

MEMORANDUM  
OF UNDERSTANDING

Between the

**CITY OF IMPERIAL**

And the

**IMPERIAL  
POLICE OFFICERS ASSOCIATION**

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**ARTICLE I - PARTIES TO THE AGREEMENT**

This Memorandum of Understanding (hereinafter "MOU") is made and entered into between the City of Imperial (hereinafter "CITY") and the Imperial Police Officers Association (hereinafter "ASSOCIATION") pursuant to the Rules and Regulations of the City of Imperial for the Administration of Employer-Employee Relations, which is fully incorporated herein by reference as though fully set forth as a part of this MOU, unless inconsistent with a specific term of this MOU.

## **ARTICLE II - RECOGNITION**

The CITY officially recognizes the ASSOCIATION as a recognized employee organization within the meaning of Government Code section 3501 (b) of the Meyers-Milias-Brown Act for the full time permanent or probationary employees of the Police Department who are peace officers represented by the ASSOCIATION except as provided in Article VII, and as to any employee who holds a CITY position which is or may be entitled Chief of Police. Exhibit A attached hereto contains a list identifying those positions which are approved by the City Council and which are positions covered by this MOU.

## **ARTICLE III - RATIFICATION**

It is agreed that this MOU is of no force or effect until ratified and approved by the membership of the ASSOCIATION and, thereafter, is ratified and approved by resolution duly adopted by the City Council of CITY. The Chief of Police is directly responsible on behalf of CITY to enforce the terms of this MOU and shall provide each employee of CITY's Police Department and each new employee of the Police Department with a copy of this MOU and any subsequent amendments thereto, as appropriate.

## **ARTICLE IV - EFFECT OF AGREEMENT**

The specific provisions of this MOU relative to wages, hours, fringe benefits, and other terms and conditions of employment for the full time classifications represented by the ASSOCIATION shall prevail over CITY practices, policies, procedures, rules and regulations pertaining to represented employees which are inconsistent with the specific terms of this MOU. CITY practices, policies, procedures, rules and regulations pertaining to employees represented by the ASSOCIATION which fall within the scope of representation, but which are not specifically addressed in this MOU, are incorporated into this MOU by reference only to the extent that they are not inconsistent with the terms of this MOU.

Except when mutually agreed upon by the parties, as required by the express terms of this MOU, or upon the expiration of this MOU, neither party shall be required to negotiate with respect to any matter covered by this MOU.

## **ARTICLE V - SCOPE OF REPRESENTATION**

The scope of representation of the ASSOCIATION shall be as set forth in Government Code section 3504, as it may be amended from time to time, and which provides that: The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment, except that the scope of representation shall not include consideration of the merits, necessity, organization, selection or discontinuation of any service or activity provided by law or executive order. CITY shall provide prior notice of proposed rules, ordinances, resolution or regulations affecting matters within the scope of representation pursuant to Government Code section 3504.5, except in cases of emergency.

## **ARTICLE VI - CITY RIGHTS**

It is understood and agreed that CITY retains all of its powers and authority to direct, manage and control to the full extent of the law. Included in but not limited to those duties and powers are the exclusive right to:

Determine its organization, its mission, and the organization and mission of the Police Department; direct the work of its employees; assign related work not expressly covered by job description; set standards of selection for employment, assignment and promotion, determine the times and hours of operations; determine normal working hours and schedule shifts accordingly; determine the kinds and levels of services to be provided and the methods and means of providing them; establish its municipal policies, goals and objectives; make technological improvements; determine staffing patterns; determine the number and kinds of personnel required; maintain the efficiency of CITY budget procedures and determine budgetary allocation; determine the methods of raising revenue; contract out work in accordance with law; and to take any action necessary to meet conditions of an emergency nature, provided that the ASSOCIATION shall be afforded the opportunity to meet and confer concerning this MOU. In addition, the CITY retains the right to classify, terminate, transfer, and discipline employees, and to determine the content of the employee performance process.

The City Manager may lay off a unit member because of lack of funds, material change in duties or organization, or for other valid reasons. "Lack of Funds" is defined as occurring when the Fund Balance in the CITY's General Fund falls below the three (3) month operating expense level. The three (3) month operating expense level is the "Minimum Fund Balance"; that is three (3) months equivalent expenses of the annual Fund Expenditures minus Capital Expenses. This clause expires on March 31, 2004.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the CITY, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith, shall be limited only by the specific an express terms of this MOU, and then only to the extent such specified and express terms are in conformance with law.

This clause shall be interpreted and applied consistently with all other specific provisions of the MOU which deal with such management rights. (*ratified and approved by City Council on 11/21/2001*)

#### **ARTICLE VII - EMPLOYEE RIGHTS**

All Employees of CITY shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations including but not limited to wages, hours, and other terms and conditions of employment. Employees of CITY also shall have the fight to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with CITY. No employees shall be interfered with, intimidated, restrained, coerced or discriminated against by CITY, ASSOCIATION, or by any employee organization because of the employee's exercise of these rights.

