

Tentative Agreement - January 6, 2016

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

CITY OF MANHATTAN BEACH

AND THE

MANHATTAN BEACH FIREFIGHTERS' ASSOCIATION

JANUARY 1, 2016 – DECEMBER 31, 2018



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## **ARTICLE 1 - PREAMBLE**

This Memorandum of Understanding (“MOU”) is entered into between the City of Manhattan Beach (hereinafter the “City”) and the Manhattan Beach Firefighters' Association (hereinafter the “Association”) in accordance with Resolution No. 4506, the Employer-Employee Organization Relations Resolution. Full consideration has been given to salaries, employee benefits, and other terms and conditions of employment. Pursuant to the provisions of Section 3505.1 of the Government Code of the State of California and Section Resolution No. 4506 of said City, said parties make this MOU (also referred to as the “Agreement”) effective January 1, 201~~63~~.

## **ARTICLE 2 - RECOGNITION**

Pursuant to the provisions of the Employer-Employee Organization Relations Resolution of the City of Manhattan Beach and applicable state laws, the Association is acknowledged by the City as the exclusive representative of the employees in the following classifications, hereinafter referred to as “affected employees”:

Firefighter  
Firefighter/Paramedic  
Fire Engineer  
Fire Engineer/Paramedic  
Fire Captain  
Fire Captain/Paramedic

## **ARTICLE 3 - EFFECTIVE AND TERMINATION DATES**

This MOU shall become effective January 1, 201~~63~~ and will continue in effect through December 31, 201~~85~~ with respect to all affected employees. During the period covered by this MOU, any items concerning wages, hours, and terms and conditions of employment provided by this Agreement shall remain in effect unless the parties agree to revise the same by a written modification to this MOU, subject to the limitations expressed in Section 3504 of the California Government Code.

## **ARTICLE 4 – SAVINGS CLAUSE**

If any section, subsection, subdivision, sentence, clause, or phrase of this MOU is for any reason held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portion of this MOU.

## **ARTICLE 5 – IMPLEMENTATION**

This MOU constitutes a mutual recommendation by the parties, to the City Council, that one or more resolutions be adopted accepting this MOU and effecting the changes enumerated herein relative to wages, fringe benefits and other terms and conditions of employment for the employees represented by the Association. It is expressly intended that the duties, responsibilities, and functions of the City in the operation of its Fire Department shall in no manner be impaired, subordinated, or negated by any provisions of this Agreement.

## **ARTICLE 6 – MAINTENANCE OF EXISTING BENEFITS**

All wages, hours and other terms and conditions of employment contained herein will not be modified without mutual agreement in writing.

## **ARTICLE 7 – MANAGEMENT RIGHTS RESERVED**

Section 1. Prior to the time when the Association became the representative of the employees covered by this Agreement, the City had the right to conduct its operations and deal with its employees with complete freedom, except as its rights were bound and limited by law. By this Agreement, the City has agreed to certain express limitations on those rights. However, it is the intention of the parties hereto that the City retain, and the City does retain, each and every right and privilege that it ever had and enjoyed except as expressly limited by this Agreement.

Section 2. Without limiting the generality of the foregoing, the City reserves and retains, solely and exclusively, all rights of management which have not been expressly abridged by a specific provision of this Agreement and all of its Common Law rights to manage the City, as such rights existed prior to the execution of this or any previous Agreement with any Union or Employee Association. The sole and exclusive rights of management which are not abridged by this Agreement shall include, but are not limited to, its rights to determine the existence or non-existence of facts which are the basis of a management decision, to determine the nature, manner, and extent of services to be provided to the public, methods of financing, types of equipment to be used, to establish, continue, discontinue, or modify policies, practices, or procedures; to determine and from time to time re-determine the number, location, relocation and types of its operations, and the methods, processes and materials to be employed, including the right to introduce new or improved methods or facilities; to discontinue processes or operations, or to discontinue their performance by employees of the City, to determine the number of hours per day or per week operations shall be carried on, and the schedules thereof; to select, determine and schedule the number and types of employees required; to assign work to such employees in accordance with requirements determined by management; to establish and change work schedules and assignments; to transfer, reclassify, promote, or demote employees, to lay off, terminate, or otherwise relieve employees from duty for lack of work; to determine the facts of lack of work; to make and enforce safety rules and work rules for the maintenance of discipline; and all other prerogatives and responsibilities normally inherent in management, provided the same are not contrary to this Agreement. All management rights, powers, authority and functions, whether heretofore or hereafter exercised, shall remain vested exclusively in the City.

## **ARTICLE 8 – WAIVER OF BARGAINING**

The Parties acknowledge that, during the negotiation which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining and that the understandings and agreements arrived at by the Parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Parties of this Agreement concur that the other shall not be obligated to bargain collectively with respect to any subject or matter without mutual consent even though such subjects or matters may not have been within the knowledge or contemplation of either or both the Parties at the time that they negotiated or signed this Agreement.

## **ARTICLE 9 - GENDER**

Whenever the masculine or feminine form of any word is used in this MOU, it also includes the other gender unless the context clearly indicates a contrary intent.

**ARTICLE 10 – SALARY**

(a) Employees shall receive the following adjustment to salary during the term of this MOU:

Effective with the pay period beginning on January 23, 2016, employees shall receive a two percent (2%) increase to base salary.

Effective on the first day of the pay period following January 1, 2017, employees shall receive a two percent (2%) increase to base salary.

Effective on the first day of the pay period following January 1, 2018, employees shall receive a two and three-quarters' percent (2.75%) increase to base salary.

- ~~• Effective March 23, 2013, all employees in the bargaining unit shall receive a nine percent (9%) base salary increase~~
- ~~• Effective the pay period including January 1, 2014, all employees in the bargaining unit shall receive a three percent (3.0%) base salary increase.~~
- ~~• Effective the pay period including January 1, 2015, all employees in the bargaining unit shall receive a two and one half percent (2.5%) base salary increase.~~

~~(b) Classification and Compensation Study: At the time the parties entered into this MOU, the City was in the middle of conducting a classification and compensation study. The parties agree that once the study is completed it will be presented to the Association. The parties agree to reopen negotiations regarding the survey. The parties agree that both the City and Association must reach an agreement for any aspect of the survey to be implemented. If no agreement is reached, it cannot be implemented. There shall not be any other surveys conducted during the term of this MOU unless agreed upon by the parties.~~

(be) Firefighters/Paramedics at Step E of the salary range and who are receiving acting Engineer pay who are promoted to Fire Engineer/Paramedic shall be placed at Step B of the Fire Engineer/Paramedic range and must remain at Step B for 2 years before being eligible to move to Step C.

~~(d) Effective March 23, 2013, the salary ranges for employees shall be as follows:~~

	<del>A</del>	<del>B</del>	<del>C</del>	<del>D</del>	<del>E</del>
<del>Firefighter</del>	<del>5990</del>	<del>6290</del>	<del>6605</del>	<del>6935</del>	<del>7282</del>
<del>Firefighter/Paramedic</del>	<del>7076</del>	<del>7430</del>	<del>7801</del>	<del>8191</del>	<del>8601</del>
<del>Fire Engineer</del>	<del>7756</del>	<del>8144</del>	<del>8551</del>		
<del>Fire Engineer/Paramedic</del>	<del>9164</del>	<del>9622</del>	<del>10103</del>		
<del>Fire Captain</del>	<del>9025</del>	<del>9476</del>	<del>9950</del>		
<del>Fire Captain/Paramedic</del>	<del>10667</del>	<del>11200</del>	<del>11760</del>		

~~(e) Effective the pay period including January 1, 2014 the salary ranges for employees shall be increased an additional 3.0%, as set forth below:~~

	<del>A</del>	<del>B</del>	<del>C</del>	<del>D</del>	<del>E</del>
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Firefighter	6170	6479	6803	7143	7500
Firefighter/Paramedic	7288	7652	8035	8437	8859
Fire Engineer	7990	8388	8808		
Fire Engineer/Paramedic	9438	9910	10406		
Fire Captain	9296	9760	10249		
Fire Captain/Paramedic	10987	11536	12113		

(cf) Effective the pay period including January 1, 2015 the salary ranges for employees shall be increased an additional 2.5%, as set forth below:

	A	B	C	D	E
Firefighter	6325	6641	6973	7322	7688
Firefighter/Paramedic	7470	7844	8236	8648	9080
Fire Engineer	8189	8598	9028		
Fire Engineer/Paramedic	9675	10158	10666		
Fire Captain	9528	10005	10505		
Fire Captain/Paramedic	11262	11825	12416		

Effective with the pay period beginning on January 23, 2016, the salary ranges for employees shall be increased an additional 2.0%, as set forth below:

	A	B	C	D	E
Firefighter	6452	6774	7112	7468	7842
Firefighter/Paramedic	7619	8001	8401	8821	9262
Fire Engineer	8353	8770	9209		
Fire Engineer/Paramedic	9869	10361	10879		
Fire Captain	9719	10205	10715		
Fire Captain/Paramedic	11487	12062	12664		

Effective with the first day of the pay period beginning after January 1, 2017, the salary ranges for employees shall be increased an additional 2.0%, as set forth below:

	A	B	C	D	E
Firefighter	6581	6909	7252	7617	7999
Firefighter/Paramedic	7771	8161	8569	8997	9447
Fire Engineer	8520	8945	9393		
Fire Engineer/Paramedic	10066	10568	11097		
Fire Captain	9913	10409	10929		
Fire Captain/Paramedic	11717	12303	12917		

Effective with the first day of the pay period beginning after January 1, 2018, the salary ranges for employees shall be increased an additional 2.75%, as set forth below:

	A	B	C	D	E
Firefighter	6762	7099	7453	7826	8219

Firefighter/Paramedic	7985	8385	8805	9244	9707
Fire Engineer	8754	9191	9651		
Fire Engineer/Paramedic	10343	10859	11402		
Fire Captain	10186	10695	11230		
Fire Captain/Paramedic	12039	12641	13272		

All employees shall remain at each salary step for a period of one year before being eligible for the next salary step.

