



# CITY OF LEMON GROVE

## CITY COUNCIL STAFF REPORT

### Item No. 4

**Meeting Date:** August 6, 2019

**Submitted to:** Honorable Mayor and Members of the City Council

**Department:** City Manager's Office

**Staff Contact:** Lydia Romero, City Manager

**Item Title:** **Memorandum of Understanding with the Lemon Grove Firefighters Association Local 2728 of the International Association of Firefighters**

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**Recommended Action:** Adopt Resolution approving the Memorandum of Understanding between the City of Lemon Grove and Lemon Grove Firefighters Local 2728 of the International Association of Firefighters.

**Summary:** In Spring of 2018, the City of Lemon Grove (City) and the Lemon Grove Firefighters Association 2728 of the International Association of Firefighters (Local 2728) agreed to extend the previous Memorandum of Understanding (MOU), expiring June 30, 2018, for one additional year. In May of 2019, the City Local 2728 began negotiations on a new MOU. Staff has completed negotiations and presents a Resolution approving a 4 (four) year MOU for the City Council's consideration.

**Background:** In June of 2015, the City and Local 2728 entered into a three-year labor MOU. In spring of 2018, both parties agreed to a one-year extension of the 2015 MOU. The extended agreement expired on June 30, 2019. In May of 2019, the City and Local 2728 met to begin to negotiations on a new MOU. The City and Local 2720 representatives have been negotiating terms of a revised agreement and are prepared to present a document for City Council consideration.

**Discussion:** The following describes significant changes to the previous MOU:

*Term* – the MOU is for a 4 (four) year term, expiring on June 30, 2023.

*Employee Salaries* – the MOU reflects no cost of living adjustments in Fiscal Year 2019-20. In Fiscal Year 2020-21 there is a 1% cost of living adjustment; Fiscal Year 2021-22 a 2% cost of living adjustment; Fiscal Year 2022-23 a 3% cost of living adjustment.

*Retirement* – Classic members will contribute an additional 3% to their PERS retirement during the term of this MOU. This contribution will begin July 1 of FY 2020-21 at 1%, FY 2021-22 at an additional 1% and FY 2022-23 at an additional

1% for a total of 3%. Under the 2013 retirement law, Public Employees' Pension Reform Act (PEPRA), Classic members are those employees serving in public employment at the time the law was passed and have continued to be employed with a public agency. The City has to amend its PERS contract to allow for the additional contributions to be made by this class of employees. Staff will bring back the revision of the PERS contract to a future City Council meeting.

*Health Insurance Benefits* – the MOU includes an increase to the health only portion from \$150 per month to \$350 per month. Employees are given the opportunity to opt out of the City's health insurance plan. If an employee, covered by this MOU, opts out of health insurance they will receive \$300 monthly opt out payment. The employee must show they have health insurance comparable to the City's plan, and they must have been enrolled at least for one (1) year before that can exercise the opt out option.

*Flexible Insurance Benefit* – an increase of this benefit from \$750 to \$1000 per employee covered by this MOU. This contribution can be used for health insurance and any other benefit offered to employees in our flexible benefit package. There is no cash back if there are any remaining dollars.

*Life Insurance* – the City will increase the life insurance from \$10,000 to \$100,000 per employee.

*Bilingual Pay* – the MOU creates a monetary incentive, for those employees covered by this MOU, to use their bilingual skills in the course of their work. Employees will have to demonstrate verbal proficiency prior to receiving the incentive pay.

*Vacation Cap* – the MOU includes a cap on vacation accrual of 576 hours and allows for a cash out provision.

*Holiday Leave* – Adds another day to the conversion.

*Non-Monetary Items* – the MOU includes several non-monetary items which are:

- **Class and Compensation Study** - City shall conduct a Class and Compensation Survey for all Firefighter employees covered by this agreement. Only agencies surveyed are La Mesa and El Cajon with agreed to data points in the survey. A committee comprised of Fire Association members will make implementation recommendations to the City Manager. This committee needs to be convened by January 2020 with the survey results completed by July of 15<sup>th</sup> of 2020.
- **Acting Position** - Allows positions, specifically Captains, to work in the engineering position, with yearly skills test conducted by the training chief. This supersedes a previous side agreement.
- **MOU language changes** – these minor language changes reflect current operations and staffing model as well as grammatical fixes from the previous MOU.

Local 2728 has already voted and approved the tentative MOU.

**Fiscal Impact:** A budget adjustment will need to be made for the FY 2019-20 budget of \$73,800. In future budget years, the increased costs associated with this labor agreement will be incorporated into the overall Fire department budget.

**Staff Recommendation:** Adopt Resolution approving the Memorandum of Understanding between the City of Lemon Grove and Lemon Grove Firefighters Local 2728 of the International Association of Firefighters.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section   | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Notification: None**

**Attachment:**  
**Attachment A – Resolution**

**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE,  
CALIFORNIA, APPROVING A MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF LEMON GROVE AND LEMON GROVE  
FIREFIGHTERS ASSOCIATION, LOCAL 2728 OF THE INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS**

**WHEREAS**, a Memorandum of Understanding (MOU) became effective on June 30, 2015 between the City and Lemon Grove Firefighters Association, Local 2728 of the International Association of Firefighters (Local 2728), relating to wages, benefits and working conditions; and

**WHEREAS** the initial term of the 2015 MOU was set to expire on June 30, 2018; and

**WHEREAS**, in Spring 2018, the City and Local 2728 entered into an agreement approving a one-year extension of the 2015 MOU, resulting in a new expiration date of June 30, 2019, and

**WHEREAS**, the City entered into formal negotiations in May of 2019 with Local 2728; and

**WHEREAS** the City Council has considered the proposed MOU and has determined that its approval is in the best interest of the City.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California, hereby:

1. Approves the attached Memorandum of Understanding with Lemon Grove Firefighters Association, Local 2728 of the International Association of Firefighters (Exhibit 1); and
2. Authorizes the City Manager to execute said Memorandum of Understanding

**PASSED AND ADOPTED** on \_\_\_\_\_, 2019, the City Council of the City of Lemon Grove, California, adopted Resolution No. \_\_\_\_\_, passed by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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**Racquel Vasquez, Mayor**

**Attest:**

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**Shelley Chapel, MMC, City Clerk**

**Approved as to Form:**

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**Kristen Steinke, City Attorney**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
CITY OF LEMON GROVE  
AND THE  
LEMON GROVE FIREFIGHTERS ASSOCIATION, LOCAL 2728 OF THE  
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

**2019-2023**

This Memorandum of Understanding (“Agreement”) between the City of Lemon Grove (hereinafter “City”), and the Lemon Grove Firefighters Association, Local 2728 of the International Association of Firefighters (hereinafter “Local 2728”), sets forth the full and entire understanding of the parties regarding the City’s fire services and other matters set forth herein. Prior or existing understanding or agreements by parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

**PREAMBLE**

This Agreement is entered into pursuant to Government Code §§ 3500-3510 and has been jointly prepared by the duly appointed representatives of the City and Local 2728. It is the purpose of this Agreement to achieve and maintain harmonious relations between the City and Local 2728 to provide for equitable and peaceful adjustment of differences that may arise and to establish proper standards of wages, hours, and other conditions of employment.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees represented by Local 2728, have freely exchanged information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to employment conditions and employee/City relations of such employees.

