

MEMORANDUM OF UNDERSTANDING

CITY OF TUSTIN

and

TUSTIN POLICE OFFICERS' ASSOCIATION

POLICE OFFICER REPRESENTATION UNIT



TERM: JANUARY 1, 2006 TO JUNE 30, 2007

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MEMORANDUM OF UNDERSTANDING
POLICE OFFICER REPRESENTATION UNIT
CITY OF TUSTIN
AND
TUSTIN POLICE OFFICERS' ASSOCIATION

WHEREAS, in accordance with the provisions of the California Government Code Sections 3500 et.seq. and Section 17 of the Personnel Rules and Regulations of the City of Tustin, City representatives have met and conferred in good faith with the Tustin Police Officers' Association pertaining to the wages, hours, benefits and conditions of employment for employees in the Police Officer Representation Unit; and

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

WITNESSETH

ARTICLE 1. Recognition.

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

ARTICLE 2. Salary.

The salaries of all bargaining unit employees in the classification of Police Officer shall be increased 5% effective December 26, 2005 as follows (salaries are indicated on a monthly basis):

Police Officer – Range 690				
A	B	C	D	E
\$4,915	\$5,167	\$5,431	\$5,710	\$6,002
Police Recruit– Range 564				

\$3,588

Effective June 26, 2006 the Classification of Police Officer shall be increased 3% as follows:

Police Officer – Range 702

A	B	C	D	E
\$5,065	\$5,324	\$5,597	\$5,883	\$6,185

Effective January 1, 2007, the salary for Police Officer and Police Recruit shall be increased by the all urban consumer price index (CPI-U) which covers Tustin for November 2005 through November 2006 to a maximum of 3%.

The preparation of the City's compensation plan as described in Section 4 of the Personnel Rules and Regulations shall be subject to the meet and confer process with the Tustin Police Officers Association.

Payroll Issuance

All Bargaining unit employees shall receive their regular salary paid Bi-weekly.

Salary Review Dates

All bargaining unit employees shall have as a salary review date the date upon which he or she shall next be eligible for consideration of a merit step increase. Any approved leave of absence exceeding thirty (30) days may result in the establishment of a new review date. Such date shall be based on the existing salary review date plus the number of calendar days of leave of absence in excess of thirty (30) days.

Normal Increases Within the Salary Range

All bargaining unit employees may be considered eligible for increases in salary according to the following:

1. Unless a salary range has only a single salary step, the letters A, B, C, D and E respectively, denotes the various progressive steps in the pay range.
2. Employees shall be eligible to move from salary step "A" to salary step "B" upon completion of six months of employment where the employee has demonstrated satisfactory performance.
3. Employees shall be eligible to move from salary step "B" to salary step "C" and thereafter to each step through the final salary step in the employee's salary range upon completion of one year at the salary step where the employee has demonstrated satisfactory performance.

4. For all employees eligible to advance between salary steps the Department Head shall submit to the Human Resources Department a written evaluation and recommendation to approve, delay, or deny the advancement. All advancements between salary steps are subject to approval by the Human Resources Director.

Salary on Demotion, Transfer or Reassignment

1. All bargaining unit employees subject to an involuntary demotion shall have their new salary set at the highest step for the classification demoted to closest to the salary at the time of demotion minus five percent (5%). In the event the involuntary demotion occurs during a promotional probationary period, and the employee returns to his/her prior classification, the employee shall have his/her salary set at the same step earned prior to the promotion. Demoted employees shall be eligible for their next merit increase at their next salary review date, which existed prior to demotion.
2. An employee who is demoted shall not be required to serve a new probationary period except that if demoted to a class in which the employee has no previous experience a probationary period of one year will be required.
3. An employee who is transferred shall continue to receive the same salary rate and the salary review date shall not change.
4. Whenever a classification is reassigned to a higher salary range, the salary of each incumbent on the effective date of the reassignment shall be increased to the corresponding step in the new range and the salary review date shall not change.

ARTICLE 3. Bi-lingual Pay.

Unit employees, except Police Officer Recruit, who successfully pass the City's examination for conversational skill, in a language other than English (which the Human Resources Director has approved as being needed for City Business), are eligible to receive \$100 per month (\$46.15 per pay period) as a bi-lingual pay incentive. Individuals are eligible to receive bi-lingual pay at the beginning of the first pay period after Human Resources receives the employee's test score demonstrating conversational proficiency. Should a conflict arise regarding designation of an employee for compensation, proficiency and/or need the Human Resources Director shall determine who is eligible. The City is responsible to develop and administer a testing vehicle to determine proficiency.

