MEMORANDUM OF UNDERSTANDING FOR

POLICE OFFICERS' ASSOCIATION

OF THE CITY OF HERCULES

Effective July 1, 2019 through June 30, 2021
Per Resolution No. 19-048

July 1, 2019 – June 30, 2021

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HERCULES AND THE HERCULES POLICE OFFICERS ASSOCIATION

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MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HERCULES AND THE HERCULES POLICE OFFICERS ASSOCIATION

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code section 3500 et seq). Parties to this Memorandum of Understanding ("MOU" herein) are the City of Hercules ("City" herein) and the Hercules Police Officers Association ("Association" herein). The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees represented by the Association and have exchanged freely information, opinions and proposals and have endeavored to reach an agreement on matters relating to the employment, conditions, and employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council as a joint recommendation of the undersigned for salary, fringe benefits, and other working conditions for the period of July 1, 2018 - June 30, 2019, and shall be in full force and effect at such date as herein prescribed, on ratification by both the City Council and affected members of the Police Association.

ARTICLE I - RECOGNITION

The City recognizes the Association as the exclusive representative of the full-time sworn employees of the Hercules Police Department in the classifications of Sergeant and Police Officer. Said recognition herein shall remain in full force and effect unless decertified according to procedures adopted in conformity with State law. The provisions of this article shall not preclude any individual representing him/herself in matters of employer/employee relations.

ARTICLE II - NONDISCRIMINATION

No bargaining unit members represented by the Association shall be reduced or removed, or in any way favored or discriminated against because of race, sex, national origin, or religion.

Neither the City nor the Association shall interfere with, intimidate, restrain, coerce, or discriminate against bargaining unit members because of the exercise of their rights to engage or not to engage in employee organization activities pursuant to Government Code Section 3500 et seq.

ARTICLE III - MANAGEMENT RIGHTS AND RESPONSIBILITY

1. Management Rights

- The City retains all its exclusive rights and authority under State law and expressly and exclusively retains its management rights, which include, but are not limited to:

- The exclusive right to determine the mission and organization of its constituent departments and commissions;

- Set standards and levels of service;

- Determine the procedures and standards of selection for employment and promotions;

- Establish and effect administrative regulations consistent with laws and the provisions of this Memorandum of Understanding to direct its employees;

- Maintain the efficiency of governmental operations;

- Determine the methods, means, and numbers and kinds of personnel by which governmental operations are to be conducted;

- Determine methods of financing;

- Determine and/or change the facilities, methods, technology, means, organizational structures, and size and composition of the work force and allocate and assign work by which the City operations are to be conducted;

- Determine and change the numbers of locations, relocations, and types of operations, processes and materials to be used in carrying out all City functions;

- Discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law;

- Take all necessary actions to carry out its mission in emergencies;

- Exercise complete control and discretion over its organization and the technology of performing its work; and

- Take actions as are in the interest of effective service to the community.

The City maintains the right to use qualified volunteers or reserves in the Police Department. Use of said individuals shall be in accordance with State law and Police Department regulations.

ARTICLE IV - SUPPORT OF AGREEMENT

During the term of this agreement, the City agrees not to negotiate with any organization other than the Police Officers Association or its designated representatives on matters on which the Association is the exclusive representative and which is within its scope of representation. The Association agrees to negotiate only with the representatives officially designated by the City to act on its behalf.

The Association is given a bank of 120 hours for Association business during the term of this MOU.

ARTICLE V - LEAVES

A. Sick Leave

1. The City provides paid sick leave benefits for all full-time sworn employees. Sick leave accrues at the rate of eight (8) hours per month for each month in which an employee has worked a minimum of 96 hours. The maximum accrual of sick leave is 2,080 hours. The City does not pay employees for unused sick leave upon termination for any reason.

   Sick leave may be taken by an employee only under the following circumstances:

   - When sickness prevents performance of services, functions, or duties;

   - In the event of a serious illness to a member of the employee's immediate family (defined as the employee's spouse, parent, step-parent, brother, sister, child, step child, domestic partner, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparent, grandchild or legal guardian); or for a scheduled medical or dental appointment for the employee or the employee's dependent children, in the event that the appointment requires the employee to be absent from work.

   In requesting sick leave, members must notify, or make reasonable effort to notify, the watch commander four (4) hours prior to the member's work shift. The City may require an employee to submit a doctor's excuse for sick leave under the following circumstances:

   - More than two (2) consecutive sick leave days taken by the employee.

   - With prior notification of the employee.

   In cases where an employee's request for sick leave would normally be approved, but there is no sick leave accrual available, then the absence shall be charged against the available vacation or compensatory time balance. If there is no such vacation or compensatory time available, then the time off shall be recorded as an authorized unpaid Leave of Absence. An employee claiming for long-term disability benefits shall not be required to first exhaust paid leave.

   If an employee's death is duty-related, his beneficiary shall be entitled to reimbursement for all that officer's accumulated unused sick leave.

B. Authorized Leaves of Absence Without Pay

1. **Requesting Leave**

   Upon the recommendation of the Chief of Police, the City Manager may, in his or

her discretion, grant an employee an unpaid Leave of Absence not to exceed three (3) months. Employees desiring to take time off without pay who have no leave balances available shall submit a request in writing to the Chief of Police. Whenever possible, such request shall be submitted at least five (5) weeks in advance.

2. **Extension of Leaves**

During the period of the Leave of Absence, an employee may request that the leave be extended by submitting such a request in writing to the City Manager stating the reason for the extension. Such a request may be approved or disapproved by the City Manager as described in the above section. No Leaves of Absence exceeding one (1) year may be granted under any circumstances.

3. **Early Return From Leaves of Absence**

An employee may request permission from the City Manager to return to work prior to the approved expiration of the leave. Approval of the City Manager for such early returns is discretionary.

4. **Failure to Return to Work From Leave of Absence**

Failure of an employee to return to work on the approved date is grounds for disciplinary action up to and including dismissal.

5. **Benefits During Leaves of Absence**

Employees on leave of absence may continue their medical and insurance benefit coverage by reimbursing the City directly for the amount of the insurance premiums in advance. Such reimbursement must be made in advance by the 30th day of the preceding month for the subsequent month for each month in which the employee wishes to receive coverage. Should the employee fail to submit payment on a timely basis, the Personnel Department will send the employee a reminder notice. Coverage in any plan will be dropped if the employee is more than 30 days late in making a premium payment.

6. **Status of Employee on Authorized Leave of Absence**

   a. An authorized Leave of Absence does not represent a break in employment for a full time sworn employee. Such an employee retains all accrued vacation, sick leave, and other rights as exist at the time the Leave of Absence begins. However, only active full-time service shall count towards accumulated seniority or toward benefits, which accrue according to length of service (including vacation and sick leave). Vacation, sick leave, holiday, and merit salary increases do not accrue to an employee on leave during the period of such leave.

b. An employee returning from Leave of Absence shall return to the same salary step or relative placement in the pay range existing at the time the employee returns to work.

C. Unauthorized Leaves of Absence

Any unauthorized Leave of Absence may be cause for disciplinary action.

D. Jury Duty

The City provides jury duty leave with pay for all sworn employees who are called upon to serve for court jury duty according to the following provisions:

1. An employee called for jury duty should immediately notify the Chief of Police by providing the jury summons indicating the date, time, and place.

2. An employee may either remain in regular pay status and turn over to the City all jury duty wages (less mileage allowance if provided by the Court), or may take vacation leave, compensatory time off, or authorized Leave of Absence without pay and retain all jury duty wages.

