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ARTICLE 1: PREAMBLE

This Memorandum of Understanding is prepared between representatives of the City of Manhattan Beach and the Manhattan Beach Police Officers' Association in accordance with Resolution No. 4506, the Employer-Employee Organization Relations Resolution. Full consideration has been given to salaries, employee benefits and other terms and conditions of employment. Pursuant to the provisions of Section 3505.1 of the Government Code of the State of California and Resolution No. 4506 of said City said parties make this Memorandum of Understanding effective the pay period including August 6, 2006.

ARTICLE 2: IMPLEMENTATION

This Memorandum of Understanding constitutes a mutual recommendation by the parties, to the City Council, that one or more resolutions be adopted accepting this Memorandum and effecting the changes enumerated herein relative to wages, fringe benefits, and other terms and conditions of employment for the employees represented by the Manhattan Beach Police Officers' Association. It is expressly intended that the duties, responsibilities, and functions of the City in the operation of its business shall in no manner be impaired, subordinated, or negated by any provisions of this agreement.

ARTICLE 3: RECOGNITION

Pursuant to the provisions of the Employee/Employer Relations Resolution of the City of Manhattan Beach and applicable State laws, the Manhattan Beach Police Officers' Association is recognized as the exclusive representative of all employees in the following classifications for the term of this agreement: Police Officer and Police Sergeant.

ARTICLE 4: REPEALS

The provisions of this Memorandum of Understanding together with those wages, hours and other terms and conditions of employment in existence prior to July 1977, which are subject to negotiations pursuant to Section 3504 of the Government Code which are not changed by this Memorandum, shall constitute the wages, hours, and terms and conditions of employment for the employees during the term of this Memorandum of Understanding.

ARTICLE 5: EFFECTIVE AND TERMINATION DATES

This Memorandum of Understanding shall become effective the pay period including August 6, 2006 and will continue in effect through August 5, 2011 with respect to those represented members of the Manhattan Beach Police Officers' Association. During the period covered by this Memorandum of Understanding any items concerning wages, and fringe benefits provided by this Memorandum of Understanding shall remain in effect unless the parties agree to revise the same by a written modification to this Memorandum of Understanding, subject to the limitations expressed in Section 3504 of the Government Code.

ARTICLE 6: CONSTITUTIONALITY

If any section, subsection, subdivision, sentence, clause, or phrase of this Memorandum of Understanding is for any reason held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portion of this Memorandum of Understanding.

ARTICLE 7: MANAGEMENT'S RIGHTS RESERVED

The scope of representation does not include consideration by the City of changes in the merits, necessity or organization of any service activities provided by law or executive order and accordingly, the following determinations shall not be subject to the meet and confer process:

- (a) Issues of public policy;
- (b) The merits, necessity, or organization of any department, service or activity provided by the City pursuant to law or ordinance;
- (c) Matters which relate to the management of the City or the direction of its work force, including the right to direct employees, to hire, promote, transfer, assign, or retain employees, or suspend, demote, discharge, or take other proper disciplinary action against employees, maintain the efficiency of the operation of the City Government, and take any actions necessary to meet conditions of an emergency nature, subject to the rules and regulations of the City. The City Manager need not meet with the representatives of any recognized employee organization to consider the personal grievance of an individual employee or group of employees until the procedure for the resolution of grievances provided for in this memorandum of understanding has been completed.

ARTICLE 8: GENDER

Whenever the masculine or feminine form of any word is used in this MOU, it also includes the other gender unless the context clearly indicates a contrary intent.

ARTICLE 9: NO DISCRIMINATION

It is agreed that neither the Manhattan Beach Police Officers' Association nor the City shall discriminate against any employee because of race, national origin, age, sex, sexual orientation, handicap, union membership, or any other applicable State or Federally mandated class.

ARTICLE 10: EDUCATIONAL INCENTIVE

The educational incentive program for all sworn employees will be as follows:

Employees will be eligible for education incentives once they complete probation and meet the requirements below. Total years as a sworn police officer includes service with another agency. The educational incentive pay shall be included in the bi-weekly paycheck based on prorated amounts. A police sergeant eligible for the education incentive shall be paid the appropriate percentage based on his actual base salary, not at the E step officer.

Effective the pay period including August 6, 2006, employees covered under this MOU shall be entitled to receive the full value of the education incentive pay while on temporary disability status, as a result of work-related injury or illness, so long as they are on active payroll status.

5% Education Incentive Criteria

- (a) An employee with an Associate degree and Intermediate POST Certificate plus 4 years as a sworn police officer shall be paid 5% of the E step officer base salary.
- (b) An employee with a Bachelor's degree and Intermediate POST Certificate plus 2 years of as a sworn police officer shall be paid 5% of the E step officer base salary.

- (c) Employees who do not have an Associate degree or a Bachelor's degree but who have a POST Intermediate Certificate shall receive the 5% incentive.

10% Education Incentive Criteria

- (a) An employee with a Bachelor's degree and Advanced POST Certificate plus 6 years as a sworn police officer shall be paid 5% of the E step officer base salary for the Bachelor's degree and 5% of the E step officer base salary for the Advanced Certificate (10% total).
- (b) An employee with a Master's degree and Advanced POST Certificate plus 4 years as a sworn police officer shall be paid 5% of the E step officer base salary for the Master's degree and 5% of the E step officer base salary for the Advanced Certificate (10% total).
- (c) Employees not having a Bachelor's degree or a Masters' degree but who have a POST Advanced Certificate shall receive the 10% incentive.

15% Education Incentive Criteria

An employee who has a Master's degree and Advanced POST Certificate plus 10 years as a sworn police officer - OR- an employee who has an Advanced POST Certificate plus 15 years as a sworn police officer shall be paid 15% of the E step officer base salary. Police Sergeants eligible for this incentive shall be paid at 15% of their base rate. The maximum benefit for the Education Incentive is 15%.

ARTICLE 11: TUITION REIMBURSEMENT PROGRAM

All members covered under this agreement shall be eligible to participate in the City's tuition reimbursement program as outlined in the applicable Personnel Instruction #26. The current annual reimbursement amount for tuition and books is \$2,500.

