

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF MURRIETA  
AND  
THE MURRIETA FIRE MANAGEMENT  
ASSOCIATION**



**JULY 1, 2019 through JUNE 30, 2023**

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## **SECTION 1 ADMINISTRATION**

### **ARTICLE 1.01 INTENT AND PURPOSE**

It is the intent and purpose of this Memorandum of Understanding (hereinafter referred to as MOU) to set forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding, but not limited to, matters relating to wages, hours, terms and conditions of employment between employees represented by the MURRIETA FIRE MANAGEMENT ASSOCIATION (hereinafter referred to as the "ASSOCIATION") represented by the negotiations team and the City of MURRIETA, hereinafter referred to as "CITY", represented by the Murrieta City Council members.

### **ARTICLE 1.02 RECOGNITION**

The CITY recognized the ASSOCIATION as the exclusive majority representative bargaining agent for all employees assigned to the position of Battalion Chief (including Battalion Chiefs assigned by the Fire Chief as Division Chief), on August 18, 2008 under resolution 92-030.

### **ARTICLE 1.03 IMPLEMENTATION**

This Memorandum constitutes a mutual recommendation to be jointly submitted to the City Council following the ratification of the Memorandum by the members of the ASSOCIATION. However, this MOU is of no force or effect unless or until adopted by the City Council.

### **ARTICLE 1.04 TERM OF MOU**

The term of this MOU shall be from January 1, 2019 through June 30, 2023.

Negotiations for a successive term shall begin as mutually agreed upon by the CITY and the ASSOCIATION. Furthermore, at the first negotiation session the ASSOCIATION shall provide a written proposal for any proposed changes to this MOU.

Upon the expiration of this memorandum of understanding, its provisions shall remain in full effect until such time as a new memorandum of understanding is adopted by both the CITY and the ASSOCIATION.

### **ARTICLE 1.05 REOPENER**

Should economic conditions change significantly, positively or negatively, either the CITY or the ASSOCIATION reserves the right to reopen negotiations. The parties agree, however, that this option may be exercised only after the first year of the MOU. In the event this option is exercised, the CITY or ASSOCIATION shall submit written notice to the other party requesting a meeting and outlining the specific issues to be discussed.

**ARTICLE 1.06**

**UNFAIR EMPLOYEE RELATIONS PRACTICE**

It is agreed that it shall be an unfair employee relations practice for the CITY and/or the ASSOCIATION or its representatives:

- A. To interfere with, restrain, discriminate, intimidate or coerce employees in the exercise of the rights recognized or granted in this MEMORANDUM.
- B. To refuse to meet and confer in good faith with the ASSOCIATION, or its representatives to refuse to meet and confer in good faith with the CITY on matters within the scope of representation.

**ARTICLE 1.07**

**MANAGEMENT RIGHTS**

The ASSOCIATION recognizes the prerogative of the CITY and the Chief of the Murrieta Fire Department to operate and manage its affairs in all respects in accordance with its responsibilities and powers or authority which the CITY has not officially abridged, delegated or modified by this MOU and such powers or authority are retained by the CITY. These management rights include but are not limited to the following:

- A. To utilize personnel, set hours of work and work schedules, methods, procedures, and means in the most appropriate and efficient manner possible.
- B. To manage and direct the employees of the Murrieta Fire Department (hereinafter referred to as the "FIRE DEPARTMENT" or "DEPARTMENT").
- C. To hire, schedule, promote, transfer, assign, train or retrain employees in positions within the FIRE DEPARTMENT.
- D. To suspend, demote, discharge, or take other appropriate disciplinary action against the employee for just cause.
- E. To determine the size and composition of the work force and to lay off employees.
- F. To determine the mission of the FIRE DEPARTMENT and the methods and means necessary to efficiently fulfill the mission including: the transfer, alteration, curtailment, or discontinuance of any goods or services; the establishment of acceptable standards of job performance; the purchase and utilization of equipment for the production of goods or the performance of services; and the utilization of students and/or temporary limited term part-time emergency provisional or seasonal employees.
- G. The CITY has the right to schedule overtime as required in the manner most advantageous to the CITY and consistent with the requirements of the CITY employment in the public interest.

- H. It is understood by the parties that every incidental duty is not always specifically described. Nevertheless, it is intended that all such duties shall be performed by the employee.
- I. Contracting and Subcontracting - The ASSOCIATION recognizes that the CITY has statutory rights and obligations in contracting for matters relating to CITY operations. The right of contracting or subcontracting is vested in the CITY including the exercise of said contracting and subcontracting rights in the event of an emergency or essential public need or where it is uneconomical for CITY employees to perform said work.
- J. The CITY retains the right to establish reasonable work rules of conduct. Any dispute with respect to these work rules shall not be subject to arbitration of any kind but any dispute with respect to the reasonableness of the application of said rules may be subject to the grievance and arbitration procedures as set forth in this MOU.

Any dispute with respect to MANAGEMENT RIGHTS shall not in any way be subject to arbitration.

#### **ARTICLE 1.08                      EMPLOYEE RIGHTS**

It is agreed that each individual employee shall have the following rights, which he/she may exercise in accordance with applicable laws, ordinances, and rules and regulations:

- A. The right to form join and participate in activities of employee organizations of his/her own choosing for the purpose of representation on matters of his/her employee relations with the CITY or not to join or participate in the activities of any organization.
- B. The right to be free from interference, intimidation, restraint, coercion, discrimination, or reprisal on the part of the management representatives, the supervisor, other employees or employee organizations with respect to his/her membership or non-membership in any employee organization or with respect to any lawful activity associated therewith which is within the scope of representation.

#### **ARTICLE 1.09                      PROBATION PERIOD**

- A. All newly hired employees represented by the ASSOCIATION shall serve an eighteen (18) month probation period commencing on the designated effective date of employment.
- B. Any former employee recalled from a lay-off action shall serve a six (6) month probation period commencing on the designated effective date of employment.
- C. All employees serving a probation period shall, in accordance with CITY

policies, receive performance evaluation during his or her probation period. However, probationers shall not be eligible for merit increases before the twelfth (12<sup>th</sup>) month of their probationary period.

D. Probationary employees shall have no grievance rights under Article 1.10 of this MOU.

## **SECTION 2 COMPENSATION**

### **SUBSECTION A WAGES**

#### **ARTICLE 2.01 COMPENSATION**

- A. Effective as soon as practical to effectuate, members of each represented class shall receive a one-time stipend equal to two percent (2%) of base pay for the period July 1, 2018 through June 29, 2019
- B. Effective the first full pay period following July 1, 2019, each represented class shall receive an across the board base salary increase of eighteen percent (18%).
- C. Effective the first full pay period following July 1, 2020, each represented class shall receive an across the board base salary increase of four percent (4%).
- D. Effective the first full pay period following July 1, 2021, each represented class shall receive an across the board base salary increase of four percent (4%).
- E. Effective the first full pay period following July 1, 2022, each represented class shall receive an across the board base salary increase of four percent (4%).
- F. All employees will be eligible for merit reviews and corresponding salary advancements, if any, (up to top step) on an annual basis.
- G. If there is a promotion into the bargaining group that results in a newly promoted employee being compensated at the same salary step as another more senior employee serving in the same job classification and if the senior employee has been in that job classification for at least one full year and is not subject to a Performance Improvement Program or similar review period, then the senior employee shall receive an increase to the next higher step. The date of this increase shall become the new annual review date for those senior employees

#### **ARTICLE 2.02 OVERTIME HOURS**

- A. Fifty-six hour personnel:
  - 1. All authorized hours-worked in excess of the assigned work period shall be compensated at the rate of time and one-half the employee's regular rate of pay. Pursuant to Section 7(k) of the Fair Labor Standards Act, the work period for employees assigned to 24 hour shifts and working the "3 in 9" schedule consists of 27 day periods which coincide with the current 27-day schedule.
  - 2. Fifty-six (56) hour personnel are defined as those full-time, paid fire suppression battalion chiefs assigned to 24-hour shifts.