#### **ARTICLE VIII - ASSOCIATION RIGHTS**

ASSOCIATION officers may have access to ASSOCIATION members during the work day on non work time to discuss ASSOCIATION business. Further, upon request for representation by an employee represented by the ASSOCIATION, such representative shall be permitted reasonable time during work hours without loss of pay to conduct such representation. Such business or representation shall not be permitted where manpower or shift assignments are adversely impacted or additional staffing or compensation will or does result. Upon request of the Chief of Police, ASSOCIATION may use CITY Police Department facilities for ASSOCIATION meetings on non-work time, and when not previously reserved or scheduled for cleaning or maintenance, to conduct ASSOCIATION business provided that ASSOCIATION gives the Chief of Police or his/her designee advance notice of any such request. Reasonable release time will be provided by the City for negotiations as agreed upon between the parties. The President of the POA may be released from work to attend one PORAC meeting in San

Diego County per month.

### **ARTICLE IX - PAYROLL DEDUCTION**

During the term of this MOU, CITY will deduct ASSOCIATION dues on a semi-monthly payroll basis and remit in a timely fashion to the ASSOCIATION for each employee who has on file with CITY a signed authorization executed and dated after final adoption of this MOU by Resolution of the City Council. ASSOCIATION hereby releases and fully indemnifies CITY for any and all costs, including defense costs and attorneys' fees and any judgment which may result from CITY's acts or omissions in compliance with this Article.

### **ARTICLE X - SAFETY AND OTHER EQUIPMENT EXCLUSIVE OF REQUIRED UNIFORMS**

CITY shall furnish to each Police Department employee at its own cost any safety equipment or other equipment for the performance of employee's duties which is mandated by State Law, or CITY and all equipment required by CITY for use in the performance of peace officer duties for CITY. All secondary firearms carried by employees must be registered with and previously approved by the Chief of Police. Peace officers are not prohibited from carrying firearms issued and approved by the City while off duty. Employees also are not prohibited from carrying a flat badge on duty when not in uniform or off duty. Effective upon final ratification of this MOU by CITY, CITY will reimburse the cost of the flat badge to each officer employed after such effective date, and will reimburse current employees for the cost of the flat badge surrendered in serviceable condition upon termination of employment. All equipment, including flat badges purchased by or reimbursed by CITY, and equipment furnished by and owned by the CITY shall be and remain the property of the CITY and shall be returned to the CITY immediately upon termination of employment in the Police Department, upon written order of the Chief of Police, or upon transfer or assignment to duties where said equipment is not required or necessary as determined by CITY.

### **ARTICLE XI - UNIFORMS AND UNIFORM ALLOWANCE**

All regular, full time employees of the Police Department are expected to maintain a clean, professional appearance at all times when representing CITY. For this purpose, CITY shall reimburse such full time employees currently employed by CITY the annual cost of purchasing uniform clothing prescribed by CITY up to a maximum amount of Seven Hundred Fifty Dollars (\$750.00) for each successive year of employment. Uniform allowances will be paid one time annually on the employee's anniversary date. *(ratified and approved by City Council on 12/04/2002)*

### **ARTICLE XII - EMPLOYEE LEAVES**

#### **A. SICK LEAVE**

1. Sick Leave Accrual - Sick leave shall accrue on a pay period basis. Employees shall receive sick leave credit of four hours for completion of each full pay period. No sick leave shall accrue for any pay period in which an employee is absent without pay for a total of more than five (5) working days. A new employee shall not begin to accrue sick leave until the commencement of the first day of a pay period on or after the employee's first day of employment.
2. Sick Leave Accumulation - Unused sick leave shall accumulate from year to year.
3. Use of Sick Leave - Sick leave may be taken at any time following the pay period in which it is earned. Use of accumulated sick leave is limited to illness or injury of the employee and an employee's appointment to see a doctor which cannot be scheduled outside of the work day. However, employee may charge to their accumulated sick leave absence from work due to the hospitalization or confinement of a member of their immediate family defined to include only spouse, child or other legal dependent of employee. In the discretion of the City Council, employees may donate sick leave to other CITY

employees who are absent due to injury or illness and who are not eligible and/or have exhausted any other paid leaves of absence to which entitled.

- (a) Upon prior written notice to an employee, CITY may require a written statement from a medical doctor for all absences of three or more consecutive work days due to illness or injury, or for an absence of any duration if the CITY has reason to believe that the use of sick leave is not warranted, is otherwise excessive, or being abused upon prior written notice to employee. CITY may also such verification upon prior written notice for any future absences for which sick leave is claimed where the CITY has reason to believe that the use of sick leave is not warranted, is excessive or is being abused.
- (b) Upon return from an absence of more than three consecutive work days on account of illness or injury, an employee shall furnish the CITY with a release from a licensed medical practitioner certifying that the employee is fit to return to duty; that such return to duty will not result in an immediate serious threat of injury or illness to the employee or others; and a specific description of the extent of any work limitations or restrictions.
- (c) Where weekly disability payments are being made under Workers' Compensation laws, accrued sick leave benefits may be used provided that the total amount received by the employee does not exceed the employee's ordinary compensation.
- (d) In all cases of industrial or work-related injury, CITY will provide light or modified duty if available and appropriate in the judgment of the City Council. Individuals approved for available light duty shall remain on light duty until medically released to full duty, or it is determined that the officer's condition is medically determined to be permanent and stationary, the officer is medically unable to continue to perform the light duty, or retired. CITY agrees that if it is determined that an officer is industrially injured, temporarily or permanently, and is unable to perform modified or light duty as a result of an injury arising out of and in the course of his or her duties, such officer shall be entitled to a leave of absence without loss of salary in lieu of temporary disability payments for the period of disability, but not exceeding one year, or until such earlier date as he or she is retired on permanent disability pension pursuant to Labor Code Section 4850. The total payments received by the officer shall not exceed his or her full salary.
- (e) In cases of a non-work related injury or illness, CITY will provide light or modified duty if available and appropriate in the judgment of the City Council.