## **ARTICLE 11 – STEP INCREASES**

All employees shall remain at each salary step for a period of one year before being eligible for the next salary step.

## **ARTICLE 11~~2~~ – PARAMEDIC COMPENSATION**

Members of the Association who are promoted to the positions of Fire Engineer or Fire Captain, or who are assigned as Fire Marshal or Fire Inspector, may retain their Paramedic License and be entitled to compensation for such license.

## **ARTICLE 12~~3~~ – TECHNICAL SPECIALTY PAY**

- (a) Members of the bargaining unit shall be eligible for up to a maximum of two (2) of the following technical specialty pays and will receive seventy three dollars (\$73.00) per month for each pay for which they qualify
- 1) Technical Rescue Certification - For those employees in the unit who receive the certification for Area G equivalency to State Rescue Systems I training or State Rescue Systems I Training. The parties agree that to the extent permitted by law, pay for this certification is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(4) as Hazard Premium.
  - 2) Hazardous Duty – Ocean Rescue Certification: For those employees in the unit who are certified (by the Fire Department Training Officer) rescue swimmers and who receive that certification from the Manhattan Beach Fire Department. The parties agree that to the extent permitted by law, pay for this certification is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(4) as Hazard Premium.
  - 3) Paramedic Trainer – For those employees in the unit who are certified as a Paramedic Preceptor (by the County of Los Angeles) and who have successfully completed the following courses: ACLS (Advanced Cardiac Life Support), PALS (Pediatric Advanced Life Support). The parties agree that to the extent permitted by law, this pay is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(4) as Training Premium.
  - 4) Paramedic Coordinator – For the one employee in the unit who is assigned as the Paramedic Coordinator. The Paramedic Coordinator shall be responsible for the paramedic program. The parties agree that to the extent permitted by law, this pay is

special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(4) as Paramedic Coordinator Premium.

5) Fire Reserve Coordinator – For the one employee in the unit who is assigned as the Fire Reserve Coordinator. The parties agree that to the extent permitted by law, this pay is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(4) as Paramedic Coordinator Premium.

(b) For Technical Specialty Pays 1-3 in paragraph (a) above, eligibility for the pay is based on the each employee’s receipt of the described certification and/or completion of the required courses. For Technical Specialty Pays 4-5 above, eligibility for the pay (which is only available to only one employee (per Coordinator) in the unit at a time) is based on the employee’s assignment as the appropriate Coordinator. If an employee qualifies for more than two of the pays above in paragraph (a), he/she may choose which of the two pays he/she will receive.

(c) The Fire Chief shall have the right to appoint employees in the unit to serve as the Paramedic Coordinator and the Fire Reserve Coordinator. The Fire Chief in compliance with the Firefighters’ Procedural Bill of Rights Act (through the informal process of the parties’ procedure) may remove an employee from either of these Coordinator assignments for performance or disciplinary reasons.

(d) ~~Technical Specialty Pay of \$62 per month will be paid to employees- Unpaid Assignments in the Fire Department: Employees in the unit may be selected by Fire Management certified by the Department as Fire Investigators, Hazardous Materials specialists, the DMV Coordinator, or the Self-Contained Breathing Apparatus Technician. For training related to these assignments, the Department shall pay the tuition or cost of training, any travel or lodging costs per city policy, overtime for members attending training off-duty, and backfill for time the employee attends training during their regular work hours. For these assignments, the Fire Chief has the discretion to remove employees from these assignments without cause, but will be provided with a written notice of the reasons for the removal.~~

~~Paid-Call Firefighter Coordinator and those employees in the unit who receive the Area G equivalency to State Rescue Systems I training and are certified to respond. The Paramedic Coordinator shall be compensated at \$186 per month. There shall be no limit upon the number of employees receiving the Area G equivalency compensation, but the number of employees being compensated for the following specialties shall be limited, as follows:~~

<del>Fire Investigators</del>	<del>6</del>
<del>HazMat Specialists</del>	<del>6</del>
<del>Self-Contained Breathing Apparatus Technician</del>	<del>1</del>
<del>Paid-Call Firefighter Coordinator</del>	<del>1</del>
<del>DMV Coordinator</del>	<del>1</del>
<del>Paramedic Coordinator (\$186/mo)</del>	<del>1</del>

(eb) Employees in the above assignments ~~receiving specialty pays~~ must be certified and maintain (except for ACLS and PALS) such certifications at the required level, including attending required training necessary to that maintenance. ~~Absent any certification training~~

~~requirement, the employee must take one class a year in their area of specialty, on City time and at City expense. This must be at a minimum, a one day class, to the extent such a class is offered more than once in a calendar year. The Fire Chief will recommend and approve training for any certification training and continuing education requirements. The continuing education and certification requirements are attached to this MOU as Attachment B. If an employee takes training to maintain a certification it shall qualify for the training required by this Article. In the event such class is not so offered, the employee, alternatively, may attend the next longest class.~~The training described in this Article is not intended to take the place of the employee option training outlined in Article 223, Training. Those employees receiving specialty pay will provide training and safety information to other department employees and serve as a resource to the department for their area of specialty as specified in Attachment B. ~~The Paramedic Coordinator shall be responsible for all aspects of the paramedic program.~~

~~(e) The Fire Chief has the sole discretion to choose which candidates are selected for specialty assignments. The Fire Chief in compliance with the Firefighters' Procedural Bill of Rights Act (through the informal process of the parties' procedure) may remove a member from a specialty assignment(s) for performance or disciplinary reasons.~~

## **ARTICLE 134 – FIRE MARSHAL AND FIRE INSPECTOR**

The special assignments of Fire Marshal and Fire Inspector will be subject to the following procedures:

In recognition of the specialization of Fire Prevention duties, there will be a 12.5% premium pay ~~added to base salary~~ for the Fire Marshal and Fire Inspector assignments. In addition, both positions will work a weekly 4-10 schedule that will consist of 4 consecutive work days of 10 consecutive work hours, with the schedules being coordinated to allow for appropriate coverage for the Fire Prevention Bureau. However, employees in this Fire Marshal and Fire Inspector assignments shall remain on the 28 day FLSA work period in accordance with Section 7(k) of the Act. The parties agree that extent permitted by law, pay for Fire Marshal and Fire Inspector pay and is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(4) as Fire Inspector and Fire Prevention Assignment Premium.

When the Fire Inspector or Fire Marshal works a suppression shift, he or she will be paid at his or her 56 hour suppression rate inclusive of the 12.5% specialty pay premium, not his or her 40-hour rate. Overtime for such work will be paid at the 56 hour suppression rate inclusive of the 12.5% specialty pay premium. ~~This provision shall be effective as to each position effective July 1, 2013.~~

The assignment of Fire Marshal may be rotated among the Fire Captains and Fire Captain/Paramedics. The Fire Inspector assignment may be rotated among the Firefighters, Firefighter/Paramedics, Engineers and Engineer/Paramedics. The following guidelines will apply:

- (a) Volunteers will be solicited first. If more than one individual volunteers, there will be a selection committee, which will consist of a Battalion Chief, a member of the Fire Association Board and the Human Resources Director. Interviews will be held and the most suitable person for the assignment will be selected.
- (b) If there are no volunteers, the assignment will be given as follows:
  - Fire Marshal – least senior (in class), non-probationary Fire Captain/Paramedic or Fire Captain who has not served in that assignment. If all incumbents in these

classifications have rotated through this assignment, the least senior incumbent will be assigned.

