

Contract No. 10607 CCS

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF SANTA MONICA, CALIFORNIA
AND
FIRE EXECUTIVE MANAGEMENT ASSOCIATION
2017-2020**

TABLE OF CONTENTS

ARTICLE I. GENERAL PROVISIONS	1
1.01 Parties to Memorandum	1
1.02 Purpose	1
1.03 Term of Agreement	1
1.04 Union Recognition, Responsibilities, and Rights	2
1.05 Full Understanding, Modification, and Waiver	2
1.06 Management Rights	2
1.07 Peaceful Performance of City Services	3
1.08 Validity of Memorandum of Understanding	3
1.09 Equal Employment and Non-Discrimination	4
1.10 Definitions	4
1.11 Overpayment Remedy	5
1.12 Payments at Termination	5
ARTICLE II. COMPENSATION	7
2.01 Effective Date of Pay Increase	7
2.02 Salaries	7
2.03 Work Hours and Overtime	7
2.04 Acting Pay	8
2.05 Educational Incentive	8
2.06 Y-Rating	9
2.07 Tuition Reimbursement	9
2.08 Professional Development Program	10
2.09 Professional Dues	11
ARTICLE III. SUPPLEMENTAL BENEFITS	12
3.01 Health Insurance	12
3.02 Retirement	17
3.03 Uniform Allowance	19
3.04 Sick Leave Buy Back Program	19

3.05	Deferred Compensation	22
3.06	Mileage Reimbursement.....	22
3.07	Vacation Cash-Out.....	22
ARTICLE IV. LEAVES		24
4.01	Paid Holidays	24
4.02	Vacation.....	24
4.03	Sick Leave	25
4.04	Leave of Absence Without Pay.....	25
4.05	Jury Duty	25
4.06	Military Leave	26
4.07	Workers' Compensation Leave.....	26
4.08	Bereavement Leave	26
4.09	Parental Leave	26
4.10	Family Leave	27
4.11	Personal Leave	27
ARTICLE V. WORKING CONDITIONS		28
5.01	Safety	28
5.02	Effect of Job Performance on Salary	28
5.03	Washing Machines.....	29
5.04	Wellness	29
5.05	Entitlement To Use Of Department Vehicle	29
5.06	Employee Parking.....	29
ARTICLE VI. EMPLOYER/EMPLOYEE RELATIONS		31
6.01	Payroll Deductions	31
6.02	Reasonable Notice.....	31
6.03	Grievance/Complaint Policy	31
6.04	Disability Retirement Dispute Resolution Procedure	33
6.05	Performance Evaluation Appeal Procedure	34
6.06.	Disciplinary Appeals.....	36
6.07	Reopener	36

**MEMORANDUM OF UNDERSTANDING
FIRE EXECUTIVE MANAGEMENT ASSOCIATION
CITY OF SANTA MONICA**

ARTICLE I. GENERAL PROVISIONS

1.01 Parties to Memorandum

This Memorandum of Understanding ("MOU" or "Agreement") is made and entered into by and between the City of Santa Monica (the "City") and the Santa Monica Fire Executive Management Association ("FEMA"), in accordance with Government Code 3500 et seq. This MOU covers these employees in the classification listed in Section 1.04 below.

1.02 Purpose

The parties agree that the purpose of this MOU is: to promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences that may arise under this MOU, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by FEMA.

1.03 Term of Agreement

This MOU is effective as of July 1, 2017, and remains in full force and effect until June 30, 2020. This Agreement will be renewed on a year-to-year basis thereafter unless either party provides written notification to the other by March 1st of the desire to terminate or modify the agreement. Both parties agree to make every effort to schedule the first meeting no later than April 1st, with a signed contract desired by July 1st.

If the Agreement is renewed by mutual agreement of the parties all terms and conditions of the MOU shall remain in full force and effect except that employees represented by FEMA shall receive a general salary increase equal to the highest salary increase received by any other City bargaining unit during the renewal period.

For the purpose of this provision an equity adjustment granted to a specific

job classification represented by a bargaining unit shall not be considered a general salary increase (also known as a cost of living adjustment) for that bargaining unit. Salary adjustments implemented for employees in a bargaining unit that represents a single job classification are considered to be equity adjustments.

1.04 Union Recognition, Responsibilities, and Rights

A. Recognition - The City recognizes FEMA as the Recognized Employee Organization for the Unit of Representation consisting of employees in the following job classification:

Deputy Fire Chief

It is the mutual understanding of the parties that acknowledgment of FEMA as the recognized employee organization:

- (1) Does not preclude employees it represents from representing themselves individually in their employment relations with the City.
- (2) Does not preclude or restrict the right of management officials to meet and consult with employees it represents concerning their employment relations with the City.

B. Duty of Representation - FEMA agrees and shall assume its responsibilities as the recognized designated representative to represent all unit employees without discrimination, interference, restraint, or coercion.

C. Scope of Representation - The scope of representation of FEMA as the Recognized Employee Organization shall be in accordance with the applicable laws, statutes and ordinances of the State of California and the City of Santa Monica.

1.05 Full Understanding, Modification, and Waiver

The parties agree that each has had full and unrestricted right and opportunity to make, advance, and discuss all matters properly within the scope of representation. This MOU constitutes the full and complete agreement of the parties. Each party, for the term of this MOU, specifically waives the right to demand or petition for changes herein; however, both parties may mutually agree to meet and confer over items and issues contained herein.

1.06 Management Rights

The City retains all rights not specifically delegated by this Agreement, including, but not limited to the exclusive right to:

direct, supervise, hire, promote, suspend, discipline, discharge, transfer, assign, schedule, and retain employees;

relieve employees from duties because of lack of work or funds, or under conditions where continued work would be inefficient or nonproductive;

determine services to be rendered, operations to be performed, utilization of technology, and overall budgetary matters;

determine the appropriate job classifications and personnel by which government operations are to be conducted;

determine the overall mission of the unit of government;

maintain and improve the efficiency and effectiveness of government operations;

take any necessary actions to carry out the mission of an agency in situations of emergency; and

take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified above or by collective agreement and perform all other functions not specifically made subject to the meet and confer process elsewhere in this MOU.

1.07 Peaceful Performance of City Services

It is mutually understood that during the term of this Agreement, neither the City nor FEMA will participate in, encourage, assist or condone any strike, concerted work stoppage, cessation of work, slow down, sit down, stay away, or any other form of interference with or limitation of the peaceful performance of City services. In the event of any such action, the City may take disciplinary action and has available to it any and all remedies provided by law. And, the City agrees not to lock out employees represented by FEMA.

1.08 Validity of Memorandum of Understanding

If any provision of this MOU is determined to be invalid or illegal by a court of competent jurisdiction, then such provision shall be severed from this MOU, but the remainder hereof shall remain in full force and effect. The parties hereto shall

immediately commence to, in good faith, negotiate for the purpose of replacing any such invalid or illegal provision.

