MEMORANDUM OF UNDERSTANDING

CITY OF TUSTIN

and

TUSTIN POLICE OFFICERS ASSOCIATION
POLICE OFFICER REPRESENTATION UNIT

TERM:
July 1, 2015 – June 30, 2018

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MEMORANDUM OF UNDERSTANDING

CITY OF TUSTIN
AND
TUSTIN POLICE OFFICERS ASSOCIATION – POLICE OFFICER REPRESENTATION UNIT

WHEREAS, in accordance with the provisions of the California Government Code Sections 3500 et seq. and Section 17 (Employer-Employee Organization Relations) of the Personnel Rules of the City of Tustin, City representatives have met and conferred in good faith with the Tustin Police Officers Association (hereinafter sometimes referred to as TPOA or Association) pertaining to the wages, hours, benefits and conditions of employment for employees in the Police Officer Representation Unit; and

WHEREAS, the meeting between the Association and City representatives has resulted in an agreement and understanding to recommend that the employees represented by the Association accept all of the terms and conditions as set forth herein and that the City representatives recommend to the City Council that it adopt by resolution or resolutions the changes and additions to the wages, hours and conditions of employment for the unit employees as set forth herein.

W I T N E S S E T H

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Tustin authorizes staff to implement the provisions of this Memorandum of Understanding (MOU) and modify the City's Classification and Compensation Plans to reflect the changes approved in this MOU, and that the wages, hours and conditions of employment be adopted and set forth as follows:

CHAPTER 1 – GENERAL PROVISIONS

Article 1. Recognition

A. The City has previously recognized the Tustin Police Officers Association as the majority representative of employees in the Police Officer Representation Unit for purposes of representation on issues of wages, hours and other terms and conditions of employment. As majority representative, the Association is empowered to act on behalf of all employees who hold positions in classes in the Police Officer Representation Unit whether or not they are individually members of the Tustin Police Officers Association.

B. The classifications constituting the Police Officer Representation Unit are Police Officer and Police Recruit.

Article 2. Entire Agreement

The City and TPOA agree that any City resolutions, ordinances, rules, regulations or practices that are in conflict with the MOU and its provisions are subordinate to this MOU and where conflicts exists this memorandum of understanding shall prevail.

Article 3. Reopener

Prior to January 1, 2017 either side may request to meet and confer for the purpose of effecting changes to this MOU to go into effect on January1, 2017 or later.

Article 4. Severability

If any part of this Agreement is rendered or declared invalid by reason of any existing or subsequently-enacted legislation, governmental regulation or order or decree of court, the invalidation of such part of this Agreement shall not render invalid the remaining part hereof.

Article 5. Binding on Successors

This Agreement shall be binding on the successors and assigns of the parties hereto and no provisions, terms or obligations herein contained shall be affected or changed in any way whatsoever by the consolidation, merger, sale, transfer or assignment of either party hereto.

Article 6. Notices

Notices hereunder shall be in writing and, if to TPOA, shall be mailed to President, Tustin Police Officers Association, Post Office Box 1516, Tustin, CA 92781; and, if to the City, shall be mailed to City Manager, City of Tustin, 300 Centennial Way, Tustin, California 92780.

Article 7. Payroll Deductions

Deductions of authorized amounts may be made from an employee's pay for the following purposes:

1. Withholding tax.
2. Contributions to retirement benefits including deferred compensation.
3. Contribution to survivor benefits.
4. Payment of life insurance and accidental death and dismemberment insurance premiums.
5. Payment of non-industrial disability insurance premium.
6. Payment of hospitalization and major medical insurance premium.
7. Payment to a City dependent care or medical care reimbursement account pursuant to IRC Section 125.
8. Payment of supplemental insurance premium.
9. Payment to or savings in a credit union or bank.
10. Contributions to United Way, Community Health Charities or other designated charity organizations.
11. Payment of membership dues and any authorized fees to TPOA.
12. Payment of authorized TPOA deductions.
13. Payment for non-return of uniforms and/or equipment issued.
14. Repayment of unearned Advance Holiday Pay.
15. Other purposes as may be authorized by the City.

CHAPTER 2 – COMPENSATION

Article 8. Salary

A. Salary ranges for represented classifications are listed in Appendix A.

B. Effective the pay period which includes July 1, 2015, employees in the bargaining unit shall receive a four percent (4%) base salary increase.

C. Effective the pay period which includes July 1, 2016, employees in the bargaining unit shall receive a three and one-half percent (3.5%) base salary increase.

D. With the paycheck issued for the pay period which includes July 1, 2017, all unit employees who are employed by the City on the effective date will receive a one-time lump sum payment of five thousand, seven hundred and one dollars ($5,701.00). In accordance with the California Public Employees' Retirement System regulations and definition of Special Compensation (2 CCR §571), this lump sum payment will not be reported to CalPERS for purposes of retirement.

Article 9. Overtime Compensation

A. Employees in the unit are subject to different work schedules. However, all employees are scheduled to work 160 hours in the 28 day FLSA work period.

B. Overtime is subject to pre-approval by the employee's supervisor. The City shall pay unit employees overtime compensation at the rate of time and one-half (1½) for all hours worked in excess of:

   1. Regularly scheduled hours per shift; or

   2. Hours worked on a day the employee is not regularly scheduled to work; or

   3. Hours worked in excess of 160 hours in the 28 day FLSA work period.

C. General Leave, Compensatory Time Off and Holiday hours paid shall be counted as hours worked in these calculations, provided, however, that Standby time shall not be considered hours worked.

Article 10. Uniform Allowance

Employees will be paid a uniform allowance of $429 per year, paid biweekly ($16.50 per pay period for 26 pay periods per year) for the purchase, rental and/or maintenance of the required uniforms. The parties agree that for "classic members" as defined by the Public Employees' Pension Reform Act of 2013, this is special compensation and shall be reported as such, to the extent legally permissible, pursuant to Title 2 CCR, Section 571(a)(5) as Uniform Allowance. Special motor officer gear and officer public safety leather/nylon gear required by the department will be provided.

Article 11. Bilingual Pay

Employees in the classification of Police Officer who successfully pass the City's examination for conversational skill in a language other than English (which the Director of Human Resources has approved as being needed for City business) are eligible to receive $250 per month ($115.38 per pay period) as a Bilingual Pay incentive. The parties agree that this is special compensation and shall be reported as such, to the extent legally permissible, pursuant to Title 2 CCR, Section 571(a)(4) as Bilingual Premium. Individuals are eligible to receive Bilingual Pay at the beginning of the first pay period after Human Resources receives the employee's test score demonstrating conversational proficiency. Should a conflict arise regarding designation of an employee for compensation, proficiency and/or need, the Director of Human Resources shall determine who is eligible. The City is responsible for the development and administration of a testing vehicle to determine proficiency. In addition, Management will determine where within its discretion bilingual proficiency is necessary in a particular work area and if so will compensate for it.