4. Sick Leave Payoff - Accumulated sick leave shall be paid upon voluntary resignation or retirement at the following rates:

After five (5) years of service	25% of accumulated sick leave
After ten (10) years of service	50% of accumulated sick leave
After fifteen (15) years of service	75% of accumulated sick leave
Voluntary retirement at age 55 or older	75% of accumulated sick leave

The above sick leave shall be paid at the current hourly rate of pay at the time of resignation or retirement less applicable taxes and deductions, if any. This paragraph 4 shall not apply to any employee involuntarily terminated for cause, or to any employee who negotiates a resignation in lieu of termination for cause unless authorized in the discretion of the City Council.

5. Additional Sick Leave - Upon exhaustion of all paid sick leave, an employee who is ill or injured may, upon written request, use accumulated vacation or other earned paid leaves of absence as sick leave.

6. Medical Leave of Absence - An employee who has exhausted all sick leave and other entitlement to paid leave may request and be granted unpaid family leave pursuant to the terms and conditions applicable by law to such leave and eligibility for such leave.

7. Return After Extended Illness or Accident - If, prior to the expiration of the leave provided for in paragraphs 4, 5, and 6 above, if so entitled, an employee who is certified by a licensed medical doctor as able to return to work shall be returned to work in the same or a substantially similar position as that held prior to the leave without loss of benefits or seniority. An employee who is still unable to return to work upon the expiration of the leaves provided in paragraphs 4, 5, or 6, may request additional paid or unpaid leave from the City Council.

8. Inability To Return To Work - After exhaustion of all leaves to which entitled, an employee who is not medically released to work shall be placed on a re-employment list in order of seniority for a period of eighteen (18) calendar months, and shall be notified of any vacancy in the employee's classification which may become vacant during that period and for which the employee is qualified. The employee shall have five (5) calendar days in which to respond from the date of receipt of the notice and to state that he or she accepts or rejects an offer of reinstatement, subject to medical certification of the employee's fitness to return to work. Failure to respond within the above five (5) day period shall cause the employee's name to be removed from the re-employment list.

## **B. VACATION LEAVE**

- (a) Vacation will accrue on a pay period basis during 26 calendar year pay periods per year. An employee commencing employment shall not begin to accrue vacation credit until the first day of a full pay period following the employee's date of initial employment.
- (b) Vacation is earned but may not be taken during the probationary period except for emergencies approved by the Chief of Police.
- (c) Unpaid absences of thirty (30) consecutive days or more are not counted in determining the expiration of the above six (6) month period of continuous service, and vacation credit is not earned during such periods of unpaid absence.
- (d) Vacation may be taken up to the full amount accrued upon the prior approval of the supervisor. Vacation, including fractions of a day, shall be granted only upon prior written request and written approval of the supervisor consistent with the supervisor's determination of the need to fulfill work requirements and to provide continuous CITY services. If CITY cancels the scheduled vacation of an employee, the CITY and employee will mutually reschedule the vacation to occur within a period of three (3) months from the date it was initially scheduled to commence.
- (e) Vacation may be earned and accumulated up to no more than four hundred and eighty (480) hours, at which time employees cease to earn vacation in excess of this amount until such time and to the extent that accumulated vacation falls below this limit.
- (f) Upon completion of the sixth continuous month of employment, employees may request, and the supervisor may grant, vacation leave with pay to the extent earned in accordance with the

following formula up to the four hundred and eighty (480) hour limit:

One through three years of continuous service	Two weeks (80 hours)
Four through ten years of continuous service	Three weeks (120 hours)
Eleven or more years of continuous service	Four weeks (160 hours)

Up to a total of 480 hours.

Upon the prior written approval by the Chief of Police, unit members who have not completed six continuous months of employment may take vacation only in an emergency situation. Emergencies do not include employment elsewhere, to participate in social or recreational events, or to pursue activities which may be completed after regular work hours.

- (g) Resigning or terminating employees with at least six (6) months of continuous service will be paid for earned vacation in a lump sum with the final check issued to the employee.

### **C. FUNERAL LEAVE**

Upon the death of a regular, full time employee of the CITY, other employees may be absent from work on a non overtime basis with the prior approval of the City Manager for a maximum of four (4) hours without loss of pay for the purpose of attending funeral services. However, the Police Department will not be closed for public service, or inadequately staffed to perform its mission as a result of such funeral attendance without the prior approval of the City Council. The City Manager may grant any additional exceptions to the limitations contained in this paragraph on a case-by-case basis. All employees granted such leave are required to attend the funeral for which such leave was requested, and to return to work following such attendance if their work day is not over.