Should any change be made in any federal or state law, or in any rules and regulations implementing such legislation, or in any City Charter provision which would be applicable and contrary to any provision herein contained, then such provision of this MOU shall be automatically terminated, but the remainder of this MOU shall remain in full force and effect. Such legislation and rules and regulations shall supersede this MOU and applicable clauses shall be substituted for those ruled invalid or illegal. The parties hereto shall immediately commence to negotiate for the purpose of replacing any such invalid or illegal provision. Notwithstanding the foregoing, the parties agree to make no change in wages, benefits, accumulation of sick leave or vacation during the term of this MOU, other than those specified in this MOU.

1.09 Equal Employment and Non-Discrimination

FEMA and the City agree to adhere to the workplace policies set forth in the City of Santa Monica Administrative Instructions regarding anti-discrimination and anti-harassment as well as applicable federal and state anti-discrimination and equal employment opportunity laws.

Employees shall not be subject to intimidation, retaliation, coercion, or discrimination for exercising their legitimate rights under these policies.

1.10 Definitions

The following definitions are to be applied in the interpretation of this MOU:

- A. "Salary Range" means the normal five-step (1 through 5) hourly or monthly pay scale (and the bi-weekly equivalent) assigned to each employment position represented by FEMA.
- B. "Salary Range Steps 1 through 5" means and is established to bear the following percentage relationship to Salary Range Step 5 computed to the nearest dollar, with attainment based upon the following amounts of service in the position:

Step 1 - 81% of Step 5 - During first year of employment

Step 2 - 85% of Step 5 - During second year of employment

Step 3 - 90% of Step 5 - During third year of employment

Step 4 - 95% of Step 5 - During fourth year of employment

Step 5 - After fourth year of employment

- C. "Nearest Dollar" means the next lower dollar in a monthly rate when the computed amount is \$0.49 or less and the next higher dollar when the computed amount is \$0.50 or more.
- D. "Date of Entrance Anniversary" means the date that recurs annually after the date of entry into a position in the classified service of the City, either by original employment, re-employment or promotion. The date of entrance for employees with broken service shall be considered as that date on which the last unbroken service was effective.
- E. "Satisfactory Service" means the attainment of an Overall Performance Rating of not less than "Meets Overall Standards" on the performance evaluation immediately preceding the employee's date of entrance anniversary.
- F. "Hours of Work" means the established hours of work for represented employees. Represented employees shall work no less than 40 hours a week on a schedule convenient to the department and approved by the Department Head.
- G. "Pay Status" includes regularly assigned work hours actually performed. Pay status also includes pay for time not worked, such as sick leave (including bereavement leave), vacation, holidays, compensatory time off, jury duty, workers' compensation leave, and military leave.

1.11 Overpayment Remedy

Permanent employees covered herein shall reimburse the City for any overpayment of wages or benefits. Said reimbursement shall not be required until the City notifies the affected employee in writing. Reimbursement may be accomplished by a lump-sum deduction made on the next subsequent employee payroll warrant following overpayment notification, or by other reasonable repayment method mutually acceptable to the employee and the City, except that lump-sum deduction shall be required if the following employee payroll warrant is the final or termination warrant issued to the affected employee.

1.12 Payments at Termination

When permanent employees covered herein leave the service of the City, the employee will be entitled to lump sum payoff of vacation days, unused compensatory time, and unused deferred holidays, as defined in Section 4.01 of this Agreement. No claim shall be made against the City for the use or payoff of unused sick leave, nor shall the effective date of termination be extended by use of compensatory time, sick leave, vacation or personal leave days.

ARTICLE II. COMPENSATION

2.01 Effective Date of Pay Increase

Changes in salary and related benefits for promotions, demotions, and acting pay changes shall become effective on the actual effective date of the action. All other salary and related benefit changes shall be effective on the first day of the pay period closest to the actual effective date of the action.

2.02 Salaries

There will be no salary increase for fiscal year 2017-2018. Effective August 1, 2017 the classification of Deputy Chief 6.75% of base salary.

- A. Effective July 1, 2018, the Step 5 salaries of employees covered herein shall be increased by 2.5%.
- B. Effective July 1, 2019, the step 5 salaries of employees covered herein shall be increased by 2.5%.

2.03 Work Hours and Overtime

Represented employees are exempt employees under the Fair Labor Standards Act. As such, in addition to performing work during normal business hours of the City, they devote whatever time is necessary to accomplish the work of their offices without eligibility to accrue compensatory time or to be paid overtime compensation. As a result, these employees will not have to account for their work time on an hourly basis and will only need to account for each full day of absence that occurs on a regularly scheduled work day.

Employees are expected to work full-time, with full-time being defined as a minimum of 80 hours per payroll period. Regardless of their exempt status, employees will need to account for absences based on the work schedule established for the employee's work unit.

Where operationally possible, the Department may allow, with approval of the Fire Chief, an employee to "flex" his/her full-time work schedule if he/she is required to work unscheduled hours either during the employee's work week or on the employee's regularly scheduled day(s) off. Flextime is a scheduling arrangement that permits variations in an employee's starting and departure times or days worked, but does not change the overall total number of hours accounted for in a fiscal year. Employees are expected to coordinate flextime use with the Fire Chief.

2.04 Acting Pay

Whenever an employee covered hereunder is appointed in an acting capacity to the position of Fire Chief due to a permanent vacancy in the Fire Chief position, the employee shall be placed at the salary step of the Fire Chief classification which will result in a salary increase of at least 5% above the employee's current salary.

2.05 Educational Incentive

An educational incentive bonus is paid to all employees covered hereunder as follows:

- A. An employee shall be paid an amount equal to 2.9% of the 5th step base salary of a Firefighter per month as an educational incentive bonus for attaining a certification by the California State Fire Marshal as a Fire Officer or Prevention Officer III.
- B. An employee shall be paid an amount equal to 5% of the 5th step base salary of a Firefighter per month as an educational incentive bonus for attaining an A.A. or A.S. degree from an accredited college or university which includes at least 18 units in fire science.
- C. An employee shall be paid an amount equal to 4.7% of the 5th step base salary of a Firefighter per month as an educational incentive bonus for the completion of satisfactory course work as follows:
 - (1) Certification as a Fire Officer plus completion of 18 units of upper division management courses either from an accredited college or university or through the State Fire Marshal program plus completion of nine years of service with the Santa Monica Fire Department, or
- D. An employee shall be paid an amount equal to 5.4% of the 5th step base salary of a Firefighter per month as an educational incentive bonus for attaining certifications as follows:
 - (1) Certification by the California State Fire Marshal as a Chief Officer; or
 - (2) Certification by the California State Fire Marshal as a Fire Marshal with both an Investigator I and Investigator II certification.