**ARTICLE 1 – RECOGNITION**

1.1 The City recognizes Local 2728 as the “meet and confer” representative for represented public safety employees of the City involved in fire suppression.

This Agreement shall be applicable to the Battalion Chief, Captain, Engineer, and Firefighter/Paramedic classifications. This Agreement shall not apply to any other classifications within the City including any substitute or temporary employees.

## **ARTICLE 2 – MANAGEMENT RIGHTS**

- 2.1 The City, on its own behalf and on behalf of the electors of the City, hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by federal, state and local laws and ordinances, the Constitution of the State of California, and the Constitution of the United States, including, but without limitation, the rights:
- A. To determine and administer City policies, procedures, rules and regulations.
  - B. Subject to the provisions of the law, to hire all employees, to determine their qualifications and the conditions of their layoff, dismissal or demotion, and to promote and to transfer all employees.
  - C. To determine the number and kinds of personnel necessary for the efficient operation of the City and to direct their activities.
  - D. To determine staffing patterns and work schedules.
  - E. To determine City programs.
  - F. To build, move, or modify City facilities.
  - G. To develop and administer the City budget.
  - H. To determine the methods of raising revenue.
  - I. To take action on any matter in the event of an emergency.
  - J. To determine the need for technology and equipment upgrades.
  - K. To delegate to the City Manager, Fire Chief, and other legally appointed officers, the operation of the City, its properties and facilities, including but

not limited to innovative and experimental uses of the City's facilities and experimental and pilot investigation of new fire science programs.

- 2.2 Employees may be assigned City-owned vehicles, lockers, desks, cabinets and cases for the mutual convenience of the City and its personnel. All personnel are admonished that the retention of personal items in such vehicles, containers or facilities is at the risk of the employee and the City will not be responsible for any losses other than as specified in Article 20 (Reimbursement for Lost, Stolen or Damaged Property). Vehicles, containers or facilities in which equipment is stored shall be subject to entry by the City. A employee shall not have his or her locker or other space for storage that may be assigned to him or her searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained and unless he or she has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the City. It shall be the policy of the City to conduct searches in the presence of two City officers and the employee. If requested by the employee, the search must also be conducted in the presence of one Local 2728 representative.
- 2.3 The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of policies, rules and regulations, and practice in the furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms are in conformance with federal and state law.

### **ARTICLE 3 – TERM OF AGREEMENT**

- 3.1 This Memorandum of Understanding shall be effective as of 0001 hours on July 1, 2019, and shall remain in effect until 2359 hours on June 30, 2023. All financial terms of this contract shall remain in place unless agreed upon by both parties. On or about March 15 of each year, either party may choose to re-open the MOU in order to meet and confer on any non-financial items by notifying the other party in writing.

## **ARTICLE 4 – RULES AND REGULATIONS**

4.1 Local 2728 agrees that all of its members shall comply with all City policies, procedures, rules and regulations, including those relating to conduct and work performance. Unless specifically modified or superseded by this Agreement, all employees covered hereunder shall be subject to the rules established in the Lemon Grove Personnel Policies Manual (Manual) under Resolution No. 3085, as amended. Local 2728 also agrees to comply with the provisions of Chapter 2.32 (City-Employee Relations) of the Lemon Grove Municipal Code, which is incorporated herein by reference as amended.

## **ARTICLE 5 – HOURS OF EMPLOYMENT**

5.1 The average workweek computed over a one-year period shall be 56 hours. The schedule shall consist of a system of three platoons, 4's and 6's (based on a 24-day work cycle). The work cycle is established as follows:

Four shifts (24 hours on, 24 hours off)

Four consecutive days off

Four shifts (24 hours on, 24 hours off)

Six consecutive days off

5.2 Personnel may be assigned to a temporary, modified workweek to accomplish needed work for the City. The terms and conditions of assignment to such workweek shall be mutually agreed upon between the local and management.

## **ARTICLE 6 – SHIFT BIDDING**

6.1 To accommodate staffing in the fire department, the department uses a "bid" system process. This system allows employees to bid for a station assignment for the upcoming year. On or around January 1, every other year, all employees shall be allowed to bid for shift assignments based on seniority in rank. Any changes will be effective on or around February 1 of the same year. In the event that openings occur in between bid cycles, they will be filled in a similar fashion based on seniority.

The following guidelines are used in the annual bid system process:

- A. In years ending in an even number, the bid will be department wide with members allowed to move from shift to shift. In years ending with an odd number, the bid will be shift wide with members allowed to move within their shift only.
- B. The Fire Chief or his designee will conduct the bid each year.
- C. Captains will be allowed to select first based on seniority within the rank, with the senior Captain selecting first. All Captains will select a station prior to Engineers.
- D. Engineers will be allowed to select next based on seniority within the rank, with the senior Engineer selecting first. All Engineers will select a station prior to Firefighters.
- E. Firefighter will be allowed to select next based on seniority with the rank, with the senior Firefighters selecting first.
- F. New hires or promotions will be placed by management regardless of date, month or year.
- G. The Fire Chief reserves the right to make changes in station assignments, or place personnel to meet the needs of the department at anytime.

**ARTICLE 7 – EMPLOYEE SALARIES**

7.1 All covered members under this MOU shall receive the following Cost of Living increase, as described below:

July 1, 2019 – 0%

July 1, 2020 – 1%

July 1, 2021 – 2%

July 1, 2022 – 3%

7.2 City shall conduct a Class and Compensation Survey (“Survey”) for all employees covered by this agreement. The City will use a committee of 2 (two) City Administration personnel selected by the City and 2 (two) Fire Personnel, who shall be selected by Local 2728, as the Class and Compensation Committee

("Committee"). The Committee will use the cities of La Mesa and El Cajon as survey agencies. The survey shall use the following data points: Top Step Base Salary, Paramedic pay, Uniform pay, Education incentive, Employee PERS Pick up and Health Care contributions. The Survey shall include data through July 15, 2020. The Committee shall review results and make implementation recommendations to City Manager on equity adjustments. The Committee convene no later than January 2020 and the survey shall be completed no later than July 15, 2020.

## **ARTICLE 8 – OVERTIME COMPENSATION**

8.1 The City shall comply with the Fair Labor Standards Act (FLSA) as amended and as it applies to the fire service.

8.2 FLSA - Under the Fair Labor Standards Act, generally, an employer must pay an employee overtime for hours worked in excess of 40 hours per week. This overtime pay is one and one half (1½ ) times the regular compensation rate.

Under Section 207(k) of the FLSA, as interpreted by the Department of Labor, employees engaged in fire protection or law enforcement activities with 28 consecutive day work periods are entitled to one and one half (1½ ) times their regular compensation rate if they work excess hours. For fire protection employees, overtime must be paid for hours worked beyond 212 hours during the 28-day work period.

