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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

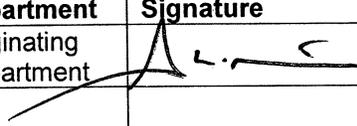
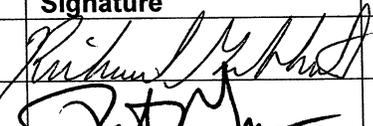
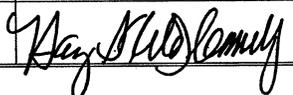
Item # 5 Ordinance/Resolution# 10-268 Council District:

For Meeting of May 3, 2010
 (Adoption Date)

TITLE:

A RESOLUTION APPROVING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE LAS CRUCES POLICE OFFICERS' ASSOCIATION.

PURPOSE(S) OF ACTION: Approve the Collective Bargaining Agreement between the City of Las Cruces and the Las Cruces Police Officers' Association.

Name of Drafter: Andre Moquin		Department: Human Resources		Phone: 528-3100	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		3100	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		2271

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In January of 2007 Council approved a three (3) year collective bargaining agreement between Las Cruces Police Officers' Association and the City of Las Cruces.

In accordance with LCMC Sec. 15-15, negotiations and impasse resolutions, the parties entered into negotiations on November 24, 2009.

Negotiations were tentatively completed on Monday March 29th, 2010 resulting in a proposed agreement that will run through May 2013.

This three (3) year agreement does not contain provisions for a general wage increase at signing. However, wage re-opener provisions are included for the first and second anniversary dates of the agreement. The parties further agreed to an early wage re-opener provided City gross receipt tax (GRT) revenues should increase by at least three (3) percent for two (2) consecutive quarters.

(Continue on additional sheets as required)

Other notable changes include an additional eight (8) hours of personal leave to be used within a twelve (12) month period, an increase of allowable compensatory time sell back in December from one hundred (100) to one hundred and fifty (150) hours and an increase to stand-by pay from sixty five (65) to eighty five (85) dollars per week.

The costs associated with this resolution include approximately thirty thousand (30,000) dollars per year for the increase to stand-by pay. Those associated with additional hours of personal leave will be limited and most likely seen as occasional overtime required to meet organizational needs during periods of employee leave.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Various	\$30,000	

List your exhibits and attachments after the fund box just like the example below.

1. Resolution.
2. Summary of changes by Section.
3. Proposed Collective Bargaining Agreement between the Las Cruces Police Officers' Association and the City of Las Cruces with changes underlined.

OPTIONS / ALTERNATIVES:

1. Vote "yes", approving the Collective Bargaining Agreement between the Las Cruces Police Officers' Association and the City of Las Cruces.
2. Vote "no", disapproving the Collective Bargaining Agreement between the Las Cruces Police Officers' Association and the City of Las Cruces.

RESOLUTION NO. 10-268

A RESOLUTION APPROVING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE LAS CRUCES POLICE OFFICERS' ASSOCIATION.

The City Council is informed that:

WHEREAS, in January, 2007 the City Council approved a three (3) year collective bargaining agreement between the Las Cruces Police Officers' Association and the City of Las Cruces; and

WHEREAS, in accordance with LCMC Sec. 15-15, negotiations and impasse resolutions, the parties entered into negotiations on November 24, 2009; and

WHEREAS, negotiations were tentatively completed on Monday March 29th, 2010; and

WHEREAS, the resulting three (3) year agreement does not contain a wage increase at signing; and

WHEREAS, provisions of the agreement allow for wage re-openers; and

WHEREAS, the cost associated with this agreement will be approximately thirty thousand (30,000) dollars and other associated cost most likely take the form of occasional overtime required to meet organizational needs during periods of employee leave.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT City Council hereby approves amendments to the collective bargaining agreement between the City of Las Cruces and the Las Cruces Police Officers' Association.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 2010.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

Section Summary

	Agreement	CL
Section 1	Association Representative	Increase representative to 10 Agreement to use off duty reps for union representation
Section 2	Lost, Damaged or Stolen Property	CL
Section 3	Clothing Allowance	Added non-sworn for uniforms
Section 4	Firearms Training	CL
Section 5	Training and Education	Clarification
Section 6	Bereavement Leave	Clarification
Section 7	Management Rights	CL
Section 8	Annual Military Leave	CL
Section 9	Leaves of Absence without Pay	CL
Section 10	Discrimination and Harassment Policy	CL
Section 11	Employee Safety and Health	CL
Section 12	Safety and Health Meetings	CL
Section 13	Credit Union	CL
Section 14	Examinations	CL
Section 15	Compensation	0% with 2 wage re-openers
Section 16	Specialty Pay	CL
Section 17	Vacation and Vacation Accrual	CL
Section 18	Seniority	CL
Section 19	Holidays	Clarification
Section 20	Sick Leave	CL
Section 21	Work Hours, Schedules and Overtime	Increase comp time payout in December Language for leave carryover requests
Section 22	Extra Duty Assignments	
Section 23	Outside Employment	CL
Section 24	Retirement	CL
Section 25	Officers Liability Protection	CL
Section 26	Group Insurance	MGT Prop
Section 27	Workers Compensation	CL
Section 28	Jury Duty and Witness Pay	CL
Section 29	Standby By/On Call Pay	Increase stand-by pay from \$65 to \$85
Section 30	Check Off Authorization	Clarification
Section 31	Lay Off and Recall	CL
Section 32	Professional Standards Section	Clarification
Section 33	Discipline	Chief may direct leave forfeiture
Section 34	Grievance Procedures	CL
Section 35	Probation Period	CL
Section 36	Filling of Vacancies	Application deadline extension for officers on leave
Section 37	Staffing	CL

Section 38	Labor Management Committee	Clarification
Section 39	City of Las Cruces & Police Department Rules & Reg	15 day limit for comments
Section 40	Contract includes Entire Agreement	CL
Section 41	Savings Clause Severability	CL
Section 42	Term of Agreement	3 years

***AGREEMENT BETWEEN
THE CITY OF LAS CRUCES***

AND

FRATERNAL ORDER OF POLICE

LAS CRUCES POLICE OFFICER'S

ASSOCIATION

EFFECTIVE May 3 2010 THRU May 3 2013

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AGREEMENT

THIS AGREEMENT is entered into by and between the **CITY OF LAS CRUCES** (“Employer”), a Municipal Corporation of the State of New Mexico, as the “Employer,” and the **LAS CRUCES POLICE OFFICER’S ASSOCIATION**, (“Association”), which is an affiliate of the Fraternal Order of Police Labor Council and the Las Cruces Lodge #8 Fraternal Order of Police.