ARTICLE 4. Educational Incentive Pay.

The City shall provide Educational Incentive Pay as an incentive for unit employees, with the exception of the classification of Police Recruit, to improve

their level of education in relevant fields beyond the expected level for their position.

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

To apply for Educational Incentive Pay an employee must be actively at work, provide official documentation of the required classes and/or degree (AA, BA or BS, Masters) **and** have completed any applicable service requirements.

<u>Degree in Related Field</u>	<u>Police Officer</u>
AA Degree or its equivalent	\$175/mo. (\$80.77 per pay period)
Bachelor's Degree	\$325/mo. (\$150.00 per pay period)
Masters Degree	\$375/mo. (\$173.07 per pay period)

An equivalent to an AA Degree shall include continuing active enrollment in a Bachelor's curriculum with over half the course work completed. Credit for a class under this plan requires a grade of "C" or better. A pass/no-pass course will be deemed to have achieved a "C" grade if the course was passed. No credit is provided for courses for which the City paid and were attended entirely or in substantial part on City time. Employees in a program leading to a job-related degree may be given credit for non-job related courses which are required to obtain the degree but they shall not exceed 50% of the total credits until the related degree is received.

A reasonable interpretation of the related nature of the degree fields shall be made by the Human Resources Director.

For purposes of contract negotiations, the BA/BS degree shall be used for future comparisons.

ARTICLE 5. Career Officer Program.

Officers qualifying under the Career Officer Program as outlined in the Police Department General Order Manual shall be eligible for additional compensation in accordance with the following:

<u>Level</u>	<u>Increase in Base Salary</u>
Senior Officer I	2.5%
Requirements include:	
<ul style="list-style-type: none">• Five (5) consecutive years of employment with the Tustin Police Department as a full time sworn police officer (lateral entry officer may use 50% of their prior paid full time sworn police officer service toward this requirement).• POST Basic Certificate.	

- 30 College semester credits (transcripts required).
- “Competent” or better annual performance evaluations for the previous three (3) consecutive years.
- Has accepted additional duties as assigned.

Senior Officer II **4.5%**

Requirements include:

- Seven (7) consecutive years of employment with the Tustin Police Department as a full time sworn police officer (lateral entry officer may use 50% of their prior paid full time sworn police officer service toward this requirement).
- POST Intermediate Certificate.
- 60 College semester credits or an Associate Degree (transcripts required).
- “Competent” or better annual performance evaluations for the previous three (3) consecutive years.
- Has performed as a Senior Officer I for one (1) year.
- Has accepted additional duties as assigned.

Master Officer **6.5%**

Requirements include:

- Ten (10) consecutive years of employment with the Tustin Police Department as a full time sworn police officer (lateral entry officer may use 50% of their prior paid full time sworn police officer service toward this requirement).
- POST Advanced Certificate.
- 90 College semester credits.
- “Competent” or better annual performance evaluations for the previous five (5) consecutive years.
- Has performed as a Senior Officer II for one (1) year.
- Has accepted additional duties as assigned.

Employees are eligible at the beginning of the first pay period following Human Resources receipt of documentation that all requirements are met and approvals processed.

ARTICLE 6. Attendance.

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

Any employee who is absent from duty shall report the reason for such absence to the Department Head or immediate supervisor prior to the absence as much in advance as possible and in no case later than two (2) hours before the beginning of the employee’s scheduled work shift. Absences not reported in such manner may be considered absence without leave. A deduction of pay may be made for the duration of any absence without leave. Upon return to work, such absence shall be justified to the Department Head who shall consider the need for

disciplinary action or to approve the absence as unavoidable and allow the employee to make up the lost time or cover it with general leave.

Failure of an employee absent without leave and without reasonable cause to report to work for three (3) consecutive scheduled work days may be cause for immediate discharge.

Continuous service for advancement within salary range shall be considered as interrupted if the employee experiences a leave of absence without pay in excess of thirty (30) calendar days. No absence with pay shall be considered an interruption of an employee's continuous service and shall not be deducted in computing total city service time.

ARTICLE 7. Retirement Plan.

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

The City shall pay, on behalf of the sworn employee (excludes Police Recruit), nine percent (9%) of the employee's reportable compensation to PERS in accordance with the City's contract with PERS. For the classification of Police Recruit, the City shall pay, on behalf of the employee, seven percent (7%) of the employee's reportable compensation to PERS in accordance with the City's non-safety miscellaneous contract with PERS.

