

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH
POLICE MANAGEMENT
ASSOCIATION**



January 1, 2002 through December 31, 2004

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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH AND
NEWPORT BEACH POLICE MANAGEMENT ASSOCIATION

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into with reference to the following:

PREAMBLE

1. The Newport Beach Police Management Association ("NBPMA"), a recognized employee organization, and the City of Newport Beach ("City"), a municipal corporation and charter city, have been meeting and conferring, in good faith, with respect to wages, hours, fringe benefits and other terms and conditions of employment.
2. NBPMA representatives and City representatives have reached a tentative agreement as to wages, hours and other terms and conditions of employment for the period from January 1, 2002 to December 31, 2004 and this tentative agreement has been embodied in this MOU.
3. This MOU, upon approval by NBPMA represents the total and complete understanding and agreement between the parties regarding all matters within the scope of representation.

SECTION 1. - GENERAL PROVISIONS.

A. Recognition.

In accordance with the provisions of the Charter of the City of Newport Beach, the Meyers-Milias-Brown Act of the State of California and the provisions of the Employer/Employee Relations Resolution No. 2001-50, the City acknowledges that NBPMA is the majority representative for the purpose of meeting and conferring regarding wages, hours and other terms and conditions of employment for all employees in the classifications listed in Exhibit A or as appropriately modified in accordance with the Employer/Employee Relations Resolution. All other classifications and positions not specifically included within Exhibit "A" are excluded from representation by NBPMA.

B. Duration of Memorandum.

Except as specifically provided otherwise, any ordinance, resolution or action of the City Council necessary to implement this MOU shall be considered effective as of January 1, 2002. This MOU shall remain in full force and effect until December 31, 2004, and the provisions of this MOU shall continue after the

date of expiration of this MOU in the event the parties are meeting and conferring on a successor MOU.

C. Scope.

1. The terms and conditions of this MOU shall prevail over conflicting provisions of the Newport Beach City Charter, the ordinances, resolutions and policies of the City of Newport Beach, and federal and state statutes, rules and regulations which either specifically provide that agreements such as this prevail, confer rights which may be waived by any collective bargaining agreement, or are, pursuant to decisional or statutory law, superseded by the provisions of an agreement similar to this MOU.
2. All present written rules and current established practices and employees' rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU.
3. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50. Management Rights include, but are not limited to, the following:
 - (a) The determination of the purposes and functions of the Police Department;
 - (b) The establishment of standards of service;
 - (c) To assign work to employees as deemed appropriate;
 - (d) The direction and supervision of its employees;
 - (e) The discipline of employees;
 - (f) The power to relieve employees from duty for lack of work or other legitimate reasons;
 - (g) To maintain the efficiency of operations;
 - (h) To determine the methods, means and personnel by which Police Department operations are to be conducted;

- (i) The right to take all necessary actions to fulfill the Department's responsibilities in the event of an emergency;
- (j) The exercise of complete control and discretion over the manner of organization, and the appropriate technology, best suited to the performance of departmental functions.

The practical consequences of a Management Rights decision on wages, hours, and other terms and conditions of employment shall be subject to the grievance procedures.

D. Release Time.

1. NBPMA members shall be allowed to participate in the following activities during scheduled working hours without loss of pay ("Release Time"):
 - (a) Attendance at meetings, conferences, seminars or workshops related to matters within the scope of representation;
 - (b) To prepare for, travel to, and attend scheduled meetings between the City and NBPMA during the meet and confer process.
 - (c) To travel to and attend scheduled grievance and disciplinary hearings.
 - (d) To meet, for up to one hour, with their representative prior to a hearing described in (d) above.
2. City grants NBPMA 100 hours of Release Time per calendar year to engage in the activities described in subsection 1(a). NBPMA may accumulate up to 300 hours of City-provided Release Time.
3. City grants NBPMA members the right to engage in the activities described in subsections 1(b), (c), and (d) at any time without reduction to the Release Time granted in subsection 2.
4. NBPMA shall designate certain members as those members entitled to release time. In no event shall any one designate be entitled to use more than 100 hours of Release Time (exclusive of actual time spent meeting with City representatives on matters relating to

the scope of representation), within any calendar year. Designates must give reasonable advance notice to, and obtain permission from, their supervisor prior to use of release time, or prior to adjusting work hours per subsection 4 (a). Requests for release time shall be granted by the supervisor unless there are specific circumstances that require the designate to remain on duty. Designates shall, to the maximum extent feasible, receive shift assignments compatible with participation in the meet and confer process.

