

# **PALM SPRINGS POLICE MANAGEMENT ASSOCIATION (PSPMA)**



## **MEMORANDUM OF UNDERSTANDING**

**DECEMBER 16, 2018 – JUNE 30, 2020**

**The Palm Springs Police Management Association  
 Memorandum of Understanding  
 December 16, 2018 – June 30, 2020**

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**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE  
MUNICIPAL EMPLOYEE RELATIONS REPRESENTATIVE (MERR) AND  
THE PALM SPRINGS POLICE MANAGEMENT ASSOCIATION (PSPMA) REPRESENTING  
THE POLICE MANAGEMENT ASSOCIATION  
DECEMBER 16, 2018 – JUNE 30, 2020**

**GENERAL PROVISIONS**

**ARTICLE 1, TERM**

This Memorandum of Understanding (“MOU”) recommended to the City Council shall be for the period commencing December 16, 2018 and terminating June 30, 2020 provided, however, that specific sections of this MOU shall have later effective dates as specified herein. No economic changes to this MOU will go into effect until the pay period following City Council approval unless this MOU specifically provides otherwise.

**ARTICLE 2, RECOGNITION**

This MOU is entered into with reference to the following facts.

- A. The Palm Springs Police Management Association, hereinafter referred to as the Association, is the exclusively recognized employee organization for members it represents employed by the City in the Police Management Unit as defined in Section 8.1.4 of the Employer-Employee Relations Resolution, Resolution 16438, as amended by Resolution 17793. The Association represents the classifications of Police Lieutenant and Police Captain.
  
- B. The Association and the Municipal Employee Relations Representative, hereinafter referred to as the MERR, have met and conferred in good faith on wages, hours and other terms and conditions of employment for the employees represented by the Association and have reached agreements which are set forth in this MOU.

**ARTICLE 3, PRACTICES**

It is understood that existing ordinances, resolutions, and policies of the City cover matters pertaining to employer-employee relations including, but not limited to, wages, salaries, benefits, hours and other terms and conditions of employment. Therefore, it is agreed that all such ordinances, resolutions and policies, including Sections 4,5,6,7 and 13 only of the Employer-Employee Relations Resolution 16438 are hereby incorporated by this reference and made a part hereof as though set forth in full and except as provided herein shall remain in full force and effect during the term hereof. The City and its employees shall continue to have the rights and prerogatives as set forth in Sections 4,5,6,7 and 13 of Resolution 16438, and nothing in this MOU shall be deemed in any manner to abridge, restrict or modify the same except as limited by the Strikes and Work stoppages section of this MOU.

#### **ARTICLE 4, FEDERAL AND STATE LAWS**

It is understood and agreed that this MOU is subject to all present and future applicable Federal and State laws and regulations and the provisions hereof shall be effective and implemented only to the extent permitted by such laws and regulations. If any part of this MOU is in conflict or inconsistent with such applicable provisions of Federal or State laws or regulations, or otherwise held to be invalid or unenforceable by any tribunal of competent jurisdiction, such part or provisions shall be suspended and superseded by such applicable laws and regulations and the remainder of this MOU shall not be affected thereby and shall remain in full force and effect.

#### **ARTICLE 5, MAINTENANCE OF BENEFITS**

The status of all existing benefits and conditions of employment now enjoyed by the members represented by the Association shall not be deemed affected by this MOU, except as specifically modified by provisions hereof or by actions taken in implementation hereof.

## **COMPENSATION/OTHER PAY**

### **ARTICLE 6, SALARIES**

Effective December 16, 2018, members of the Unit shall receive a seven and thirty-one one-hundredths percent (7.31%) salary increase.

Effective the pay period which includes July 1, 2019, members of the Unit shall receive a three percent (3.0%) salary increase.

For each classification represented by the Association, there is one range on the salary schedule.

### **ARTICLE 7, OVERTIME**

Overtime shall be earned by members of the Association who work more than eighty (80) hours over the two-week pay period. For overtime computation, hours worked include any leave of absence with pay. Police Lieutenants shall be compensated for overtime worked at a rate of fifty percent (50%) above the employee's regular hourly rate for the time worked in excess of forty (40) hours per work week. For the purpose of overtime computation, the forty (40) hours include any leave of absence with pay. Police Lieutenants must be authorized by the Chief of Police or Police Captains to work overtime. Notwithstanding the work schedule utilized by the Department, the City has adopted the 28-day work period in accordance with Section 7(k) of the Fair Labor Standards Act. The City will pay overtime as described above in excess of the requirements of the law. Both Police Captains and Police Lieutenants qualify as overtime exempt per the FLSA as managers who qualify for the Executive Exemption of the FLSA. Thus, the overtime provided herein is provided per this MOU and not per the requirements of the FLSA.

### **ARTICLE 8, SPECIAL COMPENSATION**

#### **8.1 Education Pay**

##### **A. POST Management Certification**

PSPMA members shall receive five percent (5%) of base pay for possessing a Management Certification issued by Peace Officers Standards and Training (POST).