When a public law enforcement officer employed in Imperial County is killed in the line of duty, CITY shall permit two ASSOCIATION representatives a maximum of four (4) hours to attend the funeral without loss of pay. CITY agrees to provide a vehicle for attendance at such funerals within Imperial County, if available and not otherwise required for service or scheduled for repair or maintenance, for the purpose of attending such funeral. Officers in attendance shall be representing the CITY and performing an assigned duty. Where providing the vehicle is not practicable for CITY, the ASSOCIATION shall provide its own transportation at its own expense. The CITY Manager may grant any additional exceptions to the limitations contained in this paragraph on a case-by-case basis.

### **D. BEREAVEMENT LEAVE**

In the event of a death in the employee's immediate family, three work days of bereavement leave with pay may be taken by an employee. Two additional days of absence with pay shall be granted if travel in excess of five hundred (500) miles, one way, is required. "Immediate family" is defined as father, father-in-law, mother, mother-in-law, sister, sister-in-law, brother, brother-in-law, wife, husband, son or daughter, including step sons and daughters of the employee; grandmother, grandfather, son-in-law, daughter-in-law, grandchildren, aunt or uncle, niece or nephew of the employee.

### **E. JURY DUTY LEAVE**

CITY employees summoned for jury duty shall serve without loss of pay and shall mm over any payment for such service, except for mileage reimbursement, to CITY.

### **F. MILITARY LEAVE**

Military leave shall be granted in accordance with the terms required by State and Federal law.

**G. PERSONAL NECESSITY LEAVE**

Eligible employees may use, at their election, accumulated sick leave not to exceed six (6) days per year for personal necessity. Employees are eligible to take such leave only if and to the extent that such leave will not reduce their accumulated sick leave below a total of forty (40) hours. Requests for personal necessity leave must be submitted in writing to the supervisor indicating the nature and specific purpose for such leave. Personal necessity leave may be taken for personal business which cannot be performed during off duty hours, and may not be taken for the purpose of engaging in other employment or to provide service to another person or entity for compensation; to serve any sentence or condition of probation or diversion program for any infraction or violation of criminal law; or for the purpose of illness, injury or vacation, or to engage in any activity for which the employee could have reasonably scheduled for off duty hours.

**H. MATERNITY LEAVE**

Maternity and maternity disability leave will be provided to the extent required by law.

**I. FAMILY LEAVE**

Unpaid family leave shall be provided in accordance with State and Federal laws applicable to such leave and upon the terms and conditions required by such laws.

**ARTICLE XIII - HOLIDAYS**

Employees shall be provided the following holidays:

- |                           |                                              |
|---------------------------|----------------------------------------------|
| 1. Employee's birthday    |                                              |
| 2. Christmas Eve          | December 24                                  |
| 3. Christmas Day          | December 25                                  |
| 4. New Year's Day         | January 1                                    |
| 5. Martin Luther King Day | 3d Monday in January                         |
| 6. Washington's Birthday  | 3d Monday in February                        |
| 7. Memorial Day           | last Monday in May                           |
| 8. Independence Day       | July 4                                       |
| 9. Labor Day              | 1 <sup>st</sup> Monday in September          |
| 10. Columbus Day          | 2 <sup>nd</sup> Monday in October            |
| 11. Thanksgiving Day      | 4 <sup>th</sup> Thursday in November         |
| 12. Veteran's Day*        | Substitute the Friday following Thanksgiving |

Officers required to work on the above holidays will be paid holiday pay, the applicable hourly rate shall be two and one-half times the Officers' then current rate of pay. Officers not required to work will be paid 12 hours of holiday pay at their current rate of pay. In order to be entitled to a holiday or holiday pay, ASSOCIATION members must be in a paid status immediately proceeding and succeeding the holiday. An officer is in a paid status when working or on paid leave. In addition to the above holidays, unit members will be provided one day off from work at the unit member's regular rate of compensation during each year that an MOU is in effect between the parties. This day off must be taken during the period of July 1 through June 30 of the following calendar year on a date mutually agreed upon by the unit member and the Chief of Police. This day off shall not be taken on a holiday for which the employee will be otherwise paid and may not result in overtime compensation being earned or paid. If the floating holiday is not taken within the above period of time, unit members will not be compensated for such day off, and it will not carry over to the following year. *(ratified and approved by City Council on 12/04/2002)*

**ARTICLE XIV - REPLACEMENT/REPAIR OF EMPLOYEE'S PERSONAL PROPERTY**

CITY shall reimburse employees for the lesser of the repair, replacement, or fair market value up to a total cost of \$150.00 per incident for personal property damaged or lost in the performance of duty through no fault of the employee. This limitation shall not apply to uniforms damaged or lost within the scope of employment through no fault of the employee. This Article also does not apply to the ordinary wear and tear of uniforms for which the uniform allowance is intended. If the personal property is insured, CITY shall reimburse the employee for the cost of the deductible up to a maximum of \$150.00 per incident. This Article shall not apply to personally owned vehicles used for the purpose of driving to and from work. It shall apply to personally owned vehicles where the use of such vehicle is directed by the Chief of Police or designee to perform CITY business.