RECITALS

- A. This Agreement is for the purpose of setting forth the mutual understanding of the parties as to wages, hours, and other conditions of employment of those employees for whom the Employer has recognized as the exclusive bargaining representative under LCMC 1997, Section 15-1 et seq.
- B. The general purpose of this Agreement is to provide for orderly and constructive Employee relations in the public interest; to establish wages, hours and other conditions of employment, to delineate the rights of Employees and protect the rights of the City and to assure at all times the orderly and efficient delivery of quality services to the citizens of Las Cruces.
- C. The parties hereto have reached an Agreement on all matters which have been subject to negotiation and desire to reduce such Agreement in writing in order to avoid any misunderstanding on what in fact has been agreed to.
- D. For the purposes of this Agreement and any subsequent Memorandum of Understanding, the Las Cruces Police Department shall be referred to as the “Department,” the Chief of Police shall be referred to as the “Chief,” and any reference to a Bargaining Unit member shall be referred to as “Employee.”

NOW, THEREFORE, IT IS HEREBY AGREED:

- A. The Employer recognizes the Las Cruces Police Officers' Association as the exclusive collective bargaining representative for all regular non-probationary employees in the following job titles, Animal Control Officers, Police Detectives, Police Officers, Code Enforcement Officers, Evidence Technicians, NCIC Coordinators, ID Technicians and Transport Officers; and
- B. The Employer, the Association, and any Employee of the Department shall not discriminate against any member of the bargaining unit based upon race, color, sex, creed, religion, disability, marital status, age, national origin, membership, sexual orientation, gender identity or non-membership status in the Association, or any other applicable City, County, State or Federal laws.

SECTION 1 – ASSOCIATION REPRESENTATIVE:

- A. The Employer will have an open door policy for the Association's representative(s), and will meet with Association's representative(s) at other mutually agreeable times and locations during the term of the Agreement for the purpose of administration of the Agreement and to address matters of mutual concern. The Association and the Employer will attempt to handle grievances and other matters without resorting to formal proceedings.
- B. The Association will provide the Chief and the Human Resources Department a list to a maximum of ten (10) representatives (designee) of the Association that may be granted duty time, at the discretion of the Employer, if needed, to provide Employees with reasonable access to Association representation and to help other Employees with information and guidance on following established Departmental procedures, and to attend meetings that are beneficial to the Employer and the Association. These representatives will be elected and/or appointed by the Association, and any one of them can accompany any member during any process involving disciplinary action, attending as an observer/advisor to the member only. The association will make every attempt to use off-duty representatives as often as possible

- C. The Association President and/or his/her designee may be afforded ample time with pay, to respond to his/her Association duties in meetings with management or employees as directed by the Chief during a given normal work week. The President or his/her designee shall obtain authorization from the Chief of Police or his/her designee of his/her absence from work and activities. The Chief or designee shall notify the representatives Supervisor of such absence.
- D. The Union shall be permitted to maintain one bulletin board to be used exclusively for union business. The City shall provide the available space for this bulletin board, where the posting of official union material can be accessible to all personnel. All posting and distribution of union material shall be done by one of the Officers or Stewards of the union. The bulletin board shall remain the property of the union at all times. All material posted will be approved through one of the union Officers or Stewards. No information shall be posted on the union bulletin board that is critical of the city, City Officials, elected officials, City Management or their positions on any issue, shall not be inflammatory or political in nature nor shall such posting violate state or federal law. This shall be the only location for the posting of union notices on city property. Said board will be professionally maintained at all times. If Management determines that material posted violates state or federal law or any other provisions of this section they shall meet with the union president and discuss the matter. After such discussion, unless mutually agreed otherwise, the posting shall immediately be removed

SECTION 2 – LOST, DAMAGED OR STOLEN PROPERTY:

- A. Officers who have lost, damaged or had Employer property stolen in the line of duty, regardless of cost, will not be required to reimburse the Employer for the cost of such items unless negligence is proven to the satisfaction of the Chief or his designee. Subject to the availability of funds and priorities of the Department, such Employer owned items shall be replaced regardless of cost.

- B. The Employer will replace health aids prescribed by a licensed medical/health professional, uniform apparel and required equipment damaged in the line of duty as a result of direct delivery of service in accordance with established policy and the Employee's current personal property list so long as such damage has been officially documented. This language is not intended to be used to replace old worn out health aids, uniform equipment or required equipment. Replacement requires the approval of the Chief or his/her designee.
- C. All instances of lost, damaged, or stolen property will be reported to the Employee's supervisor on duty in accordance with the established policy in writing at the time of the occurrence, or before the end of the shift. Failure to make a proper report will negate any claim for replacement.

SECTION 3 – CLOTHING ALLOWANCE:

- A. Uniform regulations for the Department are established by the Chief. The purpose of this Article is to establish that the Employer will continue to furnish uniforms in accordance with established policy.
- B. The number and type of uniforms to be furnished shall be determined by the Chief, "Class A", Class B", "Bicycle".

In addition the City shall provide to sworn uniformed officers, uniformed animal control, code enforcement and transport officers the equivalent of:

- Three (3) short sleeve uniform shirts (yearly)
- Three (3) long sleeve uniform shirts (yearly)
- Five (5) uniform pants (yearly)
- Required insignia (yearly)
- One (1) set of rain gear (as needed)
- One (1) winter jacket (as needed)
- One (1) wind breaker (as needed)
- One (1) class "A" hat (sworn only, as needed)

- One (1) soft body armor vest (Level IIA or higher) (per manufacturer recommendation)
- C. Employees who are provided a uniform are responsible for keeping the uniform in a clean and serviceable condition. Employees are subject to uniform inspection at any time at the discretion of the supervisor.
- D. Employees whose uniform is not in a clean and serviceable condition may be sent home without pay at the discretion of the supervisor until they are able to return in proper condition.
- E. The Employer will continue to pay clothing allowance. Those employees who are eligible for the clothing allowance will be determined by the Employer. The employees assigned as detectives to the C.I.S. shall receive a total of one thousand two hundred and No/100 Dollars (\$1,200.00) per calendar year. Current eligible members will be paid six hundred (600) dollars in the first pay period in April and six hundred (600) dollars in the first pay period in October, or a prorated sum beginning the first full pay period after appointment

SECTION 4 – FIREARMS TRAINING:

The Department will meet all minimum standards for firearms training as established by the New Mexico Law Enforcement Academy Board. This language shall not limit the number of shoots per year. The Department can establish other reasonable weapons training standards, including those for all Department approved firearms, whose minimum qualifications will be at least eighty (80) percent, with exception of SWAT which can be higher, in accordance with New Mexico Law Enforcement Academy (NMLEA) accredited lesson plan.

SECTION 5 – TRAINING AND EDUCATION:

The Employer encourages Employees to develop and expand their potential. Employees may be allowed to change hours to attend class during normal work hours depending on the work schedule with approval of the supervisor. Time away from

work may be paid for by the Employer. Approval to attend courses during working hours will be determined by the Chief or his designee.

An Employee shall obtain approval of their immediate supervisor before making any plans to attend classes. The Employer also offers training sessions in many specialized areas. The Employee's Supervisor/Training Office is aware of what training is being offered, and will post notices of training opportunities that might be of benefit to Employees.