3. One hundred and six (106) hours shall be paid at the employee's regular salary rate and 6.308 hours shall be paid at the overtime rate of one and one half (1.5) times the employee's regular rate, in each bi-weekly pay period.
  4. Forty (40) hour personnel are defined as those full-time, 40-hour personnel, such as a battalion chief administratively assigned by the Fire Chief as division chief. These members may be called upon to work as a first responder.
- B. The Chief may prescribe overtime work to meet operational needs. Such overtime work shall be compensated at the rate of time and one-half the employee's regular rate of pay. The CITY will assign overtime work equally insofar as possible among the employees within the workforce and within their assignments. In this regard, the Department and the Association have agreed to use the protocols of the TeleStaff system for such purpose. The City and the Association agree to continue the *ad hoc* committee meetings as regards TeleStaff protocols.
  - C. Shift personnel held over at the end of his/her tour of duty shall be compensated at time and one-half in multiples of 12 minutes (.2 hours).
  - D. With the approval of the Fire Chief, overtime in excess of 48 consecutive hours may be worked.
  - E. As deemed necessary by the Fire Chief, mandatory overtime shall be required of all DEPARTMENT/CITY employees in those situations when a vacancy cannot be filled.
  - F. All hours count as hours worked for the purpose of calculating an employee's overtime rate. Except, the trading of work time (shift trading) between employees shall be permitted in accordance with department policy, however any traded "time worked" shall be excluded in the calculation of the hours for which the employee is entitled to overtime compensation.

## **ARTICLE 2.03                      COMPENSATORY TIME**

In lieu of overtime pay, an employee, at the employee's option, may be compensated with compensatory time off (CTO) at the rate of one and one-half times the employee's regular hourly rate of pay. An employee may accumulate a maximum of 120 hours of compensatory time. Once an employee accrues 120 hours of compensatory time, any additional overtime hours will be paid to the employee in the pay period earned. Employees will not be allowed to accrue compensatory hours beyond the 120-hour maximum.

- A. Twice yearly (in June and December) represented employees may request a cash-out of their accumulated CTO. These requests shall be made in writing to the Finance Department.

- B. An employee who has accrued CTO shall, upon termination of employment, be paid for all unused compensatory time. This pay out shall be at the employee's final regular rate of pay.

**ARTICLE 2.04                      CALL BACK PAY**

- A. Duty. Any employee who left his/her scheduled place of work and is called back to duty shall receive a minimum of four hours compensation at the rate of time and one-half the employee's regular rate of pay. Reporting early for a tour of duty or an extension of a tour of duty shall not qualify for this minimum.
- B. Training and Meetings. Any employee who has left his/her scheduled place of work at the end of his/her assigned shift and is called back at any time for the purposes of training or a meeting, mandatory or otherwise, called by the Fire Chief or City Manager or designee(s) shall receive compensation at the rate of time and one-half for the length of the training or meeting or minimum of one (1) hour. This one (1) hour minimum does not apply to emergency duty callback as presented in the above paragraph. Reporting early for a tour of duty or an extension of a tour of duty shall not qualify for this minimum.
- C. Travel Time. Any employee who left his/her scheduled place of work and is called back may be compensated for travel time to return to work at a rate of time and one-half (1.5) of the employee's regular rate of pay, for the actual time of travel, up to a maximum of one (1) hour.

**ARTICLE 2.05                      WORKING OUT OF CLASSIFICATION**

- A. A "working out of class" shift shall be defined as twelve (12) hours or more. The six (6) consecutive shifts are not inclusive within a single month and may carry over to the following month and continue until a break in the "working out of class" occurs.
- B. Employees who are assigned and/or work on a temporary basis at the duties of a higher classification for a continuous period of 20 days or longer, or 6 shifts or longer shall receive 5% of the regular pay in addition to the employee's regular pay for the qualifying 6 consecutive shifts and for that period of time worked which exceeds a continuous period of 20 days or longer than 6 shifts until such time as a break in the "working out of class" occurs.
- C. In determining whether the employee has worked 6 consecutively scheduled shifts, absence for any reason, except absence due to regular holiday, regularly scheduled day off, vacation, illness or injury, shall break consecutiveness and thereby cause an employee to be ineligible to receive acting time pay.

The six (6) consecutive shifts would be broken by leave without pay and/or trade time of twelve (12) hours or more for any one occurrence.

Educational Leave, as provided in Article 3.11, will not break the consecutive shift provision.

Pay for acting out of classification will typically be paid on the pay period following qualification.

- D. The CITY shall determine the necessity for the employing individuals in acting capacity.
- E. From time to time out-of-classification training positions may be offered. These training positions will not receive out-of-classification pay. Any member who does not want to take advantage of this opportunity for advancement training may decline an offer and remain in his/her current job and current classification.
- F. Employees working out-of-classification or serving in a temporary assignment in classification governed by the Management and Confidential employee group, the compensation for such assignment shall be based on the provisions set out in Section 1.16 of the Management and Confidential Compensation Plan.

#### **ARTICLE 2.06                      UNIFORM ALLOWANCE**

- A. The CITY shall pay to each represented employee \$1,850 for the purchase and maintenance of uniforms.
- B. The CITY will not pay extra for uniforms or personal clothing damaged in the line of duty unless approved by the Fire Chief or his/her designee.

#### **ARTICLE 2.07                      BILINGUAL PAY**

The CITY has an established bi-lingual pay program which will provide an additional two and one-half percent (2.5%) of base pay for eligible members of the ASSOCIATION who are fluent in the Spanish Language. The 2.5% bilingual pay shall be calculated on base salary. The number of members to be eligible shall be determined by the CITY. To become qualified an employee must be certified by the City Manager or his/her designee after the employee successfully passes a verbal conversation examination by the CITY in cooperation with the ASSOCIATION.

#### **ARTICLE 2.08                      EDUCATIONAL PAY INCENTIVE**

Battalion Chiefs and those administratively assigned by the Fire Chief as Division Chief who have passed probation and attained appropriate educational and professional qualifications as follows shall be paid a sum in addition to their base pay as follows:

5% - Bachelor's Degree

Compensation will be calculated on base salary. Degrees must be directly related to the performance of the duties associated with the classification.

**ARTICLE 2.09 CHIEF OFFICER "ADMINISTRATIVE ASSIGNMENTS"**

The two Division Chief positions (Operations Division Chief and Administration/Fire Marshal) are administrative assignments. The Fire Chief may move Battalion Chiefs (BC's) into and out of either administrative assignment. BC's moved into an administrative assignment will commit to a minimum twelve (12) month assignment and will be compensated at Battalion Chief plus ten percent (10%) Special Assignment Pay (10% of base, before any allowable FLSA overtime) and will be assigned a Department vehicle. The CITY reserves the right to extend the duration of an administrative assignment with ten (10) days' notice based upon operational need.

**ARTICLE 2.10 TECHNICAL RESCUE INCENTIVE PAY**

Employees who maintain technical rescue/truck certification shall receive a stipend in an amount equal to \$100 per month paid over 24 pay periods.

**ARTICLE 2.11 USAR, SWAT AND INVESTIGATOR PAY**

Employees assigned to USAR, SWAT Medic, and Fire Investigation shall be paid at their 40-hour overtime rate while assigned outside of their normal duty day.

**SUBSECTION B BENEFITS**

**ARTICLE 2.12 HEALTH BENEFITS (Medical, Dental and Vision)**

**A. CAFETERIA PLAN**

The City of Murrieta is a contracting agency for participation in the Public Employees' Medical and Hospital Care Act ("PEMHCA"). Government Code § 22892 provides for a minimum employer contribution for enrolled employees, which minimum contribution is subject to change from calendar year to calendar year by CalPERS under the statute.

Effective January 1, 2018, the City's PEMHCA contribution shall be \$133.00 monthly to correspond to the statutory minimum employer contribution established by CalPERS. (The CITY has been advised that effective January 1, 2019, the minimum mandated employer contribution under PEMHCA shall be \$136.00 monthly per employee enrolled in a PEMHCA plan.)

Effective January 1, 2018, the minimum monthly amount provided under this section shall be \$1,674.08, or the lowest cost PEMHCA HMO for family coverage offered by PEMHCA in the "Other Southern California Region" plus \$244.00 (excluding HealthNet Salud Y Más or plans which provide primary healthcare in Mexico), whichever is higher.

Any amount remaining from the CITY's contribution after the payment of the monthly premium, or eight hundred thirty-three dollars and forty-three cents (\$833.43), whichever is higher, may be used for other allowable Cafeteria Plan expenditures, such as Flexible Spending Account contributions, or taken as a taxable cash payment.

Effective July 7, 2019, the City's contribution shall increase by \$100.00.

1. Up to \$933.43 of the of the Cafeteria Plan may be utilized only for medical insurance premiums. The remaining amount may be used for other allowable "Cafeteria Plan" expenditures, such as medical premiums, and Flexible Spending Account contributions.
2. No provision for cash-in-lieu (a taxable cash payment).
3. No provision for a Deferred Compensation contribution from the City's health care contribution.