**ARTICLE XV - HEALTH BENEFITS**

CITY shall provide a total, maximum monthly amount of Four Hundred Dollars (\$400.00) per month toward the purchase of each Police Officer's cost of health insurance benefits. Any amount in excess of Four Hundred Dollars (\$400.00) per month shall be paid by participating Officers by payroll deduction from any monies due the employee and is herein consented to without further authorization. *(ratified and approved by City Council on 09/20/2000)*

**ARTICLE XVI - WAGE RATES**

The base pay for each classification represented by the ASSOCIATION is provided in Exhibit A (Salary Plan) to this MOU and incorporated herein by reference, including the bilingual pay of unit members currently receiving such compensation prior to the date of ratification of this MOU by CITY. The positions of Corporal and Lieutenant are approved positions but are not to be filled without formal action by the City Council. Effective upon final ratification of this MOU by the City Council, the date which shall be inserted herein, the bilingual compensation shall apply to newly hired unit members only where CITY determines that a need exists for officers bilingual in Spanish which cannot be adequately filled without the payment of increased compensation for such skill. In addition, CITY will, upon final ratification of this MOU by the City Council, the date of which shall be inserted herein, establish the objective measurement of that degree of Spanish competency which shall entitle new employees to placement at a higher range based on their possession of bilingual skills. The bilingual test shall be given by CITY and a assigned representative of the ASSOCIATION.

**ARTICLE XVII - OUT OF CLASS ASSIGNMENT**

When the City Manager temporarily assigns an employee in writing to perform all of the duties of a higher classification for a period in excess often days, the employee shall be paid the lesser of a 5% increase calculated on the employee's regular rate of hourly compensation or that rate of hourly compensation that the employee would have received if permanently placed in the position for the period of the assignment in excess often days. This provision does not apply to the temporary replacement of another employee for scheduled vacations.

**ARTICLE XVIII - TUITION INCENTIVE**

CITY agrees to pay 100% of tuition and 100% of required books and course materials to officers who complete a college or other accredited educational class or course that is required for a law enforcement certificate or to obtain a degree in public administration, criminal justice, or law enforcement, or any refresher course or courses of instruction in the above subject areas. This Article does not apply to courses or certificates paid for by P.O.S.T. or degrees or graduate degrees which qualify the employee for a profession other than that of a peace officer. CITY will pay such costs upon successful completion of individual classes upon submission of proof of such successful completion to the Chief of Police.

## **ARTICLE XIX - OVERTIME / COMPENSATORY TIME OFF / HOLIDAY PAY**

Overtime shall be paid only for regular, full time employees of CITY if directed to be worked in advance by the Chief of Police and approved by the City Manager. However, overtime in cases of emergency, such as where it is necessary to make or complete an arrest, may be approved by the Chief of Police after the fact. Overtime at the rate of one and one-half (1.5) times the employee's regular hourly rate of pay shall be paid for actual time worked in excess of forty (40) hours per week effective July 1, 1998. Paid leaves, such as sick leave, holidays and vacation are included as time worked for the purpose of computing overtime. Compensatory time off from work not currently accumulated may not be taken or accumulated in the absence of a resolution by the City Council permitting such practice at its discretion. Compensatory time shall not be earned following the final date of ratification of this MOU. Accumulated compensatory time will not be cashed in but must be taken as time off from work. All hours of training directed to be taken outside of normal work hours, when added to hours worked, shall be compensated at the appropriate rate of pay where the total of work and training hours exceed forty (40) hours per week.

## **ARTICLE XX - LONGEVITY PAY**

In addition to the salary rates herein established, employees in full-time positions shall be compensated at the rate of Ten Dollars (\$10.00) per month for each five (5) years continuous service to the CITY up to a total of twenty (20) years.

## **ARTICLE XXI - COURT PAY**

When an employee is required, as a result of employment responsibilities, to make court appearances during otherwise off duty hours, said employee shall be compensated at the rate of four (4) hours at straight time pay for each morning and for each afternoon court session said employee is required to attend. When an employee is required, pursuant to subpoena to give a deposition as a result of employment responsibilities during otherwise off duty hours, said employee shall be compensated at the rate of four (4) hours at straight time pay for each morning and for each afternoon deposition session said employee is required to attend. Any compensation received in addition to mileage and the compensation provided for in this Article shall be turned over to CITY.

## **ARTICLE XXII - COURT STAND-BY PAY**

If an employee subpoenaed for a case arising from employment for a court appearance during his/her off-duty hours and the court places said employee on "on-call" status, the employee shall receive two (2) hours of straight time pay for each morning and/or afternoon session said employee is required to be in "on-call" status. If an officer is requested by the Chief of Police or his or her designee to be "on-call" during his/her off duty hours, CITY agrees to pay two straight time hours of pay for placement in that status during all or a part of the period of time between 7:00 a.m. and 7:00 p.m. and a like amount for part or all of the time between 7:00 p.m. and 7:00 a.m. If an Officer in on-call status is actually called to work, he/she shall be paid at the rate of one and one-half times in accordance with Article XXI for time actually worked. *(ratified and approved by City Council on 12/04/2002)*

## **ARTICLE XXIII - SHIFT DIFFERENTIAL AND FIELD TRAINING OFFICER PAY**

All employees who work the third shift shall receive a shift differential pay of Fifteen Dollars (\$15.00) per pay period. All employees who work the first shift shall receive shift differential pay of Twenty-Five Dollars (\$25.00) per pay period. Employees who work the day shift, currently 7:00 A.M. TO 7:00 P.M., shall not receive shift differential pay. An employee while serving as the officially designated field training officer shall receive a 5% increase in the employee's salary schedule compensation for the term serving as a field training officer. Only one training officer will be assigned at one time for each newly employed, regular employee.