- Fire Inspector – least senior (Full-time MBFD service), non-probationary Firefighter, Firefighter/Paramedic, Fire Engineer or Fire Engineer/Paramedic who has not served in that assignment and has been off probation for at least 1 year. If all incumbents in those classifications have rotated through this assignment, the least senior (Full-time MBFD service) incumbent will be assigned.
- (c) The assignment will be for a minimum of eighteen months or a maximum of two years, unless the Association and the City mutually agree upon a different arrangement.
- (d) Fire Marshal and Fire Inspector may work overtime in operations, according to the overtime policy established within the Fire Department.

#### **ARTICLE 145 – STATE FIRE MARSHAL CERTIFICATION PAY**

- (a) Affected employees shall be eligible for State Fire Marshal Certification pay, according to the following schedule:
- Category I (6% of base pay): Chief Officer, Fire Officer, Fire Marshal, and effective January 1, 2017 Company Officer (or an employee who has taken all required classes for Company Officer certification).
  - ~~Category II (3% of base pay): Fire Instructor, Driver/Operator, Fire Prevention Officer, Public Education Officer, Advanced Life Support\*~~ and effective January 1, 2017, Instructor I, Instructor II, Fire Inspector I, Fire Inspector II, Community Risk Educator and Community Risk Specialist.
- \* The Advanced Life Support certification is not a part of the State Fire Marshal program but is hereby included in the Category II section. Qualification for this certification pay requires successful completion of the following three courses: ACLS (Advanced Cardiac Life Support), PALS (Pediatric Advanced Life Support), PHTLS (Pre-Hospital Trauma Life Support).
- The parties agree that if the State Fire Marshal's Office changes any of the requirements for any of the above certifications, the parties agree that either party may reopen negotiations to discuss the impact of this change.

- (b) The maximum amount of compensation added to base pay pursuant to this section shall be 6%. The maximum compensation may be reached by obtaining any combination of the certifications provided above. ~~one Category I certification or two Category II certifications.~~
- (c) The City and Association agree that the intent of this Article is to recognize and encourage employees who further their job-related knowledge, skills and abilities. It is recommended affected employees discuss their training goals in advance with the Fire Chief or his designee. It is expected that employees who complete these certifications will share their knowledge, skills and abilities with other Fire Department employees. The parties agree that extent permitted by law, pay for State Fire Marshal Certification Pay and is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(2) as Educational Incentive Pay.

## ARTICLE 156 – UNIFORM ALLOWANCE

All employees shall receive a yearly allowance of \$600, paid on a bi-weekly basis, for the maintenance and replacement of uniforms. The parties agree that to the extent permitted by law, the value of the uniforms provided in this article is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(5) Uniform allowance. Notwithstanding the previous sentence, for “new members” as defined by the Public Employees’ Pension Reform Act of 2013, the uniform allowance will not be reported as compensation earnable to CalPERS.

## ARTICLE 167 – ACTING PAY

The Fire Chief shall maintain a certified list of employees qualified to act in a higher position on a temporary basis. All individuals on this list shall receive \$175 per month, regardless of the number of times required to act in a higher position.

Members who are currently on an active promotional list may be considered for an acting assignment subject to the joint approval of management and supervisory personnel. All members currently certified as Actors and receiving the appropriate compensation as of July 1, 1997 shall be exempt from the above requirements. The parties agree that to the extent permitted by law, Acting Pay is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(3) Temporary Upgrade Pay.

## ARTICLE 178 – EDUCATION INCENTIVE PAY

The education incentive program for regular employees will be as follows:

- (a) Employees who are certified as a Firefighter II and have reached at least the E step of the Firefighter salary schedule shall be paid a differential of 5% over their base salary according to the following table:

	Semester Units	Years of Full-time Service as a Sworn Firefighter
	15	8
or	30	6
or	45	4
or	AA degree	4
or	BA/BS	2

- (b) Employees who are certified as a Firefighter II and have reached at least the E step of the Firefighter salary schedule shall be paid a differential of 10% over their base salary according to the following table:

	Semester Units	Years of Full-time Service as a Sworn Firefighter
	30	12

or	45	9
or	AA degree	9
or	BA/BS	7

- (c) Employees who are certified as Firefighter II and have reached at least the E step of the Firefighter salary schedule shall be paid a differential of 15% over their base salary according to the following table:

	Semester Units	Years of full-time Service As sworn firefighter
	30	20
or	AA/45	14
or	BA/BS	12
or	MA	10

- (d) Employees requesting education incentive pay shall be required to provide information concerning each college course and proof of completion of the course.
- (e) Years as a full-time sworn firefighter includes service with another fire agency, however, the employee will be required to provide proof of full time service with that agency.

(f) The education incentive pay shall be included in the bi-weekly paycheck.

(g) The parties agree that extent permitted by law, Education Incentive Pay is special compensation as defined by CalPERS regulations and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(2) as Educational Incentive.

## **ARTICLE 189 – TUITION REIMBURSEMENT PROGRAM**

All members covered under this agreement shall be eligible to participate in the City's tuition reimbursement program as outlined in the applicable Personnel Instruction. The current annual reimbursement amount for tuition and books is \$3,000. The college or university at which courses are taken must be is accredited as defined by the U.S. Department of Education Data of Accredited Postsecondary Institutions and Programs.

~~The City provides a tuition reimbursement program budget of \$2,000 per year for employees covered under this Agreement. An employee participating in the program will be reimbursed 50% of the cost of tuition and books to a maximum of \$1,000 per calendar year for satisfactory completion of approved work related courses. Reimbursement will be reflected as untaxed amount pursuant to all rules and regulations of the federal Internal Revenue Code. If an employee terminates employment within two years of course completion, the employee will reimburse the City the full amount of tuition and expenses paid by the City. The selection process for those employees allowed to participate in the program includes the review and approval of the Fire Chief and the Human Resources Director. The Human Resources Director will establish all program procedures.~~

## **ARTICLE 1920 – HOURS OF WORK**

- (a) All employees covered by this MOU shall work a regular shift of a 48/96 work schedule consisting of two consecutive shifts of 24 consecutive hours, each followed by 96 consecutive hours off. Those employees assigned to the Fire Marshal or Fire Inspector positions will have a schedule as outlined in Article 14. The parties agree that the City has adopted a 28-day work period in accordance with Section 7(k) of the FLSA.
- (b) Due to the nature of the shift schedule called a “48/96” there may be times when one shift is scheduled to work on 12/24 and 12/25 successively. When this occurs the shift assigned to 12/24 will swap that day with the shift assigned to 12/23.

## **ARTICLE 201 - OVERTIME**

It is the City's policy to avoid the necessity for overtime wherever possible. Overtime work may sometimes be necessary to meet emergency situations or to maintain a proper staffing level. Except as otherwise provided by this MOU, overtime will be managed per the current Fire Department Overtime Policy.

- (a) Hold-over overtime shall mean time after an employee has completed a scheduled work shift and is retained at work. Holdover overtime will be paid to the quarter hour, i.e. fifteen-minute increments.
- (b) Call back, which shall be done on a rank for rank basis, shall be defined as a situation where an off-duty employee is called back to work. A minimum of four hours shall be credited notwithstanding actual time worked.
- (c) For purposes of computing overtime, vacation, holiday leave IOD (injured on duty) leave provided the employee actually worked during that particular FLSA period and leave for jury duty shall be considered as hours worked

All other leaves will not be considered hours worked for purposes of calculating overtime.

## **ARTICLE 212 - STANDBY**

The City and Association recognize that there may be times when circumstances will necessitate the placement of individuals within the Fire Department on standby pay. Standby status is when the employee is formally assigned for a specific period of time to be available to be called back into work and must respond to any call back while so assigned. The following outlines the procedures for standby status:

- (a) The employee must be “fit for duty” which means that the consumption of alcoholic beverages during an assigned standby period is prohibited, as is any use of other incapacitating medication that would impair an individual’s ability to perform his/her job.
- (b) The City may provide, at its discretion, ~~provide electronic notification a paging device~~ to an assigned employee, which shall be his/her responsibility during such an assignment.
- (c) The employee must stay within a 150 mile radius of the City so that response time will be optimized. Individual exceptions may be necessary and will be resolved by the Fire Chief and the individual impacted.
- (d) It will be department policy to first elicit volunteers for standby assignment. However if there are not enough volunteers to meet the specific number of staff needed, the “Force Hire” policy of the department will determine who will be involuntarily placed on standby.

- (e) Whenever possible, the Fire Chief and the Association agree to meet and discuss possible standby situations prior to assigning standby status. Once standby has been assigned, the employee will be compensated for that time unless both parties mutually agree that the employee can voluntarily withdraw from standby status. The parties agree that under normal conditions, the maximum number of days one individual can work, whether standby duty or regular duty, while on standby status is five days. The Fire Chief may make exceptions to this guideline for emergency conditions in accordance with the ~~MOU~~emorandum ~~of Understanding.~~
- (f) Violation of the requirements for standby may invalidate the employee's eligibility for standby compensation for that period, in addition to any disciplinary action that maybe warranted.
- (g) Compensation for standby will be equivalent to ½ the employee's straight time pay for each hour on standby status. Standby shall not, however, be considered hours worked pursuant to the Fair Labor Standards Act.

