

MEMORANDUM OF UNDERSTANDING

between

CITY OF SAN RAFAEL

and

SAN RAFAEL FIREFIGHTERS' ASSOCIATION

I.A.F.F., LOCAL 1775

JULY 1, 2016 - JUNE 30, 2018

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LIST OF EXHIBITS

Exhibit A	Salary Schedules for July 1, 2016 – June 30, 2018
Exhibit B	San Rafael Firefighters’ Association Represented Benchmark and Internal Relationships
Exhibit C	San Rafael Fire Department Drug and Alcohol Testing Policy and Procedures
Exhibit D	Firefighters Outside Employment Policy
Exhibit E	Memorandum from Liebert Cassidy Whitmore regarding Firefighters Memorandum of Understanding & Firefighters Bill of Rights
Exhibit F	Side Letter, Chief Officer Suppression Qualifications
Exhibit G	Side Letter, Acting Captain Requirements

MEMORANDUM OF UNDERSTANDING
between
CITY OF SAN RAFAEL
and
SAN RAFAEL FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 1775

The San Rafael Firefighters' Association, I.A.F.F., Local 1775, and representatives of the City of San Rafael have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of employees in the representation unit specified in Chapter 1, have exchanged freely information, opinions and proposals and have reached agreement on all matters relating to the employment conditions and the employer/employee relations of such employees.

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500, et seq.) and has been jointly prepared by the parties.

This Memorandum of Understanding shall be presented to the San Rafael City Council as the joint recommendations of the undersigned for salary and employee benefit adjustments for the period commencing July 1, 2016 and ending June 30, 2018. When ratified by the City Council, this Memorandum of Understanding shall be binding upon the San Rafael Firefighters' Association, I.A.F.F., Local 1775, the employees it represents, and the City of San Rafael.

As used throughout this Memorandum of Understanding, the pronoun designations "he" or "his" is intended to be applicable to both the male and female gender.

1 GENERAL PROVISIONS

1.1 RECOGNITION

1.1.1 Association Recognition

The San Rafael Firefighters' Association, I.A.F.F., Local 1775, hereinafter referred to as the "Association" is the recognized employee organization, as defined by Government Code Section 3501, (b), for all employees in classifications represented by the Association, said classifications being set forth in Exhibit A.

1.1.2 City Recognition

The Municipal Employee Relations Officer of the City of San Rafael or any person or organization duly authorized by the Municipal Relations Officer, is the representative of the City of San Rafael, hereinafter referred to as the "City" in Employer-Employee relations, as provided in Resolution No. 12189 adopted by the City Council on February 5, 2007.

1.2 NON-DISCRIMINATION

1.2.1 In General

The parties to this contract agree that they shall not, in any manner, discriminate against any person whatsoever because of race, color, age, religion, ancestry, national origin, sex, sexual orientation, perceived sexual orientation, gender, gender expression, gender identity,, marital status, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history) or physical or mental disability.

Any employee who believes they are being discriminated against should refer to the City of San Rafael's Harassment Policy for the process of receiving an internal administrative review of their complaint. This administrative procedure shall be used as the internal complaint procedure in lieu of the grievance procedure outlined in this MOU (Chapter 7).

1.2.2 Association Discrimination

No member, official, or representative of the Association shall, in any way, suffer any type of discrimination in connection with continued employment, promotion, or otherwise by virtue of membership in or representation of the Association.

1.3 INSPECTION OF MEMORANDUM OF UNDERSTANDING

Both the City and the Association agree to keep duplicate originals of this Memorandum on file in a readily accessible location available for inspection by any employee or member of the public upon request.

1.4 EXISTING LAWS, REGULATIONS & POLICIES

This Memorandum is subject to all applicable laws.

1.5 STRIKES & LOCKOUTS

During the term of this Memorandum of Understanding, the City agrees that it will not lock out employees, and the Association agrees that it will not agree to, encourage, or approve any strike or slow down growing out of any dispute relating to the terms of this Agreement. The Association will take whatever lawful steps are necessary to prevent any interruption of work in violation of this Agreement.

1.6 SEVERABILITY

If any article, paragraph or section of this Memorandum shall be held to be invalid by operation of law, or by any tribunal or competent jurisdiction, or if compliance with or any enforcement of any provision hereof be restrained by such tribunal, the remainder of this Memorandum shall not be affected thereby, and the parties shall, if possible, enter into meet and confer sessions for the sole purpose of arriving at a mutually satisfactory replacement for such article, paragraph or section.