- E. An employee shall be paid an amount equal to 5% of base salary per month as an educational incentive bonus for earning a Bachelor's degree from an accredited college or university which includes at least 36 units in fire science.
- F. An employee shall be paid an amount equal to 7% of base salary per month as an educational incentive bonus for earning a Master's degree from an accredited college or university which includes at least 36 units in fire science.
- G. Application for the educational incentive for either first-time eligibles or those who become eligible for a higher level of educational incentive, accompanied by either a report card, transcript, or certificate of completion by the issuing agency, may be made only after all the required course work has been completed and shall be made effective with the first payroll period following the date on which the required documentation has been submitted to the Human Resources Department.
- H. The Human Resources Department shall administer the educational incentive benefit described herein. The Human Resources Director, or his/her designee, shall make the final determination as to whether or not an employee covered by this provision qualifies for educational incentive and, if said employee qualifies, the level of educational incentive to be received by that employee.

2.06 Y-Rating

When a personnel action, e.g., demotion due to reorganization or reclassification, results in the lowering of the incumbent employee's salary range, the incumbent employee's salary may be Y-rated. "Y-rated" means the maintenance of the incumbent employee's salary rate at the level effective the day preceding the effective date of the personnel action placing the employee in a lower salary range. The employee's salary shall remain at such level until the salary range of the new classification equals or exceeds the Y-rate salary.

The provisions of this Section do not apply to a demotion in lieu of a layoff.

2.07 Tuition Reimbursement

The City will reimburse each represented employee for the cost of tuition, required study materials, and expenses for career improvement or job enhancement courses approved by the Fire Chief and subject to appeal to and approval of the Director of Human Resources or his/her designee.

Reimbursement shall equal the total cost of tuition including lodging, meals, and travel, based on approved travel guidelines and the total cost of required study materials, provided, however, that:

- A. The maximum annual amount of reimbursement per individual employee shall not exceed \$2,500 per fiscal year.
- B. The course of study must be approved in advance by the Fire Chief and the Director of Human Resources or his/her designee.
- C. The course must be directed to qualifications for an employment position represented in the City work force or to enhancement of current job skills.
- D. The employee must exhibit some reasonable expectation of qualifying for the new position upon successful completion of the study course if that was the reason for the course.
- E. The tuition and other covered expenses shall be paid in advance by the City upon the pre-authorization of the course by the Fire Chief and the Director of Human Resources or his/her designee.
- F. In no event shall the City's reimbursement be reduced when there is an outside source of aid except in those cases where the aid from any outside source, plus the normal City reimbursement, exceeds the cost of tuition and study materials for the approved study course.
- G. Courses for which tuition reimbursement will be made must be taken on the employee's time or on authorized vacation.
- H. The procedure to be followed with regard to the administration of the tuition reimbursement program shall be established by the Human Resources Department.
- I. If the employee does not pass the pre-authorized course or separates from City employment before completing the course, the employee will be required to reimburse the City for any payment made under this provision.

Subject to the provisions above, the tuition reimbursement program shall be used towards the pursuit of a college degree from an accredited college or university.

2.08 Professional Development Program

Represented employees are eligible to attend, at City expense, professional seminars, conferences, workshops, and classes, inclusive of reasonable travel,

parking or accommodation expenses, at the discretion of the Fire Chief.

2.09 Professional Dues

The City agrees to pay the dues of an employee covered herein who belongs to professional organization(s) in his/her career field, provided that the following criteria as determined by the Fire Chief are met: (1) the professional organization is related to the employee's job duties and responsibilities; (2) the cost of the dues is reasonably related to the benefit to the City as a result of the employee's membership in the organization); and (3) the employee has received the prior approval of the Fire Chief for the payment of dues.

ARTICLE III. SUPPLEMENTAL BENEFITS

3.01 Health Insurance

A. Medical Insurance

Each employee covered by this Agreement desiring to be covered hereunder may contribute, on a pre-tax basis, monies into an Internal Revenue Code Section 125 plan established for the purpose of enabling employees to pay for IRS qualified health care costs which are the responsibility of the employee. This plan is known as a Flexible Benefit.

Each employee covered hereunder desiring to be covered by the City's medical insurance plan may contribute, on a pre-tax basis, monies into the Internal Revenue Code Section 125 plan. Those monies can be used by the employee to pay on a pre-tax basis medical insurance premium contributions that the employee is required to make under the terms of this Agreement.

The City shall contribute toward medical premiums an amount equal to the actual cost of the medical insurance premium for the medical plan that an eligible employee is enrolled in, less any required employee contributions set forth below. Each active employee covered hereunder can use this City contribution to cover a portion of the cost of medical insurance for the employee and his/her eligible dependents under one of the City-provided medical insurance plans.

Pursuant to the terms of the City's Internal Revenue Code Section 125 plan, any eligible employee electing not to receive medical coverage pursuant to the options available under the City-provided medical insurance program is entitled to a lump sum monthly cash payment in the amount of \$150, which shall be reported as taxable.

Active employees covered hereunder who are eligible to participate in the City-provided medical insurance program will contribute the following monthly flat dollar amount towards the premium of their selected medical insurance plan through a payroll deduction as a contribution from the Internal Revenue Code Section 125 plan.

Health Plan	Monthly Premium Rates	Monthly City Contribution	Monthly Employee Contribution
Aetna (HMO)			
Employee	\$815.05	\$763.07	\$51.98
Employee & One	\$1,630.10	\$1,526.13	\$103.97
Employee & Family (3 or more persons covered)	\$2,119.13	\$1,983.97	\$135.16
Aetna (PPO)			
Employee	\$1,061.86	\$992.84	\$69.02
Employee & One	\$2,123.75	\$1,985.71	\$138.04
Employee & Family (3 or more persons covered)	\$2,760.88	\$2,581.42	\$179.46
Kaiser (HMO)			
Employee	\$552.00	\$516.12	\$35.88
Employee & One	\$1,079.00	\$1,008.86	\$70.14
Employee & Family (3 or more persons covered)	\$1,511.00	\$1,412.78	\$98.22

Between July 1, 2017 and December 31, 2018, the City's contribution shall equal 93% of the actual medical insurance premium for the coverage selected by the employee as of January 1, 2016, not to exceed the premium for the level of coverage (e.g. employee only, employee plus one dependent or family) under the City-provided Plan selected by the employee, plus 93% of any future premium increases that are fifteen 15% or less per annum.

Effective January 1, 2019, the City's contribution shall equal 90.5% of the actual medical insurance premium for the coverage selected by the employee as of January 1, 2019, not to exceed the premium for the level of coverage (e.g. employee only, employee plus one dependent or family) under the City-provided Plan selected by the employee, plus 90.5% of any future premium increases that are 15% or less per annum.

Effective January 1, 2020, the City's contribution shall equal 89% of the actual medical insurance premium for the coverage selected by the employee as of January 1, 2020, not to exceed the premium for the level of coverage (e.g. employee only, employee plus one dependent or family) under the City-provided Plan selected by the employee, plus 89% of any

future premium increases that are 15% or less per annum.

With respect to a permanent City employee represented by FEMA who retired between July 1, 2001, and December 31, 2003, and was participating in the CalPERS Healthcare Program as of December 31, 2003, the City shall contribute toward the payment of medical insurance premiums the amount that had been required by CalPERS as of December 31, 2003.