## **ARTICLE XXIV - RETIREMENT**

The CITY agrees to keep in effect the retirement plan administered by the Public Employees' Retirement System as it currently exists. The ASSOCIATION (public safety) retirement plan shall be 2% at 50 effective July 1, 2003. The CITY shall contribute the ASSOCIATION member's portion of PERS contribution from 1% to 7% effective July 1, 2001. *(ratified and approved by City Council on 11/21/2001; ratified and approved by City Council on 12/04/2002)*

#### **ARTICLE XXV - PROBATIONARY PERIOD**

Employees employed as peace officers and represented by the ASSOCIATION shall serve a probationary period of twelve (12) consecutive months upon employment and will also serve a new probationary period of twelve (12) consecutive months after transfer to a different position or promotion to a different position. Any employee may be terminated during the probationary period at any time prior to completion of such period for any reason at the discretion of the CITY. If the employee has transferred or been promoted from a position in which the employee successfully served a probationary period, the employee will be returned to such position or substantially similar position. If the employee did not complete the probationary period in the prior position, the employee will be returned to such position or substantially similar position only if position for which the employee is qualified is currently vacant.

A probationary period shall be extended for the duration of any pay period during which the probationary employee is not in a paid status, is on leave or absent in excess of five (5) days during any such pay period, or for any period in which employee is suspended from duty with or without pay.

#### **ARTICLE XXVI - PERSONNEL FILES**

The official personnel file of each employee shall be maintained at the CITY's central administrative office. Personnel files shall be confidential, and access to personnel files shall be limited to any individual with the written, signed and recently dated consent of the employee, and employees, representatives or agents of CITY with a need to know and authorization by CITY. In no event will documents in a personnel file or a personnel file be taken from the physical custody of CITY.

Materials in the official personnel file of each employee which may serve as a basis for affecting the status of the employee's employment, are to be made available for the inspection of the person involved, and every ASSOCIATION member shall have the right to inspect such materials upon request, provided that such request is made at a time when such person is not actually required to render services to CITY. Upon approval by the Chief of Police, employees may use vacation time or compensatory time to review their personnel files. Medical information regarding worker's compensation or other occupationally related injuries or illnesses shall be kept in a file separate from that of the personnel file. Other Information of a medical nature will be kept in a separate portion of the personnel file or in a separate file.

Information of an adverse nature shall not be entered in the personnel file of an employee until the employee has been provided with the original document, and has read, signed and dated a copy of the document containing the adverse comment indicating that the employee is aware of such comment. Should the employee refuse to sign the document, that fact should be noted on the document, and signed or initialed by the employer.

An employee shall have thirty (30) days within which to file a written response to any adverse comment entered in his or her personnel file. Such written comment shall be attached to, and shall accompany the adverse comment.

#### **ARTICLE XXVII - PERFORMANCE EVALUATION**

See Attachment A - "Salary Administration Plan / Salary Plan - POA Officers". (Introduction, Guidelines, Employee Performance Appraisal & Development, Levels of Performance - Definitions and Salary Plan). (*ratified and approved by City Council on 11/21/2001*)

## **ARTICLE XXVII - PUNITIVE ACTION**

Peace Officers shall be provided with the opportunity for administrative appeal for any punitive action taken or when a promotion is denied on grounds other than merit. "Punitive action" is defined as any personnel action which may lead to dismissal, demotion, suspension, reduction in salary, a written reprimand, or if a transfer is believed to be for purposes of punishment. The term "punitive action" shall be construed to mean any personnel action defined as punitive action pursuant to Section 3303 of the Government Code as further defined by the controlling state judicial precedent. "Punitive action" does not include an unfavorable performance evaluation including the denial of a merit increase due to such unfavorable evaluation, a transfer to compensate for a deficiency in performance or some other non-punitive reason. Termination of a probationary employee for poor performance or for acts other than misconduct is not defined as "punitive action," and any such officer is not entitled to a hearing or any appeal procedure.

### **ADMINISTRATIVE APPEAL OF PUNITIVE ACTION**

Where a peace officer is subjected by the Chief of Police to punitive action as defined in this Article XXVI, the employee may, on written request within five (5) calendar days of the date of the alleged punitive action, be granted a meeting with the City Manager. Such request shall contain the nature of the punitive action being appealed and the peace officer's reason(s) for appealing the action or decision.

The City Manager shall meet with the employee to discuss the appeal. The City Manager shall respond in writing as to the City Manager's decision regarding the appeal within five (5) calendar days following the meeting. An extension of five (5) calendar days may be taken for absence of the City Manager, where necessary to ascertain, clarify or verify information regarding the appeal, or for other sufficient reason. The employee is entitled to representation at such meeting if the employee so desires and arranges for the presence of such representative prior to the meeting.

