

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF BANNING
AND
THE CITY OF BANNING POLICE OFFICERS' ASSOCIATION
MARCH 28, 2019 – MARCH 27, 2022

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ARTICLE 1 – PREAMBLE

- 1.1 – Agreement – This Memorandum of Understanding (“MOU” or “Agreement”) is entered into between the City of Banning, a Municipal Corporation, hereinafter known as “the City” or “City” and the authorized representatives of the Banning Police Officers’ Association, the recognized employee organization of the Police Unit, hereinafter known as “BPOA” or “Union”, relative to wages, hours, and other terms and conditions of employment as provided by Sections 3500 – 3511 of the California Government Code, otherwise known as the Meyers-Milias-Brown Act.
- 1.2 – Recognition – The City continues to formally recognize the Banning Police Officers’ Association as the only Recognized Employee Organization representing employees in the unit of representation presently or hereafter employed by the City and eligible for inclusion in the Police Unit. It is understood that this Agreement shall constitute a bar to any petition or request for recognition of any unit which includes classifications of employees covered by this Agreement or such petitions to represent such employees at any time during the term hereof. This provision shall not preclude employees from otherwise exercising their rights as may be provided by the Meyers-Milias-Brown Act or the Employer-Employee Relations Resolution of the City.
- 1.3 – Term – Except as otherwise provided herein, this MOU between the City and the Union relative to wages, hours, and other terms and conditions of employment shall be for the period March 28, 2019 through March 27, 2022.
- 1.4 – Represented Classifications – This Agreement covers employees in the following classifications: Police Sergeant, Police Staff Sergeant, Police Master Sergeant, Police Corporal, and Police Officer; ~~Community Service Officer and Evidence Technician.~~

ARTICLE 2 – CONTINUATION OF RULES & POLICIES

- 2.1 – Other Written Policies - Subject to the terms of this Agreement, all City ordinance s, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2010-45) and the Administrative Policies of the City of Banning and the Banning Police Department shall apply during the term of this Agreement.
- 2.2 - Meet and Confer - The Union and the City agree to meet and confer during the term of this MOU over the adoption, amendment or revision, including repeal, of City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2010-45) and the Administrative Policies of the City of Banning and the Banning Police Department, to the extent that such documents contain mandatory subjects of bargaining pursuant to the Meyers-Milias-Brown

Act. Should an impasse be reached following such meet and confer sessions, the provisions of the Employer - Employee Relations Resolution (Resolution No. 2010-45) or any amendment thereto or successor Employer- Employee Relations Resolution will apply.

2.3 - - Past Practice - For purposes of this Agreement, a "past practice" shall be defined as an unwritten policy, procedure or work rule, whether or not it affects a mandatory subject of bargaining, and upon which the City, the Union and the bargaining unit employees may have relied through a course of conduct. As of the effective date of this Agreement, all past practices are void, and of no further force or effect.

ARTICLE 3 – EMPLOYEE RIGHTS

3.1 – Non-Discrimination – The provisions of this Agreement shall apply to bargaining unit employees without illegal discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, citizenship status, or any other basis protected by applicable law, nor will there be any discrimination with respect to hiring, retention or any condition of employment because of membership or non-membership in the Union, or because of any activities or refraining from activities on behalf of the Union.

3.2 – Union Membership – The Union will accept into membership all eligible persons of the bargaining unit without regard to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, or any other basis protected by applicable law.

3.3 – Rights Granted by State and Federal Law – Except as otherwise provided in this Agreement, the employees covered by this Agreement shall have all rights which may be exercised in accordance with State and Federal Law, and applicable ordinances, resolutions, rules and regulations. However, employees covered by this Agreement shall not have the right to a grievance for violation of any such law, ordinance, resolution or rule, except as specifically set forth herein.

3.4 – Gov't Code Section 3502 – Employees shall have the rights provided to them under Government Code section 3502 of the Meyers-Milias-Brown Act.

ARTICLE 4 – MANAGEMENT RIGHTS

4.1 – The Union recognizes and agrees that the City and its representatives have the responsibility and the authority to manage and direct all operations and activities of the City including, but not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards and the processes and the materials to be employed; the right to subcontract any work or operation; to expand or diminish

services; to determine the procedures and standards of selection for employment and promotion; determine classifications; direct its employees; take disciplinary action; relieve its employees of duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted and to assign work to employees and to establish and change work schedules and assignments and to determine the days and hours when the employees shall work; take all necessary actions to carry out its mission in emergencies; and, exercise complete control and discretion over its organization and work performance technology.

ARTICLE 5 – DUES DEDUCTION

5.1 – Dues Deduction – The City shall deduct one (1) month’s current and periodic Union dues from the wages and/or Leave benefits of each employee who voluntarily executes and delivers to the City a payroll deduction authorization form.

5.2 – Sufficient Earnings – The employee’s earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings.

5.3 – Non-Pay Status – In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Union dues.

5.4 – Cancellation – An employee’s authorization for deduction of dues may be canceled at any time by written notice from the employee to the City with a copy to the Union. An Employee's deduction authorization shall automatically be canceled if the employee leaves the employ of the City or is transferred out of the representation unit.

5.5 – Funds Transmission – The aggregate amount of such deductions by the City shall be transmitted monthly to the President of the Union or his or her designee. The City shall provide the President of the Union or his or her designee with a list each month indicating the dues deducted from the pay of any represented unit employee and those employees for whom no deduction was made pursuant to the provisions of Sections 5.2 and 5.3. The Union shall notify the City of the names of its President and other officers and designees each year following election of the board and appointment of members to committees to which the Union is entitled to appoint members under this Agreement.

5.6 – Indemnification – The Union shall indemnify, defend, and hold the City harmless against any claims made, and against any suit instituted against the City on account of deduction of employee organization dues. In addition, the Union shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

ARTICLE 6 – UNION REPRESENTATIVES

6.1 – Two (2) employees selected by the Union may attend scheduled meetings with City management during regular hours without loss of pay, provided that such employees shall not leave their work station or assignment without first providing twenty-four (24) hour notice to the Department Head. Additional employees who are not on duty may participate at no additional cost to the City. Such meetings shall be scheduled in a manner consistent with the City's operating requirements and work schedules. Nothing herein shall be deemed to preclude the scheduling of such meetings at hours other than such employee's regular working hours, in which event attendance shall be without pay.