ARTICLE 12: HOLIDAYS

(a) Sworn, Non-probationary Employees

Sworn, non-probationary employees are entitled to 110 hours off in lieu of paid holidays each year. Holiday leave shall vest at the rate of 4.231 hours each bi-weekly pay period, however, each employee's holiday leave bank shall be advanced the entire year's accumulation (110 hours) the first full pay period after July 1 of each year. Effective the final payroll period in each fiscal year, any unused holiday hours will be cashed out or rolled over into the Manhattan Beach Police Officer's Association Medical Trust Fund. It is up to the employee to notify and authorize payroll in writing by June 15th of each year to deposit holiday cash out into the Manhattan Beach Police Officer's Association Medical Trust Fund.

Employees who leave City service shall be paid for their unused, vested holiday leave upon separation. Any advanced holiday leave that is used but not vested, shall be deducted from an employee's final paycheck. In the event an employee's final paycheck is insufficient to cover the advanced leave, the City reserves the right to collect any monies due from the departing employee.

(b) Initial Hire Probationary Employees

Sworn, initial-hire probationary employees are entitled to 55 hours off in lieu of paid holidays each 6 months. Holiday leave shall vest at the rate of 4.231 hours each bi-weekly pay period, however, each employee's holiday bank shall be advanced the 55 hours each July 1 and January 1 or pro-rata portion if their service as an initial hire probationary employee begins after these dates.

Employees who leave City service shall be paid for their unused, vested holiday leave upon separation. Any advanced holiday leave that is used but not vested, shall be deducted from an employee's final paycheck. In the event an employee's final paycheck is insufficient to cover the advanced leave, the City reserves the right to collect any monies due from the departing employee.

Employee may cash out up to 30 hours of holiday time during the first pay period in December.

ARTICLE 13: SICK LEAVE PAYOFF FOR INDUSTRIAL DISABILITY RETIREMENT

As permitted by the Government Code, the City shall not pay for accumulated sick leave for industrial disability retirements.

ARTICLE 14: SPECIAL PAYS

Specialty Pay assignments and compensation shall be as follows:

- (a) Traffic Assignment Pay: Any sworn employee assigned to the traffic bureau will receive 5% of the employee's actual base salary step for that assignment. Motorcycle service pay: Any sworn employee who is assigned to motorcycle service, shall, during the period of such assignment, receive in lieu of the 5% above, compensation for the extra hazards faced in performing this assignment and for off-duty cleaning of the motorcycle at the rate of 10% of the employee's actual base salary step. In addition, the City will compensate the employee for uniform maintenance as outlined under Article 19 of this MOU. Employees assigned to motor duty may, at their option, use their City assigned motorcycle to travel to and from work. Officers who use their motorcycle to travel to and from work must live within 50 miles of the City. For purposes of FLSA, such travel time will not be compensated in any manner whatsoever, even when the employee is required to leave the radio on and monitor the radio.
- (b) Detective service pay: Any sworn employee of the Police Department, when assigned to the Detective Bureau or the Narcotics Team, shall during the period of such assignment receive in addition to his regular monthly pay, compensation at the rate of 5% of the employee's actual base salary step per month.
- (c) Dog Handler Pay: Employees who are assigned as dog handlers shall, during the period of such assignment, receive an amount of 7.5% on top of base pay which will be considered full compensation for the special skills associated with the position and for all time spent on and off duty to care for the following, but not limited to, feeding and cleaning up after the animal, attending to the animal's physical health, welfare and grooming, training, medicating, veterinary care, daily and routine maintenance to the canine vehicle and field equipment. The parties acknowledge that the Fair Labor Standards Act entitles the parties to agree to a reasonable level of compensation for the performance of off duty canine duties. The compensation derived at in this agreement was determined after an actual inquiry of the Canine Officer in July 2006. It is the intent of the parties through the provisions of this article to fully comply with the requirements of the Fair Labor Standards Act. Both parties believe that this agreement complies with the requirements of the Fair Labor Standards Act. In addition, during that time, the City will compensate the officer for uniform maintenance as outlined under Article 19 of this MOU. Employees assigned as dog handlers shall be provided a City vehicle for this purpose, but such travel time to and from work shall not be compensated. Officers assigned to canine must live within 30 miles of the City.
- (d) Training Officer Pay: The City agrees to pay a maximum of six (6) police officers, who are designated as Field Training Officers, 5% of the employee's actual base salary per month.
- (e) Administrative Pay: Those employees assigned to Court Liaison Officer, School Resources Officer, Community Relations/Crime Prevention Officer, Administrative Sergeant, Administrative Officer and Traffic Sergeant shall during the period of such assignment receive in addition to their regular monthly compensation,

compensation at the rate of 5% of the employee's actual base salary step per month. A traffic sergeant assigned to motorcycle service shall receive a maximum of 10% special pay as outlined in section (a) of this Article.

- (f) Crime Scene Investigator (CSI) Pay: The City agrees to pay a maximum of six (6) police officers, who are designated as CSI's, 3% of the employee's actual base salary per month.
- (g) Defensive Tactics Instructor Pay: The City agrees to pay a maximum of eight (8) police officers, who are designated as Defensive Tactics Instructors, \$180 per month.
- (h) Firearms Instructor Pay: The City agrees to pay a maximum of six (6) police officers, who are designated as Firearm Instructors, \$180 per month.
- (i) Tenure of assignment in specialty pay positions referenced above is governed by Department Policy.
- (j) Bilingual Pay: As soon as administratively possible, but no later than January 31, 2007, a Bilingual Pay Program will be implemented. Employees will receive bilingual pay for verbal skills in Spanish. Employees receiving bilingual pay are expected to use this skill, including assisting other employees and members of the public, in the course and scope of their duties, as needed.

In order to receive bilingual pay, employees must be certified as verbally bilingual in Spanish. Employees may make application for bilingual pay certification through the Human Resources Department. The certification process shall consist of such tests as determined by the Human Resources Department. Re-certification will be required every two (2) years. Should an employee fail the qualifying test, the employee may retake the test; however, an employee may only take the qualifying test two (2) times in a six (6) month period.

Employees certified as bilingual in Spanish will be compensated \$100 per month.

