

Attachment #3



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF PASADENA

AND

PASADENA FIREFIGHTERS MANAGEMENT ASSOCIATION

December 9, 2013 – June 30, 2016

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PREAMBLE

- A. The Pasadena Firefighters Management Association, a recognized employee organization, hereinafter referred to as the PFMA, and the City of Pasadena, a Public Agency, hereinafter referred to as City, have been meeting and conferring consistent with Section 3500, et al, of the Government Code and have reached agreement.
- B. It is the intent and purpose of this Memorandum of Understanding (MOU) to set forth the total and complete understanding and agreement between the parties regarding wages, hours and other terms and conditions of employment; and this MOU constitutes the sole and entire existing agreement between the parties and expresses all contractual rights and obligations as negotiated by the parties.
- C. This MOU is in all respects subject to the provisions of the Pasadena City Charter, and laws of the State of California. A decision by the City pursuant to the City Charter that has a direct impact on the wages, hours or conditions of employment of those represented by the PFMA will be discussed with the PFMA prior to the implementation of such decision. This section does not preclude employees from raising grievances pursuant to the grievance procedure concerning such decision.
- D. It is recognized by the signatories to this Memorandum of Understanding representing the City and PFMA that this MOU has been entered into pursuant to Section 3505.1 of the California Government Code.

ARTICLE 1 RECOGNITION

- A. The City recognizes the PFMA as the exclusive representative bargaining unit for Fire Battalion Chief.
- B. Such representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. Any modifications to terms and conditions of employment are subject to the meet and confer process.
- C. The City will deduct the regular dues of employee members of the PFMA. Dues deduction shall be made only on the written authorization of the employee and shall continue in effect unless canceled by the employee upon voluntary written notice to the Human Resources Department.

ARTICLE 2 **TERM**

The term of this MOU is December 9, 2013 – June 30, 2016.

ARTICLE 3 **MANAGEMENT RIGHTS**

- A. Except as modified by this Agreement or by law, the City shall reserve and retain all its inherent and exclusive rights and authority of management which have not been abridged by this MOU or by law which includes the right to:
1. Supervise, hire, transfer, assign and schedule employees;
 2. Take disciplinary action for just cause;
 3. Relieve employees from duty because of lack of work or other legitimate reason;
 4. Determine services to be rendered;
 5. Utilization of technology and overall budgetary matters;
 6. Determine the procedures and standards of selection for employment and promotion;
 7. Determine the methods, means and personnel by which government operations are to be conducted;
 8. Determine the allocation and content of job classifications;
 9. Maintain the efficiency of governmental operations;
 10. Take all necessary actions to carry out its purpose and functions in declared emergencies; and
 11. Exercise complete control and discretion over its method of organization and the technology of performing its work.
- B. The exercise of these rights does not preclude PFMA from consulting about the impact these decisions have on wages, hours and other terms and conditions of employment, or raising a grievance on those matters pursuant to the grievance procedure.

ARTICLE 4 ASSOCIATION REPRESENTATIVES

The Association Officers shall be allowed reasonable time off to participate in meet and confer sessions with City representatives and represent members in grievance and disciplinary matters.

ARTICLE 5 NON-DISCRIMINATION

The provisions of the MOU shall be applied equally to all employees and the City and Union agree that they shall not unlawfully discriminate on any basis that is protected by law including participation in Association activities.

ARTICLE 6 NO STRIKE

- A. The parties to this Memorandum recognize their mutual responsibility to provide the citizens uninterrupted municipal services.

- B. No employee of the City of Pasadena shall instigate, participate, afford leadership to a strike against the City of Pasadena, or engage in any form of concerted action to withhold service from said City. Participation in any such strike or concerted action against the City shall constitute cause for discharge.

- C. The City agrees that it shall not lockout its employees during the term of this Agreement. The term "lockout" is hereby defined so as not to include the discharge, suspension, termination, layoff, failure to recall or failure to return to work of the employees of the City in the exercise of its rights as set forth in any of the provisions of this Agreement or applicable ordinance or law.

ARTICLE 7 MODIFICATION CLAUSE

Any agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall not in any manner be binding upon the parties hereto unless made and executed in writing by all parties hereto, and if required, approved and implemented by the City Council.

ARTICLE 8 SAVINGS CLAUSE

Should any part of this MOU be rendered or declared illegal or invalid by legislation, state or federal regulation, decree of a court, or any other body with jurisdiction over the City, such invalidation shall not affect the remaining portions of this MOU.

ARTICLE 9 **IMPASSE**

Should the possibility of agreement between the representatives of the City and the recognized employee organization be exhausted, the parties agree to resolve the impasse dispute(s) in accordance with the provisions of City Resolution 555 and the Meyers-Milias-Brown Act.

ARTICLE 10 **SALARIES**

A. **Salary Increases**

1. Effective the pay period following approval of the MOU, base pay will be increased by 2%.
2. Effective the pay period that includes July 1, 2014, base pay will be increased by 3%.
3. Effective the pay period that includes July 1, 2015, base pay will be increased by 2.5%.

B. **Salary Differentials**

1. The minimum rate of the salary range for Fire Battalion Chief shall be at least eighteen percent (18%) above top step of Fire Captain.

C. **Salary on Promotion**

1. Upon promotion from Fire Captain to Fire Battalion Chief, employees will be appointed to the position of Fire Battalion Chief at ninety percent (90%) of the maximum of the Fire Battalion Chief salary range.
 - a) Upon promotion from Fire Captain to Fire Battalion Chief (EMS Coordinator), an employee who possesses and maintains paramedic certification and works as a fully functional paramedic shall also receive the EMT-D bonus and \$150 per month. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571 (a)(4) Special Assignment Pay – Paramedic Coordinator Premium as special compensation.

D. Movement Through the Salary Range

1. Salary increases are granted based on merit. Movement through the salary range occurs in conjunction with an employees' annual performance evaluation.
2. Salary can never exceed the maximum of the published salary range.

ARTICLE 11 WORK SCHEDULES

A. Fire Battalion Chief may be assigned one of the following work schedules:

1. 4/10 work schedule which includes four ten hour days in each seven day work week. Employees working the 4/10 work 2080 hours per year.
2. 56 hour Shift schedule which includes a twenty-four hour shift every other day and after three shifts employees have four consecutive days off. Employees working the 56 hour shift schedule work 2912 hours per year.
3. The starting time for shift employees is 7:00 a.m. Should the City wish to change the shift start time, it will provide notice to PFMA and meet and confer on the impacts of the proposed change.
4. Definitions related to duty hours:
 - a) Shift – twenty-four (24) consecutive hours over two calendar days
 - b) Day – one-half of a twenty four hour shift (twelve hours)

ARTICLE 12 OVERTIME

- A. Fire Battalion Chiefs are designated as exempt from overtime under the Fair Labor Standards Act (FLSA).
- B. Fire Battalion Chiefs shall perform the hours of work necessary as determined by the Fire Chief. Employees may be required to work extended hours in excess of his/her normal work schedule as part of his/her regular compensation.
- C. A Fire Battalion Chief who is regularly assigned the 4/10 work schedule and who works outside regularly scheduled hours providing position coverage in Fire Operations for a 56 hour shift employee is compensated at time and a half base pay at the 56 hour rate for hours worked.