ARTICLE 7 – BULLETIN BOARDS

7.1 – Authorized Postings – The City will furnish adequate bulletin board space where currently available. The Department Head shall designate the bulletin boards to be used for posting notices. Bulletin boards may be used for the following notices:

- (a) Scheduled Union Meetings, Agenda and Minutes.
- (b) Information on Union Elections and the Results.
- (c) Posting of Union special, recreational, and related bulletins.
- (d) Reports of Official Business of Union including Reports of Committees or the Board of Directors.
- (e) MOU, Pay Scales, Job Announcements, Promotions Lists, etc.
- (f) Such other items as may be approved by the Department Head upon request of the Union.

7.2 – Posted Notices – Posted notices shall not be defamatory or violate any of the City's policies, nor shall they advocate election or defeat of candidates for public office. All notices to be posted may be dated and signed by an authorized representative of the Union. The Union may give notices to the represented employees through the use of the City mail system and/or the City computer e-mail system.

ARTICLE 8 – MEMORANDUM OF UNDERSTANDING COPIES

8.1 – The City shall provide the Union with one (1) original and one (1) electronic (PDF) copy of this Memorandum after it has been fully executed by the parties. The City shall also provide a copy of the executed MOU to any represented employee hired or promoted into the representation unit after the effective date of the Agreement. The City may charge for any additional hard copies. The Union shall be responsible for providing

hard copies of this MOU to current represented employees at Union expense. Electronic copies shall be no charge.

ARTICLE 9 – MEETINGS

9.1 – Items of Mutual Concern – Upon mutual agreement of both the City and the Union, the parties may meet to discuss items of mutual concern. A meeting conducted under this section shall not constitute a meet and confer or hearing under any grievance procedure.

9.2 – Use of City Facilities – The Union may be granted permission to use City facilities for the purpose of meeting with employees to conduct Union business provided space for such meetings can be made available without interfering with City needs. The Union shall be held fully responsible for any damages to and security of any facility that is used by the Union.

9.3 – Budget Oversight Committee – The City agrees to the creation of a Budget Oversight Committee, with the Union entitled to appoint one (1) member. Said Committee shall have an equal number of members appointed by the City's recognized Employee Associations and the City. Said Committee shall be advisory only to the City Manager.

ARTICLE 10 – HOURS OF WORK

10.1 – Schedules – Unless modified by the Department Head as set forth in section 10.2 and 10.4 below, the Police Unit employees described below shall work the following work periods:

- (a) Employees assigned to uniform patrol shall have a work schedule of seven (7) twelve (12) hour shifts each fourteen (14)-day work period.
- (b) Employees assigned to the detective bureau shall have a work schedule as assigned by the Department Head.

10.2 – Department Head Discretion – Employees may be assigned to a work schedule consisting of the days and hours as determined by the Department Head.

10.3 – Briefing – Pre-shift briefing shall be at the discretion of the Department Head and if required, shall count as hours worked.

10.4 – Schedule Changes – The Department Head, in the exercise of his or her discretion may change the work schedule and/or work period of Police Unit employees. Accordingly, work schedule and work period changes are not subject to meet and confer requirements. The Department Head shall notify the Union regarding any change in work schedule and/or work period no later than fourteen (14) days before the date the change is implemented.

10.5 – Shift Assignments – Each year, the Department Head shall post a shift assignment notice on which officers shall indicate their shift assignment preference. The Notice will solicit three shift preferences and any additional information regarding their reasons for requesting a particular shift. The Department Head shall consider each request, giving those with seniority a higher priority, and make an effort to accommodate individual preferences. However, it is recognized that the Department Head shall have the ultimate authority to make shift assignments based on the needs of the Department. These shift assignments shall be for the full year except for individual changes as determined by the Department Head.

10.6 – Outside Employment – Prior to any bargaining unit employee accepting outside employment, he or she shall request and receive authorization from the Department Head. Authorization for outside employment shall be made according to the policies and procedures in place at the time of request.

ARTICLE 11 – SHIFT EXCHANGE

Employees may be permitted to trade shifts provided that:

- (a) No additional compensation or other cost to the City results from such assignment;
- (b) Exchanging employees are fully qualified to perform the required tasks of both assignments; and
- (c) Written requests for shift representation must be submitted on the prescribed Department form and approved by the Department Head or his/her designee prior to the start of the requested shift.

ARTICLE 12 – SALARIES, PERFORMANCE EVALUATIONS, INCENTIVE PAY

12.1 – Salary Adjustment – All BPOA represented Unit members shall receive a cost of living (COLA) salary increase of three percent (3%) of base pay for the period March 28, 2019 – March 27, 2020; and an additional salary increase of three percent (3%) of base pay for the period March 28, 2020 – March 27, 2021 and a final additional salary increase of two percent (2%) of base pay for the period March 28, 2021 – March 27, 2022.

12.2 – Assignment to Ranges – All employees have been placed on ranges with defined steps as shown on the attached salary schedule. The salary table is calibrated in approximate 2.5% increments. Subsequent annual increase for satisfactory performance will be two (2) steps or approximately 5%.

- (a) No employee shall be granted a step increase unless and until such employee has obtained an acceptable evaluation consistent with the applicable administrative policies of City.

- (b) A first denial of a step increase shall not be an allowable subject of the exercise of employee rights under any grievance procedure afforded by the City or collective bargaining agreement.
- (c) An employee denied a step increase for unacceptable performance shall be entitled to be re-evaluated in six (6) months from the date of the performance evaluation which led to the denial of the step increase. If the employee's overall performance is rated acceptable, the employee shall be granted the appropriate step increase effective the first pay period following the six month re-evaluation period. Such step increase shall not be retroactive.
- (d) If the employee's performance continues to be unacceptable after the six (6) month re-evaluation period, the employee shall be given a final denial of a step increase for the remainder of the regular evaluation period. Denial of a step increase under this subsection may, at the employee's option, be subject to the collective bargained grievance procedure for unit members.
- (e) An employee at the top of his or her range shall have his or her performance evaluated at least annually within thirty (30) days of his or her anniversary date.

12.3 – Premium Pay – City shall additionally pay a five percent (5%) premium for the following special assignments, provided that no such premium shall attach when the officer is otherwise working an eighty-four (84) hour shift:

- Professional Standards Supervisor (Sgt. Rank only)
- Detective Sergeant
- Detective (ARCNET)
- K-9 Officer
- Motor Officer
- School Resource Officer
- CET
- Any other assignment determined to be appropriate and approved by the Chief of Police in consultation with the Human Resources Department.