- a. Any NBPMA negotiating team member may request and shall (subject to the approval process above) be granted flex work hours on any scheduled workday during which the negotiating team member is to attend a meet and confer session. Employees may flex start/finish time up to two (2) hours.

E. Bulletin Boards.

Space shall be provided on bulletin boards within the Police Department at their present location for the posting of notices and bulletins relating to NBPMA business, meetings, or events. All materials posted on bulletins boards shall indicate the name of the organization responsible. Material posted shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of race, gender, ethnicity, religion or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material.

F. No Strike.

The parties recognize their mutual responsibility to provide the citizens of Newport Beach with uninterrupted municipal services and, therefore, for the term of this MOU, the parties agree not to conduct concerted strike, work slowdown, sick-out, withholding of services, or lockout activities.

G. Conclusiveness.

This MOU contains all of the covenants, stipulations, and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled, and each party expressly waives its rights to request the other to meet and confer concerning any issue within the scope of representation except as

expressly provided herein or by mutual agreement of the parties. No representative of either party has the authority to make, and none of the parties shall be bound by, any statement, representation or agreement reached prior to the execution of this MOU and not set forth herein.

H. Modifications.

Any agreement, alteration, understanding, variation, or waiver or modification of any of the terms or provisions of this MOU shall not be binding upon the parties unless contained in a written document executed by authorized representatives of the parties.

I. Savings.

Should any part of this MOU be rendered or declared illegal or invalid by legislation, decree of court of competent jurisdiction or other established governmental administrative tribunal, such invalidation shall not affect the remaining portions of this MOU.

J. Impasse.

In the event of an impasse (the failure to agree on a new MOU after the express term of the existing MOU has expired), the parties may agree on mediation pursuant to the procedure outlined in Section 16 of Resolution No. 2001-50 or a successor resolution.

SECTION 2. - COMPENSATION.

A. Direct Wage Payments.

1. Salary

Effective the first pay period in January, 2002, the City shall increase base salary for the NBPMA employees by four (4%) percent.

Effective the first pay period in January, 2003, the City shall increase base salary for all NBPMA employees by two (2%) percent.

Effective the first pay period in January, 2004, the City shall increase base salary for the NBPMA employees by four (4%) percent.

2. NBPMA shall have the right to reopen negotiations on the general increase scheduled for January, 2004 if the Consumer Price Index for Los Angeles, Riverside, Orange County All Urban Consumer increases by more than six (6%) percent for the twelve (12) months ending July, 2003. The City

shall have the right to reopen if the Index increases by less than three (3%) percent.

2. Code Seven/Duty Incentive Time.

The City and NBPMA have agreed to entitlement to compensation for duty incentive time and Code Seven time based upon implementation of the 9/80 work schedule (since modified to 3-12, with concurrence of NBPMA) and a settlement agreement between the City and NBPMA. NBPMA and its members agree that the provisions and rules relative to entitlement to compensation for duty incentive time or Code Seven time survive the termination of this MOU, that the provisions of the settlement agreement are in full force and effect, and that no request for compensation for duty incentive time or Code Seven time at variance with the provisions of existing rules or the settlement agreement shall be made at any time in the future by NBPMA or any of its members.