- (k) Medical Restrictions: An employee, medically precluded from performing his designated special pay assignment(s) due to an industrial injury/illness shall be ineligible for special pay bonuses after two full pay periods which he is unable to perform said assignment(s). Nothing in this section is intended to waive the Association's or individual's right to challenge the legality of this section.

ARTICLE 15: JURY DUTY

It is the City's policy to provide up to 2 weeks (80 hours) paid leave time to full-time employees summoned for jury duty in accordance with the City's Personnel Instruction #13. Officers summoned to appear in court for jury duty purposes shall notify their supervisor when so summoned and will be required to provide court documentation of such appearance.

ARTICLE 16: SALARIES

- (a) Prior to the dates identified in paragraph b below, the City shall conduct a survey of the top-step base pay for Police Officers and Police Sergeants in the following cities: Beverly Hills, Culver City, El Segundo, Hawthorne, Hermosa Beach, Fountain Valley, Newport Beach, Redondo Beach, Santa Monica and Torrance.
- (b) Employees in the classification of Police Officer and Police Sergeant shall receive an across-the-board base salary increase to bring each classification's top-step base salary to the average of the 3 highest surveyed cities, with the noted minimum and maximum increases below:

Effective the pay period including January 1, 2007, the minimum salary increase possible is 0% and the maximum increase possible is 5% for Police Officers and 6% for Sergeants

Effective the pay period including January 1, 2008, the minimum increase possible is 0% and the maximum increase possible is 4%

Effective the pay period including January 1, 2009, the minimum increase possible is 0% and the maximum increase possible is 4.5%

Effective the pay period including January 1, 2010, the minimum increase possible is 0% and the maximum increase possible is 4.25%

Effective the pay period including January 1, 2011, the minimum increase possible is 0% and the maximum increase possible is 5%

ARTICLE 17: HEALTH CARE AND RETIREE MEDICAL CONTRIBUTION

1. Medical

- (a) Effective January 1, 1990, the City will contract with the California Public Employees' Retirement System (CalPERS) for health care. The City will contribute the minimum employer contribution as provided under Government Code section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA).
- (b) Effective the first payroll period in December 2006 and each December thereafter, the City agrees to provide a contribution to cover the PORAC Plan at the level the employee is enrolled, either single, employee with one dependent, or employee with two or more dependents. To the extent out-of-pocket costs are incurred, the City will process the costs through premium conversion, thereby reducing the employee's taxable income.
- (c) There shall be no cash back to employees from health care allowances, however, employees are eligible to allocate any portion of their allowance to the City's Section 125 Healthcare or Childcare Flexible Benefits Plan. Employees waiving medical insurance will receive the employee only allowance regardless of the number of dependents.
- (d) The City shall pay any surcharge assessed by PERS on the health care premiums up to 3.3%. Any future surcharges shall be paid by the employee.
- (e) Once an employee exhausts 4850 pay and becomes eligible for Temporary Disability, the employee must supplement TD payments with at least 1 hour of paid leave per bi-weekly pay period to be eligible for health insurance contributions from the City.

2. Dental

- (a) The City will continue to provide coverage at the level the employee is enrolled, either single, employee with one dependent, or employee with two or more dependents. To the extent out-of-pocket costs are incurred, the City will process the costs through premium conversion, thereby reducing the employee's taxable income.

3. Vision

- (a) The City shall provide all represented employees and dependents the same vision care plan that is provided to Management/Confidential and miscellaneous employees.

4. Retiree Medical Contribution

- (a) Effective January 1, 1990, the City shall pay \$1.00 per month for retirees in the Police Officer's Association unit electing to participate in the CalPERS medical insurance program. The \$1.00 per month amount will increase each year by 5% of the minimum employer contribution as provided under Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA). The City shall pay any mandated surcharge increases required by CalPERS.
- (b) Any employee who retires on or after December 1, 2004, and who has a minimum of twenty (20) years of service with the City of Manhattan Beach, shall receive a contribution of \$300 per month.

Effective August 6, 2006, any employee who retires from the City of Manhattan Beach on or after August 6, 2006, and who has a minimum of twenty (20) total years of service as sworn law enforcement in U.S. public agency (ies), with a minimum of ten (10) consecutive years at the City of Manhattan Beach in a sworn police status shall receive a contribution of \$300 per month. Effective the pay period including December 31, 2007, any employee who retires on or after December 31, 2007 from the City of Manhattan Beach and meets the qualifications, shall receive a contribution of \$400 per month.

Said contribution will be used toward health insurance costs, unless and until the following occur:

- 1) The retiree reaches 65 years of age; or
- 2) The retiree becomes eligible for Medicare; or
- 3) The retiree dies.

ARTICLE 18: POLICE OFFICERS' ASSOCIATION HEALTH TRUST FUND

The parties agree to discuss the feasibility of city administration of the Police Officer's Association Medical Trust Fund. No action will be taken beyond discussions without full agreement of both parties.

ARTICLE 19: UNIFORM ALLOWANCE

Each employee shall receive a uniform allowance of \$700 per year, which shall be paid in bi-weekly installments. Motor Officers shall receive an additional \$15 per year (total \$715) and Canine Officers shall receive an additional \$180 per year (total \$880).

ARTICLE 20: SICK LEAVE

- (a) Accumulation: Each employee covered by this M.O.U. shall earn sick leave at the rate of 7.67 hours per month for a total of 92 hours per year. Sick leave is permitted to be used once accrued as provided for in the rules and regulations.
- (b) Three days continuous sick leave usage requires a doctor's slip to return to work.
- (c) The Sick Leave Bank Program, which establishes a Sick Leave Donation Policy for Police Sworn personnel is governed by Administrative Instruction 96.

Catastrophic Leave Bank: The Association and City agree to discuss alternatives to existing Sick Leave Bank Program during the term of this contract. No action will be taken beyond discussions without full agreement of both parties.