A retired permanent City employee represented by FEMA has the option of purchasing continued medical insurance coverage under the medical insurance plans described above with the eligible retiree paying the full actual cost of the chosen medical insurance plan.

With regard to the tax liability provisions of this Section, the City warrants that the cafeteria plan is a bona fide IRS Section 125 cafeteria plan. The regular and intended effect of the implementation of the plan, under current law, is to enable employees to choose between the receipt of benefits that are not subject to either state or federal income tax and benefits that are subject to tax without the choice resulting in a taxable event. Thus, the tax liability provision shall be interpreted to mean that, in the event of a change in IRS regulations or tax law that makes cafeteria benefits taxable, the employee (not the City) is responsible for the taxes. In the absence of such a change, the provision pertaining to tax liability shall have no effect.

One of the medical insurance plans offered by the City will be the Kaiser plan that has been established by the Public Employees Benefit Trust (the "PEBT Kaiser Plan"). This Agreement shall serve as the Resolution required of FEMA under the terms and conditions pertaining to participation in the PEBT Kaiser Plan. If the City determines that participation in the PEBT Kaiser Plan is not in the best interest of the City or its employees, FEMA will, upon notification by the City, file the Resolution that is required under the terms and conditions of the PEBT Kaiser Plan to end participation in the plan. In order to avoid disruptions in medical insurance coverage for participants in the PEBT Kaiser Plan, the effective date of the termination of said change shall be at the beginning of the medical plan (i.e., calendar) year designed by the City.

The City has established a Post-Employment Health Plan (PEHP) for employees covered herein. Contributions to said plan shall be made by all FEMA employees through payroll deduction. FEMA shall notify the City, in writing, of the amount that will be contributed by each FEMA employee into the PEHP. Employees covered herein are currently contributing \$35 per

month into the PEHP. Upon written notification from FEMA, contributions into the PEHP can be changed or discontinued.

B. Dental Insurance

Dental insurance coverage shall be provided at no cost to employees and their eligible dependents, provided that employees covered herein participate in the City-offered dental insurance programs.

C. Vision Insurance

The City agrees to provide vision care insurance at no cost to employees and their eligible dependents. The City retains the right to select the provider and to set levels of coverage for said vision care insurance plan. The City also retains the right to change the provider of said vision insurance plan and/or the level of benefits provided under that plan without meeting and conferring.

D. Life Insurance

The City agrees to maintain at no cost to the employee a term life insurance plan for permanent employees covered herein, with individual coverage of twice the employee's annual base salary up to a maximum benefit of \$500,000.

E. Contributions to Retiree Health Benefit Trust

1. **Trusts to Receive Contributions.** Santa Monica Firefighters Local 1109 ("Local 1109") established the Santa Monica Fire Fighters Association Health Benefit Trust ("Fire Fighters Trust"), and the Coalition of Santa Monica City Employees established the Santa Monica City Employees Coalition Benefit Trust ("Coalition Trust"). Each Trust was established for the administration of retiree health benefits for employees represented by the establishing labor organization. The City does not participate in the administration of either Trust. The establishing labor organization is responsible for all costs associated with administering the Trust which it established. The City is not responsible for any tax liability associated with contributions to or payments made from either Trust. The City will transmit employer and/or employee contributions on behalf of each employee represented by FEMA to either the Fire Fighters Trust or the Coalition Trust, based upon the following rules. For each employee who promoted and/or

transferred from Local 1109 to FEMA, the City will transmit the following employer and employee contributions to the Fire Fighter Trust, pursuant to Sections 2-4 below. For each employee represented by FEMA who did not promote and/or transfer from Local 1109 to FEMA, i.e., who was hired directly into a position represented by FEMA, the City will transmit employer contributions to the Coalition Trust, pursuant to Section 2 below.

- 2. Employer Contributions to Fire Fighter Trust or Coalition Trust.** The City will contribute \$150.69 per month on behalf of each eligible employee covered by this Agreement who is represented by FEMA. This monthly contribution for an active employee will only be made for each month that the employee is eligible to receive medical insurance coverage under the City-provided medical insurance program. The Parties shall not allow an employee described in this agreement to opt out of the contributions, receive the contributions in salary or cash, or elect to contribute a different amount.
- 3. Employee Contributions to Fire Fighter Trust.** The City shall withhold a mandatory contribution per pay period on a pre-tax basis from the pay of every active employee, who is represented by FEMA and who promoted and/or transferred from IAFF Local 1109 to FEMA. The amount of the employee contribution shall match the employee contribution that Local 1109 has agreed to and communicated to the City for that pay period. This amount is in addition to the employer contribution amount provided in Section 2 above. The Parties shall not allow an employee described in this agreement to opt out of the contributions, receive the contributions in salary or cash, or elect to contribute a different amount. This monthly contribution for an active employee will only be made for each month that the employee is eligible to receive medical insurance coverage under the City-provided medical insurance program.
- 4. Modification of Employer and Employee Contribution Amounts.** The employer contribution amount under Section 2 shall be adjusted prospectively whenever, and in the same amount that, the employer contribution transferred to the respective Trust on behalf of other active employees participating in that Trust is adjusted, i.e., all employer contribution amounts to the Coalition Trust shall match the employer contributions for Coalition members, and all employer contributions to the Fire Fighter Trust shall match the employer contributions for Local 1109 members. The mandatory employee contribution amount under

Section 3 shall be adjusted prospectively whenever, and in the same amount that, the employee contributions transferred to the Trust on behalf of each IAFF Local 1109 member is adjusted.

5. **Remittance of Contributions.** The City shall transmit such contributions to the Trust for the duration of the MOU. Those contributions shall be remitted monthly in one aggregate ACH transfer to the custodian of the Trust within 30 days of the date the payment would have been payable to the employee. In addition, the City shall submit a monthly report of contributing employees, in the format requested by the Trust, to the Plan Administrator.

3.02 Retirement

- A. Retirement benefits shall be provided pursuant to the City's contract with the California Public Employees' Retirement System (CalPERS) and in accordance with the Public Employees' Retirement Law ("PERL") (Gov. Code, § 20000 et seq.) and CalPERS regulations.
- B. Employees who are not "new members" as defined in Government Code Section 7522.04(f) (who have been determined by CalPERS to be "classic members") are provided the following retirement benefits:
 - a) Safety 3% @ 55 retirement formula (Gov. Code, § 21363.1)
 - b) Final Compensation Period – One Year (Gov. Code, § 20042)
 - c) Effective July 1, 2014, the Employer Paid Member Contribution (EPMC) benefits provided under Government Code Section 20691 were discontinued; the City no longer pays any portion of the required normal member contribution equal to 9% of pensionable income. The entire member contribution shall be paid by each affected employee.
 - d) "Classic members" shall pay to CalPERS the entire 9% member contribution as described above. In addition, in accordance with Government Code Section 20516(f) pursuant to a cost-sharing arrangement, employees shall also contribute 4% of "compensation earnable."
- C. In accordance with Government Code Section 20516(f), effective at the beginning of the first pay period of Fiscal Year 2018-2019, employees shall pay to CalPERS pursuant to a cost-sharing arrangement an amount equal to 5% of "compensation earnable."