For calendar year 2020, the City will contribute \$1955.82 per month, inclusive of the PEMHCA minimum required employer contribution. This amount is the sum of the monthly premium for Anthem HMO Select for family coverage in "Other Region 3" (\$1611.82) plus \$244.00, plus the \$100 in lieu of a taxable cash payment which exceeds \$1,674.08. HealthNet SmartCare is the lowest cost family premium in "Region 3" after HealthNet Salud Y Más in Calendar year 2019.

The employee will pay any additional cost based on their chosen plan coverage.

In the event that the lowest cost family premium in "Region 3" (excluding HealthNet Salud Y Más) changes from one calendar year to the next, the above calculation shall be redone to determine the required City contribution. However, the amount that can only be used for health insurance (\$933.43 per month) will not change.

As regards retirees, the following shall apply:

1. **Employees hired prior to January 1, 2010** - Eligible retirees, who are enrolled in a CalPERS medical plan shall receive the required monthly minimum employer contribution mandated by PEMHCA plus a monthly contribution to a Retiree Healthcare Savings Plan (RHS) which added together equals \$833.43. For example, if the minimum required PEMHCA contribution is \$136.00 then the RHS contribution shall be \$697.43. Benefits under this section shall be paid to the retiree or his/her spouse for the duration of their respective lifetimes.
2. **January 1, 2008 and later employees (10 complete years of service)** - Employees hired on and after January 1, 2008 and who thereafter retire from

CITY service with a minimum ten (10) complete years of service with the CITY, and who are enrolled in a CalPERS medical insurance plan, shall receive CITY-funded medical insurance for the retiree and eligible dependents, in an amount not to exceed \$360.00 per month up to the date of eligibility to receive Medicare (the \$360.00 maximum amount is computed by adding the PEMCHA minimum payment mandated from time to time by the Act to a RHS contribution, which shall when totaled equal \$360.00 per month). Upon employee eligible for Medicare, the CITY contribution to medical insurance shall be in the minimum mandated amount for employer contributions to participate in the Act.

3. **January 1, 2008 and later employees (fewer than 10 complete years of CITY service)** - For those employees hired on and after January 1, 2008 who then retiree from CITY service with fewer than ten (10) full years of CITY service, and who are enrolled in a CalPERS medical insurance plan, the CITY medical insurance contribution shall be equivalent to the PEMCHA minimum mandated employer contribution to participate in the Act.

#### **B. DENTAL INSURANCE**

The CITY agrees to provide a dental and orthodontics benefit plan for all Employees. The CITY also agrees to pay monthly premium payments for each employee.

#### **C. VISION INSURANCE**

The CITY agrees to provide vision insurance for all represented employees and their dependents. The CITY will pay the full premium for the plan per employee per month.

### **ARTICLE 2.13                      LIFE INSURANCE**

The CITY agrees to provide life insurance coverage in the coverage equal to one year of base salary for all employees through an insurance company selected by the CITY. The CITY shall pay the full monthly premium for said life insurance.

### **ARTICLE 2.14                      LONG TERM DISABILITY**

- A. **Long Term Disability.** The CITY agrees to provide long-term disability insurance coverage through an insurance company selected by the CITY. The CITY shall pay the full monthly premium for this insurance.
- B. **Short Term Disability.** The CITY agrees to provide short-term disability insurance coverage through an insurance company selected by the CITY. The CITY shall pay the full monthly premium for this insurance.

**ARTICLE 2.15****NOTIFICATION OF BENEFIT VENDOR CHANGE**

The CITY shall notify the ASSOCIATION, in writing, at least thirty (30) days prior to changing the vendor providing any benefit in this section of the MOU.

**ARTICLE 2.16****TUITION REIMBURSEMENT**

After twelve (12) months of full-time employment with the CITY, regular full-time employees shall be eligible for reimbursable expenses for approved course completed at accredited educational institutions provided:

- a. Courses are satisfactorily completed.
- b. Appropriate proof of successful completion is submitted to the Human Resources Department.
- c. The Fire Chief has determined that the course of instruction will enable the employee to perform his or her present duties more effectively and will prepare them for future opportunities into which they could reasonably expect promotion or transfer within the Fire DEPARTMENT.
- d. The hours of instruction do not conflict with the employee's regularly scheduled work day. When hours do conflict, the employee may be excused as indicated above in Article 3.12.
- e. Eligible expenses include tuition, books, parking, lab and other appropriate class required materials/fees.
- f. Up to \$3,450 per employee, per fiscal year may be reimbursed for direct expenses. Direct expenses include tuition, books, parking, lab and other appropriate class required materials/fees. In consideration for those employees registered in an accredited accelerated academic program, the maximum reimbursable amount of eligible expenses shall increase to \$6,900 per employee per fiscal year. The maximum amount an employee may receive in tuition reimbursement during the course of their employment shall be \$13,800. An accredited institution shall be defined as any technical, vocational, college, university, or business school, which has been accredited by a recognized governmental or professional accrediting body and has been approved by the Human Resources Director.

**1. Application process**

Employees shall submit a Tuition Reimbursement Request to the Fire Chief. The Fire Chief will review the request for compliance with CITY policies and either approve or deny the request. If the request is denied, the Fire Chief will state the reason for denial. The Fire Chief shall forward the completed form to the Human

Resources Director for review to assure compliance with CITY policy. The Human Resources Director shall forward one copy of the completed form to the employee.

Employees who are eligible for educational assistance from sources outside the CITY shall be restricted in their participation in this program. Such restriction shall be limited to an amount that is the difference between the maximum amount available under this program less the amount the employee is eligible for from outside sources. Financial assistance from outside sources shall include scholarships, fellowships, educational grants and benefits payable from the federal, state, and local government.

The Human Resources Director shall maintain records of those employees participating in the Tuition Reimbursement Program including the academic performance of employees and total reimbursement per employee.

## 2. Reimbursable Expenses

Employees shall be eligible for reimbursement of tuition, textbooks, registration fees and laboratory fees related to an approved course of instruction.

## 3. Non-reimbursable Expenses

Employees shall not be eligible for reimbursement of late registration penalties or fees, transportation costs, parking, interest or any other charge not specified as reimbursable in this section.

## 4. Application for reimbursement

Employees who successfully complete an approved course shall submit a request for reimbursement to the Human Resources Department. Such request must include receipts for all items for which the employee wishes to be reimbursed and a copy of the final grade report with a grade of C or higher. The Human Resources Department shall attach the required documentation to the Tuition Reimbursement Request and forward one copy to the Finance Department for processing. The Finance Department shall prepare a reimbursement check payable to the employee and forward the check to the Human Resources Department for distribution to the employee. Said check shall be processed as part of the CITY'S regular payroll schedule.

## 5. Repayment of Tuition Reimbursement

As part of the Tuition Reimbursement Request, the employee shall agree that upon voluntary termination of employment within thirty-six months following receipt of a tuition reimbursement, there shall be a deduction from their final check in an amount equal to the tuition reimbursement prorated over the thirty-six-month period from the date of reimbursement.

6. If at any time an employee withdraws from a class, he/she will notify the CITY and Human Resources Department of the drop within 5 working days.

#### **ARTICLE 2.17                      DEFERRED COMPENSATION MATCH**

For those employees participating in a CITY sponsored 457 Deferred Compensation Program, the CITY shall contribute a matching amount to the employee's account on a dollar for dollar basis, not to exceed \$2,400 per year. The City's contribution matching will cease upon establishment of a CITY sponsored retirement plan under Article 2.17.

#### **ARTICLE 2.18                      RETIREMENT PLAN**

The CITY will establish and sponsor a 401(a) Retirement Plan. For those employees enrolled in a CITY sponsored 457 Deferred Compensation Plan, the CITY shall contribute to a 401(a) account an amount matching the employee's 457 contribution, not to exceed \$2,400. In no case shall the CITY's match exceed limits established by the Internal Revenue Service.

The CITY agrees to establish a retirement plan effective with the first full pay period in January 2020.

#### **ARTICLE 2.19                      RETIREMENT**

- A. The CITY shall continue to make contributions to the California Public Employee Retirement System (PERS) in accordance with the CITY'S contract with PERS.
- B. Effective 7/1/2002 the CITY shall amend its Public Employee Retirement System (PERS) retirement contract to provide for Section 20042 benefits (the single highest year benefit) with the full cost paid by the CITY.

The CITY's contract with PERS shall provide for Section 20042 benefits (the single highest year benefit) with the full cost paid by the CITY.

