrepresentation or mistake.
4. The employee has not cooperated fully in supplying all information and submitting to any examination requested by the City to determine the existence or continuing nature of the employee's disability.

F. In the event an employee becomes ineligible to accrue sick leave or is scheduled to end employment with the City and has not completed the reimbursement schedule for this benefit, the balance due shall be handled by payroll deduction or accounts receivable as applicable.

Section 8. Military Leave. Military Leave shall be granted in accordance with the provisions of state and/or federal law. All employees entitled to military leave shall give the appointing power an opportunity, within the limits of military regulations to determine when such leave shall be taken.

Section 9. Jury Duty. The City will not provide release time for jury duty to employees covered by this Agreement. If the State and/or Federal Court Jury Commissioners rescind their present policy of granting exemptions from jury service to persons who do not receive paid release time for jury duty from their employers, so as to require jury duty service despite the absence of such pay from their employer, then the City's practice of providing paid leave time to employees for jury duty shall be reinstated immediately upon the effective date of such change for the applicable State and/or Federal Court.

A. In the event that an employee is called for jury duty and wishes to serve, accrued vacation leave, compensatory time or a leave of absence without pay shall be granted subject to the scheduling requirements of the City.

B. In the event that the court fully reimburses the City for the full salary of an employee on jury duty, the City will immediately reinstate the practice of providing paid release time to employees for jury duty.

C. In the event that an employee is called for jury duty and the court does not excuse jury service based on the non-payment of salary by the employer, the City shall grant said employee paid release time for the required jury duty.

Section 10. Executive Leave. Police Captains and Police Lieutenants are eligible for three shifts of Executive Leave each calendar year. This leave may not be carried forward from one calendar year to another.

Section 11. Physical Fitness Leave. All employees are eligible to earn up to eighty (80) hours of Physical Fitness Leave per calendar year. Such hours are earned on a calendar quarterly basis and are credited in the quarter following the quarter in which it was earned. The earning of these hours is voluntary on the part of each employee.

Physical Fitness Leave hours are earned based on the following schedule: Ten (10) hours for fitness testing results achieved and rated as "Good" and twenty (20) hours for results rated as "Excellent." All fitness testing for purposes of this provision is conducted by a member(s) of the Downey Police Department Physical Fitness Committee.

Independent of regular fitness testing above, every employee has the opportunity to earn an additional ten (10) hours of Physical Fitness Leave provided the medical examination and other requirements of the program are met.

Earned physical fitness hours are intended to be used to cover authorized time off. Any unused Physical Fitness Leave balance shall be paid out in February in the following calendar year. If an employee has a Physical Fitness leave bank of one hundred (100) hours, the employee is ineligible to accrue any additional time.

Physical fitness testing standards and procedures shall be established by the Police Department.

ARTICLE IX

FRINGE BENEFIT ADMINISTRATION

Section 1. Administration. The City reserves the right to select the insurance carrier or administer any fringe benefit programs that exist during the term of this Memorandum of Understanding except dental insurance.

Section 2. Selection and Funding. In the administration of the fringe benefit programs, the City shall have the right to select any insurance carrier or other method of providing coverage to fund the benefits included under the terms of this Memorandum of Understanding, provided that the benefits of the employees shall be no less than those in existence as of the implementation of this Agreement.

Section 3. Changes. If, during the term of this Memorandum of Understanding, any change of insurance carrier or method of funding for any benefit provided hereunder occurs, the City shall meet with and discuss the matter prior to any change of insurance carrier or method of funding the coverage.

ARTICLE X

MEDICAL, DENTAL AND LIFE INSURANCE

Section 1. Medical Insurance.

A. Through the term of this Memorandum of Understanding that begins July 1, 2020, the City agrees to pay one hundred percent (100%) of the premium for medical insurance for employees hired by the City prior to February 23, 2016. Such City paid medical coverage will include employee plus their qualified dependent(s) up to the highest premium rates for a Preferred Provider Option (PPO) medical plan offered by CalPERS.

B. Through the term of this Memorandum of Understanding that begins July 1, 2020, the City agrees to pay 100% of the premium for medical insurance for employees hired on or after February 23, 2016. Such City paid medical coverage will include employee plus their qualified dependent(s) up to the premium rates for the Kaiser HMO medical plan offered by CalPERS. If an employee elects a higher cost CalPERS plan, he must pay the difference in premium between that plan and the Kaiser HMO plan premium for his respective eligible level of coverage.

C. The stated amounts of City paid medical premiums are inclusive of the CalPERS statutory minimum employer contribution under the Public Employees' Medical and Hospital Care Act (PEMHCA).

Section 2. Employee Waiver of Medical Coverage. The City agrees to permit an employee to waive City-sponsored medical coverage as follows:

1. The employee must presents proof to the Human Resources Director or designee that he and his qualified dependent(s) are covered by another non-City-sponsored medical plan for the plan year;
2. The employee must sign a statement acknowledging the opt out of City offered medical insurance coverage and agreement to hold the City harmless for any consequences, whatsoever, that result from the employee's waiver of City offered medical insurance coverage for employee and/or qualified dependent(s); and
3. The employee must sign a statement acknowledging his understanding that his qualified dependent(s) are not eligible to re-enroll in City sponsored medical coverage until the next Open Enrollment period or as otherwise required by law under COBRA provisions.