Effective at the beginning of the first pay period of FY 2019-2020, employees shall pay to CalPERS pursuant to a cost-sharing arrangement, an amount equal to 6% of "compensation earnable."

- D. Employees hired on or after January 1, 2013, who are “new members” as defined in the Public Employees’ Pension Reform Act of 2013 (Government Code Section 7522.04(f)), are provided the following retirement benefits:
- a) Safety 2.7% @ 57 retirement formula (Gov. Code, § 7522.25(d);
 - b) Final Compensation Period – Three Years (Gov. Code, § 20037;
 - c) “New members” shall be required to contribute at least one-half of the total normal cost as calculated and established in the annual CalPERS valuation report. Should the total normal cost of the plan change by one percent or more from the base total normal cost established for the plan, the new member rate shall be 50% of the new normal cost rounded up to the next highest quarter percent.
- E. The City contracts for the following optional benefits, which apply to all employees:
- a) 1959 Survivor Benefit Level 4 (Gov. Code, § 21574);
 - b) Pre-Retirement Option 2W Death Benefit (Gov. Code, § 21548);
 - c) Pre-Retirement Death Benefits to Continue After Remarriage of Survivor (Gov. Code, § 21551);
 - d) Post-Retirement Survivor Allowance (Gov. Code, §§ 21624, 21626, 216228);
 - e) Post-Retirement Survivor Allowance to Continue After Remarriage (Gov. Code, § 21635);
 - f) \$500 Retired Death Benefit (Gov. Code, § 21620);
 - g) 2% Annual Cost of Living Allowance Increase (Gov. Code, § 21329);
- F. The effective retirement date of an employee covered herein who has been found to be entitled to an industrial disability retirement shall be the earlier of (a) the date selected by the employee or (b) 30 calendar days from the date on which the City notifies the employee that all appeal rights have been waived or exhausted and he/she is going to be granted a disability retirement by the City.

In accordance with CalPERS requirements, the City shall make advanced disability retirement payments, issued on a bi-weekly basis, to an employee covered herein who has been found eligible for an industrial disability retirement. The amount of the advanced disability pension payment will be

equal to 50% of what the City estimates as the employee's earnings reported to CalPERS during the prior 12-month period or, upon the employee's request, another 12-month period.

In addition, the City will, upon the written request of an employee covered herein who has filed any retirement application with CalPERS, provide the employee with his/her pay history for the time period designated by the employee as the employment period to be used by CalPERS for the calculation of his/her monthly retirement benefit from CalPERS. The City will provide the employee with a listing of the forms of compensation which the City reports to CalPERS as compensation earnable for the purpose of calculating an employee's retirement benefit from CalPERS.

3.03 Uniform Allowance

Employees covered hereunder shall be paid a uniform maintenance allowance of \$105 per month.

The City agrees to furnish required safety equipment, safety pants, and safety boots, as needed. The employee has the option of receiving two pairs of safety boots, or one pair of safety boots and one pair of Department-approved oxfords.

The City agrees to replace, as needed, not more than one work shirt and two patches per employee per year and to replace uniform shirts and/or pants that are damaged due to work-related actions performed while on duty. In lieu of one work shirt, an employee may elect to receive department T-shirts equal in value to one work shirt. The City will provide four pairs of pants to each new employee upon hire. In addition, if the City changes the uniform pant worn by sworn employees, the City will provide four pairs of pants to each employee whose uniform pant is being changed.

The employees will wear the Department-approved uniform as specified in the Fire Department Operations Manual.

3.04 Sick Leave Buy Back Program

Employees covered herein have the option to receive payoff for unused sick leave under the following conditions:

A. Definitions

- (1) "Sick Leave Bank" or "Bank" means sick leave earned in years prior to the Accrual Year.

(2) "Accrual Year" means the fiscal year in which Payable Sick Leave is earned.

(3) "Payable Sick Leave" means that portion of the sick leave unused in this year's accruals.

(4) "Day" means eight hours.

B. To be eligible to receive payoff an employee must have a minimum Sick Leave Bank of 22 days.

- C. An employee with the required Bank (and years of service as of the end of the Accrual Year) is eligible to sell unused sick leave earned during an Accrual Year according to the following schedule:

Less than 10 Completed Years of Service with Santa Monica		10 or More Completed Years of Service with Santa Monica	
Unused Days		Unused Days	
Days Used	Available Days for Pay	Used	Available Days for Pay
0	6	0	12
1	5	1	11
2	4	2	10
3	3	3	9
4	2	4	8
5	1	5	7
6 or more	0	6	6
		7	5
		8	4
		9	3
		10	2
		11	1
		12 or more	0

- D. Payoff shall be made at the regular rate of pay.
- E. Sick leave for which payoff is received shall be considered "used" in that it will not be added to the Bank (or if added to the Bank prior to the payoff date, shall be removed from the Bank).
- F. Each employee eligible for payoff will elect whether to take payoff or to add the Payable Sick Leave to the Bank. The election will be made prior to June 30th of each Accrual Year.
- G. Payoff for an Accrual Year will be available only to those employees on the payroll July 1st of the following Accrual Year, with the exception that those employees who retire on a Service Retirement, or who are involuntarily separated due to lack of funds (layoff), during the Accrual Year shall be given the opportunity to receive payoff on a pro-rata basis. Employees who separate from City service other than by retirement or by layoff shall not be eligible for payoff.

H. It is hereby mutually agreed that the sick leave accrual rate shall be limited to one day per month of satisfactory service. This provision applies to all employees of the bargaining unit covered by this MOU whether or not the individual employee elects to receive payoff annually.

3.05 Deferred Compensation

It is hereby agreed that employees covered herein will be offered participation in the City's deferred compensation plan. Effective August 1, 2017, the City shall contribute to this Plan on behalf of each employee a bi-weekly amount of \$41.54.

3.06 Mileage Reimbursement

Reimbursement to employees covered herein for the authorized use of a private vehicle for City business shall be paid at the rate established by the City's Mileage Reimbursement Administrative Instruction.

3.07 Vacation Cash-Out

Employees have the option to cash out accrued vacation leave based upon the years of service completed at the time of the exercise of the option on two occasions each calendar year (on or about July 1 and the last paycheck in December), as follows:

<u>Years of Service Completed</u>	<u>Maximum number of cashable hours</u>
Less than 5 years	Up to 30 hours
5 years or more	Up to 60 hours (120 total per year)

In order to exercise this option with respect to the July cash-out, an employee must, before the end of the preceding calendar year, designate the number of hours, up to the applicable maximum number of hours allowed, that he/she would like to cash out effective on or about July 1st. If the employee fails to make a designation, he/she will not be allowed to cash out any hours at that time.