E. Military Leave

Military Leave of Absence shall be granted within the provisions of State law.

F. Pregnancy Disability Leave

1. Employees are entitled to use sick leave, accrued vacation and/or compensatory time off for disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom on the same terms and conditions governing Leaves of Absence for other temporary illness or medical disability.

2. Such leave shall not be used for childcare, child rearing, or preparation for childbearing, but shall be limited to those disabilities as set forth above.

3. The length of such disability leave, including the date on which the leave shall commence and the date on which the duties are to be resumed, shall be determined by the employee and the employee's physician; however, the Personnel Department may require a verification of the extent of disability through a physical examination of the employee by a physician appointed by the City at City expense.

4. Employees are entitled to leave without pay or other benefits for disabilities because of pregnancy, miscarriage, childbirth, or recovery therefrom when sick leave has been exhausted on the same terms and conditions applicable to other temporary illness or medical disability.

5. The employee on pregnancy disability leave shall be returned to an equivalent position within her classification.

G. Family Medical Leave Act of 1993

1. The City shall provide eligible employees with family care leave in accordance with the Federal Family Medical and Leave Act (FMLA) and the California Family Rights Act (CFRA). Under FMLA and the CFRA, eligible employees may take up to twelve (12) weeks of unpaid leave; however, employees must first use accrued vacation and compensatory time leave.

H. Catastrophic Illness and Donations of Leave by Employees

1. HPOA members may participate in the City of Hercules Catastrophic Illness Plan as donors and receivers of hours.

I. Bereavement Leave

Bereavement leave of up to 24 hours shall be provided to employees in the event of a death in the immediate family of the employee. In addition to the 24 hours of bereavement leave, employees may use accrued unused vacation or sick leave to extend their bereavement leave up to a total of 40 hours. At the discretion of the City Manager, additional time may be taken as vacation, sick leave or unpaid leave.

Immediate family of an employee is defined as: parents, step-parents, parent-in-laws, spouse, domestic partner, child, step child, brother, sister, grandparents, grandchildren, brother/sister in-law, son/daughter-in-law or legal guardian.

In special cases, the City Manager may approve a leave of absence for bereavement in other circumstances.

ARTICLE VI - HOURS OF WORK

A. Work Assignment

Full-time employees shall be assigned to a shift designated by the Chief of Police after a meet and confer with the HPOA on the number of days and hours equaling eighty (80) hours per two week period at such times as designated by the Chief of Police.

1. Hours of Work

a. Effective January 1, 1996, the City designated a 7(k) exemption under FLSA of one hundred and seventy-one (171) hours per 28-day period as the standard work period.

2. **Break Periods**

Employees shall receive one (1) fifteen-minute break during the mid-portion of each four-hour block of time. In addition, employees shall receive allowance of forty-five minutes for meals during each shift of duty. If an employee does not receive at least thirty minutes for meal break during a shift, he/she shall be paid compensation for forty-five minutes at a time and one-half (1-1/2) rate.

B. **Overtime**

1. All employees required to work in excess of their regularly assigned shift shall receive compensation at the rate of time and one-half (1-1/2) of the employee's regular base rate of pay for each additional quarter hour of work performed.

2. An employee required to work in excess of 171 hours per 28-day period shall receive time and one-half (1-1/2) of the employee's regular base rate plus, if assigned shift differential, Officer-In-Charge (OIC) pay, Field Training Officer pay, and education incentive pay.

3. Overtime shall be earned and recorded in quarters ($1/4^{th}$) of an hour increments rounded to the nearest quarter ($1/4^{th}$) of an hour.

C. **Compensatory Time Off**

In lieu of receiving cash payment at the regular rate of pay (Section B) for overtime hours worked, an employee may elect the option of taking compensatory time off (CTO). Compensatory time off shall be earned at the rate of time and one-half for each hour worked. Compensatory time off must be requested by the employee when submitting an overtime slip. No more than two hundred forty (240) hours of compensatory time off may be accumulated. Compensatory time off must be scheduled with the advance approval of the Chief of Police or his/her designee. Use of accumulated compensatory time off shall follow the current guidelines provided by the United States Department of Labor.

D. **On Call Pay**

Detectives and other employees who are required to remain on call or on court telephone standby by the Chief of Police or his/her designee shall be restricted from traveling to any location which would preclude his/her return to duty within one-half hour and shall be required to maintain the ability to be contacted by phone at all times. Employees shall be compensated at the following rate:

$50.00 per weekday
$55.00 per weekend day
$60.00 per holiday

Detectives shall have full use of a take-home City vehicle while on call.

E. Call Back Pay

When an officer is called back to duty by a supervisor, that officer shall be compensated at one and one-half (1-1/2) times his/her regular hourly rate. Any compensation for being called back to duty shall cease after the officer is relieved from duty by his/her supervisor. Any employee represented by the Association who is called back in accordance with this article shall be compensated for a minimum of four (4) hours. The City and the Association agree that the intent of this Article is to compensate employees who are called back to duty on an emergency or urgent basis, or for department meetings, training, or City business, and that this Article shall not apply if "call back" work hours are contiguous either prior to or at the end of the employee's normally assigned shift. If an employee receives, less than eight (8) hours notice to return to duty for hours that are contiguous and prior to the normally assigned shift, the minimum shall apply.

F. Court Pay

An employee shall be entitled to receive compensation for a court appearance as a witness subpoenaed by the City, the State of California, or the United States, as follows:

1. Court appearances made while on-duty shall constitute normal hours of work.

2. In the event a court appearance extends beyond the end of the officer's regularly assigned shift, such time spent in court will be treated as normal work time for the purpose of computing the officer's overtime compensation.

3. Employees required to appear in court during their off-duty time shall be paid as follows:

a. Morning Session Only: Employees shall receive a minimum of four (4) hours compensation at the appropriate rate. Time in excess of the minimum compensation shall be on an actual time basis at time and one-half (1-1/2).

b. Afternoon Session Only: Employees shall receive a minimum of four (4) hours compensation. Time in excess of the minimum compensation shall be on an actual time basis at time and one-half (1-1/2).

c. Morning and Afternoon Sessions: When an employee is required to be present at both a morning and an afternoon court or attorney conference, the employee shall receive overtime compensation for the actual time spent in court from the time of arrival until dismissed by the court including lunch recesses.

d. Afternoon and Evening Sessions: When an employee is required to be present at both an afternoon and an evening court or attorney conference, the employee shall receive a minimum of four (4) hours compensation for the afternoon session. When the employee is released from court one (1) or

more hours prior to the start of the evening session, or the evening session is scheduled for a court in a different city than that of the afternoon session, the employee shall receive a minimum of four (4) hours compensation for the evening session.

e. In the event the time spent in court extends into the beginning of the employee's regularly scheduled work shift, time spent in court shall be deemed ended at the time such shift is scheduled to begin for the purpose of computing the employee's overtime compensation.

f. Compensation for court pay is subject to the employee submitting the appropriate form reflecting the beginning and ending time of the court appearance.

If a morning court appearance is canceled with six (6) hours or less notice provided to the employee or an afternoon appearance is canceled with two (2) hours or less notice provided to the employee, the employee shall be compensated for one (1) hour pay at the overtime rate.

G. Department Training

1. For the purpose of department scheduled training, work assignments shall not be modified with less than seven (7) calendar days notice or upon mutual agreement by the employee and the Chief of Police or designee.

2. Training Hours: Any training of six (6) hours or more shall be considered a full shift; less than six (6) hours, the employee shall be required to return to duty on that shift.