Approved leave time is considered as hours worked for the purposes of FLSA overtime calculation.

8.3 Every full time employee covered by this Agreement shall be eligible for overtime pay. There are three types of overtime: scheduled, voluntary and recall.

Scheduled overtime is the term used for the three hours worked each workweek in addition to the regular 53 hours, paid at time and one half.

Voluntary overtime includes all overtime worked to fill normal positions whether a full or partial shift. Voluntary overtime begins when the employee reports to the work location where the position is being filled. All forcebacks to cover normal

shifts are considered voluntary. Employees reporting for voluntary overtime shall be paid a minimum of two hours.

Recall overtime includes all overtime for which the employee is called back to work due to an emergency. The Fire Chief or his/her designee determines what constitutes an emergency. Recalled employees shall be paid overtime from the time of recall, for a minimum of two hours, for each recall and hour for hour beyond two hours. Employees on recall overtime shall be paid their current hourly rate.

- 8.4 It is the intent of the City to not compensate more than one employee to fill a normal position whether with regular or overtime pay.
- 8.5 Recalled employees shall be entitled to reimbursement for meals during the emergency for which they are recalled.
- 8.6 Employees shall not work more than 96 consecutive hours except during extreme emergencies as directed by the Fire Chief. 12 (Twelve) hours is normally considered a minimum break in duty.
- 8.7 Employees shall not be force hired in order to staff the annual bonfire event. The event shall be staffed by regularly scheduled shift employees and/or voluntary over time employees.

#### **ARTICLE 9 – TIME REPORTING AND USE OF LEAVE CREDITS**

- 9.1 All hours worked and leave credits taken shall be reported in 30-minute increments. 15 minutes or less shall not be reported. More than 15 minutes and less than 45 minutes shall be reported as 30 minutes. More than 45 minutes shall be reported as one hour.

## **ARTICLE 10 – EXCHANGE OF SHIFTS/EARLY RELIEF**

10.1 Exchange(s) of shift/early relief are privileges granted by the Fire Chief or his/her designee. The Fire Chief or his/her designee may deny shift exchange(s) at the time of request; the reason(s) for denial shall be substantiated at the time of denial.

10.2 Shift exchanges (“trade time”) shall follow these guidelines:

- A. The Shift Battalion Chief may grant shift exchange requests of less than 24 hours.
- B. Shift exchange requests of 24 hours or more must be approved by the Shift Battalion Chief and the Fire Chief or his/her designee and must be submitted at least 24 hours prior to the planned exchange of shift.
- C. All shift exchanges shall be rank for rank, inclusive of acting positions.
- D. Shift exchanges that would require a firefighter to work in excess of 96 consecutive hours shall be denied.
- E. All exchanges shall be completed within 12 months of the initial exchange.
- F. The responsibility to cover an assigned work shift remains with the employee assigned to such shift.

Approved shift exchanges shall be considered a normal, scheduled work assignment. If for any reason a shift exchange or any portion thereof is not worked, the employee that accepted the shift exchange for that shift shall be charged annual leave. If this occurs with an original shift exchange, a payback shift exchange shall still be owed for the full amount of hours agreed upon between the parties. All payback shift exchanges are considered fulfilled with hours worked or charged annual leave. In the event of an on-duty injury during a shift exchange, the City shall cover the remaining portion of such shift. Anyone who fails to fulfill a shift exchange (original or payback) twice in a six-month period may not be allowed to participate in any new shift exchanges for one year after the date of such failure.

- G. Shift exchanges of more than four hours are not allowed while an employee is working overtime.

#### **ARTICLE 11 – MINIMUM SUPPRESSION STAFFING**

- 11.1 The City agrees that the use of a constant minimum staffing model is more cost effective than utilizing an overstaffing model during the term of this Memorandum of Understanding. The City, therefore, shall utilize a constant minimum staffing model. Minimum daily staffing for the City shall be six (6) members per shift. The six shift positions shall be two captains, 2 engineers, and 2 firefighter/paramedics per shift. Except in the case of an anticipated absence of at least six months, as a result of injury, illness, military service, jury duty, or any other similar event, the City reserves the right to use temporary firefighters to fill the temporary vacancy.

#### **ARTICLE 12 – FIRST RESPONDER AND PARAMEDIC TERMS AND CONDITIONS**

- 12.1 A base annual paramedic recertification incentive of 3.3 percent of top Firefighter/Paramedic annual salary shall be paid in December.
- 12.2 Employees who maintain their paramedic status after reassignment or promotion shall receive the paramedic recertification incentive listed in Article 12.3.
- 12.3 Those employees originally hired as Firefighters/Paramedic shall maintain their certification as a minimum job requirement until promotion or separation.
- 12.4 Employees may not use City training or education reimbursement funds, referred to in Section 21.1, for the costs associated with EMT or paramedic recertification course, training or testing.

#### **ARTICLE 13 – ACTING POSITIONS**

- 13.1 Those acting in positions of a different rank shall comply with the regulations and orders of the position in which they are acting and shall be required to have knowledge of and be responsible and accountable for the proper execution of the duties of such rank. They shall be accorded all authority and privileges of the office in which they are acting, and shall be obeyed and respected accordingly.

- 13.2 Employees of a higher rank may voluntarily work in a position of lower rank (i.e., an Engineer working in a Firefighter/Paramedic position) only after the overtime list has been exhausted and prior to any forcebacks. Overtime voluntarily worked in a lower rank shall not prejudice the employee's position on the overtime list for their rank. Captains may work down as an engineer, as long as they have completed a yearly competency test that consists of a pre-trip check and cone and pump evaluation to verify competency as determined by the training Chief.
- 13.3 Employees being trained for another position shall not be compensated for the position for which they are being trained as long as the position is presently filled. The intent of this Article is to prevent two or more employees from being compensated for the same position at the same time.
- 13.4 Vacancies occurring on a planned or daily basis will normally be filled rank for rank from the voluntary overtime list. This would include any vacation or short-term sick leave or leave of absence. This does not preclude the ability of the City to fill long-term vacancies occurring due to sick leave, leave of absence or other circumstances with move up or qualified acting personnel. Long-term vacancies are normally defined as eight shifts or longer.

The City may use other methods of filling vacancies if it has knowledge that the vacancy will exist for eight shifts or longer. If no one from the vacant rank is signed up for voluntary overtime, then others of higher rank shall be offered the overtime prior to any force back.

If no employee, on or off duty, of equivalent rank or certified to act in the vacant position is available, the Fire Chief or his/her designee shall appoint the employee he/she feels most qualified to fill the vacant position until an equivalent or certified employee is available.