## **ARTICLE 223 - TRAINING**

Each employee shall have the option to select and attend a minimum of one Fire Service-related training class per year at City expense. Additional training courses may be available based on budgetary restrictions.

~~For the period of March 23, 2013 through March 23, 2014, e~~Employees who attend the training class(es) shall be paid their regular compensation (for their 24 hour shift) if any of the training days fall on their regular workdays and the City shall provide coverage for the employee's regular shift. On employees' regular days off, employees shall be paid for their actual time in the training at time and one half. ~~In the month of March 2014, the Fire Chief shall determine whether this compensation method for training is acceptable. If so, it will continue. If not, the practice of time off and compensation shall revert to the past practice described in the Leave/Overtime Policy.~~

The backfill for coverage of the employee's regular duty day during the training period will be filled according to the overtime system and the employee attending the training will not be force hired during the scheduled training except that an employee may be recalled under exigent circumstances as determined by the Fire Chief or his/her designee. Preventing a force hire of another member is not an exigent situation.

By March 1 of each fiscal year, ~~it is intended that~~ employees shall have either taken their training class or reserved a class which must be completed by June 30. Employees who take such classes must submit a daily class schedule (with class hours) to their duty-Battalion Chief on the employee's next work day following the training. Notwithstanding the preceding, employees may be authorized by the Fire Chief or his/her designee to attend additional training after March 1<sup>st</sup>, if there is funding available from the budgeted training and training overtime accounts. Coverage and overtime will be used as described above. Similarly, employees will not be subject to force hire except as described in above.

## **ARTICLE 234 – JURY DUTY**

An employee will be given paid leave for each hour the employee serves on jury duty, plus reasonable travel time (not to exceed one hour per day) up to a cumulative total of 80 hours of paid leave each fiscal year. A minimum of 4 hours will be guaranteed to the person hired to replace the employee on jury duty. Jury duty leave will be counted as hours worked for the purpose of overtime. It is understood that affected employees

who are scheduled to work a shift during their jury service are expected to promptly report to work upon being released by the court.

## **ARTICLE 245 - HOLIDAYS**

Effective the first payroll period each fiscal year, all employees shall receive 96 hours of holiday leave. This holiday leave must be used during the fiscal year in which it is earned. Effective the final payroll period each fiscal year, employees shall be paid for all accrued, unused holiday leave at the employee's then-current base rate of pay. Any pay out of unused holiday leave will be accomplished pro-rated at the appropriate base pay rate for employees assigned to a 4-10 work schedule. New hires will receive a pro-rated amount of holiday time based on their hire date.

For employees assigned to the 4-10 work schedule from a suppression assignment of 24 hours per day, when so assigned, their holiday hours will immediately be divided by 1.4 since their hourly base rate will increase by 1.4. Similarly, when assigned back to suppression, their holiday hours will be multiplied by 1.4.

## **ARTICLE 256 - VACATION**

Paid vacations shall be authorized only for regular employees. During the first 12 months of employment, the employee does not earn any vacation. On the thirteenth month of employment, the employee receives 216 hours of vacation and thereafter earns at the following annual vacation rates:

<u>Years of Service</u>	<u>Schedule</u>	<u>Number of Hours</u>	<u>Maximum Accrual Hours</u>
Less than 10 years	24-hour shift	18 hours per month	648
	40 hours/week	12.86 hours per month	
10 through 20 years	24-hour shift	24 hours per month	864
	40 hours/week	17.14 hours per month	
Over 20 years	24-hour shift	30 hours per month	1080
	40 hours/week	21.43 hours per month	

If an employee reaches the vacation accrual maximum, that employee will not accumulate further vacation until such time that the employee's accrual rate returns to below the maximum amount. Under special circumstances and with City Manager approval an employee may be allowed to accrue over the maximum on a temporary basis.

As with holiday hours, employees assigned to a 4-10 work schedule from a suppression assignment of 24 hours a day, will have their vacation hours divided by 1.4 upon entrance into that assignment. Upon assignment back to a suppression assignment, the employee's vacation hours will be multiplied by 1.4.

## **ARTICLE 267 – SICK LEAVE**

Sick leave shall be accumulated as follows:

- (a) 12 hours per month earned sick leave. Per Labor Code section 233, employees may use one half of one's year's annual accrued sick leave (72 hours) to care for a 1) child (biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in

loco parentis), 2) a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee, 3) the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child, 4) a grandparent, 5) a grandchild, or 6) a sibling.

~~(a)(b)~~ Employees working a 40-hour week shall earn sick leave at a rate of 8.58 hours per month.

~~(b)(c)~~ When an employee uses sick leave for a purpose which qualifies for leave per the Federal Family and Medical Care Leave Act (FMLA) and/or the State California Family Rights Act (CFRA) or is disabled by pregnancy, the City may run the employee's FMLA/CFRA leave and/or Pregnancy Disability Leave (PDL) concurrently with the sick (or other accrued leave or unpaid leave) leave. In addition, if an employee uses FMLA/CFRA or PDL for a purpose which these laws would entitle the City to require the use of sick leave, the City may do so.

(d) Per the existing City Rules and Regulations: A department head may require an employee to furnish a doctor's certificate at any time for proof of illness.

## **ARTICLE 28 – FAMILY ILLNESS**

~~Sick leave may be used for family illness as provided for in the existing City Rules and Regulations (72 hours leave allowed per year) and in the City's Family Care and Medical Leave Policy.~~

## **ARTICLE 29 – DOCTOR'S NOTE**

~~Per the existing City Rules and Regulations:~~

~~A department head may require an employee to furnish a doctor's certificate at any time for proof of illness.~~

## **ARTICLE 2730 – JOB ABANDONMENT**

Employees absent from work without authorization or notification for two consecutive shifts shall be construed to have abandoned their employment with the City and be subject to termination.

## **ARTICLE 2831 – INSURANCE**

(a) Medical Insurance

The City contracts with the Public Employees' Retirement System (CalPERS) for medical insurance. The City will contribute the minimum employer contribution as provided under Government Code section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA). The City's contribution to medical insurance as described below is inclusive of (not in addition to) the CalPERS statutory minimum.

~~1. The City shall contribute the following for medical insurance for calendar year 2013:~~

~~▪ Employee only \$648.38 per month, less minimum employer contribution.~~

~~▪ Employee Plus one dependent \$1,205.30 per month, less minimum employer contribution~~

~~▪ Employee Plus two or more dependents \$1,564.12 per month, less minimum employer contribution.~~

- ~~12. Effective January 1, 2014, and for each calendar year thereafter, the City will contribute an amount for each bargaining unit member for health insurance. The amount~~ ¶The City will contribute for each employee ~~will be~~ ninety-five percent (95%) of the premium for the CalPERS PORAC plan, depending on whether the employee is enrolled as single, employee with one dependent or employee with two or more dependents. If the plan chosen is less costly than 95% of the rates of the PORAC plan, the City will pay 95% of the premium for the plan chosen with the employee paying (with a deduction from their pay) for the remainder of the plan chosen. If an employee chooses a plan which is more costly than 95% of the PORAC premium rate, the employee will pay the difference through pre-tax payroll deduction between 95% of the PORAC premium rate and the more expensive plan.

The City shall pay any surcharge assessed by PERS on the medical insurance premiums up to 3.3%. Any future surcharges above 3.3% shall be paid by the employee.

There shall be no cash back to employees from health care allowances provided by the City, however, employees who opt out of health insurance completely will receive 95% of the employee-only PORAC premium rate which will be paid to the employee in their normal paycheck subject to applicable taxes to the extent the City would have contributed to the City's Section 125 Healthcare or Childcare flexible benefit plan (if qualified to participate) up to the maximum allowed by law. If taken as pay, this amount will not be compensation earnable (i.e., PERSable) as it is not part of the employee's compensation and is not considered "special compensation" under the CalPERS regulations which define "special compensation". Employees may choose to allocate the amount to the City's Section 125 Healthcare or Childcare Flexible Benefits Plan up to the maximum allowed by law. Employees completely opting out of health insurance must show proof of coverage under another acceptable group health plan. and are eligible to allocate any portion to their City's Section 125 Healthcare or Childcare Flexible Benefits Plan, up the maximum allowed by law. Any health care allowances which exceed the maximums permitted to be allocated to the City's Section 125 Healthcare or Childcare Flexible Benefits Plan will not be provided to employees.

The parties agree to a reopener at any time during the term of the MOU to address issues related to the Affordable Care Act.