1.7 FULL UNDERSTANDING, MODIFICATION, WAIVER

1.7.1 Joint Representation

The parties jointly represent to the City Council that this Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein.

1.7.2 Waiver & Modification

Except as specifically otherwise provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required to meet and confer with respect to any subject or matter covered herein, nor as to wages or fringe benefits during the period of the term of this Memorandum. The foregoing shall not preclude the parties hereto from meeting and conferring at any time during the term of this Agreement with respect to any subject matter within the scope of meeting and conferring for a proposed Memorandum of Understanding between the parties to be effective on or after July 1, 2018.

1.7.3 *Effective Dates*

This Agreement will be in effect from July 1, 2016 through June 30, 2018. It shall be automatically renewed from year to year thereafter unless either party shall have notified the other, in writing, at least sixty (60) days prior to the annual anniversary of the above date that it desires to modify the Memorandum. In the event that such notice is given, negotiations shall begin no later than thirty (30) days prior to the anniversary date.

2 MMBA

2.1 ASSOCIATION RIGHTS

2.1.1 *Advance Notice of Change*

Except in cases of emergency, reasonable advance written notice shall be given the Association of any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council, and any Board or Commission, or any Department and the Association shall be given the opportunity to meet and confer with the City and Representatives prior to adoption. In cases of emergency, when the City Council determines that an ordinance, rule, policy, resolution or regulation must be adopted immediately without prior notice or meeting with the Association, the City shall provide such notice and opportunity to meet and confer at the earliest practical time following the adoption of such ordinance, rule, policy, resolution or regulation. A copy of any such ordinance, rule, policy, resolution or regulation shall be provided to the association together with the notice required by this Section, whenever possible.

2.1.2 *Dues Deduction*

Payroll deduction for membership dues shall be granted by the City to the Association.

The following procedures shall be observed in the withholding of employee earnings:

1. Payroll deductions shall be for a specified amount in uniform as between employee members of the Association and shall not include fines, fees and/or assessments. Dues deductions shall be made only upon the employees' written authorization.
2. Authorization, cancellation or modifications of payroll deduction shall be made upon forms provided or approved by the City Manager or his/her designee. The voluntary payroll deduction authorization shall remain in effect until employment with the City is terminated or until canceled or modified by the employee by written notice to the City Manager or his/her designee. Employees may authorize dues deductions only for the organization certified as the recognized employee organization of the classification to which such employees are assigned.
3. Amounts deducted and withheld by the City shall be transmitted to the officer designated in writing by the Association as the person authorized to receive such funds, at the address specified.
4. The employees earnings must be sufficient, after all other required deductions are made, to cover the amount of the deductions herein authorized. When an employee is in a non-pay status for an entire pay period, no withholdings will be made to cover that pay period from future earnings, nor will the employee deposit the amount with the City which would have been withheld if the employee had been in a pay status during that period.
5. In the case of an employee who is in a non-pay status during a part of the pay period, if the salary is not sufficient to cover the full withholding, no deductions shall be made. In

this connection, all other required deductions have priority over the employee organization deduction.

6. The Association shall file with the City an indemnity statement wherein the Association shall indemnify, defend, and hold the City harmless against any claim made and against any suit initiated against the City on account of check-off of Association dues, assessments and other payments to the Association. In addition, the Association shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

2.1.3 *Release Time*

The City shall allow a reasonable number of Association representatives who are official representatives of the Association be given time off without loss of compensation or other benefits when formally meeting and conferring with representatives of this City on matters within the scope of representation. One hundred forty-four (144) hours per calendar year shall be provided for union release time, apart from MMB activity, with ten days advance notice and approval of the Fire Chief. Once approved, hours will be deducted from this total on an hour for hour basis per representative. Except by mutual agreement, the number of Association representatives excused for such purposes shall not exceed three (3) at any one time, per the approval process outlined above.

2.1.4 *Association Access to Work Locations*

Reasonable access to employee work locations shall be granted to officers of the Association and officially designated representatives of the Association for the purpose of processing grievances or contacting members of the Association concerning business within the scope of representation, which are to be discussed with City representatives. Access may be restricted so as not to interfere with the normal operations of Department or with established safety or security requirements.