Employee has responsibility for initiating discussion to identify and assess their own specific training needs.

All requests for training will be routed through the immediate chain of command to the training office, and evaluation of all requests will be made in accordance with Departmental policies.

SECTION 6 – BEREAVEMENT LEAVE

Employees of the Las Cruces Police Department may take up to three days paid Bereavement Leave for a Death in the immediate family. For the purpose of this section, immediate family shall include parents, stepparents, spouse, children, stepchildren, siblings, step-siblings, grandparents, grandchildren, legal guardians or domestic partners.

- A. Payment for Bereavement Leave shall be computed at the bereaved employee's hourly rate.
- B. Employees shall be granted one day paid Bereavement Leave for a death of their mother-in-law, father-in-law, aunt, uncle, or grandparents-in-law.
- C. One additional Bereavement Leave day shall be allowed in the funeral is being held at a location greater than 300 miles from the City of Las Cruces.
- D. If requested by the supervisor, an employee must present reasonable proof of death, relationship and/or attendance.
- E. Leave should be taken within a reasonable period of time as determined by the Chief.

SECTION 7 – MANAGEMENT RIGHTS:

Unless limited by this Collective Bargaining Agreement or by other statutory provisions, the Employer retains the following rights:

- A. To direct and supervise all operations, functions and the work of the Employees;
- B. To determine the place to report to work, to determine methods, processes, and manner of performing work;
- C. To authorize all personnel transactions such as to hire, lay off, promote, demote, assign, transfer, discipline, discharge or terminate Employees;
- D. To determine what and by whom services will be rendered to the citizens;
- E. To determine staffing requirements, create, abolish and reallocate positions or to eliminate or reorganize work units;
- F. To establish and revise schedules of work;
- G. To establish, revise and implement standards for hiring and promoting Employees;
- H. To assign shifts, work days, hours of work and work locations;
- I. To designate, assign or reassign all work duties;
- J. To determine the need for additional positions and the qualifications of new Employees, and to determine the qualifications for and/or qualifications of Employees considered for transfer and/or promotion;
- K. To evaluate and judge the skill, ability and efficiency and general work performance of Employees;
- L. To take actions, as necessary, to carry out the mission of the Employer in emergencies;
- M. Retain all rights concerning management and operations of the activities of the City of Las Cruces not specifically prohibited by a Collective Bargaining Agreement or "The City of Las Cruces Labor Management Relations Ordinance." Said rights include, but are not limited to, personnel matters and staffing of functions, compensation, benefits and terms and conditions of employment;
- N. To determine the allocation of available funds to activities of the Organization, including establishing funding for personnel costs, operating expenses and capital outlay;
- O. To direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public Employees;
- P. To determine qualifications for employment and the nature and content of personnel examinations;
- Q. To take actions as may be necessary to carry out the mission of the Employer in emergencies;
- R. Retain all rights not specifically limited by this Collective Bargaining Agreement. These rights shall not be subjugated or diminished by any expressed or implied duty to bargain.

- S. Employees are required to comply with all department and city directives, orders, rules and procedures not in specific conflict with this Agreement. If an employee believes a conflict exists he/she must follow the directive and may grieve the situation at a later time. Such directives, orders, rules, policies and procedures not in specific conflict with this Agreement are considered retained management rights and are not subject to the grievance procedure or any other complaint to appeal procedure.

SECTION 8 – ANNUAL MILITARY LEAVE:

During the term of this Agreement, Employees in the bargaining unit shall be covered in accordance with the City's Manual of Personnel Policies regarding Military Leave, as adopted or revised.

SECTION 9 – LEAVES OF ABSENCE WITHOUT PAY:

When a regular full-time Employee has demonstrated a need for time off to the Employer, the Employer may grant a regular Employee leave without pay for a period not to exceed one (1) year.

During such leave, the Employee's position may be filled by another Employee. If the leave is for longer than a three (3) month period, the Employee shall advise the Chief at least thirty (30) days in advance of their desire to return to the Department. At the expiration of a leave without pay, the Employee may be reinstated in the position previously held, if available, or offered another vacant position for which they are fully qualified. The employee may be required to successfully complete a medical/physical examination, side arm qualification, drug screen or any other job related qualification as determined by the Chief of Police.

Approved leave without pay shall not constitute a break in service for purposes of seniority but all time off in excess of thirty (30) days will be discounted from continuous service time. No leave is accrued while an Employee is in leave without pay status and the time spent in such status shall not count toward eligibility for any pay increase, retirement, or for the purpose of meeting the qualification for any position.

Failure of an Employee to comply with the conditions of their leave without pay may be cause for refusal of reinstatement, and the Employee may be terminated from any further employment obligations.

SECTION 10 - DISCRIMINATION AND HARASSMENT POLICY:

During the term of this Agreement, Employees in the bargaining unit shall be covered in accordance with the City's Manual of Personnel Policies regarding Discrimination and Harassment Policy, as adopted or revised.

SECTION 11 – EMPLOYEE SAFETY AND HEALTH:

The safety and health of its Employees are prime considerations in every phase of its activities. The Employer is concerned for the human value of life, health, and physical well being, and it is convinced that good safety and health practices are essential to efficient services to the public.

It is the Employer's intent to provide and maintain safe and healthy working conditions for its Employees. In order to ensure this, the Employer will:

- A. Attempt to instill in its Employees an awareness of the need to promote safety and health working habits and attitudes on a continuous basis.
- B. Provide at Departmental expense City approved safety equipment and procedures, provide protection against health hazards in the work place, and make reasonable efforts to ensure the safety of Employees. If an employee, while carrying out his/her duties, is exposed to a contagious disease, the city agrees to pay the expense for inoculation and immunization for the employee and employees resident immediate family. This is subject to the review and approval of the Chief on the basis of documentation and verification presented by the employee to the Chief through the human resources department.
- C. Comply with applicable laws, regulations, policies and procedures.
- D. Employees are required to use and maintain provided safety equipment and follow established safety procedures.

- E. The police administrators will utilize resources and maintain reasonable standards based upon the circumstances for assignment and dispatch of uniform officers within the patrol function in the interest of officer safety.
- F. The City agrees to defray funeral and burial expenses of any employee killed in the line of duty up to a maximum of five thousand dollars (5000).

SECTION 12 – SAFETY AND HEALTH MEETINGS:

The parties including the Employees (in writing through the chain of command) will bring hazardous/safety conditions that exist in the work place to the attention of the other party. The parties will meet at mutually agreed upon times and places to discuss safety and health issues of mutual concern.

SECTION 13 – CREDIT UNION:

Employees wishing to join a credit union or any other financial institution are subject to membership or enrollment requirements as established by those respective credit unions or institutions. Direct deposits for Bargaining Unit members will be allowed into the financial institution(s), account(s) or fund(s) of the Employee's choice (no more than three total transactions).