- C. The City shall pay the full 9% required employee contribution to PERS. Effective January 16, 2011 the City's employer paid member contribution shall change to 7.1%, and employees will pay the remaining 1.9% through a pre-tax payroll deduction, provided that a PERS contract amendment is not required. Effective, July 15, 2012, the CITY agrees to pay the entire 9% employee contribution. The employer paid member contribution herein shall be treated as a "pick-up" of pension benefits under Section 414(h) (2) of the Internal Revenue Code.
- D. The City shall pay the full 9% required employee contribution to PERS. Effective January 16, 2011 the City's employer paid member contribution shall change to 7.1%, and employees will pay the remaining 1.9% through a pre-tax payroll deduction, provided that a PERS contract amendment is not required. Effective,

July 15, 2012, the CITY agrees to pay the entire 9% employee contribution. The employer paid member contribution herein shall be treated as a "pick-up" of pension benefits under Section 414(h) (2) of the Internal Revenue Code.

E. The CITY's PERS contract shall provide for Section 21362.2 benefits (3% @ age 50) for safety employees.

## **SECTION 3 HOURS**

### **ARTICLE 3.01                    HOLIDAYS**

- A. CITY employees shall be eligible for holidays as prescribed in this section of this MOU.
  
- B. The approved CITY holidays for forty-hour personnel shall be as follows:
  - 1) January 1<sup>st</sup>, known as New Year's Day
  - 2) The third Monday in January, known as Dr. Martin Luther King, Jr. Day
  - 3) The third Monday in February, known as "Presidents' Day"
  - 4) The last Monday in May, known as "Memorial Day"
  - 5) July 4<sup>th</sup>, "Independence Day"
  - 6) The first Monday in September, known as "Labor Day"
  - 7) November 11<sup>th</sup>, known as "Veterans' Day"
  - 8) Thanksgiving Day
  - 9) The day after Thanksgiving
  - 10) December 24<sup>th</sup>, known as Christmas Eve\*\*
  - 11) December 25<sup>th</sup>, known as "Christmas Day"
  - 12) December 31<sup>st</sup>, known as New Year's Eve\*\*
  - 13) Employee's Birthday (Floating Holiday)
  - 14) Any day declared to be a holiday by proclamation of the Mayor.

\*\* Half Day Holiday. Each holiday shall be valued at nine (9) hours, including the floating holiday but excluding the half day holidays (denoted by asterisks) which shall be valued at four and one-half (4.5) hours each.

For forty-hour employees the holiday will be the day observed unless the holiday falls on the weekend.

### **ARTICLE 3.02                    HOLIDAY LEAVE BANK FOR 40-HOUR EMPLOYEES**

For accounting purposes, each employee on a flex schedule shall begin with a bank of ninety-nine (99) hours of Holiday Leave at the beginning of the fiscal year. A flex-schedule employee's Holiday Bank shall be reduced the number of hours taken for the holiday.

Employees are required to use Holiday Leave each time a CITY authorized holiday falls on a day when the employee would normally be scheduled to work. When a CITY authorized holiday falls on a day when CITY facilities are normally closed, an additional day will not be designated as a holiday. When this occurs, no holiday hours will be deduced from employees' Holiday Banks and employees will be able to use them as holiday leave at another time. Such time must be scheduled in advance and approved by the Department Head with consideration given to sufficient staff being available to continue the efficient operation of the department. Holidays occurring during Leave Without Pay are not earned.

Any Holiday Leave Bank hours not used by June 30 of the fiscal year shall be forfeited.

Employees beginning employment during the fiscal year will start with a prorated Holiday Leave bank. Hours will be credited as follows:

- a. Nine (9) hours for each City authorized holiday that has not yet occurred.
- b. Nine (9) hours of floating holiday time if the employee's start date is prior to March 1, for and one-half (4.5) hours of floating holiday time if the employee's start date is between March 1 and April 30; and no floating holiday leave time if the employee's start date is between May 1 and June 30.

Employees terminating employment with the CITY during the fiscal year will receive payment for unused holiday leave as follows:

- a. Nine (9) hours for each CITY authorized holiday that has occurred during that fiscal year.
- b. Necessary adjustments to the Holiday Leave Bank upon termination of employment will be deducted from the final pay check.

Forty hour employees must have worked all of his/her regularly scheduled working day immediately preceding the holiday and his/her next regularly scheduled working day immediately following the holiday in order to receive compensation for the holiday.

### **ARTICLE 3.03                      HOLIDAY COMPENSATION-SHIFT EMPLOYEES**

- A. Employees shall accrue one hundred fifty-one (151) hours of holiday leave each January 1.
- B. All one hundred fifty (151) hours will be deposited in the Holiday Leave Bank to be used as time off or cashed out.

Payment (at straight time hourly rate) can be requested in May of each year for up to 60 hours payable on the first payroll check in June and any remaining balance will be paid on the first payroll check in December.

- C. In addition, Thanksgiving Day, Christmas day, and New Year's Day will be non-work days except for normal station duties. All other holidays will be treated as normal workdays.
- D. Holiday hours will be pro-rated in the event of termination of employment.

**ARTICLE 3.04**

**HOLIDAY LEAVE CONVERSION**

- A. If a 40-hour employee moves to a 56-hour assignment, the employee’s holiday leave bank hours will be converted by multiplying the number of hours remaining in the employee’s bank by 1.4.
- B. If a 56-hour employee moves to a 40-hour assignment, the employee’s holiday bank will be converted by dividing the number of remaining holiday hours by 1.4. If, after the conversion, the employee does not have sufficient holiday hours to cover the remaining holidays in the year, the employee shall use his/her Vacation and/or Compensatory Time Bank to cover the remaining holidays.

**ARTICLE 3.05**

**VACATION LEAVE**

- 1. All full-time permanent or probationary 56-hour shift employees shall accrue vacation leave on a bi-weekly basis. Vacation will be accrued as follows:

**Shift Personnel**

<b>During:</b>	<b>Shift Personnel</b>
The first three years of service	5.54 hours per pay period
The fourth through fifth years	6.46 hours per pay period
The sixth through eighth years	7.38 hours per pay period
The ninth through eleventh years	8.31 hour per pay period
The twelfth year and thereafter	9.23 hour per pay period

**40-Hour Personnel**

<b>During:</b>	<b>40-hour Personnel</b>
The first eighteen months of service	1.54 hours per pay period
The nineteenth month through the fourth year	3.08 hours per pay period
The fifth through ninth years	4.62 hours per pay period
The tenth year and thereafter	6.15 hour per pay period

- 2. The maximum Vacation Leave time which may be taken shall be the number of hours accrued as of the end of the last payroll period immediately preceding the first day of Vacation Leave requested and approved. The minimum amount of Vacation Leave which may be requested and approved is 8 hours, except when Vacation Leave is used as Education Leave.
- 3. Vacation Leave will be granted for a maximum of one Battalion Chief per shift on a first come, first served basis. Additional vacations may be approved by the Fire Chief based on the staffing needs of the CITY and available personnel to fill the vacancy.

4. Only one year of Vacation Leave may be carried to the following year. It is incumbent upon the employee to manage his/her accrued Vacation time off so as not to exceed the maximum two-year accrual. In the event the maximum is exceeded, the CITY has the right to schedule the employee off in order to reduce the accrued hours to the maximum level.
5. Vacation leave year is 1 January to 31 December.
6. Vacation Leave may be taken before the completion of the first year of service with the approval of the CITY Manager or designee.

**ARTICLE 3.06 ANNUAL LEAVE**

1. Battalion Chiefs administratively assigned by the Fire Chief as 40-hour Division Chiefs shall accrue Annual Leave per the following schedule:

Years of Service	Annual Accrual	Maximum Accrual
1 to 3 years	168 hours per year (21 days x 8 hrs)	644 hours
4 to 6 years	192 hours per year (24 days x 8 hrs)	644 hours
7 to 10 years	216 hours per year (27 days x 8 hrs)	644 hours
11 to 15 years	232 hours per year (29 days x 8 hrs)	644 hours
16+ years	272 hours per year (34 days x 8 hrs)	644 hours

2. The maximum amount of scheduled Annual Leave time which may be taken shall be thirty (30) working days in a calendar year. Additional Annual Leave for exceptional situations may be granted on a case-by-case basis by the City Manager.
3. Employees are encouraged to use their Annual Leave to rest, relax and spend time with loved ones periodically. A minimum of 80 hours of Annual Leave, excluding holidays, must be used each calendar year by the employee. The 80 hours can be taken in increments and does not have to be in a consecutive block of time.
4. Annual Leave may be accrued up to a maximum of six hundred and forty-four (644) hours. When this maximum amount is reached the employee will no longer accrue additional Annual Leave. Annual Leave accruals will re-commence in the next pay period following the use of Annual Leave which reduces this balance below the maximum allowed. It is incumbent upon the employee to manage his or her accrued annual time off so as not to exceed the maximum amount of 644 hours. In the event the maximum amount is exceeded, the CITY has the right to schedule the employee off in order to reduce the accrued hours to the maximum level.
5. Earned and accrued annual leave may be taken before the completion of the first year of service with the approval of the City Manager or designee.