- D. A Fire Battalion Chief who is regularly assigned the 56 hour shift schedule and who works outside regularly scheduled shift assignment providing position coverage in Fire Operations for a 56 hour shift employee is compensated at time and a half base pay for hours worked.
- E. A Fire Battalion Chief assigned to work special events outside of his/her regularly scheduled hours is compensated with time and one half the forty hour rate for those hours. Employees who receive a same day cancellation for a special event shall be paid a four hour minimum at straight time.
- F. A Fire Battalion Chief may not receive overtime while also being compensated for any other hours of work.
- G. The Fire Chief or his/her designee may, at his/her discretion, authorize overtime for a Fire Battalion Chief who works extended hours on a scheduled basis or emergency basis. The overtime will be paid at time and one-half base rate of pay.

ARTICLE 13 SPECIAL ASSIGNMENT PAY

A. Management Merit Pay

Should the City reinstate the management incentive pay program (merit pay) previously suspended for other management units, the City agrees to reopen negotiations with the Association to discuss that subject only.

B. EMT-D Pay

Unit members who possess EMT-D certification receive 4% EMT-D pay calculated off of base pay. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571 (a)(2) Education Pay – Paramedic Pay as special compensation.

C. Shift Differential Pay

A Fire Battalion Chief assigned to the 4/10 work schedule will receive a 10% shift differential. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571 (a)(4) Special Assignment Pay – Shift Differential as special compensation.

D. Movie Detail

Fire Battalion Chiefs shall receive \$55 per hour in recognition of additional supervisory skills and abilities when assigned to work a movie detail. The minimum payment shall be 4 hours at \$55 per hour. If the event is canceled after noon of the day prior to the event, employees shall receive the 4 hour minimum pay at \$55 per hour. This compensation is considered special detail and is not reported as special compensation to CalPERS.

E. Bilingual Pay

1. Employees shall be eligible for bilingual pay pursuant to the City's bilingual policy.
2. Employees who pass the City's bilingual proficiency testing process are eligible to receive \$140 per month as bilingual pay. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) Education Pay – Bilingual Pay as special compensation.

F. California Incident Command Certification (300 Level)

1. The City shall provide to employees, upon completion of the California Incident Command Certification Systems for Strike Team Leader (300 Level), a one-time payment of \$1400.
2. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) Education Incentive as special compensation.

G. Chief Officer/National Fire Academy Executive Fire Officer Certification

1. The City shall provide to employees, who obtain the Chief Officer from the California State Fire Marshall's Office or the Executive Fire Officer Certification from the National Fire Academy a one-time payment of \$1400.
2. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) Education Incentive as special compensation.

H. Education Pay

Employees holding an Associate of Arts/Science degree from an accredited college shall receive education incentive pay of \$175 per month. Employees

holding a Bachelor of Arts/Science degree from an accredited college shall receive education incentive pay of \$275 per month. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) Education Incentive as special compensation.

I. Acting Assignments

Acting assignments shall be in conformance with Policy 3.10 of the City of Pasadena Manual of Personnel Rules, Practices and Procedures. Employees in a long term acting assignment shall receive at least a 5% increase to their usual rate of pay and shall receive any regular pay increases to the position the employee holds. Employees in acting assignments shall not be entitled to any other premium or incentive pay for specialized assignments or duties unless the employee continues to actually perform such specialized duties. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2, CCR 571(a)(3) Premium Pay – Temporary Upgrade Pay.

ARTICLE 14 **VACATION**

A. Vacation Accrual and Maximum

1. Vacation accrues on a per pay period basis as follows for 40 hour Battalion Chiefs:

Years of continuous City service	Hours accrued per pay period	Annual Accrual	Vacation Maximum Accrual
Six months of continuous service	1.85 hours	48 hours	96 hours
1 year – completion of 5 years	3.69 hours	96 hours	192 hours
6 th year	4.00 hours	104 hours	208 hours
7 th year	4.31 hours	112 hours	224 hours
8 th year	4.62 hours	120 hours	240 hours
9 th year	4.92 hours	128 hours	256 hours
10 th – 15 th year	5.23 hours	136 hours	272 hours
16 th year	5.54 hours	144 hours	288 hours
17 th year	5.85 hours	152 hours	304 hours
18 th year	6.15 hours	160 hours	320 hours
19 th year	6.46 hours	168 hours	336 hours
20+ years	6.77 hours	176 hours	352 hours

2. Vacation accrues on a per pay period basis as follows for 56 hour shift Battalion Chiefs:

Years of continuous City service	Hours accrued per pay period	Annual Accrual	Vacation Maximum Accrual
Six months of continuous service	2.79 hours	72 hours	144 hours
1 year – completion of 5 years	5.54 hours	144 hours	288 hours
6 th year	6.00 hours	156 hours	312 hours
7 th year	6.46 hours	168 hours	336 hours
8 th year	6.92 hours	180 hours	360 hours
9 th year	7.38 hours	192 hours	384 hours
10 th – 15 th year	7.85 hours	204 hours	408 hours
16 th year	8.31 hours	216 hours	432 hours
17 th year	8.77 hours	228 hours	456 hours
18 th year	9.23 hours	240 hours	480 hours
19 th year	9.69 hours	252 hours	504 hours
20+ years	10.15 hours	264 hours	528 hours

- a) Once an employee reaches the maximum accrual as set forth in the above chart, the employee is still permitted to accrue vacation

in the following 12 months at the rate he/she is entitled to accrue. However, the vacation earned above the maximum will be used in that 12 month period by the employee, cashed out if requested by the employee or lost at the end of that period if neither used nor cashed out. Thus, at the end of the 12 month period, the employee will have no more than the maximum accrual of vacation.