- (d) An employee shall be able to use his or her accumulated sick leave to supplement any temporary disability pay received by the employee as outlined in the Personnel Rules XI Section 4.
- (e) Conversion: The employee annual sick leave conversion program is as follows:
 - 1) 70-92 unused hours of sick leave earned in the fiscal year, the employee receives one-half of the unused sick leave credited to vacation and the remainder carried over as sick leave.
 - 2) 46-69 unused hours of sick leave earned in the fiscal year, the employee receives one-quarter of the unused sick leave credited to vacation and the remainder carried over as sick leave.
 - 3) 45 hours or less of unused sick leave earned in the fiscal year, the employee receives no conversion to vacation and the entire unused sick leave is carried over as sick leave.
 - 4) If an employee is at or near their vacation accrual maximum, sick leave will be converted up to the amount of his or her vacation limit only.
- (f) The City will allow employees to convert up to 30 hours of sick leave conversion time to cash which will be deposited in the employee's name in the Manhattan Beach Police Officers' Association Health Trust Fund. This cannot be cashed out as pay and it is at the option of the employee. The City will allow employees to have direct deposit into the Trust Fund. The City will be given a hold harmless agreement for operation of the Trust.
- (g) Police sworn employees shall have the following options regarding their sick leave conversion, if eligible:
 - 1) Convert applicable sick leave credit to vacation hours and use the time.
 - 2) Allow up to 30 hours of sick leave conversion time to be directly deposited into the Association's Trust Fund.
- (h) At retirement, an employee may apply any unused accrued sick leave as additional service credit in accordance with applicable CalPERS regulations, as mandated in Government Code Section 20840(e).

ARTICLE 21: VACATION

Employees begin to earn vacation upon completion of six (6) months employment. At that time, the employee receives 40 hours vacation and thereafter earns the indicated monthly rate. If an employee terminates employment with the City and then returns, vacation shall be earned at the same rate as if he were a new employee. Vacation shall be earned for continuous periods of employment to the following maximum vacation accumulation amounts:

<u>Tenure</u>		<u>Vac Days/Yr</u>	<u>Vac Hrs/Mo</u>	<u>Vac Accum Cap</u>
Greater than:	Less than or equal to:			
6 months	5 full years	10	6.667	240 hours
5 full years	10 full years	13	8.667	308 hours
10 full years	16 full years	15	10.000	340 hours
16 full years	17 full years	16	10.667	376 hours
17 full years	18 full years	17	11.333	392 hours
18 full years	19 full years	18	12.000	408 hours
19 full years	20 full years	19	12.667	424 hours
20 full years		20	13.333	440 hours

If an employee reaches the vacation accrual maximum, that employee will not accumulate further vacation until

such time that the employee's accrual rate returns to below the maximum amount. Under special circumstances, and with City Manager approval, an employee may be allowed to accrue over the maximum on a temporary basis.

ARTICLE 22: PROBATION

Probation for original appointments of sworn members of the Police Department shall be not less than 18 months. Probation for laterals hired after August 3, 1985 and promotional appointments of sworn members of the Police Department, shall be not less than 12 months. However, in addition to any and all pre-existing City Policies and Procedures authorizing extension of the probationary testing period, said probationary testing period shall be automatically extended where, (1) any cumulative absence during the testing period from the performance of the employee's usual and customary duties is in excess of 240 hours or, (2) where presence at the work site during the testing period but in a condition where the employee is unable to perform all of the usual and customary duties of the job position, is in excess of 240 hours. In calculating said 240 hours, absences attributed to utilization of holiday time off and to the utilization of compensatory time off, shall be excluded. In those instances where 240 hours are accumulated, the probationary testing period extension shall automatically occur as a matter of law regardless of notice of said extension being provided to the subject employee. The employee subject to said probationary testing period extension shall have no administrative or judicial recourse by which to challenge implementation of the probationary testing period extension. Further, the probationary testing period extension shall be in an amount of time equal to the total number of hours during the probationary testing period which necessitated implementation of this particular article.

ARTICLE 23: RETIREMENT

- (a) Sworn members of the Police Department shall be covered under the provisions of California Government Code 21362.2, also known as the 3% @ 50 plan through the Public Employees Retirement System (PERS). The City shall pay the employee contribution of 9% to PERS.
- (b) Effective May 21, 1993, the City shall contract with PERS for the One-Year Final Compensation option (Government Code Section 20042).
- (c) Effective the pay period including January 1, 2009, the City shall take all action necessary to report, and to begin reporting, as "compensation earnable" the value of employer paid member contribution (EPMC), pursuant to California Government Code Section 20636(c)(4).

ARTICLE 24: DUES DEDUCTION

The City shall allow for one Police Association payroll deduction per member. Said deduction shall be declared at the beginning of each fiscal year and shall be the same percentage or dollar amount for all.

ARTICLE 25: MEDICARE/SOCIAL SECURITY

If Federal Medicare/Social Security is mandated by Congress, the contribution designated by law to be the responsibility of the employee shall be paid in full by the employee and the City shall not be obligated to pay or "pick-up" any portion thereof.

ARTICLE 26: WORK STOPPAGE PROHIBITION

Prohibited Conduct

- (a) The Association, its officers, agents, representative, and members, agree that, during the term of this Memorandum of Understanding or any agreed upon extensions of the MOU, they will not call or engage in any strike, walkout, work stoppage, sickout, blue flu, concerted withholding of services by employees represented by the Association, disruption of City services, or honor any job action by any other employee or

group of employees of the City or any union or association of employees by withholding or refusing to perform services; provided, however, that by executing this agreement neither the Association nor any of its members waive their rights (1) under Section 6300 et seq. of the California Labor Code to refuse to work under unsafe conditions and (2) under the United States and California Constitutions to exercise their rights of freedom of speech, assembly and association such as by engaging in lawful informational picketing.

This article shall not constitute a waiver by the City of its position that any work stoppages are illegal, regardless of whether or not a valid MOU is or is not in effect. Nor shall this article constitute a waiver by the Association of its rights to engage in any strike walkout, work stoppage, sick-out, blue flu, or other job actions that are allowable under the law at the conclusion of the term of this MOU or any agreed upon extensions, and to assert that these actions are lawful.

- (b) In the event that the Association, its officers, agents, representatives, or members engage in any of the conduct prohibited above, the Association shall utilize reasonable efforts to stop such conduct and immediately instruct, in writing, any persons engaging in such conduct that their actions are in violation of this Memorandum of Understanding and are unlawful, and that they must immediately cease such conduct and return to work.
- (c) In the event the Association carries out in good faith its responsibilities set forth in Paragraph (b) above, it shall not be liable for the actions of any individual who participates in conduct prohibited by Paragraph 1 above. Any employee who participates in any conduct prohibited above or violates any other City rule or regulation, shall be subject to disciplinary action including termination by the City.