Effective the first pay cycle in January, 2018 in which medical opt out allowance is due, the City agrees that the employee who is approved to opt out of medical coverage shall receive compensation for one of the following, depending on the level of non-City sponsored coverage the employee has provided proof of having:

- a. Three hundred dollars (\$300.00) per month if waiver eligibility is for "employee only" coverage.
- b. Four hundred and fifty dollars (\$450.00) per month if waiver eligibility is for "employee plus one" coverage.
- c. Six hundred and fifty dollars (\$650.00) per month if waiver eligibility is for "employee plus two or more dependents" coverage.

The eligible amount will be paid to the employee as taxable earnings. A medical opt out election may only be made during an announced Open Enrollment period for medical insurance changes effective January 1

Section 3. Dental Insurance.

A. HMO Dental Plan. The City shall continue its contribution of thirty-one dollars and ninety-five cents (\$31.95) per month towards a HMO dental benefit plan for employee and his qualified dependent(s). Any amount necessary to cover the monthly premium in excess of the City's contribution is the responsibility of the employee.

B. Delta Dental PPO Plan. The City shall maintain its Delta Dental PPO plan, which is a

self-funded plan administered by Delta Dental, and agrees to maintain the employee's contribution rate of fifty-two percent (52%) towards the total monthly premium.

1. Plan premiums are calculated annually based on the prior year's claims experience, administrative fees, and an industry trending projection. This calculation shall be conducted by Delta Dental for communication by the City during the announced annual Open Enrollment period.
2. For cost effectiveness that is mutually beneficial to the City and the Association, the City will continue to evaluate other Delta Dental plan coverage options for implementation to reduce premiums and/or employee out of pocket costs for consideration of a change from a current composite rate to a three-tier rate structure ("Employee only; Employee plus one dependent; and, Employee plus two or more dependents") for monthly premiums effective January 1. In addition, the City changes from a June Open Enrollment to the Open Enrollment Period that coincides with CalPERS medical plan for changes effective January 1. There will be no changes in dental plan coverage without agreement of the parties. The annual CalPERS medical Open Enrollment Period is held generally during September through October.

Section 4. Life Insurance. Police Captains and Police Lieutenants shall be provided with group term life insurance in the amount of \$100,000.00.

Section 5. Long-Term Disability Insurance. Police Captains and Police Lieutenants shall be provided with group Long-Term Disability insurance coverage.

ARTICLE XI

RETIREMENT

Section 1. California Public Employees' Retirement System (CalPERS) Coverage. Employees covered by this Agreement participate in the California Public Employees' Retirement System (CalPERS). Employee options are described in a contract between the City of Downey and CalPERS.

Section 2. Retirement Formulas and Contributions.

A. FIRST TIER

1. Employees hired in a safety classification prior to October 10, 2012 shall be provided the 3% at 50 retirement formula as set forth in California Government Code Section 21362.2.
 - a. In accordance with existing practice and Government Code sections 20636(c)(4) and 20691, the City will pay the employees' statutorily required member contribution of nine percent (9%) and report this Employer Paid Member Contribution ("EPMC") to CalPERS as special compensation.

- b. Effective the pay period that includes July 1, 2015, employees in the first tier shall have deducted a total of six percent (6%) of CalPERS reportable compensation, on a pre-tax basis, pursuant to Government Code Section 20516 (f).
- c. The City has passed a resolution setting forth that all deductions or contributions under this Section shall be regarded as a pick-up of retirement costs pursuant IRC 414(h)(2).
- d. First tier benefits are available only to "classic" members (i.e., those members that do not meet the statutory definition of "new member" under the California Public Employees' Pension Reform Act ("PEPRA"), specifically Government Code section 7522.04(f) and who were hired prior to October 10, 2012).

B. SECOND TIER

- 1. Employees hired into a safety classification on or after October 10, 2012, but before January 1, 2013, shall receive the 3% at 55 retirement formula pursuant to California Government Code Section 21363.1.
 - a. Employees covered hereunder shall pay, on a pre-tax basis, the nine percent (9%) statutorily required member contribution to CalPERS.
 - b. The City has passed a resolution setting forth that all deductions or contributions under this Section shall be regarded as a pick-up of retirement costs pursuant IRC 414(h)(2).
 - d. Second tier benefits are available only to "classic" members (i.e., those members that do not meet the statutory definition of "new member" under the California Public Employees' Pension Reform Act ("PEPRA"), specifically Government Code section 7522.04(f) and hired on or after October 10, 2012, but before January 1, 2013.

C. THIRD TIER ("PEPRA" TIER)

- 1. Employees who meet the definition of "new member" set forth in Government Code section 7522.04(f) shall be eligible for the benefits provided by PEPRA, which include but are not limited to the following:
 - a. Retirement formula of 2.7% @ 57 (Government Code section 7522.25);
 - b. Employees covered hereunder shall pay a member contribution of fifty percent (50%) of normal cost as determined from time to time by CalPERS (employee contribution is twelve and one-fourth percent (12.25%) for FY 2015-2016);
 - c. There shall be no Employer Paid Member Contribution (EPMC) by the City;

- d. Retirement benefit calculations shall be based on pensionable compensation, as defined by Government Code section 7522.34; and
- e. Retirement benefits shall be calculated based on the three (3) year highest average annual pensionable compensation.

Section 3. City Contribution to Retiree Retirement Health Savings (RHS) Plan.

A. City Contribution to RHS Plan. The City will contribute the following monthly amount toward an employee's RHS account. This contribution is inclusive of the Public Employees' Medical and Hospital Care Act (PEMHCA) statutory minimum employer contribution as specified in Cal. Government Code § 22892(c):

Employees who retire after July 1, 1987 - \$ 98.00
Employees who retire after July 1, 2002 - \$ 200.00
Employees who retire after July 1, 2003 - \$ 235.00
Employees who retire after July 1, 2004 - \$ 270.00

These City contribution amounts shall be referred to herein as the "retiree medical contribution."