3. Any travel time that is outside the work assignment and in excess of the employee's normal commute is subject to compensation by The City. The City will compensate employees for travel time to training through an established Travel Time Guide.

ARTICLE VII - VACATION PLAN

A. Accrual Rate and Accumulation

The City provides paid vacation benefits for all full-time employees. Vacation shall be paid at the regular rate of pay earned at the time of vacation is commenced. The amount of annual paid vacation accrual is based on the number of years of full-time service based on total time in public service for each member. Existing designated employees may qualify as being eligible for this provision on a forward going basis. The vacation accrual is as follows:

- Start to 4 years of service – 96 hours annually
- 5 to 9 years of service – 120 hours annually

- 10 to 15 years of service – 144 hours annually
- 16 to 19 years of service – 160 hours annually
- 20 years plus of service – 176 hours annually

The maximum vacation balance which may be accumulated is 280 hours. When an employee reaches this maximum balance, no additional earned vacation is added to his/her account. The maximum amount of vacation accrual which may be added to the vacation balance in any one (1) year is the amount earned during the year less forty (40) hours.

No vacation leave may be earned by an employee while he/she is on Leave of Absence. In addition, an employee may not take vacation during his/her first six (6) full months of employment.

When an employee is terminated for any reason, he/she shall be entitled to all vacation pay earned and accumulated up to and including the effective date of the termination.

B. Vacation Sell Back

Consistent with City policy, employees may sell back up to 40 hours of their accrued unused vacation annually, once during each fiscal year. Employees will only be allowed to cash-out a maximum of 40 hours of vacation, provided that after doing so it leaves them with at least 40 hours of vacation and/or compensatory time on the books and 40 hours of sick leave at the time of cash-out.

ARTICLE VIII - HOLIDAYS

A. Holidays

The City provides paid time off for all full-time permanent employees for thirteen (13) holidays per year. Payment for holidays shall be as follows:

- Employees not receiving extra days off for City holidays shall be compensated for holidays in the pay period in which the holiday falls.
- Employees who are not assigned to a uniformed position shall continue to have the option of working the designated City Holiday schedule and thus receive the above holiday compensation. The decision to work the holiday schedule will be a yearly one and must be declared to the finance department prior to the start of the fiscal year. Those employees that choose not to work the City Holiday schedule and receive compensation in the form of time off shall not receive financial compensation for the days off as outlined in Article VIII on this MOU.
- Employees separated from City service before June 1 or December 1 shall be entitled to receive holiday pay at the rate of one (1) holiday for each month that the employee was in paid status through the first pay period of the month, e.g., employees who separate on or after the 16th of March shall be entitled to three (3)

holidays at eight (8) hours straight time; employees who separate from City service before the 16th of March shall be entitled to two (2) holidays at straight time.

- Each POA member will be allocated floating holiday hours. The number of hours will be determined by the holiday schedule issued by the City Manager for the city offices. Each member may select these floating holidays, subject to the requirement that their supervisor must approve requests for time off that do not incur a cost to the city. Floating holidays are provided for annually on each fiscal year (July 1 – June 30) and cannot be carried forward each year.

- **Proclaimed Holidays**

  - Independence Day
  - Labor Day
  - Veterans' Day
  - Thanksgiving Day
  - Day After Thanksgiving
  - Christmas Eve Day
  - Christmas Day
  - New Year's Day
  - Martin Luther King Day
  - President's Day
  - Memorial Day
  - Two Floating Holidays

  If any of these Holidays fall on a Sunday, the Monday following shall be observed as the holiday. If any of these Holidays fall on a Saturday, the preceding Thursday shall be observed as the Holiday.

- To be eligible for Holiday pay, employees must have worked the workday before and the workday after the Holiday, or be in approved paid leave status the workday before and the work day after the Holiday.

ARTICLE IX - GENERAL PROVISIONS

A. Payroll Deductions

The City shall grant payroll deductions for membership dues to the Association.

ARTICLE X - COMPENSATION

A. Salaries

The salaries in Table 1 below include a 2% Cost of Living Adjustment (COLA), effective July 14, 2019.

TABLE 1

July 14, 2019	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Police Officer	7420	7642	7872	8108	8351	8601
Police Sergeant	8772	9034	9305	9584	9872	10169

Safety employees shall receive an additional 3% Cost of Living Adjustment, effective July 12, 2020 as shown in Table 2 below.

TABLE 2

July 12, 2020	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Police Officer	7642	7872	8108	8351	8601	8860
Police Sergeant	9034	9305	9584	9872	10168	10473

1. Effective the first full pay period following July 1, 2018, all bargaining unit members will be required to participate in the City's Direct Deposit program for all regular paychecks.

All members of the bargaining unit shall receive a one-time, non-recurring, non-pensionable retention payment of two percent (2%) of their gross annual salary earned in FY 2018-19 and a one-time, non-recurring, non-pensionable retention payment of three percent (3%) of their gross annual salary earned in FY 2019-20. These retention payments shall be paid by supplemental check in the second pay period of August 2019 and August 2020. Members may elect to direct the retention payment to their Deferred Compensation Plan if desired.

B. Salary Upon Hire

A. Police Officer Trainees, while at the Police Academy and who have not graduated from the Police Academy, shall be compensated at a rate of ten percent (10%) less than Step 1 of the range for Police Officer.

C. Salary Step Advancement

It is the responsibility of the City to establish appropriate standards of performance for employees and to review employees' performance in meeting established standards. Employees will be evaluated as to whether the employee meets standards, exceeds standards, or fails to meet standards. Employees evaluated as meeting or exceeding standards overall will receive a salary step advancement to the next salary step until the employee reaches the top step of the salary range. For employees hired on or after

July 1, 1990, the salary step advancement shall become effective the first pay period following the employee's anniversary date. Excepted from this provision shall be those employees whose anniversary date falls on the first day of the pay period. An employee evaluated as failing to meet standards overall will receive no salary step advancement and such an employee's evaluation will indicate the specific areas of improvement needed in order to meet standards overall; such an evaluation may be appealed initially to the Chief of Police and then, if desired, to the City Manager whose determination shall be final.

An employee evaluated as failing to meet standards overall will receive a follow-up evaluation not less than three (3) months nor more than six (6) months following the initial evaluation and will be granted a salary step advancement at that time if the employee's performance is rated as meeting or exceeding standards overall.

Employees are eligible for further salary step advancement twelve (12) months following their previous salary step advancement, except as provided in B, 1, above. When an employee demonstrates an outstanding level of performance in the opinion of the Chief of Police, the employee may be evaluated and awarded salary step advancement, even though twelve (12) months have not elapsed since the employee's previous salary step advancement.

The evaluation will be discussed with the employee and space will be provided on the evaluation form for the employee's comments. The employee will be given a copy of the evaluation.

The HPOA salary schedule will consist of six steps, with each additional step above #1 receiving an additional 3% of salary.

D. Incentive Pay Plan

HPOA employees will be eligible for the same incentive plan that the rest of the City employees have. The City will meet and confer with HPOA on the formulation of this policy.

E. Education Reimbursement

An employee who is enrolled in a technical/vocational, an associate of arts, bachelor's, or master's degree program which the City determines is in a job-related field may receive reimbursement for tuition and books in an amount not to exceed three thousand five hundred dollars ($3,500) per fiscal year. The Chief of Police, the Human Resources Department and the City Manager must approve the reimbursement prior to enrollment. Evidence of a grade of "C" or better – or, if no grade is given, successful completion of the course – shall be required as a condition of obtaining reimbursement. There will be a total of $30,000 dollar annual allocation in the Education Reimbursement Program for all City employee groups. A POA member who is enrolled in a degree program and has received reimbursement monies the prior year will have priority and cannot be bumped from the

program by a member who did not receive a reimbursement the prior fiscal year.