For sworn employees, effective July 1, 2004 the employer rate for PERS will be 32.802%. In the future (with the exception of Police Recruit) should the PERS employer rate exceed 32.802%, the employee and the City will cost share on a 65% City / 35% employee basis any increase above 32.802% (i.e., if the rate is 34.802%, the excess is 2% - the City will be responsible for 1.3% and the employee will be responsible for .7%) Any contribution required of the employee will reduce the City's 9% contribution, which is currently being made on behalf of the employee, and such contribution will be paid through payroll deduction from the employee's earnings. The employee cost sharing contribution shall not exceed 3.15%. The City will notify employees of any required contribution to PERS when it reviews its annual notice of rates from PERS.

In the event the City's PERS rate is reduced, any amount being paid by the employee under this cost sharing provision shall be reduced in an amount equal to the City's rate reduction until such time as the City's rate is equal to 32.802%. PERS Cost sharing shall be treated consistently with other survey market cities for the purpose of calculating compensation.

The PERS plan in effect for Safety Members is the 3%@ 50 formula for Local Safety Members. The plan has been amended to include Section 21574 (Fourth Level of 1959 Survivor Benefits, Section 20042 (One-year Final Compensation), and Section 21024 (Military Service Credit as Public Service).

The PERS plan in effect for Non-safety Miscellaneous Members is the 2%@ 55 formula for Local Miscellaneous Members. The plan has been amended to include Section 21573 (Third Level of 1959 Survivor Benefits, Section 20042 (One-year Final Compensation), and Section 21024 (Military Service Credit as Public Service).

All employees shall pay 100% of the monthly cost for the 1959 Survivor Benefits, in addition to the \$2.00 monthly cost for the Basic Level 1959 Survivor Benefit.

ARTICLE 8. Social Security.

In the event the City and its employees are required to participate in the Federal Social Security Program, the contributions 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 9. Paid Leave.

A. General Leave

1. Each employee accrues General Leave in accordance with the following:

<u>Periods of Service</u>	<u>General Leave Hours Per Year</u>
0-5 years	160
6-10 years	208
Over 10 years	248

2. Each November, regular and promotional probationary employees may request that he/she be paid for a maximum of forty (40) hours of accrued General Leave. Employee requests will be granted provided the employee will retain eighty (80) hours of General Leave in his/her account after the payout occurs.
3. Each calendar year employees may accumulate General Leave to a maximum of two and one half (2 ½) times the employee's annual entitlement. Upon separation from the City service the employee will be paid for unused Leave, not to exceed the maximum of two and one-half (2 1/2) years entitlement, at the employee's then current base salary rate.
4. Pay in lieu of General Leave will be granted upon termination of City employment or upon a finding of hardship by the City Manager.
5. The taking of General Leave for reason other than non-job related illness or injury must be approved by the Department Head and due regard shall be given to the employee's preference in scheduling such paid leave time.

B. Holidays

The following holidays are observed by the City:

January 1	New Year's Day
Third Monday in February	President's Day
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
November 11	Veteran's Day
Thanksgiving Day	Thanksgiving Day
Day after Thanksgiving Day	Day after Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day
December 31	New Year's Eve

When a holiday occurs on a Sunday, the following Monday will be observed instead. When a holiday occurs on a Saturday, the preceding Friday will be observed instead.

For the designated holidays, employees are eligible for nine (9) hours of paid time off for each full day. Unless operational needs, as determined by the Police Chief, require that the time be taken at some other date the time off will be taken on the scheduled holiday.

If the holiday hours paid on a holiday or substituted day off are less than the employee's regularly scheduled hours the employee may use accrued compensatory time or General Leave to ensure that hours paid will be the same as would regularly be paid for the day.

In December of each year, each regular and promotional probationary employee may request a cash out of his/her holiday credit for the following year in lieu of having time off. The employee must have General Leave accrued in an amount equivalent to the holiday cash out requested to be eligible for full payment of the advanced holiday payment in January. In the event the employee does not have the required hours in his/her General Leave bank, pursuant to the City's leave report for pay period 25 of each year, the advance holiday payment shall be made in two installments, one in January (January – September holidays) and one in October (October – December holidays) of each year.

The request may only be for all cash, or all General Leave or half cash/half General Leave. This notification shall be in writing and is irrevocable. In the event that an employee separates from service and has used and/or been paid for holidays in excess of the pro-rata earned hours per month, the overage shall be deducted from his/her final check.