As a result of the City contracting for CalPERS medical insurance pursuant to PEMHCA provisions effective October 1, 2012, the following revisions are in effect to avoid an increase cost to the City's mandated contribution for retirees:

B. Eligibility Requirements. Subject to meeting eligibility criteria below, the maximum monthly City contribution amount specified in Section A shall be deposited on a quarterly basis to the retiree's RHS account for the reimbursement of qualified medical expenditures. To be eligible to enroll in the City's CalPERS health plans, pursuant to CalPERS rules and regulations, and receive the maximum monthly City contribution amount specified in Section A above, the employee must satisfy the following eligibility criteria:

1. At the time of retirement, the employee has a minimum of ten (10) years of service or is granted a service-connected disability retirement, and
2. Employee retires within 120 days of separation from employment with the City; and
3. At the time of retirement, the employee is employed by the City; and
4. Effective the day after official separation from the City, the employee has been granted a retirement allowance by the California Public Employees' Retirement System.

C. The City's obligation to contribute toward the retiree's RHS account shall be modified downward or cease during the lifetime of the retiree upon the occurrence of any one of the following:

1. During any period the retiree is eligible to receive or receives health insurance coverage at the expense of another employer the payment will be suspended. "Another employer" as used herein means private employer or public employer or self-employed or the employer of a spouse. As a condition of being eligible to receive the RHS contribution set forth above, the City shall have the right to require any retiree to annually certify that the retiree is not receiving any such paid health insurance benefits from another source. If it is later discovered that misrepresentation has occurred, the retiree will be responsible for reimbursement to the City of those amounts inappropriately deposited and the retiree's eligibility to receive future RHS deposits will cease.
2. In the event the Federal government or State government mandates an employer-funded health plan or program for retirees, or mandates that the City make contributions toward a health plan (either private or public plan) for retirees, the City's rate set forth above shall be converted from a RHS deposit and applied to that plan. If there is any excess, that excess may be applied toward the retiree's RHS account provided the retiree pays the balance owing for any such coverage.
3. Upon the death of the retiree, the City's obligation to deposit into the retiree's RHS account shall cease. The surviving spouse shall be able to continue CalPERS medical insurance coverage pursuant to PEMHCA provisions and provided the surviving spouse pays the appropriate premiums minus the City's mandated retiree contribution amount.

D. An eligible retiree covered by this Section who no longer elects coverage under any City sponsored medical plan, effective at the end of any calendar quarter may present the City with proof of payment for alternate health insurance coverage and continue to receive the City's deposit to the retiree's RHS account on a quarterly basis up to the amount to which the retiree is entitled in Section A above. Once a retiree elects to withdraw from eligibility to participate in a City sponsored health plan for coverage under an alternate insurance plan, the City and the retiree understand that the retiree may not re-enroll in a City sponsored medical plan and otherwise forfeits the City's RHS contribution amount permanently.

E. In addition to the conditions specified above, the City's deposit to a retiree's RHS account shall cease upon any of the following:

1. The retiree fails to submit or respond to the City's request (via certified mail to the last known mailing address of the retiree) to provide appropriate proof of alternate health insurance coverage at the end of sixty (60) days from the date of the City's written request.
2. The death of the retiree.

ARTICLE XII

TUITION REIMBURSEMENT

Section 1. Reimbursement Rates. With prior approval of the City Manager or designee, employees may be reimbursed for tuition and required books for courses taken to improve their value to the City. Tuition shall be reimbursed for courses as recommended by the department head with job related justification and approved by the City Manager or their designee. An employee must receive a passing grade in order to be reimbursed for the course. Reimbursement shall be made at the rate of tuition charged at California State University, Long Beach for courses on the semester system. Courses on the quarter system shall be reimbursed at the unit equivalent California State University, Long Beach amounts.

ARTICLE XIII

PROBATIONARY PERIOD

Section 1. Length of Probation/Extensions. An original appointment will be tentative and subject to a probationary period of not less than eighteen (18) months, except that the City Manager may extend the probationary period for a class up to an additional six (6) months or for a marginal employee for up to an additional three (3) months. The promotional appointment will be tentative and subject to a probationary period of not less than twelve (12) months. Should the appointing authority desire to terminate any probationary employee, the appointing authority shall notify such employee not later than two (2) weeks prior to the end of the probationary period.

Section 2. Process for Retention/Termination. If the service of the probationary employee has been satisfactory to the appointing authority, then the appointing authority shall file with the Personnel Officer a merit rating including a statement, in writing, to such effect and stating that the retention of such employee in the service of the City is desired. In the case of an original appointment, if such a statement is not filed, the employee will be deemed to be unsatisfactory and his employment terminated at the expiration of the probationary period. In the case of a promotional appointment, the employee shall be reinstated to the position from which he was promoted.

Section 3. First of the Month. All probationary periods shall extend to the first day of the month following the period of probation.

ARTICLE XIV

SENIORITY

Section 1. Definition. Seniority is defined as the length of an employee's continuous service within rank from his last date of promotion, and shall apply in the manner and to the extent set forth in the remainder of the Article.

Section 2. Probationary Employees Excluded. Probationary employees shall have no seniority rights, but shall acquire seniority from his last date of hire upon completion of his probationary period.

Section 3. Layoff and Recall. Seniority shall apply between employees in a rank for purposes of layoff and recall.