F. Education Incentive Pay

Extra compensation for possession of POST certificates and/or college degrees shall be provided pursuant to the following schedule:

A. Intermediate POST Certificate: 3.5% of base wage;
B. Associate of Arts Degree: 4% of base wage;
C. Advanced POST Certificate: 4.5% of base wage;
D. Bachelor of Arts Degree: 5% of base wage.

An employee shall only be eligible for one of the foregoing education incentive payments.

G. Bilingual Pay

Effective July 1, 2019, an employee certified as bilingual shall receive an additional premium of 1% of base wage per month if he or she is certified as bilingual as follows:

A. The employee has the demonstrated ability to translate Spanish, Chinese or Tagalog into English and vice versa, both in writing and verbally, established by passing a proficiency test administered by the City's Human Resources representative or its designee; and,

B. The employee and department head certify that the employee's bilingual skills are desired by the department, and the employee may be called upon when necessary to translate communications as required by the department head.

H. Field Training Officer Pay Differential

An employee who is assigned as a Field Training Officer will be paid an additional five percent (5%) of his/her salary for actual time spent as a Field Training Officer. This differential shall also apply to the Field Training Sergeant.

I. Shift Differential

The City agrees to pay a differential of three percent (3%) of base salary for officers and sergeants assigned to swing and/or relief swing and five percent (5%) of base salary for officers and sergeants assigned to the graveyard shift. The differential shall be available only to those employees actually performing duties on the covered shifts.

J. Assigned Positions

The City agrees to pay sworn employees designated to work a regular assigned position including Administrative Sergeant, Investigative Sergeant, and Training Sergeant, excluding patrol, an additional five percent (5%) of his/her base salary. This differential does not include sworn employees temporarily assigned to the position. Sworn employees temporarily assigned shall have the work schedule adjusted to include a paid lunch. Officers receiving Specialty Pay incentive will retain pay incentive even when working shifts not related to the Specialty Pay.

K. **Out-of-Class Work**

a. **Officer in Charge**

During the absences of regular supervisors, a sworn officer shall be designated as Officer-in-Charge (OIC) to handle field supervision or station responsibilities as required. The OIC shall be compensated at a rate which is five percent (5%) above said employee's existing salary rate for every hour worked in such temporary service. Any out-of-class work for which premium compensation is provided requires advanced written approval of the Chief of Police, or his or her designee.

b. **Acting Commander**

An employee who is appointed Acting Commander shall receive an hourly rate equal to five percent (5%) above said employee's existing salary rate for every hour worked in such temporary assignment. Any out-of-class work for which premium compensation is provided requires advanced written approval of the Chief of Police, or his or her designee.

c. **Acting Chief of Police**

An employee who is appointed Acting Chief of Police shall receive an hourly rate equal to ten percent (10%) above said employee's existing salary rate for every hour worked in such temporary appointment. Any out-of-class work for which premium compensation is provided requires advanced written approval of the Chief of Police, or his or her designee.

L. **Uniforms**

a. **New Employees**

The City shall provide all new members with a uniform which includes three (3) short sleeve shirts, three (3) long sleeve shirts, three (3) pants, one (1) tie, one (1) hat, and leathers and rain gear, as determined by the Chief of Police and as approved by the City Manager. The City shall also provide safety equipment, including

weapons, ammunition, and body armor vest, as determined necessary by the Chief of Police and as approved by the City Manager. Each employee is responsible for the care, maintenance, and replacement of such uniforms. The City shall reimburse employees for the cost of serviceable uniforms damaged in the course of employment. In addition, each employee is responsible for the care and maintenance of the issued safety equipment.

b. **Uniform Allowance**

The City will compensate each employee an additional $75.00 per month ($900.00 annually) as payment for such maintenance and replacement. Such compensation shall be made semi-annually during the second pay period in January and the second pay period in July. Due to the retention payment mentioned in Article X.A.1, the July Uniform Allowance will be deferred to the first pay period in August of 2017. Payment shall be made by a separate check and not as part of a regular paycheck. Employees shall become eligible to receive the first semi-annual payment following their first anniversary date. With respect to the time between the employee's first anniversary date and the semi-annual payment, the allowance will be prorated on a monthly basis with an employee having to work more than sixteen (16) days to receive payment for that month. The uniform allowance is considered a prospective payment and there shall be no payment or reimbursement upon separation from City service.

M. **Work-Out**

During the term of this MOU, the City and the Association agree to explore establishing an on-site gym to allow for possible work-out release time for officers.

N. **K-9 Differential**

An employee who is assigned as a K-9 officer will be paid an additional five percent (5%) of her/his salary.

O. **Longevity Pay**

Hercules Police Officer's longevity pay is calculated as a percentage of their salary and the City will make the payments in 26 bi-weekly installments. Existing designated employees may qualify as being eligible for this provision on a forward going basis. The calculations are based on total public service sworn time and will be as follows in addition to the employee's base salary:

At 5 years of service:	2 %
At 10 years of service:	4 %

At 15 years of service:	6 %
At 20 years of service:	8 %
At 25 years of service:	10%

P. **Assigned Take-Home Department Vehicles**

Employees holding certain specialized assignments may be assigned take-home City vehicles. These include City owned and City rented vehicles. Employees assigned take-home vehicles are not considered on duty and eligible for compensation for time spent driving to and from work in their City vehicle. Employees may be considered on duty and eligible for compensation when engaging in a law enforcement action while driving to or from work.

Q. **Assigned Position – Corporal**

An employee who appointed Corporal will be paid an additional five percent (5%) of his/her base salary as described in Section K. This amount is intended to cover the additional effort and responsibilities associated with this position and will be paid to the employee during the entire period they serve in this assignment, whether or not they are working under the supervision of a police sergeant or have an assigned trainee.

This position incorporates the duties previously performed on an as needed basis by the Officer in Charge (OIC) and Field Training Officer (FTO) specialized assignments. Employees who are not assigned Corporals may only perform OIC and FTO duties if they are on the current Corporal list and have the approval of the Patrol Division Commander.

R. **Computer Loan Program**

Eligible Employees: Regular full time employees that have completed their initial one-year probation period with the City. Employee must maintain a balance of up to 40 hours of vacation and/or compensatory time until the loan is paid in full. The hours employee must maintain will vary on the amount borrowed.

Maximum Loan Amount: The City will loan employees a maximum of $2,500 for the purchase of computer hardware and software. Employees may not have more than one loan outstanding at any time. If the purchase exceeds $2,500, the remainder of the purchase price is the employee's responsibility. No interest will be charged by the City under this program.

ARTICLE XI - DEFERRED COMPENSATION PLAN

Voluntary employee contributions may be made to the Deferred Compensation Plan through an authorized payroll deduction from the employee's salary.

ARTICLE XII - EMPLOYEE RETIREMENT PLAN

Members hired on or before 6/30/2011 shall receive the 3% at 50 PERS retirement formula through

their employment with the City of Hercules to include final year compensation One Year Final Compensation pursuant to Section 20024.2 of the California Government Code. Members hired after 6/30/2011 but before 01/01/2013 shall receive the 3% at 55 PERS retirement formula through their employment with the City of Hercules to include final year compensation One Year Final Compensation pursuant to Section 20024.2 of the California Government Code. Members agree to pay the employee's portion of nine percent (9%) pre-tax under the PERS Plan. In the event that the contribution amount is increased above the nine percent (9%) amount, the parties agree to meet and confer on the additional payment. Effective with the pay period beginning November 4, 2018, safety members will pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.