In the event an employee is on leave, or is not otherwise eligible to receive a paid holiday, and has received advance holiday pay, the City shall

reduce the employees' leave bank(s) the amount of hours of any unearned holiday previously paid on the payroll immediately following the holiday (or as soon as the overpayment is discovered).

C. Bereavement Leave

The City shall provide three (3) days off with pay for the purpose of bereavement leave in the event of a death in the employee's immediate family. "Immediate Family" shall be defined as including the spouse, mother, father, brother, sister, child, grandparent, and grandchild of the employee or the employee's spouse. An employee may use less than three (3) days.

Bereavement Leave is intended to allow time for an employee to mourn the loss of a loved one and/or to assist family members during a time of loss. In the event an extended absence or travel is necessary, the employee may request to use General Leave to supplement bereavement leave.

D. Jury Duty Leave

All bargaining unit employees on jury duty will receive full City salary. The employee will turn over all amounts payable to the employee by the courts for jury duty except for mileage and subsistence reimbursements, to the City.

E. Industrial Disability Leave

All bargaining unit employees who are unable to perform the essential functions of their classification and assignment by reason of job-related injury or illness as contemplated by the Worker's Compensation laws of the State of California shall be paid:

1. Full salary and benefits to a maximum provided for under the City's Personnel Rules and Regulations (Police Recruit) or pursuant to Section 4850 (Police Officers).
2. All other benefits as prescribed under the Worker's Compensation laws of the State of California.

F. Military Leave

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

ARTICLE 10. Shift Differential.

Employees whose regular shift is the graveyard shift (shift begins at 6:00 p.m. and ends at 6:30 a.m. the following day) shall receive \$50.00 per month for each month worked on said shift. This differential is designed to compensate the employee for the inconvenience of working this particular shift. Unit employees receiving this differential are paid \$25.00 per pay period, limited to 24 pay periods per year.

ARTICLE 11. Payroll Deductions.

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

- A. Withholding Tax;
- B. Contributions to retirement benefits including deferred compensation;
- C. Contribution to survivor benefits;
- D. Payment of life insurance and accidental death and dismemberment insurance premium;
- E. Payment of non-industrial disability insurance premium;
- F. Payment of hospitalization and major medical insurance premium;
- G. Payment to a City dependent care or medical care reimbursement account pursuant to the IRC Section 125;
- H. Payment of supplemental insurance premium;
- I. Payment to or savings in a Credit Union or Bank;
- J. Contributions to United Way, Community Health Charities or other designated charity organizations;
- K. Payment of membership dues and any authorized fees to TPOA
- L. Payment of authorized TPOA deductions;
- M. Purchase of United States Savings Bonds;
- N. Payment for non-return of uniforms and/or equipment issued;
- O. Repayment of unearned advanced holiday pay, and
- P. Other purposes as may be authorized by the City.

Article 12. No Strike/Job Action.

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

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

In the event of such activities, the Association shall immediately instruct any person engaging in such conduct that they are violating the Agreement and that

they are engaging in unauthorized conduct and resume full and faithful performance of their job duties.

ARTICLE 13. Uniform Allowance.

Employees will be paid a uniform allowance of \$429.00 per year. The allowance is paid bi-weekly (\$16.50 per pay period/26 pay periods per year). Special motor officer gear and officer public safety leather/nylon gear required by the department will be provided.

ARTICLE 14. Standby Duty.

Unit employees shall be compensated for standby duty for other than court appearances at the rate of two (2) hours straight time for each eight (8) hours required, including holidays. Standby duty for scheduled court appearances on behalf of the City shall be compensated at a rate of two (2) hours straight time for morning (a.m. hours) appearances and two (2) hours straight time for afternoon (p.m. hours) appearances.

If a scheduled standby is canceled and the employee is not advised of the cancellation before 6:00 p.m. on the day prior to the subpoena date, the employee shall receive two hours of standby pay. A reasonable effort by the employer (e.g. phone call) to notify the employee prior to 6:00 p.m. on the day prior, will negate the two hours of standby pay. Employees who are scheduled for standby shall advise the department of a telephone number where they can be either reached or a message can be left to advise them of a cancellation.

If an employee is on standby and the standby status is canceled the employee will still receive the full amount of standby pay appropriate for the time frame involved.

ARTICLE 15. Call-Back Duty.

In addition to standby compensation, if any, officers shall receive a minimum of two (2) hours overtime paid at a time and one-half rate for any call which required them to return to duty.

ARTICLE 16. Special Assignments.