Section 4. Bumping Rights. An employee who is subject to layoff pursuant to this Section may exercise his seniority in the next lower rank within the Police Department provided that the employee has satisfactorily held the same position in the rank in which the employee seeks to exercise seniority. The employee with the earliest promotion date to that rank will be considered to have seniority for that position.

ARTICLE XV

CITY RIGHTS

Section 1. Management Rights. The City reserves, retains, and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provisions of the Memorandum of Understanding or by law to manage the City, as such rights existed prior to the execution of this Memorandum of Understanding. The rights of management, as they are not abridged by this Agreement or by law, shall include, but not be limited to, the following rights:

- A.** To manage the City generally and to determine the issues of policy.
- B.** To determine the necessity and organization of any service or activity conducted by the City and expand or diminish services.
- C.** To determine or change the nature, manner, means, and technology, types of equipment and extent of services to be provided to the public.
- D.** To determine or change methods of financing.
- E.** To determine and/or change the facilities and size of the work force by which the City operations are to be conducted.
- F.** 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.
- G.** Establish and/or change work schedules and/or work assignments in accordance with this Agreement and existing departmental rules, regulations and procedures.
- H.** To relieve employees from duties for lack of work or lack of funds.
- I.** To establish and modify productivity and performance programs and standards and to require compliance therewith.

J. To discharge, suspend, demote or otherwise discipline permanent non-probationary employees for proper cause.

K. To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with this Memorandum of Understanding.

L. To determine policies, procedures and standards for selection, training and promotion of employees.

M. To maintain order and efficiency in its facilities and operation.

N. To establish and promulgate and/or modify rules and regulations to maintain order and safety in the City which are not in contravention with this Agreement.

O. To take any and all necessary actions to carry out the mission of the Agency in emergencies.

Section 2. Impact of Management Rights. Except in emergencies, or where the City is required to make changes in its operations because of the requirements of law, whenever the exercise of management's rights shall impact on employees of the bargaining unit, the City agrees to meet and confer with representatives of the Association regarding the impact of the exercise of such rights, unless the matter of the exercise of such rights is specifically provided for in this Memorandum of Understanding or in Personnel or Departmental Rules and Regulations and/or salary resolutions of the City which are incorporated by this reference in this Agreement.

Section 3. Health and Safety. The City shall not exercise any of the foregoing rights in an arbitrary, capricious or invidiously discriminatory manner as to injure the health and/or safety of the employees.

ARTICLE XVI

EMPLOYEE ORGANIZATION RIGHTS AND RESPONSIBILITIES

Section 1. Dues Deductions. The City shall deduct dues on a regular basis from the pay of all employees in the classifications and positions recognized to be represented by the Association who voluntarily authorize such deduction, in writing, on a mutually agreed upon form to be provided for this purpose. The City shall remit such funds to the Association within thirty (30) days following their deduction.

Section 2. Indemnification. The Association agrees to hold the City harmless and indemnify the City against any claims, causes of actions or lawsuits arising out of the deduction or transmittal of such funds to the Association, except the intentional failure of the City to transmit to the Association monies deducted for the employees pursuant to this Article.

ARTICLE XVII

NO STRIKE - NO LOCKOUT PROHIBITED CONDUCT

Section 1. No Job Action. The Association, its officers, agents, representatives and/or members agree that during the term of this Agreement they will not cause or condone any strike, walkout, slowdown, sick-out, or any other job action by withholding or refusing to perform services.

Section 2. No Lockout. The City agrees that it shall not lockout its employees during the term of this Agreement. The term "lockout" is hereby defined so as not to include the discharge, suspension, termination, layoff, failure to recall or failure to return to work of employees of the City in the exercise of its rights as set forth in any of the provisions of this Agreement or applicable ordinance or law.

Section 3. Consequence for Prohibited Conduct. Any employee who participates in any conduct prohibited in Section I above shall be subject to termination by the City.

Section 4. Suspension of Employee Organization Rights. In addition to any other lawful remedies or disciplinary actions available to the City, if the Association fails, in good faith, to perform all responsibilities listed below in Association Responsibility, Section 5, the City may suspend any and all of the rights and privileges, accorded to the Association under the Employee Relations Resolution in this Memorandum of Understanding including, but not limited to, suspension of recognition of the Association, grievance procedure, right of access, check-off, the use of the City's bulletin boards and facilities.

Section 5. Association Responsibility. In the event that the Association, its officers, agents, representatives, or members engage in any of the conduct prohibited in No Job Action, Section 1 above, the Association shall immediately instruct any persons engaging in such conduct that their conduct is in violation of this Memorandum of Understanding and unlawful, and they must immediately cease engaging in conduct prohibited in Section I above and return to work.

Section 6. Hold Harmless. If the Association performs all of the responsibilities set forth in Association Responsibility, Section 5 above, its officers, agents, representatives or members shall not be liable for damages for prohibited conduct performed by employees who are covered by this Agreement in violation of Section I above.

ARTICLE XVIII

GRIEVANCE PROCEDURE

Section 1. Grievance. Grievance shall be defined as a dispute between the Association, employee or employees and the City, regarding interpretation or application of specific provisions of this Memorandum of Understanding and departmental rules and regulations. Employees may not file grievances for any decision for which another appeal procedure is available, including but not limited to, the appeal procedures under Article XIX or

Article XX.

Section 2. Conduct of the Grievance Procedure. An employee may request the assistance of another person of his own choosing in preparing and presenting his grievance at any level of review, or may be represented by a recognized employee organization or may represent himself.