## **ARTICLE 14 – LIMITED DUTY**

- 14.1 Personnel on sick leave due to an off-duty injury or a non-contagious illness, and with the written consent of their physician, may, at the discretion of the Fire Chief, be allowed to return to work in a limited duty status.
- 14.2 Limited duty may include any one or more of the following or within the City operations, but shall not include emergency duties:
- A. Clerical duties,
  - B. Station maintenance,
  - D. Department runner (parts, supplies, mail delivery, etc.),
  - F. Fire prevention duties,
  - H. Other duties that may appropriately fall within limited duty status.
- 14.3 Limited duty is available at the discretion of the City and is contingent upon a need existing for both the City and the employee.
- 14.4 The existing needs of the City and the utilization of an eligible employee's special skills shall be a determining factor in the assignment of limited duty. Limited duty assignments may include assignments to duties in other City departments where the employee's special skills may be utilized. If more than one employee is on sick leave and limited duty is available, the alternating of personnel may be required. Other factors being equal, the employee with the longest sick leave should receive first consideration.
- 14.5 Limited duty shall not extend beyond 30 calendar days, unless reviewed and approved for extension by the Fire Chief in the same manner as the original request.
- 14.6 The granting of limited duty is with the understanding that the employee's injury or illness is of a temporary or nonpermanent nature only and the employee shall be expected to be able to return to full duty when physically able.

- 14.7 Return to full duty can only be accomplished by obtaining written clearance from the physician treating the employee. The employee shall, as soon as possible, notify the City regarding his/her medical status.
- 14.8 Personnel on limited duty shall continue to accrue annual and sick leave based on the prevailing workweek for that employee's full duty status.
- 14.9 Suppression personnel assigned to limited duty will be assigned to a 40-hour duty week and will not be eligible for time and one-half (1½) compensation until they exceed 40 hours per week.
- 14.10 The formula for converting a 56-hour workweek to a 40-hour workweek and back to a 56-hour workweek for sick leave and annual leave is (with all calculations rounded to the nearest one half hour):
- Total hours divided by 56 times 40 equal total hours on 8-hour day (subtract time)
- Total hours divided by 40 times 56 equal total hours on 24-hour day (add time)
- 14.11 Employees on leave due to an on-duty injury may be brought back on limited duty as soon as allowed by the treating physician. This may extend beyond the 30-day limit stated in Article 14.5.

#### **ARTICLE 15- PERSONAL EXPOSURE RECORD**

- 15.1 The City shall fund the cost of The California Professional Fire Fighters Personal Exposure Record for each employee covered by this agreement.

#### **ARTICLE 16 – INSURANCE BENEFITS**

- 16.1 During the term of this Agreement, the City agrees to provide each employee with health coverage pursuant to the Plans currently offered. City shall contribute \$350.00 per month towards the cost of health insurance coverage for the employee.
- 16.1 A. An employee may elect to waive the City's health insurance coverage and receive \$300 monthly Opt-Out payment in accordance with the terms of the cafeteria plan (including, but not limited to access to the

\$1,000 Flexible Benefits per 16.3 below and dental, vision, and supplementary insurance), and the Affordable Care Act, if the employee complies with the following conditions:

- 1) The employee certifies that the employee and all individuals in the employee's tax family for whom coverage is waived, have alternative Minimum Essential Coverage as defined by the Patient Protection and Affordable Care Act through a provider other than a federal marketplace, a state exchange, or an individual policy.
- 2) During the City's annual open enrollment period, the employee must complete an annual written attestation confirming that the employee and the other members of the employee's tax family are enrolled in alternative Minimum Essential Coverage. The employee agrees to notify the City no later than 30 days if the employee or other member(s) of the employee's tax family lose coverage under the alternative Minimum Essential Coverage Plan.
- 3) The employee understands that the City is legally required to immediately stop conditional opt-out payments if the City learns that the employee and/or members of the employee's family do not have the alternative Minimal Essential Coverage.
- 4) Employees must be enrolled in a City sponsored plan for one (1) year before they can opt out.

16.1 B The City reserves the right to modify at any time, the amount an employee is eligible to receive under this paragraph, if required by IRS Cafeteria Plan regulations, other legislation or Federal and/or California agency guidance.

16.2 Employee must participate in one of two dental insurance plans.

- 16.3 The City contributes \$1000.00 per month towards a flexible benefits package. The employee may contribute this amount plus any of his/her own funds towards any of the offered pre-tax benefits.. Certain premiums may be paid with pre-tax dollars. Two types of Flexible Spending Accounts are offered: Medical Expense Reimbursement and Dependent Care Reimbursement accounts.
- 16.4 The City will directly pay a separate health insurance benefit to all current and future retirees that are or have been employed by the City as of July 1, 2010. The separate health insurance benefit, which will be paid on a six-month basis, will be in the amount of \$200.00.
- 16.5 The City shall provide a \$100,000.00 Whole Life Insurance Policy to each covered employee.
- 16.6 Each covered employee hired after April 1, 1986 shall contribute 1.45 percent of salary for Medicare coverage. City shall contribute 1.45 percent of the salary of each covered employee for Medicare coverage.
- 16.7 If employees affirmatively elect, through a union-wide vote, to establish a Retiree Savings Accounts, City shall administer said program through payroll deductions on behalf of the employees.

#### **ARTICLE 17 – RETIREMENT BENEFITS**

- 17.1 The retirement benefits for the employees covered by this Agreement are as specified in the contract with the Public Employees' Retirement System (PERS). Said contract shall form part of, and be subject to all provisions of this Agreement.
- 17.2 If hired on or before December, 31, 2012, the employee shall pay the employee's 9 percent share of the retirement contribution. Beginning July 1, 2020, employee's shall pick up 1% (one percent) of the City's normal cost. On July 1, 2021, employee's shall pick up an additional 1% (one percent) of the City's normal cost, for a total of 2% (two percent.) On July 1, 2022, employee's shall pick up an additional 1% (one percent) of the City's normal cost for a total of 3% (three percent.)

17.3 The retirement benefit for employees hired on or before December 31, 2012 shall be based on a 3%@55 retirement formula and shall include:

- Final Compensation – 1 Year
- Sick Leave Credit
- Military Service Credit
- 1959 Survivor Benefit, Fourth Level
- EPMC Conversion

17.4 Retirement benefits of employees hired on or after January 1, 2013 shall be regulated through the Public Employees’ Pension Reform Act (PEPRA). CALPERS will determined if a new employee is a “classic member” (due to reciprocity) or a “new member.”

17.5 PEPRA regulations shall be determined by CALPERS. As of July 1, 2013, “new members” shall have benefits which include:

- 2.7%@57 retirement formula,
- Final compensation is the average of the last three years of employment,
- Employee is to pay an employee contribution equal to 50 percent of “normal cost,” and
- There shall be no Employee Paid Member Contribution (EPMC) for employees hired on or after January 1, 2013. The City shall not report any EPMC as special compensation or compensation earnable for employees hired on or after January 1, 2013.

17.6 Deferred compensation plans are available for employee participation through payroll deduction.

**ARTICLE 18 – UNIFORM ALLOWANCE**

18.1 All protective clothing and/or protective devices required of employees in the performance of their duties shall be furnished and maintained by the City, without cost to the employees, in accordance with State law and CAL-OSHA regulations.