12.4 – Field Training Officer (FTO) – Any Police Unit member who is assigned as a Banning Police Department Field Training Officer and who is a California Police Officer Standards and Training (POST) Certified FTO, shall receive additional pay of five percent (5%) as long as certification is current and maintained. This percentage is in effect with or without a trainee as the FTO is expected to help teach and guide less experienced Officers during the course of their duties. If an FTO denies a trainee or chooses not to teach or guide less experienced Officers, the Police Chief or designee can remove the FTO from the training program and deny the FTO incentive pay increase of five percent (5%), even if the FTO holds a current FTO certification.

12.5 – Bilingual Pay – Employees certified to use sign language or to speak Spanish, or any of the Hmong languages (Chinese, White Lao, Blue Lao), or any other foreign language designated for Bilingual Pay by the City Manager, shall be paid a bonus equivalent to five percent (5%) of their base salary for such use on the job. Initial certification and any requirement with respect to demonstration of the continuing ability to use sign language or to speak the foreign language shall be determined by the City using methods selected by the Human Resources Department.

12.6 – Disciplinary Reductions in Pay – Any disciplinary reduction in pay due to a formal disciplinary action may be satisfied in the form of the following: (a) Payment based upon a lump sum amount to be deducted in one paycheck provided that the deduction does not violate minimum wage laws or the Fair Labor Standards Act; OR, (b) Payment over a period of pay periods based on a case by case basis provided that there is extraordinary financial hardship and that the maximum number for payment is ten (1) pay periods. Extraordinary financial hardships will be determined by the City Manager.

12.7 – Longevity Pay – Employees shall receive additional compensation, effective on the employee’s employment anniversary date, for Longevity as follows:

- (a) Upon completion of ten (10) years of continuous service employees will receive additional pay of one-half percent (0.5%) of base salary;
- (b) Upon completion of fifteen (15) years of continuous service employees will receive additional pay of one percent (1.0%) of base salary;
- (c) Upon completion of twenty (20) years of continuous service employees will receive additional pay of one and one-half percent (1.5%) of base salary;
- (d) Upon completion of twenty-five (25) years of continuous service employees will receive additional pay of two percent (2.0%) of base salary.

ARTICLE 13 – OVERTIME

13.1 – 7(k) Exemption – The City has adopted a fourteen (14) day work period pursuant to the “7k exemption” of 29 U.S.C. section 207(k) under the Fair Labor Standards Act (FLSA). Except as provided below in connection with uniformed patrol officers, an employee shall be paid at the rate of one and one-half (1-1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty (80) hours in the fourteen(14) day work period. Uniformed patrol officers assigned to work twelve (12) hour shifts as outlined in Article 10.1 above, shall be paid at the rate of one and one-half (1- 1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty-four (84) hours in the fourteen (14) day work period. This section 13.1 does not preclude the Chief of Police from establishing the practice of scheduling an employee to work a payperiod of any duration

which is not less than eighty (80) hours and not more than eighty-four (84) hours, subject to the shift change provisions of the MOU. At all times, the full eighty-four (84) hours shall be accounted for on the time card. Unassigned hours of the eighty-four (84) shall be so indicated.

(a) The City shall pay the employer CalPERS contribution, as required by the MOU, for the first eighty-four (84) hours of CalPERS eligible time worked during a pay period. Hours earned as overtime and paid at time and one-half (1/2) shall not be counted as CalPERS eligible hours. All overtime worked shall be authorized by a supervisor in advance, if possible. Otherwise, the claim for overtime shall be subject to review by the Department Head. Overtime may be paid as accrued compensatory time subject to the following: Compensatory time may not be accumulated in excess of two hundred forty (240) hours. Employees may cash out accumulated comp time twice per year (July and December) up to a maximum of eighty (80) hours per year unless otherwise restricted herein. Any cash out will be at the employee's current rate of pay inclusive of all premium pay.

(i) The "regular hourly base rate of pay" includes only salary as described in Article 13.1. Acting pay as set forth in Section 14.1 and educational incentive pay as provided in Article 18.4.

(b) In calculating overtime, the practice of the Finance Department shall be as follows:

(i) All hours appearing on the time card as "Reg Hours" shall first be totaled.

(ii) All hours otherwise defined as "hours worked" under the MOU shall then be totaled.

(iii) Finally, all hours recorded as overtime on the time card shall be totaled.

(iv) All hours totaled above, which are in excess of eighty-four (84) hours for patrol personnel and eighty (80) hours for special assignments during the pay period, shall be treated as overtime.

(v) In the case of correction of the time card by the Finance Department, the affected employee shall be given timely notice of such correction prior to the preparation of the pay check.

(c) Any assigned hours which are not worked, and are not otherwise accounted for through a reduction in accrued leave, shall be treated as Leave-Without-Pay

("LWOP") and the employee may be subject to a personnel action as prescribed in the personnel policies of the City.

(d) Accruals, and reductions in accruals, are based on an eighty (80) hour pay period.

13.2 – Hours Worked – “Hours worked” means time spent in required court appearances as set forth in Article 15, and time paid for vacation, holidays, sick leave, CTO and administrative leave for officer involved shooting or other non-disciplinary leave.

13.3 – Call Out Minimum – Bargaining Unit employees shall be paid a minimum of two (2) hours' pay for any time worked during the first hour when called-out for emergencies, and time and one-half (1/2) for each hour worked thereafter. For example, should an employee be called-out to work two (2) hours of emergency duty he or she would be compensated with three and one-half (3 1/2) hours' pay at the regular hourly base rate of pay; two (2) hours' pay for the first hour worked and one and one-half (1.5) hours pay for the second hour worked.

13.4 – Pyramiding of Overtime – There shall be no pyramiding or duplication of overtime payments and other premiums for the same hour worked.

13.5 – Compensatory Time – Accrued compensatory time may be taken by the employee on an "hour accrued/hour off" basis. However, in the event an employee terminates his employment and/or the City is otherwise obligated or desires to "cash out" accrued compensatory time, the employee shall be paid for any accrued time at his or her then regular hourly base rate of pay.

13.6 – Maximum Comp Time Accrual – Comp time may be accrued to a maximum of two-hundred-forty (240) hours.

ARTICLE 14 – ACTING PAY AND PROMOTION PAY

14.1 – Represented employees temporarily assigned to work in a higher classification by management shall be compensated for working their thirty-first (31st) consecutive day of such assignment within the fiscal year, and consecutive days worked thereafter, at a rate of five percent (5%) above their normal rate of compensation while working in the higher classification. The conditions of this subsection are prerequisites to the receipt of any higher acting pay. At such time as an employee is no longer performing work out of his or her pertinent classification, he or she shall be compensated at his or her regular rate of pay for his or her pertinent classification.