This shall not abrogate the right of any employee to receive all due process guaranteed to him or her in procedures relating to disciplinary action.

ARTICLE 27: GRIEVANCE PROCEDURE

(a) Definition of Grievance

Grievance shall be defined as a dispute between (1) an employee, group of employees, or the Association on behalf of an individual employee or group of employees, and (2) the city, regarding the application or interpretation of specific provisions of the MOU or City Personnel Rules and Regulations. This procedure is not intended to discourage resolution of disputes regarding the MOU in an informal manner.

(b) Grievance Submittal

Grievances must be submitted on the Grievance form and within the proper time frames to be considered. Time limits when filing formal grievances may be extended by mutual agreement between the parties.

(c) Grievance Procedure Steps

Informal Process

The employee shall first discuss the issue with the appropriate supervisor as soon as practical and in any event no later than 20 working days from the occurrence or knowledge of the occurrence of the issue. The supervisor should respond and when appropriate resolve the issue within 20 working days from the date of the discussion with the employee.

Formal Process

- 1) If the employee is not satisfied with the supervisor's response in the informal process, the employee may submit the issue for formal review by completing the Police Department Review Grievance Form,

stating the specific MOU or City Personnel rule or regulation that was improperly applied and stating the specific resolution desired. This Grievance Form shall be submitted to the Chief of Police for review within 20 working days of the supervisor's response in the Informal process. The Chief will give a written reply by the end of the tenth (10th) workday following the date the grievance was submitted.

- 2) If the grievance is not settled in Step 1 of the formal process, the employee must, within 5 working days following receipt of the Chief's written reply, present the grievance form to the Human Resources Director for further processing. The failure of the grievant to take this action will constitute a waiver of the grievance, unless time limits are extended through mutual agreement.
- 3) Within ten working days of receipt of the grievance, the Human Resources Director will contact the grievant to schedule a meeting with the City Manager or his/her designee to hear the grievance. Either the City or the employees' representative may call other employees as witnesses during the meeting.

A written decision will then be rendered within 15 working days of the hearing. The decision of the City Manager will conclude the grievance process.

ARTICLE 28: PRE-DISCIPLINARY AND APPEAL PROCESS

GENERAL POLICY: The City is committed to following the principles of progressive discipline. Disciplinary actions should be designed to fit the nature of the problem. The particular action imposed shall depend on the severity of the misconduct, the particular factual circumstances involved and take into consideration other incidents with comparable circumstances. All disciplinary action shall be based on the principles of just cause.

PROVISIONS:

(a) Actions defined:

1) Performance Feedback

The use of oral or written performance feedback (including Blue Cards) shall not be considered disciplinary action, and shall be used as a tool by supervisors to address performance problems or minor instances of misconduct, as well as accomplishments. The supervisor or manager should review with the employee both the specific deficiencies in question and the City's standards. The cause(s) of the deficiency should be identified along with specific improvement needed. Any written warnings will be kept in the supervisory file, not the official personnel file, and a copy given to the employee. The employee may respond in writing within 30 days. The supervisory file is intended to be a temporary file to record performance, both positive and negative, throughout the performance year. When the performance evaluation is prepared for the employee, the entire contents of the supervisory file should be considered in determining the overall performance. Once the evaluation is completed and filed in the employee's personnel file, all written performance feedback prepared during the evaluation period must be discarded.

2) Letter of Reprimand

A Letter of Reprimand shall be considered the lowest level of discipline and generally is appropriate to correct an instance of more serious circumstance or employee misconduct which does not warrant suspension or discharge, repeated instances of minor misconduct or identified performance problems. The purpose of a Letter of Reprimand is to put the employee on notice that the City will take other disciplinary action unless improvement in performance is demonstrated. The supervisor or manager issuing the Letter of Reprimand shall meet with the employee to discuss specific improvements required within a defined time period to avoid further disciplinary action. A copy of the Letter of Reprimand will be placed in the

employee's official personnel file. The employee has the right to respond within 30 days.

3) Suspension

Suspension is the temporary removal of an employee from his duties without pay for up to thirty (30) calendar days.

4) Reduction in Pay

A Reduction in Pay is a reduction in hourly salary for a limited and defined period of time, and does not result in any classification change. The employee continues to report to work for the duration of the Reduction in Pay.

5) Demotion

Demotion is the movement of an employee from his current classification to a new classification having a lower salary range.

6) Discharge

Discharge is the involuntary termination of an employee.

(b) Pre-Disciplinary Procedure ("Skelly Meeting")

If an employee is to receive a letter of reprimand, be suspended, receive a reduction in pay, be demoted or discharged, the employee shall:

- 1) Receive written notice of the intended action at least 7 working days before the date it is intended to become effective, which provides the specific grounds and the particular facts upon which the action is based.
- 2) Receive copies of any known materials, reports or other documents upon which the intended action is based.
- 3) The employee shall have the right to respond in writing and/or orally within a reasonable period of time to the intended charges and/or be accorded the right to meet within a reasonable period of time with the Chief of Police who has the authority to modify or eliminate the intended disciplinary action.
- 4) Be given the written decision of the Chief prior to the effective date of the disciplinary action.

(c) Appeal Process

- 1) A disciplinary action of Letter of Reprimand and any suspension up to and including 3 days, is appealable as follows:

Step 1: The employee must, within twelve (12) working days, present the appeal to the Human Resources Director for processing. The failure of the employee to take this action shall constitute a waiver of the appeal, unless time limits are extended through mutual agreement.

Step 2: Within ten working days of receipt of the appeal, the Human Resources Director will set up a meeting between the employee and his/her representative with the City Manager or his or her designee to review the issues. A written decision will then be rendered within fifteen (15) working days of the meeting. The decision of the City Manager will be final.

It is not intended that the appeal procedure be used to effect changes in the established salary and fringe benefits.

Either the City or the Association may call any employee as a witness to any of the above steps, and the City agrees to compensate said witness for his testimony. The parties agree to make every effort to call witnesses while they are on duty.

- 2) A disciplinary action of suspension in excess of 3 days, or if the result of the discipline is over 3 days total suspension time in a 12-month period, reduction in pay, demotion or discharge is appealable using the following process.