SECTION 14 – EXAMINATIONS:

All sworn Employees shall be required to meet all established minimums for certification as prescribed by the New Mexico Law Enforcement Academy Board during their employment with the Department as well as all minimum requirements contained in the employee's job description.. All requirements for fitness testing shall be developed by the Employer and criteria related to and validated for law enforcement personnel. Failure of an employee to maintain the minimum requirements for the job shall be considered "just cause" for termination.

SECTION 15 – COMPENSATION:

- A. No earlier than one hundred and twenty (120) days prior to the first anniversary date of adoption, either party may notify the other in writing of its desire to re-open this Agreement, provided such re-opener shall be limited to Section 15 Pay Increase and one (1) other non-economic section. Upon such notice given, the duly authorized representatives of the parties shall meet for the purpose of negotiating with respect to said matters. All other provisions of this Agreement shall remain in full force and effect during any reopening. Should City gross receipts tax revenue increase by three (3) percent for two consecutive quarters (May 2010 to December 2010) the parties agree to reopen negotiations early on article 15 and one (1) other non-economic item at that time.
- B. Effective on the first full pay period after adoption of this contract by the City council and ratification by Union membership, all eligible bargaining unit employees, in lieu of an increase to base rates in April 2010, shall receive an additional eight (8) hours of personal leave. This additional eight (8) hours will be in effect until April 9, 2011. Leave will be requested and used as per applicable policy.
- C. No earlier than one hundred and twenty (120) days prior to the second anniversary date of adoption, either party may notify the other in writing of its desire to re-open this Agreement, provided such re-opener shall be limited to Section 15 Pay Increase and one (1) other non-economic section. Upon such notice given, the duly authorized representatives of the parties shall meet for the purpose of negotiating with respect to said matters.
- D. Compensation increases shall become effective on the first full pay period after final authorization.
- E. Step increases will continue for the first year of this agreement in accordance with city's rules and regulations.

SECTION 16 – SPECIALTY PAY:

- A. **Bilingual pay**

Sworn officers, codes enforcement officers, animal control officers and transport officers who demonstrate a sufficient level of proficiency in Spanish, as determined by the Human Resources Department, and used to the benefit of the department shall receive twenty (20) dollars per week of bilingual pay.

B. Senior Patrol Pay

Patrol officers with ten (10) or more years of consecutive service within the patrol section

C. Animal Control Certification

Animal Control Officers who achieve NACA III and NACA cruelty III certifications shall receive seventy five (75) dollars of pay per month for these certifications.

D. K- 9 Pay

The handler(s) assigned to the K-9 Unit shall perform the routine care and maintenance of the canine ("K9"). Officers will be allotted ½ hour per duty day to complete this task. Officers will be compensated seven (7) hours of overtime per pay period for off-duty care and maintenance of the police K9.

SECTION 17 – VACATION AND VACATION ACCRUAL:

During the term of this Agreement, Employees in the Bargaining Unit shall continue to accrue annual leave in accordance with the City's Manual of Personnel Policies, as adopted or revised.

SECTION 18 – SENIORITY:

Seniority is defined as "the length of continuous service within the Department as a certified law enforcement sworn officer, or for a non-sworn member as the length of continuous service with the Department.

In addition, seniority as it applies to assignment within the following section, unit or task force, is determined by the length of continuous service within those said assignments.

Assignments:

Criminal Investigations Section
 Traffic Unit
 Metro Narcotics Task Force
 DEA Task Force
 FBI Gang Task Force
 School Resource Officer
 K-9 Unit
 Patrol

When, or if, a member Employee involuntarily leaves CIS, TRAFFIC, METRO, DEA, FBI, SRO, or K-9 sections to return to patrol, that member will go the bottom of the seniority list until the next shift rotation (bid shift) plus one year.

Sworn officers assigned to the patrol section shall bid for shifts and days off according to seniority. The bid shall occur prior the fiscal year. Shift assignments will be for one (1) year. Seniority list shall be maintained by the bargaining unit.

Should members of disbanded specialty sections be returned to patrol due to funding or administrative directives, then those affected members will return with all their due seniority.

When, or if, a member employee leaves the Department (other than approved "leave-of-absence"), and is allowed to return to duty, said member, after being employed in an continuous service for a period to equal twice the time away (minimum one year), will then have their original "date-of-hire" returned and seniority will take place with the next scheduled shift rotation for the purpose of seniority only. Upon such return, said Employee, for pay purposes only, will return to the same base rate of pay that said_employee was at, at the beginning of Employee's absence.

A returning retiree's seniority will be calculated based upon their return hire date and their salary will be recommended to the City Manager by the Chief.

SECTION 19 – HOLIDAYS:

- A. Employees will receive paid holidays at eight (8) hours per day, as adopted by City Council.
- B. Paid holiday leave is recognized as a benefit that the City provides to allow employees to observe national, state and local celebrations. Therefore, only essential employees will work holidays. The Chief will determine who is an essential employee.
- C. Employees working on a Holiday will receive holiday pay, as indicated in A, plus time and one half (1½) for all hours actually worked on the Holiday. Holiday hours will be considered time worked for purposes of determining overtime pay.
- D. Employees shall receive eight (8) hours of personal leave as per the City of Las Cruces Manual of Personnel Policies, as adopted or revised.
- E. Non-essential sworn bargaining unit members normally scheduled to work a holiday will receive their regularly scheduled hours, up to ten (10), as holiday pay for holidays they do not work to ensure a normal workweek.

SECTION 20 – SICK LEAVE:

During the term of this Agreement, Employees in the bargaining unit shall be covered in accordance with the City's Manual of Personnel Policies regarding Sick Leave, as adopted or revised.

SECTION 21 – WORK HOURS, SCHEDULES AND OVERTIME:

- A. The Chief will set all work hours and schedules. A normal forty-hour work week will be either five 8-hour days, or four 10-hour days. These hours will be worked over a seven (7) day work week. Nothing will prevent the Chief from changing work hours and schedules after meeting and consulting with the Association.
 - 1. All Bargaining Unit members shall be paid overtime for all hours actually worked over forty (40) in the designated seven (7) day period.
 - 2. The overtime rate shall be one and one half (1½) times the Employee's regular hourly rate of pay.

3. All non-sworn may be permitted a rest period of fifteen (15) minutes during each one-half shift. Rest periods cannot be accrued or carried over or used at the beginning or end of a shift or to extend a lunch period. Rest periods are subject to scheduling and interruption by management.
- B. When there is a delayed opening of City offices or early closing due to inclement weather conditions, non-sworn, non-essential personnel may be sent home with pay or allowed to stay at home with pay at the discretion of the Chief. Essential sworn personnel will still report for duty as scheduled, and are not eligible for any further or additional compensation for said duty.
- C. During the term of this Agreement, Employees in the bargaining unit shall be covered in accordance with the City's Manual of Personnel Policies regarding Compensatory Time, as adopted or revised. A member may request, in writing to the City Manager, to carry over unused accrued annual leave beyond two hundred and forty (240) hours at the end of the calendar year for extraordinary circumstances.