3. Overtime.

- (a) Employees shall be entitled to overtime compensation at the rate of time and one half for hours worked in excess of their regularly scheduled shift. Paid time off shall be considered time worked for overtime calculation purposes.
- (b) Overtime compensation shall be in the form of compensatory time off or pay at the election of the employee. Maximum compensatory time accrual shall be 91 hours. All overtime worked for employees at the CTO maximum shall be paid. The parties agree that the current practice of accruing and utilizing CTO is reasonable and shall continue for the term of this agreement.
- (c) NBPMA members occupying the position of Captain shall not be entitled compensatory time off for overtime. City and NBPMA agree that the position of Captain is properly considered exempt from the overtime requirements of FLSA. However, NBPMA members occupying the position of Captain shall be eligible for up to 80 hours of administrative leave per calendar year. The precise amount of administrative leave granted each Captain

shall be based upon the recommendation of the Police Chief and approved by the City Manager. Administrative leave may not be carried forward from one calendar year to the next.

(e) With the approval of the Division Commander, NBPMA members assigned to non-shift assignments may work certain holidays if they occur on regularly scheduled work days.

B. Additional Compensations.

1. Scholastic Achievement Pay.

Sworn NBPMA members are entitled to additional compensation contingent upon scholastic achievement ("Scholastic Achievement Pay").

Sworn NBPMA members may apply for increases pursuant to this Section when eligible and scholastic achievement pay shall be included in the member's paycheck for the pay period immediately after approval by the Chief of Police. It is the responsibility of the NBPMA member to apply for Scholastic Achievement Pay. Approval of the member's application shall not be unreasonably withheld or delayed, and the member shall not be entitled to receive scholastic achievement pay prior to the date the application is approved even though the member may have been eligible prior to approval. Scholastic achievement pay is contingent upon years of service and the number of units and/or degrees received by the employee. Qualifying units and/or degrees must be awarded by accredited community colleges, state colleges or universities. The following is a schedule of monthly payments pursuant to the Scholastic Achievement Program:

<u>Years of Service:</u>	<u>60 Units:</u>	<u>90 Units:</u>	<u>BA/BS</u>	<u>MA/MS/JD:</u>
2	1%	1%	1%	1%
3	2%	3%	5.5%	6.5%
4	2%	3%	5.5%	6.5%

Educational incentive payments shall be made only for units/degrees above the minimum

qualifications called out in the job descriptions. Individuals receiving pay in this category (minimum units/degrees) as of January 1999 shall retain the compensation, however.

2. Holiday Pay.

NBPMA members shall accrue 96 hours of holiday time each fiscal year (July 1 through June 30th), at the rate of 3.7 hours per pay period. NBPMA members may (a) use holiday time as paid time off work, (b) convert holiday time to flex leave or vacation leave or (c) receive pay for holiday time as specified in this Section. An election to receive holiday compensation as pay shall be made on a one time irrevocable basis in accordance with PERS regulations Only holiday pay irrevocably elected is "PERSable". The NBPMA members may use holiday time as paid time off work, convert holiday time to flex leave or vacation leave, or receive pay for holiday time as specified in this Section. NBPMA members who have not used all holiday time accrued during any fiscal year shall, during the month of July, elect either to convert unused holiday time to flex leave (or vacation leave if the member is in the vacation leave/sick leave program) or to be paid for unused holiday time at the members normal hourly rate of pay, provided, however, NBPMA members shall not be entitled to convert holiday time to flex leave to the extent that the conversion would cause the amount of flex leave accrued to exceed the Flex Leave Accrual Threshold. In the absence of an election during July, the members shall receive pay for unused holiday time at their normal hourly rate. NBPMA members who elect to receive pay for unused holiday time shall receive compensation in their paycheck for the last pay period in August. In no event shall any NBPMA member be entitled to receive holiday pay until serving at least thirty (30) consecutive calendar days in active paid status.

3. Leave Pay-Off

For the term of the agreement, NBPMA members shall receive payment for any accrued leave upon termination at the rate of 109% of their base hourly rate.