Article 12. Educational Incentive Pay

A. The City shall provide Educational Incentive Pay as an incentive for employees in the classification of Police Officer to improve their level of education in relevant fields beyond the expected level for their position.

B. Police Officers are eligible to receive Educational Incentive Pay after six (6) months of City service. Educational Incentive Pay begins the first pay period after Human Resources receives and certifies the employee has met all of the eligibility requirements.

C. To apply for Educational Incentive Pay, an employee must be actively at work, provide official documentation of the required classes and/or degree (associate's, bachelor's, or master's) and have completed any applicable service requirements.

D. Incentive amounts are as follows:

Degree in Related Field	Amount
Associate's	$175/month ($80.77/pay period)
Bachelor's	$325/month ($150.00/pay period)
Master's	$375/month ($173.07/pay period)

The parties agree that this is special compensation and shall be reported as such, to the extent legally permissible, pursuant to Title 2 CCR, Section 571(a)(2) as Educational Incentive.

E. Employees currently receiving Educational Incentive Pay for an equivalent to an Associate's degree shall be grandfathered and shall continue to receive whatever compensation is provided to employees with an Associate's degree. Such employees must have continuing active enrollment in a bachelor's curriculum with over half of the course work completed. Credit for a class under this plan requires a grade of "C" or better. A pass/fail course will be deemed to have achieved a "C" grade if the course was passed. No credit is provided for courses for which the City paid and that were attended entirely or in substantial part on City time. Employees in a program leading to a job-related degree may be given credit for non-job related courses which are required to obtain the

degree, but they shall not exceed 50% of the total credits until the related degree is received. A reasonable interpretation of the related nature of the degree fields shall be made by the Director of Human Resources.

F. For purposes of contract negotiations, the Educational Incentive Pay provided for a bachelor's degree shall be used for future compensation comparisons.

Article 13. Career Officer Program

A. Officers qualifying under the Career Officer Program shall be eligible for additional compensation in accordance with the following:

Level	Increase in Base Salary	Requirements
Senior Officer I	2.5%	• Five (5) consecutive years of employment with the Tustin Police Department as a full-time sworn Police Officer (a lateral entry Police Officer may use 50% of his/her prior paid full-time sworn Police Officer service toward this requirement) • POST Basic Certificate • 30 college semester credits (transcripts required) • "Competent" or better annual performance evaluations for the previous three (3) consecutive years • Has accepted additional duties as assigned
Senior Officer II	4.5%	• Seven (7) consecutive years of employment with the Tustin Police Department as a full-time sworn Police Officer (a lateral entry Police Officer may use 50% of his/her prior paid full-time sworn Police Officer service toward this requirement) • POST Intermediate Certificate • 60 college semester credits or an associate's degree (transcripts required) • "Competent" or better annual performance evaluations for the previous three (3) consecutive years • Has performed as a Senior Officer I for one (1) year • Has accepted additional duties as assigned
Master Officer	6.5%	• Ten (10) consecutive years of employment with the Tustin Police Department as a full-time sworn Police Officer a lateral entry Police Officer may use 50% of his/her prior paid full-time sworn Police Officer service toward this requirement) • POST Advanced Certificate • 90 college semester credits • "Competent" or better annual performance evaluations for the previous five (5) consecutive years • Has performed as a Senior Officer II for one (1) year • Has accepted additional duties as assigned

Employees are eligible for Career Officer Pay at the beginning of the first pay period following receipt by the Human Resources Department of documentation that all requirements have been met and approvals have been processed. The parties agree that this is special compensation for "educational incentive pay" within the meaning of, and shall be reported, to the extent legally permissible, as such pursuant to Title 2 CCR, Section 571(a)(2) Educational Incentive.

Article 14. Standby Duty

A. Unit employees shall be compensated for Standby Duty (except for court appearances) at the rate of two (2) hours of straight time for each eight (8) hours required, including Holidays. If an employee is on Standby Duty and the Standby status is canceled, the employee will still receive the full amount of Standby Pay appropriate for the time frame involved.

B. Standby Duty for scheduled court appearances on behalf of the City shall be compensated at a rate of two (2) hours of straight time for morning (a.m. hours) appearances and two (2) hours of straight time for afternoon (p.m. hours) appearances. If a scheduled Standby for court appearances is canceled and the employee is not advised (either via phone call or voicemail) of the cancellation before 6:00 p.m. on the day prior to the subpoena date, the employee shall receive two (2) hours of Standby Pay. A reasonable effort by the City (e.g., phone call or voicemail) to notify the employee prior to 6:00 p.m. on the day prior will negate the two (2) hours of Standby Pay. Employees who are scheduled for Standby Duty shall advise the department of a telephone number where they can be either reached or a message can be left to advise them of a cancellation.

Article 15. Call-Back Duty

In addition to Standby Pay, if any, employees shall receive a minimum of two (2) hours of overtime compensation paid at a time and one-half (1 ½) rate for any call (fifteen (15) or more minutes beyond the end of their shift) which required them to return to duty.

Article 16. Court Pay

A. An employee shall be paid at a rate of time and one-half (1 ½) for actual time spent in City-required court appearances that occur during the employee's off-duty hours. A minimum of two (2) hours of Court Pay will be provided for court appearances scheduled in the morning (8:00 a.m. – 12:00 p.m.) and/or a minimum of two (2) hours of such compensation for court appearances scheduled in the afternoon (12:00 p.m. – 5:00 p.m.).

B. Employees receiving Court Pay do not also receive Standby compensation for court appearances for the same time period.

Article 17. Special Assignments

A. The Police Chief has sole discretion to determine who shall receive a special assignment. Employees assigned to the following special assignments (or successor titles) listed below shall receive, in addition to their regular compensation, premium pay in the amount of two and one-half percent (2.5%) of base salary for performing in such special assignments; provided, however, that at no time

may an employee receive more than one (1) special assignment pay premium. The parties agree that this is special compensation and shall be reported as such, to the extent legally permissible, pursuant to Title 2 CCR, Section 571(a)(4).

1. Commercial Enforcement Officer (Police Investigator Detail)
2. Community Impact Officer (Police Liaison Premium)
3. Field Training Officer (Training Premium)
4. Gang Unit Officer (Gang Detail Assignment Premium)
5. Investigator – General Investigations (including OCATT) and Special Investigations (including RNSP) (Police Investigator Premium)
6. K-9 Officer (Canine Officer/Animal Premium)
7. Motorcycle Patrol Officer (Motorcycle Patrol Premium)
8. Professional Standards Personnel Officer/Professional Standards Training Officer (Police Administrative Officer)
9. School Resource Officer (Police Liaison Premium)
10. Special Enforcement Detail Officer (Police Investigator Detail)

B. The City has the absolute discretion regarding the assignment and reassignment of employees to special assignments. Any such assignment is not vested and may be revoked at any time and any appeal required by Section 3304(b) of the California Government Code shall be governed by Article 37 of this MOU (Rules of Evidence and Procedure for Employees Removed from Special Assignments).