Appeal Procedure:

Step 1: The employee may appeal to the Board of Review (LA County Civil Service Commission) or request an outside Arbitrator to hear the appeal by filing an appeal to the Police Chief's action within twelve (12) working days. The Arbitrator will be selected from a list supplied by the State Mediation and Conciliation Services. In the event agreement cannot be reached on the identity of the arbitrator, both parties will alternately strike names from the list until only one remains. The order of striking names will be decided by a flip of the coin

Step 2: In cases of discharge, reduction of pay or suspension without pay in excess of five (5) days, a hearing will be granted. For suspensions of 4 or 5 days, the Board of Review or Arbitrator may make a decision without a hearing, after a review of the written materials submitted by all parties concerned. As indicated in MB Municipal Code Section 2.08.090, Removal and Suspension of Employees and Officers, the City Manager may affirm, revoke or modify the action of the Board of Review or Arbitrator and that decision shall be final.

The City and POA will each pay half of the cost of appeals to a Board of Review or an Arbitrator if the Association assists the appellant in its representative capacity or in any way financially. Shared costs shall include only those charges from the Board of Review or Arbitrator.

ARTICLE 29: HOURS OF WORK/OVERTIME

- (a) Firearms qualification - All members of the department are required to qualify at the range each quarter. Time spent qualifying will be in a paid status. All employees on shifts when the range is open will qualify while on duty. Employees who shoot at the range at times for other than the required qualification or training will be considered to be on personal time and such time is not counted as working time and is not compensable in any manner whatsoever.
- (b) Court standby pay - A member of the bargaining unit, who while off-duty is on court standby status, may leave a telephone number where he or she may be reached while on court standby. Such time is not considered hours worked under the FLSA, however, the employee will be paid 1/2 his regular rate of pay.
- (c) Court pay - When an employee is required to appear in court while off-duty, he shall be paid for all hours spent in court, with a minimum credit of three (3) hours for each morning court session and an additional 2 hours for each afternoon court session. If an employee's regular work shift begins within 2 hours from the time the employee is called to court, the employee will be paid for the time prior to the start of his regular shift. Travel time shall not be considered hours worked and shall not be compensated.
- (d) Call-back pay - Call back duty occurs when an employee is ordered to duty on a non-regularly scheduled work shift. Call back does not occur when an employee is held over from her prior shift or is working prior to her regularly scheduled shift. An employee called back to duty shall be credited with a minimum of 1 hour work commencing when she received the phone call to report to duty. Any hours worked in excess of 1 hour shall be credited on an hour for hour basis for actual time worked. Travel time home shall not be considered hours worked and shall not be compensated in any manner whatsoever. This provision is to be distinguished from "Court Standby" pay in Section 26b which is to be used when an employee is called to appear in court.

- (e) Training time - Attendance at training schools/facilities which improves the performance of regular tasks and/or prepares for job advancement is compensable for hours spent in class only. Any time spent in excess of the classroom time will not be counted as working time and is not compensable in any manner whatsoever. Time spent in studying and other personal pursuits is not compensable hours of work, even though the employee may be confined to campus or to barracks 24 hours a day. Travel time to and from the training facility outside of an employee's normal work shift is not compensable hours of work.

All local and non-local travel must be in accordance with the guidelines outlined in Administrative Instruction #6 "Travel and Attendance at Conferences and Meetings". Whenever possible and practical, supervisors will try to arrange City-related travel to occur during working hours and minimize the impact to the employee's own time. It is the employee's responsibility to identify potential conflicts and bring them to their supervisor so that they may be addressed in the most feasible fashion.

- (f) General overtime - All employees required to work in excess of the standard work period of 80.0 hours in a 14 day Fair Labor Standards Act cycle shall receive compensation at the rate of time and one-half his rate of pay or compensatory time at the rate of 1.5 times hours worked at the employee's option. An employee's compensatory time bank shall not exceed 55 hours. Effective August 20, 2005, an employee's compensatory time bank shall not exceed 65 hours.

In determining an employee's eligibility for overtime compensation in a work period, paid vacations, holidays, bereavement leave, and compensatory time, shall be included as hours worked. The following paid leaves of absence are not considered hours worked for purposes of calculating overtime: 1) Sick Leave; 2) Administrative Leave; 3) 4850 Time.

- (i) Overtime authorization - All overtime requests must have the prior authorization of a supervisor prior to the commencement of such overtime work. Where verbal authorization is obtained, written authorization must be obtained as soon thereafter as practicable. Dispatched calls beyond the end of duty time are considered as authorized.

An employee's failure to obtain prior written approval, or explicit verbal authorization followed by written authorization, will result in the denial of the overtime request. The overtime slip constitutes written authorization.

- (j) Clothes changing - Time spent in changing clothes before or after a shift is not considered hours worked and is not compensable in any manner whatsoever.
- (k) City vehicle use - Employees who are provided with a City vehicle to travel to and from work shall not be compensated in any manner whatsoever for such travel time in the City vehicle. (This provision also applies in those situations where the radio must be left on and monitored.)
- (l) All Police Sworn employees shall work under the 4/10 plan. Scheduling remains a management right. If an officer is placed on a multi-jurisdictional assignment, the officer shall work the schedule utilized by the assignment.
- (m) Modified duty assignments. The parties recognize that temporary modified duty assignments (commonly referred to as "light duty") may be assigned to affected employees who are temporarily incapacitated from performing all usual and customary duties of their position. The parties hereby specifically agree that determination by administration of the days and hours of work to which an employee shall be assigned while performing "light duty," is a management right.

ARTICLE 30: DIRECT DEPOSIT PAYCHECKS

Employees covered under this MOU shall receive their biweekly compensation through the City's direct payroll deposit program.

ARTICLE 31: ABANDONMENT OF POSITION

Employees absent from work without authorization or notification for three consecutive working days, shall be construed to have abandoned their employment with the City and be subject to termination.

ARTICLE 32: GARNISHMENTS

A \$25.00 initial set-up fee and \$7.00 service charge per garnishment per payroll check shall be charged to the employee. Child support garnishments will be subject to the \$25 set up fee and \$1.00 service charge per garnishment per payroll check. Garnishments imposed prior to July 10, 1993, shall be charged at the 1992-93 M.O.U. rates.