All footwear with the exception of turnout boots are not considered protective devices for the purposes of this article although such footwear shall still meet any applicable safety standards.

- 18.2 Suppression personnel shall receive \$1,000 as a uniform allowance. Said allowance shall be paid in the 2<sup>nd</sup> pay period of July as a lump sum and reported to CALPERS.
- 18.3 The City shall provide a Class “A” uniform to each employee upon completion of the Fire Specialist requirements. Maintenance and repair of the Class “A” uniform shall be in accordance with Article 18.4.
- 18.4 The minimum amounts of uniform items in good repair maintained by each employee shall be established by City policy. Management, to ensure compliance with developed policy, shall conduct periodic inspections.

#### **ARTICLE 19 – BILINGUAL PAY**

- 19.1 The City agrees to provide certain employees an additional compensation (“Bilingual Pay”) in the amount of \$650 per year in exchange for use of bilingual skills. Bilingual pay shall compensate those employees identified by the City based on their bi-lingual proficiency and use of their bi-lingual skills. Bi-lingual pay will be paid on the 1st (first) pay period in December. To qualify and receive Bilingual pay, employees must pass a verbal proficiency test as deemed appropriate by the City Manager or designee.

The first pay out to qualified employees will be December 2019 which shall include any and all employees who have taken and passed the verbal proficiency test in 2019 and thereafter.

#### **ARTICLE 20 – REIMBURSEMENT FOR LOST, STOLEN OR DAMAGED PERSONAL PROPERTY**

- 20.1 Replacement of personal property lost, stolen, or damaged while on duty shall be compensated at full replacement value. These items would include eyeglasses, hearing aids, wristwatches damaged or destroyed (in a manner other than normal wear and tear), and items of personal property authorized to be in the

station that are stolen while the on-duty employee is out of quarters. Required uniform items damaged on emergency incidents shall be replaced on a prorated basis.

- 20.2 Lost, stolen or damaged items must be verified by a Captain or the Fire Chief or his/her designee during the shift the alleged loss, theft or damage occurred.
- 20.3 Items lost, stolen or damaged due to negligence are not covered.
- 20.4 Employees are responsible for securing personal items and ensuring station security to avoid loss or theft of personal items.

#### **ARTICLE 21 - EDUCATION AWARD**

- 21.1 Employees hired on or before December 31, 2013 are eligible for an education award who have achieved Fire Specialist rating (3 years of service), on or before December 1st of the year in which the award is given. Payment shall be made in a lump sum during the first pay period in December each year. The employee must present proof of degree completion to the HR Analyst prior to November 1<sup>st</sup> to be eligible for that year.
- 21.2 Those employees referred to in Section 21.1, that have earned AA/AS shall receive 1 percent of top Firefighter/Paramedic annual salary. Those employees referred to in Section 21.1 that have earned a BA/BS or higher shall receive 2 percent of top Firefighter/Paramedic annual salary. The education award shall be paid in December of each year.
- 21.3 Employees hired on or after July 1, 2013, after completing their probation period, shall receive a one-time education award of \$1,500.00 for possessing or earning a AA/S and \$3,000.00 for possessing or earning a BA/S. The employee must present proof of degree completion to the HR Analyst.

#### **ARTICLE 22- EDUCATIONAL REIMBURSEMENT**

- 22.1 The City shall provide \$1,000.00 for educational reimbursement for each employee according to the following schedule and requirements.

22.2 Courses , classes or conferences related to the employee's job responsibilities shall be eligible for reimbursement under this policy. Costs covered by this article include but are not limited to the following: tuition or registration fees, books, required and/or recommended items/supplies and reasonable travel expenses including lodging, travel and meals.

22.3 Reimbursement for attendance in these courses, classes or conferences must be pre-approved by the Fire Chief or his/her designee. Any dispute may be handled through the grievance process.

### **ARTICLE 23 – HOLIDAYS AND MODIFIED WORK SCHEDULES**

23.1 Holidays recognized by the City are as follows:

- |                               |                            |
|-------------------------------|----------------------------|
| 1. New Year's Day             | 8. Thanksgiving Day        |
| 2. Martin Luther King Jr. Day | 9. Day after Thanksgiving  |
| 3. Presidents' Day            | 10. Christmas Eve – ½ day  |
| 4. Memorial Day               | 11. Christmas Day          |
| 5. Independence Day           | 12. New Year's Eve – ½ day |
| 6. Labor Day                  | 13. Floating Holiday       |
| 7. Veterans' Day              |                            |

23.2 Modified work schedules shall be observed on all Sundays and Department Holidays.

23.3 Modified work schedule is defined as the completion of daily equipment check and physical fitness. Any reporting requirement necessitated by emergency activities shall be fulfilled. No other mandatory work requirements are normally scheduled during these days. Employees are encouraged to use this time for personal training or other constructive purposes.

23.4 The Duty Chief or Station Captain may suspend the modified work schedule privilege due to unexpected or urgent Department needs. If such suspension occurs, every effort shall be made to grant a modified work schedule day to those employees affected by such suspension within a reasonable time following the suspension of the modified work schedule.

23.5 The Fire Chief may order a modified work schedule day whenever he/she deems it appropriate.

23.6 The department may conduct one multi-company drill per quarter per shift on Sunday without necessitating a rescheduling of the modified work schedule day. Modified work schedules shall be observed in the station on the following recognized legal holidays (not the day before or after):

1. New Year's Day                      January 1
2. Martin Luther King Jr. Day        the third Monday in January
3. Presidents' Day                    the third Monday in February
4. Memorial Day                      the last Monday in May
5. Independence Day                 July 4
6. Labor Day                          the first Monday in September
7. Veterans' Day                      November 11
8. Thanksgiving Day                 the fourth Thursday in November
9. Day after Thanksgiving            the fourth Friday in November
10. Christmas Eve (½ day)            December 24
11. Christmas Day                     December 25
12. New Year's Eve (½ day)          December 31

23.7 No later than the second pay period in January of each year, each suppression employee shall be compensated at straight time for 6 holidays (144 hours) as compensation for holidays worked during the previous calendar year (January through December). This time will be put in their leave bank as holiday hours.

23.8 Suppression employees with less than five years of employment with the City may use 144 hours holiday leave throughout the year at a 1:1 ratio. At the end of each calendar year, suppression employees with less than 5 years of employment will have the option to cash out remaining hours at a 1:1 ratio or, in lieu of cash compensation, elect to convert remaining holiday leave hours to annual leave at a 1:1 ratio.

Suppression employees with more than 5 years of employment with the City may use up to 72 hours holiday leave throughout the year at a 1:1 ratio (up to three shifts) and the remaining 72 hours at a 1:1.5 ratio (two shifts). At the end of the calendar year, suppression employees with more than five years employment will have the option to cash out any remaining hours at a 1:1 ratio. Or, in lieu of cash compensation and based on hours already converted for the year, may elect to convert 72 hours holiday leave to annual leave at a 1:1 ratio (up to three shifts) and the remaining 72 hours at a 1:1.5 ratio (two shifts). Employees with more than 5 years of employment can only convert a maximum of 72 hours at a 1:1 ratio whether it is used throughout the year or converted to annual leave at the end of the year.