When an employee reaches the expiration date of a special assignment term, as specified in the Police Department's General Orders, the employee does not have the right to appeal the Police Chief's decision to not renew or extend the employee's term in that special assignment.

C. Each employee performing the assignment of Motor Officer or K-9 Officer will receive one (1) paid day off per month (10 hours) which is considered compensation for hours worked under the FLSA for the time spent (as an officer-dog handler or officer motor-handler) at their residence in caring for the dog/equipment during regular days off and during vacation or sick leave.

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

The City and Officers understand and agree that this additional compensation is intended to compensate canine/motor officers for all off duty hours spent caring, grooming, feeding and otherwise maintaining their assigned canine or maintaining their assigned motorcycle, in compliance with the FLSA and interpretive cases and rulings. Unless otherwise authorized by a supervisor, employees in these assignments must limit their off-duty hours to a maximum of ten (10) hours per month because they are only being paid for 10 hours per month.

Article 18. Shift Differential Pay

Employees who are regularly assigned to the graveyard shift (shift begins at 6:00 p.m. and ends at 6:30 a.m. the following day) or to a shift where all hours worked falls between the hours of 6:00 p.m. – 6:30 a.m. shall receive Shift Differential Pay. Special Enforcement Detail (SED) Team members are eligible for Shift Differential Pay as long as the unit's regular schedule is the graveyard shift. If the Police Department temporarily and indefinitely modifies the work schedule of the SED Team in order to meet the changing priorities and needs of the department, SED Team members will remain eligible for Shift Differential pay during this time. The parties agree that this is special compensation and shall be reported as such, to the extent legally permissible, pursuant to Title 2 CCR, Section 571(a)(4) as Shift Differential. This differential is designed to compensate the employee for the inconvenience of working this particular shift. Unit employees receiving this differential are paid $25 per pay period, limited to 24 pay periods per year.

CHAPTER 3 – BENEFITS

Article 19. Flexible Benefits Plan

A. The City contracts with the California Public Employees' Retirement System (CalPERS) for the provision of medical insurance. All employees in the bargaining unit shall receive the minimum amount required under the Public Employees' Medical and Hospital Care Act (PEMHCA) ($122 per month for calendar year 2015, and a yet to be determined amount for subsequent calendar years) as well as an additional amount which is provided under a Section 125 Flexible Benefits program. The amounts below include the minimum amount under PEMHCA.

B. Effective the pay period which includes July 1, 2015, the Flexible Benefits contribution per month per eligible employee will be as follows:

Employee Only	Employee + 1 Dependent	Employee + 2 or More Dependents
$775	$1,025	$1,250

C. Effective the pay period that includes July 1, 2016, the Flexible Benefits contribution per month per eligible employee will be increased to the following amounts:

Employee Only	Employee + 1 Dependent	Employee + 2 or More Dependents
$825	$1,075	$1,300

D. Effective the pay period that includes July 1, 2017, the Flexible Benefits contribution per month per eligible employee will be increased to the following amounts:

Employee Only	Employee + 1 Dependent	Employee + 2 or More Dependents
$875	$1,125	$1,350

C. Employees who do not take medical insurance through the program offered by the City shall receive $400 per month effective July 1, 2015, $425 per month effective July 1, 2016 and $450 per month effective July 1, 2017 as the Flexible Benefits Opt-Out contribution. As a condition of receiving such amount, the employee must provide evidence, satisfactory to the City, that he/she has medical insurance coverage comparable to coverage available through the City program. If the employee also opts out of the City's dental insurance, the employee must also provide evidence, satisfactory to the City, that he/she has dental insurance coverage comparable to coverage available through the City program.

D. The Flexible Benefits contribution consists of mandatory and discretionary allocations which may be applied to City-sponsored programs, including required payment towards employee medical insurance under the Public Employees' Medical and Hospital Care Act (PEMHCA). At minimum, employees are required to take employee only medical and dental insurance, with premiums paid out of their Flexible Benefits contribution. Employees may allocate the remaining amount among the following programs:

1. Medical insurance
2. Dental insurance
3. Additional life insurance
4. Vision insurance
5. Deferred compensation
6. Section 125 Flexible Spending Account for medical or dependent care reimbursement
7. Eligible catastrophic care programs
8. Cash

Discretionary allocations are to be made in accordance with program/City requirements including restrictions as to the time when changes may be made in allocations to the respective programs.

E. The Section 125 Flexible Benefits program will be continued in full force and effect for the duration of this Agreement unless changed by mutual agreement of the City and Association. The City retains the right to change administrators.

Participation in the Section 125 medical and/or dependent care reimbursement programs is voluntary and employee-funded.

Article 20. Retirement

A. All employees covered under this Agreement shall be members of the California Public Employees' Retirement System (CalPERS) and are subject to all applicable provisions of the City's contract with CalPERS, as amended.

B. Employees first hired by the City as Local Safety members prior to January 1, 2012 shall be provided the CalPERS 3% @ 50 retirement formula in accordance with Government Code section 21362.2.

1. These employees are responsible for paying the employee contribution of 9% of the employee's wages through a pre-tax payroll deduction. The City has adopted the CalPERS resolution in

accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

2. These employees are also responsible for paying an additional pension contribution of three percent (3%) as cost sharing in accordance with Government Code section 20516(f), for a total employee pension contribution of twelve percent (12%). If, at any time in the future, the Association informs the City that it no longer agrees to this cost sharing agreement, effective on the date of the elimination of the cost sharing (which would need to coincide with the expiration date of the MOU) these employees' base salary would be reduced by an amount equal to the value of this three percent (3%) cost sharing.

3. The plan has been amended to include Section 21574 (Fourth Level of 1959 Survivor Benefits), Section 20042 (One-Year Final Compensation), and Section 21024 (Military Service Credit as Public Service). The employee is responsible for paying the employee portion of the 1959 Survivor benefit premium.

C. Employees first hired by the City as Local Safety Members on or after January 1, 2012, excluding any individuals defined as "new members" by the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be provided the CalPERS 2% @ 50 retirement formula.

1. These employees are responsible for paying the employee contribution of 9% of the employee's wages through a pre-tax payroll deduction. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

2. These employees are responsible for paying an additional pension contribution of three percent (3%) as cost sharing in accordance with Government Code section 20516(f), for a total employee pension contribution of twelve percent (12%). If, at any time in the future, the Association informs the City that it no longer agrees to this cost sharing agreement, effective on the date of the elimination of the cost sharing (which would need to coincide with the expiration date of the MOU) these employees' base salary would be reduced by an amount equal to this three percent (3%) cost sharing.