3. Vacation shall be taken in a minimum of one full shift (10 hours for 4/10 Battalion Chiefs and 24 hours for 56 hour shift Battalion Chiefs) unless approved by the Fire Chief or his/her designee.
4. Unit members may cash out up to one-half of the employees' vacation bank at his/her current base rate of pay.
5. Unit members who have identified a retirement date may request to cash out additional vacation hours in the twelve months preceding the retirement date.
 - a) 56 hour shift Battalion Chiefs may request to cash out one-hundred eighty (180) hours of vacation at their current base rate of pay.
 - b) 4/10 Battalion Chiefs may request to cash out one hundred fifty (150) hours of vacation at their current base rate of pay.
6. Vacation approval is subject to the process identified in the Fire Department policy. For efficient administration of the department, should the City Manager determine that vacation leaves of absence cannot be scheduled; the City Manager may authorize pay in lieu of vacation or allow accumulation of vacation above the maximum accrual.
7. Upon separation from employment, any accrued but unused vacation will be paid to the employee with the final paycheck at his/her base rate of pay.

ARTICLE 15

HOLIDAYS

- A. The following eleven days shall be observed as holidays for employees regularly assigned to work the 4/10 work schedule:
 1. January 1;
 2. the third Monday in January;

3. February 12;
 4. the third Monday in February;
 5. the last Monday in May;
 6. July 4;
 7. the first Monday in September;
 8. the Monday or Friday closet to November 11;
 9. the fourth Thursday in November;
 10. the day following the fourth Thursday in November,
 11. December 25;
- B. If any of the foregoing holidays fall upon a Saturday, the preceding Friday is the holiday in lieu thereof. If any of the foregoing holidays falls upon Sunday, the Monday following is the holiday in lieu thereof.
- C. When a holiday falls on a regularly scheduled work day, the employee will receive the day off with ten hours of holiday pay. When a holiday falls on a regularly scheduled day off, the employee receives ten hours of holiday pay in addition to his/her regular hours of work.
- D. Holiday pay for 4/10 employees is not reported as special compensation to CalPERS.
- E. Annually, 4/10 Battalion Chiefs receive ten floating holiday hours with the first paycheck in January.
- F. The following twelve days shall be observed as holidays for employees regularly assigned to work a 24-hour shift:
1. January 1;
 2. the third Monday in January;
 3. February 12;
 4. the third Monday in February;
 5. the last Monday in May;
 6. July 4;
 7. the first Monday in September;
 8. September 9;
 9. November 11;
 10. the fourth Thursday in November;
 11. the fourth Friday in November and;
 12. December 25.
- G. Shift employees shall be paid twelve (12) hours of holiday in-lieu pay for each holiday as the holiday occurs. The parties agree that to the extent permitted by

law, this is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571 (a)(5) Holiday Pay as special compensation.

- H. Shift employees who work both the day before and part of a designated holiday will be paid time and one half his/her base rate of pay for twelve hours (12) and straight time for the remaining twelve hours (12) of the shift.
- I. Employees who as a result of a shift trade work on a designated holiday will be paid the half-time portion of the overtime paid to employees working on the holiday. That amount will be reflected on the timesheet as six (6) hours at base rate of pay.

ARTICLE 16 **LEAVES OF ABSENCE**

A. **Sick Leave**

- 1. Sick leave may be granted for personal illness or injury; absences for medical, dental, and/or vision care appointments; or to attend to an immediate family member (as defined by California Labor Code Section 233) who is ill/injured and needs care as permitted by that law.
- 2. Every employee who is unable to report to work for his/her scheduled shift shall, in addition to reporting absences on Telestaff, call or have someone call the Deputy Fire Chief prior to the beginning of the scheduled shift to report the absence.
- 3. The Fire Chief or his/her designee has the authority to approve sick leave for unit members.
- 4. Unit members requesting to use sick leave for more than three shifts (i.e., 30 hours for a 4/10 employee or 72 hours for a 24 hour shift employee) shall submit a signed verification of the need for absence due to illness/injury or the need to care for a family member. The verification must be provided by the personal physician, osteopath, chiropractor, or Christian Science practitioner attending to the employee or family member, and presented to the employees' supervisor before returning to work.
- 5. A unit member who while on vacation becomes ill/injured and who provides a doctor's verification of illness/injury prior to returning to work that verifies that leave for injury or illness in excess of three days was required, may request that the vacation time be substituted with sick leave. Such requests are subject to approval by the Fire Chief.

B. Sick Leave Accrual

1. Effective January 1, 2014, unit members who work the 4/10 accrue eighty (80) hours of sick leave per year (3.08 hours per pay period) up to a maximum of 2080 hours.
2. Effective January 1, 2014, unit members who are 24 hour shift employees accrue one-hundred and twenty hours (120) of sick leave per year (4.62 hours per pay period) up to a maximum of 2080 hours.
3. Unit members who retire from the City may convert up to 2200 hours of accrued and unused sick leave to service credit pursuant to Government Code Section 20965.
4. Unit members may use sick leave for an immediate family member who is seriously ill and requires the employee's presence.

C. Workers' Compensation Leave

Workers' compensation benefits shall be granted as provided by law.

D. Military Leave

Military leave of absence shall be granted as provided by law.

E. Bereavement

1. Unit members may use bereavement leave due to the death of an immediate family member (spouse, registered domestic partner, child, step-child, parent, parent of spouse/registered domestic partner, grandparent, brother or sister).
2. Bereavement Leave is provided as follows:
 - a) 48 hours for shift employees.
 - b) 30 hours for employees working the 4/10 schedule.
3. Under special circumstances, the Fire Chief may authorize bereavement leave for the death of an individual not specified as an employee's immediate family member.

F. Maternity Leave/Reduced Work Week Schedule with Benefits

The City will provide an unpaid maternity leave of absence for up to six months, or a combination of unpaid leave for a maximum of six months combined with a reduced work week schedule of at least 20 hours or more per week for 40 hour employees (28 hours on average per week for shift employees). The total combination of unpaid leave plus the reduced work week schedule shall not exceed a total of nine months. In addition, while the employee under this policy is on an unpaid leave of absence or reduced work week schedule, the City will continue providing health and dental contributions to the employee as if the employee is on a regular full time paid status. The leave provided for in this section will run concurrently with California Pregnancy Disability Leave, California Family Rights Act leave, and/or Federal Family and Medical Care Leave to the extent such leaves are permitted by law.

G. Personal Leave

An employee may request an unpaid leave of absence for personal reasons. Such leaves of absence must be approved by the Fire Chief and the City Manager.

H. Jury Duty Leave

1. If a unit member is required to be absent from work to report for jury duty, the employee will notify their supervisor of the absence as soon as possible, including, a phone message the night before if the employee finds out via a phone recording that he/she must report the next day.
2. The employee shall be paid his/her regular compensation and benefits during the time of service required. The employee shall pay over to the City any and all fees received for such service, except those fees allowed for mileage.