2.1.5 *Association Office Space*

The Association shall be allowed office space on City property at a mutually agreed upon location, with telephone service maintained at the expense of the Association.

2.1.6 *Conduct of Business*

Consultations between the City and the Association, for discussion of grievances and for negotiations between the City and Association representatives normally will be conducted during regular working hours. Association representatives who are on duty will be allowed to participate in such meetings.

Association officers are authorized reasonable time during on-duty hours to process employee complaints or grievances, and to conduct negotiations with management at the local level.

2.1.7 *Association Meetings*

The Association shall be able to use Fire Department facilities for meetings provided space and time are available. All meetings using Fire Department facilities must have prior approval of the Fire Chief or his/her designee. Employees and companies normally covering the first in district where any such meeting is being held will be allowed to attend provided they remain ready and available to perform their duties. Association officers and employees who have business to present at the meeting, but are assigned to other stations will be allowed to attend meetings. Arrangements for this purpose will be the same as routine department cover-ins, provided that the Association and Duty Chief both determine the resulting coverage meets acceptable emergency response safety standards.

2.1.8 *Association Orientation of New Employees*

Whenever the City hires an employee within any classification covered by this Memorandum of Understanding and represented by the Association, the City will inform the employee, as soon as possible, of the terms and provisions of this Memorandum of Understanding and will provide said employee with a copy of the current Memorandum of Understanding. The City shall make available two hours, at a mutually agreeable time, during the initial thirty (30) days of employment for new employee orientation by the Association.

2.2 MANAGEMENT RIGHTS

The City reserves, retains, and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provision of this Memorandum of Understanding or by law to manage the City, as such rights existed prior to the execution of this Memorandum of Understanding. The sole and exclusive rights of management, as they are not abridged by this Agreement or by law, shall include, but not be limited to, the following rights:

1. To manage the City generally and to determine the issues of policy.
2. To determine the existence of facts which are the basis of the management decision.
3. To determine the necessity of any organization or any service or activity conducted by the City and expand or diminish services.
4. To determine the nature, manner, means, technology and extent of services to be provided to the public.
5. Methods of financing.
6. Types of equipment or technology to be used.
7. To determine and/or change the facilities, methods, technology, means and size of the work force by which the City operations are to be conducted.
8. To determine and change the number of locations, re-locations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operation of the City.
9. To assign work to and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments.
10. To relieve employees from duties for lack of work or similar non-disciplinary reasons.
11. To establish and modify organizational productivity and performance programs and standards.
12. To discharge, suspend, demote or otherwise discipline employees for proper cause in accordance with the provisions and procedures set forth in City Personnel Rules and Regulations, the Firefighters Procedural Bill of Rights and this Memorandum of Understanding.
13. To determine job classifications and to reclassify employees.
14. To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with this Memorandum of Understanding and the City's Rules and Regulations.
15. To determine policies, procedure and standards for selection, training and promotion of employees.
16. To establish employee performance standards including but not limited to, quality and quantity standards; and to require compliance therewith.
17. To maintain order and efficiency in its facilities and operations.

18. To establish and promulgate and/or modify rules and regulations to maintain order and safety in the City which are not in contravention with this Agreement.
19. To take any and all necessary action to carry out the mission of the City in emergencies.

The City and Association agree and understand that if, in the exercise of any of the rights set forth above, the effect of said exercise of rights by the City impacts an area within the scope of representation as set forth in the Meyers/Milias/Brown Act, case law interpreting said act, and/or Federal law, the City shall have the duty to meet and confer with the Association regarding the impact of its decision/exercise of rights.

3 COMPENSATION

3.1 TOTAL COMPENSATION

3.1.1 Entry Level Step

All entry level Firefighters hired on or after July 1, 2013 shall be paid at the entry level step for salary and incentives as indicated in Exhibit A through the probationary year.

3.1.2 Salary Increases

Effective the pay period including July 1, 2016 or the first full pay period following City Council ratification of a new MOU, whichever occurs later, the City will increase base wages for all employees by 2.0%. Contingent upon SRFA ratification and City Council adoption of the successor MOU by September 6, 2016, the increase will be retroactive to July 1, 2016.

Effective the pay period including July 1, 2017, the City will increase base wages for all employees by 0.0%.

Future salary adjustments for Fire Mechanics will be based on labor market comparisons of Fire Mechanic positions that perform similar duties of the City's Fire Mechanic.