6. **Vacation Postponement.** If an employee does not utilize his or her Annual Leave for the purposes of vacation in any calendar year, the employee may, subject to approval of the City Manager, be allowed such vacation leave during the succeeding calendar year. In no event, however, shall any employee's vacation leave with pay exceed thirty (30) working days in any calendar year.
7. **Holidays within Vacation Period.** Holidays falling within the scheduled vacation leave period shall not be considered as part of an employee's vacation. Should a holiday be declared during an employee's vacation leave period, an equivalent number of hours for the applicable holiday shall be credited back to the employee's Annual Leave balance. Illness occurring during a scheduled vacation period shall not be considered as unscheduled (sick) leave.
8. **Unused Annual Leave.** Any employee who is eligible for Annual Leave benefits and terminates his or her employment with the CITY will be paid for any unused Annual Leave hours.
9. **Length of Vacation Leave.** Vacation leave in excess of eighty (80) consecutive hours will require the City Manager's approval.
10. **When an employee is absent from work due to illness or a health related reason,** said leave periods shall utilize Annual Leave with pay. In the event of absences due to illness or injury, the department head, in consultation with the Human Resources Director, may require a physician's statement indicating the employee's fitness to return to work.

In December of each year, not to exceed once a year, employees with more than two (2) years of service may sell back unused annual leave up to 50% of their accrued vacation leave bank at the employee's current base hourly rate. For example, if an employee has 300 hours of accrued vacation leave, they would only be eligible to sell back 150 hours. This payment must be made in cash and is taxable.

## **ARTICLE 3.07                      ADMINISTRATIVE LEAVE**

Battalion Chiefs working 40-hour assignments and those administratively assigned as Division Chief working a 40-hour schedule shall be granted Administrative Leave according to the following schedule:

60 hours/year

These hours shall be credited at the beginning of each fiscal year and unused Administrative Leave shall be forfeited at the end of each fiscal year.

## **ARTICLE 3.08**

## **SICK LEAVE**

1. All full-time permanent or probationary 56-hour shift employees accrue 12 hours of Sick Leave per month. Leave will be earned, commencing on the first day of employment as a probationary employee, and accrued on a bi-weekly basis.
2. The CITY shall allow Sick Leave with pay whenever an employee's absence is due to a non-industrial illness that prevented his/her attendance on the job and performance of duties on the day of absence.
3. Any employee who makes an application for vacation or compensated time off and is denied due to insufficient staffing and subsequently requests Sick during the same work week must call the Fire Chief to request the Sick Leave. The Fire Chief may deny the request or require further explanation of the request. Before the employee returns to work, the Fire Chief may require a medical certificate signed by a licensed physician authorized to practice medicine in the State of California. When such a certificate is required, the Fire Chief shall notify the absent employee of the need for such certificate prior to his/her return to work. The medical certificate must set out the following:
  - a. The fact that the employee was not able to work;
  - b. A statement that the employee is physically able to return to work;
  - c. The effective date the employee is to return to work.
4. Any employee falsely using Sick Leave shall be subject to discipline including discharge.
5. Employees will be allowed to use three (3) shifts of Family or Bereavement leave during the fiscal year, to be taken from accrued sick leave for immediate family members. Immediate family members shall be defined as mother, father, brother, sister, spouse, children, grandparents, in-laws, and legal guardians.
6. To encourage attendance at work and discourage the excessive use of sick leave, employees with continuous employment of five (5) years or more will receive a payment of 25% of unused Sick Leave when they resign or retire at the then rate of compensation.

Employees with continuous employment over ten (10) years will receive a payment of 50% of unused Sick Leave when they resign or retire at the then rate of compensation.
7. The Fire Chief may require an employee to submit to a medical or psychiatric examination by a physician designated by the CITY before permitting the employee to return to work after the employee has been on sick leave. If the results of any such examination indicate that the employee is unable to perform

assigned duties, or if the performance of those duties will expose others to infection, the employee shall be placed on sick leave, compensatory time, vacation time, or leave without pay after all such leave has been used, until adequate medical evidence is submitted that the employee is competent to perform assigned duties or will not subject others to infection. In the cases of disabling illness or injury, the Fire Chief, designee, or Human Resources may seek transfer of the employee, seek the employee's retirement, or seek the employee's termination by reason of the employee's inability to perform required work.

### **ARTICLE 3.09                      JURY LEAVE**

Employees who are called for jury service in any court in the State of California or in the United States shall be granted a leave of absence to serve as a juror.

Employees granted leave under the first paragraph of this article shall be eligible for reimbursement of lost salary subject to the terms of the following conditions:

1. Where the fees paid for such jury service, exclusive of transportation expenses and meals, is less than the salary paid by the CITY to such employee, the CITY shall reimburse the employee for the loss occasioned by such difference in pay. The leave granted by this article is in addition to all other leaves granted or authorized by any other provisions of the CITY ordinances and the time of the leave granted under this article shall not be deemed a part of any leave granted or authorized by any other provision of CITY ordinances. For the purpose of determining promotions or salary advancement, the status of the employee shall be considered as though not interrupted by such attendance.
2. Upon completion of jury duty, the employee shall provide the CITY with evidence of the amount of money earned for daily jury duty exclusive of transportation expenses and meals.

### **ARTICLE 3.10                      MILITARY LEAVE**

The City shall comply in all respect with Uniformed Services Employment and Reemployment Rights Act (USERRA).

### **ARTICLE 3.11                      EDUCATION LEAVE**

Employees taking fire related or general education classes towards their fire related degree, or work related degree will be excused from work as provided for in Article 3.12. All education leave time for the actual time necessary for the employee to travel to and attend authorized courses shall be submitted for approval by the Fire Chief and deducted from accrued vacation and/or compensation benefit hours.

### **ARTICLE 3.12                    TRAINING LEAVE**

While the CITY desires to provide and fund on-going training as the budget permits, some employees may desire to pursue approved training in addition to that which is provided by the CITY. In those cases, where the employee desires to take a specified training course and to personally fund said course, the Fire Chief may authorize the employee to have training leave time from the employee's scheduled work shifts only for the actual amount of time necessary for the employee to travel to and attend the authorized training courses. Said leave time will be part of the employee's normal workweek.

In those situations, where the length of the training course(s) overlaps the employee's work schedule and days off, the employee shall only receive leave time compensation for the time absent during the scheduled work shift. Said training is in addition to funded CITY training and scheduled days off shall not be compensated by the CITY.

### **ARTICLE 3.13                    LEAVE OF ABSENCE**

1. One ASSOCIATION member shall be permitted time off with pay to attend ASSOCIATION conferences and/or conventions at the Fire Chief's discretion.
2. The Fire Chief may, in appropriate circumstances, grant leave of absence without pay, provided that the term thereof, and the reasons therefore are reduced to writing and signed by the Fire Chief and the employee.

### **ARTICLE 3.14                    TIME BANK LEAVE**

As of the date this memorandum of understanding is approved by all parties, a time bank shall be established to be used for ASSOCIATION business. ASSOCIATION activity is presented in Article 4.07 of this MOU. All donations to the Time Bank shall be calculated on a dollar for dollar basis. Only vacation and compensation time hours may be donated to the Time Bank. Each hour donated to the Time Bank shall be converted to a standardized unit by multiplying the number of donated hours by the donating employee's base hourly pay rate, without overtime. This dollar amount will then be credited to the Time Bank. Withdrawals from the Time Bank shall be charged at the withdrawing employee's applicable base or overtime-hourly pay rate. The use of the Time Bank shall be approved by the Fire Chief via the DEPARTMENT'S and CITY'S normal leave request process.

## **SECTION 4 WORKING CONDITIONS**

### **ARTICLE 4.01 EMT REQUIREMENT**

Suppression members shall as a condition of employment maintain their current status as an EMT-1 with the County of Riverside, Department of Health, Emergency Medical Services Section. In addition, the members shall demonstrate their required skill proficiency at intervals not to exceed 6 months as required in the EMT accreditation protocol. Violation of this condition of employment shall be deemed good cause for reprimand and possible dismissal.