14.2 – Represented employees promoted to work in a higher classification shall be placed in the lowest step of the higher classification that pays more than the employee received in the lower classification but not less than five percent (5%) more than the employee received in the lower classification.

ARTICLE 15 – PAY FOR JURY DUTY: COURT APPEARANCES, “ON CALL” DUTY

15.1 – Any employee who shall be summoned for attendance to any court for jury duty during his or her normal working hours shall be deemed to be on duty and there shall be no loss of salary, but any jury fees received by him or her shall be paid into the City treasury. Any employee who shall be called as a witness arising out of and in the course of his or her City employment shall be deemed to be on duty and there shall be no loss of salary, but any witness fees received by him or her, shall be paid into the City treasury. An employee absent as a witness in a private matter shall not be entitled to be paid during such absence, except that he or she may, however, use Vacation Leave, Holiday Leave and Compensatory Leave for such absence.

15.2 – Represented employees shall be compensated for off-duty court appearances. The City will pay a minimum of three (3) hours for travel to and appearances in court at a rate of one and one-half (1.5) times the base rate of pay. All travel shall be calculated based on the time required to travel from any Banning Police Station to the destination. All hours required in excess of three (3) hours shall be compensated at one and one-half (1.5) times the base rate of pay.

15.3 – Employees required to be on call for court appearances before noon shall be compensated for one (1) hour. Those required to be on call for court purposes after noon shall be compensated for one (1) hour. Requirement for multiple court appearances in the same time frame shall constitute one (1) period of on call. For purposes of this section, an employee shall not be deemed to be on call while appearing in court. Employees shall not be paid for being on call under this Section for a day on which the employee is compensated for being in court under Section 15.2.

15.4 – Any detective scheduled for “on call” duty shall receive eight (8) hours of either compensatory time off or pay for each scheduled day off on which the detective or detective sergeant is assigned to "on call" duty, other than for court appearances as outlined above.

15.5 – An employee shall be on call for purposes of the receipt of the four (4) hours where:

- (a) The employee is scheduled to provide a mandatory response; and
- (b) That response is to be to the station, or other designated location within two (2)

hours; and

- (c) The employee is required to provide the Department Head with sufficient information to obtain immediate contact with the employee.

15.6 – All Police Unit members who are required to respond to a traffic accident call out would receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before their arrival time. The Evidence Technician will be entitled to receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before his/her arrival for any call outs.

15.7 – Scheduled Training – Any employee who is scheduled by the Department to attend day long training during his or her normal shift or working hours shall be deemed to be on duty and there shall be no loss of salary. The Department will abide by the "day for a day" theory for any day long training not lasting more than four (4) days. This policy provides that the employee will not owe the Department time should the day long training course be shorter than the officer's regularly scheduled work day. This theory applies only to scheduled full-day training courses. For overtime calculation purposes, only actual hours in training will count as actual hours worked.

ARTICLE 16 – EQUIPMENT, UNIFORM ALLOWANCE, SAFETY AND TRAINING

16.1 – The City will provide covered employees safety equipment in accordance with California State Law. Said safety devices and safeguards shall remain the property of the City of Banning and their use may be required and regulated by the Department Head or his or her designee.

16.2 – The Department Head or his or her designee shall have sole authority to assign the use of or regulate the use of City property by represented employees including but not limited to City vehicles.

16.3 – The City agrees to pay a uniform allowance of one-hundred-fifty dollars (\$150) per month to Police Unit members. Payment of the uniform allowance will be paid equally between the first two pay periods each month. Such money shall be used for the purpose of purchasing and maintaining uniforms in order that individual officers and civilian employees who wear regulation uniforms may maintain a professional appearance.

16.4 – The City shall reimburse Police Unit employees the reasonable replacement value of personal property, not including uniforms for which the above uniform allowance is paid, which is destroyed in the course and scope of their employment. The employee shall make application for reimbursement by presenting to the Department Head the damaged or destroyed article. Personal property subject to this provision consists of personal property necessary to fulfill the employee's job duties and that is approved in advance for use on the job. Replacement for prescription eyewear is limited to two-hundred dollars (\$200) per

pair. Replacement for watches is limited to fifty dollars (\$50). Sums paid hereunder shall be secondary to any applicable insurance. If an individual pays a sum of money to the City pursuant to a court order as restitution for damaging the uniform of a bargaining unit employee, then the City will reimburse that amount to the Police Unit employee.

16.5 – The Department Head or his designee may at his or her discretion authorize an employee to carry optional weapons. Nothing in this Agreement shall require the Chief of Police to approve the use of any specific weapon or ammunition.

ARTICLE 17 – MILEAGE, MEALS AND OTHER TRAVEL REIMBURSEMENT

17.1 – The City will reimburse expenses for meals, lodging and tuition when a Police Unit employee attends a City directed educational program. Reimbursement shall be equal to but not exceed the amount permitted under applicable P.O.S.T. standards. If the employee's meals and lodging expenses exceed reimbursement provided by P.O.S.T., then the employee may be required to demonstrate that such expenses are reasonable by providing receipts for all expenses and written justification. Only reasonable expenses will be reimbursed.

17.2 – Accommodation arrangements for attendance at a City directed educational program shall be made by the Police Unit employee. The City agrees to provide any accompanying information concerning available lodging arrangements for the program to the employee as soon as it becomes available to the City.

17.3 – Upon request, an employee attending a City directed educational program shall receive an advance up to the P.O.S.T. established limits established for the particular educational program.

17.4 – At the conclusion of the educational program, the employee shall show by certificate awarded or some other manner that the program was attended and completed.

17.5 – Except as otherwise set forth in this MOU, the scheduling of training/educational programs shall be done in accordance with Departmental procedures.

ARTICLE 18 – TUITION AND BOOKS REIMBURSEMENT; EDUCATION INCENTIVE

18.1 – Qualifications – All Police Unit employees enrolled in an approved Associate of Arts/Sciences degree coursework and community colleges or Bachelor of Arts/Science Degree or Master of Arts/Science Degree programs shall be eligible to receive reimbursement for tuition and cost of books actually paid for their approved professional and technical courses subject to the provisions below.

- (a) The employee has furnished evidence that the course has been completed with at least a "C" grade or "pass."