##### **B. Education Incentive Pay**

Effective December 16, 2018, PSPMA members shall receive one percent (1%) of base pay for possessing a Bachelor's Degree (BA or BS) from a college or university accredited by either the Council for Higher Education Accreditation ("CHEA") or the U.S. Department of Education ("USDE").

Effective December 16, 2018, PSPMA members shall receive five percent (5%) of base pay for possessing a Master's Degree (MA) from a college or university accredited by either the Council for Higher Education Accreditation ("CHEA") or the U.S. Department of Education ("USDE"). An employee who receives pay for having a Master's Degree shall not receive pay for having a Bachelor's Degree.

If an employee has both a Master's Degree and a POST Management Certification, they

shall receive two percent (2%) for the Master's Degree and five percent (5%) for the Management Certification for a total of seven percent (7%).

The parties agree that to the extent permitted by law, the educational incentive pay is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) Educational Pay for the BA, BS or MA or Peace Officer Standards and Training (POST) Pay for the POST Management Certification.

## 8.2 Bilingual Pay

PSPMA members may be eligible to receive an additional 5% in compensation for their bilingual services. The City Manager shall determine the language needs as well as the number of employees eligible for such premium pay. All employees receiving bilingual pay must pass the prescribed examination every two years to continue to receive bilingual pay. For all members of the bargaining unit who were members on the first date of this 2019-2020 MOU – December 16, 2018 who were receiving bilingual pay, if they fail the prescribed examination, they shall not lose the bilingual pay for six months after failing the examination and shall have up to three (3) chances to re-take the examination to pass it and not have a lapse in the pay.

Any employees hired after July 1, 2018 who become eligible for bilingual pay shall receive two hundred and fifty dollars (\$250) per month for Bilingual Pay.

For any employees in the bargaining unit who receive bilingual pay, they must sign up to be present at and prepared to use their bilingual skills at one City Council meeting per year. On the day of the Council meeting for which the employee signs up, they shall adjust their work schedule that day by starting four hours later than their regular start time so that they can be present at the Council meeting to utilize their bilingual skills.

The parties agree that to the extent permitted by law, this pay is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(4) Bilingual Premium.

## **ARTICLE 9, UNIFORM AND CELL PHONE ALLOWANCE**

The City agrees to continue paying a uniform and safety equipment allowance to each sworn member, and uniformed non-sworn members of this Unit as a reimbursement for expenses incurred for acquisition and maintenance of uniforms and safety equipment in an amount of one hundred thirty-five dollars (\$135) per month. The City will pay each Unit member fifty dollars a month (\$50) Cell Phone Allowance in lieu of a City provided cell phone.

The parties agree that to the extent permitted by law, uniform allowance shall be reported to CalPERS as such pursuant to Title 2, CCR 571(a)(5) and the City will report as special compensation, the value of the uniforms for a unit member who is a classic member employee per the Public Employees' Pension Reform Act of 2013 (PEPRA). "New members" as defined by the PEPRA will not have the value of the uniforms reported as special compensation.

## **ARTICLE 10, MILEAGE**

Reimbursement for personal vehicle use shall be at prevailing IRS rate. Where extensive vehicle travel is required, a City vehicle should be provided, and the auto allowance will not be removed until the issue is reconciled.

## **BENEFITS**

### **ARTICLE 11, HEALTH, DENTAL, VISION, AND OTHER INSURANCE**

This article sets forth various insurance benefits available to Unit members. The amounts provided by the City for health, dental and vision insurance for 2018 are set forth below. In the event that the premium charges for the health, dental or vision benefits exceed the total premium costs for the prior year by 4% or more, the amount of the excess shall be paid by the Unit member through a payroll deduction. Each calendar year, the City will pay up to a 4% increase above the prior year's premium rates. The above explanation of the health, vision and dental contributions are described with the following example involving the 2016-2018 rates:

- A. In 2016, the Blue Shield single party rate was \$927.80.
- B. In 2017, the rate increased by 4.75% to \$971.87.
- C. In 2017, the City paid the first 4% of the 4.75% increase = \$37.11 of the \$44.07 increase and the employee paid the remainder (the difference between 4% and 4.75% = .75% of the increase or \$6.96). Thus, in 2017, the premium rate was \$971.87, and the City paid  $\$843.07 + \$37.11 = \$880.18$  and the employee paid \$91.69.
- D. In 2018, that same rate went up to \$1,010.74. This was a 4% increase over the 2017 rate. The parties agree that it was the City's responsibility to pay the first 4% of the 2018 increase on top of the 2017 premium. Since the 2017 rate was \$971.87, and 4% of that amount \$38.87, the City's additional increase for 2018 is \$38.87 which is added to what it was paying in 2017.  $\$880.18 + \$38.87 = \$919.05$ . The employee pays no increase for 2018 as the premium amount did not exceed the 4% that the City contributes.

Vision and Dental Insurance are calculated exactly the same way as described above for health insurance.