3. The plan includes Section 21574 (Fourth Level of 1959 Survivor Benefits) and Section 21024 (Military Service Credit as Public Service). The employee is responsible for paying the employee portion of the 1959 Survivor benefit premium. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code Section 20037.

D. Police Officers first employed by the City on or after January 1, 2013 who are defined as "new members" by the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the CalPERS 2.7% @ 57 plan for Local Safety members.

1. The employee is responsible for paying the employee contribution of one-half of the total normal cost of the plan, as defined by CalPERS, through a payroll deduction. Effective the pay period including July 1, 2015, the employee contribution is 11.50%. This amount will be

determined by CalPERS in the future. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

2. The plan includes Section 21574 (Fourth Level of 1959 Survivor Benefits) and Section 21024 (Military Service Credit as Public Service). The employee is responsible for paying the employee portion of the 1959 Survivor benefit premium. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code Section 7522.32(a).

E. Police Recruits first employed by the City on or after January 1, 2012, excluding any individuals defined as "new members" by the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the CalPERS 2% @ 60 retirement formula for Local Miscellaneous members.

1. The employee is responsible for paying the employee contribution of 7% of the employee's wages through a pre-tax payroll deduction. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

2. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code Section 20037. The plan provides for 3rd level of 1959 Survivor benefits with the employee paying the employee portion of the premium.

F. Police Recruits first employed by the City on or after January 1, 2013 who are defined as "new members" by the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the CalPERS 2% @ 62 plan for Local Miscellaneous members.

1. The employee is responsible for paying the employee contribution of one-half of the total normal cost of the plan, as defined by CalPERS, through a payroll deduction. Effective the pay period including July 1, 2015, the employee contribution is 6.25%. This amount will be determined by CalPERS in the future. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

2. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code Section 7522.32(a). The plan provides for 3rd level of 1959 Survivor benefits with the employee paying the employee portion of the premium.

Article 21. Deferred Compensation

For each unit employee, the City shall contribute $37 per month to a Section 457 deferred compensation plan. It is the responsibility of each employee to complete the necessary paperwork and take required steps to enroll in the plan. Should an employee fail to enroll, the City is under no obligation to make retroactive contributions on behalf of said employee. Employees hired into the bargaining unit shall be provided with notification of the deferred compensation program, including the amount of employer contributions, during employee orientation.

Article 22. Employee Life Insurance

A. The City will provide life insurance on the life of each regular, permanent full-time employee and pay the required premiums. The death benefit of said insurance shall be one hundred percent (100%) of the employee's base annual salary to the nearest multiple of $1,000, up to a maximum of $200,000. The City will also provide $1,000 per dependent of dependent life insurance.

B. The City shall also make available, at the employee's option, a supplemental life insurance policy. The premium of the supplemental policy shall be paid by the employee.

Article 23. Long-Term Disability (LTD) Plan

A. The TPOA-provided Long-Term Disability (LTD) Insurance Plan specifically for sworn police personnel in effect as of January 1, 2000 shall continue in full force and effect during the term of this agreement unless changed by the mutual agreement of the City and the Association.

B. The City will contribute $20.50 per month per unit employee to the TPOA LTD Fund.

C. In addition to provisions of the TPOA LTD Plan, the City will provide a supplemental benefit during the initial 30 days of leave (the elimination period) if the duration of the leave exceeds 30 days.

   In the event a non-industrial illness or injury is anticipated to exceed 30 days, the employee is first required to use 80 consecutive hours of his/her accrued leave during the 30 day period beginning with the first day of the leave. In the event no leave time is available, the employee shall be on leave without pay for 80 consecutive hours.

   After the first 80 hours of leave, and for the remainder of the 30 day elimination period, the employee shall be compensated by the City at the rate of 60% of the employee's pre-disability base salary. This City payment is taxable income. The employee may supplement this City payment with accrued leave (General Leave or Compensatory Time Off) to enable him/her to receive an amount equivalent to no more than 100% of his/her pre-disability earnings.

D. Provided an employee is eligible for FMLA/CFRA leave, Flexible Benefits will be continued for ninety (90) days of a disability leave and such time will be counted towards satisfying Federal Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) requirements.

E. Eligibility for City benefits provided in parts C and D of this Article is conditioned upon the City's receipt of proof of disability.

F. Police Recruits shall participate in the City's Short-Term / Long-Term Disability (STD/LTD) plan under the same terms, conditions and cost as those employees in the general employee bargaining unit (TMEA).

Article 24. Tuition Reimbursement

Employees shall be encouraged to further their academic education and training in those areas of benefit to the employee and to the City. Full-time employees will be eligible for reimbursement by the City of tuition for professional technical courses subject to the following conditions:

1. Department head and Director of Human Resources approval must be obtained before enrollment in the course.

2. Reimbursement shall be made for tuition fees, textbooks, lab fees, or required supplies, upon completion of the course with a satisfactory grade and after the completion of the initial probationary period as a Police Officer. Requests to enroll in courses may be granted prior to the completion of probation. However payment will not be made until the employee has completed the probationary period and attained regular status.

3. Tuition reimbursement shall not be made if the employee is drawing veteran's education benefits or any other reimbursement for the same course.

4. Employees may be reimbursed for up to $4,000 per calendar year in covered expenses for attending graduate school, a four-year college or university, or a job-related program through University of California or California State University extended education programs and $2,000 per year for attendance at a California Community College. This reimbursement benefit may be used for other job-related educational programs administered by other professional organizations with the express approval of the City Manager. If an employee separates from City service within one calendar year of receiving this Tuition Reimbursement benefit, the employee is responsible for refunding the City the full amount of the benefit that was paid. Funds will be deducted from the employee's final paycheck to cover the re-payment of the tuition reimbursement.

5. The City has set up procedures that allow for expedient reimbursement for classes taken and fees paid. Employees may request reimbursement in the calendar year that the class is taken and completed. Failure to request reimbursement in a timely manner and/or classes taken in excess of the allowable reimbursement level cannot be carried over to a future year reimbursement period.

Article 25. Retiree Medical Insurance

A. The City will reimburse eligible unit employees up to a maximum of $350 per month for the payment of CalPERS retiree medical insurance premiums. This amount includes the minimum contribution towards retiree medical insurance required under the PEMHCA program ($122 for calendar year 2015, and a yet to be determined amount for subsequent calendar years).