- (b) Police Unit employees will receive a maximum of four-thousand dollars (\$4,000) for tuition and actual expenses paid for books for expenses incurred per fiscal year for any academic training in a university or college recognized by an accrediting institution as determined by the Human Resources Director.

18.2 – Reimbursement Requirements.

- (a) Requests for reimbursement must be completed and returned to the Human Resources Department within three (3) weeks after receipt of course completion documentation. (No reimbursement will be made without bona fide receipts or documentation).
- (b) Reimbursements will be made only after proof of completion of course with a minimum of "C" average or "pass" and satisfactory receipts of payment for books and tuition are approved by the Human Resources Department.

18.3 – Attendance – Employees may utilize shift changes and one (1) hour or more increments of Vacation or Holiday Leave to attend courses that have been approved under this Article. Employees may also convert Sick Leave to Vacation Leave for this purpose.

18.4 – Education Incentive Pay – Educational incentive pay shall be earned as follows:

- (a) Possession of an Intermediate POST Certificate entitles the unit member to two-hundred dollars (\$200) a month; and possession of a Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, entitles the employee to three-hundred dollars (\$300) a month.
- (b) Possession of an Associate of Arts/Science Degree in any academic field entitles the employee to seventy-five dollars (\$75) per month.
- (c) Possession of a Bachelors of Arts/Science Degree in any academic field entitles the employee to one-hundred-fifty dollars (\$150) per month.
- (d) Possession of a Masters of Arts/Science Degree in any academic field entitles the employee to two-hundred-twenty-five dollars (\$225) per month.
- (e) Possession of a Ph.D. in any academic field entitles the employee to three-hundred dollars (\$300) per month.
- (f) Possession of an Intermediate POST Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to \$275 per month;

Possession of an Intermediate POST Certificate and a Bachelors of Arts/Science Degree in any academic field entitles the employee to three-hundred-fifty dollars (\$350) per month; Possession of an Intermediate POST Certificate and a Masters of Arts/Science Degree in any academic field entitles the employee to four-hundred-twenty-five dollars (\$425) per month; Possession of an Intermediate POST Certificate, and a Ph.D. in any academic field entitles the employee to five-hundred dollars (\$500) per month.

- (g) Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to three-hundred-seventy-five dollars (\$375) per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Bachelors of Arts/Science Degree in any academic field entitles the employee to four-hundred-fifty dollars (\$450) per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Masters of Arts/Science Degree in any academic field entitles the employee to five-hundred-twenty-five dollars (\$525) per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Ph.D. in any academic field entitles the employee to six-hundred dollars (\$600) per month.
- (h) For all Police Unit members who are employed with the City at the time of the execution of this MOU, possession of sixty (60) semester units from an accredited college with a minimum of thirty-nine (39) units being in an occupationally related field (i.e. Police Science, Social Science, Political Science, Public Administration, etc.) shall entitle the employee to receive pay of one-hundred dollars (\$100) per month. Determination as to whether courses are occupationally related will be made by the Department Head with right of appeal to the City Manager.
- (i) The amounts in this article shall not be pyramided except as set forth above.

ARTICLE 19 – SICK AND BEREAVEMENT LEAVE

19.1 – Sick Leave Accrual – Represented employees shall accrue three and sixty-nine hundredth (3.69) hours of Sick leave per pay period. Sick leave shall accrue without limit.

19.2 – Use of Sick Leave – Sick Leave shall be granted only where consistent with the City's sick leave and Pregnancy Leave policy (currently AP-1 and AP-02).

19.3 – [Intentionally left blank]

19.4 – Conversion to Vacation – Any employee who has taken forty (40) hours of Sick Leave or less during the fiscal year ending June 30 of each year shall be entitled to convert up to forty (40) hours of unused sick leave to vacation. The month of August will be the month for annual conversion. Only those employees who have completed twelve (12) months of service with the City as of June 30th of any year will be eligible for such annual conversion and there shall be no interim pro-rata conversion.

19.5 – Cash Out Upon Separation – After ten (10) years continuous City service, and upon voluntary separation under satisfactory conditions or involuntary disability retirement, sworn personnel shall be eligible to receive a cash payment equivalent to forty percent (40%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Civilian personnel shall be eligible to receive a cash payment equivalent to thirty percent (30%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Such reimbursement will be computed based upon the employee's final compensation rate.

19.6 – Conversion to Deferred Compensation – Beginning with the 11th year of City service, unit members may convert the value of the total amount of their sick leave bank, minus forty (40) hours, to either Deferred Compensation, or the Retiree Health Savings. Thereafter, the employee may contribute one hundred percent (100%) of the value of unused sick leave, minus forty (40) hours for such purposes.

19.7 – Use of Other Leave – An employee who has exhausted all accumulated Sick leave while on Sick leave may utilize accrued Vacation or Holiday Leave or accrued compensated time off for the purposes described in 19.2 above or 19.8 below.

19.8 – Bereavement Leave – Employees covered by this Agreement will be allowed three (3) shifts off duty with pay for Bereavement leave upon the death of a member of their family. For the purpose of this subsection, "family" includes the following persons: spouse, domestic partner, mother, father, brother, sister, child, stepchild, grandchild, or grandparent of the employee or any one of the same relatives of the employee's spouse or domestic partner.

19.9 – Military Leave – Banning's policy relating to military leave and compensation therefore, shall be in accordance with the provisions of the Military and Veteran's Code of the State of California (Section 389-399.5) and with all Federal provisions (the Uniformed Services Employment and Reemployment Rights Act of 1994, USERRA, Pub.L. 103- 353, codified as amended at 38 U.S.C. §§ 4301-4335).

ARTICLE 20 – VACATION AND HOLIDAY LEAVE

20.1 – Vacation Leave Accrual – For employees of the City as of date of this Agreement, Vacation Leave shall accrue in accordance with the following schedules:

- (a) One (1) through four (4) years of service: ten (10) days per year = three and eight-hundredth (3.08) hours per pay period;
- (b) Beginning the fifth (5th) year through the ninth (9th) year: fifteen (15) days per year = four and sixty-two hundredth (4.62) hours per pay period;
- (c) Beginning the tenth (10th) year & thereafter: twenty (20) days per year = six and fifteen hundredth (6.15) hours per pay period.

20.2 – Maximum Accrual – Vacation Leave may be accrued to a maximum of three-hundred twenty (320) hours for non-supervisory personnel and three-hundred thirty-six (336) hours for supervisory personnel. Holiday leave may be accrued to a maximum of one-hundred sixty (160) hours per employee.