A. Any retroactivity on monetary grievances shall be limited to ninety (90) days prior to the date that the grievance was filed, in writing, except in cases where it was impossible for the employee to have had prior knowledge of an accounting error.

B. All time limits specified may be extended to a definite date by mutual agreement of the employee or his Association representative, and the decision-making Management representative involved at each step of the grievance procedure. Such mutual agreement shall be evidenced in writing and signed by the employee or Association representative and management representative.

Section 3. Grievance procedure shall provide for the following steps:

Step One. Informal Procedure. An employee must first attempt to resolve a grievance without delay through discussion with a supervisor on an informal basis. The grievance shall begin at the level of supervision that ultimately took the action that resulted in the grievance. If, after such discussion, the employee does not believe the problem has been satisfactorily resolved, he shall have the right and obligation to discuss it with his supervisor's immediate superior, if any, and through the chain of command to the Chief of Police if necessary. Every effort shall be made to find an acceptable solution by these informal means at the most immediate level of supervision. At no time may an informal process go beyond the Chief of Police. In order that this informal procedure may be responsive, all parties involved shall expedite this process.

In no case may more than fourteen (14) calendar days elapse from the date of the alleged incident or action giving use to the grievance or fourteen (14) calendar days from the date the employee should have reasonably known about the alleged incident and the first meeting with the supervisor discussed in this section. The employee shall have up to seven (7) additional days for each level of supervision; however, the time shall not be cumulative. Failure to meet any of these time lines shall mean that the grievance shall be barred and waived.

Step Two. Formal Procedure. If the grievance is not resolved through the informal process and the employee has complied with all time limits, then the employee shall have the right to file the grievance in written form and present it to the Chief of Police within ten (10) calendar days from the decision or completion of the informal process. The written grievance shall state all facts plus the specifics of the alleged dispute. Failure of the employee to take action within the time limit set forth above will constitute termination of the grievance.

The Chief of Police shall review the written material submitted by the employee and may require the employee's supervisor and/or superior officers to submit written material regarding this grievance. Copies of these materials will be given to the employee prior to meeting with the Chief of Police. The Chief of Police shall render a decision and comments in writing that shall be

given to the employee within ten (10) calendar days of the meeting between the employee and the Chief of Police.

Step Three. Employee Relations/Human Resources Director. If the grievance is not resolved in Step Two, the employee may within ten (10) calendar days present the grievance in writing to the Employee Relations/Human Resources Director for processing. Failure of the employee to take this action will constitute termination of the grievance. In the event the employee is not being represented by a recognized employee organization, the Employee Relations/Human Resources Director shall forward the grievance to the designated management representative who shall attempt to resolve the grievance with the employee. If the employee is being represented by a recognized employee organization, the Employee Relations/ Human Resources Director shall convene a joint meeting of the recognized employee organization and management representative who shall attempt to resolve the grievance. In the event the grievance is not satisfactorily adjusted or settled through discussion at this level, both parties shall advise each other, in writing, as to their respective positions.

Step Four. Grievance Hearing. If the grievance is not resolved in Step Three, the employee may, within ten (10) calendar days of the receipt of the written position from management representatives, present a “request for hearing” in writing to the Human Resources Director. Failure of the employee to take this action will constitute termination of the grievance. The Human Resources Director shall request from the State Mediation and Conciliation Service, or mutually agreed upon alternative organization, a list of seven (7) neutral hearing officers. In the event that the parties cannot agree upon a mutually acceptable hearing officer from the list of seven (7), the parties shall alternately strike names from the list, with the City striking the first name. The identity of the last remaining individual on the list will be selected as the hearing officer.

The hearing officer shall preside over a full and fair evidentiary hearing and, within thirty (30) calendar days of its conclusion, render a written decision that includes findings of fact and a recommendation to the City Manager. That decision shall be served jointly upon the grieving party and the City Manager.

Step Five. City Manager’s Decision. Within thirty (30) calendar days of receipt of the decision of the hearing officer, the City Manager shall, in writing, adopt, modify or reject that decision. The decision of the City Manager shall be the final administrative decision.

ARTICLE XIX

APPEAL PROCEDURE

(Minor Discipline)

The following administrative appeal process is established pursuant to Government Code § 3304.5. This procedure shall apply to officers who receive punitive action other than disciplinary transfer, step reduction, suspension, demotion and dismissal.

A. Right to Administrative Appeal under this Procedure

1. Any public safety officer (as that term is defined by Government Code § 3301) who is subjected to punitive action (within the meaning of Government Code § 3303) other than dismissal, demotion, step reduction, suspension or disciplinary transfer or who is subjected to an action which may lead to punitive action, shall be entitled to receive an administrative appeal under this procedure. The officer shall not be entitled to appeal the action prior to its imposition, i.e., an officer shall not be entitled to receive a hearing akin to a Skelly hearing or other pre-disciplinary appeal hearing prior to imposition of the punitive action.
2. Officers subjected to dismissal, demotion, step reduction, suspension or disciplinary transfer shall continue to be entitled to an appeal in accordance with the disciplinary appeal procedures set forth in this Agreement.

B. Notice of Appeal

1. Within five (5) calendar days of receipt by an officer of notification of punitive action as set forth above, the officer shall notify the Human Resources Director in writing of the officer's intent to appeal the punitive action.
2. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

C. Hearing Officer

1. The City Manager shall have twenty-one (21) calendar days from receipt of the notice of appeal to designate himself as the hearing officer or appoint a neutral hearing officer who is not embroiled in the controversy, i.e., a person who did not initiate or authorize the action in question.
2. The hearing officer appointed by the City Manager shall serve in an advisory capacity and shall be responsible for making recommended findings of fact and issuing an advisory decision to the City Manager. The City Manager may adopt, modify, or reject the hearing officer's recommendations and advisory decision and the City Manager's decision shall be final and binding.