Except as indicated, employees assigned and engaged in the performance of work that constitutes the following special assignments (or successor titles) shall receive, in addition to their regular compensation, premium pay in the amount of two and one half percent (2 1/2%) of base salary provided that at no time may an employee receive more than one (1) special assignment pay premium.

Area Resource Officer
Bike Team Officer
Field Training Officer
Community Resources Officer

Commercial Enforcement Officer (limited to one individual assignment)
K-9 Officer
Investigator
Motor Officer
Professional Standards Personnel Ofcr/Professional Standards Training Ofcr
Gang Unit Officer
School Resource Officer

The City has the absolute discretion regarding the assignment and reassignment of employees to special assignments. Any such assignment is not vested and may be revoked at any time and any appeal required by Section 3304(b) of the California Government Code, shall be governed by Section 17.

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

In July 2006, upon implementation of the area command system, the City will meet with TPOA to discuss the FTO and inclusion of SWAT assignments.

ARTICLE 17. Rules of Procedure and Evidence for Post-Removal From Specialty Pay Position Hearings.

Any Police Officer removed from a specialty pay position for non-disciplinary reasons may file a written appeal with the City Manager within 10 days of receiving notice of removal.

1. Hearings shall be conducted by the City of Tustin ("City") Manager or his or her designee.

2. The question to be decided is whether the City abused its discretion in removing the police officer from the specialty pay position.

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

4. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses. If the employee

does not testify his or her own behalf, the employee may be called and examined as if under cross-examination.

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

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

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

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

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

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

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

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

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

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

ARTICLE 18. Deferred Compensation.

The City shall contribute \$37.00 per pay period, per employee, to a deferred compensation program or vehicle currently offered by the City. It is the responsibility of employees to complete the necessary paperwork and take

required steps to enroll in the program. Should employees fail to enroll, the City is under no obligation to make retroactive contributions on behalf of said employee or employees. Employees hired into the representation unit shall be provided with a notification of the deferred compensation program, including the amount of employer contributions, during employee orientation.

ARTICLE 19. Court Pay Provisions.

The City shall pay actual time spent in court at a rate of time and one-half to employees who are required to appear in court on behalf of the City during their off-duty hours subject to a minimum of two (2) hours of such compensation for court appearances scheduled in the morning (a.m. hours) and two (2) hours of such compensation for court appearances scheduled in the afternoon (p.m. hours).

ARTICLE 20. Rest Periods and Lunch Breaks.

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

Any employee required to monitor a radio or telephone during the lunch break shall be considered on paid status during the lunch break and shall be paid for said time.

No employee shall be intimidated, coerced or discriminated against for exercising his/her entitlement to rest periods and/or lunch breaks as provided for in this Article.

ARTICLE 21. Overtime Compensation.

The City shall pay unit employees premium pay of time and one-half for all approved overtime hours worked in excess of; (1) regularly scheduled hours per shift; (2) hours worked on a day the employee is not regularly scheduled to work; or (3) hours worked in excess of the prescribed hours during the applicable work cycle, (i.e. (a) 40 hours in a 7-day work cycle for employees on the 4/10 work schedule; (b) 160 hours in a 28-day cycle for employees on the 3/12.5 work schedule; and (c) 80 hours in a 14-day work cycle for employees on the 9/80 work schedule). General leave, compensatory time and holiday hours paid shall be counted as hours worked in these calculations; provided however, that standby time shall not be considered in determining entitlement to premium pay.

In lieu of receiving cash payment for overtime, the employee may elect the option of accruing compensatory time at the rate of time and a half, subject to a maximum accrual of forty (40) hours.

The time during which an employee may take compensatory time shall be subject to approval by the appointing authority or designee with due regard for the wishes of the employee and for needs of the service. Should this provision

be found invalid by an arbitrator, court of competent jurisdiction or the Department of Labor, the accrual of compensatory time shall cease and all accrued compensatory time shall be paid at the employee's current straight time rate.

Upon separation from City service, an employee shall be compensated for all accrued compensatory time of forty (40) hours or less at his/her straight time hourly base rate.

ARTICLE 22. Employee Life Insurance.

The City will provide life insurance on the life of each regular, permanent full-time, employee and pay the premiums thereof. The death benefit of said insurance shall be one hundred percent (100%) of the employee's base annual salary to the nearest multiple of \$1,000.00. The City shall also make available, at the employee's option, a supplemental life insurance policy, the death benefit of which shall be \$18,000.00. The premium of said supplemental policy shall be paid by the employee.

ARTICLE 23. Flexible Benefits Plan.