In order to exercise this option with respect to the end of December cash-out, an employee must, before the end of the preceding calendar year, designate the number of hours, up to the applicable maximum number of hours allowed, that he/she would like to cash out effective the last paycheck in December. If the employee fails to make a designation, he/she will not be allowed to cash out any hours at that time.

Once an employee has elected to participate in the Vacation Cash-Out Program,

the total number of hours designated for cash-out will be automatically processed and paid. If an employee has a lower balance of vacation leave than elected vacation hours, only available vacation hours at the time of cash-out will be processed.

For employees who elect to cash out vacation hours as specified above, those hours will be paid to the employee at the end of the fiscal year at the same time as the Sick Leave Buy Back Program.

ARTICLE IV. LEAVES

4.01 Paid Holidays

Employees covered herein shall receive 12 paid holidays as follows:

- 1st of January – New Year’s Day
- 3rd Monday of January – Martin Luther King’s Birthday
- 3rd Monday of February – Presidents’ Day
- Last Monday of May – Memorial Day
- 4th of July
- 1st Monday of September – Labor Day
- 4th Thursday of November - Thanksgiving Day
- The Friday following Thanksgiving
- The half day immediately preceding Christmas
- 25th of December - Christmas
- The half day immediately preceding New Year's Day
- Two floating holidays (to be prorated at the rate of 1.67 hours per month)

4.02 Vacation

Each employee occupying a regularly authorized full-time position or a permanent and continuing part-time position in any job classification covered herein shall accrue vacation leave with pay on the following basis. "Day" is defined in Section 3.04.A of this MOU.

1. Following completion of the first six months of continuous service, six days.
2. Thereafter, up to and including five completed years of service, one day for each completed calendar month of service.
3. Thereafter, up to and including ten completed years of service, 1.25 days for each completed calendar month of service.
4. Thereafter, up to and including 15 years of service, 1.58 days for each completed calendar month of service.
5. Thereafter, up to and including 20 years of service, 1.75 days for each completed calendar month of service.
6. Upon completion of 20 years of service, two days for each completed calendar month of service.

7. Each employee may accumulate vacation leave to a maximum of three times the employee's annual accrual rate.

4.03 Sick Leave

Sick leave shall be defined as in Section 2.04.570 of the Santa Monica Municipal Code, hereby incorporated as if set forth in full herein, except as follows:

Sick leave shall be defined as absence from duty because of the employee's illness or off-the-job injury, exposure of the employee to contagious disease as evidenced by certification from an accepted medical authority, medical or dental appointments of the employee or the employee's dependent children which could not be scheduled during non-work hours, with proper advance notification to the employee's supervisor, or illness or injury of the employee's spouse or children. For the purpose of this Section, an employee's domestic partner and the children of the employee's domestic partner are covered by this provision.

4.04 Leave of Absence Without Pay

Such leave shall be governed by the Santa Monica Municipal Code which is summarized as: An employee may be granted a leave of absence without pay upon application approved by the Department Head and the City Manager. Such leave may not exceed one year. Upon expiration of the leave, the employee shall be reinstated to the position held before the leave was granted. Such leave shall be granted only in those cases where an employee's record of service and qualifications make it desirable for the City to retain his/her services even at the cost of some inconvenience to the City.

4.05 Jury Duty

Employees covered herein, when duly called to serve on any jury and when unable to be excused therefrom, shall receive the regular base compensation less all jury fees received excluding mileage for the time required to be spent in court provided that an individual employee will be so paid for jury service for a maximum of ten work days. Each employee receiving a notice to report for jury service shall immediately notify his/her immediate supervisor. Whenever daily jury duty scheduling permits, employees shall return to their regular daily job assignment to complete their regular daily work hours.

If an employee is called for jury service for more than ten work days, the employee may request that the Director of Human Resources extend the time period for which the employee will be paid for jury service beyond the ten work

day period. The Director of Human Resources shall not unreasonably refuse to grant any such request.

4.06 Military Leave

Military leave shall be administered in accordance with applicable federal and state laws, rules and regulations.

4.07 Workers' Compensation Leave

Workers' compensation leave shall be in accordance with applicable California state law.

4.08 Bereavement Leave

Bereavement leave of not more than five working days with pay shall be provided for absence from duty due to a death within the employee's immediate family, meaning: spouse, the employee's domestic partner, child, step-child, child of the employee's domestic partner, brother, sister, parent, stepparent, parent-in-law, son-in-law, or daughter-in-law.

Bereavement leave of not more than three working days shall be provided for absence from duty due to the death of other family members to include sister-in-law, brother-in-law, step-brother, step-sister, grandparent, grandchild, spouse of stepchild, step-parent of spouse, uncle, aunt, niece, and nephew. Use of additional appropriate leave (vacation, sick, or personal leave) shall not be unduly denied for additional absence from duty beyond that provided above.

4.09 Parental Leave

Employees who demonstrate that they have primary responsibility for the care of a new child who requires constant parental supervision shall be entitled to a leave of absence totaling four months immediately following the child's birth or adoption and shall be returned to the same job classification occupied prior to the leave upon its expiration. Paid vacation leave or sick leave, if applicable, as well as unpaid leave shall be counted toward the four-month total. Paid sick leave can be used only if the requirements of the Santa Monica Municipal Code are met. Additional leave may be requested under the provisions of this MOU governing leaves of absence without pay (Section 4.04).

Primary responsibility may be established by providing documentation that the employee's spouse is medically incapacitated; or that the spouse is gainfully employed during the hours the employee is normally scheduled to work and no

schedule change for the employee's spouse is possible; or by demonstrating other extraordinary circumstances such as the adoption of a disabled child who requires constant parental supervision.

Maternity leave is not the same as parental leave and shall be administered in accordance with state and federal law.

4.10 Family Leave

The City shall comply with the provisions of the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA).

When granted family leave, the employee may choose to use available accrued sick leave at his/her discretion; however, except for sick leave, the employee must exhaust all other available leave time, if applicable, before he/she can go on unpaid status.

4.11 Personal Leave

A FEMA employee may accrue up to two days or 16 hours of personal leave. One day or eight hours shall be cashable and one day or eight hours shall be non-cashable and may be used for personal matters. An employee must be on the payroll as of the first day of the fiscal year in order to be eligible to receive the eight hours of cashable personal leave. These cashable leave hours cannot be carried over to a subsequent fiscal year if not used in the fiscal year in which the hours have been accrued. Payment equivalent to the employee's base salary as of June 30th for any unused cashable leave shall be payable to the employee upon the request of the employee at the end of the fiscal year when earned. The personal leave will not be subject to cash-out when the FEMA employee separates from City employment.

ARTICLE V. WORKING CONDITIONS

5.01 Safety

The City shall provide safe, clean, and healthy city facilities in accordance with applicable federal, state, and local laws and regulations. FEMA agrees that where safety devices or items of protective equipment are required or furnished, their use shall be mandatory. Further, FEMA and the management of the Fire Department shall meet on a quarterly basis to discuss safety or equipment issues or concerns.