### **ARTICLE 4.02 DISCIPLINARY PROCEDURES**

#### **A. STANDARDS OF CONDUCT:**

All employees are expected to adhere to standards of reasonable and prudent conduct.

#### **B. APPLICABILITY OF DISCIPLINE:**

Disciplinary action may be taken against any non-elected employee of the CITY. Employees represented by the ASSOCIATION shall have rights to the notice and hearing requirements set forth in this article.

#### **C. DISCRETION IN DISCIPLINARY ACTION:**

The City Manager, Human Resources Director, or Fire Chief can exercise their discretion in applying discipline appropriate to the employee's offense(s) and work record.

#### **D. PERMITTED DISCIPLINARY ACTION:**

Any one or combination of the following disciplinary actions may be taken against any employee for offenses stated in this article or for any other just cause:

- Oral admonishment
- Directive Memorandum
- Corrective Memorandum
- Written reprimand
- Suspension
- Reduction in salary
- Demotion
- Dismissal

#### **E. PRE-DISCIPLINARY PROCEDURES:**

An employee being considered for any discipline shall be insured due process when appropriate through pre-disciplinary measures described in this article. There are no appeal rights for pre-disciplinary action.

Oral Admonishment. Oral admonishments should be given in private. The supervisor shall include in the admonishment a review of appropriate departmental standards and policies, employee performance expected in the future and the likely consequences of failure to correct performance or behavior. Oral admonishments shall be memorialized in writing.

Directive Memorandum. A directive memorandum is pre-discipline. It informs the employee how to complete a task and directs employee to perform correctly in the future. It can also be used to give general direction to more than one employee.

Corrective Counseling / Memorandum. Corrective counseling / memorandum is pre-discipline. Corrective counseling is a formal counseling process with dialogue between the supervisor and the employee that is to be followed up by a corrective memorandum. The corrective memorandum informs employee that even after previous direction, a task or behavior is still inappropriate or being completed incorrectly. This is a warning that future occurrences may result in disciplinary action.

#### F. DISCIPLINARY ACTION:

Written notice of any proposed disciplinary action shall be given to the employee in private. This notice shall include the proposed action, the intended effective

Date and the specific reasons for such action. A written copy of the allegations of misconduct and the grounds for such allegations shall also be included, along with a copy of all supporting documentation upon which the department expects to rely. The employee is entitled to copies of all materials on which the allegations are based, if there are any. The employee's right to respond orally or in writing, the right to respond in person or through a designated representative, the time in which the response should be made and to whom and where it should be made, shall be specified in the notice of intended discipline.

Written Reprimand. A written reprimand shall be prepared for the continued or more serious offense. The reprimand shall take the form of a memorandum including a full, accurate and factual statement of the reason for the reprimand. The memorandum shall be given to the employee in private. The supervisor shall explain appropriate departmental standards and policies, employee performance expected in the future and likely consequences of failure to correct performance or behavior. A copy of the memorandum shall be placed in the employee's personnel folder. The employee may respond to the memorandum in writing within 14 calendar days from date of receiving the memorandum and have such response placed in the employee's personnel folder. A dated copy of the written reprimand shall be released to the employee.

Suspension Without Pay. When the employee's undesirable conduct has been continuous, repeated, or is deemed by management to be of such severity that lesser penalties are inadequate or have proved ineffective, the Fire Chief may

impose suspension without pay. Such suspension shall occur only after the notice of intent to suspend is issued. The employee will have appeal rights as indicated in the employee response section of this MOU.

Reduction in Salary. In lieu of, or in addition to other forms of discipline, when facts justify, the Fire Chief may impose a reduction in salary upon the employee to a lower step on the present salary range or to a lower salary range, as appropriate. The reduction may be for a limited period or permanent, as specified. Any reduction in salary shall be subject to the notice procedures. The employee will have appeal rights as indicated in the employee response section of this MOU.

Dismissal. When the employee's conduct has been of a continuous nature, uncorrected by previous discipline, or is of such a nature as to make further employment not in the CITY'S interests, or for other good cause, the Fire Chief shall have the right to dismiss the employee. Dismissal shall be final termination of the employee's employment. Any action of dismissal shall be taken only in compliance with the notice procedures. The employee will have appeal rights as indicated in the employee response section of this MOU.

#### G. EMPLOYEE RESPONSE FOR DISCIPLINARY ACTIONS:

An employee is entitled to a reasonable time, not to exceed 14 calendar days from date of notice, to answer a notice of proposed discipline. The Fire Chief may grant an extension of the response period if the employee can demonstrate a reasonable need. Should an employee respond, the Fire Chief shall consider the response in reaching a decision on the proposed disciplinary action. The employee is entitled to respond in writing or orally, personally or through a designated representative, or any combination thereof. If the employee requests a meeting to present a response, the meeting shall not be conducted as an adversarial hearing.

The employee may not cross-examine the department's witnesses nor present a formal case to support the response. The employee shall be given the opportunity to make a representation the employee believes might affect the disciplinary decision. Any time extensions shall be permitted only with the consent of the Fire Chief. If the employee fails to respond within the time specified, the Chief may proceed with a decision.

The Chief has the right to conduct further investigations should new information be presented. If new charges result from the investigation, the employee shall be given another opportunity to respond.

#### H. THE FIRE CHIEF'S RESPONSE:

The Fire Chief shall provide a written answer to an employee's response at the earliest practical date, not to exceed 14 calendar days following the response of the employee. The Chief shall deliver the notice of decision to the employee at or before the time when the action will be effective. The answer shall be dated and signed by the Chief. The answer shall inform the employee if the notice of proposed discipline has been sustained. The answer shall include a statement of the employee's right to appeal, as provided herein. Additionally, the time limit for an appeal and the specific discipline to be imposed or the decision not to impose discipline shall be detailed in the answer. The effective date of discipline shall be included in the answer. Any time extensions shall be permitted only with the consent of the Chief.

#### I. APPEAL OF DEPARTMENT DISCIPLINARY ACTIONS:

Any employee may appeal imposition of discipline within 14 calendar days after the receipt by the employee of the Chief's answer. Appeals from discipline shall be in writing, signed by the employee, and delivered to the City Manager or designee. Where necessary, the City shall propose necessary modifications to this MOU, which are necessary to bring the MOU into conformance with Government Code § 3254.5 (FBOR.) To the extent required by law, the parties

shall then engage in the meet and confer process regarding the adoption of modifications to this MOU. However, pursuant to Government Code § 3254.5, the administrative appeal shall be conducted in procedural compliance with Section 11500 et. seq. of the Government Code.

#### J. APPEAL HEARING:

Pursuant to Government Code § 3254.5, the City Manager/Hearing Officer appeal shall be conducted in conformance with Section 11500 et. seq. of the Government Code.

##### A. DISCIPLINARY SANCTIONS NOT INVOLVING DISCHARGE, DEMOTION OR SUSPENSION FOR MORE THAN ONE (1) SHIFT/DAY

Pursuant to Government Code § 11445.20, the CITY shall use an informal hearing procedure in those situations where a disciplinary sanction against an employee does not involve discharge, demotion or suspension for more than one (1) day/shift. Section 11445.20, is specifically incorporated into Sections 11500 et. seq. (see Section 11501(c) above).

Accordingly, Section 11400 et. seq. is incorporated into this MOU, with specific reference being made to Section 11445.40, which provides the basis for an informal hearing in matters subject to Section 11400 et. seq.

In an informal hearing, the City Manager or designee shall be the presiding officer. The City Manager or designee shall conduct the informal hearing in accord with the procedural guidelines set forth in Section 11445.40-11445.60. The determination of the City Manager or designee shall be final and binding.

**B. DISCIPLINARY SANCTIONS INVOLVING DISCHARGE, DEMOTION OR SUSPENSION FOR MORE THAN ONE ('1) SHIFT/DAY.**

In those instances where the procedures in Sections 11400 et. seq. are inapplicable to an administrative appeal, the administrative appeal shall be conducted in procedural compliance with Section 11500 et. seq. Pursuant to Section 11512, the CITY has determined that in those instances that shall be presided over by an administrative law judge, the agency shall continue to hear the case through pre-existing processes (City Manager or Hearing Officer) with the administrative law judge presiding at the hearing pursuant to Section 11512(b). Accordingly, pursuant to Section 11517, it shall be the City Manager that shall issue the final decision, with the administrative law judge being present during the consideration of the case and if requested, providing assistance and advice to the City Manager or Hearing Officer in the conduct of its hearing.