The Flexible Benefits Plan will be as follows:

- A. Effective December 26, 2005, the Flexible Benefits Contribution per month per eligible employee shall be:

Employee Only	Employee + 1 Dependent	Employee + 2 or more Dependents
\$407	\$625	\$833

- B. Employees who do not take medical insurance through the program offered by the City shall receive \$300 per month in lieu of the coverage comparable to coverage available through the City program. As a condition of receiving such amount, the employee must provide evidence, satisfactory to the City, that he/she has medical and dental insurance

- C. The Flexible Benefits contribution consists of mandatory and discretionary allocations which may be applied to City sponsored programs. Employees are required to take employee only medical and dental insurance (employees may opt out pursuant to evidence of satisfactory coverage) with premiums to be paid out of their contribution and \$16 of the contribution constitutes the City payment towards employee medical insurance. Employees may allocate the remaining amount among the following programs:

1. Medical insurance offered under the Public Employees' Medical and Hospital Care Act Program.
2. Dependent Dental Insurance
3. Additional Life Insurance

4. Vision Insurance
5. Deferred Compensation
6. Section 125 Dependent or Medical Care Reimbursement Programs
7. Eligible Catastrophic Care Programs
8. Cash

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

D. Section 125 Program

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

The City agrees to re-open this section in December 2006.

ARTICLE 24 . Probationary Period.

Each sworn bargaining unit employee shall be subject to an original probationary period of not less than eighteen (18) months for new hire police officers. This extended probationary period shall not affect an employee's entitlement to periodic merit increases. The Police Chief may recommend to the Human Resources Director to extend for a period not to exceed ninety (90) days the probationary period of any unit employee.

A unit employee rejected during a promotional probationary period (other than Police Recruit) shall be reinstated to the position and status from which promoted unless the employee is being discharged for cause. Employees being disciplined for cause during a promotional probationary period shall have the right of appeal using the existing disciplinary appeals procedure.

Any leave of absence without pay exceeding fifteen (15) work days may cause the employee's probationary period to be extended by the number of work days of such leave that are in excess of fifteen (15) days.

ARTICLE 25. Probationary Rejection.

A probationary employee, rejected for failure to meet standards or pass probation, shall not be eligible for any internal grievance or appeal procedure pursuant to Swift vs. County of Placer.

ARTICLE 26. Layoff Procedure.

The provisions of Section 10 of the Personnel Rules and Regulations currently in effect are hereby incorporated into this memorandum of understanding by reference and shall be an attachment hereto.

ARTICLE 27. Consolidated Omnibus Budget Reconciliation Act of 1985.

Employees who are allowed to remain on a City health, dental or other insurance plan following separation from employment pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), may be charged the maximum rate permissible by law for such coverage (presently 102% of the premium for an active employee).

ARTICLE 28. Retiree's Health Insurance.

The City will contribute (reimburse) a maximum of \$350.00 per month towards the payment of medical insurance premiums for employees who have five (5) years of continuous City service and at the time of leaving City service, retire with a PERS pension. Such contribution includes any required contribution to be made for eligible retirees under the Public Employees' Medical and Hospital Care Act Program.

The City agrees to investigate the creation of a Retiree Health Savings Plan into which employees can make contributions.

ARTICLE 29. Long-Term Disability (LTD) Plan.

- A. Police recruits shall participate in the City's STD/LTD plan under the same terms, conditions and cost as those employees in the general employee bargaining unit.
- B. The Long-Term Disability Insurance Plan specifically for sworn police personnel in effect as of January 1, 2000 shall continue in full force and effect during the term of this agreement unless changed by the mutual agreement of the City and Association.
- C. The City will contribute \$20.50 per month per unit employee to the TPOA LTD. Fund.
- D. In addition to provisions of the Long-Term Disability Insurance Plan, provided the leave exceeds thirty (30) days, the City agrees to pay the 60% of an employees' base salary for a period not to exceed 14 days or the equivalent of 80 hours. Such payment is considered taxable income and occurs after the employee has used eighty (80) consecutive hours of General Leave during the 30 day period beginning with the 1st day of the leave.
- E. Flexible benefits will be continued for ninety days of a disability leave and such time will be counted towards satisfying Federal FMLA and State of California FRA requirements.

- F. It is understood that proof of coverage is to be submitted to the City upon request and eligibility for City benefits provided in D and E of this Article is conditioned upon the City's receipt of proof of disability.

ARTICLE 30. Tuition Reimbursement.