D. Burden of Proof/Persuasion

For administrative appeals arising under this section, the City shall bear the burden of proving by a preponderance of the evidence the facts which form the basis for the charge or challenged personnel action and the burden of persuasion that the punitive action was reasonable under the circumstances. For example, if an officer received a written reprimand for unauthorized absence from work, then the City would bear the burden of proving that the officer was absent from work without authorization and that a written reprimand was reasonable under the circumstances.

E. Conduct of Hearing

1. The formal rules of evidence do not apply, although the hearing officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative.

2. The parties may present opening statements.
3. The parties may present evidence through documents and testimony.
 - a. Witnesses shall testify under oath.
 - b. The hearing officer shall issue subpoenas for documents or testimony upon reasonable request of the parties.
4. The presentation of witness testimony shall not exceed one hour from each side and an additional fifteen (15) minutes shall be given to each for rebuttal. The Department shall be heard first. The length of witness testimony shall remain subject to the hearing officer's discretion.
5. Following the presentation of evidence, if any, the parties may submit oral and/or written closing argument for consideration by the hearing officer.

F. Recording of the Hearing

If the punitive action involves an allegation of misconduct, then the hearing shall be stenographically recorded by a certified court reporter. Otherwise, the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

G. Representation

The officer may be represented by an association representative or attorney of his choice at all stages of the proceedings. All costs associated with such representation shall be borne by the officer. The City shall also be entitled to representation at all stages of the proceedings.

H. Decision

1. If a hearing officer is appointed by the City Manager, the hearing officer shall issue his advisory decision in writing within sixty (60) calendar days of the submission of the case by the parties for decision. The written decision shall set forth proposed findings of fact and a proposed decision.
2. Within ten (10) calendar days of receipt of the advisory decision, the City Manager shall serve the parties with written notice of his decision adopting, modifying, or rejecting the hearing officer's recommendations and decision. If the City Manager modifies, or rejects the hearing officer's decision, then he shall review the entire record prior to making a decision.
3. If the City Manager hears the appeal him, he will issue his decision within sixty (60) calendar days of the submission of the case by the parties for decision. The written decision shall set forth his findings of fact and final decision.

4. The decision shall be served by first class mail, postage pre-paid, upon the officer as well as his attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the police personnel that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.6.

ARTICLE XX

APPEAL PROCEDURE

(Major Discipline)

A. If the grievant is not satisfied with the decision at Step Three, or if an employee or the Association wishes to appeal the disciplinary decision of the City Manager, the grievant/employee may, within ten (10) days of the receipt of the decision, submit a request in writing to the Association for an administrative hearing of the dispute. Within twenty (20) days of the grievant's receipt of the decision at Step Three, the Association shall inform the City, in writing, of its request to have an administrative hearing. The Association and the City shall attempt to agree upon a hearing officer.

If no agreement can be reached, they shall request that the City supply a list of seven (7) names of persons experienced in hearing grievances in cities from a panel mutually selected by the Association and the City. Each party shall alternately strike a name until only one remains. The remaining panel member shall be the Hearing Officer. The order of the striking names shall be determined by lot.

B. The Hearing Officer shall, within thirty (30) days unless both parties agree otherwise, hear evidence and render a decision on the issue or issues submitted to him. If the parties cannot agree upon the issues, the Hearing Officer shall determine the issues.

C. The Hearing Officer shall hold a hearing. The Hearing Officer's decision shall be advisory to the City Manager.

D. The City and the Association agree that the jurisdiction and authority of the Hearing Officer so selected and the opinions the Hearing Officer expresses will be confined exclusively to the interpretation of the express provision or provisions of this Agreement at issue between the parties. The Hearing Officer shall have no authority to add to, subtract from, alter, amend, or modify any provisions of this Agreement or the written ordinances, resolutions, rules, regulations and procedures of the City or the Department, nor shall he impose any limitations or obligations not specifically provided for under the terms of this Agreement. The Hearing Officer shall be without powers or authority to make any decision that requires the City or management to do an act prohibited by law.

E. After a hearing and after both parties have had an opportunity to make written arguments, the Hearing Officer shall submit to all parties a written decision containing findings of fact, determination of issues, and statement of the precise disciplinary penalty, if any. The Hearing Officer shall exercise his independent judgment in evaluating the evidence presented in the administrative hearing to determine whether the weight of the evidence supports the agency's decision. The disciplinary action can be disturbed only if it constitutes an abuse of

discretion.

F. The City shall bear any fees and expenses assessed by the Hearing Officer for purposes of this article. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other. Either party may request a certified court reporter to record the entire hearing. The cost of the services of such court reporter shall be shared equally by the parties.

G. Where the disciplinary appeal concerns a thirty-six (36) hour suspension or lesser disciplinary action which results in a loss of pay, the following limitation shall apply to the amount of time available to each party to the hearing for a presentation of any individual party's case. For purposes of time-limit computation only, the Association and any one (1) employee, as well as any other entity that may properly be appearing on behalf of or with an interest similar to the Association or employee's, shall be jointly deemed to be the same one party for computing the time limitation on presentations. Accordingly, the time limitation shall not be multiplied by the number of individuals or entities appearing, on behalf of, or with an interest similar to, the individual employee who has been disciplined.

Each party to a disciplinary appeal under this article shall be limited to a maximum of seven (7) hours of presentation time during conduct of any proceeding before a hearing officer.