The current MOU requires that the member employee pay the full member contribution effective July 1, 2011. Section 414(h)(2) of the Internal Revenue Code allows the public agency who is a member of PERS to designate employee retirement contributions required by the MOU, as being picked up by the employer and treated as employer contributions for tax purposes.

Members hired on or after 01/01/2013 shall receive the 2.7% at 57 PERS retirement formula, shall contribute 50% of the total annual normal cost of their pension benefit to the pension plan as determined by the City's actuary and shall have their final compensation based on the employee's highest annual compensation earnable averaged over a consecutive 36-month period. The City and members agree that all the provisions of AB 340 and AB 197 will be followed. Effective with the pay period beginning November 4, 2018, safety members will pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.

An employee who retires may convert his/her unused sick leave balance to service credit as provided by Government Code Section 20965 .If an employee elects to convert their entire balance of sick leave to service credit they must notify the City at least one year prior to the date of retirement.

The Association shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, demands, damages, costs, expenses or liability including, but not limited to, liability for back taxes, and all claims of any type by the IRS, Franchise Tax Board, Unit members or their heirs, successors or assigns arising out of this Agreement to pay or partially pay or "pick-up" an employee's contribution to PERS.

ARTICLE XIII - MEDICAL AND INSURANCE BENEFITS

A. Medical

1. The City contribution to the PERS health plan on behalf of all active and retired employees shall be minimum established by CalPERS which for the 2019 calendar year is $139.00.

2. Active employees shall commence cost sharing starting in calendar year 2020 based on a dollar amount equal to the premium of the Kaiser Bay Area Region plan as follow:

2020 Calendar Year

The City contribution shall be the 2019 Kaiser Bay Area Region plan rate plus the first 3% increase in cost. The Employee shall pay up to the next 3% increase in cost, with the City responsible for anything above a total of 6%.

2021 Calendar Year

The City contribution shall be its share of the 2020 Kaiser Bay Area Region plan rate plus the first 3% increase in cost. The Employee shall pay up to the next 3% increase in cost, with the City responsible for anything above a total of 6%.

(For example, the City would only contribute an amount equal to the premium of the Kaiser Bay Area Region plan employee only coverage.)

3. If the employee chooses a plan where the premium exceeds the amount allowed, such excess shall be paid by the employee.

4. If the employee chooses a plan, which has a lower premium than the amount allowed, the employee shall not receive the difference in cash.

5. Supplemental Optional Monies Allowance for Retirees:

Eligibility

The City will provide an optional monetary allowance currently in the amount of $334.70 per month with an annual three percent adjustment on January 1st of each year to employees who retire as regulated by the Public Employee's Retirement System. To be eligible for the optional monies, an employee must retire as follows:

1. **Service Retirement**: Employees who have served the City for at least ten (10) years prior to retirement and are at least fifty (50) years old when they separate service from the City.

2. **Disability Retirement**: Employees who retire with a disability retirement are not required to be a certain age, but must have at least twenty (20) years of service with the City.

To be eligible for the optional money allowance, employees must also have the minimum amount of sick leave on the books, as outlined in the chart below. If an employee has below the amount of sick leave required for their years of service, then they will only be eligible for the percentage paid equivalent to the amount of sick leave they do have on the books.

Additionally, employees must retire within one hundred twenty (120) days of separation from City employment to be eligible to receive the optional money allowance.

Years of Service	Amount of sick leave hours on the books on the day employee separates service	Percentage of Optional Money Available
10	480	50
11	528	55
12	576	60
13	624	65
14	672	70
15	720	75
16	768	80
17	846	85
18	864	90
19	912	95
20	960	100
21	960	100
22	960	100
23	960	100
24	960	100
25	No minimum amount required	100

Employees who separate service from the City of Hercules, but do not retire as a PERS annuitant within 120 days of separation, shall not be eligible for medical retirement under this program.

Retiree Reaches Age 65

The City will pay a portion of the optional money to a retiree until the retiree reaches age 65, upon which they are required to enroll in Medicare. At that time, the optional money will drop to an amount equivalent to the Kaiser Supplemental to Medicare rate through PERS. The retiree will be eligible for the same percentage of the Supplemental Optional Monies as they were eligible for under the Basic Optional Monies plan. Employees who are not eligible for Medicare must provide the City proof that they are not eligible for Medicare, either through their own employment history or their spouse and after providing such proof, the city will continue to pay the percentage of the Basic Optional Monies Plan. If proof is not provided, the City will automatically begin paying the Supplemental Optional **Monies Plan percentages**.

This benefit, which is effective January 1, 2001, is expected to last into perpetuity. The funds being established for this program may not be used by the City or HPOA for any purpose other than what is expressly stated in this section of the MOU. If in the future the City and HPOA mutually agree to end or modify this benefit, they can do so only for active

employees. Any retiree who is currently receiving this benefit will continue to receive the benefit as stated in the MOU that was in effect at the time of their retirement. Conversely, if the City and HPOA increase this benefit, they can do so only for active employees and retiree benefits will remain the same as it was when they retired.

The City shall provide to the HPOA an annual statement of prior year balances in the medical retirement fund no later than December 31st of each year.

Payment

Payment will be made on a bi-annual basis. The optional money allowance for the months of January through June will be made the third week in July; July through December will be paid the third week in January of each year. Checks will be mailed to the address on file. Supplemental Optional Money payments are subject to applicable Federal and State Income Tax regulations.

1. **Medical Redirect** - If an employee elects for no health coverage, and can demonstrate to the City on an annual basis that the employee has alterative health care coverage; the employee shall be entitled to use 50% of their eligible contribution to the compensation of their choice.

2. **Vision/Dental** - The City agrees that it will continue to pay the full premium for VSP and Delta Dental Insurance for the employee and their immediate family members if Medical Redirect option is exorcised by the employee.

B. Dental and Orthodontic

The City shall pay the premium for Delta Dental Plan, including orthodontic benefits, coverage for full-time employees plus eligible dependents.

Benefit summary:

- The City will provide Dental Insurance with a maximum benefit of $1,500 of coverage per calendar year for each family member.
- The City will provide 50% Orthodontic coverage with a lifetime maximum of $2,500 for each eligible family member.

C. Vision

The City has contracted with Vision Service Plan (VSP) in order to offer vision benefits to employees and eligible dependents. The City shall pay the premium for the VSP benefit for full-time employees plus eligible dependents.

Benefit summary:

- Vision Exam - $20.00 co-pay- every 12 months

- Prescription Glasses- $20.00 co-pay - every 12 months
- Frames- $130 allowance for frame of choice/ 20% off amount over your allowance- every 12 months
- Contact Lenses – No co-pays applies – every 12 months ($130.00 allowance for contacts and the contact lens exam/fitting & evaluation)

Retirees may participate in the Vision Plan, provided the Plan will allow them to do so and the retiree pays the group rate plus the administrative fee that is allowed under COBRA laws (currently two (2) percent) to the City.

D. Other Insurance Benefits

The City will pay the monthly premiums for all full-time employees for life, long-term disability, and accidental death and dismemberment insurance. The insured valued benefit for each type of coverage is as follows:

1. **Long-Term Disability** - The City will provide Long Term Disability **Premier (Plan B)** through Police Officers Standards and Research (PORAC). The cost of said insurance plan shall be added to each employee's salary. The employee will then pay the premium through payroll deduction.