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

- A. Department Head and Human Resource Director approval must be obtained before enrollment in the course.
- B. Reimbursement shall be made of tuition fees, textbooks, lab fees, or required supplies, upon completion of the course with a satisfactory grade and after the completion of the initial probationary period.
- C. Tuition reimbursement shall not be made if the employee is drawing veteran's education benefits or any other reimbursement for the same course.
- D. Reimbursement for up to \$500.00 each calendar year if the employee is attending a community college or \$2,000.00 each calendar year if the employee is attending a four year college or university will be paid upon receipt by the Human Resources Department of proof of successful completion of the course(s) and proof that payment of fees has been made. If an employee attends both a community college and four year college or university in a calendar year the maximum reimbursement shall be \$1000.00.
- E. The City shall set up procedures that allow for expedient reimbursement for classes taken and fees paid. Employees may request reimbursement in the calendar year that the class is taken and completed. Failure to request reimbursement in a timely manner and/or classes taken in excess of the allowable reimbursement level cannot be carried over to a future year reimbursement period.

ARTICLE 31. Performance Evaluations.

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

ARTICLE 32. Work Schedules.

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

- A. Department work schedules include the 4/10 work schedule; (in a 7-day work cycle the employee works four 10-hour days where the scheduled work shift commences and ends at the same time each day, with three consecutive days off) and the 3/12.5 work schedule, (in a 28-day work cycle the employee works three 12.5 hour days where the scheduled work shift commences and ends at the same time each day, with 4 consecutive days off, in each seven (7) calendar day period, except that the employee must work one additional 10-hour shift during the work cycle) as follows:

4/10

- Traffic, Investigation, and Professional Standard Divisions,
- Employees in special assignments

3/12.2

- Patrol
- Police officers assigned to the bike team will continue to work a 3/12.2 schedule until implementation of the area commander system at which time, the bike team will work a 4/10 schedule.

Continuation of the schedule is subject to needs of the Department, provided that if the Department desires to discontinue that work schedule, the employee will revert to the 9/80 work schedule (in a 14-day work cycle the employee works eight 9-hour days where the scheduled work shift commences and ends at the same time each day, and one eight-hour work day, with one period of 3 consecutive days off and one period of two consecutive days off or some other schedule upon mutual agreement of the Department and employee.

- B. Employees assigned to special task forces or regional teams will work the hours that the team works.
- C. The Department shall continue the present practices of (1) rotating shift assignments on a regular basis at 6-month intervals; (2) allowing employees to sign up for and select shift assignments based on seniority; and (3) limiting an employee to 12 consecutive months on any shift assignment.
- D. Any employee's work schedule may be temporarily changed to accommodate training assignments which are eight (8) or more hours in duration.

ARTICLE 33. Management Rights Clause.

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

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

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

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

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

ARTICLE 34. Administrative Regulations.

The City Manager may issue written administrative personnel regulations designed to augment or clarify the provisions of this Memorandum.

ARTICLE 35. Application of Agreement.

The term "employee" whenever used herein, whether singular or plural, means and applies only to those employees of the City included within the Tustin Police Officer Representation Unit, and that this Agreement covers only said employees. It is not solely limited to the members of the Tustin Police Officers Association.

ARTICLE 36. Gender.

Words used in this Agreement in the singular include the plural, and the plural include the singular. Words appearing in the male gender include the female gender and the female gender includes the male gender.

ARTICLE 37. Severability.

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

Article 38. No Change of Benefits.

During the life of this agreement there shall be no unilateral change of benefits or privileges contained in this Memorandum of Understanding or the Resolutions adopting this Memorandum of Understanding that are not specifically changed by this agreement except for those not impacting terms and conditions of employment.

ARTICLE 39. Employee Rights.

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

1. TPOA shall have access to and be provided with payroll deduction of dues, fees, and assessments without charge through the City's regular payroll system.
2. TPOA shall be afforded the use of department bulletin boards for the posting of notices, updates, meeting minutes and other material related to TPOA business.
3. TPOA shall be afforded the reasonable use of department copy machines and faxes and will reimburse the City for any material costs or toll fees for such use.
4. Upon notice and subject to availability the City shall allow TPOA the use of City facilities including meeting rooms for TPOA membership, Board of Directors and committee meetings.
5. TPOA representatives shall be allowed reasonable paid release time for preparation for and attendance at meetings with management related to the meet and confer process and labor relations matters.
6. All bargaining unit members shall have the right to representation by TPOA in processing grievances and disciplinary appeals. Employees shall be afforded reasonable paid release time to meet with TPOA representatives for discussion and consultation on grievances and disciplinary appeals.
7. TPOA shall have the exclusive right on behalf of the bargaining unit to meet and confer with management over matters of wages, benefits, hours, and terms and conditions of employment pursuant to State and Federal laws.
8. All bargaining unit members shall have the right to join and participate in the activities of TPOA free from interference, intimidation, coercion, or discrimination.