The time limitations outlined in this section shall not apply to disciplinary appeals concerning suspensions exceeding 36 hours in length, or greater disciplinary action which results in a loss of pay.

"Presentation Time" triggering the seven (7) hour presentation time limitation, shall include oral opening statement and oral closing argument, direct, cross, and/or redirect examination of witnesses, rebuttal and sur-rebuttal witness testimony, demonstrations, and site inspections (excluding travel time to and from the site).

The hearing officer shall record and maintain account of all such hours by means of a timekeeping device suitable to the task. The hearing officer has discretion to extend said limitation.

H. Within thirty (30) calendar days of receipt of the Hearing Officer's decision, the City Manager shall issue a final written decision adopting, modifying, or rejecting the Hearing Officer's decision. The City Manager's decision shall be the final administrative decision, subject only to review under California Code of Civil Procedure 1094.5.

ARTICLE XXI

MISCELLANEOUS

Section 1. Third Party Legal Actions. Third party legal actions against Police Captains and Police Lieutenants. If a determination is made by the department that the employees involved have met the condition that the action given rise to the legal proceeding was taken by the employees during the course and scope of the employees' employment without malice and in the apparent best interest of the City, the City shall afford legal representation to the

employees in any civil or criminal process. The choice of attorney shall be made by the majority vote of the Police Chief, City Manager, and employees. The Police Chief, City Manager and the employees shall each have one (1) vote for a maximum total of three (3) votes.

Section 2. Substance Abuse Policy. The City of Downey and the Association have a vital interest in maintaining safe, healthful and efficient working conditions. Being under the influence of a drug or alcohol on the job may pose serious safety and health risks not only to the user but to co-workers and the citizens of Downey. The possession, use or sale of an illegal drug or of alcohol on the job also poses unacceptable risks for safe, healthful and efficient operations. "On the job" means while on City premises, at work locations, or while on duty or being compensated on an "on call status."

The City of Downey and the Association recognize that their future is dependent on the physical and psychological well being of all employees. The City and the Association mutually acknowledge that a drug and alcohol-free work environment benefits Downey's employees and citizens.

The purpose of this section is to define the City's drug and alcohol policy as well as the possible consequences of policy violation.

A. Possession, sale, use or being under the influence of drugs or alcohol while on the job is strictly prohibited. This prohibition shall not apply to legitimate undercover activities of Police Officers that are undertaken in accordance with the direction of the Police Department.

B. When reasonable suspicion exists, the City may require an employee to submit to a medical examination, including, but not limited to, a substance screening. Substance screening means the testing of urine or other body fluids as reasonably deemed necessary by a physician to determine whether an employee has a restricted substance in their system. Reasonable suspicion is cause based upon objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his job safely is reduced.

C. Any manager or supervisor requesting an employee to submit to a substance screening shall document in writing the facts constituting reasonable suspicion and shall give the employee a copy. The employee shall be given an opportunity to provide additional facts. An employee who is then ordered to submit to a substance abuse screening may request to be represented. Because time is of the essence in drug screening, a representative must be available within a reasonable time or the employee will then be ordered to submit to substance screening. An employee who refuses to submit to a substance screening may be considered insubordinate and shall be subject to disciplinary action up to and including termination.

D. The supervisor, or designee, shall transport the suspected employee to the testing facility. Testing shall occur on City time and be paid for by the City. Employee urine samples, or other body fluids, will be collected in a system which includes methods or mechanisms designed to assure the integrity of the sample. The facility used for testing shall be certified by the National Institute on Drug Abuse and comply with established guidelines for "chain of custody" to insure that identity and integrity of the sample is preserved throughout the collecting,

shipping, testing and storage process.

E. Any positive test for alcohol or drugs will be confirmed by a scientifically sound method. An employee who tests positive on a confirmatory test will be given the opportunity to discuss the results with a physician to be designated by the City. The employee should be prepared at that time to show proof of any valid medical prescription for any detected substance or to otherwise explain, if he so chooses, a positive test result.

F. While use of medically prescribed medications and drugs is not per se a violation of this policy, this policy shall establish that no employee shall operate a City vehicle or dangerous machinery or equipment while taking any kind of medication or drugs which are clearly marked that they may cause significant drowsiness or impair an employee's performance. An employee shall notify his supervisor, before beginning work, when taking such medications or drugs. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a physician designated by the City may be required. The City reserves the right to send an employee home on sick leave under these circumstances.

Employees with substance abuse problems are encouraged to participate voluntarily in the City-sponsored Employee Assistance Program (EAP). Assistance through the EAP may be sought by an employee with complete confidentiality and without adverse consequences to his employment. Employees should be aware, however, that a request for assistance through the EAP will not insulate the employee from disciplinary action already contemplated. Depending upon the facts surrounding the reasonable suspicion determination, positive test result, and/or other violation of this policy or other City/department rules and regulations, the City may refer an employee to the EAP. Such referral could, at the discretion of the City, be made available to the employee as an alternative to disciplinary action. Referral would be subject to agreement by the employee to enroll, participate in and successfully complete a rehabilitation and/or counseling program and other terms and conditions in a "Last Chance Agreement."

1. It is the City's intent to use the EAP option for first offenders except the City reserves the right to discipline for those offenses which are a significant violation of City/department rules and regulations or where violation did or could have resulted in serious injury or property damage.

Section 3. Industrial Disability Retirement Procedures. The City Manager may delegate to the Assistant City Manager his authority under Resolution Number 4428 concerning industrial disability retirement applications.