#### **11.1 Health, Dental and Vision Insurance**

The City agrees to contribute up to the amounts below for calendar year 2018 and 2019 for Unit members toward Health (including hospitalization, drug coverage through such program(s)) Dental and Vision insurance. Unit members will sign verification of dependent eligibility annually at open enrollment.

January 1, 2018

Type of Coverage	Health	Dental	Vision
Single Party	\$919.05	\$36.67	\$13.42
Two-Party	\$1,764.10	\$50.54	\$13.42
Family	\$1,869.38	\$74.33	\$13.42

## City Contribution for 2019

Type of Coverage	Health	Dental	Vision
Single Party	\$959.48	\$35.67	\$13.42
Two-Party	\$1,841.70	\$50.54	\$13.42
Family	\$1,951.62	\$74.33	\$13.42

The City of Palm Springs provides Domestic Partner Coverage to the current health, dental and vision insurance. The enrollee must provide a copy of the Declaration of Domestic Partnership, Statement of Financial Liability for Domestic Partnership, Statement of Financial Liability for Domestic Partner Health Benefits, and Affidavit of Eligibility for Economically Dependent Children to the City. The City will use the same enrollment policies for domestic partnerships as are currently used for traditional marriages or as provided by the requirements of the insurance carrier.

For medical coverage, if an employee elects to opt out of coverage offered by the City, they must provide proof of “minimum essential coverage” (as defined by the Affordable Care Act) through another source (other than coverage in the individual market, whether or not obtained through Covered California).

### 11.2 Term Life Insurance

The City agrees to provide (\$50,000) Term Life Insurance coverage at no cost to employees in the unit.

### 11.3 AD&D Coverage

The City agrees to provide coverage of \$50,000 for Accidental Death and Dismemberment (AD&D).

## **ARTICLE 12, HEALTH INSURANCE FOR RETIREES**

### A. Tier I:

Association members hired prior to (or received a written offer of employment) prior to October 20, 2005, shall receive health insurance for retirees as follows:

1. After 20 years of continuous full-time service, 75% of the premium for retiree health insurance coverage will be paid by the City.
2. After 25 years of continuous full-time service, 100% of the premium for retiree health insurance coverage will be paid by the City.

The City’s contribution as described above will be based on the coverage type (single, two-party or family) chosen by the employee at the time of retirement.

In the event of the employee’s death, the City’s contribution will end. The surviving spouse may remain on the plan as a retiree without a City contribution to the premium.

3. Retired employees who have not completed 20 years of continuous City service (except for the two-year service credit option described in paragraph 1 below), shall be entitled to participate at their own cost in the health, hospitalization and drug coverage plan.

All Employees who become eligible to receive Medicare must enroll in Medicare Part A and B to remain eligible to receive the above contributions.

4. Service Credit for Health Insurance For Retirees in Tier 1

Employees in Tier 1 shall be eligible for two years of service credit for the purpose of being eligible for retiree health insurance (e.g., an employee with 18 years of continuous service will be eligible for the benefits available to those with 20 years of continuous service) if in the month of June (starting in 2019) the employee makes an irrevocable offer to retire (which will be immediately accepted by the City) by no earlier than ninety (90) days from the date of notice or later than December 31 of that same calendar year.

B. Tier II:

For all employees initially hired by the City after October 20, 2005, there will be no City contribution for retiree health benefits. The City will, however, make a \$100.00 per month contribution (to such employees' Retiree Health Savings Plan and the City will also pay the cost of the administration of the Plan.

## **ARTICLE 13, RETIREMENT**

### 13.1 Retirement Formula

Unit members (and not "new members as defined by the Public Employees' Pension Reform Act of 2013 - PEPRA) hired prior to June 17, 2011, are covered by the 3% @ 50 formula provided for by the Public Employees' Retirement Law at Government Code section 21362.2. These employees' retirement will be calculated pursuant to the optional benefit (in the City's contract with CalPERS) of single highest twelve-month period.

Unit members (and not "new members as defined by the Public Employees' Pension Reform Act of 2013 - PEPRA) hired after June 17, 2011, are covered by the 3% @ 55 formula provided for by the Public Employees' Retirement Law at Government Code section 21363.1. These employees' retirement will be calculated pursuant to the optional benefit (in the City's contract with CalPERS) of single highest twelve-month period.

Unit members who are defined as "new members" under the PEPRA, are covered by the 2.7% @ 57 formula provided for by the PEPRA at Government Code section 7522.25(d). These employees' retirement will be calculated per the three-year average final compensation as provided for by the PEPRA per Government Code section 7522.32(a).

### 13.2 Employee Contributions to the Retirement System

- A. Employees subject to the 3%@50 and 3%@55 formula hired:

Employees in the Unit shall pay their nine percent (9%) member contribution.

These employees also pay an additional three percent (3%) of pensionable income of the employer rate as cost sharing (per Government Code Section 20516(f)). If, at any time in the future, the Association informs the City that it no longer agrees to this cost sharing agreement, effective on the date of the elimination of the cost sharing (which would need to coincide with the expiration date of the MOU) the base salary of all employees in the bargaining unit will be reduced by three percent (3%).