If not satisfied with the decision of the City Manager or if the City Manager imposed the punitive action, the employee may, within five (5) calendar days, request to meet with the Personnel Committee of the City Council for the purpose of appealing the decision or action taken. The Personnel Committee will schedule a meeting with the employee to hear the employee's position. The employee is entitled to representation at the meeting, to present any relevant evidence, oral or written statement, or to ask questions of any witness present or requested to be present by any party who the Personnel Committee finds to be relevant to the proceedings. A record shall be made of the meeting. The meeting shall be conducted in an orderly manner, and all participants shall conduct themselves in a professional manner. Unduly disruptive, discourteous and offensive behavior may cause the Personnel Committee to exclude the offending individuals from the meeting, and/or to recess the meeting temporarily or to a later time and date.

Following the conclusion of the meeting, the Personnel Committee shall issue a written decision indicating the reasons for their decision and a summary of the facts upon which the decision is based. The decision shall be served on the employee within five (5) calendar days following the meeting.

The employee may then, if not satisfied with the decision of the Personnel Committee, appeal in writing to the City Council within five (5) calendar days. The City Council shall consider the appeal and accept, reject, or modify the decision of the Personnel Committee. The City Council's decision shall be final. Punitive action as defined in this Article shall be excluded from the provisions of Article XXVII,

Discipline, and Article XXVIII, Grievance Procedure. If a punitive action as defined herein additionally also constitutes discipline as defined in Article XXVII below or a grievance as defined in Article XXVIII and is pursued under the grievance procedure, that procedure shall constitute the administrative appeal in lieu of the procedure provided in this Article.

#### **ARTICLE XXIX - DISCIPLINE**

This Article applies only to permanent employees. Discipline is defined as any suspension without pay, involuntary demotion, or termination of employment of a permanent employee. Discipline does not include and this Article shall not apply to punitive action as defined in Article XXVI herein, performance evaluations, written or oral warnings, admonitions, reprimands, counseling memorandums, directives or similar actions.

Discipline shall be taken only for cause as defined below.

1. Fraud or misrepresentation in securing appointment or promotion;
2. Incompetent or unsatisfactory performance of duty;
3. Inefficient, untimely, careless or negligent performance of duty;
4. Failure to possess the minimum qualifications for the position, such as loss of driver's license;
5. Dishonesty;
6. Insubordination;
7. Unauthorized absence from duty or place of assigned duty;
8. Discourteous or disrespectful behavior toward superiors or other employees;
9. Discourteous or disrespectful behavior toward members of the public;
10. Insubordination;
11. Behavior on or off duty which is unprofessional and tends to bring discredit on the Department or CITY;
12. Conviction of any crime which relates to the qualifications, certification, functions, or duties required of the employee in the assigned position;
13. Loss, theft, conversion, damage, destruction or other misuse of CITY property or property entrusted to its use;
14. Misuse of authority or position;
15. Failure to fully comply with CITY policies, ordinances, rules, regulations, and the provisions of any applicable MOU, or Department rules, regulations or orders.
16. Failure to comply with safety rules, standards and regulations or behavior which endangers the employee, other employees or members of the public;
17. Misuse of or abuse of sick leave or other leave benefits.
18. Use, possession, or being under the influence of alcohol or intoxicating beverages or controlled substances without a prescription on CITY property, during the work day, or while performing duty for the CITY;
19. Failure to report accidents, injuries and known safety hazards or violations;
20. Engaging in sexual harassment, or other discriminatory unlawful conduct;
21. Reporting to work in an impaired condition due to the use of alcoholic beverages or other intoxicants or controlled substances;
22. Other unprofessional conduct which reflects adversely on CITY or the Police Department.

CITY may place an employee on paid administrative leave immediately subject to the fights set forth in the following paragraph.

In all cases, employees shall be provided written notice of any proposed disciplinary action from

the City Manager or Department Head, and except in cases of emergency, such notice shall be provided at least five (5) working days prior to the effective date of the proposed action. A working day is defined as a day when City Hall is open for business. The notice shall contain a description of the action to be taken and its effective date; a statement of the reasons for such discipline including the causes therefore; notice of the employee's right to meet with the City Manager prior to the end of the five (5) day period; a copy of this Article; and a form, the signing and filing of which with the City Manager shall constitute a denial of all charges and demand for hearing. Such form must be submitted within five (5) working days of the date of the notice of proposed disciplinary action. The discipline shall be effective, subject to the right of appeal at Step 4 of the Grievance Procedure, at the end of the above five (5) day period in which the meeting may be held unless the employee is otherwise notified by the City Manager.

### **ARTICLE XXX - GRIEVANCE PROCEDURE**

A grievance is defined as a claim by an employee or ASSOCIATION that CITY has misinterpreted, misapplied, or violated any specific term or provision of this MOU, or any CITY policy, rule, or Ordinance. An appeal of any discipline imposed as defined in Article XXVII above shall be submitted at Step 4 of this Article. Specifically excluded from this grievance procedure are the content of performance evaluations, punitive actions defined in Article XXVI above, reprimands, warnings, admonitions or other actions excluded from the Discipline Article, or the content of documents placed in personnel files.

A Grievant is defined as the ASSOCIATION and/or an employee. A Grievant may be accompanied at any step of the grievance procedure by a representative of the Grievant's choice.