Section 4. No Tobacco Policy. The City of Downey prohibits new hires (employees hired on or after December 10, 1993) from using tobacco products either on or off duty. Except, however, employees are allowed an occasional off-duty celebratory cigar.

ARTICLE XXII

SOLE AND ENTIRE MEMORANDUM OF UNDERSTANDING

Section 1. Sole Source. It is the intent of the parties hereto that the provisions of this Memorandum of Understanding shall supersede all prior agreements and memorandums of understanding, or memorandums of agreement, or contrary salary and/or personnel resolutions and ordinances of the City, oral or written, expressed or implied, agreements between the parties or understandings between the parties, and shall govern their entire relationship and shall be the sole source of any and all rights which may be asserted hereunder. This Memorandum of Understanding is not intended to conflict with Federal or State Law.

Section 2. Inclusion of Other Rules and Regulations. Notwithstanding the provisions of Section 1 above, there exists within the City of Downey, certain personnel resolutions, ordinances, and departmental rules, regulations and procedures. To the extent that this Memorandum does not specifically contravene provisions of these personnel resolutions, ordinances, and departmental rules, regulations and procedures; these personnel resolutions, ordinances, and departmental rules, regulations and procedures are specifically incorporated herein.

ARTICLE XXIII

WAIVER OF BARGAINING DURING TERM OF THIS AGREEMENT

During the term of this Memorandum of Understanding, the parties mutually agree that they will not seek to negotiate or bargain with regard to wages, hours, and terms and conditions of employment, whether or not covered by this Memorandum or in the negotiations leading thereto and irrespective of whether or not such matters were discussed or were within the contemplation of the parties hereto during the negotiations leading to this Memorandum. Regardless of the waiver contained in this Article, the parties may, however, by mutual agreement, in writing, agree to meet and confer about any matters during the term of this Memorandum.

ARTICLE XXIV

REOPENER

Section 1. The parties agree that the City can re-open negotiations to achieve labor cost savings during the term of this Agreement, however, there shall be no changes unless mutually agreed to in writing.

Section 2. The parties agree to reopen discussions during the term of this agreement regarding changes to the City's Cafeteria Plan to ensure compliance with legal requirements. No changes to the Cafeteria Plan shall be made unless mutually agreed to in writing.

ARTICLE XXV

EMERGENCY WAIVER PROVISION

In the event of circumstances beyond the control of the City, such as acts of God, fire, flood, insurrection, civil disorder, national emergency, or similar circumstances, provisions of this Memorandum of Understanding or the City's Personnel Rules and Regulations or Resolutions of the City, which restrict the City's ability to respond to these emergencies, shall be suspended for the duration of such emergency. After the emergency is over, the Association shall have the right to meet and confer with the City regarding the impact on employees of the suspension of these provisions in the Memorandum of Understanding and the City's Personnel Rules and Regulations and policies.

ARTICLE XXVI

SEPARABILITY

Should any provision of this Memorandum of Understanding be found to be inoperative, void, or invalid by a court of competent jurisdiction, all other provisions of this Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding.

ARTICLE XXVII

TERM OF MEMORANDUM OF UNDERSTANDING

The term of this Memorandum of Understanding shall commence on July 1, 2020 and shall continue in full force and effect until June 30, 2023.

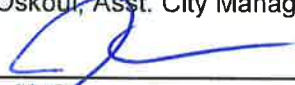
ARTICLE XXVIII

RATIFICATION AND EXECUTION

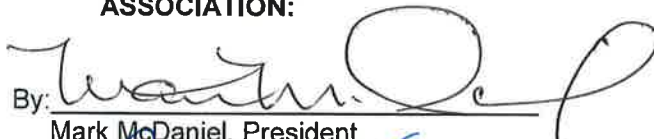
The City and the Association acknowledge that this Agreement shall not be in full force and effect until ratified by the Association and adopted by the City Council of the City of Downey. Subject to the foregoing, this Agreement is hereby executed by the authorized representatives of the City and the Association and entered into this 23rd day of June, 2020.

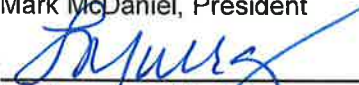
CITY OF DOWNEY:

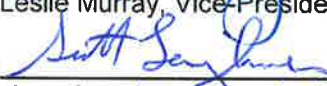
By: 
John Oskoui, Asst. City Manager

By: 
James McQueen, Dir. of Human Resources

THE DOWNEY POLICE MANAGEMENT ASSOCIATION:

By: 
Mark McDaniel, President

By: 
Leslie Murray, Vice-President

By: 
Scott Loughner, Secretary/Treasurer

APPROVED AS TO FORM:



EXHIBIT A

CLASSIFICATIONS REPRESENTED BY THE DOWNEY POLICE MANAGEMENT ASSOCIATION

Police Captain
Police Lieutenant

PAY SCHEDULE

Effective 6/29/2020

Position Title	A	B	C	D	E
Police Captain	74.5690	78.6706	82.9974	87.5621	90.9741
Police Lieutenant	59.3086	62.5708	66.0120	69.6427	72.3565

Effective 6/28/2021

Position Title	A	B	C	D	E
Police Captain	76.0604	80.2440	84.6574	89.3133	92.7936
Police Lieutenant	60.4948	63.8222	67.3322	71.0356	73.8036

Effective 6/27/2022

Position Title	A	B	C	D	E
Police Captain	77.5816	81.8489	86.3506	91.0996	94.6495
Police Lieutenant	61.7047	65.0986	68.6788	72.4563	75.2797