ARTICLE 17

EMPLOYEE BENEFITS

A. Life Insurance

The City will provide life insurance and accidental death and dismemberment coverage for each employee in the amount of \$50,000.

B. Long Term Disability

The City will provide a long term disability plan that will provide for disability payments to employees under, at least, the following basic provisions:

1. Disability payments will commence on the 61st calendar day of the illness or injury.
2. Payments will be coordinated with deductible benefits as provided under the LTD plan, not to exceed a total of 50% of the employee's salary or a maximum of \$900 per month.
3. The maximum benefit period will be five years.
4. The City will pay the premium for the basic plan.
5. The City will make available supplemental LTD coverage, which employees may purchase at their expense.

C. Dental Care Program

1. The City will contribute 100% of the employee's PPO premium.
2. For employees covering one dependent, the City will contribute an additional \$71.67 per month above the employee only PPO premium.
3. For employees covering two or more dependents, the City will provide an additional \$85.40 above the employee only PPO premium.
4. Effective during the term of this agreement, if the City's contribution for dependent coverage for PFFA, Local 809 increase, equivalent increases shall be provided to bargaining unit employees. Application of this provision shall not result in a decrease in the contributions listed above.

D. Health Insurance/Employee Option Benefit Fund

1. The City of Pasadena participates in the CalPERS Medical program (per the Public Employee Medical and Hospital Care Act – "PEMHCA"). For employees enrolled in a CalPERS medical plan, the City contributes the required statutory minimum (per Government Code section 22892) toward the medical premium which is part of the EOBF allowance.
2. The Employee Option Benefit Fund (EOBF) allowance is used to offset health premium costs and includes the PEMHCA minimum.
3. Effective January 1, 2014, the EOBF allowance for employees enrolled in a medical plan offered through the City is:

Tier 1:	Employee Only	\$1,343.57
Tier 2:	Employee +1	\$1,343.57
Tier 3:	Employee +2	\$1,343.57

4. Employees in the unit as July 1, 2013 of who elect to opt out of medical coverage offered by the City because they have provided proof of medical coverage will receive an EOBF opt out allowance of \$1,228.57 per month which will be designated to the employee's deferred compensation account. Employees may elect to have 65% of the EOBF Opt Out allowance paid as cash in lieu of depositing the total allowance to a deferred compensation account offered by the City.

5. Effective, July 1, 2013 new employees hired by the City electing to opt out of medical coverage offered by the City because they have provided proof of medical coverage will receive an EOBF opt out allowance of \$400 per month which will be designated to the employee's deferred compensation account. New employees may elect to have 65% of the EOBF Opt Out allowance paid as cash in lieu of depositing deferring the total allowance to a deferred compensation account offered by the City.

6. During the 2013 - 2016 term of this agreement, should the City's contribution for PFFA, Local 809 increase, an equivalent increase shall be provided to bargaining unit employees. Application of this provision shall not result in a decrease in the contributions listed above. The parties agree that no modification will be made to PFMA's 2014 EOBF allowance until the City resolves its labor negotiations with PFFA. Should the result of those negotiations be an increase to PFFA's EOBF allowance that exceeds the PFMA 2014 allowance (as set forth above), and that increase has an effective date as of January 2014, the City will grant the same increase to PFMA retroactive to January 2014.

ARTICLE 18

RETIREMENT

- A. Retirement benefits shall be provided pursuant to the City of Pasadena's contract with the California Public Employees' Retirement System (CalPERS) and in accordance with the Public Employees' Retirement Law and CalPERS regulations.

- B. Unit members employed by the City of Pasadena on or before December 31, 2012 and unit members hired on or after January 1, 2013 who have less than a six month break in CalPERS covered service or who are

members of an agency with reciprocity, are provided the following retirement benefits:

1. Safety 3% @ 55 retirement formula (Section 21363.1)
 2. Final Compensation Period – One Year (Section 20042)
 3. Effective the pay period that follows City Council approval of this MOU, employees will pay three percent (3%) of the member contribution on a pre-tax basis. The City will pay and report the value of Employer Paid Member Contributions (per resolution) of 6%.
 4. Effective the pay period that includes July 1, 2014, employees will pay an additional three percent (3%) (for a total of six percent) of the member contribution on a pre-tax basis. The City will pay and report the value of the Employer Paid Member contribution (per resolution) of 3%.
 5. Effective the pay period that includes July 1, 2015, employees will pay an additional three percent (3%) (for a total of nine percent) of the member contribution on a pre-tax basis. The City will report the value of Employer Paid Member Contributions (per resolution) as 0%.
- C. Unit members hired on or after January 1, 2013 who are “new members” as defined in the Public Employees’ Pension Reform Act of 2013, are provided the following retirement benefits:
1. Safety 2.7% @ 57 retirement formula
 2. Final Compensation Period – A final compensation period based upon the highest annual average compensation earnable during the 36 consecutive months of employment immediately preceding the effective date of his or her retirement or some other period designated by the retiring employee.
 3. Unit members contribute one-half of the total normal cost toward retirement. Effective January 1, 2013 that amount is 12%.
- D. The City contracts for the following optional benefits which apply to all employees:
1. 1959 Survivor Benefit Level 4 (Section 21574)

2. Pre-Retirement Option 2W Death Benefit (Section 21548)
3. Pre-Retirement Death Benefits to Continue After Remarriage of Survivor (Section 21551)
4. Post-Retirement Survivor Allowance (Section 21624/26/28)
5. Post-Retirement Survivor Allowance to Continue After Remarriage (Section 21635)
6. \$500 Retired Death Benefit (Section 21620)
7. 2% Annual Cost of Living Allowance Increase (Section 21329)
8. Unused Sick Leave Credit (Section 20965)

ARTICLE 19 **RETIREE HEALTH**

- A. An amount equal to three percent (3%) of base pay shall be contributed by the City for designation to a post-retirement medical fund.
- B. The Association shall be solely responsible for maintaining and allocating funds from the post-retirement medical fund. The Association shall indemnify and hold harmless the City from any of its actions or lack of actions in administering the fund.

ARTICLE 20 **UNIFORMS**

- A. The City will provide uniforms, including the safety shoes, all of which will be replaced by the City as a result of normal wear and tear.
- B. In accordance with PERS regulations, the City will report a uniform value of \$750.00 per year to PERS for compensation purposes for each employee who is provided a City uniform. The parties agree that to the extent permitted by law, this is special compensation and shall be reported as such pursuant to Title 2, CCR 571(a)(5) Statutory Items – Uniforms. “New members” as defined under the Public Employees’ Pension Reform Act of 2013 will not have the value of the uniforms reported as special compensation.