The twelve percent (12%) employee contribution is 9% member and 3% cost sharing.

B. Employees subject to the 2.7% @ 57 Formula – “New Members” as defined by PEPR A:

Unit members who are defined as “new members” under the PEPR A, are covered by the 2.7% @ 57 formula provided for by the PEPR A at Government Code section 7522.25(d). These employees’ retirement will be calculated per the three-year average final compensation as provided for by the PEPR A per Government Code section 7522.32(a). These employees shall pay the statutorily mandated employee contribution rate of one half of the total normal cost as determined each year by CalPERS.

13.3 Adoption of IRS Code Section 414(h)(2) Resolution

The City has adopted the CalPERS resolution in accordance with and as permitted by IRS Code section 414(h)(2) to ensure that the employees’ payment (i.e., “pick up” as that term is used in section 414(h)(2)) of their employee contribution is made on a pre-tax basis.

13.4 Optional Benefits

- A. The City contracts with CalPERS for the following optional benefits:
- B. Pre-retirement death benefits to continue after remarriage of survivor – Government Code section 21551
- C. Death Benefit – Government Code section 21620
- D. Post Retirement Survivor Allowance – Government Code sections 21624/26/28 and 21635
- E. 1959 Survivor Benefit Level 4– Government Code section 21574
- F. Military Relocation Credit - Government Code section 21024
- G. Final Compensation Period One Year - Government Code section 20042 for classic members
- H. 2% Cost of Living Allowance - Government Code section 21329
- I. Prior Service - Government Code section 20055

## **WORK HOURS/LEAVE**

### **ARTICLE 14, WORK SCHEDULE**

Association members are ordinarily allowed to work a 4/10 or three (3) twelve and a half (12 ½) flex workweek at the discretion of the Chief of Police. Any unit member whose work schedule is changed may request a meeting with the Chief of Police to discuss the change.

### **ARTICLE 15, ANNUAL LEAVE**

Unit members shall be eligible to use annual leave once it is accrued. Annual leave shall accrue to a maximum of four hundred (400) hours. Until December 31, 2019, unit members may request payment of annual leave in lieu of time off. Such cash-ins of annual leave will be permitted twice per year on the second pay-day in July and on the first pay-day in December. An employee whose accrual is at 400 hours shall not accrue additional annual leave unless and until the member uses such leave bringing the balance below 400 hours or cashes in such leave as permitted herein.

Effective for calendar year 2020 and every year thereafter: By December 15 (the first year being 2019) of each year, employees may make an irrevocable election to cash out up to the maximum number of hours of annual leave which they can accrue per year which will be earned in the following calendar year at the employee's base rate of pay. In the following year, the employee can receive the cash for the annual leave they irrevocably elected to cash out in either two (2) separate increments of up to half their annual accrual cap (i.e., for those who accrue 16.67 hours per month - 200 hours per year, 100 hours each) or one (1) increment of up the maximum they can accrue in a year.

The employee would be paid one half of what they irrevocably elect to cash out hours on both the second pay day in July and the first pay day on December or the employee can elect to be paid their full amount they elected to cash out on the first pay day in December. However, if the employee's annual leave balance is less than the amount the employee elected to cash out (in the prior calendar year) the employee will receive cash for the amount of leave the employee has accrued at the time of the cash out.

If an employee makes an irrevocable election to cash out annual leave in the following calendar year and uses annual leave in that subsequent year, the annual leave used will come from annual leave the employee had earned prior to January 1 of the year the employee has elected to cash out annual leave. This is to ensure that assuming an employee had an annual leave balance prior to January 1, the annual leave used will not result in a reduction in the amount of annual leave the employee will be eligible to cash out.

Members shall accrue annual leave on a monthly basis in accordance with the following schedule:

Years of Service	Hours Accrued Monthly
0 Through 5	12
6 Through 10	14
11 and after	16.67

Annual leave is vested. This means that once earned, it cannot be taken away by the City. Association members can either use the annual leave or cash it out as described in this Article.

## **ARTICLE 16, HOLIDAYS**

Unit members shall receive in lieu of all City recognized holidays, 3.67 hours per pay period (the 24 pay periods when holiday in lieu pay is paid to employees) at their straight time hourly rate.

The parties agree that to the extent permitted by law, the compensation in this section is special compensation for those employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(5) holiday pay.

## **ARTICLE 17, SICK LEAVE**

Sick leave shall accrue at a rate of ten (10) hours of sick leave per month to a maximum of five hundred and twenty (520) hours. Employees who accumulate over 520 sick leave hours will have an opportunity to cash out the excess hours over the 520 sick leave hours twice per year on the last pay day of July and the first pay day of December. Employees will have the option of depositing the excess hours into their deferred compensation account or converting the excess hours to taxable cash (as income). If an employee does not exercise the option to deposit the excess hours into their deferred compensation account or convert it to taxable cash, the hours will be converted to cash by the City. Thus, following the final pay day in December, unit members shall not have more than 520 hours of accrued sick leave in their sick leave account.