B. A unit employee hired by the City prior to July 1, 2011 is eligible for this benefit provided that he/she has been continuously employed by the City for five (5) full years, retires from the City and CalPERS, and enrolls in a CalPERS medical insurance plan immediately after retirement. Eligible employees, who suffer a disability, are unable to return to work, and take a disability retirement from CalPERS may satisfy the five (5) year continuous service requirement using a combination of service with the City and service with any public agency with a reciprocal retirement system.

C. A unit employee hired by the City on or after July 1, 2011 is eligible for this benefit provided that he/she has been continuously employed by the City for ten (10) full years, retires from the City and CalPERS, and enrolls in a CalPERS medical insurance plan immediately after retirement. Eligible employees, who suffer a disability, are unable to return to work, and take a disability retirement from CalPERS may satisfy the ten (10) year continuous service requirement using a combination of service with the City and service with any public agency with a reciprocal retirement system.

D. Reimbursement shall not be made until an employee appears on the City's CalPERS insurance billing. In order to maintain the retiree medical insurance stipend throughout retirement, an employee must maintain coverage in a CalPERS medical insurance plan; once coverage is dropped, reimbursement will cease and will not be reinstated.

CHAPTER 4 – LEAVES OF ABSENCE

Article 26. General Leave

A. Paid General Leave shall be granted to each full-time employee at the rates listed below per year, prorated on a biweekly basis for each biweekly pay period in which the employee is in paid status for at least 40 hours of the pay period. If the employee is in paid status between 40-80 hours of a pay period, his/her General Leave will be earned on a prorated basis for the pay period.

Periods of Service	General Leave Hours Per Year	Maximum Accrual
0-5 years	160 hours	320 hours
6-10 years	208 hours	416 hours
Over 10 years	248 hours	496 hours

B. Once per fiscal year, each regular and promotional probationary employee may request that he/she be paid for a maximum of forty (40) hours of accrued General Leave. Requests for cash out must be received no later than two weeks prior to the paycheck date when the cash out is requested. The right to cash out 40 hours of accrued General Leave discussed herein is separate and apart from the cash out of hours from the Excess General Leave Bank ("EGLB") discussed below. For all three years of the term of this MOU (July 1, 2015 through June 30, 2016, July 1, 2016 through June 30, 2017 and July 1, 2017 through June 30, 2018) once per fiscal year employees may cash out additional accrued General Leave as follows based on years of service used to determine General Leave accrual rates provided employees have at least 160 hours of accrued General Leave at the time of cash out:

0-5 years	40 additional hours per year
6-10 years	50 additional hours per year
Over 10 years	60 additional hours per year

C. The additional hours may be cashed out at the same time as the initial 40 hours or at one additional time during each fiscal year. Additionally, any of the GL cash-out may be directed to the employee's deferred compensation account up to the statutory limits for deferred compensation (in 2015, the statutory limits are $18,000 per year, with a catch-up limit of $36,000).

D. Each employee is responsible for managing his/her General Leave bank. Employees wishing to stay below the General Leave cap are encouraged to regularly monitor their leave accrual balances that are provided on each biweekly paycheck, provide the department with as much advance notice as possible when requesting to use General Leave for time off, be flexible when requesting to take time off during periods of heavy usage or staffing shortages, and take advantage of the General Leave cash out program.

   The department will not unreasonably deny an employee's request to use General Leave. Supervisors will be fair and reasonable in reviewing employee requests to use General Leave and will balance the wishes of the employee with the operational and safety needs of the department and the efficient use of the City's resources.

   If an employee requests to take time off using General Leave and has not fully used the General Leave cash out program, the fact that an employee is at his/her General Leave accrual cap shall not be cause for the department to automatically grant the employee's request to use General Leave.

E. Upon reaching the maximum, accrual will cease until leave is used to reduce the accrual below the maximum. Should an employee request to use General Leave in accordance with department procedures and be denied the use of leave which will result in the employee reaching his/her maximum accrual cap, the Director of Human Resources will be notified to facilitate an agreeable remedy for both parties.

F. Upon separation from the City service the employee will be paid for unused General Leave, at the employee's then current base salary rate.

G. Mandatory cash out of all remaining Excess General Leave Bank will be paid to employees with the second paycheck in July 2015. Should employees with an EGLB wish to cash out General Leave pursuant to Article 26.B, the hours to be cashed out must first be taken from the EGLB.

H. The use of General Leave for reasons other than non-industrial illness or injury must be approved by the department head and due regard shall be given to the employee's preference in scheduling such paid leave time.

I. Advanced General Leave is available under the following provisions:
   a. A unit member requests a leave of absence for a "serious health condition" as that term is defined under the FMLA/CFRA for him or herself, a child, parent, spouse or registered domestic partner; and
   b. At the time of the leave, the employee has a minimum of eighty (80) hours of General Leave accrued; and
   c. The employee exhausts his/her General Leave accrual; then

d. Upon request of the employee, the City will grant an advance of one-hundred twenty (120) hours of General Leave for use in conjunction with the serious health condition (as defined above).

The Advanced General Leave must be repaid to the City once an employee returns to work. Advanced General Leave will be repaid by transferring newly accrued General Leave back to the City until full repayment of the leave has been returned. However, should an employee request and receive Catastrophic Leave donations, the City will have any advanced hours returned from the catastrophic leave donation bank to the City prior to providing the employee use of the donated hours.

Article 27. Compensatory Time Off

A. In lieu of receiving cash payment for overtime, employees may elect the option of accruing Compensatory Time Off at the rate of time and one-half (1½), subject to a maximum accrual of forty (40) hours.

B. The time during which an employee may take Compensatory Time Off shall be subject to approval by the Police Chief or designee with due regard for the wishes of the employee and for needs of the service. However, an employee wishing to use his/her accrued Compensatory Time Off shall provide the City with reasonable notice of such request. Reasonable notice is defined as two calendar weeks. If reasonable notice is provided, the employee's request will not be denied unless it would be unduly disruptive to the department to grant the request. A request to use Compensatory Time Off without reasonable notice may still be granted within the discretion of the supervisor or manager responsible for considering the request.

C. Upon separation from City service, an employee shall be compensated for all accrued Compensatory Time Off at his/her regular rate of pay.

Article 28. Holidays

A. The following Holidays are observed by the City:

January 1	New Year's Day
Third Monday In January	Martin Luther King Jr. Day
Third Monday in February	Presidents' Day
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
November 11	Veterans Day
Thanksgiving Day	Thanksgiving Day
Day following Thanksgiving Day	Day after Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day
December 31	New Year's Eve

B. Except as otherwise provided, when a Holiday occurs on a Sunday, the following Monday will be observed instead and when a Holiday occurs on a Saturday, the preceding Friday will be observed instead.