ARTICLE 21 **REIMBURSEMENTS**

- A. Tuition Reimbursement

1. Employees pursuing a Bachelor of Arts/Bachelor of Science degree or higher in Fire Management, Public Administration, or other job-related field at an accredited college or university, shall be eligible for tuition reimbursement of up to one thousand dollars (\$1,000) per calendar year. Upon presentation of receipts and grade cards, employees will be reimbursed for the actual costs of tuition, books, lab fees, or other student expenses.
2. Eligibility for tuition reimbursement shall be in accordance with Section 4.10 – Tuition Reimbursement of the City of Pasadena’s Manual of Personnel Rules, Practices and Procedures.

B. Mileage Reimbursement

The City will provide reimbursement to the employee for use of his/her personal vehicle for authorized work related travel. Such reimbursement shall be equal to the rate allowed for tax deduction by the federal IRS for unreimbursed employee business expenses for the applicable calendar year.

ARTICLE 22 PROFESSIONAL DEVELOPMENT ALLOWANCE

Battalion Chiefs will receive a professional development allowance of \$750 per fiscal year.

ARTICLE 23 TRANSPORTATION DEMAND MANAGEMENT PROGRAM - PRIDESHARE II

Battalion Chiefs must participate in the PrideShare II program as identified in the City’s Personnel Manual of Policies and Procedures. Solo drivers are required to pay \$35 per month (\$17.50 per pay period). Shift employees will pay one-half of the solo driver fee (8.75 per pay period). Non-solo drivers have benefits provided per the policy.

ARTICLE 24 DISCIPLINE

- A. The City shall have the right to discipline and discharge employees for cause. Disciplinary actions will be consistently applied, taking into consideration the nature of the cause, the work history of the employee, and past disciplinary actions taken for similar cause. Work assignment will not be used as a disciplinary action.
- B. Disciplinary procedures will be in accordance with State law and the employee and the PFMA will be notified of the proposed action in writing and informed of

his/her rights to representation and grievance. The employee may request that the PFMA not be so notified.

ARTICLE 25 **PROBATION**

Fire Battalion Chiefs serve a twelve month (12 month) probationary period.

ARTICLE 26 **RULES**

The City (and the Fire Department) shall have the right to issue reasonable rules and/or regulations which do not conflict with the express terms of this MOU. Such rules will be discussed with and submitted to the PFMA prior to adoption. Such rules will be posted in conspicuous places and made accessible to employees prior to implementation.

ARTICLE 27 **GRIEVANCE**

A. **Definition**

1. **Grievance**: a dispute between an employee or employees and the employer regarding an interpretation or application of the rules and regulations governing conditions of employment.
2. **Employee**: A Fire Battalion Chief

B. **Guidelines**

1. An employee may file a grievance without jeopardizing the employee's employment. A grievance shall not be filed to establish new rules and regulations, change prevailing ordinances or resolutions, nor circumvent existing avenues of relief where appeal procedures have been prescribed.
2. An employee may select one of the following methods of representation. To most effectively utilize the grievance procedure, the method selected should generally be used throughout the processing of the grievance. The employee may:
 - a. Be self-represented
 - b. Be represented by another person
3. Once a grievance is presented and formal notification has been given to the department that the employee will be represented by another person in the grievance proceedings, then that representative shall be governed by this policy. The represented employee shall be entitled to:

- a. Notification of the time and place of the grievance proceedings and the opportunity to be present at such proceedings.
 - b. A copy of any written decisions or communications to the employee concerning the grievance proceedings.
4. A grievance may be initiated by the employee concerned, or PFMA on behalf of an employee, employees, or on behalf of the PFMA.
 5. An earnest and sincere effort shall be made by all parties to cooperate in the prompt resolution of a grievance in an amicable manner. The time limits may be extended when mutually agreed upon in writing between the appropriate parties. If the employee, or the employee's representative, fails to proceed with the grievance within any of the time limits specified herein, the grievance shall be considered settled on the basis of the last decision rendered.
 6. This is the sole and exclusive method for resolving grievances.

C. Grievance Procedure

1. Step 1 (Supervisor)
 - a) The employee shall orally present the grievance to the immediate supervisor within ten (10) working days following the event or events upon which the grievance is based. If the employee elects to be represented (per "Guidelines, Para.2") upon notification to the immediate supervisor, the employee may be assisted by a representative in presenting the grievance.
 - b) The immediate supervisor shall make whatever investigation deemed necessary and may arrange a meeting with the employee to discuss the grievance and, if possible, resolve it. In any event, the supervisor shall give an answer to the employee within ten (10) working days following the oral presentation of the grievance. If the employee has requested to be represented, the representative shall be given the opportunity to attend the meeting, and shall be informed of the immediate supervisor's decision on the grievance.

- c) If the employee is not satisfied with the decision of the immediate supervisor, upon indicating the specific areas of disagreement, appeal to Step 2 can be made.
2. Step 2 (Fire Chief/Director of Human Resources)
- a) If the employee desires to appeal the grievance to Step 2, there shall be submitted in writing the specific grievance and areas of disagreement on forms provided, to the Fire Chief, within five (5) working days following receipt of the immediate supervisor's decision at Step 1.
 - b) The written grievance must contain a complete statement of the complaint, the facts upon which it is based, the employee's reasons for the appeal, and the remedy being requested. The grievance form shall be signed and dated by the employee.
 - c) The Fire Chief and the Director of Human Resources, or their designated representatives, shall attempt to resolve the grievance and shall arrange a meeting with the employee and appropriate representative. A decision, in writing, shall be given to the employee within ten (10) working days following the receipt of the written appeal or conclusion of the appeal meeting, whichever is later.
 - d) If the employee is not satisfied with the Step 2 decision, upon indicating areas of specific disagreement, appeal of the grievance to Step 3 for resolution may be made.
3. Step 3 (Advisory Arbitration)
- a) If the grievance has been properly processed and is not satisfactorily resolved at Step 2, the employee may appeal the grievance to Step 3. The appeal shall be in writing, shall be signed by the employee, or PFMA representative, and shall be submitted to the Director of Human Resources within fourteen (14) calendar days of the written decision at Step 2.
 - b) If the employee is being represented, the employee may be assisted by a representative in the appeal.
 - c) Within five (5) calendar days after receiving the notice to appeal a grievance to Step 3, the parties shall request the Public

Employment Relations Board (PERB) to provide a list of seven (7) persons qualified to act as arbitrators.