**ARTICLE 24 – ANNUAL LEAVE**

24.1 Annual Leave Earn Rates:

| <u>YEAR</u> | <u>56-HOUR EMPLOYEES</u> |
|-------------|--------------------------|
| 1-5         | 11.00 hours per month    |
| 6-10        | 15.00 hours per month    |
| 11-15       | 20.00 hours per month    |
| 16-20       | 22.00 hours per month    |
| 21+         | 24.00 hours per month    |

Employees begin earning the higher rate during the pay period in which his/her anniversary date falls (i.e., five years and one day = 14 hours per month earn rate).

24.2 All annual leave is to be charged on an hour-for-hour basis to the nearest half hour consistent with Article 9. No employee covered under this MOU will be allowed to accumulate annual leave hours that exceed a cap of 576 hours. When the employee reaches the maximum accrual he/she shall cease earning vacation leave until the balance falls below the maximum accrual. Forty (40) hour employees may not take more than four weeks off at any one time on their first choice of annual leave.

An employee may be granted vacation pay (at the employee's current hourly rate) in lieu of vacation time off with the approval of the City Manager. The number of days will be deducted from the employee's vacation accrual balance.

#### **ARTICLE 25 – ILLNESS/INJURY WHILE ON ANNUAL LEAVE**

25.1 Employees who are on authorized vacation and become ill or otherwise disabled through an accident may make a request to the Fire Chief to charge such sickness or disablement to credited sick leave, provided a physician's statement is presented to the Fire Chief.

#### **ARTICLE 26 – SICK LEAVE**

- 26.1 Employees working a 56-hour duty week earn twenty (20) hours of sick leave per month.
- 26.2 Sick leave is to be charged at the rate of hour for hour at the nearest half hour consistent with Article 9.
- 26.3 Safety employees covered by Labor Code section 4850 shall not be allowed to use sick leave for on-duty injuries.
- 26.4 In the event that an employee uses sick leave for more than three consecutive shifts, the City may require a health care providers' confirmation prior to any additional sick leave usage.

#### **ARTICLE 27 – FAMILY CARE LEAVE**

27.1 The City shall periodically review its policy regarding Family Care Leave to ensure conformance with all current state and federal laws that apply and shall provide amended verbiage for this Article if necessary to comply with such state or federal law.

#### **ARTICLE 28 – SICK LEAVE UPON RETIREMENT OR SEPARATION**

28.1 Upon retirement or separation (having worked for the City for a period of not less than five years), employees shall be paid for one-half of their accumulated sick leave hours. Pay shall be based upon vested amounts at the employee's pay

rate at the time the hours were earned (using the final pay rate each fiscal year for all time earned in that fiscal year).

28.2 Upon retirement, employees have the option to apply accumulated sick leave time toward retirement service credit on an hour-for-hour basis.

#### **ARTICLE 29 – BEREAVEMENT LEAVE**

29.1 In addition to annual and sick leave, employees shall be granted three consecutive working shifts leave with pay within a two-week period of a death of a family member (a maximum of 72 hours for 56-hour personnel, and 24 hours for 40-hour personnel). Additional leave is allowed, provided the employee uses his/her available annual or sick leave. Employees learning of the death of a family member while on duty shall, in addition, be given the remainder of that shift off.

29.2 For the purposes of this Article, “family member” is defined as the employee’s spouse, child, brother, sister, parent, parent-in-law, grandparent, grandchild or any person who is significant to the employee and is living in the same household.

29.3 Employees may use available sick or annual leave credits for time off due to the death of other family members not listed in Article 29.2.

#### **ARTICLE 30 – EMERGENCY TIME OFF**

30.1 Any emergency time off, not qualifying under the “Sick Leave,” “Family Care Leave,” or “Bereavement Leave” provisions, shall be charged against the employee’s available annual leave.

#### **ARTICLE 31 – LEAVE FOR JURY DUTY AND SUBPOENAED WITNESS SERVICE**

31.1 The City cooperates fully with local, state and federal courts in allowing employees to serve on juries without any financial loss. Any regular or probationary full-time employee who is required to serve as a juror, or who is subpoenaed as a witness in any court in a cause related to City matters, shall be entitled to a leave of absence with pay while performing services as a juror or as a witness.

- 31.2 Employees who are called for jury duty will receive full compensation according to Article 31.1 above, for that period of absence, provided they furnish verification of jury service to the Finance Department.
- 31.3 In the event that the absence of an employee from work would cause a hardship on the City, the City may petition the Jury Commissioner to excuse the employee from jury duty.
- 31.4 To insure proper shift coverage, an employee who receives a notice of jury duty shall, within 24 hours of receipt of notice, notify and present the notice to the Fire Chief or his/her designee.

#### **ARTICLE 32 – LEAVE FOR MILITARY SERVICE**

- 32.1 An employee requesting a leave of absence to meet military requirements shall be granted such leave without pay, together with reemployment rights as provided by federal and state laws in effect at the time.
- 32.2 An employee who wishes to voluntarily incur military obligation involving one or more periods of active duty must obtain prior approval of the City Manager. (Such voluntary military service shall be without pay.)
- 32.3 An employee, who wishes to voluntarily serve in the Military Reserve, National Guard, etc., shall be required to provide for his/her own time off. It shall not be the City's responsibility to provide time off, time off with pay, or standby overtime coverage for the employee. If the employee wishes, a leave of absence may be requested pursuant to Article 34.

#### **ARTICLE 33 – MATERNITY LEAVE**

- 33.1 An employee who becomes pregnant must notify her immediate supervisor of the pregnancy and the approximate date of delivery or such earlier date as she expects to begin a leave of absence.
- 33.2 An employee, who is disabled from performing her duties because of pregnancy, childbirth, or related medical conditions, may have a leave of absence without pay for the period of such disability not to exceed a total of four months. The

employee may use any accrued paid leave, such as annual or sick leave, before beginning an unpaid leave.

The four-month period of pregnancy disability leave of absence is a cumulative period, including all absences caused by the pregnancy. Within a reasonable time after delivery (usually six to eight weeks) the City may require an employee on pregnancy disability leave to provide her health care provider's statement of her fitness to return to work, ongoing disability, or work restrictions, if any. Before returning to work, the employee must provide her health care provider's statement of her fitness for duty.

- 33.3 A pregnant employee who wishes to continue working, but has work limitations resulting from the pregnancy, shall provide the City with a statement from her health care provider indicating all work limitations or restrictions. The City will make a reasonable effort to provide the employee with work that meets the limitations but, if no such work is available, the employee will be eligible to begin her pregnancy disability leave of absence. See Article 14 (Limited Duty) for additional information.