## **ARTICLE 18, DISPOSITION OF SICK, EXCESS SICK AND ANNUAL LEAVE UPON RETIREMENT**

Accrued sick and excess sick leave shall be paid upon retirement from the City service. Upon separation all unpaid accrued and vested annual leave will be paid at the employee's current salary rate. All unpaid accrued and vested annual leave of deceased employees shall be paid to the estate of said deceased except as otherwise provided by law. Employees in the Association may designate who shall receive their final paycheck, including the cash out of accrued leave.

## **EMPLOYER/EMPLOYEE RELATIONS**

### **ARTICLE 19, DRUG POLICY/DRUG SCREENING**

This policy is attached and incorporated by reference into this Agreement as Exhibit B.

### **ARTICLE 20, PAYROLL DEDUCTION**

The City will provide payroll deductions at request of the Association for dues, assessments, and other deductions authorized by the Association. Remittance will be bi-weekly to the Association's treasurer.

### **ARTICLE 21, STRIKES AND WORK STOPPAGE**

#### **21.1 Prohibited Conduct**

The Association, its officers, agents, representatives and/or members agree that during the term of this Agreement, they will not cause or condone any strike, walkout, slowdown, sick out, or any other unlawful job action by withholding or refusing to perform services.

Any employee who participates in any prohibited conduct listed above may be subject to suspension, demotion, or dismissal by the City.

In addition to any other lawful remedies or disciplinary actions available to the City, if the Association fails, in good faith, to perform all responsibilities listed below as Association Responsibility, the City may suspend any and all rights and privileges accorded to the Association in this Agreement, including but not limited to suspension of the Grievance Review Procedure and Dues Deduction.

#### **21.2 Association Responsibility**

In the event that the Association, its officers, agents, representatives, or members engage in any Prohibited Conduct, the Association shall immediately instruct any persons engaging in such conduct that their conduct is in violation of this Agreement and unlawful, and they must immediately cease engaging in conduct prohibited in Article 21.1 and return to work.

### **ARTICLE 22, GRIEVANCE PROCEDURE**

#### **22.1 Definition of Grievance**

- A. A "Grievance" is a dispute of one or more employees or a dispute between one or more employees involving the interpretation, application or enforcement of the provisions of the MOU, or of the Personnel Rules and Regulations that are within the statutory scope of representation, and for which there is no specific method of review provided by federal, State or local law.
- B. Personnel rules 4.3.3 or 7.7 are excluded from the grievance procedure as well as any other rules as specified and complaints involving harassment shall be handled by a separate procedure.
- C. Release or lay-off of employees during an initial probationary period after hire, reinstatement, or reemployment is not subject to the grievance procedure.

## 22.2 Time Limits and Waivers

- A. Working Days - For purposes of the Grievance Procedure, working days, further referred to as "days", are defined as the period from 8 a.m. to 6 p.m. City Hall working days, currently Monday-Thursday, excluding holidays.
- B. Initiation - A Unit employee must initiate the grievance within fifteen (15) days of the occurrence of the event giving rise to the grievance or within fifteen (15) days after the grievant should, with reasonable diligence, have had knowledge of such occurrence, whichever is later.
- C. Management Reply - Failure by management to reply to the employee's grievance within the time limits specified under the grievance procedure shall automatically grant the employee the right to process the grievance to the next level of review.
- D. Failure to Submit to Next Level - If a Unit employee fails to submit from one level to the next level within the time limits and in the manner provided under the grievance procedure, the grievance shall not be subject to further consideration and will be deemed resolved.
- E. Waiver by Mutual Agreement - Any level of review or any time limits established in the procedure may be waived or extended by mutual agreement between the Unit employee and management, which must be confirmed in writing.
- F. Outside of Authority - If the supervisor, manager, or department head designated by the grievance procedure below to receive the grievance determines that they do not have the authority to resolve it, that supervisor, manager, or department head, shall so inform the grievant and forward the grievance to the next higher level of supervision with authority to resolve it, if applicable, or advise the grievant in writing they may continue to the next level in the process.

## 22.3 Informal Resolution

- A. The responsibility of a Unit employee with a bona fide grievance concerning terms and conditions of employment is to promptly inform and discuss the grievance with the department supervisor or designee in order to, in good faith, endeavor to resolve the matter expeditiously and informally.
- B. If such informal discussion does not resolve the grievance to the Unit employee's satisfaction, such employee may file a formal grievance in accordance with the procedure set forth in this section.

## 22.4 Procedure

- A. The Unit employee shall provide the grievance in writing, with signature and date, and submit it to their immediate supervisor within fifteen (15) days of the initial commencement of the occurrence being grieved. The supervisor shall further consider and discuss the grievance with the Unit employee and such employee's designated representative as deemed appropriate, and shall, within fifteen (15) days of having received the written grievance, submit a response thereto in writing to the employee and the employee's representative, if applicable.