C. For the designated Holidays, employees are eligible for nine (9) hours of paid time off for each full day. Unless operational needs, as determined by the Police Chief, require that the time off be taken at some other date, the time off will be taken on the scheduled Holiday. If the Holiday hours paid on a Holiday or substituted day off are less than the employee's regularly scheduled hours the employee may use accrued Compensatory Time Off or General Leave to ensure that hours paid will be the same as would regularly be paid for the day.

D. In December of each year, each regular and promotional probationary employee will be granted Advance Holiday Pay, a cash out of his/her Holiday credit for the following year in lieu of having time off. The employee must have General Leave accrued in an amount equivalent to the Holiday cash out requested to be eligible for full payment of the Advance Holiday Pay in January. In the event the employee does not have the required hours in his/her General Leave bank, pursuant to the City's leave report for Pay Period 25 of each year, the Advance Holiday Pay shall be made in two installments, forty-five (45) hours in January (January – September Holidays) and fifty-four (54) hours in October (October – December Holidays) of each year.

   In the event that an employee separates from service and has used and/or been paid for Holidays in excess of the pro-rata earned hours per month, the overage shall be deducted from his/her final check.

   In the event an employee is on unpaid status immediately before or after the holiday, or is not otherwise eligible to receive a paid Holiday, and has received Advance Holiday Pay, the City shall reduce the employee's leave bank(s) by the amount of hours of any unearned Holiday previously paid on the payroll immediately following the Holiday (or as soon as the overpayment is discovered).

E. Newly hired probationary employees are not eligible for Advance Holiday Pay and will be paid for each Holiday as it occurs.

F. The parties agree that Holiday Pay is additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays and shall, to the extent legally permissible, be reported as special compensation pursuant to Title 2 CCR, Section 571(a)(5).

Article 29. Bereavement Leave

The City will allow up to fifty (50) hours of paid leave for the purpose of Bereavement Leave in the event of a death in the employee's immediate family. For purposes of this section, "immediate family" shall be defined as including the spouse, registered domestic partner, mother, stepmother, father, stepfather, brother, sister, child, stepchild, grandparent, and grandchild of the employee or the employee's spouse/registered domestic partner. An employee may use less than fifty (50) hours. Bereavement Leave is intended to allow time for an employee to mourn the loss of a loved one and/or to assist family members during a time of loss. In the event an extended absence or travel is necessary, the employee may request to use General Leave to supplement Bereavement Leave.

Article 30. Military Leave

Upon notice from the Association that a unit employee has been called to Active Duty, the City will, within 30 calendar days, place on the City Council Agenda a Resolution for consideration that would provide the affected employee with supplemental salary in the event his/her military pay and associated dollar stipends and extras is less than he/she would have earned in base pay if the employee had not been called to Active Duty.

CHAPTER 5 – WORKING CONDITIONS

Article 31. Attendance

A. All bargaining unit employees shall be in attendance at work in accordance with the rules regarding hours of work, Holidays, and leaves.

B. Any employee who is absent from duty shall report the reason for such absence to the department head or immediate supervisor prior to the absence as far in advance as possible and in no case later than two (2) hours before the beginning of the employee's scheduled work shift. Absences not reported in such manner may be considered absence without leave. A deduction of pay may be made for the duration of any absence without leave. Upon return to work, such absence shall be justified to the department head who shall consider the need for disciplinary action or to approve the absence as unavoidable and allow the employee to make up the lost time or cover it with General Leave.

C. Absence from work without approved leave and without reasonable cause for three (3) consecutive scheduled work days may be cause for immediate discharge.

D. If an employee has a leave of absence without pay in excess of thirty (30) calendar days, continuous service shall be considered interrupted for purposes of advancement within a salary range. Absence with pay shall not be considered an interruption of an employee's continuous service and shall not be deducted in computing total city service time.

Article 32. Work Schedules

A. Police Officers work schedules under Section 207(k) of the Fair Labor Standards Act (FLSA).

B. Department work schedules include:

1. The 4/10 work schedule for employees in Special Assignments. In each seven (7) calendar day period, the employee works four 10-hour days where the scheduled work shift commences and ends at the same time each day followed by three (3) consecutive days off.

2. The 3/12.5 work schedule for employees in Patrol. In each seven (7) calendar day period, the employee works three 12.5 hour days where the scheduled work shift commences and ends at the same time each day and is followed by four (4) consecutive days off. During the 28 day work cycle, the employee must work one additional 10-hour shift.

C. Continuation of the schedule is subject to needs of the department, provided that if the department desires to discontinue that work schedule, the employee will revert to the 9/80 work schedule or some other schedule upon mutual agreement of the department and employee.

D. Department employees will select shifts as follows:

1. The City is divided into two separate patrol areas – North and South.

2. Available shifts (which are determined by the Department and are subject to change) will be designated by the Department by patrol area. Police Officers will select shifts in either the North or South area twice a year. Police Officers are limited to twenty four (24) consecutive months on any shift assignment (day shift, cover watch, or graveyard). Based on departmental needs, a Police Officer may be allowed to extend beyond the twenty four (24) consecutive month rotation.

3. Based on department needs, shift assignments may be reserved for probationary Police Officers during the probationary period. The remaining shifts will be selected by patrol area by seniority.

4. Field Training Officers will be given the opportunity to select shifts by seniority as a full-time Police Officer with Tustin PD. In the event the voluntary "by seniority" shift selection does not provide the necessary coverage, the Chief of Police, or designee, may assign Field Training Officers to shifts that provide necessary coverage. When making mandatory shift assignments for Field Training Officers, management will make an effort to adhere to the shift preferences of Field Training Officers.

5. Bilingual Police Officers will be given the opportunity to select shifts by seniority. In the event the voluntary "by seniority" shift selection does not provide the necessary coverage, the Chief of Police, or designee, may assign Bilingual Police Officers to shifts that provide necessary coverage. When making mandatory shift assignments for Bilingual Police Officers, Management will make an effort to adhere to the shift preferences of Bilingual Police Officers.

6. If a Police Officer assigned to a Special Assignment returns to patrol, at a time other than at shift selection, he/she will be assigned to a patrol area and shift based on the staffing needs of the department.

7. If a Police Officer assigned to a Special Assignment returns to patrol, in conjunction with shift selection, he/she will be assigned to a patrol area but will participate in the shift selection process based on seniority.

8. If at the time of shift signups a Police Officer is off work on a medical leave of absence without a documented return-to-work date from his/her primary treating physician, he/she will not be permitted to select a shift for the upcoming deployment period. However, if a Police Officer is off work on a medical leave of absence and has presented the City with a documented full duty return-to-work date that is no more than 60 days beyond the start of

the upcoming deployment period, he/she will be permitted to select a shift at the time of shift signups.

E. Employees assigned to special task forces or regional teams will work the hours that the team works.

F. Employees may have their work schedule changed to accommodate training assignments which are eight (8) or more hours in duration.