- d) Within five (5) calendar days following receipt of the list of arbitrators, the parties shall meet to select the arbitrator.
- e) The arbitrator shall hold a hearing on the issue, or issues submitted. The arbitrator shall not hear witnesses without the presence of both parties. He or she shall render a written opinion within thirty (30) days following the closing of the hearing unless the period has been mutually extended in writing. The opinion, which shall be bound by the present MOU shall be advisory only, shall not be binding on either party, and shall be limited to the issue, or issues, presented to the arbitrator. The opinion shall be sent to the City Manager, with a copy to the employee.
- f) Within fifteen (15) calendar days following receipt of the advisory opinion, the City Manager shall advise the employee by letter whether or not he or she intends to take any further action regarding the issue, or issues, referred to in the arbitrator's advisory opinion. A copy of the City Manager's letter will be sent to the employee and PFMA.
- g) The City and PFMA shall contribute equally to the cost of facilities, fees and expenses of the arbitrator, including transcripts required which shall be determined in advance of the hearing. Each party shall bear its own witness and attorney fees.
- h) There shall be no arbitration of oral reprimands. The decision at Step II shall be the final administrative step.

ARTICLE 28

LAYOFF

- A. The City Manager shall have the authority to accomplish reduction in force.
- B. Procedure
 - 1. The City will make every effort to accommodate those employees who may be subject to layoff through the process of normal attrition.
 - 2. Within the bargaining unit, individuals will be laid off based upon seniority.

- a) Seniority is defined, for purpose of layoff, by the employee's continuous service employment date within a Pasadena Fire Department's management classification. If several employees have the same seniority in the management classification, seniority shall be determined by the employee's continuous service employment date with the City of Pasadena.
3. The layoff priority employment categories, shall be as follows:
 - a) Probationary, regular, full-time employees
 - b) Permanent, regular, full-time employees
- C. A management employee to be laid off shall be given written notice thereof at least two weeks before the effective date of the layoff. The department head may relieve the employee of further duties at any time after the notice is given. However, the employee shall receive full pay for any remaining portion of the two week notification period.
- D. Employees who may be laid off shall be certified to available vacancies for which they qualify.
- E. At the time of layoff, management employees may request to be placed on a Reemployment List for twenty-four (24) months provided their performance evaluation is rated "Above Average" or better, and shall be certified to vacant City positions within their job classification or classification series, if qualified. If the vacant position occurs in the department from which the employee was laid-off, reappointment shall be made.
- F. Employees who are laid off may remain in a lay-off status for a maximum of twenty-four (24) months and the following provisions shall apply:
 1. Employees will not continue to accumulate any longevity-based benefit during the period that they are laid off, but will retain any benefits accumulated to the date of layoff.
 2. Employee retirement and insurance benefits cease at the time of, and will not be paid during a layoff period.
 3. If employees are reinstated all rights and benefits will be restored as a regular employee from the date of first appointment within the period of the most recent continuous service, with an appropriate adjustment for the time that was not actually worked on the job.

4. Laid-off employees will have the option of receiving payment for any accumulated vacation at any time during the layoff period.
 5. Laid-off employees who are not recalled within the 24-month period will be completely separated from the City service and will automatically receive payment for any accumulated vacation which has not been previously claimed.
- G. At the discretion of the City Manager, an administrative assignment may be made, in accordance with Policy 3.13 of the City of Pasadena Manual of Personnel Rules, Practices and Procedures.
- H. Prior to the effective date of any layoffs, the City shall give notice to the Association and shall meet and confer on the impact of the layoffs. These negotiations shall include discussion of appropriate severance packages.
- I. Employees who are laid off shall receive a severance pay benefit based on the following terms and conditions:
1. Severance pay shall be at the rate of 70 percent of the employee's current monthly base salary. The employee will be entitled to one monthly payment for each year of continuous, regular employment, to a maximum of six payments. Severance pay will be reduced by the amount of unemployment compensation, if any, received by the employee so that the total payment does not exceed 70 percent of monthly salary.
 2. Severance payments shall be prepared with the regular payroll and paid at the end of each month that the employee has not been recalled for the duration of his/her benefit.
 3. Employee must have completed at least one year of service before being entitled to this severance pay.
 4. If the layoff is for less than one month, the employee shall receive a benefit proportional to the length of time of the layoff.

ARTICLE 29

ALCOHOL AND SUBSTANCE ABUSE PREVENTION

- A. It is the responsibility of the City, PFMA, and employees to maintain a safe, healthy and productive work environment. Therefore, employees shall not report for work under the influence of drugs, or alcohol, nor use or possess alcohol or illegal substances while at work, nor have their ability at work impaired as the result of the use of drugs or alcohol, as such conduct is likely to

result in reduced productivity, an unsafe work environment, poor morale, and a danger and liability to employees and the City.

- B. "Under the influence of drugs or alcohol" means the use of alcohol or any illegal substance, or misuse of a prescribed drug, in a manner and to a degree that causes impairment in the employee's work performance or the ability to use City property or City equipment safely.
- C. It is the responsibility of the employee to notify their supervisor before beginning work when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment.
- D. The parties agree to take all necessary steps to fulfill these responsibilities and minimize potential dangers.
- E. The City of Pasadena has established an Employee Assistance Program to assist those employees who voluntarily seek help for alcohol or drug problems. Employees who have job performance problems related to alcohol or drug abuse may also be referred to the Employee Assistance Program by the department administration.
- F. The parties to this MOU hereby adopt and support the Drug and Alcohol Prevention Policy attached to this MOU as Exhibit II.

SIGNATURE PAGE

The parties hereto have caused their duly-authorized representatives to execute this Memorandum of Understanding effective December 9, 2013.

CITY OF PASADENA

PASADENA FIREFIGHTERS
MANAGEMENT ASSOCIATION

Michael J. Beck, City Manager

Jon Trautwein, PFMA President

Kristi Recchia, Director of Human Resources

Sean English, PFMA Secretary/Treasurer

Peter J. Brown, Liebert Cassidy Whitmore

Kevin Costa, Deputy Fire Chief

Jaime Arellano, Management Analyst

EXHIBIT I

**City of Pasadena and PFMA
SALARY SCHEDULE**

Effective the beginning of the pay period following City Council approval, the rates of pay are as follows:

Fire Battalion Chief \$133,185.56 - \$148,199.28

Effective the beginning of the pay period that includes July 1, 2014 the rates of pay are as follows:

Fire Battalion Chief \$137,181.13 - \$152,645.25

Effective the beginning of the pay period that includes July 1, 2015, the rates of pay are as follows:

Fire Battalion Chief \$140,610.66 - \$156,461.39

Hourly Rate Conversion

4/10 schedule = annual salary divided by 2080 hours

56 hour schedule = annual salary divided by 2912 hours

EXHIBIT II

City of Pasadena and PFMA DRUG AND ALCOHOL POLICY

ARTICLE 1

PURPOSE

It is the purpose of this policy to ensure that unit members who perform their job do so free of the effect of alcohol or any substance (whether illegal or not), maintain a drug free work environment, to eliminate substance abuse and its effects in the workplace and to ensure that all employees are able to perform their duties safely and efficiently in the interests of the public, the City, their fellow employees and their own interests as well.