2. **Life** - In the amount of $50,000.

3. **Accidental Death and Dismemberment** - In the amount of $50,000.

E. VantageCare Retiree Health Savings Program

VantageCare Retiree Health Savings Program allows employees to accumulate assests to pay for health insurance and out-of-pocket expenses in retirement. Management agrees to open the contract to discuss the VantageCare Retiree Health Savings Program (and only this program), if the HPOA decides to participate in it.

ARTICLE XIV - LAY-OFF POLICY AND PROCEDURE

A. Discretion of City

Whenever it becomes necessary to abolish any position of employment, the employee holding such position of employment may be laid off or demoted without disciplinary action and without the right of appeal.

B. Notification

Employees to be laid off shall be given at least thirty (30)-calendar day's prior notice.

C. Vacancy and Demotion

Except as otherwise provided, whenever there is a reduction in the work force, the appointing authority shall first demote to a vacancy, if any, in a lower class for which the employee who is the latest to be laid off in accordance with Section F below is qualified. All persons so demoted shall have their names placed on the re-employment list.

D. Employee Rights

An employee affected by lay-off shall have the right to displace an employee who has less seniority in a lower class in the same class series or a lower classification in which the affected employee once had permanent status. For the purpose of this section and Section "E" below, seniority includes all periods of full-time service at or above the classification level where lay-off is to occur.

E. Seniority

In order to retreat to a former or lower class, an employee must have more seniority than at least one of the incumbents in the retreat class and request displacement action in writing to the City Manager within five (5) working days of receipt of notice of lay-off.

Employees retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

Employees retreating to a lower or similar class shall serve a probationary period in a new class unless they have previously successfully completed a probationary period in the class or a class in the class series.

Whenever two (2) or more employees have the same hire date, the order of seniority shall be determined by lottery. The names of all employees having the same sworn date will be drawn at random, one (1) name at a time until all names are drawn. The order of selection shall determine the order of seniority, with the employee whose name is drawn first having the greater seniority. Lottery selection will be made by the Chief or his or her representative in the presence of an Association representative.

F. Employment Status

Employees shall be laid off in inverse order of seniority according to their date of hire as a full time sworn employee of the City of Hercules. Employees holding the rank of Sergeant shall be laid off in inverse order according to their date of promotion.

G. Re-employment List

The names of persons laid off or demoted in accordance with these rules shall be entered upon a re-employment list. Such list shall be used by the appointing authority when a vacancy arises in the same or lower class of position before certification is made from an

eligible list.

H. Duration of Re-employment List

Names of persons laid off shall be carried on a re-employment list for one (1) year, except the persons appointed to permanent positions on the same level as that which laid off, shall, upon such appointment, be dropped from the list. Persons who refuse re-employment shall be dropped from the list. Persons re-employed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for one (1) year.

ARTICLE XV - OUTSIDE EMPLOYMENT AND OUTSIDE ACTIVITIES

A. General Prohibition

No employee shall engage in employment, activities, or enterprises for compensation of any kind or character which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as an employee of the City or the duties, functions, or responsibilities of his or her position or the City itself.

B. Definition

For the purpose of this section, an employment activity or enterprise is inconsistent, incompatible, in conflict with, or inimical to those various duties, functions, or responsibilities set forth above if it:

a. Involves the use for private gain or advantage of the City's time, facilities, equipment, or supplies; or except in limited cases of police officers, the badge, uniform, prestige, or influence of the City; or

b. Involves receipt or acceptance by a City employee of any money or other consideration from anyone other than the City for performing an act which the employee would be required or expected to perform in the regular course of working as a City employee; or

c. Involves the performance of an act in an outside capacity which may be subject directly or indirectly to the control, approval, inspection, review, audit, or enforcement of an officer, employee, or elected official of the City; or

d. Involves such time demands as would render performance of duties as a City employee less efficient, in the opinion of the Chief of Police and concurrence of the City Manager; or

e. Gives the appearance of involving or potentially involving the influence, directly or indirectly, or knowledge acquired by virtue of one's City office or employment; or

f. Involves an employment activity or enterprise which is inconsistent with the nature of the employment or professional standards called for by the employee's position.

C. Chief of Police's Approval

No employee shall be gainfully employed at any employment activity or enterprise outside of the City service without the prior approval from the Chief of Police. Such approval shall be denied only if the employment violates Section B of this Article.

D. Retroactive and Prospective Application

All provisions of this section shall apply to outside employment held by an employee on the effective date of this Agreement, as well as any outside employment sought after the date of this Agreement. As to any outside employment held on the effective date of this Agreement which is not approved, the City Manager may allow a reasonable period, not to exceed one year, for the employee to cease such outside employment.

E. Grievance Authority

An employee dissatisfied with a decision of the Chief of Police under this section may request a review before the City Manager in a manner provided in Article XVII of this Agreement. The City Manager's decision is final.

F. Penalty for Violation of this Section

An employee's failure to abide by this section may be cause for disciplinary action and/or disciplinary action and/or dismissal.

ARTICLE XVI - DISCIPLINARY ACTION PROCEDURES

A. Applicability of This Section

1. The provisions of this article shall be administered in compliance with the requirements of State law governing police officer discipline set forth under Section 3303 of the California Government Code.

B. Grounds for Discipline

Causes for disciplinary action include, but are not limited to, the following:

1. Fraud in securing appointment;

2. In competency, inefficiency, inexcusable neglect of duties, or failure to perform

duties;

3. Insubordination;

4. Dishonesty;

5. Drunkenness on duty or chronic abuse of alcohol;

6. Addiction to or use of narcotics or habit-forming drugs;

7. Violation of City or departmental rules;

8. Misuse or appropriation of City property or funds;

9. Negligence or misconduct resulting in damage to public property or waste of public supplies;

10. Failure to follow adopted safety practices, or failure to properly use required personal protective gear or equipment;

11. Discourteous or non-cooperative treatment of the public or other City personnel;

12. Acceptance of gifts or gratuities for the performance of services, functions, or duties for which employee is retained by the City;

13. Conviction of a crime;

14. Engaging in any employment, activity, or enterprise which is inconsistent, incompatible, in conflict with, or inimical to performance of services, functions, and duties for which the employee is retained by the City;

15. Failure to maintain required licenses and certificates;

16. Failure to maintain eligibility for vehicle insurance coverage where driving is a requirement of the job classification. For purposes of this section, "driving is a requirement of the job classification" when the job description for the classification lists a driver's license as one of the requirements for the position.

C. Delegation of Disciplinary Action

The City Manager may impose discipline or authorize any Department Head to discipline subordinate employees subject to these procedures.

D. Types of Discipline

The specific disciplinary actions which may be imposed against City employees are defined below. The City may also issue non-disciplinary letters of instruction. A letter of

instruction shall be removed from the employee's personnel file on completion of the annual evaluation subsequent to its issuance.

1. **Written Reprimand**

A written reprimand is a formal notice to an employee that his or her performance or behavior must be improved and that further disciplinary action, including additional reprimands, suspension, reduction in pay, demotion, or dismissal, may be taken unless the employee's performance or behavior is improved.

a. The content of the written reprimand should include the following:

- A description of the action or activity necessitating a written reprimand;
- The date(s) and time(s) of the action or activity causing the written reprimand.

b. The written reprimand should be prepared in duplicate and presented to the employee for his or her signature.

c. The written reprimand should then be distributed as follows:

- One copy to the employee;
- Copies to the Department Head and City Manager;
- One copy to the employee's personnel file.

d. Employees shall have sixty (60) calendar days within which to respond to any adverse comments entered in his or her personnel file. Such responses shall be attached to the adverse comments.

e. There shall be no right to appeal a written reprimand beyond Level III review by the City Manager as provided above in this agreement.

f. After one (1) year, an employee may request that the Chief of Police remove a written reprimand from the employee's record.