20.3 – Approval Required – Vacation Leave shall be taken with approval of the Department Head at any time following the completion of the eighteen (18) month probationary period for entry-level Unit members and one (1) year probationary period for lateral hire Unit members, but the Vacation Leave taken shall not be in excess of that actually accrued at the time such Vacation Leave is taken. Vacation Leave must be approved a minimum of fourteen (14) days in advance of the first day of such Vacation by the Department Head or his or her designee. Exceptions may be made to the fourteen (14)-day notice requirement for emergencies or at the discretion of the City by the Department Head or Division Supervisor.

20.4 – Payment Upon Separation – Any employee, who has been in continuous full-time service of the City for a period of 1 year or more, who is about to separate from his or her employment and has earned Vacation Leave to his or her credit, shall be paid for such Vacation Leave on the effective date of such separation up to the maximum accrual. It shall not be necessary to carry such employee on the payroll for the Vacation Leave period, and the vacancy created may be filled at any time after the employee ceases to perform the duties of his or her office or employment. When separation is caused by death, payment of all outstanding compensation, including Salary and all remaining Sick Leave, Vacation, Comp Time or Holiday Time accruals shall be paid into the employee's direct deposit account the same as regular payroll.

20.5 – Payment of Excess Hours – Unused vacation accrual in excess of the employee's annual entitlement, if any, may be paid off at the option of the employee up to a maximum of forty (40) hours every twelve (12) months. The employee may otherwise be scheduled for

mandatory vacation time off by the Department Head for a period of time equal to the excess accrual.

20.6 – Holidays – City Holidays are as follows:

- New Year's Day
- Martin Luther King Day
- Presidents' Day
- Memorial Day
- Fourth of July
- Labor Day
- Veterans' Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas
- One (1) floating holiday

20.7 – Holiday Accrual – Employees shall accrue Holiday Leave at the rate of three and thirty-eight hundredths (3.38) hours per pay period.

20.8 – Approval Required – Holiday Leave must be approved a minimum of fourteen (14) days in advance by the Department Head or his or her designee of the first day of such Holiday leave. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the City by the Department Head or immediate supervisor.

20.9 – Cash Out – Employees may cash out accrued holiday leave twice per year (July and December) up to a maximum of eighty-eight (88) hours per calendar year.

20.10 – Payment Upon Termination – Any employee who is about to terminate his or her employment, and has earned Holiday Leave to his or her credit, shall be paid for such Holiday Leave on the effective date of such termination.

ARTICLE 21 – MEDICAL AND DENTAL INSURANCE

21.1 – City Contributions to Cafeteria Plan – The City agrees to the following contribution to each employee's cafeteria account: The City will contribute to each employee's cafeteria account an amount equal to the payment of that employee's medical insurance premium related to a City sponsored medical plan (excludes dental) up to a maximum of \$16,200.00 annually. The City contribution will increase to \$16,800.00 effective July 1, 2019. An employee opting out of a City sponsored medical plan, i.e. demonstrating proof of medical coverage from another plan, will receive a cafeteria contribution equal to \$6,352.00. The City's contribution may be used toward any City benefit offered under the cafeteria plan. All dollars will be allocated

equally on a monthly basis. No cafeteria plan contributions may be converted to cash and taken as income. Employees will be responsible for all taxes associated with this payment.

(a) The contribution shall first be used to provide for health insurance for the employee. The employee shall be covered by health insurance with a City approved health insurance plan unless the employee provides proof to the City that the employee is covered by another acceptable health plan as determined by the City's Human Resource Department. Additionally, all members of the Police Unit shall participate in a long-term disability plan approved for participation by the members of the Police Unit, provided that such plan does not require the City to incur costs for its administration.

(b) The balance may be used for any of the following or any combination thereof:

- a. Health insurance for the employee's spouse and/or dependents.
- b. Dental Plan for the employee and the employee's spouse and/or dependents.
- c. Eye care plan for the employee and the employee's spouse and/or dependents.
- d. Deferred compensation program.

21.2 – IRS 125 Plan – Police Unit employees may participate in the City's Internal Revenue Section 125 program which will allow employees to allocate specified amounts of monthly pretax salary or wages for the reimbursement of medical care expenses, dependent care expenses, or both. Premiums for LTO are excluded from the pretax provisions of the Section 125 program.

21.3 – Insurance Advisory Committee – The City shall maintain the Insurance Advisory Committee to which the Association may appoint two (2) representatives.

21.3.1 – Purpose – The purpose of the Advisory Insurance Committee shall be to advise the City relative to health, life, and related insurance plans which may be provided to employees of the City of Banning including the type of plans, scope of coverage, and the selection of insurance carriers.

21.3.2 – Voting – The Insurance Committee shall determine issues by a majority vote of the members, each member having one (1) vote, except that any such determination shall constitute an advisory recommendation only to the City Manager.

21.3.3 – Selection of Members – Insurance Committee Members shall be selected as follows:

- (a) Representatives of bargaining units shall be selected in a manner to be

determined by each respective unit.

(b) The City's Representative shall be the City Manager or his/her designee.

21.3.4 – Meetings – The Insurance Advisory Committee shall meet as may be necessary to conduct the business of the Committee.

21.3.5 – Status – The Insurance Advisory Committee will be advisory only, with no power or prerogative to decide on behalf of the City on issues pertaining to employee insurance coverage.

ARTICLE 22 – RETIREMENT AND MEDICARE

22.1 – Contributions to CalPERS.

- (a) All CalPERS Classic employees are responsible for paying their contributions for their respective retirement plans to CalPERS at five percent (5%) for safety members and eight percent (8%) for non-sworn miscellaneous members. The City shall contribute four percent (4%) for safety members, to total the required nine percent (9%) contribution.
- (b) Per the Public Employees' Pension Reform Act of 2013 and related laws and regulations, new employees hired after January 1, 2013 are subject to paying at least 50% of the normal costs or as otherwise determined by CalPERS.

22.2 – CalPERS Formulas.