ARTICLE 33: SHIFT BIDS

Employees in the classification of Police Officer and Police Sergeant shall be entitled to select their shifts. It remains the sole discretion of the department to determine through the master schedule of available shifts, which days off are associated with any particular shift. Shift selection shall be made based upon seniority in the employee's current classification (including any time served in a higher or lower paying classification). The only exceptions to this entitlement are under the following conditions:

- (a) To accommodate a formal PIP
- (b) To facilitate the separation of two employees who have a formal, documented hostile work environment and/or sexual harassment incident.
- (c) To facilitate the separation of two employees who have a formal, documented adverse situation which has impacted the effectiveness of the shift to which they are assigned.

Movement of individuals under the above circumstances shall only be done after all other reasonable efforts have been considered.

If a non-probationary Police Officer or Police Sergeant is displaced from his selected shift (after the shift bid has been finalized) by an officer being moved under one of the above circumstances, that displaced officer or sergeant shall be entitled to a 5% bonus of their current base salary for the period of the displacement.

Under this article, the placement of officers or sergeants for the purposes of balancing experience throughout the shift, equal distribution of FTOs or other officers assigned collateral duties such as CSI, DUI, DRE, or to assign premium shifts as inducements or rewards to less senior officers, are specifically excluded.

Any dispute regarding the necessity of movement of officers or the accuracy of the asserted need shall be resolved by the City's Human Resources Director.

Notwithstanding any other provisions of this Article: (1) Probationary Police Officers may be assigned to specific shifts for training purposes which will be accomplished by blocking out the last slot on the particular shift needed and before shifts are bid, and (2) A maximum of two probationary police sergeants may be assigned to specific shifts for training purposes, which will be accomplished by blocking out the appropriate slot on the particular shift

needed before the shifts are bid. Each slot will be on a different shift. There will be no bumping mid-cycle. The Department will have the right to closely or exactly match probationary sergeants' days off to that of the lieutenant on the shift they are assigned to.

ARTICLE 34: NO SMOKING

Employees hired after September 3, 1988, must refrain from smoking tobacco or using any other tobacco substance at any time on or off duty as a condition of continued employment. Violation of this condition of employment shall be deemed good cause for discipline up to and including dismissal.

ARTICLE 35: DRUG TESTING PROGRAM

The City and the Association agree to mutually work together for the prevention of alcohol and substance abuse in the workplace for the benefit of the employees, City, and the residents of Manhattan Beach. The agreed Alcohol and Substance Abuse Policy is incorporated herein as Attachment A.

ARTICLE 36: FITNESS PROGRAM

The City and Association, during the term of this agreement, agree to discuss the implementation of a fitness program. No program will be adopted without agreement of both parties.

ARTICLE 37: EMPLOYEE/EMPLOYER RELATIONS RESOLUTION

The parties have agreed that if, during the term of the MOU, the City requests to discuss the Employee/Employer Relations Resolution, no changes will be made without written agreement of the parties.

ARTICLE 38: FULL AND COMPLETE UNDERSTANDING

This Memorandum of Understanding represents the full and complete understanding between the parties related to the subject matter set forth herein and all preliminary negotiations of whatever kind or nature are merged herein. The parties hereto have caused this Memorandum of Understanding to be executed as of August 6, 2006.

REPRESENTATIVES OF THE MANHATTAN
BEACH POLICE OFFICERS' ASSOCIATION

REPRESENTATIVES OF THE
CITY OF MANHATTAN BEACH

BY _____
John Loy, POA President

BY _____
Marcie Scott, Human Resources Director

BY _____
Michael Rosenberger, Officer

BY _____
Bruce Moe, Finance Director

BY _____
William Matson, Sergeant

BY _____
Randolph Leaf, Police Captain

BY _____
Steven Tobias, Sergeant

BY _____
Angelo DiGenova, Police Lieutenant

BY _____
Joseph Aiello, Officer

BY _____
Danielle Higdon, Sr. Human Resources Analyst

BY _____
Richard Hatten, Officer

BY _____
Christine Tomikawa, Human Resources Analyst

BY _____
Ryan Small, Officer

BY _____
Geoff Dolan, City Manager

ATTACHMENT A**CITY OF MANHATTAN BEACH
AND
MANHATTAN BEACH POLICE OFFICERS ASSOCIATION
DRUG AND ALCOHOL ABUSE POLICY****I. PURPOSE**

The City of Manhattan Beach and the Manhattan Beach Police Officers Association recognize that behavior resulting from the use of alcohol and other drugs detrimentally affects work performance, safety, security, and public confidence in City employees and presents a risk to City employees and the health and welfare of the citizens of the City of Manhattan Beach.

While the City has no intention of intruding into the private lives of its employees, the special nature of the duties entrusted in public safety officers demands that the use of alcohol and other drugs which may affect an employee's ability to perform his or her job be strictly regulated.

Employees who think they may have an alcohol or drug usage problem are urged to seek confidential assistance from the Employee Assistance Program. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not seek help.

II. POLICY

It is the policy of the City of Manhattan Beach that employees shall not be under the influence of alcohol or drugs, nor possess alcohol or drugs while on City property, at work locations, or while on duty or on an "on-call" status; shall not utilize, sell or provide drugs or alcohol to any other employee or to any person while such employee is on duty or on an "on-call" status, nor have their ability to work impaired as a result of the use of alcohol or drugs.

The City reserves the right to search, without employee consent, all areas and property in which the City maintains control or joint control with the employee, except as restricted by the California Public Safety Officers Procedural Bill of Rights Act.

Refusal to submit immediately to an alcohol and/or drug analysis when requested by a sworn supervisor for the causes for testing listed in this policy may constitute insubordination and may be grounds for discipline up to and including termination.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be detained until he or she can be reasonably transported from the work site.

The City provides an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. The City and the Association encourage and support the rehabilitation of employees with alcohol and drug abuse problems through the constructive use of the EAP. It is understood that EAP counseling sessions are confidential except for compliance with mandatory EAP referral evaluations and program requirements. Records kept under this program shall be available only to those persons who administer the program or monitor, and/or manage employees participating in the EAP program.