4. July 4th

The Police Department has the discretion to schedule any of its employees to work a regular work day on July 4th, regardless of the day of the week or job assignment. This may include modifying work schedules and/or days off according to deployment needs. Sergeants and Lieutenants who actually work July 4th will be compensated at their regular hourly rate, plus premium pay equal to 1/2 of the hours actually worked on that day. Employees will be provided their regular number of days off for the month of July (unless otherwise scheduled on an overtime basis), which will be selected/assigned according to the normal practices of their particular work unit.

Section 3. - LEAVES.

A. Pay for Time not worked.

1. Flex Leave.

(a) NBPMA personnel hired prior to July 1, 1996, shall accrue flex leave at the following rates. It is mutually understood that accrual rates have been modified to provide for the longevity increase set forth below:

<u>Years of Continuous Service</u>	<u>Adjusted Accrual Per Pay Period</u>	<u>Longevity Pay Increase</u>
1/2 but less than 5	5.23077	
5 but less than 9	5.84616	
9 but less than 12	6.46152	
12 but less than 16	7.07696	
16 but less than 20	7.07696	.77%
20 but less than 25	7.07696	1.54%
25 and over	7.07696	2.3%

(b) NBPMA personnel hired after July 1, 1996, shall accrue flex leave at the following rates. It is mutually understood that accrual rates have been modified to provide for the longevity increase set forth below:

<u>Years of Continuous Service</u>	<u>Adjusted Accrual Per Pay Period</u>	<u>Longevity Pay Increase</u>
1/2 but less than 5	4.61538	
5 but less than 10	5.53846	
10 but less than 16	6.46152	
16 but less than 20	7.07696	.77%

20 but less than 25	7.07696	1.54
25 and over	7.07696	2.3%

NBPMA and the City acknowledge that employees assigned the 9/81 work schedule accrue one (1) additional hour per pay period in addition to the accrual levels set forth in subsections 1(a) and 1(b) above.

(c) The Flex leave program shall be administered as follows:

(i) NBPMA members shall not accrue flex leave until continuously employed by the Newport Beach Police Department for a period of six (6) months provided, however, if a member on the flex leave program becomes sick during the first six months of employment, the City will advance up to thirteen (13) pay periods of paid leave time for use by the member to recover from illness. In the event the City advances paid leave time and the employee is terminated or resigns before completing six months of continuous employment, the member's final check shall be reduced by an amount equal to the number of flex leave hours advanced multiplied by the member's hourly rate of pay.

(ii) NBPMA members shall accrue thirteen pay periods of flex leave immediately upon completion of six (6) months continuous employment with the Newport Beach Police Department, provided however, this amount shall be reduced by any flex leave time advanced during the first six months of employment.

(iii) Members employed by the City prior to initiation of the flex leave program have had then current accrued vacation time converted to flex leave on an hour for hour basis with then current sick leave placed in a bank to be used as provided in Section 703 et seq. of the Personnel Resolution. Members entitled to use sick leave pursuant to Section 703.1 of the Personnel Resolution must notify appropriate department personnel of their intention to access the sick leave bank and, in the absence of notification, absences will be charged to the member's flex leave account.

Members who wish to convert an absence from flex leave to sick leave must submit a written request to the Chief of Police within twenty (20) days after the absence (20 days from the last absence in the event the member was continuously absent for more than one day) specifying the nature of the illness and the person notified of the intent to use sick leave, or the reasons for the failure to notify appropriate department personnel. The Chief of Police shall grant the request for conversion if the member submits a written statement signed by his or her attending physician confirming the illness and the Police Chief determines that the member's failure to notify appropriate departmental personnel was reasonable under the circumstances.

- (iv) NBPMA members shall be entitled to accrue flex leave up to seventy-eight (78) times the members bi-weekly flex leave accrual rate (Flex Leave Accrual Threshold). NBPMA members first hired by the City prior to July 1, 1996, shall be paid for all flex leave that accrues in excess of the flex leave accrual threshold (Flex Leave Spillover Pay). Flex Leave Spillover Pay will be paid at the member's regular hourly rate of pay. NBPMA members who have not utilized at least 80 hours of flex leave during the prior calendar year shall not accrue flex leave in excess of the Flex Leave Accrual Threshold and shall not be entitled to Flex Leave Spillover Pay.