#### Step 1

Within five (5) working days of the incident which gave rise to the grievance, a Grievant may present the grievance orally to the Chief of Police. If not resolved, the Grievant may proceed to Step 2.

#### Step 2

The Grievant must submit the grievance in writing to the Chief of Police within five (5) working days of the informal meeting at Step 1. The Chief shall respond in writing granting or denying the grievance in whole or in part within five (5) working days of receipt of the written grievance.

#### Step 3

If the Grievant is not satisfied with the response at Step 2, or there is no timely response at Step 2, the Grievant may submit the grievance to the City Manager within five (5) days of the earlier of the date the Chief did respond or should have responded at Step 2. Within five (5) days of receipt of the grievance, the City Manager shall meet with the Grievant and within five (5) days of such meeting respond in writing with a decision granting or denying the grievance in whole or in part. The City Manager's decision shall be final and binding on the Grievant and the City except where the grieved action is suspension without pay, demotion, or termination of employment. In the case of suspension without pay for five days or less, the Grievant may request a hearing before the Personnel Committee by executing and filing with the City Manager the form provided with the notice of proposed discipline.

At the hearing, the Grievant shall be granted a reasonable opportunity to present any evidence, witnesses or documents deemed relevant, to request the presence of any reasonably available witnesses, to cross examine any witnesses testifying against the Grievant, and to be accompanied by a representative of the Grievant's choice. The burden of proof shall be on the Department

Head or CITY. Hearings shall be conducted in an orderly manner and all participants shall conduct themselves in a professional manner. Unduly disruptive, discourteous and offensive behavior may cause the Personnel Committee to exclude the offending individual from the hearing, or to recess the hearing to a later time or date. A record will be made of the hearing. Following the conclusion of the hearing, the Personnel Committee shall issue a written decision indicating the reasons for that decision and a summary of the facts upon which the decision is based. The decision shall be served on the employee within five (5) calendar days of the meeting. The employee may then, if not satisfied with the decision of the Personnel Committee, appeal in writing to the City Council within five (5) calendar days. The City Council shall consider the appeal and accept, reject, or modify the decision of the Personnel Committee.

**Step 4** - Suspension Without Pay, Demotion or Termination of employment Only.

In cases of suspension without pay, demotion or termination of employment, a hearing requested following the City Manager's decision at step 3 to appeal the decision of the City Manager, shall be before an arbitrator provided by the American Arbitration Association and selected pursuant to those rules. The CITY and the employee shall equally bear the costs of the Arbitrator, a court reporter and production of the record of the hearing. All other costs shall be borne by the party incurring the expense.

The CITY shall request a list of Arbitrators from the American Arbitration Association. All lists from the AAA shall contain only names of neutrals who are members of the National Academy of Arbitrators and who have issued at least five arbitration decisions since 1996 involving the discipline of City or County employees.

The arbitrator's decision will be in writing and will set forth the findings of fact, reasoning and conclusions of the arbitrator. The arbitrator shall be subject to the following limitations.

1. The arbitrator shall have no power to add to, alter, subtract from, disregard, change or modify any terms of this MOU, but shall determine only whether just cause exists for the discipline and if the remedy is appropriate.
2. The award of the arbitrator shall be based solely upon the evidence and arguments presented to him/her in the presence of the parties, and upon any post-hearing briefs of the parties.
3. Should the arbitrator determine that the employee should be reinstated, or that a suspension was without just cause, the employee shall be awarded back pay upon reinstatement or reimbursed for the days of suspension without, pay served.

**ARTICLE XXXI - WORK SCHEDULE**

Effective upon the first day of the first pay period immediately following final ratification of this MOU by CITY, unit members shall work 3 twelve hour days plus one eight hour day per a two week schedule as assigned by the Chief of Police.

**ARTICLE XXXII - TERM OF AGREEMENT**

This MOU shall be effective upon final adoption by resolution of the City Council and shall remain in full force and effect until June 30, 2004. Upon written request by either party and submission of an initial proposal prior to the expiration date of this MOU, each party may request to meet and confer regarding a new MOU. Failure to timely request and submit a proposal shall cause the MOU to be

extended for one additional year upon the same terms and conditions. Alternatively, the parties may reopen negotiations on any matter covered by this MOU or any matter within the scope of representation upon mutual consent of the parties.

Except in cases of emergency, CITY shall give reasonable written notice to ASSOCIATION of any ordinance, rule, resolution, regulation or established practice directly relating to matters within the scope of representation as defined by the law which is proposed to be adopted by CITY and shall give ASSOCIATION the opportunity to meet with CITY. In cases of emergency, CITY shall give ASSOCIATION such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

**ARTICLE XXXIII - SEVERABILITY**

If any provision of this MOU is found by a court of competent jurisdiction to be contrary to law, subject to any appeal, such decision shall not affect the validity of the remaining provisions of this MOU which shall continue in full force and effect. In the event of a final ruling by a court of competent jurisdiction invalidating all or any part of this MOU, CITY and ASSOCIATION agree to meet and confer upon request of either party regarding such decision within a reasonable period of time after said ruling.

DATE:

FOR THE POLICE OFFICERS ASSOCIATION

\_\_\_\_\_

\_\_\_\_\_

DATE:

FOR THE CITY OF IMPERIAL

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Ratified by the City Council 08/04/1998