Each calendar year, a member may "cash in" up to one hundred and fifty (150) hours of accrued compensatory time – payable with and/or as part of the first paycheck in December. This provision shall not be interpreted to prevent the City from cashing out all accrued compensatory time at the end of the fiscal year. A member may request, in writing to the City Manager, to carry over unused accrued compensatory time beyond the end of the fiscal year for extraordinary circumstances.

SECTION 22 – EXTRA DUTY ASSIGNMENTS:

The Employer will post all extra duty assignments and Employees will be allowed to sign up for such assignments. In situations where an insufficient number of Employees sign up for such assignments, the assignments will be made in a reverse seniority order. Reasonable consideration may be given for hours worked and the nature of the assignment.

SECTION 23 – OUTSIDE EMPLOYMENT:

During the term of this Agreement, Employees in the bargaining unit shall be covered in accordance with the City's Manual of Personnel Policies regarding outside employment, as adopted or revised.

SECTION 24 – RETIREMENT:

Retirement benefits provided under the Public Employees Retirement Association (PERA) are not negotiable under the Collective Bargaining Ordinance of the City of Las Cruces. Therefore, following information is provided solely to inform union members about their current retirement benefits.

The Employer has adopted Plan Five (5) of Public Employees Retirement Association program for sworn officers which allows retirement at twenty (20) years at a rate of seventy percent (70 %) and at a maximum rate of eighty (80%) at twenty-two (22) years ten (10) months.

Non-sworn personnel are in plan three (3) which allows retirement after twenty-five (25) years. The Employers contribution to PERA will remain status quo for the term of this Agreement.

The parties to this Agreement encourage Employees to contact PERA directly to obtain detailed information regarding retirement benefits and options.

Upon retirement, an Employee may convert unused sick and vacation leave to cash in accordance with the provisions of the City's Manual of Personnel Policies, as adopted or revised.

SECTION 25 – OFFICERS LIABILITY PROTECTION:

A. Pursuant to 41-4-1 et seq., N.M.S.A. (1978), as amended, the Employer shall provide protection to bargaining unit members from liability arising out of acts committed during the performance of their activities within the scope of their duties as employees of the City of Las Cruces.

- B. Legal counsel will be provided as set forth in Section 41-4-1 et seq., N.M.S.A. (1978), as amended.

SECTION 26 – GROUP INSURANCE:

The Employer has Group Insurance plans that are offered to its Employees. The Employee will be advised of the plans at the Employee orientation. The Employer will pay sixty (60) percent of the premium cost of any of the group medical insurance plans (50% for basic life insurance) and long term disability currently offered by the Employer for all bargaining unit Employees. If the City's contribution changes for non-union employees, this Agreement is amended to reflect said changes. The parties agree to discuss group insurance concerns in meetings of the Employee Insurance Committee.

Specified details of the plans and costs to an Employee are available through the Human Resources Department.

SECTION 27 – WORKERS COMPENSATION:

The following information regarding Workers compensation coverage is provided for information purposed only and represents the parties understanding of existing benefits not an Agreement of any level of benefits as a result of collective bargaining negotiations.

- A. All Employees are covered under the provisions of the New Mexico Workers Compensation Act (the "Act") as required by the Act. The Act offers certain benefits (subject to conditions and maximums established by the Act) to Employees who have on-the-job injuries and may include such items as:
1. Medical care coverage for job related accidents
 2. Pay beginning seven (7) days after a covered injury
 3. Funeral benefits for Employees
 4. Death benefits to dependants

B. For the seven (7) day period of injury not covered by the Act, an Employee must use available accrued annual and sick leave.

C. All accidents, even though they may seem minor at the time, must be reported immediately to the supervisor on duty in accordance with established City policy. Delay in reporting an accident could result in a loss of benefit.

Any change in benefits based on modifications to this Section or to State Law will be applicable to this contract.

SECTION 28 – JURY DUTY AND WITNESS PAY:

On days he/she would otherwise have worked, an Employee shall be given time off without loss of pay for jury duty. Fees received for jury duty (other than meal or travel allowances) shall be returned to the Employer. Time off with pay will be granted to any Employee who appears before a court, public body or commission as a witness on behalf of the Employer.

SECTION 29 – STAND BY/ON-CALL PAY:

Standby pay will be used to compensate members required to make their time available to the City government after regular scheduled working hours.

A. Definitions:

1. Standby: An individual required to be available to respond to emergencies. One that is held in reserve, ready to act reliably when needed after regular work hours.
2. Standby Pay/On-Call Pay: Compensation paid in addition to the hourly base rate to individuals required to standby. Extra compensation is paid to the standby for making his/her time available to the Employer after regular working hours, with this compensation being eighty five (85) dollars weekly.
3. Show Up Pay: Sometimes referred to as call back pay. This payment is awarded to certain Employees who report for duty when recalled from off duty status and who are responding for less than two hours of duty is paid for the two (2) hours in accordance with paragraph 5 below.
4. If the employee remains at work following the expiration of the two (2) hours period or is called back before its expiration, they will compensated for additional time worked beyond the two (2) hours.

5. If an employee is released from work after the expiration of that two (2) hour period and recalled to work, the employee shall be compensated for two (2) hours and any additional time worked. Should the call out result in an unreasonable loss of rest (less than four (4) hours) the employee may call their direct supervisor and request flex time. Flex time shall be based on actual time worked and is contingent upon supervisor approval. A supervisor may direct the use of flex time.

B. Policy:

1. Standby pay/On-Call Pay is determined by this Agreement. The standby pay/On-Call Pay for all members, will remain the same as City Policy. In the event City Policy changes (increases), said increases will apply to all members of Collective Bargaining Unit.

SECTION 30 – CHECK OFF AUTHORIZATION:

- A. The City of Las Cruces extends to the Las Cruces Police Officers Association representing such unit of Employee the following rights:
 1. To represent the Employee in negotiations and in the settlement of grievances.
 2. To Association members dues deductions, upon presentation of dues deduction authorizations cards signed by individual Employees and it is further agreed that the City of Las Cruces shall deduct from the pay of any Employees covered under this Agreement, who authorizes such deductions, and shall remit such deductions to the Treasurer of the Association within ten (10) days, after such deductions are made; and
 3. To exclusive representation status during the term of the Agreement as provided in the Labor Management Relations Ordinance.
- B. Employer shall, for the duration of this Agreement and for any Employee, who submits authorization therefore, deduct from such represented members pay for each pay period of each month Association dues in an amount specified.
- C. The Employer shall pay the amount withheld to the Association.
- D. Any non-probationary Employee who is eligible to be a member of the bargaining unit and has not joined the Association within thirty (30) days of becoming a member of the bargaining unit or after ending probationary status shall have deducted from his/her pay by the Employer as a condition of employment a

monthly service fee in the amount of ninety-two (92) percent of the monthly dues being paid by Association members.