NBPMA members first hired, or rehired by the City subsequent to July 1, 1996, shall not be eligible for Flex Leave Spillover Pay and shall not be entitled to accrue flex leave in excess of the Flex Leave Accrual Threshold.

- (v) All requests for scheduled flex leave shall be submitted to appropriate department personnel. Flex leave may be granted on an hourly basis. In no event shall a member take or request flex leave in excess of the amount accrued.
- (vi) Members shall be paid for all accrued flex leave at their then current hourly

rate of pay upon termination of the employment relationship.

B. Bereavement Leave.

Bereavement Leave shall be defined as the necessary absence from duty by an employee having regular or probationary appointment because of the death or terminal illness in his/her immediate family. NBPMA members shall be entitled to 40 hours of bereavement leave per incident (terminal illness followed by death is considered one incident). Parents and siblings of spouses shall be considered part of the immediate family for the purposes of this section.

C. Workers Compensation Leave.

In accordance with Section 4850 of the Labor Code, unit employees shall be entitled to leave of absence while disabled without loss of salary for the period of the disability, not to exceed one year.

SECTION 4. - RETIREMENT.

A. Retirement Benefits.

1. The City shall pay each member's required PERS retirement contribution (9% of salary for sworn employees). City payments pursuant to this Section shall be deemed to be member contributions under the Public Employees Retirement System and recoverable by the member as such in accordance with the rules and regulations promulgated by PERS. These amounts will be reported to PERS monthly as special compensation for retirement purposes.
2. The City has implemented the Level 4 1959 survivor's benefits for NBPMA members.
3. The City has amended its contract with the Public Employees' Retirement System to implement the 3% at 55 Retirement Program. The ongoing cost of this retirement change shall be borne by the City.

The City of Newport Beach will, no later than December 1, 2002, amend its contract with the Public Employees Retirement System to implement the 3% at 50 Retirement Program. The on-going cost of this retirement change shall be borne by the City.

SECTION 5. - FRINGE BENEFITS.

A. Health/Dental Insurance.

1. The City has implemented an IRS qualified Cafeteria Plan. NBPMA members shall join this plan effective January 2002. The City contribution toward the Cafeteria Plan shall be as set forth below. In addition, the City shall contribute a total of \$16 towards medical insurance. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurances/programs. The City and the Newport Beach Police Management Association will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules during regular open enrollment periods.

Effective January, 2002, the City's contribution towards the Cafeteria Plan will be \$484 (plus the \$16 medical contribution).

Effective January, 2003, the City's contribution towards the Cafeteria Plan will increase to \$534 (plus the \$16 medical contribution).

Effective January, 2004, the City's contribution towards the Cafeteria Plan will increase to \$559 (plus the \$16 medical contribution).

Effective upon the ratification of this agreement, NBPMA members who do not want to enroll in any health care plan offered by the City must provide evidence of health care insurance coverage, and execute an agreement releasing the City from any responsibility or liability to provide health care insurance coverage on an annual basis.

2. Benefits Information Committee.

City has established a Medical/Dental Information Committee composed of one representative from each employee group and up to three City representatives. The Medical/Dental Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate

coverage levels and other health care issues. The purpose of this Committee is to provide each employee group with information about health care issues and to receive timely input from associations regarding preferred coverage options and levels of coverage.

3. Retiree Medical Insurance

An employee is eligible for retiree medical benefits after seven years of service if the employee retires from the City and is a PERS annuitant.

The City has implemented the \$400 cap for retiree medical insurance contributions as agreed to by the City and the Newport Beach Police Management Association in previous Memoranda of Understanding. In accordance with these agreements, the City and active employees shall be responsible for 3/4ths (1/2 City and 1/4 actives) of retiree medical insurance cost to a maximum of \$400. Retirees shall be responsible for the remaining 1/4. The employee's current share of the retirement contribution in accordance with the formulas set forth above shall be \$27.47 per month. Subsequent contribution levels shall be set in January, annually, in accordance with the formula described above, commencing in January 2002.