- (a) The City agrees to continue to pay the employer's portion of the CalPERS "Three Percent at Fifty" (3% @ 50) public safety retirement formula and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) public miscellaneous retirement formula for employees hired on or before December 20, 2012. All employees shall pay their full member contributions under their respective retirement plans.
- (b) The City previously adopted Resolution 2012-99 approving the Side Letter Agreement between the City and the BPOA which authorized implementation of a two tiered retirement plan providing the CalPERS "Two Percent at Fifty" (2% @ 50) retirement formula for public safety employees and the "Two Percent at Sixty" (2% @ 60) retirement formula for public miscellaneous employees. The new two tiered retirement plans applied to all new employees hired after December 20, 2012. All Unit employees hired on or before December 20, 2012 remained at the previously existing "Three Percent at Fifty" (3% @ 50) retirement formula for public safety employees and the "Two Point Five Percent at Fifty- Five" (2.5% @ 55) formula for public

miscellaneous employees.

- (c) Unit employees hired on or after January 1, 2013 shall be enrolled in either the "Two Percent at Fifty" (2% @ 50) formula for public safety employees and the "Two Percent at Sixty" (2% @ 60) formula for public miscellaneous employees or the "Two Point Seven Percent at Fifty- Seven" (2.7% @ 57) formula for public safety employees and the "Two Percent at Sixty-Two" (2% @ 62) formula for public miscellaneous employees depending upon eligibility rules as established by CalPERS under the Public Employees' Pension Reform Act of 2013 and related laws and regulations.
- (d) Per the Public Employees' Pension Reform Act of 2013 and related laws and regulations, all Unit employees hired on or after January 1, 2013 shall also be required to have their final compensation defined as the highest average annual final compensation during a consecutive thirty- six (36) month period, subject to the cap. Unit employees hired before January 1, 2013 will maintain the "single highest year" benefit.

22.3 – F.I.C.A. – Police Unit employees will pay employee portion of FICA and the City shall be responsible for payment of the employer's portion.

ARTICLE 23 – MISCELLANEOUS BENEFITS

23.1 – Life Insurance – The City shall provide a life insurance policy to each employee in the Police Unit in the amount of \$50,000.00.

23.2 – Direct Deposit – All Police Unit employees shall be paid by direct deposit of their payroll check into an account of their choice, except those employees who either do not hold an account with a financial institution that offers direct deposit or who do not hold an account of any type and such employees will be required to pay a \$10 administration fee per payroll. It shall be the responsibility of the employee to establish and maintain such account.

23.3 – Computer Loan – Every Police Unit employee shall be entitled to participate in an interest free loan program for the purchase of a computer. The maximum amount of any individual loan shall be equal to one (1) month of an employee's salary. The cumulative amount of loans outstanding hereunder shall not exceed \$20,000. The loan shall be upon the terms and conditions established by the City. These conditions shall include the prohibition against developing, maintaining or storing any department files or department related files or information or any criminal justice files, including but not limited to Megan's Law files and information, on such equipment. Wrongful possession of such information on the equipment shall constitute grounds for discipline up to and including dismissal. For purposes of this section "department files or department related files" are information concerning any individual or group of individuals, developed or obtained in the course and scope of the

duties of the owner of the equipment purchased hereunder, or the course and scope of the duties of the provider of the information to such owner, as a law enforcement officer or employee of a law enforcement agency. The definition includes, but is not limited to, information regarding an individual or group of individuals which is not available to the general public and which is available to the owner of the equipment because, and not necessarily solely because, of their status as a public safety officer.

23.4 – Utility Allowance – Any Police Unit employee who resides within the City shall receive one-hundred-fifty dollars (\$150) per month as a discount against the cost of electric and water service during the period of such residency.

23.5 – Deferred Compensation Plan – The City has established a deferred compensation plan under Section 457 of the IRS code. Police Unit employees may participate in this plan at their own expense and at their option. Employees may opt to deposit into their established deferred compensation account, any funds paid to them under any leave pay out provisions in this MOU. Deposits into deferred compensation accounts shall be subject to IRS rules and regulations.

23.6 – Gun Loan – The City has established a loan program for those police officers approved by the Chief of Police who wish to purchase a weapon. Repayment of the loan shall be through payroll deduction. The complete policy is established in Resolution 2005- 66.

23.7 – Take Home Vehicles – The City has established a program for those police officers living within thirty-five (35) miles driving distance to take home marked police vehicles. The complete policy is established in Departmental Policies.

ARTICLE 24 – LAYOFFS AND RE-EMPLOYMENT

24.1 – Purpose – The purpose of this Article is to provide a fair and equitable basis for the reduction in force of full-time classified personnel due to insufficient work or lack of funds.

24.2 – Reasons for Lay Off – The City of Banning retains the right to determine when a lack of work or lack of funds condition exists. Lack of work means that a category of work effort within the City can be fulfilled with fewer employees at a level of service acceptable to the City. Lack of funds means that the City in its sole discretion has determined that it cannot sustain operations at the current level of employment within the funding available. For the purpose of this subsection, the determination of the City shall be binding.

24.3 – Notice of Lay Off – Any lay off initiated under the provisions of this Agreement can take place at any time during the year. The City shall notify the affected employees in writing at least ten (10) working days prior to the employee's last day of work. The City reserves the right to pay the employee for such ten (10) day period or any remaining portion thereof, and to require the employee to immediately vacate City property. A copy of any notice will be forwarded to the appropriate Police Unit representative. Any notice of

lay off shall specify the reason for the lay off and the effective date. The form and timing of any such notice shall be subject to the established grievance procedure, provided however, the City's decision to lay off is not subject to the grievance procedure. The date of the layoff shall not be delayed by the pendency of a grievance.

24.4 – Order of Lay Off – Any lay off shall be effective within the job classification or job classifications selected by the City. Once the City has determined which classification or classifications will be affected by the layoff, the order of lay off shall be based on seniority among employees in the classification with "satisfactory job performance." "Satisfactory job performance" as used in this section shall be established when an employee has not more than two (2) overall less than satisfactory evaluations within the past five (5) years. For purposes of this Article, seniority is defined as the length of uninterrupted service within the classification of employees to be laid off as measured from the date of the layoff notice.

24.5 – Reduction of Class – Any employee who has been designated to be laid off may choose to be reduced in class and compensation if the employee has greater seniority in a class than those employees in a lower class or position.

24.6 – Equal Seniority – If two (2) or more employees subject to lay off have equal class seniority, then the determination as to who has greater seniority shall be based upon total length of uninterrupted service with the City.

24.7 – Reemployment Rights – Laid off employees will be eligible for reemployment under the provisions of the Personnel Rules.

24.8 – Reduction in Work Week – The Personnel Rules authorize the City Council to change or alter the work week by resolution.

24.9 – Probationary Period – The Probationary Period for entry-level Unit members shall be eighteen (18) months and for lateral hired Unit members the Probationary Period shall be twelve (12) months.