This service fee shall be segregated by the Association and used on a pro rate basis solely to defray the cost for its services in negotiating and administering this Agreement. A service fee deduction for an Employee may be made only if the accrued earnings of the Employee are sufficient to cover the service fee after all other authorized payroll deductions for the Employee have been made. The Association shall assume the liability for all check off matters beyond the Employer's responsibility to make deductions in accordance with this section. Fairshare funds are subject to auditing by the City's external auditor at the discretion of the City.

SECTION 31 – LAY OFF AND RECALL:

- A. In the event that lay off is necessary, the Employer shall provide the Association an opportunity to provide alternatives.
- B. When the City determines it is necessary to have a reduction in force, certified law enforcement officers will be laid off in reverse order of seniority. Non-certified law enforcement personnel will be laid off in reverse order of seniority within their present classification. The term "seniority" for the purposes of this section is set forth in Section 17 entitled "Seniority" of this Agreement.
- C. Employees recalled to work will be recalled in reverse order of layoff.
- C. The Employee that is laid off may remain on lay off status for a period of twelve (12) months. Employees on layoff status must provide the City with a correct address to which a recall notice may be mailed. Failure to provide and maintain a correct address to which a recall notice may be mailed, with result in a forfeiture of recall rights. Failure to report to work within five (5) days of receipt of recall or refusal of any position offered to the Employee will also result in a forfeiture of any recall rights. Recall notices will be sent by certified return receipt requested mail. If the Employee has not been recalled within twelve (12) months of the lay off, the City will have no further employment obligations to the Employee.

SECTION 32 – PROFESSIONAL STANDARDS SECTION:

Whenever any peace officer is under investigation by the Department for alleged actions that could result in administrative sanctions being levied against the officer, the following shall be adhered to: Lack of compliance with the investigative sections of the Police Officer's Bill of Rights shall preclude the Department from taking disciplinary action.

- A. Any interrogation shall be conducted when the officer is on duty or during his normal waking hours, unless the urgency of the investigation requires otherwise, but in the case of a shooting incident there shall be no interview/interrogation within forty eight (48) hours, and if in a health facility only after the attending physician's approval.
- B. Any interrogation shall take place at a location designated by the investigating officer, usually a police department facility, unless the urgency of the investigation requires otherwise;
- C. Prior to commencement of any interrogation session:
 1. An officer shall be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation;
 2. An officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the Chief or his Department Designee determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity or security of the investigation; and
 3. A reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation.
- D. During an interrogation session, the following requirements shall be adhered to:
 1. Each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;
 2. There shall not be more than two interrogation sessions within a twenty-four hours period, unless the parties mutually consent to additional sessions, provided that there shall be at least one-hour rest period between sessions;
 3. The combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise;

4. There shall not be more than two interrogators at any given time;
 5. An officer shall be allowed to attend to physical necessities as they occur in the course of the interrogation session;
 6. An officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session.
- E. When any officer is under investigation for an administrative matter, the officer shall be permitted to produce any relevant documents, witnesses or other evidence to support his case.
- F. Any interrogation of an officer shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript; provided that any recesses called during the interrogation shall be noted in the transcript; and
- G. An accurate copy of the transcript or tape shall be provided to the officer, upon his written request, no later than fifteen working days after the investigation has been completed.
- H. An officer, must as a condition of continuing employment, truthfully answer any and all questions relating to the matter under investigation whether the officer is a participant or a witness to the matter. The determination of whether a question is relevant to the matter under investigation shall be made solely by the investigator.
- I. The Department shall afford an opportunity if he/she requests, to consult with a POA representative before being questioned, provided the interrogation is not delayed more than two (2) hours and a POA representative may be present during the interrogation. The POA representative may exercise the following rights:
- a. The right to consult with the employee prior to the interview.
 - b. The right to determine what the allegations are prior to the interview.
 - c. The right to privately consult with the employee during the interview.
 - d. The right to offer investigatory leads at the conclusion of the interview.
 - e. The right to offer mitigating circumstances at the conclusion of the interview.

The investigating officer may remove any party interfering with the interrogation.

- J. In the event a PSU investigator has evidence of an intentional false police report, these observations and opinions may be included as part of the investigative report. In these cases, the City may take whatever action it deems appropriate and the officer may at his/her discretion pursue whatever legal remedies are available.
- K. The Chief may order a polygraph examination, and only after the following has been done:
1. All reasonable investigative means have been exhausted.
 2. The officer has been advised of the Chief's reasons for ordering the polygraph examination.
- L. At the end of the investigation, the PSU investigator will submit a written summary to the Chief, containing:
1. an outline of the alleged conduct
 2. the finding relative to the alleged actions
 3. specific violations, if any are shown to the evidence
 4. ancillary issues developed during the investigation
 5. conclusion with a recommended finding for each allegation as follows:
 - a. SUSTAINED - conduct alleged apparently occurred and amounts to misconduct
 - b. NOT SUSTAINED - insufficient evidence exists to clearly prove or disprove allegation
 - c. UNFOUNDED - act alleged apparently did not occur
 - d. EXONERATED - personnel's conduct was lawful, justified and proper
 - e. OFFICE INVESTIGATION - complainant failed to cooperate with the investigation and there is not enough evidence available to draw a fair conclusion
 - f. SUSTAINED OTHER – the employee was determined to have committed a violation other than what was originally alleged.
- M. At the time that the written summary is approved by the Chief, a written notice will be provided to the officer, notifying him/her of the completion of the investigation. Upon the Chief's receipt of the written summary, the Chief will render a decision regarding disciplinary action within a reasonable period of time and make notice of his decision to the officer. PSU will submit a monthly report to the Chief, listing all outstanding PSU investigations submitted to the Chief for approval.

- N. A member may sign a privacy waiver allowing a POA representative to view any allowable investigative materials as per the officers' bill of rights, and to inquire about the status of a pending investigation.

SECTION 33 - DISCIPLINE:

A. POLICY

Department, Bureau, Division, and Section commanding officers may exercise Discipline for members' violations of City policy, the Department's General Orders, Special Orders, Administrative Orders, and Rules and Regulations.

B. ELIGIBLE VIOLATIONS

1. Discipline will be applied in a corrective, progressive, and uniform manner unless the facts of the situation warrants a more severe discipline. It shall be the responsibility of the Chief or his Departmental Designee to determine what situations warrant more severe discipline.

Discipline shall take into account the circumstances surrounding the incident, the nature of the violations, the employee's record of discipline, and the employee's record of performance and conduct.
2. Disciplinary action in the form of a suspension may be implemented immediately or postponed pending the outcome of a Grievance or Appeal, dependant on the needs of the Department as determined by the Chief of Police.

C. PENALTIES

Discipline penalties shall be limited to any one of the following:

1. verbal reprimand
2. written reprimand
3. suspension without pay
4. disciplinary transfer
5. terminations

Nothing in this order is meant to prohibit a supervisor or Commanding Officer from, nor relieve same of the responsibility for initiating and/or conducting necessary and appropriate training, as determined by the Department. Verbal

reprimands must be specifically recognized by the employee and the supervisor as such.