- B. If the written response of the immediate supervisor does not result in a resolution of the grievance, the Unit employee may further submit the grievance, by presenting a written request, with date and signature, to the Unit employee's department head within seven (7) days of the Unit employee's receipt of the supervisor's response. The department head may investigate the grievance and may set a meeting with the Unit employee, employee's designated representative, and other persons as deemed appropriate to consider the grievance. Within thirty (30) days of receipt of the grievance by the department head, the department head shall submit a response to the grievance to the Unit employee and employee's representative, if applicable.
- C. If the response by the department head, does not result in a resolution of the grievance, the Unit employee may further submit the grievance, by presenting a written request, with date and signature to the Human Resources Director, for submission to the Office of the City Manager, within seven (7) days of the unit employee's receipt of the department head's response. The City Manager or designated representative may set a meeting with the Unit employee, employee's designated representative, and other persons as deemed appropriate, to consider the grievance. Within thirty (30) days of receipt of the grievance the City Manager or designated representative shall submit a response to the Unit employee and employee's representative, if applicable. The decision of the City Manager Office is final and binding.
- D. This grievance procedure is the sole and exclusive method for alleging a violation, misinterpretation or misapplication of any provision of this MOU.

## **ARTICLE 23, DISCIPLINARY APPEALS PROCESS**

Effective December 16, 2018 the parties agree that if an employee subject to discipline is entitled to appeal that discipline per Personnel Rules 14 and 15, the appeal process provided by the Personnel Rules (the Personnel Board) will no longer apply. Rather, the parties agree that effective December 16, 2018 discipline which is subject to appeal may be appealed to a hearing officer selected by the parties. The disciplinary appeals process is as follows:

### 23.1 Property Interest Discipline

#### A. Appeals Procedure

1. If an appeal of a dismissal, suspension, demotion or reduction in salary is filed with the Director of Human Resources within ten (10) days of receipt of a written notice of discipline, this process will be used which includes the use of a hearing officer.
2. The City and the employee or their representative may agree on the hearing officer. If they cannot agree, the hearing officer shall be chosen from a panel of seven (7) hearing officers from a list provided State Mediation and Conciliation Service. The parties shall alternately strike names until one hearing officer remains. The parties shall flip a coin with the winner of the coin flip getting to choose whether to strike the first name or the second name. Names will be struck until the hearing officer is selected.
3. The hearing officer shall submit an advisory decision setting forth findings, conclusions, and recommendations to the City Council.

## B. Hearings

1. The hearing shall commence no more than ninety (90) calendar days from the date the hearing officer is selected provided that the parties may agree to a longer period to commence the hearing.
2. All disciplinary hearings shall be closed to the public unless the affected employee requests that the hearing be open to the public.
3. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission and exclusion of evidence.
4. Each party shall have these rights: to be represented by legal counsel or other person of their choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence against them. If the employee appealing the discipline does not testify on their own behalf, they may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing. The cost of the reporter will be paid for by the City. However, if the employee wants to order a transcript the City will not pay for the cost of that transcript. The cost of the hearing officer will be paid for by the City.
5. The hearing shall proceed in the following order, unless the hearing otherwise directs:
  - a. Opening statements shall be permitted with the City proceeding first.
  - b. The City shall proceed first in the hearing. If witnesses are called, the opposing party shall have the right to cross-examine the witnesses on any matter relevant to the issues, even though that matter was not covered on direct examination.
  - c. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason permits them to offer evidence upon their original case.
  - d. Closing arguments and written briefs shall be permitted.
  - e. The hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. The hearing officer shall base findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing

officer, for good cause, otherwise directs. The hearing officer, prior to or during a hearing, may grant a continuance for any reason believed to be important to reaching a fair and proper decision.

- f. The hearing officer may recommend sustaining, rejecting or modifying the disciplinary action but not increasing the proposed discipline.
6. The hearing officer's findings, conclusion and recommendations shall be filed with the Director of Human Resources, who will forward them to the City Manager who then forward to the City Council. The City Council, in its sole discretion, may hear limited oral arguments and/or request written statements from either party on the hearing officer's advisory decision. The City Council shall inform the employee appealing the discipline of its decision regarding the appeal within sixty (60) calendar days of the receipt of the hearing officer's report. The City Council may sustain, reject or modify the findings of the hearing officer but cannot increase the discipline proposed by the City. However, the City Council may extend the time to issue its decision beyond the sixty (60) calendar day period if it believes it is necessary. The decision of the City Council regarding the appeal shall be the final step in the administrative appeal process. However, any disciplinary action is deemed final as of the effective date. Copies of the City Council's decision, including the hearing officer's report shall be filed where appropriate, including the employee's personnel file. The City Council's decision is subject to review by a superior court pursuant to Code of Civil Procedure Section 1094.6.
7. Subpoenas and subpoenas *duces tecum* pertaining to the hearing shall be issued at the request of either party, not less than ten (10) calendar days prior to the commencement of the hearing; after commencement, subpoenas shall be issued only at the discretion of the hearing officer.
8. The time limits specified at any step in this procedure may be extended or reduced by written agreement of the employee or representative and the representative for the City.