2. **Suspension**

a. Suspension is the temporary removal, without pay, of an employee from his or her duties.

b. The Chief of Police may suspend an employee for up to three (3) working days for each violation.

c. Suspensions of more than three (3) days are imposed by the City Manager. There shall be no right to appeal suspensions of three (3) days or less beyond a

Level III review by the City Manager as described in Article XVII of this Agreement.

3. **Demotion**

a. A demotion is the removal of an employee from his or her existing position to a lower paying position.

b. All demotions shall follow the guidelines of the Disciplinary Procedures in Section E below.

c. The rejection of an employee who is serving in a probationary promotional position and subsequent removal is a failure by the employee to satisfactorily complete the promotional testing process. Such an employee would be returned to his or her prior position. Such a rejection and removal is not disciplinary action subject to this Agreement.

4. **Reduction in Pay**

a. A reduction in pay within an employee's salary range represents a permanent or temporary lowering of an employee's salary rate, with a corresponding reduction in all other salary-based fringe benefits.

b. Reduction in pay resulting from the rejection of an employee who is serving in a probationary promotional position and is rejected during that period is not a disciplinary action subject to these procedures.

5. **Discharge**

a. Discharge is the permanent removal of an employee from the City's service.

b. Job abandonment as defined in the City's Rules and Regulations is neither a "discharge" nor disciplinary action, but is construed as the voluntary resignation of the employee.

E. Disciplinary Appeal Process

1. Upon the suspension without pay, demotion, reduction in pay, or discharge of an employee who is an Association member, the procedures described in Section 3 below shall be followed.

2. These procedures shall also constitute the administrative appeal rights and

protections afforded by the Public Safety Officers Procedural Bill of Rights Act (Government Code Sections 3300 et seq.)

3. These disciplinary appeal procedures include notice and four Levels (I, II, III, IV) of Response.

a. **Preliminary Notice of Possible Disciplinary Action**

No employee for whom this section applies shall be subject to disciplinary action unless prior to the action the employee has received:

i. Notice of possible disciplinary action, including the specific nature of such discipline;

ii. A written copy of the charges and the grounds for such charges;

iii. Copies of all relevant materials upon which the charges are based; and

iv. Notice of a reasonable time which shall not be less than seven (7) calendar days within which to respond orally and/or in writing to the charges or schedule a meeting at which to respond orally to the charges.

b. **Notice of Disciplinary Action Taken**

1. No disciplinary action shall be taken against an employee until the time period provided herein has passed for a response from the employee to the notice of possible disciplinary action and no response was received, or after the employee has responded to the preliminary notice of disciplinary action.

2. Thereafter, the employee shall be given written notice of the discipline to be imposed, if any, including the charges and the grounds for such charges, as well as notice of the employee's appeal rights under these provisions.

c. **Appeals**

1. A "disciplinary appeal" is a formal written objection or challenge to any disciplinary action, including dismissal, demotion, suspension, or reduction in salary. The reduction in pay or change in assignment which occurs in the course of regular rotation is not punitive and shall not be subject to this grievance procedure.

2. Appeal of Written Reprimand or Suspension of Three (3) Days or Less

A written reprimand or suspension of three (3) days or less may be appealed in writing to the City Manager within fifteen (15) calendar days of receipt of the notice of disciplinary action.

The City Manager, within a reasonable time, shall conduct a hearing and render a written decision which shall be final

3. Appeal of Suspension of More Than Three (3) Days, Demotion, Reduction in Pay, or Discharge

An employee shall have the right to an appeal of a disciplinary action involving a suspension of more than three (3) days, a demotion, a reduction in pay and/or discharge. The procedures described in Sections 1 through 5 below shall be followed for all appeals.

1. Notice

(1) Within fifteen (15) calendar days of receiving a written notice of disciplinary action, the employee may submit a written request to the City Manager for a hearing before a hearing officer from the California Office of Mediation and Conciliation.

(2) The parties shall request that State Mediation and Conciliation supply a list of seven (7) names of persons experienced in hearing public employment discipline matters. If the City and the Association are unable to mutually agree on a hearing officer, each party shall alternately strike a name from the list until only one remains. The order of strike shall be determined by lot.

(3) The hearing shall be scheduled within sixty (60) days of such a request unless both parties agree to waive this provision.

(4) Written notice of the hearing shall be given to the employee and his/her representative, if any, promptly upon the scheduling of the hearing, but in no event shall the hearing be scheduled with less than twenty (20) days notice. For good cause, the Hearing Officer may grant a continuance.

(5) This notice shall be mailed by ordinary mail and also by certified mail, return receipt requested, to the employee's last address of record on file in the Personnel Office. The employee bears the burden of keeping a current address on file.

2. **Appearance; Representation; Witnesses; Conduct of Hearing**

(1) At the administrative hearing, the employee and the City Manager shall each be entitled to representation.

(2) An official record shall be made of the hearing by a certified court reporter. The cost of a transcript shall be borne by the party requesting a transcript. Such transcript shall be the official record of the proceeding; however, either party may tape record the proceedings.

(3) The hearing may be public or closed, at the employee's option. Both the employee and City may designate a person who shall not be subject to exclusion as a witness and who has investigated the matter at issue in the hearing and whose assistance during the hearing is necessary to the efficient conduct of the hearing. Witnesses shall be subject to cross examination.

(4) The hearing shall proceed generally as follows:

(1) The City and the employee or his or her representative may make opening statements.

(2) The City shall present evidence in support of the City's position. The employee may present evidence on his or her behalf.

(3) Both the City and the employee may subpoena witnesses and present rebuttal evidence as they deem necessary and appropriate.

(4) The Hearing Officer shall rule on any objections made to the admissibility of evidence or otherwise relating to the conduct of the hearing. Such rulings shall be final. Hearsay evidence shall be admissible but shall not form the sole basis for a finding.

(5) The City and the employee may make closing statements.

(6) Written briefs shall be submitted at the request of either party.

3. **Hearing Officer's Decision**

(1) Upon the conclusion of the hearing, the Hearing Officer shall cause proposed findings and recommendations to be prepared in writing and shall certify the same.

(2) The Hearing Officer shall, at a minimum, find whether the City has shown that the charges in support of the disciplinary action have been substantiated. Such a finding shall be made as to each charge. If the Hearing Officer finds that none of the charges are supported by the evidence presented, the recommendation shall be that no disciplinary action be taken. If the Hearing Officer finds that any or all the charges are supported, he/she shall either:

(1) Recommend that the proposed disciplinary action be carried out;

(2) Recommend that no disciplinary action be taken; or

(3) Recommend that the proposed disciplinary action be modified.

(3) The Hearing Officer's findings and Recommendations shall be filed as a permanent record with the City Manager. The City Manager shall deliver a certified copy of such findings and recommendations to the City Council and to the employee affected by such findings and recommendations.

(4) If, due to any cause, a hearing cannot be held and an employee is consequently denied such a hearing within the time stated herein, action shall be deferred until a hearing can be scheduled.

(5) The cost of the Hearing Officer shall be borne by the City. All other costs shall be the responsibility of the party incurring them.