D. PROCEDURES

1. Upon discovering a violation, the reporting supervisor shall;
 - a. Submit a written recommendation to the appropriate Deputy Chief for review and final recommendation to the Chief of Police or Departmental Designee.
 - b. Only the Chief of Police or Departmental Designee shall authorize any disciplinary action deemed necessary for the violations cited.
 - c. The employee may accept the imposed discipline. If the employee does not agree with the imposed discipline he/she may direct his/her concerns to the LCPOA President.
 - d. The POA President and Chief of Police or designee by agreement may meet to discuss an informal resolution on discipline matters involving the loss of pay.
 - e. Final imposition of discipline rests solely with the Chief of Police or Departmental Designee. At the discretion of the Chief, employees may be allowed the forfeiture of vacation or comp time in lieu of leave without pay. (Any further remedies can be found in Section 33 of this contract.)

E. LOUDREMILL HEARING

1. In the event an employee is terminated, demoted, or suspended for more than two (2) working days, the City Manual of Personnel Policy regarding "Loudermill Hearings" shall be adhered to. There shall be a meeting with an employee explaining the reasons for an involuntary transfer.
- F. The Peace Officer's Employer/Employee relations Act (Officer's Bill of Rights) shall be applied and adhered to, throughout the procedures in this section and others.

SECTION 34 – GRIEVANCE PROCEDURES:

A. Purpose:

The purpose of this grievance procedure shall be to secure at the lowest possible administrative level equitable resolutions to problems, which may arise and are

subject to review under this procedure. There shall be no other grievance or appeal procedure for Employees in the bargaining unit other than in this article.

B. Definitions:

1. A grievance shall be defined as a dispute pertaining to a claim, which alleges a violation of this Collective Bargaining Agreement or an appeal of a disciplinary action, which results in an Employee being suspended without pay, demoted or terminated. A letter of reprimand may be appealed through the grievance procedure up to the level of the Chief.
2. A grievant shall be any Employee, group of employees, or the Association.
3. Working days are the 40-hour working period of an employee over a seven (7) day period, not including holidays observed by the Employer.

C. Procedures:

1. Grievance proceedings shall be kept informal at all levels of this procedure.
2. The number of days indicated at each level of this procedure shall be considered a maximum, and every effort shall be made to expedite the process.
3. If the Employer or Department fails to comply with the time limit requirements as set forth under any of the procedure levels, the grievance shall be considered automatically appealed.
4. Absent emergency circumstances as determined by the Chief, if the grievant fails to comply with the grievance time limit requirements as set forth under any of the procedure levels, the grievance shall be considered null and void.
5. The time limit set forth herein may be extended provided the extension has mutually been agreed upon by the parties in writing.
6. A grievance shall not be considered unless the grievant initiates the grievance no later than ten (10) days after the grievant knew, or reasonably should have known, of the action, which precipitated the grievance.

D. Steps:

1. The grievant shall first discuss the grievance with the immediate supervisor (sergeant) directly with the objective of solving the grievance. If the grievance is not resolved within ten (10) days, a written grievance may be filed with the sergeant. To be considered, the grievance must be timely, submitted and contain at a minimum what contractual provision(s) of the Collective Bargaining Agreement is alleged to have been violated, and the facts constituting the alleged violation and the relief sought.
2. If after ten (10) days from the date the grievance is filed with the sergeant the grievance is not resolved, a grievance may be filed with the Chief. No later

than ten (10) days following receipt of the written grievance, the Chief or designee shall schedule a meeting in an attempt to resolve the grievance. Each party shall be entitled to bring documents and/or witnesses (at the expense of the party bringing the witness) to the meeting in order to present evidence on his/her behalf. Each party shall have the right to cross-examine witnesses brought by the other party.

3. The Chief or his/her designee will have ten (10) days to render a decision. Note: All grievances that involve an interpretation of existing policy or orders of the Chief or interpretation of the Collective Bargaining Agreement will only be filed at the Chiefs level.
4. If the grievance is not resolved with the Chiefs decision, the grievance may be filed with the City Manager or his/her designee, who may take whatever action he/she chooses to resolve the grievance. The City Manager will have ten (10) days to render a decision.

E. Arbitration: The only issues that can be appealed to arbitration are: allegations of a violation of the specific language of the collective bargaining agreement, disciplinary suspensions without pay, demotions and terminations. All other grievances are resolved with the decision of the City Manager.

If the grievance is not resolved with the decision of the City Manager, either the Union or the Employer may request arbitration. In the event an individual employee requests arbitration, he/she must obtain the written approval of the Union to proceed. If Union does not approve the employee's request, the decision of the City Manager is final and binding on the Union, the employee and the employer. The party who requests arbitration must submit a request to the Federal Mediation and Conciliation Service, with a copy to the City Manager, within ten (10) days of receipt of the City Manager's Step 4 response to the grievance. Failure to request arbitration within the ten (10) day time frame will render the grievance null and void. The request for an arbitrator can not include any special requirements for the arbitrator unless those requirements are mutually agreed upon by the parties.

1. The arbitrator will be selected from a panel of seven (7) arbitrators requested from the Federal Mediation and Conciliation Service. Each party reserves the right to request additional panels. The moving party to the arbitration shall strike the first name from any panel. The parties shall alternatively strike names until there is one name remaining who shall be the arbitrator.
2. The arbitrator shall conduct a hearing as soon as possible

3. The arbitration decision shall be in writing and shall include the suggested relief. The arbitrator shall not have the authority to expand, or add to, the rights of employees or the union under the terms of this Agreement. If this agreement is silent on an issue that is the subject of arbitration the arbitrator shall dismiss the grievance.
4. The arbitrator's decision shall be final and binding on the parties and shall constitute an award within the meaning of the Uniform Arbitration Act.
5. The arbitrator's fees and costs shall be shared equally by the parties. All other expenses shall be assumed by the party incurring the costs, including the cost of witnesses. The parties may mutually agree to share the cost of providing a verbatim record of the proceedings.

F. Miscellaneous:

1. No reprisal or retaliation by any party shall be taken against any person who participates in or who is a witness in the proceeding of a grievance.
2. A grievant and the party charged may be accompanied and represented at any hearing or meeting conducted under this procedure.
3. An Employee acting individually may present a grievance without the intervention of the Association provided the grievance has been processed in accordance with this procedure.
4. If a grievance affects a group of two (2) or more Employees, or involves an action or decision by the Employer or the Department, which has a department-wide impact, the Association may submit the grievance on behalf of the affected Employees.
5. All documents related to a grievance shall be maintained in a separate folder from the Employee's personnel file. This provision shall not apply to documents related to a grievance over a disciplinary action unless such documents are removed from an Employee's personnel file as relief given in the disposition of a grievance.
6. All grievances and grievance responses shall be filed and processed in accordance with this Collective Bargaining Agreement.
7. The grievance and the Association's processing of grievances shall be conducted on non-paid Employee time unless otherwise agreed by the parties.
8. Any and all grievances reduced to writing and settled shall be signed by the Employer and the Union's Committee for the records of each party. In order to eliminate waste of time or delay, it may be agreed by the parties to try to settle one or more grievances at the same time. The Employer or the union shall have the right to bring documents and/or witnesses (at the expense of the party bringing the witness) to the grievance meeting in order to present evidence on their behalf.
9. This procedure is the exclusive remedy for bargaining unit members and the union for appealing or challenging the City involving any matter that is either

wages, hours or other terms and conditions of employment.