#### **ARTICLE 34 – CATASTROPHIC LEAVE BANK**

- 34.1 The City Manager may authorize the establishment of a catastrophic leave bank to benefit an employee stricken with a debilitating disease or illness, who has exhausted his/her own leave time, and who is not eligible for long term disability benefits. A donor employee may authorize the use of up to 25 percent of his/her accrued annual or sick leave by the catastrophic leave bank.
- 34.2 The catastrophic leave bank shall function until the leave time is no longer needed by the employee, the employee is eligible for long-term disability benefits, or the donated hours are exhausted.
- 34.3 The Finance Department will convert the donated time to its value, and reduce the donor employee's leave balance during the payroll process. If an individual employee's donated value exceeds the amount needed by the catastrophic leave bank, the donor employee's leave balance will not be reduced by the excess.

## **ARTICLE 35 – UNPAID LEAVE OF ABSENCE**

35.1 On occasion, it may be necessary for an employee to be absent from work for an extended period. A leave of absence for a limited period is permitted depending on the reasons and circumstances prompting such request. A leave of absence must be supported by valid reasons and approved by the City. Such leave shall be without pay.

- A. An employee desiring a leave of absence must present a written request to his/her immediate supervisor. The written request must contain the anticipated length of the absence with dates and circumstances prompting such a request.
- B. The immediate supervisor will forward the request to the Fire Chief, who shall review and act upon the request considering the following factors:
  - 1. The purpose for which the leave is requested.
  - 2. The length of time the employee will be away.
  - 3. The effect the leave will have on the ability of the Division to carry out its responsibilities.
  - 4. The employee's position and length of service.
- C. To be valid, a leave of absence must be confirmed in writing. An approved leave of absence will not be extended beyond the date of the initial written request without further written approval.
- D. An employee who has been granted a leave of absence shall give two weeks notice of intent to return to work and the City shall be under no obligation to reemploy him/her before the expiration of the approved return to work date. Failure to notify the City two weeks in advance may result in a delay of reinstatement of up to two weeks.
- E. A leave of absence for up to 30 calendar days may be approved by the Fire Chief. A leave of absence over 30 calendar days must be approved by the City Manager.

**ARTICLE 36 – EFFECT OF UNPAID LEAVE OF ABSENCE ON EMPLOYEE BENEFITS**

- 36.1 Time spent on unpaid leave of absence, except a mandatory military leave of absence, will not be counted as time employed or in determining an employee's eligibility for benefits that accrue based on length of employment.
- 36.2 An employee on unpaid leave of absence for one full pay period or longer, which includes the first day of a month is not entitled to the flexible benefit allowance. The City will pay the health insurance benefit only for the first month following the start of the leave of absence, providing the employee prepay the balance of the premium.
- 36.3 An employee on unpaid leave of absence may have his/her health and dental benefits continue, providing the employee prepay monthly in full the amount of premium necessary to maintain such benefits.
- 36.4 While on unpaid leave of absence, an employee shall not accrue or be paid for any holiday, annual or sick leave that he/she may have otherwise accumulated.

**ARTICLE 37 – REINSTATEMENT TO POSITION FOLLOWING UNPAID LEAVE OF ABSENCE**

- 37.1 The City will make every effort to reinstate an employee to the same position he/she previously occupied or to a similar position following an unpaid leave of absence.

If the City cannot guarantee that the same or a similar position will be immediately available at the time an employee desires to return to work, the employee shall be notified in advance of taking an unpaid leave of absence.

- 37.2 All personnel on an unpaid leave of absence of over 60 calendar days must have a routine physical examination, at his/her expense, prior to returning to work. Such employees must produce a signed copy of the Physician's Release of Ill or Injured Worker.

## **ARTICLE 38 – EMPLOYEE ACCESS TO PERSONNEL RECORDS**

- 38.1 A employee shall not have any comment adverse to his or her interest entered in his or her personnel file, or any other file used for any personnel purposes by his or her City, without the employee having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. However, the entry may be made if after reading the instrument the employee refuses to sign it. That fact shall be noted on that document, and signed or initialed by the employee.
- 38.2 A employee shall have 30 days within which to file a written response to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment.
- 38.3 Personnel Files shall be available to a employee under the following conditions:
- A. The City shall, at reasonable times and at reasonable intervals, upon the request of an employee, during usual business hours, with no loss of compensation to the employee, permit that employee to inspect personnel files that are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.
  - B. The City shall keep each employee's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request by the employee.
  - C. If, after examination of the employee's personnel file, the employee believes that any portion of the material is mistakenly or unlawfully placed in the file, the employee may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the employee describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the employee.

D. Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the City shall either grant the employee's request or notify the officer of the decision to refuse to grant the request. If the City refuses to grant the request, in whole or in part, the City shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the employee.

38.4 It shall be understood that all such materials shall be available for use in promotional considerations; however, no material shall be considered after three years from the date of occurrence.

38.5 In addition to all adverse action documents placed in an employee's file, all corrective measures taken to assist an employee with rehabilitation and/or to improve poor job performance shall be documented and placed in the employee's personnel file. It is the intent of this measure to show an employee's effort to correct any unacceptable job performance and/or behavior problems. It is the employee's responsibility to provide documentation of corrective measures taken outside of City direction or knowledge.

#### **ARTICLE 39 – GRIEVANCE PROCEDURE**

39.1 Applicability of Article. To the extent that the Firefighters Procedural Bill of Rights Act (Government Code Section 3250 *et. seq.*, as amended, "FPBORA") is applicable to the imposition of discipline of covered firefighters under this agreement, the remaining sections of this Article shall be applicable to the imposition of discipline. As to all other matters, Resolution Number 1723 shall be applicable to grievances and discipline not covered by the Firefighters Procedural Bill of Rights. Nothing herein is intended to limit the rights afforded to employees under FPBORA. An employee is not required to utilize and/or exhaust the grievance process when seeking to exercise the rights and protections afforded by FPBORA.

39.2. Definitions applicable to Article 39. For purposes of this Article, the following definitions apply:

- A. "Firefighter" means any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank. Sections 39.2 – 39.6, inclusive, do not apply to any employee unless they have successfully completed the probationary period established by his or her City as a condition of employment. If the City has decided to initiate a formal investigation of an employee who has not completed his or her initial probationary period, the probationary employee shall be considered a "firefighter", of the purposes of this Article and this Article shall apply to the conduct of the formal investigation. No provision of this Article shall be applicable to review procedures normally associated with an employee's initial probationary period.
- B. "Punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

39.3 Investigation Procedures. The Fire Fighter Procedural Bill of Rights (FPBORA) will be adhered to when conducting any and all investigations that could lead to punitive action.