ARTICLE 25 – GRIEVANCE AND DISCIPLINE APPEALS PROCEDURE

25.1 – Procedure – Subject to the provisions of this MOU, any permanent Police Unit employee who has a grievance, as defined below, or has been disciplined, as defined below, shall be entitled to have the matter reviewed through the procedures outlined in this Article. This Article shall also include and satisfy all rights which a permanent bargaining unit employee may have under California Government Code Section 3304(b).

25.2 – Definitions:

- (a) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "grievance" is defined as a dispute between the employee and the City, or

the Union and the City, over the interpretation or application of this MOU, or the second denial of a step increase to an employee. The term "grievance" does not include "discipline" as defined herein.

- (b) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "discipline" is limited to any action taken by the City against a permanent Police Unit employee which (1) is punishment or discipline of the employee, (2) will result in a reduction or loss in the employee's salary, (3) is either (i) an involuntary termination from City employment (ii) involuntary suspension from employment without pay, (iii) involuntary move from one (1) job classification to another job classification where the second job classification has a lower rate of pay at the top step than the top step of the job classification from which the employee was moved, or (iv) involuntary reduction in step within a job classification, and (4) is not the result of a lay off or (v) a written reprimand.

25.3 – Informal Step – An attempt shall be made to ascertain all facts and adjust such grievance or discipline on an informal basis between the employee and, if he or she desires, the employee's representative, on the one hand, and the immediate supervisor, on the other hand. Presentation of such grievance or discipline shall be made within fourteen (14) calendar days of the incident causing the grievance or discipline, or the date on which the employee first became aware of it.

25.4 – Step One – If the grievance or discipline is not adjusted to the satisfaction of the employee within seven (7) calendar days after presentation to the grievance or discipline to the immediate supervisor, and if the employee or the Union wishes to resolve the matter, the grievance or discipline shall be submitted in writing by the employee or his or her representative to the Police Chief in consultation with the Human Resources Director within the next fourteen (14) calendar days. The Police Chief shall meet with the employee, his or her representative or both within seven (7) calendar days of receipt of such written grievance; and deliver his or her decision in writing to the employee, along with reasons for such decision, within seven (7) calendar days after meeting.

25.5 – Step Two – If the grievance or discipline dispute is not adjusted to the satisfaction of the employee and the union under the procedures set forth immediately above, the employee or his/her representative may submit written notice to the City Manager of his/her intent to submit the matter to mediation. Such written notice must be delivered to the City Manager within fourteen (14) calendar days after the date of the Chief of Police's written decision. The Union agrees that submission of any matter to mediation must be by mutual agreement of the Union and the City, with each party to bear their own costs. If the parties mutually agree to mediation, the following procedures apply:

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.

- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

25.6 – Grievances Related to MOU Interpretation – The Union agrees that submission to mediation of any grievance related to MOU interpretation or administration must be by mutual agreement of the Union and the City, with each party to bear their own costs. If the parties mutually agree to mediation, the following procedures apply:

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

On grievances pertaining to the interpretation or administration of this MOU, the Union agrees that the decision of the arbitrator shall be final and binding upon the City.

25.7 – Grievances Related to Discipline – On grievances related to discipline, the written notice in Step Three below shall set forth in detail the employee's and/or Union's view of the basis for the disciplinary dispute and shall separately set forth the issue or issues to be submitted to the advisory arbitrator. The procedures set forth below shall be followed thereafter.

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.

- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

On disputes related to discipline, the decision of the arbitrator shall be advisory to the City Manager, whose decision shall be the final decision of the City.

25.8 – Step 3 – Within seven (7) calendar days after the Union and City receive the advisory arbitrator's recommendation on the dispute related to discipline, either the Union or the Department Head may submit written argument to the City Manager as to whether the arbitrator's opinion should be accepted, rejected or modified. Within fourteen (14) calendar days after the seven (7) day-period above has expired, the City Manager shall advise the Union and the Department Head whether the City Manager is accepting, rejecting, or modifying the advisory arbitrator's recommended decision. The decision of the City Manager shall be final and binding.

25.9 – Modification of Time Limits – The above time limits may be modified by mutual agreement.

ARTICLE 26 – SEVERABILITY CLAUSE

26.1 – Severability – If any of the provisions contained in this MOU are determined to be unlawful, then only such provision(s) shall be deleted from this MOU with the remainder of this MOU remaining in force and effect. Upon the issuance of a decision by a Court of Competent Jurisdiction declaring any section of this MOU to be unlawful, unenforceable, unconstitutional, or not applicable, the parties agree to meet and confer as soon as possible concerning only those sections.

ARTICLE 27 – COMPLETE AGREEMENT

27.1 – Entire Agreement – This Agreement is the entire Agreement between the parties, terminating all prior agreements, whether written or oral, arrangements and practices, and, except as otherwise provided herein, shall conclude all meetings and conferences during the term of this Agreement.

27.2 – Items Not Covered – All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City’s direction and control.

27.3 – Vacant Positions – The level of service and number of employees remain a management prerogative and the parties agree that the City may elect not to fill four (4) current or soon to be vacant police officer positions as a cost saving mechanism.

ARTICLE 28 – INVESTIGATION DOCUMENTS AND MATERIALS

The City shall continue to maintain investigation documents and material in accordance with its Records Management Program. No. A-28 in the Administrative Policy which was adopted by Resolution No. 2003-26.

ARTICLE 29 – RE-OPENERS

During the term of this MOU, unless otherwise provided, the parties shall not meet and confer with respect to any subject or matter (except if other labor groups receive an increase in the employee cafeteria account above \$14,450.00, then an automatic reopener would be triggered) whether or not referred to in this MOU, unless mutually agreed to otherwise.

ARTICLE 30 – RATIFICATION AND EXECUTION

This MOU has been developed as a result of meet and confer sessions between representatives of the City and the Union regarding issues related to wages, hours and other terms and conditions of employment. The City's representatives and the Union have reached an understanding as to certain recommendations to be made to the City Council for the City of Banning and have agreed that the parties hereto will jointly urge said Council to adopt a new wage and benefit resolution which will provide for the changes contained in said joint recommendation. The parties hereto acknowledge that this MOU shall not be in full force and effect until adoption by the Banning City Council.

In witness whereof the parties have caused their signatures to be affixed this 10th day of July, 2019.

For the City of Banning

For the Banning POA

Douglas Schulze
City Manager

Derek Thesier
Lead Negotiator