SECTION 35 – PROBATION PERIOD:

The probationary period for Employees holding positions which will be represented by this Bargaining Unit shall be twelve months from the Employee's most recent date of hire as a full-time regular Employee. This probationary period may be extended for a period of up to six (6) months (for good and sufficient purpose) as determined by the Chief.

SECTION 36 – FILLING OF VACANCIES:

- A. Vacancies, per the approved budget, are considered those positions without an incumbent, which the Employer determines needs to be filled.
- B. In the event the Employer chooses to fill a vacancy with other than a temporary assignment, such vacancy shall be posted for a period of at least five (5) days. The posting shall contain such information as the minimum skills and qualifications as well as desirable skills and qualifications.
- C. Employees wishing to apply for a posted vacancy shall do so by following the instructions contained on the posting notice or by contacting the Human Resources Department when applicable.
- D. If an employee is on approved leave during the posting period, the employee shall be allowed to apply immediately upon return to duty, or at the posting close date and time, if done forty eight (48) hours prior to the initial testing date. It is the employees' responsibility to indentify any such postings
- E. Vacancy notices shall be placed in areas normally frequented by Employees.
- F. Vacancies will be filled by the applicant who the Chief believes is best qualified and meets the needs of the Department.
- G. Factors such as, but not limited to, work performance, attendance, disciplinary history and qualifications and a scored test shall be given consideration.

- H. Employees selected to fill vacancies shall be subject to an orientation period of six (6) months in the position during which time their performance in the new position shall be evaluated. Employees will be apprised of their capability in the new position or may be returned to their former position at any time, at the discretion of the Chief.
- I. The parties acknowledge that the Chief has the authority to reassign or transfer all Employees when he determines doing so best meets the needs of the Department. Nothing in this Section shall be construed as a limitation on that authority.
- J. Employees will be given reasonable notice of involuntary reassignments or transfers.
- K. Temporary assignments will be filled at the discretion of the Chief or his designee. Normally such assignments shall not be of duration of more than one (1) year.

SECTION 37– STAFFING:

The parties acknowledge that it is an exclusive right and prerogative of management to determine staffing levels. If the Association has concerns over staffing levels, it may provide input to the Chief or his/her designee.

SECTION 38 – LABOR MANAGEMENT COMMITTEE:

If during the term of this Agreement the parties agree there is need for a labor management committee, such a committee shall be formed as follows:

- A. The committee shall meet ~~at least once per quarter~~ at mutually agreed upon times and places.
- B. The Association and the Employer shall each appoint two (2) members unless otherwise agreed upon.
- C. The committee shall be free to address any topic of mutual concerns to the parties.

- D. The outcome of the meetings shall not be considered as constituting a binding agreement of the parties unless specifically so stated in writing.
- E. The committee is not empowered to negotiate or change the Collective Bargaining Agreement.

The Chief or his/her designee and the President of the Association may meet as needed at mutually agreed upon times and places to discuss possible conflicts or problems that may arise and try to resolve them at the lowest possible level. By mutual agreement, items may be referred to the Labor Management Relations Committee should such a committee be formed.

SECTION 39 – CITY OF LAS CRUCES AND POLICE DEPARTMENT RULES AND REGULATIONS AND CITY POLICIES:

- A. The Employer and the Department may amend or expand current policies, rules and regulations which directly affect or may affect Bargaining Unit Employees, provided such amendments or expansions do not violate the provision of this Agreement or any Memorandum of Understanding between the parties. Said policies, rules and regulations are the written expression of retained management rights and therefore are not subject to the grievance procedure unless they violate a specific provision of this Agreement or a Memorandum of Understanding between the parties. The Employer and the Department will make available a copy of amended rules and regulations, or policies and procedures for Employee use. It is the Employees' responsibility to become familiar with such documents. The Association President will be provided a copy of any anticipated amendments and the Association will be provided the opportunity to respond in writing, within fifteen (15) days, to such changes unless the changes are due to an emergency situation.

SECTION 40 – CONTRACT INCLUDES ENTIRE AGREEMENT:

This Agreement is the only existing Agreement between the parties and replaces any and all previous Agreements. The Employer and the Association may, upon mutual Agreement and negotiation, place in effect a Memorandum of Understanding which may change provisions of this Agreement, or address matters which may become issues of mutual concern from time to time. The Employer is responsible for the initial reproduction of fully executed copies. The Association will be provided with such reproductions, and each party is responsible for distribution to its constituents. It is the responsibility of the Employees and supervisor to become familiar with this Agreement.

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining, and that all such subjects have been discussed and negotiated upon and the Agreements contained in this Agreement were arrived at after free exercise of such rights and opportunities; therefore, the Employer and the Association, for the life of this Agreement, each voluntarily and without qualification waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject matter not specifically referred to or covered in this Agreement even though such subject matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

SECTION 41 - SAVINGS CLAUSE SEVERABILITY:

If any provision of this Agreement is determined by final order of an administrative body or court with jurisdiction over the parties to be contrary to law, the affected provision shall be rendered null and void. All other provision not affected by the illegal provision shall remain in full force and effect. The provision determined to be contrary to law may be subject to renegotiations by the parties provided either party submits a request to reopen negotiations no later than thirty (30) days after the parties know or reasonable should have known that the provision was contrary to law.

SECTION 42 - TERM OF AGREEMENT:

THIS AGREEMENT is to be effective on the date of signature, except where a different date is indicated within any specific provision of this Agreement, and will expire on May 3, 2013.

During the term of this agreement, the Employer and the Association may reopen any provision of this Agreement upon mutual agreement.

THIS AGREEMENT shall remain in full force and effect and shall not expire until a successor Agreement is signed.

IN WITNESS whereof, the parties hereto have set their hands and seals this ____ day of _____, 2010.

LAS CRUCES POLICE
OFFICERS' ASSOCIATION

CITY OF LAS CRUCES

PRESIDENT
JR Stewart

Ken Miyagishima, Mayor

SECRETARY

ATTEST:

Esther Martinez, City Clerk

Fraternal Order of Police
Dave Heshley

Terrence Moore, City Manager

FOP Attorney
Fred Mowrer

Peter Bradley, Interim Chief of Police

Pete Connelly, Interim City Attorney