39.4 Punitive Action – Procedures.

- A. A firefighter shall not be subjected to punitive action, or denied promotion, or be threatened with that treatment, because of the lawful exercise of the rights granted under this Article, FPBORA, or the exercise of any rights under any existing administrative grievance procedure.
- B. Punitive action or denial of promotion on grounds other than merit shall not be undertaken by the City against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal.
- C. Punitive action or denial of promotion on grounds other than merit shall not be undertaken for any act, omission, or other allegation of misconduct

if the investigation of the allegation is not completed within one year of discovery by the City. This one-year limitation period shall apply only if the discovery of the act, omission, or other misconduct occurred on or after January 1, 2008. If the employing department or licensing or certifying agency determines that discipline may be taken, it shall complete its investigation and notify the firefighter of its proposed disciplinary action within that year, except in any of the following circumstances:

1. If the firefighter voluntarily waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
2. If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
3. If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
4. If the investigation involves an employee who is incapacitated or otherwise unavailable.
5. If the investigation involves a matter in civil litigation where the firefighter is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.
6. If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
7. If the investigation involves an allegation of workers' compensation fraud on the part of the firefighter.

- D. If a predisciplinary response or grievance procedure is required or utilized, the time for that response or procedure shall not be governed or limited by this provision.
- E. If, after investigation and any predisciplinary response or procedure, the City decides to impose discipline, that agency shall notify the firefighter in writing of its decision to impose discipline within 30 days of its decision, but not less than 48 hours prior to imposing the discipline.
- F. Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a firefighter if both of the following circumstances exist:
  - 1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
  - 2. One of the following conditions exists:
    - a) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
    - b) The evidence resulted from the firefighter's predisciplinary response or procedure.

39.5 Administrative Appeal Rights. An administrative appeal instituted by a firefighter under this Article or the FPBORA shall be conducted in conformance with rules and procedures adopted by the employing department or licensing or certifying agency that are in accordance with California Government Code Section 11500 *et. seq.* (Chapter 5 of Part 1 of Division 3 of Title 2).

39.6 Performance of Official Duties. The rights and protections described in this chapter shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.

39.7 Except as set forth above, Resolution 1723 shall set forth the Grievance Procedure. This, or subsequent revisions, shall be applicable to all covered employees subject to this Memorandum of Understanding.

#### **ARTICLE 40 – UNION BUSINESS**

40.1 Employees, on a voluntary basis, may donate hours of annual leave, to provide time for their officers to conduct Local 2728 business.

40.2 Employees shall notify the Finance Department in writing of the amount of hours to be donated to the Local 2728 time bank. Once donated, all time remains in the bank. The City shall convert all hours donated into a monetary amount equal to the donating employee's hourly rate times the hours donated. The monetary amount necessary to cover the absence of a Local 2728 officer using the Local 2728 time bank would then be subtracted from the time bank as the time is approved and used. Only officers of the Local 2728, upon written request approved by the Local 2728 president and one other Local 2728 officer could draw time from this bank.

40.3 The Finance Director shall be responsible to maintain the Local 2728 time bank. The Local 2728 president shall notify the Finance Director regarding use of the Local 2728 time bank by any Local 2728 officer.

#### **ARTICLE 41 - DISCRIMINATION**

41.1 The City of Lemon Grove and the Lemon Grove Firefighters' Local 2728 shall not discriminate against any employee per Lemon Grove Personnel Policies Manual.

41.2 The City and Local 2728 shall reopen any provision of this Agreement for complying with any final order of a federal or state agency or court of competent jurisdiction requiring a modification or change in any provision or provisions of this Agreement in compliance with state or federal anti-discrimination laws.

#### **ARTICLE 42 – PROVISIONS OF LAW**

42.1 This Agreement is subject to all current and future applicable federal, state, and local laws and regulations of the City. If any part or provision of this Agreement is in conflict or inconsistent with such applicable federal, state, or local laws and

regulations, or is otherwise held to be invalid or unenforceable by any tribunal of competent jurisdiction such a part or provision shall be suspended and superseded by such applicable law or regulation, and the remainder of the Agreement shall not be affected thereby.

- 42.2 If any Article, part or provision of this Agreement will operate to withhold or prohibit the receipt of any state or federal funds, such Article, part or provision shall be suspended to the extent that the Article, part or provision operates to withhold or prohibit the receipt of such funds. In such instance, the City and Local 2728 will immediately meet and confer to discuss alternative proposals submitted by either party.
- 42.3 Should either the federal or state government or both, enact any mandatory wage and/or benefit freeze which would void, suspend or alter any part or provision of this Agreement, the City and Local 2728 agree that at such time as the provision of the wage and/or benefit freeze is lifted, the affected provision of this Agreement shall be restored as originally agreed upon, retroactively to the date of suspension or alteration insofar as allowable by law. Alternatively, should the parties mutually agree, they may jointly elect to renegotiate any provision voided, suspended or altered by such wage and/or benefit freeze.

#### **ARTICLE 43 – RENEGOTIATION**

- 43.1 In the event Local 2728 desires to meet and confer in good faith on the provisions of a successor Agreement, it shall serve upon the City its written request to commence meeting and conferring in good faith for such successor Agreement. Negotiations shall begin at a time mutually agreeable to the parties.
- 43.2 The City and Local 2728 agree to open negotiations for the next contract on or about March 1, 2023.

#### **ARTICLE 44 – IMPASSE PROCEDURES**

- 44.1 Either party may initiate impasse procedures pursuant to Lemon Grove Municipal Code section 2.32.130.

44.2 Nothing in this Article shall prohibit a more expeditious resolution of the impasse if such resolution is mutually agreed by both of the parties.

#### **ARTICLE 45 – LODGING DURING EMERGENCY INCIDENTS**

45.1 Whenever an employee is assigned to an out-of-the-City emergency incident for more than 24 hours and remains assigned to the incident, a motel room shall be provided for rest periods by the responsible agency whenever logistically feasible and provided for others assigned to that incident.

#### **ARTICLE 46 – EMERGENCY INCIDENT COMPENSATION**

46.1 Suppression staff covered under this MOU shall be compensated at 1.5 times at the regular rate of hours in excess of the normal work schedule when assigned to support emergency incidents. Compensatory time shall include the entire time of commitment, beginning at the time of initial dispatch from home base to the time of return to home base upon completion of assignment.

46.2 Battalion Chiefs and/or other staff on a scheduled 40-hour work week shall be compensated at 1.5 times at the regular rate of hours in excess of the normal work schedule when assigned to support emergency incidents. Compensatory time shall include the entire time of commitment, beginning at the time of initial dispatch from home base to the time of return to home base upon completion of assignment.

#### **ARTICLE 47 – BATTALION CHIEF 9/80 SCHEDULE ACCURALS**

47.1 Battalion Chiefs working a 9/80 Administrative schedule (if changed from suppression) shall have their sick leave and vacation banks converted to a 9/80 schedule. This is calculated by dividing 40 by 56.

47.2 In lieu of 144 holiday hours the Battalion Chief will observe the holiday scheduled layed out in the Personnel Manual and will receive a floating holiday in the same manner as other 9/80 fire staff.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers thereof on this 6<sup>th</sup> day of August, 2019.

CITY OF LEMON GROVE

LEMON GROVE FIREFIGHTERS  
ASSOCIATION

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Lydia Romero, City Manager

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Brad Maxfield, President