Upon receipt of a timely letter of appeal, the City Manager shall set a time for a hearing. The hearing shall be held within 30 calendar days after receipt of the

appeal letter. The City Manager shall give not less than seven calendar days' written notice to the appellant, and any such person requesting same, of the time and place of such hearing. The appellant may appear personally and represent himself/herself or be represented by another of the appellant's choosing.

1. During the examination of witnesses, all other witnesses, except the parties, shall be excluded from the hearing, unless the City Manager, in his or her discretion and for good cause, otherwise directs.
2. No photography, still or motion, or voice recordings shall be taken during the hearing.
3. The City Manager, prior to or during a hearing, may grant a continuance for any reason deemed to be important to the manager in reaching a fair and proper decision.
4. The City Manager shall give all parties to the action a reasonable opportunity to be heard on relevant issues. The FIRE DEPARTMENT'S representative shall first present an opening statement and oral and/or

documentary evidence in support of the department's position. The appellant may present oral or documentary evidence and may cross-examine any witness called by the department. The appellant or their representative may make an opening statement on the appellant's behalf. The department's representative may cross-examine any witness called by the appellant. Both the department and the employee may present rebuttal evidence. The department may then make a closing statement, followed by the appellant.

5. The City Manager shall not be bound by technical rules of evidence.
6. The City Manager may, at the manager's discretion, appoint a hearing officer to conduct the hearing on the manager's behalf and to report findings and recommendations to the manager for final decision. In this case, a copy of the hearing officer's report shall be provided to the appellant.

#### **K. FINDINGS AND DECISIONS:**

The City Manager shall, within 14 calendar days after the conclusion of the hearing, render a decision to be prepared in writing. The City Manager shall determine whether the action of the Fire Chief is supported by the evidence. Should the City Manager find that none of the charges are supported by the evidence presented; the decision shall be that no disciplinary action be taken. A decision not to impose discipline shall be accompanied by a directive from the City Manager to delete all references to the appealed action from the appellant's personnel file. Should the City Manager find that any or all of the charges are supported; the manager shall affirm, overrule or modify in whole or in part the Fire Chief's disciplinary action. The City Manager shall cause a copy of the findings and decision to be delivered to the appellant and the appellant's designated representative. A copy will be forwarded to the Human Resources department for inclusion in the appellant's personnel file.

#### **L. APPELLANT'S STATUS DURING APPEAL PERIOD:**

If the pre-disciplinary meeting with the Fire Chief (H, above) results in a decision that discipline is appropriate, the disciplinary action shall be immediately implemented, with restitution/reinstatement, if any, being made following conclusion of the City Manager level appeal.

### **ARTICLE 4.03                      GRIEVANCE AND ARBITRATION PROCEDURE**

- A. Only matters involving interpretation application or enforcement of the terms of this MOU shall constitute a grievance under the provisions set forth here.

No issues whatsoever between the ASSOCIATION and the CITY shall be subject to grievance unless such issues result from an action or occurrence which takes place following the execution of this MOU.

- B. The aggrieved party shall also be given time off as necessary for the processing of his or her grievance.
- C. General Grievances: ASSOCIATION grievances involving the general interpretation application or enforcement of this MOU may be initiated with step two of this procedure. Grievances initiated at step two must meet the time limits set forth in step one.
- D. Time limits set forth in the grievance procedure with the exception of the initial time limit on the filing of grievances shall be exclusive of Saturdays, Sundays, and holidays.

**STEP ONE:**

All grievances must be filed in writing with the employee's immediate supervisor within 30 calendar days of the date that the grievant should have been aware of the act by the exercise of reasonable diligence with a copy to the Fire Chief; otherwise the right to file a grievance is forfeited and no grievance is deemed to exist. The immediate supervisor shall be required to give an oral answer within 5 days.

**STEP TWO:**

The grievance shall be considered settled in step one unless within 5 days after the immediate supervisor's answer is due the grievance is reduced to writing and presented to the Chief of the DEPARTMENT. Within 5 days the Chief of the FIRE DEPARTMENT shall furnish the employee with a written answer to the grievance, a copy of which shall be forwarded to the ASSOCIATION president.

**STEP THREE:**

If the grievance is not settled at step two, the CITY and/or ASSOCIATION may submit the grievance to an arbitrator as hereinafter provided. Arbitration may be resorted to only when issues arise between the parties hereto with reference to the interpretation, application, or enforcement of the provisions of this MOU. No item or issue may be subject to arbitration unless such arbitration is formally requested in writing within 30 days following the filing of the written response required by step two of the grievance procedure or the due date therefore. This provision is one of limitation and no award of any arbitrator may be retroactive for a period greater than 30 days prior to presentation of the grievance in step one as provided here or the date of occurrence whichever is later but in no event shall it be retroactive for any period prior to the execution of this MOU. Final and binding arbitration may be initiated by either party serving upon the other party a notice in writing of the intent to proceed to arbitration. Said notice shall identify the MOU provision the grievance or grievances the department and the employees involved. Unless the parties can, within 5 working days following the receipt of such written notice, agree upon the selection of an arbitrator either party may in writing request the State Mediation and

Conciliation Service to submit a list of nine arbitrators to both parties. Either party may, within 5 working days of receipt of said list, notify the other party and the State Mediation and Conciliation Service of its intent to reject the entire list submitted by the State Mediation and Conciliation Service. The State Mediation and Conciliation Service shall submit a new list, which shall not duplicate in any way the original list upon receipt of such notice. The option to reject the list may only be exercised by each party once per grievance.

The toss of a coin shall determine who shall eliminate first. By alternate elimination the remaining named person shall then become the arbitrator. The arbitrator shall neither add to nor detract from nor modify the language of this MOU in arriving at a determination of any issue presented that is proper for arbitration within the limitations expressed here. The arbitrator shall have no authority to change wage rates or salaries. The arbitrator shall expressly confine himself/herself to the precise issues submitted for arbitration and shall have no authority to determine any other issue not submitted to him/her or to submit observations or declarations of opinion which are not directly essential in reaching the determination. All expenses which may be involved in the arbitration proceedings shall be borne by the grievant and CITY equally. However, expenses relating to the calling of witnesses or the obtaining of depositions or any other similar expenses associated with such proceeding shall be borne by the party at whose request such witness or depositions are required.

The arbitrator so selected shall hold a hearing at Murrieta, California at a time and place convenient to both parties at the earliest possible date following the notification of a selection. The arbitrator shall take such evidence as in his/her judgment is appropriate for the disposition of the dispute. Statements of position may be made by the parties and witnesses may be called. The arbitrator shall have the initial authority to determine whether or not the dispute is arbitrable under the express terms of this MOU. If it is determined that the dispute is subject to arbitration, the arbitrator shall proceed in accordance with this Article to determine the merits of the dispute submitted to arbitration.

#### **ARTICLE 4.04                      LIMITATIONS ON GRIEVANCE ARBITRATION**

A. Arbitration shall be limited to:

1. An interpretation of the articles of this MOU and:
2. A grievance as defined herein arising out of the express terms of this MOU.

B. Arbitration shall not apply as regards disciplinary matters.

For the purposes of brevity, the term arbitrator as used subsequently shall refer either to a single arbitrator or a panel of arbitrators as the case may be.

No issue whatsoever between the ASSOCIATION and the CITY shall be arbitrated or subject to arbitration unless such issue results from an action or occurrence which takes place following the execution of this MOU and no

arbitration determination or award shall be made by an arbitrator which grants any right or relief for any period of time whatsoever prior to the execution date of this MOU or following the termination of this MOU.

In the event that this MOU is terminated for any reason, rights to arbitration thereupon cease. This provision however shall not affect any arbitration proceedings, which were properly commenced prior to arbitration or termination of this MOU.

It is contemplated by the provisions of this MOU that any arbitration award shall be issued by the arbitrator at the earliest date after completion of this hearing.

#### **ARTICLE 4.05                      FITNESS FOR DUTY**

The City and the Association agree that employees must be physically and mentally fit to perform the duties of the job in order to instill public confidence in the fire service. It is equally important that the dignity and rights of all personnel be respected and followed in the administration of fitness for duty examinations.

The Fire Chief or designee, in consultation with the Human Resources Director and City Manager may determine that a member who demonstrates behavior or performance that calls into question his or her fitness for duty may be required to submit to a physical or psychological fitness for duty examination.

When a fitness for duty exam is ordered, the member will be presented in accordance with *Skelly* and FOBAR and a written statement containing the facts that were used to make this decision.

The medical provider who performs the fitness for duty exam will be provided with the documentation detailing the performance and behavior issues as well as a job description.

An employee administratively relieved from duty pending a fitness exam shall be placed on paid administrative leave until the results of the examination are known to the Chief, City Manager, and Human Resources Director.