POLICY

The Association and the City recognize that drug or alcohol use in the workplace is a serious problem which can jeopardize employee safety, morale and productivity, and/or service to the public. The parties further recognized the importance of a safe, healthy and productive work environment and the need to eliminate any substance abuse in the workplace. The City and the Association agree that employees who use or possess illicit drugs or alcohol on the job have committed a violation of this policy. The City and the Association recognize that employees have a right to personal privacy and confidentiality as long as their conduct does not affect their ability to fulfill their duties to the employer. The goals of this policy are to prevent drug and alcohol use and impairment on the job and to encourage voluntary treatment and rehabilitation of those employees who acknowledge having a drug or alcohol problem that affects their ability to fulfill their employment duties. The City is supportive of those who seek help voluntarily and may authorize the use of earned sick leave, vacation or leave of absence. The City will be equally committed in identifying and disciplining those who continue to be substance abusers and do not seek help.

APPLICATION

This policy agreement applies to all employees holding classifications represented by the Association and pertains to alcohol, and to all substances, drugs or medications, legal and illegal, that could impair an employee's ability to effectively and safely perform the functions of the job. All testing pursuant to this agreement will be based solely upon "reasonable suspicion."

ARTICLE 2

NOTICE AND EDUCATION

- A. All bargaining unit employees shall be provided with a copy of this agreement. Newly hired employees represented by this association shall be given a copy of this agreement upon hire. Supervisors shall be familiar with the provisions of the agreement and shall be available to respond to questions. The City shall periodically disseminate educational materials regarding drug and alcohol use and abuse to all management as well as represented employees.
- B. All employees including management and supervisory personnel shall be trained, with periodic updating, to correctly identify symptoms of being under the influence of drugs and alcohol. Training shall include observation, documentation and reporting procedures and methods to identify workplace substance abuse. Any supervisor who has not received appropriate training shall be deemed incapable of having "reasonable suspicion" under this agreement unless such reasonable suspicion is consistent with the criteria outlined in Article 4 - C.

ARTICLE 3

PROHIBITED CONDUCT AND EMPLOYEE OBLIGATIONS

- A. No employee shall possess or use any illegal substance or drugs while on duty.
- B. While on duty, no employee shall bring onto City property or have in his or her possession or ingest any alcoholic beverage, controlled substance or drug, illicit or legal, unless such employee has lawfully been prescribed the controlled substance by his or her physician.
- C. Employees shall not present themselves for duty while under the influence of drugs or alcohol.
- D. The employee shall notify their supervisor of the effects or possible effects of medications or drugs, prescription, which may interfere with the safe and effective performance of equipment. The employee is not required to disclose the name of the drug or the reason for which the drug was prescribed.
- E. Employees must provide, within a reasonable period of time, bona fide verification of a valid prescription for any potentially impairing drug or

medication identified when a drug screen and confirming (Gas Chromatography-Mass Spectrometry) test is positive.

ARTICLE 4

REASONABLE SUSPICION DRUG TESTING

- A. The City may require an employee to submit to a medical evaluation or a drug screen only where it has a reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty, and where the specific procedures provided below are followed.
- B. Random, mass or individually scheduled testing of employees for drug or alcohol, which is not based on reasonable suspicion and not performed pursuant to the specific procedures described below, is prohibited by this article of the collective bargaining agreement.
- C. Reports of drug use or aberrant behavior which are not confirmed by specific observations as provided below shall not constitute reasonable suspicion.
- D. "Reasonable suspicion" exists only when all of the following elements are present:
 - 1. An employee observes another employee exhibiting aberrant or bizarre behavior, inability to do their job, using an illegal substance at the worksite, possessing drugs or alcohol at the worksite or other signs or symptoms of being under the influence;
 - 2. The employee's behavior or symptoms are observed and confirmed by a supervisor;
 - 3. The symptoms and/or behavior are of the type recognized and accepted by medical science as being under the influence caused by alcohol or controlled substances; and
 - 4. In determining if reasonable suspicion exists the supervisor shall consider other factors (such as, but not limited to, fatigue, lack of sleep, side effects of prescription and/or over the counter medications, reactions to noxious fumes or smoke, etc.) which may explain the behavior of the employee.

5. "Reasonable Suspicion" is a clear indication based on objective facts and personal observation of at least two employees, both who must be a supervisor to the employee, sufficient to lead a reasonably prudent person to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job safely, effectively and efficiently is impaired. For example, any combination of any of the following may constitute reasonable suspicion:
- a) Slurred speech;
 - b) Odor of an alcoholic beverage on breath;
 - c) Unusual, anti-social behavior which is so unusual that it warrants summoning a supervisor or anyone else with authority;
 - d) Unsteady walking and movement;
 - e) An accident involving the employee and/or equipment or property where the cause may be symptomatic of suspected use of drugs or alcohol;
 - f) Patterns of physical altercation;
 - g) Unusual behavior where the cause may be symptomatic of suspected use of drugs or alcohol;
 - h) Possession of alcohol or drugs unrelated to job responsibilities;
 - i) Information obtained from a reliable person with personal knowledge. The supervisor shall verify or corroborate such information prior to requesting or ordering an employee to submit to a drug test.
- D. The involvement of an employee in an accident or on-the-job injury shall not, standing alone, constitute the reasonable suspicion required by this agreement.
- E. Each supervisor, employee or other witness who observes on-duty conduct tending to establish reasonable suspicion will document in writing the specific symptoms or behaviors observed at the time of the observation. The supervisor must record the date, time and location of their observations.
- F. When a bargaining unit employee has reasonable suspicion that a management or other non-bargaining unit employee may be under the influence or impaired while on duty, the bargaining unit employee or employees may report that suspicion to the next level supervisor (up to and including the Department Head) who is then under an obligation to investigate.