4. City Council Action

(1) The City Council shall have the following options with respect to the Hearing Officer's findings and recommendations:

* Adopt the findings and recommendations as prepared;

* Modify the findings and recommendations; or

* Reject the Hearing Officer's findings and recommendations and adopt separate Council findings and recommendations.

(2) If the findings and recommendations of the Hearing Officer are adopted as proposed, the members of the City Council need not review the record of the hearing before the Hearing Officer. Otherwise, the Council shall review such record.

(3) The employee will be notified pursuant to California Code of Civil Procedure section 1094.6 that he or she has ninety (90) calendar days within which to file an appeal in Superior Court of the Council's decision.

ARTICLE XVII - GRIEVANCE PROCEDURE

A. Definitions

a. A "grievance" is an allegation by an employee or group of employees who claim to have been adversely affected by an alleged violation, misinterpretation, or misapplication of a specific provision of this Agreement, the City's Personnel Rules and Regulations or Police Department Policies.

b. A "grievant" is an employee adversely affected by an alleged violation, misinterpretation, or misapplication of a specific provision of this Agreement, or the City's Personnel Rules and Regulations or the Association specifically naming one or more such individuals.

B. General Provisions

1. Until final disposition of a grievance, the grievant shall comply with the directions of the grievant's immediate supervisor.

2. All documents dealing with the processing of a grievance shall be filed separately from the personnel files of the employee.

3. Time limits for appeal provided at any level of this procedure shall begin the first day following receipt by the grievant of the written decision.

4. If any grievance meeting or hearing is scheduled during duty hours, any employee required by either party to participate as a witness or grievant in such meeting or hearing shall be released for a reasonable period of time from regular duties without loss of pay.

5. An employee may at any time present grievances to the City and have such grievances adjusted without the intervention of the Association, as long as the adjustment is not inconsistent with the terms of an applicable Memorandum of Understanding. The City shall not agree to a resolution of the grievance until the affected Association has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response. Upon request of the grievant, the grievant may be represented at any stage of the grievance procedure by a representative of the Association.

6. Time limits may be extended by mutual agreement of the parties.

C. <u>Procedures</u>

1. <u>Level I - Information/Resolution</u>

a. An employee who believes he or she has a grievance shall present the grievance orally to the immediate supervisor within fifteen (15) calendar days after the grievant knew, or reasonably should have known, of the circumstances which form the basis for the grievance.

b. Failure to do so will render the grievance null and void.

c. The immediate supervisor shall hold discussions and attempt to resolve the matter within fifteen (15) calendar days after the presentation of the grievance.

d. It is the intent of this informal meeting procedure that at least one personal conference be held between the aggrieved employee and the immediate supervisor.

2. <u>Level II - Formal Written Grievance</u>

a. If the grievance is not settled during the informal conference and the

grievant wishes to press the matter, the grievant shall present the grievance in writing to the Commander within fifteen (15) calendar days after the oral decision by the immediate supervisor.

b. The written information shall include:

1. A description of the specific grounds of the grievance, including names, dates, and places necessary for a complete understanding of the grievance;

2. The provisions of this Agreement or the City's Personnel Rules and Regulations which are alleged to have been violated;

3. The reasons why the immediate supervisor's proposed resolution of the problem is unacceptable;

4. The specific actions requested of the City which will remedy the grievance.

c. The Commander shall communicate the decision to the grievant in writing within fifteen (15) calendar days after receiving the grievance. If the Commander does not respond within the time limits, the grievant may appeal to the next level.

d. Within the above time limits, either party may request a personal conference.

3. <u>Level III - Appeal to the Chief of Police</u>

a. If the grievant is not satisfied with the decision at Level II, the grievant may within fifteen (15) calendar days of the receipt of the decision at Level II appeal the decision to the Chief of Police. The grievant shall present the grievance in writing to the Chief of Police within fifteen (15) calendar days after the decision by the Commander.

b. The written information shall include:

1. a description of the specific grounds of the grievance, including names, dates, and places necessary for a complete understanding of the grievance;

2. the provisions of this Agreement or the City's Personnel Rules and Regulations which are alleged to have been violated;

3. the reasons why the Commander's proposed resolution of the problem is unacceptable;

4. the specific actions requested of the City which will remedy the grievance.

c. The Chief of Police shall communicate the decision to the grievant in writing within fifteen (15) calendar days after receiving the grievance. If the Chief of Police does not respond within the time limits, the grievant may appeal to the next level.

d. Within the above time limits, either party may request a personal conference.

4. <u>Level IV - Advisory Mediation</u>

a. If the grievant is not satisfied with the decision at Level III, either party by mutual agreement, may request the assistance of a mediator from the Mediation and Conciliation Service of the State of California.

b. The grievant must make his/her written request to submit the grievance to advisory mediation within fifteen (15) calendar days of the receipt of the decision at Level III.

c. The City and the Association shall mutually agree upon a mediator from the Mediation and Conciliation Service of the State of California.
Those present at mediation shall include the Assistant City Manager, or the person the City Manager designates, the Chief of Police, the grievant, and his/her representative.

d. The proceedings shall be tape recorded, including the opinion of the State mediator. The taped recording shall be sealed, signed, and dated by both parties. A written transcription shall be provided to both parties, if requested.

e. The mediator shall have no authority to resolve the grievance. In the event the grievance is not resolved, neither stipulations, admission, settlement proposals nor concessions agreed to or offered during the mediation shall be admissible at any subsequent hearing.

5. <u>Level V - Appeal to the City Manager</u>

a. If advisory mediation fails, the grievant may within fifteen (15) calendar days file a written appeal to the City Manager.

b. The statement of appeal shall include a copy of the original grievance and a clear, concise statement of the reasons for the appeal to Level V.

c. Within the fifteen (15) calendar days, the City Manager shall complete fact-finding which may include review of the mediation transcript, scheduling

a meeting with the grievant, Chief of Police, and their representatives, if any.

d. The City Manager shall communicate his or her decision to the grievant within fifteen (15) calendar days of the completion of fact-finding.

e. The decision of the City Manager shall be final in resolving all employee grievances.

ARTICLE XVIII - WAIVER CLAUSE

Except as otherwise provided herein, no changes or modifications of this Agreement shall be offered, urged, or otherwise presented by the Association or the City during the term of this Agreement, provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent. Any additions or changes in this Agreement shall not be effective unless reduced to writing and properly executed by both parties.

ARTICLE XIX - SEVERABILITY

If any provision of the Agreement, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

ARTICLE XX - DURATION

This Agreement shall be effective July 1, 2019, and shall continue in full force and effect until June 30, 2021, and become amendable thereafter with the exception that there shall be one (1) re-opener during the term of this agreement to discuss possible technical language clarifications to the HPOA MOU. The City and the Association shall meet prior to June 30, 2021 and confer on a successor M.O.U.

ARTICLE XXI - PERSONNEL RULES AND REGULATIONS

The Personnel Rules and Regulations which shall hereafter be adopted by the City shall control and determine any matters or subjects not specifically provided for herein. The Association shall have the opportunity to meet and consult with management on said Personnel Rules and Regulations prior to their adoption by the City Council.

FOR THE POLICE OFFICERS ASSOCIATION:

Dwayne Collard — 7/18/19
Dwayne Collard — **Date**
HPOA President

D. Miller — 7/18/19
Dan Miller — **Date**
HPOA Negotiator & HPOA Treasurer

FOR THE CITY:

David Biggs — 7/23/19
David Biggs — **Date**
City Manager