- (b) Vision Insurance:

The City will provide all represented employees and dependents with the vision care plan.

- (c) Dental Insurance

~~Effective January 1, 2014,~~ ¶The City shall pay the employees' and dependents premiums for the Delta Dental Plan.

- (d) Life Insurance:

The City shall provide to all employees covered by this MOU ~~the same a~~ basic life insurance ~~as that currently received by management and confidential employees. The policy in an amount is based on equal to~~ the employee's annual salary, rounded to the next higher thousand, not to exceed a maximum basic life benefit of \$100,000.

## ARTICLE ~~2932~~ – MEDICARE/SOCIAL SECURITY

If Federal Medicare/Social Security is mandated by Congress, the contribution designated by law to be the responsibility of the employee shall be paid in full by the employee and the City shall not be obligated to pay or "pick up" any portion thereof.

## ARTICLE ~~303~~ – RETIREMENT

### 1. For all members, except those defined as "New Members" within the meaning of the California Public Employees' Pension Reform Act of 2013:

- (a) Retirement Formula: Per California Government Code 21363.1, also known as the 3% @ 55 plan through the Public Employees' Retirement System (PERS).
- (b) One-Year Final Compensation option "single highest year" (Government Code section 20042)
- (c) ~~EPMC: Between January 1, 2013 and March 22, 2013, the City shall pay the employees' 9% contribution to CalPERS, and report same pursuant to Government Code Section 20636(e)(4). Effective March 23, 2013, Retirement Contribution:~~ employees shall pay their ~~own~~ nine percent (9%) member contribution. ~~Effective the pay period including January 1, 2014, e~~Employees shall also pay an additional three percent (3%) retirement contribution as cost sharing pursuant to Government Code Section 20516(f), for a total employee contribution towards retirement of 12%. Following the approval of the 2016-2018 MOU, the City shall amend its contract with CalPERS to provide that cost sharing is in accordance with Government Code section 20516(a). The City will shall act as soon as administratively possible to follow the steps which are necessary to amend its CalPERS contract. In accordance with IRS Code section 414(h)(2), the cost sharing will then be treated as a pre-tax deduction.

### 2. For "New Members" within the meaning of the California Public Employees' Pension Reform Act of 2013:

- ~~(a) The parties agree that the provisions of AB 340 (The California Public Employees' Pension Reform Act of 2013) will go into effect on the first day of the term this MOU. In addition, if there is any other clean up or other retirement legislation which goes into effect during this MOU and if there are provisions of that legislation which, by law, automatically goes into effect, either party may request to negotiate over the legislation, including over the impact.~~
- ~~(b)~~(a) Retirement Formula: Per Government Code Section 7522.25(d), also known as 2.7% @ 57 retirement formula.

~~(e)(b)~~ Final compensation will be based on the highest annual average pensionable compensation~~compensation—earnable~~ during the 36 consecutive months immediately preceding the effective date of his or her retirement, or some other 36 consecutive month period designated by the member per Government Code section 7522.32(a).

(d) ~~Effective January 1, 2013, employees shall pay the higher of nine percent (9%) or one half of the normal cost rate, as established by CalPERS. — Effective the pay period including January 1, 2014, s~~Such employees' contribution to CalPERS shall pay the higher of twelve percent (12%) or one half the normal cost rate as established by CalPERS on the annual employee contribution rate determination. Any amount of such employee's retirement contribution which is above the total normal cost rate (i.e., if the half the normal cost rate goes below 12%) shall be paid in accordance with Government Code Section 20516(f). Following the approval of the 2016-2018 MOU, the City shall amend its contract with CalPERS to provide that cost sharing is in accordance with Government Code section 20516(a). The City will shall act as soon as administratively possible to follow the steps which are necessary to amend its CalPERS contract. In accordance with IRS Code section 414(h)(2), the cost sharing will then be treated as a pre-tax deduction.

3. The City will continue to provide the 1959 PERS Survivor Benefit Level 4, for the families of all active employees covered by this MOU. The City will continue to provide the Post Retirement Survivor Allowance 50% and Post Retirement Survivor Allowance Continues benefits.

~~(d)~~

#### **ARTICLE 314 – SICK LEAVE BUY-BACK RETIREMENT CREDIT**

~~Upon service retirement only, an employee shall have the option of selecting one of the following:~~

~~(a) — City will buy back unused sick leave at a rate of one half its value. If subsequent to a service retirement an employee receives a disability retirement, that employee is obligated to repay the City for any sick leave buy back already received. The retiring employee shall sign an agreement acknowledging this potential obligation. (Attachment A)~~

~~\_\_\_\_\_ or~~

~~(b) — For retirement calculation purposes, seventy five percent (75%) of an employee's accrued sick leave shall be converted to service credit, for service retirements only. Upon retirement, an employee with any disability rating which does not *per se* preclude a service retirement will be eligible for this sick leave conversion. If the retirement is later changed to a disability retirement, the employee's service credit shall be recalculated, and the employee shall reimburse the City for any funds received as a result of receiving a pension using the additional service credit. The retiring employee shall sign an agreement acknowledging this potential obligation. (Attachment A)~~

(a) An employee who retires on a service retirement may cash out up to one-half of his/her unused and accrued sick leave. Any additional unused and accrued sick leave (i.e., the employee's remaining sick leave after cash-out) may be converted to service credit pursuant to the City's CalPERS contract amendment (per Government Code section 20965) to allow for the reporting of unused sick leave. If subsequent to a service retirement an employee receives a disability retirement, that employee is obligated to repay the City for any sick leave buy-back already

received. The retiring employee shall sign an agreement acknowledging this potential obligation. (Attachment A).

(b) An employee who retires on a disability retirement does not have the option to cash out sick leave, but, like those who retire on a service retirement, may convert any amount of his/her accrued and unused sick leave to service credit pursuant to the City's CalPERS contract amendment (per Government Code section 20965) to allow for the reporting of unused sick leave.

## **ARTICLE 325 – SICK LEAVE CONVERSION**

Employees shall be permitted to convert sick leave to vacation leave on an annual basis as follows:

- (a) If an employee has ninety-one (91) to one hundred forty-four (144) unused hours of sick leave earned in the fiscal year, the employee receives one-half of the unused sick leave credited to vacation and the remainder carried over as sick leave.
- (b) If an employee has sixty (60) to ninety (90) unused hours of sick leave earned in the fiscal year, the employee receives one-quarter of the unused sick leave credited to vacation and the remainder is carried over as sick leave.
- (c) If an employee has fifty-nine (59) hours or less of unused sick leave earned in the fiscal year, the employee receives no conversion to vacation and the entire unused sick leave is carried over as sick leave.

## **ARTICLE 336 – RETIREMENT HEALTH INSURANCE**

(a) The City shall pay the minimum employer contribution as provided under Government Code Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA) for retirees electing to participate in the PERS medical insurance program. The City shall pay any mandated surcharge increases required by PERS. Because the City contracts with CalPERS for the provision of medical insurance it complies with the requirements of Public Employees' Medical and Hospital Care Act (PEMHCA). Therefore, the City shall pay the CalPERS statutory minimum amount on behalf of all employees who retire from the City in accordance with the requirements of PEMHCA.

(a)(b) In addition to the provision of the CalPERS statutory minimum contribution as provided by subdivision (a) of this Article, any employee who takes a service retirement, and who has a minimum of twenty (20) years of service with the City, shall receive \$400 per month. Said payment will be used toward the premiums of a health insurance plan, with proof of medical insurance coverage being provided when an employee qualifies, until one or both of the following occur:

1. The retiree reaches 65 years of age; ~~or~~
2. The retiree becomes eligible for Medicare; or
3. The retiree dies.

If any of the preceding conditions occur, the employee shall no longer be eligible to receive the additional \$400.00 retiree medical contribution.

- (c) The City and the Association recognize that this payment is subject to all I.R.S. rules and regulations of the federal Internal Revenue Code and state tax codes.