### 23.2 Appeals Procedures for Punitive Action For Which There Is No Property Interest

#### A. Appeals Procedure:

In accordance with Government Code section 3304.5, the following procedure shall be used if an employee is subject to punitive action which does not implicate a property interest as defined by the Public Safety Officers' Procedural Bill of Rights Act that does not involve termination from employment, demotion, suspension or a reduction of pay.

1. Appeal to the Police Chief or Designee
  - a. An employee who receives notice of a punitive action shall be entitled to appeal the action to the Police Chief prior to the effective date of the punitive action. The appeal is an opportunity for the employee to present written material and arguments why a punitive action should not occur or offer alternatives to the action.
  - b. Notice of Appeal: Within fourteen (14) calendar days of receipt by an employee of notification of a punitive action, the employee shall notify the Police Chief in writing

of the intent to appeal the punitive action. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal. Nothing in this section shall limit the right of the Department to institute disciplinary action, notwithstanding that an appeal may be pending.

## 2. Hearing

a. **Hearing Officer:** The Police Chief or designee shall act as the hearing officer. The Police Chief shall have twenty (20) days from receipt of the request to schedule an appeal hearing. The hearing shall take place within ninety (90) calendar days of the date the employee appealed the punitive action, or such other time as may be agreeable by the parties.

b. **Burden of Proof:**

(1) If the action being appealed does not involve allegations of misconduct (i.e., allegations that the officer has violated one or more federal, state, or local laws, and/or City or Police Department regulations, procedures, or rules) the limited purpose of the hearing shall be to provide the employee the opportunity to establish a record of the circumstances surrounding the action. The City's burden shall be satisfied if the City establishes that the action was reasonable, even though reasonable persons might disagree about whether the action was the best one under the circumstances.

For example, if the Police Department affected a non-disciplinary transfer of an employee out of a premium pay assignment with the intent of affording other employees the opportunity to work in the assignment, the decision would not be subject to being overturned as long as it was reasonable, even if one or more persons might disagree with the decision.

(2) If the punitive action involves charges of misconduct, (i.e., allegations that the employee has violated one or more laws, regulations, procedures, or rules), the City shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge of misconduct and the burden of persuasion that the punitive action was reasonable under the circumstances.

For example, if an employee received a written reprimand for unauthorized absence from work then the City would bear the burden of proving that the employee was absent from work without authorization and that a written reprimand was reasonable under the circumstances.

c. **Conduct of Hearing:**

The formal rules of evidence do not apply, although the Hearing Officer shall have discretion to exclude evidence which is incompetent, not relevant or cumulative, or the presentation of which will otherwise consume undue time. The rules of privilege shall be observed.

(1) The parties may present arguments through documents and statements.

- (2) If the punitive action being appealed is a written reprimand, the parties will not be entitled to confront and cross-examine witnesses.
- (3) Following the presentation of written material and statements, the involved parties may submit closing arguments orally or in writing for consideration by the hearing officer.
- (4) Representation: The employee may be represented by an association representative or attorney of their choice.

d. Decision:

After the hearing, a decision will be submitted in writing within forty-five (45) calendar days. The decision shall be served by first class mail, postage pre-paid, upon the employee as well as any attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the employee that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.5.

#### **ARTICLE 24, TAKE HOME VEHICLE PROGRAM**

This policy is attached and incorporated by reference into this Agreement as Exhibit A.

## **APPENDIX A. TAKE HOME VEHICLES**

### **POLICY**

The City Manager shall authorize take home vehicles for members of the bargaining unit living within either the Palm Springs city limits, or in certain instances, within 33 miles of Palm Springs city limits as determined by Google Maps or another map software agreeable to both parties.

### **USE OF CAR**

The take home vehicle is to be used in a manner that facilitates immediate response of the officer in case of call out. Use of the vehicle is restricted to a 33-mile radius from the City Palm Springs city limits. A unit member who is assigned a take home vehicle may use the vehicle to commute back and forth to work, including stopping on the normal route for personal purposes. However, the take home vehicle is not to be used as the unit member's personal car when not commuting to or from work. This includes, but is not limited to, that the unit member is not to use the vehicle on days when the member is not working as well as on work days if not commuting to or from work. For unmarked vehicles, the unit member may transport members of their immediate family in the unit if doing so during their normal commute to or from work.

Unit members who are assigned to attend training classes, responding to a City of Palm Springs job-related court subpoena, or attending any other Department sanctioned event outside the City of Palm Springs, may use their assigned vehicle to attend the event.

Unit members who are not assigned a take home vehicle shall park their assigned vehicle at the police department. Those unit members have the option of responding to court or other department sanctioned events outside the City of Palm Springs either from the department in their assigned vehicle, or from their home, using their own vehicles and putting in for mileage reimbursement.