In addition to the contributions above, current employees shall contribute \$10 per month and the City shall contribute \$20 per employee per month to accumulate funds to meet unfunded retiree medical liabilities. This contribution shall continue until the liability is fully funded.

The City shall maintain separate, account for retiree medical funding. The account for unfunded retiree medical liabilities shall be interest bearing. Statements of these accounts shall be available to all affected employee organizations.

B. Disability Insurance.

The City shall provide disability insurance with the following provisions:

Weekly Benefit	66 2/3%
gross weekly wages	
Maximum Benefit (mo.)	\$ \$8,000
Minimum Benefit	\$50

Waiting Period

30 Calendar Days

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Employees shall assume responsibility for the payment of the disability insurance.

Concurrent with implementation of the new disability insurance program, the industrial accident leave policy of the City (Section 8.03.2.1 1998 Personnel Rules) has been eliminated.

C. Section 125 Plan.

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income by City payment of allowable expenses such as childcare and medical expenses. City shall maintain a "reimbursable account program" in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which an NBPMA member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee's account, with the base salary of the employee reduced by the amount designated by the employee to be placed into that account. The City's obligation to establish a reimbursable account program is contingent upon the City incurring no cost or potential liability relative to the plan or its administration. City shall cooperate to the fullest extent of the law provided, however, City may require the plan to contain provisions that authorize the administrator to pay allowable expenses only upon submittal of a demand from the City. Any "reduction" in salary pursuant to this Section and/or the Section 125 Plan established by the City, shall not affect any other provision of this MOU.

D. Employee Assistance Program.

City shall provide an Employee Assistance Program through a properly licensed provider. NBPMA members and their family members may access the Employee Assistance Program at no cost subject to provider guidelines.

E. Tuition Reimbursement.

NBPMA members attending accredited community colleges; colleges, trade schools or universities may apply for reimbursement of one hundred percent (100%) of the

actual cost of tuition, books, fees or other student expenses for approved job-related courses. Maximum tuition reimbursement for sworn personnel shall be \$600.00 per fiscal year. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade of "C" or better for undergraduate courses and a grade of "B" or better for graduate courses. All claims for tuition reimbursement require the approval of the Chief of Police and the Human Resources Director.

SECTION 6. - MISCELLANEOUS PROVISIONS.

A. Schedule.

1. Employees currently work a variety of alternative work schedules (some trial) as approved by the Chief of Police. They include 3/12 and 4/10. The basic work schedule shall be considered the 9/81 for the term of this MOU. Subject to the right to re-open as specified in this subparagraph, 9/81 shall be the standard work schedule for the term of this MOU. The 9/81 schedule will be structured to allow for 130 days off during the calendar year. NBPMA members shall be entitled to eleven (11) days off for ten months of the year and ten (10) days off during two months of the year. The Chief of Police shall determine the months during which NBPMA members shall receive ten days off. The Chief of Police shall also have the right to alter the work schedule of any NBPMA member assigned to any multi-agency or regional task force.

Upon notice, the parties shall meet and confer, in good faith, regarding the appropriate work schedule(s) for NBPMA members.

2. City shall have the right to designate a 14 day or 28 day work period pursuant to Section 29 U.S.C. 507(k) ("7 K Exemption"), provided, however, the 7 K Exemption shall not affect the City's obligation to pay overtime pursuant to provisions of this MOU including the provisions of Section 2.A.3.
3. The parties agree that the following procedures are consistent with good police practices, provide each NBPMA member with ample time to perform all required duties, and comply with the Fair Labor Standards Act:
 - (a) All Patrol Supervisors are required to report to work 15 minutes early;

- (b) All Patrol Supervisors acknowledge and agree that normally, they are to leave at the end of their shift, that they shall not routinely perform duties beyond the end of their shift, that the 15 minutes allotted for briefing preparation is adequate, and they will comply with an order issued by the Chief of Police consistent with this MOU;
- (c) The 15 minutes per shift shall be converted to compensatory time on a straight time basis and placed in a compensatory time off bank, which the member may use as flex leave, vacation leave or sick leave, but for which the member would not be paid at any time.