Both parties to this Agreement agree to fully support the City's Risk Control Policy. Said policy sets forth the City's commitment to maintaining a safe and healthy work environment, to preventing accidents and injuries, and minimizing risk and loss wherever possible. Said policy outlines the safety responsibilities of the City, City managers and supervisors, and City employees. Further, it shall be the obligation of employee(s) covered hereunder to immediately report to his/her immediate supervisor any working condition that appears to be unsafe to the employee(s).

The City will provide, at no cost to the employee, the appropriate vaccinations required by law for all employees covered hereunder.

5.02 Effect of Job Performance on Salary

The City Manager, in exceptional cases, based upon specific appraisal of the importance and difficulty of the work and the experience and ability of the person to be employed, or of the incumbent, may authorize entrance salaries higher than the minimum, and special increases above the amount prescribed in the salary schedule for the class and length of service of the incumbent. In no event, however, shall the rate exceed the maximum rate for that class.

Notwithstanding any provision contained herein, there will be no increase in wages of any kind as a result of a "NOT ACCEPTABLE" rating on the employee's prescribed periodic performance rating. There will be no subsequent increases in wages until the "NOT ACCEPTABLE" rating has been improved to at least the "MEETS OVERALL STANDARDS" level. Any overall rating in the "NOT ACCEPTABLE" category may delay the next scheduled salary step increase at the discretion of the Fire Chief. Such action shall remain in effect until the rating has been improved to at least a "MEETS OVERALL STANDARDS" level.

5.03 Washing Machines

It is agreed that the City will provide, for the safety of the members of FEMA, washing machines and clothes dryers in all Fire Stations, for the sole purpose of cleaning safety clothing, uniforms and department equipment soiled and contaminated at emergency incidents.

5.04 Wellness

- A. Any employee hired on or after July 1, 1990, shall be restricted from habitual smoking or chewing tobacco both on duty and off duty. This provision will be maintained throughout said employee's tenure with the Santa Monica Fire Department as a condition of employment.

With respect to this Section, the parties agree to meet and confer in the event of any legal challenge to any provision under this Section with respect to the defense of FEMA or of any officer or member named in such legal challenge.

- B. Employees shall complete a medical examination by the City medical examiner, with the frequency and components of the examination to be determined by the City, provided however, that legislatively mandated medical examinations will be included as part of the examinations covered by this provision.

5.05 Entitlement To Use Of Department Vehicle

All represented employees shall be assigned a Department vehicle, which shall be equipped for emergency response. They shall use the vehicle in the event of recall in case of emergency and for daily commuting to and from the City and for official City business, including authorized City travel. The vehicle also may be used for personal errands when done in connection with traveling to and from the workplace and the employees' residence, and in accordance with policy established by the Fire Chief.

5.06 Employee Parking

Employees shall be provided with a parking location and parking card or other identification placard to park in City workplaces. In order to encourage employees to commute using alternative means of transportation other than single occupancy vehicle (SOV) driving, a parking cash-out incentive shall be offered. Each employee shall have the option to commit to a non-SOV driving form of transportation as her/his principal mode of transportation and forego

receiving a card or other parking identification placard in exchange for a monthly payment (cash-out) in the amount of \$100. Employees will not be eligible for cash-out if they drive alone (SOV) to work and park in an alternative location to their designated parking location.

In order to facilitate the need for parking cash-out participants to drive to work and park occasionally, the City will provide a pay-per-use parking card (or other mechanism based on available technology) upon request by the employee to park in the Civic Center parking facility. The first five uses of the card per month will not be charged. Based on the number of times the employee drives to work alone (SOV) during the month, beginning with the sixth monthly usage of the card, the employee will be charged \$10 per use to be deducted from the following month's cash-out payment. Participants receiving the cash-out who park in uncontrolled lots will receive a day pass to park when needed. For each day pass issued, beginning with the sixth used each month, the employee will be charged \$10 per use to be deducted from the following month's cash-out payment.

The cash-out for the upcoming month shall be paid in the first paycheck of the month and is currently taxable. If tax laws are modified to allow the cash-out to be designated as pre-tax, the City will then provide the cash-out as a pre-tax benefit. Employees receiving cash-out may opt out of the program by notifying the program administrator and a parking card or identification placard shall be issued, which will be valid beginning the first day of the following month, and parking cash-out will be cancelled.

This provision does not apply to employees who travel to and from work in a City provided vehicle on a regular basis.

This program will be implemented effective January 1, 2017.

The employees covered by this Agreement recognize that the City must comply with regulations issued by the Air Quality Management District (AQMD) and the City's Transportation Demand Management (TDM) Plan Ordinance. If members of the Bargaining Unit's Average Vehicle Ridership (AVR) is not progressing towards meeting the AQMD or TDM ordinance targets and it becomes necessary to consider charging for parking during the term of this Agreement in order to comply with City, State or Federal requirements regarding transportation management, the City will meet and confer with FEMA before any employee(s) would be subject to such a charge.

ARTICLE VI. EMPLOYER/EMPLOYEE RELATIONS

6.01 Payroll Deductions

The City will, with proper authorization from employees, process deductions from employee pay. Any or all such payroll deductions must be submitted to the payroll office during the pay period prior to the start of the deduction.

6.02 Reasonable Notice

It is mutually agreed that FEMA shall receive at its place of business a copy (via intercity mail) of the City Council and Personnel Board agendas for each meeting. FEMA shall notify the City as to the business address to which such notifications should be sent. Further, it is understood that said notification shall be concurrent with the notification provided to the Personnel Board and City Council members.

6.03 Grievance/Complaint Policy

A grievance is a complaint by one or more employees concerning the application or interpretation of the MOU, ordinances, resolutions, policies, practices or procedures affecting the employee's wages, hours and/or working conditions, provided, however, that grievances regarding disciplinary actions must be lodged by the employee being disciplined and that appeals arising from suspensions, demotions and removals shall be subject to the procedures outlined in the Santa Monica Municipal Code, and that complaints regarding performance evaluations shall be subject to the procedures contained in Section 6.04 of this Agreement.

The City agrees that employees shall be afforded all due process rights provided in applicable law.

FEMA agrees that the rights of probationary employees are limited to those provided under the Santa Monica Municipal Code and City Charter.

Step 1. The aggrieved employee(s) shall request to meet with the Fire Chief regarding the grievance, which must be stated in writing, specifically citing the MOU provision, ordinance, resolution, rule, policy, practice or procedure that is the subject of the grievance and the circumstances giving rise to the grievance within 30 days of the event giving rise to the grievance.

Step 2. If the grievance is not resolved by the end of the employee's tenth regularly scheduled day following presentation of the grievance to the Fire Chief, the employee may, within five days, appeal to the Director of Human Resources,

who will investigate the grievance and make recommendations to the City Manager, whose decision shall be final. The decision of the City Manager shall be issued no later than 30 days following presentation of the grievance by the Director of Human Resources.