### **DUTY TO RESPOND**

Unit members driving a take home vehicle may not ignore stranded or disabled motorists, traffic collisions, or any hazardous conditions they observe. The unit member must have the equipment necessary to respond and shall activate the radio, notify Dispatch of the situation and take action if deemed appropriate.

### **PARKING**

Unit members who are not assigned a take home vehicle shall park their assigned vehicle at the police department or other City of Palm Springs facility as directed by the Chief of Police.

### **MAINTENANCE**

It is the responsibility of the employees to keep their vehicles clean. The City's contract car wash may be used as often as necessary to keep vehicles in a presentable condition. It is the employee's responsibility to make their assigned vehicle available to the City Shop for scheduled maintenance or when notified that additional service is required.

### **SUSPENSION OF PRIVILEGE**

The take home vehicle privilege may be suspended if the unit member has two or more preventable accidents within a three-year period, or if they fail to follow the guidelines set forth in this policy.

## **APPENDIX B - DRUG POLICY/DRUG SCREENING**

The City of Palm Springs and the Association have a vital interest in maintaining safe, healthful and efficient working conditions. Being under the influence of a drug or alcohol on the job may pose serious safety and health risks not only to the user but also to co-workers and the citizens of Palm Springs. The possession, use or sale of an illegal drug or of alcohol on the job also poses unacceptable risks for safe, healthful and efficient operations. "On the job" means while on City premises, at work locations, or while on duty or being compensated on an "on call status".

PSPMA and the City recognize that their future is dependent on the physical and psychological well-being of all employees. PSPMA and the City mutually acknowledge that a drug and alcohol-free work environment benefits employees and citizens, and members agree to comply with this policy at such time as a mutually agreed upon employee assistance program is in place.

The purpose of this article is to define the City's drug and alcohol policy as well as the possible consequences of policy violation.

### **SECTION 1**

Possession, sale, use or being under the influence of drugs or alcohol while on the job is strictly prohibited.

### **SECTION 2**

When reasonable suspicion exists, the City may require an employee to submit to a substance screening. The employee will be given the option to select a blood test or urinalysis. Reasonable suspicion is cause based upon objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform their job safely is reduced.

### **SECTION 3**

Any manager or supervisor requesting an employee to submit to a substance screening shall document in writing the facts constituting reasonable suspicion and shall give the employee a copy. This report must advise the employee of the right to representation. The employee shall be given an opportunity to provide additional facts. An employee who is then ordered to submit to a substance abuse screening may request to be represented. Because time is of the essence in drug screening, a representative must be available within a reasonable time or the employee will then be ordered to submit to a substance screening. Any employee who refuses to submit to a substance screening may be considered insubordinate and shall be subject to disciplinary action up to and including termination.

### **SECTION 4**

The supervisor, or designee, shall transport the suspected employee to the testing facility or shall call to the Police Station a licensed phlebotomist who will draw blood samples, when a blood test is selected. Urine samples shall be taken at the Police Station under supervision of the supervisor. Testing shall occur on City time and be paid for by the City. Employee urine samples, or other body fluids, will be collected in a DOX Security Container System or other system that includes methods

or mechanisms designed to assure the integrity of the sample. The facility used for testing shall be certified by the National Institute of Drug Abuse and comply with established guidelines for "chain of custody" to insure that identity and integrity of the sample is preserved throughout the collecting, shipping, testing and storage process.

#### SECTION 5

Any positive test for alcohol or drugs will be confirmed by a scientifically sound method. An employee who tests positive on a confirmatory test will be given the opportunity to discuss the results with a physician to be designated by the City. The employee should be prepared at that time to show proof of any valid medical prescription for any detected substance or to otherwise explain, if the employee so chooses, a positive test result.

#### SECTION 6

While use of medically prescribed medications and drugs is not per se a violation of this policy, this policy shall establish that no employee shall operate a City vehicle or dangerous machinery or equipment while taking any kind of medication or drugs which are clearly marked that they may cause significant drowsiness or impair an employee's performance. An employee shall notify their supervisor, before beginning work, when taking such medications or drugs. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a physician designated by the City may be required. The City reserves the right to send an employee home on sick leave under these circumstances.

#### SECTION 7

Employees with substance abuse problems are encouraged to participate voluntarily in the City-sponsored Employee Assistance Program (EAP). Assistance through the EAP may be sought by an employee with complete confidentiality and without adverse consequences to their employment. Employees should be aware, however, that a request for assistance through the EAP will not insulate the employee from disciplinary action already contemplated.

Depending upon the facts surrounding the reasonable suspicion determination, positive test result, and/or other violation of this policy or other City/department rules and regulations, the City will refer an employee to the EAP. Such referral could, at the discretion of the City, be made available to the employee as an alternative to disciplinary action. Referral would be subject to agreement by the employee to enroll, participate in and successfully complete a rehabilitation and/or counseling program and other terms and conditions in a "Last Chance Agreement."