B. Scheduling of Medical Treatment for Industrial Injuries

1. Time spent by an employee receiving medical attention during the employee's normal working hours is considered hours worked and compensable, when the City or it's representative schedules the appointment.
2. When an employee is temporarily totally disabled due to an industrial injury, and is unable to perform even limited duty in the workplace, all appointments, whether arranged by the City or the employees, shall be considered as occurring during normal working hours. The employee shall not be entitled to any additional compensation, regardless of the employee's regular work schedule or the type of compensation currently received, except as otherwise required by law.
3. When an employee has been released to either full or limited duty and has returned to the workplace, time spent receiving ongoing medical treatment, such as physical therapy or follow-up visits that are not scheduled by the City, is not considered hours worked and therefore, is not compensable. To avoid disruption in the workplace, an employee shall schedule such appointments to occur during off duty hours whenever possible. In the event such scheduling is not available, employee may be allowed to attend an appointment during their regularly scheduled duty shift with prior supervisory approval. Regular recurring appointments (i.e., weekly physical therapy) must be scheduled off duty.

C. Reductions in Force/Layoffs.

The provisions of this section shall apply when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions.

- (a) "Layoffs" or "Laid off" shall mean the non-disciplinary termination of employment.
- (b) "Seniority" shall mean the time an employee has worked in a Classification or Series calculated from the date on which the employee was first granted permanent status in their current Classification or any Classification within the Series, subject to the following:
 - (i) Credit shall be given only for continuous service subsequent to the most recent appointment to permanent status in the Classification or Series;
 - (ii) Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.
- (c) "Classification" shall mean one or more full time positions identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part-time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- (d) "Series" shall mean two or more Classifications within a Department which require the performance of similar duties with the higher ranking Classification(s) characterized by the need for less supervision by superiors, more difficult assignments, more supervisory responsibilities for subordinates. The City

Manager shall determine those Classifications which constitute a Series.

- (e) "Bumping Rights", "Bumping" or "bump" shall mean the right of an employee, based upon seniority within a series, to displace a less senior employee in a lower Classification within the Series. No employee shall have the right to bump into a Classification for which the employee does not possess the minimum qualifications such as specialized education, training or experience.

2. Procedures.

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

- (a) Temporary and probationary employees within any Classification shall, in that order, be laid off before permanent employees.
- (b) Employees within a Classification shall be laid off in inverse order of seniority;
- (c) An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series. An employee who has Bumping Rights shall notify the Department Director within three (3) working days after notice of layoff of his/her intention to exercise Bumping Rights.
- (d) In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice.

Employees subject to lay-off shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days pay in lieu of notice. In addition, employees laid off will be paid for

all accumulated paid leave, holiday leave (if any), and accumulated sick leave to the extent permitted by the Personnel Resolution.

4. Re-Employment.

Permanent and probationary employees who are laid off shall be placed on a Department re-employment list in reverse order of layoff. The re-employment list shall remain in effect until exhausted by removal of all names on the list. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re-employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her last known address. Any employee shall have the right to refuse to be placed on the re-employment list or the right to remove his or her name from the re-employment list by sending written confirmation to the Human Resources Director.

5. Severance Pay.

Permanent employees who are laid off shall, as of the date of lay-off, receive one-week severance pay for each year of continuous service with the City of Newport Beach.

D. Grievance Procedure.

1. Definition.

The term "grievance" means a dispute between NBPMA or any member and the City regarding the interpretation or application of rules or regulations governing the terms and conditions of employment, any provision of the Personnel Resolution, any provision of Resolution No. 2001-50, or this MOU.

2. Guidelines.

Any NBPMA member may file a grievance without fear of retaliation or any adverse impact on any term or condition of employment.