### **~~ARTICLE 37 – PERS SURVIVOR BENEFITS~~**

~~The City will continue to provide the 1959 PERS Survivor Benefit Level 4, for the families of all active employees covered by this MOU. The City will continue to provide the Post Retirement Survivor Allowance 50% and Post Retirement Survivor Allowance Continues benefits.~~

### **ARTICLE 348 – GRIEVANCE PROCEDURE**

- (a) The purpose of Grievance Procedures is:
  - 1. To promote Employee-Employer relations by establishing procedures on grievance matters.
  - 2. To provide that grievances shall be settled as near as possible to the point of origin.
  - 3. To provide that the grievance procedures shall be as informal as possible.
- (b) A "grievance" shall be defined as a dispute between an employee, group of employees, the Association on behalf of an individual employee or group of employees, and the City, including supervisory personnel, regarding the application or interpretation of specific provisions of this MOU or City Personnel Rules or Regulations.
- (c) Grievances must be submitted ~~on the approved Fire Association Grievance Form or~~ in a letter with a description of the nature of the grievance, a description of the specific policy(ies) or rule(s) that have alleged to have been violated and the requested remedy, within the proper time frames in order to be considered. Time limits for filing formal grievances may be extended by mutual agreement of the parties.
- (d) There shall be an earnest effort on the part of both parties to settle grievances promptly through the steps listed below:

Step 1: If the grievance is not resolved through an informal process, i.e., verbal discussion with his immediate supervisor, the grievance may be submitted for formal review by stating the specific City Personnel rule or regulation and/or provision(s) of the applicable MOU that was improperly applied and stating the specific resolution desired. This request should be submitted to the Fire Chief or his designee for review within 40 calendar days of any informal discussion. The Chief or designee will give a written reply by the end of the tenth (10<sup>th</sup>) calendar day following the date the grievance was submitted.

Step 2: If the grievance is not resolved in Step 1 of the formal process, the employee must, within ten (10) calendar days, present the grievance to the Human Resources Director for processing. The failure of the grievant to take this action shall constitute a waiver of the grievance, unless time limits are extended through mutual agreement.

Step 3: Within twenty (20) calendar days of receipt of the grievance, the Human Resources Director will set up a meeting between the grievant(with a representative if desired) and the City Manager or his designee to review the grievance. A written decision will then be rendered within thirty (30) calendar days of the meeting. The decision of the City Manager will be final, except for purposes of judicial review.

It is not intended that the grievance procedure be used to effect changes in the established salary and fringe benefits.

Either the City or the Association may call any employee as a witness to any of the above steps, and the City agrees to release said witness from work if he is on duty. If an employee is called by the City and the employee is off duty, the employee will be compensated for his/her time as hours worked. If the employee is on-duty, the employee will receive his/her regular compensation.

## **ARTICLE 359 – DISCIPLINARY APPEAL PROCESS**

**GENERAL POLICY:** The City is committed to following the principles of progressive discipline. Disciplinary actions should be designed to fit the nature of the problem. The particular action imposed shall depend on the severity of them is conduct, the particular factual circumstances involved and take into consideration other incidents with comparable circumstances.

### **PROVISIONS:**

(a) Disciplinary actions defined:

1. Oral/Written Warning

The use of an oral or written warning shall not be considered disciplinary action, and shall be used as a tool by supervisors to address performance problems or minor instances of misconduct and may be initiated at any time. The supervisor or manager will review with the employee both the specific deficiencies in question and the City's standards. The cause(s) of the deficiency will be identified along with specific improvement needed. The employee should be advised of the action that will be taken should he or she fail to achieve the improvement outlined within the time period specified. Any written warnings will be kept in the supervisory file, not the official personnel file, and a copy given to the employee. The supervisory file is intended to be a temporary file to record performance, both positive and negative, throughout the performance year. Once the performance evaluation is completed for the year, all items in the file should be referenced in the performance evaluation if appropriate, and discarded at the end of the performance year.

2. Letter of Reprimand

A Letter of Reprimand generally is appropriate to correct instances of more serious circumstances or employee misconduct which do not warrant suspension or discharge, repeated instances of minor misconduct or identified performance problems. The purpose of a Letter of Reprimand is to put the employee on notice that the City will take other disciplinary action unless immediate, real and consistent improvement in performance is demonstrated. Any decision to issue a Letter of Reprimand should be reviewed by the Human Resources Department. The supervisor or manager issuing the Letter of Reprimand shall meet with the employee to discuss specific improvements required within a defined time period to avoid further disciplinary action. A copy of the Letter of Reprimand will be placed in the employee's official personnel file.

3. Suspension

Suspension is the temporary removal of an employee from his duties without pay for up to

thirty (30) calendar days.

4. Reduction in Pay

A Reduction in Pay is a reduction in hourly salary for a limited and defined period of time, and does not result in any classification change. The employee continues to report to work for the duration of the Reduction in Pay.

5. Demotion

Demotion is the movement of an employee from his current classification to a new classification having a lower salary range.

6. Discharge

An employee may be discharged for cause. Employees who are considered At-Will may be removed at any time.

(b) Pre-Disciplinary Procedure

If an employee is to be suspended, receive a reduction in pay, be demoted or discharged, the employee shall:

1. Receive written notice of the intended action at least 7 days before the date it is intended to become effective, stating the specific grounds and the particular facts upon which the action is based.
2. Receive copies of any known materials, reports or other documents upon which the intended action is based.
3. Be accorded the right to respond in writing within a reasonable period of time to the intended charges.
4. Be accorded the right to meet within a reasonable period of time with the Department Head or designee who has the authority to modify or eliminate the intended disciplinary action.
5. Be given the written decision of the Department Head or designee prior to the effective date of the disciplinary action.

(c) Appeal Process

The following appeals procedures are adopted by the parties pursuant to Government Code § 3254.5 of the Firefighters Procedural Bill of Rights Act.

1. Definitions

- a. The term “firefighter” means an employee who is considered a firefighter under Government Code § 3251(a) as well as any firefighter who is a peace officer pursuant to Penal Code § 830.37. This includes all employees who are in this Unit.

- b. The term “punitive action” means any action defined by Government Code § 3251(c), i.e., “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.”

2. Formal Appeals Procedures – For Punitive Action Causing a Loss of Pay Not Covered by the Informal Hearing Process

A firefighter shall be entitled to an appeal hearing before an Administrative Law Judge assigned from the Office of Administrative Hearings which shall be conducted in accordance with Chapter 5 (commencing with § 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.

- a. Notice of Discipline as Accusation - The final notice of discipline which may be issued at the conclusion of the pre-disciplinary procedures shall serve as the Accusation as described in Government Code §§ 11500, *et seq.*
  - i. Pursuant to Government Code § 3254(f), the discipline shall not be effective sooner than 48 hours of issuance of the final notice of discipline.
  - ii. The notice shall be prepared and served in conformity with the requirements of Government Code §§11500, *et seq.* A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code shall be provided to the firefighter concurrently with the notice of discipline.
- b. Administrative Law Judge - Pursuant to Government Code § 11512, the appeal will be heard by an administrative law judge
- c. Time and Place of Hearing- Pursuant to Government Code § 11508, unless otherwise decided by the administrative law judge, a hearing shall be conducted at City Hall or in another City facility at a time to be determined by administrative law judge with the input of the representatives of both the City and employee.
- d. Notice of the Hearing- A notice of the hearing shall be provided to the parties pursuant to Government Code § 11509.
- e. The burdens of proof and production of evidence shall be borne by the City. The standard of proof shall be by a preponderance of the evidence.
- f. The proposed decision of the administrative law judge shall be in writing. Copies of the proposed decision shall be delivered to the parties by registered mail and accompanied by a proof of service
- g. Following receipt of the proposed decision, the City Council, or any designee (e.g., the City Manager) to the extent authorized by law, may take any of the actions set forth in Government Code § 11517(c)(2) A through E.

3. Appeals Procedures Informal Process

The Informal Hearing Procedure, as opposed to the formal procedures, may be used in the City's sole discretion for disciplinary action imposed on an employee that does not involve termination from employment, demotion, suspension without pay for more than two (2) shifts for employees working a 56-hour suppression schedule or three (3) working days for employees working a 40-hour administrative schedule, or where the practical financial effect of the discipline equates to a two shift suspension or less for employees working a 56-hour suppression schedule or three (3) working days or less for employees working a 40-hour administrative schedule.

a. Appeal to the Fire Chief or His/Her Designee

i. A firefighter who receives notice of a punitive action shall be entitled to appeal the action to the Fire Chief prior to the effective date of the punitive action. The appeal is an opportunity for the firefighter to present written material and arguments why a punitive action should not occur or offer alternatives to the action.

ii. Notice of Appeal: Within seven (7) calendar days of receipt by a firefighter of notification of a punitive action, the firefighter shall notify the Fire Chief in writing that he/she intends 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.

iii. Hearing Officer: The Fire Chief or his/her designee shall act as the hearing officer. If the Fire Chief cannot serve as the hearing officer because of actual bias, prejudice or interest as defined by Government Code §11425.40, then the City Manager or his/her designee shall serve as the hearing officer. The Fire Chief shall have five (5) calendar days from receipt of the request to schedule an appeal hearing. The hearing shall take place within thirty (30) calendar days of the date the firefighter was notified about the punitive action or such other time as may be agreeable by the parties.

b. Burden of Proof: The City shall bear the burden of proof at the hearing.

i. The Department shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge(s) and that punitive action was reasonable under the circumstances.

c. Conduct of Hearing:

- i. 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.
- ii. The parties may present arguments through documents and statements.
- iii. If the punitive action being appealed is a written reprimand, the parties will not be entitled to confront and cross-examine witnesses.
- iv. 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.
- v. Representation: The firefighter may be represented by an association representative or attorney of his or her choice.

d. Decision:

After the hearing, a decision will be submitted in writing within five (5) calendar days. The decision shall be served by first class mail, postage pre-paid, upon the firefighter as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the firefighter that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.5.

e. Decision to impose Discipline:

If, after the hearing, a decision is rendered which imposes discipline, pursuant to Government Code § 3254(f), the discipline shall not be effective sooner than 48 hours of issuance of the final notice of discipline.