ARTICLE 5

- A. If a supervisor or manager has reasonable suspicion that the employee is under the influence or impaired by a substance, he/she is required to document the reasonable suspicion in writing and then request that another supervisor or manager observe the employee to determine whether the other manager or supervisor can verify if the reasonable suspicion indicators are present or not. If they are not, the employee may not be subjected to testing. If there is confirmation of the reasonable suspicion indicators after observing the employee, the manager or supervisor may order the employee to undergo drug and/or alcohol testing.
- B. If the test results for a controlled substance and/or alcohol are positive, the employee will be subject to disciplinary action which may result in discharge.
- C. After careful review of the employee's record, with the approval of the Fire Chief, the employee may elect to enter a drug/alcohol rehabilitation program. If the employee fails to complete the rehabilitation program the City may initiate disciplinary action up to and including discharge. If returned to his or her former position and will be subject to random testing.
- D. If the employee meets the criteria for reasonable suspicion and refuses to comply with an appropriate order to submit to drug testing the employee must be advised that such refusal constitutes insubordination and that serious disciplinary action up to and including discharge may result.

ARTICLE 6

- A. Employees ordered to submit to a medical evaluation or drug/alcohol test shall be referred to a designated medical facility. The employee shall be driven to the clinic by a person designated by the City and may be accompanied by the PFMA or other representative if the employee chooses.
- B. The employee shall produce and submit a urine sample or blood specimen or other appropriate specimen for analysis.
- C. The employee can be required to submit urine samples in accordance with appropriate chain of custody procedures. The employee shall, upon request provide a blood sample or other specimen in lieu of a urine sample.
- D. The employee may request that the PFMA representative be allowed to accompany the employee (if available immediately) to the testing site and observe the process consistent with the chain of custody procedures.

- E. The collection of the specimen shall be in accordance with standard protocol procedures. All specimen containers shall be sealed with tamper-proof evidence tape and labeled with the employee's identification number in the presence of the employee and the PEMA representative, if applicable.
- F. All the testing shall be done by a laboratory certified by the National Institute on Drug Abuse (NIDA) and licensed by the State of California. Such laboratory shall perform such quality assurance measures as will ensure the accuracy of the results it reports.
- G. All samples shall be tested using a screening test such as Enzymes Multiplied Immuno Technology, Thin Layer Chromatography, High Pressure Liquid Chromatography or Antibody/Immunological testing. Following the screening test all positive samples must be subjected to a confirming test using Gas Chromatography-Mass Spectrometry (GC-MS). Both City samples must be determined to be "positive" on the screening and confirmation tests to be deemed positive.
- H. The standard for a finding of "positive" shall be in accordance with the standards established by the U.S. Department of Health and Human Services.
- I. Using scientifically accepted protocol a sample of the urine shall be set aside for independent testing at the employee's request for 180 days.

ARTICLE 7

INTERPRETING TEST RESULTS

- A. The results of the urine or blood test shall be reported to the Fire Chief/ Human Resources Director.
- B. If the results are negative, the physician or health care practitioner shall immediately report that fact to the Fire Chief/Personnel Director. The Fire Chief/Personnel Director shall notify the affected employee. When results are negative the employee shall be entirely vindicated of any wrongdoing related to substance abuse.
- C. If the sample is positive, it may be concluded that the employee was recently exposed to the drug. Neither the City nor the physician may conclude that the individual was under the influence on the job on the basis of the test results

alone. The City may consider the positive result together with the symptoms observed pursuant to Article 6 above, and form a judgment as to whether or not the employee was under the influence of alcohol or a controlled substance at the time of the test. Such conclusions shall be reported, in writing with the reason therefore, to the employee.

- D. The City shall, if requested, present the employee with a copy of all of the laboratory reports including, but not limited to all test results, computer printouts, interpretations, graphs, reports and chain of custody forms and a copy of all materials upon which a disciplinary action is based. If the PFMA and/or the employee elects not to have a split sample test within 120 hours the City can proceed with appropriate action.
- E. After considering the results of the split test performed for the employee, if presented, the City may impose discipline on the employee in accordance with Article 8, below.
- F. The City may discipline employees in accordance with the Discipline section of the MOU.
- G. Except as provided in Item D (above), the test results and other related lab test reports if any shall be transmitted directly to the Fire Chief/Director of Personnel and shall not appear in an employee's general personnel folder. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Fire Chief/Director of Personnel. The reports or tests results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in formal dispute between the employer and employee; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by medical personnel for diagnosis or treatment of the patient who is unable to authorize disclosure.

ARTICLE 8

VOLUNTARY TREATMENT OR REHABILITATION

- A. Employees on their own volition may seek voluntary assistance for alcohol or substance abuse problems without prejudice. Voluntary assistance does not include situations where the substance abuse problem has been discovered by

the City. An employee who seeks voluntary assistance shall not be disciplined or illegally discriminated against for seeking such assistance. Requests for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent.

- B. Treatment in such programs may be covered by the employee or by the group medical plan.
- C. Any drug or alcohol testing performed pursuant to a voluntary treatment or rehabilitation program shall remain confidential.

ARTICLE 9

MISCELLANEOUS PROVISIONS

- A. Confidentiality: Results of all urine and/or blood tests performed pursuant to this agreement will be considered medical records and will be held in confidentiality to the extent permitted by law.
- B. Notwithstanding any provision in this policy, the parties understand that the City may pursue administrative action based on internal investigation of off duty misconduct.
- C. Interpretation of Policy. Any dispute over the meaning or application of this agreement shall be resolved pursuant to grievance arbitration procedures of the collective bargaining agreement.
- D. No PFMA Liability. The City agrees to indemnify, defend and hold the Association harmless in the event of a lawsuit by an employee alleging that his/her civil or constitutional rights have been violated by agreement to this substance abuse policy. The City shall have the exclusive right to determine whether any such claim or suit shall or shall not be compromised, resisted, defended, tried or appealed.
- E. Conflict with Other Laws. This agreement is in no way intended to supersede or waive an employee's federal or state constitutional rights and/or protections.

ARTICLE 10

EMPLOYEE ASSISTANCE PROGRAM

- A. The City and Association encourage the voluntary utilization of Employee Assistance Program (EAP). All EAP contacts are held in strict confidence by the EAP unless the employee requests, through specific written release of information that the Human Resources Director, supervisor, bargaining unit or other parties to be notified.
- B. The employee's compliance with the EAP program is voluntary. Absent just cause, the employee's job security and/or promotional opportunities will not be jeopardized by voluntary participation in the EAP or any other treatment service. Use of the program does not represent absolution for unsatisfactory job performance or conduct.
- C. Sick leave can be made utilized for self referral appointments during regular work hours if the employee is unable to schedule them during off duty hours. Any earned leave time may be utilized for EAP participation. If any employee requires additional leave time he/she may request a medical leave of absence subject to approval by the Fire Chief.
- D. The EAP is available for assessment, diagnosis and referral to treatment. Any employee wishing confidential assistance can call the EAP provider and arrange an appointment with a counselor.