It is mutually understood and agreed that:

- A. All time periods in this Section may be extended by mutual consent of the employee and the management representative involved.
- B. A grievance shall be considered untimely if not presented by the employee or FEMA within 30 days of the incident giving rise to the grievance or within 30 days of its effect upon the employee in those instances where it is shown that the employee could not reasonably have known of the grievable action.
- C. Employees shall have the right to be represented in grievance matters in the following manner:
 - 1) Employees shall have the right to represent themselves individually in grievance matters.
 - 2) Employees may designate a representative of his or her choice to represent them in grievance matters.
 - 3) For the purposes of this Section, "days" means regularly scheduled work days of the employees in the affected department or division.
 - 4) Reasonable time off without loss of pay or benefits shall be given to a grievant or FEMA grievance representative to investigate or process grievances, and to witnesses in any grievance hearing or meeting held during working hours.

Before performing any grievance work, FEMA representatives, the grievant or witness shall obtain permission from the department director and shall report back to work when the grievance work is completed. Neither the grievant nor representative nor witness shall interrupt or leave work if the department director determines that such interruption or absence will unduly interfere with the work of the employee. However, if the department director denies such time off when requested, time off must be granted within 24 hours of such request.

- D. An employee who has initiated a grievance, or assisted another employee

in initiating and/or processing a grievance, shall not in any way be coerced, intimidated or discriminated against.

6.04 Disability Retirement Dispute Resolution Procedure

- A. When a safety member of the Retirement System applies for a disability retirement, and the Board of Administration ("Board") of CalPERS requests the City to determine whether the applicant is incapacitated for the performance of duty, the City shall promptly perform all acts necessary, including the conduct of a medical examination, to determine whether the applicant is incapacitated for the performance of duty. The determination of the City shall include an explanation of the basis for that decision. If the City has not made that determination within 180 calendar days from the date of the Board's request, it shall be deemed to have determined that the applicant is incapacitated for the performance of duty.
- B. As soon as the City has made its determination, it shall notify the employee in writing. This notice, as well as all other notices required by this procedure, shall be sent to the employee's home address with a copy to his or her legal representative, if any. The notification shall be accompanied by a copy of this Disability Retirement Dispute Resolution Procedure.
- C. The employee may challenge that determination, or any related decision by the City regarding his/her disability retirement or its effective date, by submitting to the City Manager a written request for a hearing. This request must be submitted within 30 calendar days from service of the notice that is the subject of the request for a hearing. If the employee fails to submit such a written request within the prescribed time limit, the determination of the City shall become final and no longer subject to appeal.
- D. If the employee submits a timely written request for a hearing, the matter shall be referred to the Office of Administrative Hearings so that a hearing will be conducted by an Administrative Law Judge from that office in accordance with the provisions of Government Code Section 11500 et seq. (i.e., the Administrative Procedure Act). However, it shall not be necessary for the City to prepare a Formal Accusation or Statement of Issues, or for the employee to file a Notice of Defense, as identified in that Act. Instead, the communications described above shall replace those items. However, all discovery rights described in the Act shall be available to the parties; the hearing shall be conducted in accordance with the provisions of Government Code Section 11513; the resulting decision shall be as specified in the Act; and all time limits prescribed in the Act shall be applicable.

- E. The City has the burden of proof that its decision should be upheld.
- F. The employee is entitled to a representative of his/her choice in the hearing. The cost of such representation shall be borne by the employee.
- G. Where testimony of City employees is involved, at least seven calendar days advance notice shall be given to the Department Head so that work assignments may be made accordingly. Wherever practicable, City employees needed as witnesses shall be placed on an on-call basis and compensated at their regular rates of pay of time spent in the hearing.
- H. The decision of the Administrative Law Judge shall be final, subject to judicial review commenced by the employee or the City in accordance with the provisions of Government Code Section 11523.

6.05 Performance Evaluation Appeal Procedure

Since probationary employees are "at will" until successfully completing their probationary period, only permanent (non-probationary) employees may appeal their performance evaluation.

A. General Provisions:

- 1) An appeal of a performance evaluation shall only be considered if it is filed within ten calendar days following receipt of the performance evaluation by the employee.
- 2) All time periods regarding the appeal of a performance evaluation may be extended only by mutual written agreement of the employee or his/her representative and the management representative involved.
- 3) If a management representative does not meet with the employee or render a decision within the time limits specified, the employee may immediately exercise the next step in the performance evaluation appeal process.
- 4) An employee can elect to file a response to his/her performance evaluation at any time during the appeal procedure if he/she decides to not take the appeal to the next level listed in the appeal procedure or is not satisfied with the City Manager's written decision.

B. An appeal involving a performance evaluation shall be processed in the following manner:

1) If an employee believes that his/her performance evaluation does not correspond to the facts, the employee is encouraged to meet with the Fire Chief.

2) First Step

If the matter is not satisfactorily resolved between the employee and the Fire Chief, the employee may attach a response to the performance evaluation to be attached to the employee's performance evaluation before it is filed in the employee's personnel file or formally appeal his/her performance evaluation to the Fire Chief. The employee must submit his/her appeal to the Fire Chief within ten calendar days following the employee's receipt of his/her performance evaluation, and the appeal to the Fire Chief must be submitted in writing, with the employee specifically stating the reasons why he/she believes the performance evaluation needs to be revised.

3) Second Step

The Fire Chief, or his/her designee, shall meet with the employee within seven calendar days from the date on which the Fire Chief's office receives the appeal from the employee. The "designee" of the Fire Chief shall not be anyone who has participated in the employee's performance evaluation that is being appealed by the employee. Within seven calendar days following such meeting, the Fire Chief, or his/her designee, shall give a written decision to the employee.

4) If the employee is not satisfied with the decision of the Fire Chief, within seven calendar days following receipt of the Fire Chief's decision, the employee may submit the performance evaluation appeal to the Director of Human Resources. The Director of Human Resources, or his/her designee, shall make such investigation as required and make recommendations to the City Manager no more than seven calendar days following the meeting with the employee. Within seven calendar days following receipt of the Human Resources Director's recommendation, the City Manager shall render a written decision, which shall be final.

6.06. Disciplinary Appeals

All disciplinary appeals shall be conducted pursuant to the Firefighters' Procedural Bill of Rights Act as set forth in California Government Code Section 3250, *et seq.*

6.07 Reopener

During the term of this Agreement, upon request from either the City or the Association, and to the extent required by law, the parties shall meet and confer in good faith regarding implementation of the City's new Payroll/HR program with consideration of possible adjustments to language or processes as they relate to payroll and human resources practices.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed this 5 day of June 2019.

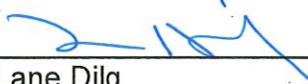
ATTEST:


DENISE ANDERSON-WARREN
City Clerk

CITY OF SANTA MONICA
a municipal corporation

By: 
RICK COLE
City Manager

APPROVED AS TO FORM:


Lane Dilg
City Attorney

FEMA


Tom Clemo
President