(d) Retention of Documents

Any disciplinary action up to the level of a suspension of six hours or less shall be removed from an employee's personnel file no earlier than 18 months after the date of issue if the following conditions are met:

- 1. No discipline has been imposed during the eighteen month period after the discipline was issued;
- 2. The employee requests the removal in writing to the Human Resources Director.

(e) Examples of Misconduct

It is impossible to provide an exhaustive list of the types of impermissible conduct. However, misconduct that may result in disciplinary action, up to and including discharge includes, but

is not limited to, the following examples:

1. Insubordination, including: (a) refusal to follow a work order; (b) insulting or demeaning the authority of a supervisor or manager; or, (c) foul or abusive language directed at a supervisor or manager.
2. Intentional or negligent conduct that damages City property or the property of another employee, a customer, a vendor, or a visitor. Removing from the premises without authorization, the property of the City, a City employee, customer, vendor, or visitor. Property includes, but is not limited to, records, supplies, materials, equipment, land or facilities. Intentional or negligent misuse of City property, or the property of another employee, customer, vendor, or visitor.
3. Fighting or provoking a fight on City time or property; engaging in horseplay or other action that endangers City property or disrupts work; failure to work cooperatively with others.
4. Harassing, threatening, intimidating, or coercing any other employee, customer or visitor, including any violation of the City's Harassment Policies.
5. Bringing or possessing weapons or any other dangerous device onto City property without authorization.
6. Disregarding any safety, fire prevention or security rule or practice, or engaging in activity that creates a safety, fire or security hazard.
7. Failing to report a work-related accident or injury immediately, or as soon as circumstances permit.
8. Soliciting or accepting reimbursement or gratuities for services from customers or any other person during working hours or while on City premises; unauthorized vending, solicitation or sales of goods or services to other employees, customers, or visitors during working hours or while on City premises.
9. Excessive tardiness or unscheduled absenteeism for any reason whether or not reported; abuse of sick leave.
10. Failing to notify one's supervisor of absence and the reason for absence prior to the start of a shift; leaving City premises or one's assigned work area during working hours without permission; failure to abide by lunch or break periods or working unauthorized overtime.
11. Submitting an employment application containing false or misleading information.
12. Unauthorized dissemination of proprietary information or employee records on files; falsifying or destroying any City records, including, but not limited to, any timekeeping records or customer records.
13. Conviction of a felony or conviction of a misdemeanor involving moral turpitude which relates to the employee's ability to perform the duties of his/her position. For purposes of these rules, a plea of "nolo contendere" or "no contest" will constitute conviction.
14. Failing to obtain or maintain any required license, registration, certifications, or permit.
15. Incompetence; failing to meet acceptable performance standards; failure to perform assigned duties.

16. Dishonesty.
17. Performance of non-City work on work time.
18. Any other misconduct which affects the work environment or the quality customer relations or any other violation of established City policy.

#### **ARTICLE 3640 – PROMOTIONAL TESTING & ELIGIBILITY LISTS**

The Association agrees that the eligibility lists for promotional positions covered by this Agreement may be extended up to twenty-four months, in six-month increments.

Promotional exams will be conducted as the needs require, but must occur within a span of four years. In other words, at least one promotional exam for Fire Engineer/Paramedic and Fire Captain/Paramedic shall be scheduled within a four-year timeframe from the date the eligibility list was established for the prior test for each class. The parties have agreed that Human Resources will provide a minimum of four months between posting and administering a promotional exam.

In order to minimize the impact on departments and staff, the goal shall be to maintain a two-year gap between test administrations for each class. However, should the need arise to administer both promotional examinations concurrently the Human Resources staff agrees to wait at least four months before administering the second promotional exam, unless the parties agree to a different schedule.

In the absence of a promotional test, the Fire Department will develop an internal process to verify that eligibles may continue to serve in an acting capacity for Fire Engineer or Fire Captain. The Fire Chief shall have the final decision on verifying eligibles.

#### **ARTICLE 3741 – SENIORITY POINTS**

In all examinations, seniority credit of 0.25 of 1 percent for each full year of current permanent service, up to a maximum of three (3) points, shall be given to fire department employees covered by this MOU. Said credit shall not apply to positions in the management/confidential classifications. Seniority credit will be allowed and computed as follows:

An employee receives 0.25 of 1 percent for each full year of permanent service with the City, up to a maximum of three (3) points. Deductions from such credit shall be made for all absences of three (3) months or more where the employee has not terminated but was not actively working.

The seniority points shall be calculated as of the final day of the filing period for the examination.

#### **ARTICLE 3842 – PROBATION**

All new appointments within the Fire Department shall serve a probationary period of twelve (12) months. Probationary periods may be extended for a period of not to exceed six (6) months as provided for in the City's Rules and Regulations.

#### **ARTICLE 3943 – CONSTANT STAFFING**

The term "constant staffing" refers to procedures established to ensure that fire suppression staffing levels are maintained at a predetermined number of personnel. A predetermined number of personnel is established by the number of currently authorized Fire Department positions and by the organizational assignment of personnel. The Association and the City agree that the current constant staffing program of eight (8) persons per shift shall be maintained excepting that the City, in anticipation of vacancies, may hire three (3) additional

fire employees to fill anticipated vacancies for a period not to exceed four (4) months prior to such vacancy actually occurring unless such time limit is specifically waived by the Association. An employee shall be mandated to work to maintain constant staffing levels; however, ~~Fire Reserves Paid-Call Firefighters~~ shall not be included in the constant staffing calculations.

## **ARTICLE 404 – WORK STOPPAGE PROHIBITION**

### Prohibited Conduct

- (a) The Association, its officers, agents, representatives, and members, agree that, during the term of this ~~MOU Memorandum of Understanding~~ or any agreed upon extensions of the MOU, they will not call or engage in any strike, walkout, work stoppage, sick-out, blue flu, concerted withholding of services by employees represented by the Association, disruption of City services, or honor any job action by any other employee or group of employees of the City or any union or association of employees by withholding or refusing to perform services; provided, however, that by executing this Agreement neither the Association nor any of its members waive their rights (1) under Section 6300 *et seq.* of the California Labor Code to refuse to work under unsafe conditions and (2) under the United States and California Constitutions to exercise their rights of freedom of speech, assembly, and association such as engaging in lawful informational picketing.
- (b) In the event that the Association, its officers, agents, representatives, or members engage in any of the conduct prohibited above, the Association shall immediately instruct, in writing, any persons engaging in such conduct that their actions are in violation of this ~~MOU Memorandum of Understanding~~ and are unlawful, and that they must immediately cease such conduct and return to work.
- (c) In the event the Association carries out in good faith its responsibilities set forth in Paragraph 2 above, it shall not be liable for the actions of any individual who participates in conduct prohibited by Paragraph 1 above. Any employee, who participates in any conduct prohibited above or violates any other City Rule or Regulation, shall be subject to disciplinary action up to and including termination by the City. This shall not abrogate the right of any employee to receive all due process guaranteed to him in procedures relating to disciplinary action.

## **ARTICLE 415 – DUES DEDUCTIONS**

If the Association requests to have the City deduct dues, dues will be deducted at a flat dollar or percentage amount per pay period per employee.

## **ARTICLE 426 – DIRECT DEPOSIT PAYCHECKS**

Employees hired prior to November 23, 1985, may voluntarily participate in the City's direct deposit payroll plan. A \$5 fee per paycheck (including lost checks) will be charged for all employees hired prior to November 23, 1985, who do not participate in the direct deposit program. Employees hired after November 23, 1985 shall receive their biweekly compensation through the City's direct deposit payroll program.

## **ARTICLE 437 – GARNISHMENTS**

Employees receiving more than two garnishments (not including child support) in a ten-year period may be subject to immediate termination subject to Skelly provisions. A \$25 set up fee and \$5 service charge per garnishment per payroll check shall be charged to the employee by the City.

## **ARTICLE 448 – PAID-CALL FIRE RESERVE FIGHTER PROGRAM**

The Association acknowledges that it does not represent the ~~Paid-Call-Fire Reserves~~fighters utilized by the City. The City will, however, meet and confer with the Association with respect to any changes in the ~~Paid Call Fire Reserve~~fighters Program which affect the terms and conditions of employment of the employees represented by the Association, to the extent that such effects are subject to bargaining under the Meyers-Milias Brown Act.