- (a) A grievance shall not be filed to establish new rules or regulations, change prevailing ordinances or resolutions, nor circumvent existing avenues of relief where appeal procedures have been prescribed.
- (b) A member may be self-represented or represented by one other person.
- (c) A member and any representative shall be given notice of the time and place of any grievance proceeding, the opportunity to be present at such proceedings, a copy of any written decision or communication to the employee concerning the proceedings, and any document directly relevant to the proceedings.
- (d) All parties shall engage in good faith efforts to promptly resolve the grievance in an amicable manner. The time limit specified may be extended upon mutual agreement expressed in writing.
- (e) The procedures in this MOU represent the sole and exclusive method of resolving grievances.

3. Procedure.

(a) Steps.

NBPMA members occupying the position of Sergeant or Lieutenant shall present any grievance to the supervising Captain, and may appeal the decision of the supervising Captain to the Chief of Police and City Manager by complying with the procedures in this subsection. Any member occupying the position of Captain shall present any grievance to the Chief of Police, and may appeal the decision to the City Manager by following the procedures outlined in this subsection. The decision of the City Manager shall be final.

(b) Written Notice.

All grievances shall be submitted in writing. The grievance shall be submitted within ten (10) working days after the member knew, or in the exercise of reasonable diligence should have known, of the act or events upon which the grievance is based. The grievance shall contain a complete statement of the matters at issue, the facts upon which the

grievance is based, and the remedy requested by the member. All appeals shall be in writing and, in addition to the matters which must be stated in any grievance, shall specify the decision or decisions which form the basis of the appeal. Grievances and appeals shall be deemed submitted when personally delivered to the appropriate supervisor or the Chief of Police.

(c) Hearings/Meetings.

The appropriate supervisor, Chief of Police or City Manager shall meet with the member and any representative in an effort to resolve the grievance. The meeting shall be conducted within ten (10) working days after the appeal or grievance is served. The meeting shall be informal and the discussion should focus on the issues raised by the grievance. Written decisions on the grievance or appeal shall be served on the employee within ten (10) working days after the meeting.

4. General Grievance.

A general grievance affecting more than one NBPMA member may be filed by NBPMA on behalf of the affected employees with the Chief of Police. The grievance shall contain a complete statement of the matters at issue, the facts upon which the grievance is based, and the remedy requested by NBPMA. The Chief of Police shall meet with NBPMA representatives within ten (10) days following receipt of the grievance and provide a written decision on the grievance within ten (10) working days after the meeting. In the event NBPMA is dissatisfied with the decision of the Chief of Police, it may appeal to the City Manager by following the procedures outlined in Step 4 of the procedure applicable to employees. In the event NBPMA is dissatisfied with the decision of the City Manager, it may appeal the decision to the Civil Service Board by filing a written notice of appeal within fifteen (15) days after receipt of the decision.

E. Direct Deposit.

All Unit employees shall participate in the City's Direct Deposit Program.

F. Reopener.

The City and NBPMA agree to reopen negotiations on a Deferred Retirement Option Program should it become available. Any implementation during the term of this agreement will be on a cost neutral basis to the City.

G. Payout.

Final paychecks, including leave payouts, will be at the rate of pay effective the first pay period in January for any employee retiring in January, 2002.

H. Uniform Allowance.

Effective immediately, the City will begin reporting to PERS a uniform allowance amount of \$1,000 per year.

Executed this _____ day of _____, 2002:

NEWPORT BEACH POLICE MANAGEMENT ASSOCIATION

By: _____
Fred Heinecke

By: _____

CITY OF NEWPORT BEACH

By: _____
Tod Ridgeway
Mayor

ATTEST:

By: _____
LaVonne Harkless, City Clerk

APPROVED AS TO FORM:

Robert H. Burnham, City Attorney

EXHIBIT A
POLICE MANAGEMENT ASSOCIATION

Police Sergeant
Police Lieutenant
Police Lieutenant/Legal Advisor
Police Captain