Article 33. Shift Trades

Employees in the unit have the right to trade shifts with their colleagues at the same rank subject to the following conditions:

1. Both employees agree to the shift trade voluntarily.

2. A supervisor approves the shift trade. Supervisors will not unreasonably deny a trade. However, denials are not subject to being grieved.

3. The employee whose shift is worked gets credit for the shift. Thus, the employee whose shift was worked will record the time as time worked on his or her time sheet.

4. Payback of the traded shift will be the responsibility of the two employees who trade shifts and will not be monitored by the City. Traded shifts should fall in the same two week pay cycle. They must fall within the same 28 day work period. If an employee leaves the City having not paid back a shift, it shall be the responsibility of the two employees to work out any pay back.

5. If an employee agrees to trade shifts with another employee and then calls in sick and/or does not work the shift, the employee who agreed to work the shift shall have his/her General Leave deducted. For example, if Police Officer A agrees to work the shift for Police Officer B and prior to the shift, Police Officer A calls in sick and does not work the shift, Police Officer A's General Leave is deducted and Police Officer B gets credit for the shift.

Article 34. Rest Periods and Lunch Breaks

A. All bargaining unit employees shall be entitled to a fifteen (15) minute rest period for each four (4) hours of their work shift. The scheduling of the rest breaks shall be the responsibility of the employee's supervisor.

B. Employees receive a paid lunch break because they are required to be working or available to respond immediately to calls for service during their lunch time.

CHAPTER 6 – EMPLOYER / EMPLOYEE RELATIONS

Article 35. Employee Rights

As the recognized representative of the employees covered by this memorandum of understanding, the City acknowledges and recognizes the following employee rights:

1. TPOA shall have access to and be provided with payroll deduction of dues, fees, and assessments without charge through the City's regular payroll system.

2. TPOA shall be afforded the use of department bulletin boards for the posting of notices, updates, meeting minutes and other material related to TPOA business.

3. TPOA shall be afforded the reasonable use of department copy machines and faxes and will reimburse the City for any material costs or toll fees for such use.

4. Upon notice and subject to availability, the City shall allow TPOA the use of City facilities including meeting rooms for TPOA membership, Board of Directors and committee meetings.

5. TPOA representatives shall be allowed reasonable paid release time for preparation for and attendance at meetings with management related to the meet and confer process and labor relations matters.

6. All bargaining unit members shall have the right to representation by TPOA in processing grievances and disciplinary appeals. Employees shall be afforded reasonable paid release time to meet with TPOA representatives for discussion and consultation on grievances and disciplinary appeals.

7. TPOA shall have the exclusive right on behalf of the bargaining unit to meet and confer with management over matters of wages, benefits, hours, and terms and conditions of employment pursuant to State and Federal laws.

8. All bargaining unit members shall have the right to join and participate in the activities of TPOA free from interference, intimidation, coercion, or discrimination.

9. TPOA shall have the right to distribute a reasonable amount of association information and newsletters at the job site.

10. TPOA representatives shall have the right to reasonable use of department telephones and e-mail for the discussion of TPOA business.

11. TPOA representatives and consultants shall have the right of reasonable access to the workplace.

12. TPOA representatives may be granted General Leave or other leave for labor relations training.

13. All other rights and privileges currently in effect or which may be enacted in the future pursuant to State or Federal law.

Article 36. Third Party Advisory Process for Disciplinary Appeals

A. Disciplinary actions, which may move beyond the department head's decision, include the actions of termination, suspension, reduction of salary, and demotion. The "third party" advisory process is the step between the department head's action and the City Manager's final decision. In the department head's notice of final disciplinary action (which should be served by personal delivery) shall be a statement which clearly informs the employee that he/she has the right, within ten (10) working days after receipt of the response, to request the next level of appeal. The day the employee receives the department head's final notice shall not count as one of the ten (10) days.

B. The employee's request for the next level of appeal must be addressed to the Director of Human Resources and received in the Human Resources Department so that same is date stamped by the Human Resources Department with the ten (10) day period.

C. If, within the ten (10) day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the department head shall be considered conclusive and shall take effect as prescribed. If within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Director of Human Resources, an appeal hearing shall be established as follows:

    1. If a single third party hearing officer cannot be agreed upon by the Director of Human Resources and the employee's representative (or employee alone if unrepresented), the State Mediation and Conciliation Service shall be requested to submit a list of seven (7) persons qualified to act as arbiters to the City and employee. Within ten (10) days following receipt of the list of arbiters, the parties shall meet to select the arbiter. The parties shall alternately strike one (1) name from the list of arbiters (the right to strike the first name to be determined by lot) until one (1) name remains, and that person shall be the arbiter.

    2. Where practicable, the date for the hearing shall not be less than twenty (20) days, nor more than sixty (60) days, from the date of the filing of the appeal with the Director of Human Resources. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing.

    3. All hearings shall be private, provided, however, that the arbiter shall, at the request of the employee, open the hearing to the public.

    4. Subpoenas and subpoenas duces tecums pertaining to a hearing shall be issued at the request of either party, not less than five (5) working days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the arbiter.

    5. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which

reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules, which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence shall be excluded. The arbiter shall not be bound by technical rules of evidence. The arbiter shall rule on the admission or exclusion of evidence.

6. Each party shall have these rights: to be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses or any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the respondent does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing.

7. The hearing shall proceed in the following order, unless the arbiter, for special reason, otherwise directs:

    a. The party imposing discipline shall be permitted to make an opening statement.

    b. The appealing party shall then be permitted to make an opening statement.

    c. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence.

    d. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted.

    e. The parties may then, in order, respectively offer rebutting evidence only, unless the arbiter for good reason permits them to offer evidence upon their original case.

    f. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the arbiter.

8. The arbiter shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the arbiter, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The arbiter, prior to or during a hearing, may grant a continuance for any reasons he/she believes to be important to reaching a fair and proper decision. The arbiter shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days

after conducting a hearing. His/her decision shall set forth findings of fact and conclusions. The opinion shall be advisory only.

9. The arbiter may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee. He/she may not recommend for discipline more severe than that invoked by the department head.

   The arbiter's opinion and recommendation shall be filed with the City Manager, with a copy sent to the charged employee, and the Director of Human Resources and shall set forth his/her findings and recommendations. If it is a dismissal hearing and a dismissal is not the arbiter's recommendation, the opinion shall set forth the recommended date the employee is recommended to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.