III. APPLICATION

This policy applies to all employees in the classification of Police Officer and Police Sergeant. This policy applies to alcohol and to all substances, drugs, medications, legal or illegal, which could impair an employee's ability to effectively and safely perform the functions of the job.

IV. EMPLOYEE RESPONSIBILITIES

An employee must:

- A. not report to work or be subject to duty while his or her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
- B. not possess or use alcohol or impairing drugs (illegal drugs and prescriptions drugs without a prescription) during working hours or while subject to duty, on breaks, during meal periods or at anytime while on City property, with the exception of substances which have been confiscated by arrest and are in transport to designated holding facilities, or incidents which are performed as part of the job and with the condoning by the Chief of Police;
- C. not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either the employee or both employees are on duty or on an "on-call" status;
- D. submit immediately to an alcohol and drug test when requested by a sworn supervisor;
- E. notify his or her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and
- F. provide within 24 hours of request bona fide verification of a current valid prescription for any potentially impairing drug or medication declared by the employee before the drug test and identified when a drug test is positive. The prescription must be in the employee's name.

V. MANAGEMENT RESPONSIBILITIES AND GUIDELINES

- A. Sworn supervisors are responsible for reasonable enforcement of this policy.
- B. Sworn supervisors may request that an employee submit to a drug and/or alcohol test when any of the "Causes for Testing" items listed in this policy occur.
- C. In cases of "reasonable suspicion", any sworn supervisor requesting an employee to submit to a drug and/or alcohol test must document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs and submit said documentation to the Chief of Police prior to the end of the shift.
- D. Any sworn supervisor encountering an employee who refuses an order to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and disciplinary consequences of this policy. Where there is reasonable suspicion that the employee is under the influence of drugs or alcohol, the sworn supervisor shall detain the employee until the employee can be safely transported to the testing facility by a manager or supervisor. The employee will be relieved of his/her weapon, which will be secured by the department until the employee is authorized to return to work.

- E. Sworn supervisors shall not physically search the person of employees, nor shall they search the personal possession of employees without the freely given consent of, and in the presence of, the employee, or unless a valid search warrant has been obtained, or where he or she has been notified in advance that a search will be conducted.
- F. Sworn supervisors shall notify the Chief of Police or designee when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City, or those other areas protected by the Public Safety Officers Procedural Bill of Rights Act.

VI. CAUSES FOR TESTING

Employees covered by this policy shall be tested for drugs or alcohol for any of the following reasons:

1. Randomly during initial probationary period.
2. Prior to promotional appointment.
3. Within 30 days prior to renewal date of Drivers License.
4. Within 30 days of assignment to investigative detail.
5. Within 30 days of assignment to SWAT.
6. As soon as possible after reporting a traffic accident where the employee's work vehicle was moving.
7. Whenever there is "reasonable suspicion" of an employee under the influence on worktime.

Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his or her job safely is reduced. For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- a. Slurred or thick speech;
- b. Alcohol odor on breath;
- c. Inability to perform work properly;
- d. Unsteady walking and movement;
- e. Unusual or anti-social behavior so unusual that it warrants summoning a supervisor;
- f. Eyes that stare blankly or appear glassy;
- g. Possession of alcohol or drugs;
- h. Nystagmus;
- i. Information obtained from a reliable person with personal knowledge whose identity is known.

VII. PHYSICAL EXAMINATION AND PROCEDURE

The physical examination and procedure are detailed in an addendum to this policy. Amendments to the addendum shall not affect any other section in this policy.

Whenever a sworn supervisor deems a drug test necessary for any of the eight reasons listed in cause for testing, the manager or supervisor shall send the employee to the City's medical facility for testing. If the employee is impaired or is for any reason deemed unsafe to transport him or herself to the facility, the manager or supervisor or designee shall transport the employee to the City's medical facility for the test. The employee shall be paid for time spent at the examination. The City shall bear the expense of the examination, and shall provide transportation to and from the medical facility and the employee's work site.

The medical provider uses a certified National Institute of Drug Abuse (NIDA) laboratory. The certification of laboratories performing drug testing for Federal agencies was developed by NIDA to assure strict adherence to the rigorous standards of testing and custody control form. Test results are returned to the Medical Review Officer (MRO).

The initial test is a process called Urine Drug Screen # 37042N. If all results are negative, the test is complete. If a positive test result is noticed, a secondary test using the Gas Chromatography/Mass Spectrophotometry (GCMS) method is conducted by the laboratory to verify the results. This test has been used as binding legal and medical precedent. If the subsequent test is negative, then the test is considered negative for all purposes. If the subsequent test confirms a positive finding, it is noted on the report and sent to the MRO. At this point, in cases other than THC and cocaine, the MRO will contact the employee to discuss the possibility that the person has taken medication (prescription or otherwise) that was not indicated on the original form completed by the employee. The employee is not informed of a positive result, he or she is just asked to clarify any drug intake. The final results are then sent by the MRO to the City.

Drugs tested for include, but are not limited to Amphetamines, Barbituates, Benzodiazepines, Cocaine, Methadone, Methaqualone, Opiate, PCP, THC, Propoxyphene, and Alcohol. Cut off levels shall be consistent with the current guidelines issued by NIDA.

VIII. RESULTS OF DRUG AND/OR ALCOHOL TESTING

A. During Employment Drug and/or Alcohol Tests

1. A positive result from a drug and/or alcohol analysis may result in appropriate disciplinary action, up to and including discharge, pursuant to the City's disciplinary policy.
2. If a drug screen is positive, the employee must provide within 24 hours of request, bona fide verification of a valid prescription for the drug declared by the employee before the drug test and identified in the drug screen. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription or if the prescription is not in the employee's name, or if the employee has not previously notified his or her supervisor, the employee will be subject to disciplinary action, up to and including discharge.
3. If an alcohol or drug test is positive for alcohol or drugs, the City shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out following an evaluation of the circumstances.

IX. APPEALS

If the employee desires to appeal a positive test result, he or she may request a new testing of a remaining portion of the original urine sample, or split sample, within 3 business days of notification of the original test result. The split sample test by Gas Chromatography/Mass Spectrophotometry (GC/MS) shall be conducted at the employee's expense and shall be conducted by any National Institute of Drug Abuse approved laboratory located in California.