When the results of the examination indicate that the employee is fit to perform the regular duties of the position, the employee shall be returned to work on his or her next regular work shift.

When the results of the examination indicate the employee is not fit for duty, the employee will be placed on leave. An employee with no unused, accrued leave may be placed in an unpaid status.

The employee may request, or if there is a possibility that the cause is based on a work related issue, the employee will be offered, a DWC1. Determination of the compensability of the claim will be made following standard workers' compensation procedures.

If the results of the examination indicate that the employee is fit for duty with limitations, in accordance with ADA and FEHA, the City and the employee will meet in an interactive process to determine whether the employee's limitations can be reasonably accommodated, and the employee returned to work. If there is no reasonable accommodation that can be made, the employee shall be treated as though unfit for duty.

### **Exams**

The cost of the examination shall be borne by the City. An employee shall be paid for all time spent in the exam, including travel to and from the exam.

## **ARTICLE 4.06 PROHIBITION OF STRIKES**

- A. The ASSOCIATION, its officers and members, shall neither cause nor counsel its members or any of them to strike for any reason during the term of this MOU, nor shall it in any manner cause them to directly or indirectly to commit any concerted acts of work stoppage, slow down, or refusal to perform any customarily assigned duties for the employer, namely, the CITY, for any reason during the term of this MOU. The occurrence of any such acts or actions prohibited in this article by the ASSOCIATION shall be deemed a violation of this MOU.
- B. In applying the provisions of this article, all of its terms used here shall be given the meaning commonly understood.
- C. The ASSOCIATION shall not be liable where the acts or actions previously enumerated are not caused or authorized directly or indirectly by the ASSOCIATION.

## **ARTICLE 4.07 ASSOCIATION ACTIVITY**

- A. ASSOCIATION meetings may be held on CITY time for those personnel on scheduled duty and said meetings shall only be held after 1700 hours. ASSOCIATION meetings may be held on CITY property with the prior approval of the Fire Chief. Approval from the Fire Chief must be obtained prior to noticing any Association meeting which is requested to be held on CITY property.
- B. Representatives of the ASSOCIATION having business with the officers and individual members of the ASSOCIATION may confer with such officers or members during the course of the work day for a reasonable length of time provided that such activities do not impede the operation of the CITY.
- C. The ASSOCIATION shall advise the CITY, in writing, of its negotiators, and shall be limited to designating two (2) negotiators each calendar year. Representatives from the ASSOCIATION shall be paid regular salary for the time spent annually in negotiations during the regular work hours, except no payment will be made for negotiating time outside the representative's normal work day. The names of the

duly chosen representatives of the Bargaining Unit shall be submitted to the Fire Chief, sufficiently in advance of the regularly scheduled meetings, so as to permit the scheduling of operations within the CITY. The provisions of this MOU shall be limited to conferences or negotiations held with respect to wages, hours, and conditions of employment.

- D. The CITY shall provide space on bulletin boards at all stations, training centers, and each division and permit the use of the same for the ASSOCIATION announcements. A reasonable amount of time will be allowed members of the ASSOCIATION to post ASSOCIATION notices. A reasonable amount of time will be allowed members on duty to vote in ASSOCIATION elections and referendums provided, however, that on-duty personnel shall not be allowed to leave their assigned duty stations. The bulletin board will be subject to the following provisions. All notices shall be posted by an officer of the ASSOCIATION and shall relate to the following matters:
1. ASSOCIATION recreational and social affairs.
  2. ASSOCIATION meetings.
  3. ASSOCIATION APPOINTMENTS.
  4. ASSOCIATION elections.
  5. Results of ASSOCIATION elections.
  6. Reports of committees of the ASSOCIATION.
  7. Rulings or policies of the ASSOCIATION.
  8. Judicial and quasi-judicial decisions (affecting any members of the bargaining unit such as the results of fact finding, grievances, etc.).
  9. Any other material authorized by the Fire Chief. Notices and announcements shall not contain anything political or controversial, or anything reflecting upon the CITY, any of its employees or officers, or any labor organization among its employees, and no material, notices or announcements which violate the provisions of this article shall be posted. The Fire Chief shall approve notices and announcements.
  10. The ASSOCIATION shall have the right to use the mail systems, be allowed mailboxes in each station for the purpose of communication with the employees regarding ASSOCIATION and related activities.

ASSOCIATION notices, logos, decals, shall not be permitted on any CITY property or equipment.

- E. The ASSOCIATION may designate three representatives who may meet with the representatives of CITY management on an as needed basis to discuss matters pertinent to the welfare of the CITY and its employees. Topics to be discussed may include, but shall not be limited to, apparatus, equipment, health and safety, training and operating procedures. The provisions of this article are not intended as a method to satisfy the meet and confer obligations contained in Section 3500 et seq. of the Government Code.

**ARTICLE 4.08 NO SMOKING POLICY**

Safety members employed after May 1, 1989 shall as a condition of their employment refrain from smoking tobacco at any time on or off duty. Violation of condition of employment shall be deemed good cause for dismissal.

**ARTICLE 4.09 POLITICAL ACTIVITIES**

- A. Any employee entitled to vote in any public election shall be afforded the necessary time off to do so, in accordance with the provisions of the California Statutes, or any other means that is satisfactory to the CITY and the ASSOCIATION.
- B. Employees shall observe strictly all rules of the FIRE DEPARTMENT and the CITY relating to political activity insofar as they are applicable to hours spent on duty and campaigning after hours.

**ARTICLE 4.10 SUBSTANCE ABUSE POLICY**

The CITY and the ASSOCIATION have met and conferred and have established a Drug Free Workplace Policy. Employees shall be subject to the terms and conditions of that policy.

**ARTICLE 4.11 PAYROLL**

- A. The CITY agrees to payroll deductions based on signed statements of authorization from affected employees for insurance premiums, ASSOCIATION dues and other like requests.
- B. Direct Deposit. To increase payroll efficiency and reduce costs, employees will be required to have their pay checks automatically deposited to their bank accounts. If an employee does not currently have a bank account the CITY will work with the employee to establish an account with a financial institution.

**ARTICLE 4.12                      NON-DISCRIMINATION**

The CITY and its agents and the ASSOCIATION and its members shall not discriminate against any employee with regard to the hiring of any employee, or termination, transfers, promotions, exchanges, duty assignments, on the basis of race, creed, color, sex, national origin, marital status, political affiliation, age, membership in or association with the activities of any employee organization in compliance with the CITY'S Equal Opportunities Ordinance, California Statutes, title VII of the Civil Rights Act of 1964, and the term of this MOU.

**ARTICLE 4.13                      PERSONNEL FILES**

- A. Employees may review their own personnel and/or administrative file with the exception of pre-employment background examinations results and psychological test results, provided reasonable notice by written request is made to the CITY.
  
- B. The Employee shall make an appointment to review his/her administrative/personnel files with Human Resources Department at least one working day in advance and the CITY shall honor his/her request under normal conditions.
  
- C. Material derogatory to an Employee's conduct, service, character, or personality shall not be entered in an Employee's personnel or administrative file unless the Employee is notified and given an opportunity to review and comment thereon. The Employee shall be given a copy of the material on request. The Employee shall acknowledge that he/she has read and does not necessarily indicate agreement with its contents.
  
- D. Any Employee wishing to review his/her file while on duty under the provisions of this article shall first notify his/her supervisor and obtain approval for the necessary time. The supervisor shall not unreasonably withhold approval but may set reasonable time limits and schedules so as not to adversely affect CITY operations. The employee need not notify his/her supervisor if this review is not done on duty.

**ARTICLE 4.14                      LAYOFF POLICY**

In the event that a reduction in force becomes necessary, layoffs will be conducted based on seniority within job classification. In case of equal seniority within job classification, the employee with the highest score on the Battalion Chief Promotional Examination shall remain provided that he is not subject to a Performance Improvement Program or similar review period.

**ARTICLE 4.15                      FIREFIGHTERS BILL OF RIGHTS**

Nothing in this document shall be construed to limit or deny rights conferred upon Battalion Chiefs (including those in administrative assignments as Division Chiefs) by the Firefighters Bill of Rights.

**ARTICLE 4.16                      CELL PHONES**

The CITY will provide one cell phone for all members at no charge to the employees.

Dated: February 24, 2020

**CITY OF MURRIETA**

**MURRIETA FIRE  
MANAGEMENT ASSOCIATION**

By:   
Kim Summers  
City Manager

By:   
Mike Ramos  
President

**Attest:**

  
Stephanie Smith  
City Clerk