10. Within thirty (30) days of the receipt of the arbiter's findings and recommendations, and transcript, whichever date is later, the City Manager shall adopt, amend, modify or reject the recommended findings, conclusions, and/or opinions of the arbiter. Prior to making a decision, which modifies or rejects the recommendation of the arbiter, the City Manager shall order and read the transcript of the Third Party Advisory Process. Prior to making a decision which supports the arbiter, the City Manager may order and read the subject transcript, at his/her option, allow limited oral arguments and/or may request and review written statements from either side. The decision of the City Manager shall be final and conclusive. Copies of the City Manager's decision, including the arbiter's recommendations(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager. Each party shall bear equally the cost of facilities, fees and expenses of the arbiter, including the court reporter and transcripts. If the City Manager orders a transcript for his/her review, the City shall bear the cost of providing the transcript. Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled arbitration, thereby resulting in a fee charged by the arbiter or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for the payment of that fee. This process shall not apply to mutual settlements by the parties, which result in an arbitration fee.

11. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Manager, the time of such suspension, demotion or dismissal shall be effective from the first day after such delivery of said decision or shall relate back to be effective as of the date the employee was suspended from duty pending hearing before and decision by the City Manager, whichever is applicable. If discipline imposed resulted in loss of pay, the pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate. The provision of Section 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this Article.

Article 37. Rules of Evidence and Procedure for Employees Removed from Special Assignments

Any Police Officer removed from a Specialty Pay position for non-disciplinary reasons may file a written appeal with the City Manager within 10 days of receiving notice of removal, in accordance with the following:

1. Hearings shall be conducted by the City Manager or his/ her designee.

2. The question to be decided is whether the City abused its discretion in removing the Police Officer from the Specialty Pay position.

3. Formal rules of evidence and procedure that may be applicable in a court of law shall not apply to these hearings. Evidence, both oral and documentary, shall be admissible if it is the type of evidence that responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any judicial rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be admitted for the purpose of supplementing or explaining any direct evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be applicable to the same extent that they are recognized in civil actions.

4. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses. If the employee does not testify his or her own behalf, the employee may be called and examined as if under cross-examination.

5. Testimony shall be recorded by means of either a tape recording or certified court reporter.

6. Witness shall be sworn unless both parties stipulate otherwise.

7. Written declarations made under penalty of perjury shall be admissible, provided, however, that declarants shall be made available for testimony at the request of the party against whom the declaration is offered.

8. The Police Officer appealing the removal from the Specialty Pay position has the burden of proof. The standard of proof is a preponderance of the evidence. The City shall present its case first. During the presentation of the City's case, the officer shall have the right to cross-examine any witness called to testify by the City. During the presentation of the officer's case, the City shall have the right to cross-examine any witness called by the employee to testify.

9. Both parties shall have the right to counsel. Employee may be represented by the applicable employee organization representative.

10. Both parties shall have the right to present an opening argument prior to the presentation of any evidence and a closing argument after the presentation of all evidence.

11. The City Manager, or his/her designee, shall decide all questions of procedure and evidence.

12. The City Manager, or his/her designee, shall issue a written decision within 30 days of 1) the conclusion of the hearing, or 2) the receipt of post-hearing briefs if such briefs are requested by the City Manager or his/her designee.

13. The decision of the City Manager shall be final and binding. If the City Manager chooses to designate a hearing officer, that hearing officer will make a recommendation based on written findings to the City Manager, whose decision shall be final and binding.

14. Any objection to the City Manager, or his/her designee, on the grounds of bias, must be made in writing, stating the reasons therefore, by delivering of the writing to the City Manager no later than five (5) days prior to the date of the hearing.

Article 38. Performance Evaluations

An employee may not appeal or grieve a performance evaluation unless said evaluation results in the denial of a merit increase. Nothing herein shall serve to restrict an employee from having a written rebuttal attached to a performance evaluation with which the employee disagrees.

Article 39. No Strike / Job Action

A. The Association, its officers, agents, representatives, and/or members agree on behalf of themselves and the employees in the bargaining unit that they will not cause or condone any strike, walkout, work stoppage, job action, slowdown, sick out, or refusal to faithfully perform assigned duties and responsibilities, withholding of services or other interference with City operations, including compliance with the request of other employees and/or labor organizations to engage in any or all of the preceding activities.

B. Any employee who participates in any of the conduct prohibited above may be subject to discipline up to and including termination.

C. In the event of such activities, the Association shall immediately instruct any person engaging in such conduct that they are violating the Agreement and that they are engaging in unauthorized conduct and should resume full and faithful performance of their job duties.

Article 40. Management Rights

Except as otherwise specifically provided for in State and/or Federal laws, and this Agreement, the City reserves and retains and is vested with all rights of management which have not been expressly abridged by specific provisions of this Agreement or by law to manage the City. This shall include, but is not limited to:

1. The right to temporarily suspend the provisions of this Agreement in the event of and for the duration of an emergency as determined by the City Council and/or by County, State, or Federal action. In the event of such suspension of the Agreement, when the emergency is over, management will immediately initiate the meet and confer process over replacement of any salary, benefit, or working conditions lost by unit employees as a result of the suspension of this Agreement.

2. The right to determine staffing and direct the work force, including the right to hire, promote, demote, evaluate, transfer, layoff, or discharge for just cause any employee.

3. The right to contract or sub-contract services and/or work.

4. The right to take such further action as may be necessary to organize and operate the City in the most efficient and economical manner to serve the public interest.

5. The right to modify the performance evaluation form.

6. The right to modify and update class specifications.

Article 41. Layoffs

The layoff provisions described in the Personnel Rules currently in effect are incorporated into this MOU by reference.

IN WITNESS WHEREOF, the parties hereto have executed this document this 21st day of July 2015.

FOR THE CITY OF TUSTIN

Jeffrey Parker, City Manager

Derick Yasuda, Director of Human Resources

Matthew West, Assistant to the City Manager

Karyn Roznos, Senior Management Analyst

Peter J. Brown, Liebert Cassidy Whitmore

FOR THE TUSTIN POLICE OFFICERS ASSOCIATION – POLICE OFFICER REPRESENTATION UNIT

Thomas Lomeli, President

Matthew Roque, Vice President

David Welde, Treasurer

Ronnie Sandoval, Secretary

Robert M. Todd, Stone Busailah, LLP

APPENDIX A – MONTHLY SALARY RANGES

Effective the pay period that includes July 1, 2015

Classification	Step A	Step B	Step C	Step D	Step E	Step F
Police Officer	$6,043.19	$6,352.64	$6,677.92	$7,019.87	$7,379.33	$7,756.61
Police Recruit	$4,478.58	N/A	N/A	N/A	N/A	N/A

Effective the pay period that includes July 1, 2016

Classification	Step A	Step B	Step C	Step D	Step E	Step F
Police Officer	$6,254.70	$6,574.98	$6,911.65	$7,265.57	$7,637.61	$8,028.09
Police Recruit	$4,635.33	N/A	N/A	N/A	N/A	N/A