9. TPOA shall have the right to distribute a reasonable amount of association information and newsletters at the job site.
10. TPOA representatives shall have the right to reasonable use of department telephones and e-mail for the discussion of TPOA business.
11. TPOA representatives and consultants shall have the right of reasonable access to the workplace.
12. TPOA representatives may be granted general or other leave for labor relations training.
13. All other rights and privileges currently in effect or which may be enacted in the future pursuant to State or Federal law.

ARTICLE 40. Third Party Advisory Process for Disciplinary Appeals.

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

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

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

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

- B. Where practicable, the date for the hearing shall not be less than 20 days, nor more than 60 days, from the date of the filing of the appeal with the Director of Human Resources. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing.
- C. All hearings shall be private provided, however, that the arbiter shall at the request of the employee, open the hearing to the public.
- D. Subpoenas and subpoenas duces tecums pertaining to a hearing shall be issued at the request of either party, not less than 5 working days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the arbiter.
- E. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules, which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence shall be excluded. The arbiter shall not be bound by technical rules of evidence. The arbiter shall rule on the admission or exclusion of evidence.
- F. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses or any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the respondent does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, arbiter, employee/employee representative) mutually agree that same is not necessary.
- G. The hearing shall proceed in the following order, unless the arbiter, for special reason, otherwise directs:
 - 1. The party imposing discipline shall be permitted to make an opening statement.
 - 2. The appealing party shall then be permitted to make an opening statement.

3. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence.
 4. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted.
 5. The parties may then, in order, respectively offer rebutting evidence only, unless the arbiter for good reason permits them to offer evidence upon their original case.
 6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the arbiter.
- H. The arbiter shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the arbiter, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The arbiter, prior to or during a hearing, may grant a continuance for any reasons he/she believes to be important to reaching a fair and proper decision. The arbiter shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than 30 days after conducting a hearing. His/her decision shall set forth findings of fact and conclusions. The opinion shall be advisory only.
- I. The arbiter may recommend sustaining or rejecting any or all of the charges files against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee. He/she may not recommend for discipline more stringent than that invoked by the Department Head.

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

- J. Within 30 days of the receipt of the arbiter's findings and recommendations, and transcript (which is optional only in certain cases), whichever date is later, the City Manager shall adopt, amend, modify or reject the recommended findings, conclusions, and/or opinions of the arbiter. Prior to making a decision, which modifies or rejects the recommendation of the arbitrator, the City Manager shall order and read the transcript of the Third

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

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

ARTICLE 41. Binding on Successors.

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

ARTICLE 42. Entire Agreement.

This agreement, upon ratification and adoption supersedes all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein and constitutes the complete and entire agreement between the parties and concludes the meet and confer process for its term unless otherwise expressly provided for herein.

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

The City and TPOA for the duration of this Agreement, each voluntarily and without qualification waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter covered in the Agreement including the impact of the City's and the Association's exercise of their respective rights as set forth herein on wages, hours, benefits and terms and conditions of employment. The City agrees that it will not seek to change any of the wages, hours, benefits and terms and conditions of employment provided for and covered by this Agreement during its term. This paragraph does not waive the right of the City or the Association to bargain over any subject or matter not covered in the Agreement which is a mandatory subject of bargaining and concerning which the City or the Association is considering a need to change during the term of this agreement.

Article 43. Amendments.

This memorandum can be altered or amended only by written agreement between the parties hereto.

ARTICLE 44. Notices.

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

ARTICLE 45. Term of Agreement.

All provisions set forth herein shall be effective on January 1, 2006 and shall remain in effect through June 30, 2007.

In witness whereof, the parties hereto have executed this document this 3rd day of January, 2006.

City of Tustin



William A. Huston, City Manager




Linda Jensen, Liebert Cassidy Whitmore




Ron Nault, Finance Director




Tustin Police Officers Association



Michael Shrode, President



Mike Lamoureux

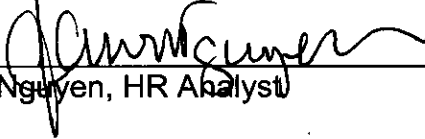


Luis Garcia



Joe Garcia, Police Captain

Sean Whiteley



Fawn Nguyen, HR Analyst