## **ARTICLE 459 – PHYSICAL EXAM PROGRAM**

Purpose: The Physical Exam Program is intended to improve the well-being and quality of health for Manhattan Beach Fire Association employees and is based upon the understanding that early detection of medical problems can save lives.

- The parties agree the goal is to implement the Program within one (1) year of the adoption of this MOU.
- All Association members shall participate in the program.
- The City shall pay for the physical exams. However, if an employee decides to seek a second medical opinion, or if an employee wishes to have a physical exam more frequently than what is provided by the program, the employee shall be responsible for paying for the exam or using his medical insurance coverage.

The parties have discussed and agreed to the following terms of the Program. Once the Program has been finalized within the timeframe above, the Program will be set forth in writing as a side letter to this agreement.

### 1. Timeframes: 3-2-1

A baseline exam will be provided for all members in the first year of the Program. Employees will be examined according to the following schedule after the baseline year:

- Up to age 40 = every 3 years
- Up to age 50 = every 2 years
- Age 50+ = every year

### 2. Exam Components

The basis of the exam components will be NFPA 1582 Sections 7.4.3 – 8.1.2.

### 3. Exam Provider(s)

An Advisory Committee made up of up to two (2) Association members and two (2) City staff members will gather provider names and interview the most qualified providers and observe their facilities. Providers who can conduct the entire exam in one facility are preferred. The Advisory Committee's recommendation will be forwarded to the Human Resources Director for final approval and implementation. In the event the Committee's recommendation is not approved, the matter shall be referred back to the Committee.

4. Medical Records

A copy of the exam results will be provided to the employee. The City will not receive medical records resulting from these physical exams.

**ARTICLE ~~4650~~ – ADDITIONAL DUTIES**

The City agrees that during the term of this MOU, members of the Firefighters' Association shall not be required to perform non-Fire Department related duties; provided, however, that notwithstanding any other provision of this paragraph, members of the Firefighters' Association may also, from time to time, be required to perform other duties related to emergency operations, or other duties specifically provided for in this Agreement. Before the assignment of any duties that are not allowed by this paragraph or this Agreement, the City will meet and confer with the Fire Association.

**ARTICLE ~~4751~~ – POLICY MANUALS**

The following documents will be available on-line on the City's intranet: Administrative and Personnel Instructions Manual, Personnel Rules and Regulations; Current MOU and Addendums.

The Association and the two fire stations will be provided (by the Fire Chief) with up-dated City and Department Policies and Procedures; Standard Operating Guidelines; General Orders; Department Rules and Regulations; Training Manual (will be included in SOGs); and Policy Memos.

This ~~MOU~~Memorandum of Understanding represents the full and complete understanding between the parties related to the subject matter set forth herein and all preliminary negotiations of whatever kind or nature are merged herein. The parties hereto have caused this ~~MOU~~Memorandum of Understanding to be executed this \_\_\_ day of \_\_\_\_\_ 20163.

MANHATTAN BEACH FIREFIGHTERS' ASSOCIATION

CITY OF MANHATTAN BEACH

By \_\_\_\_\_  
Dave Shenbaum, Fire Captain/Paramedic

By \_\_\_\_\_  
~~Mark Danaj~~~~David N. Carmany~~, City Manager

By \_\_\_\_\_  
Tim O'Brien, Fire Captain /Paramedic

By \_\_\_\_\_  
~~Teresia Zadroga-Haase~~ ~~Cathy Hanson~~, Human Resources Director

By \_\_\_\_\_  
John Dulmage, Fire Engineer/Paramedic

By \_\_\_\_\_  
Bruce Moe, Finance Director

By \_\_\_\_\_  
~~Robert M. Wexler~~~~James Falls, Firefighter/Paramedic~~  
~~Silver, Hadden, Silver, Wexler & Levine~~

By \_\_\_\_\_  
Robert Espinosa, Fire Chief

By \_\_\_\_\_  
Peter J. Brown  
Liebert Cassidy Whitmore

**ATTACHMENT A**

**Waiver for Sick Leave Buy Out – Article 314**

I have requested payment for accrued sick leave (payable at the rate of one half its value) as is customarily paid to retiring employees taking service retirements. However, I acknowledge by my signature below that I have applied for an industrial disability retirement and that I understand that if I receive such a retirement I will not be eligible to receive pay for accrued sick leave and must refund the full amount of such pay to the City.

I hereby agree to make such a repayment in full of all accrued sick leave within thirty (30) business days of receiving notice that my application for industrial disability retirement has been granted. I acknowledge that failure to do so may result in the City taking legal action against me to collect the amount I have received for accrued sick leave and that I may be subject to paying interest at the then prevailing legal rate on the amount owed, court costs and attorney fees.

Employee Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT B

### Certifications, Continuing Education, and Training Requirements for Technical Specialty Assignments Paid or Unpaid

#### Fire Investigations

Requirements to be assigned:

- PC 832
- SFT Fire Investigator 1A
- SFT Fire Investigator 1B

After Assigned\*:

- SFT Fire Investigator 2A
- SFT Fire Investigator 2B

Continuing Education:

Must complete 8 hours of approved training related to fire investigations (may include attendance at the South Bay Fire Investigators Task Force meetings).

Department Training:

Must provide and document 2 hours of fire investigations training annually.

#### Hazardous Materials Liaison

Requirements to be assigned\*:

- Hazardous Materials 1A: Basic Chemistry of Hazardous Materials.
- Hazardous Materials 1B: Applied Chemistry - Field Identification of Chemicals.
- Hazardous Materials 1C: Incident Considerations.
- Hazardous Materials 1D: Tactical Field Operations.

After Assigned\*:

- Hazardous Materials First Responder Awareness Level
- Hazardous Materials First Responder Operational Level
- Hazardous Materials First Responder Operational, Decontamination

Continuing Education:

Must complete 8 hours of approved training related to hazardous material response (may include attendance at the South Bay Fire Hazardous Materials working group meetings).

Department Training:

Must provide and document 2 hours of hazardous materials response training annually.

#### SCBA Technician

Requirements to be assigned\*:

Attend vendor Specialist Level training.

Continuing Education\*:

- Attend training required to maintain certifications.
- Complete 4 hours vendor ride-along maintenance training annually.

Department Training:

Must provide and document 6 hours (2 hours per shift) of SCBA training annually.

Paramedic Coordinator

Requirements to be assigned:

At the Department's expense complete Los Angeles County Emergency Medical Services Authority's Paramedic Coordinator Orientation.

After Assignment:

Review, recommend changes, and approve Department's EMS policies and documents annually.

Continuing Education:

Must attend 8 hours of EMS related training/meetings annually (not regular EMS CE).

Department Training:

Must provide and document 6 hours program briefing (2 hours per shift) annually.

~~Paid-Call Fire Reservefighter~~ Coordinator

Requirement to be assigned:

California State Fire Marshal's Company Officers certification

After Assignment:

At the Department's expense complete SFT Fire Instructor 2A, 2B, and 2C

Continuing Education:

Review, recommend changes, and approve Department's ~~Paid-Call Fire~~ Reservefighters training curriculum annually.

Department Training:

Must submit ~~Paid-Call Fire~~ Reservefighter annual competency evaluations to the Program Coordinator.

Department of Motor Vehicle Licensing Coordinator

Requirement to be assigned:

None

Continuing Education:

Must be familiar with current state legislation, licensing, and training requirements.

Department Training:

- Manage and schedule emergency vehicle operations training.
- Provide written or verbal briefings/updates to the entire department concerning new or change in legislation or requirements.

Rescue Systems I

Requirement to be assigned:

SFT Rescue Systems I or completion of Area G Rescue Systems Training.

Continuing Education:

Must pass annual competency testing relating to rescue system curriculum as designated by the Department Training Officer.

Department Education:

Must provide and document 2 hours of rescue systems training annually.

\*Provided at department expense for currently assigned employees

Hazardous Duty – Ocean Rescue Certification:

Requirements to be assigned: The Department Training Officer develops the qualification program for assignment. For the initial assignment, the employee must be certified by the Department Training Officer.

Continuing Education: Certified Rescue Swimmers shall complete and pass the pool swim and water tread as established by the Department Training Officer. These employees must attend annual training developed by the Department Training Officer.

Department Training: Must provide two hours of documented training to the member's shift annually.

Paramedic Trainer:

Requirements to be assigned: Must complete an approved Los Angeles County Paramedic Preceptor program and complete the following courses: ACLS (Advanced Cardiac Life Support), and PALS (Pediatric Advanced Life Support).

Continuing Education: Must complete the Los Angeles County Paramedic continuing education requirements to maintain their state paramedic license.

Department Training: Provide training as needed for new members and paramedic students.