Effective July 1, 2008, the Fire Captain Specialist salary will be set at 5% above the Fire Captain salary (see Exhibit B).

3.1.3 Equity Adjustments

Employees represented by this bargaining unit will receive an additional 1.0% equity adjustment to base hourly rate at the same time as the salary increase for FY 2016/17 as noted in section 3.1.2 above.

3.1.4 One-Time Payments

The following one-time payments are limited to the two years cited in this agreement and are not scheduled to recur in the future:

1. Each employee in the bargaining unit will receive an Expedited Bargaining Payment (\$2,200) and New Tiered Medical Benefit Program Payment (\$1,337); a total payment in the amount of \$3,537 will be paid during the first pay period in December 2016. This money will not be included in the Full Flex Cafeteria Plan. This payment will not contribute to employees' pensions and is subject to normal payroll taxation; and
2. Each employee in the bargaining unit will receive a Health Cost Increase Offset (\$2,200) and Medical Plan Restructure Payment (\$1,337); a total payment in the amount of \$3,537 will be paid during the first full pay period in December 2017. This money will not be included in the Full Flex Cafeteria Plan. This payment will not contribute to employees' pensions, is subject to normal payroll taxation and may be used by each employee to address their own unique health care cost needs.

3.1.5 *Compensation Goal & Definitions*

It is the goal of the City Council to try to achieve a total compensation package for all employees represented by the Association in an amount equal to the following:

1. The average, plus one dollar, of the total compensation paid to the same or similar classifications in the following ten (10) cities/districts: Alameda, Alameda County, Fairfield, Hayward, Napa, Novato Fire District, Santa Rosa, Southern Marin, South San Francisco, and Vallejo; AND,
2. The highest total compensation paid to the same or similar classifications in agencies in Marin County.

Total Compensation for survey purposes shall be defined as: Top step salary (excluding longevity pay steps), educational incentive pay, EMT pay, holiday pay, uniform allowance, employer paid deferred compensation (except for such portion that may be part of employee cafeteria plan), employer's contribution towards employees' share of retirement, employer paid contributions toward insurance premiums for health, life, long term disability, dental and vision plans, and employer paid cafeteria/flexible spending accounts.

The CPI shall be the percentage change in the San Francisco-Oakland-San Jose Area All Urban Consumer Index as published by the Bureau of Labor Statistics for the one year period ending the month of October each year during the term of the contract.

3.1.6 *Compensation Surveys*

To measure progress towards the above-stated goal, the City will survey the benchmark position as identified in Exhibit B and included as part of this MOU in September of each year of this contract. However, if General Tax Revenues as defined in Section 3.2.2 have not increased over the prior fiscal year, then the City and Association will not complete the compensation survey unless it is the final year of this Agreement.

Identified benchmark positions from other agencies include positions that are filled as well as those that may be unfilled, so long as the benchmark position is identified by the survey agency as having similar job duties, qualifications, class and grade compared to the Association's benchmark position. The City and the Association may identify other city/agency positions to be included in San Rafael's compensation survey upon similar duties, qualifications, class and grade to those set out in Exhibit B of this MOU.

Survey data will include all salary and benefit increases, as defined in 'total compensation', in place or to be effective no later than September 1 of that same year, for the purpose of applying the excess General Tax Revenues, if any, described in this chapter. The City and the Association shall review the benchmark and related survey data for accuracy and completeness.

3.1.7 *Pay Schedule*

During the term of this Agreement, the City may institute a change of the payroll schedule from 24 pay cycles per year to 26 pay cycles per year

3.1.8 *Fair Labor Standards Act*

The Parties shall continue to discuss changes to ensure the City's compliance with the FLSA. The Parties understand that the City has the management right to administer its payroll system in compliance with the law and also understand that all impacts of any resulting changes to employee compensation must be negotiated with SRFA.

3.2 REVENUE SHARING

3.2.1 *Conditions for Revenue Sharing*

Employees in the bargaining unit positions defined in this MOU shall receive Revenue Sharing Increases, effective January 1 of each year of the contract, in addition to the Contract Compensation Increase (if any), if the following conditions are met:

- a. If the CPI increase, as defined in Section 3.1.3, is greater than the Contract Compensation Increase, and
- b. If General Tax Revenues have resulted in revenues being available for distribution, based upon the formulas defined in Section 3.2.2, and
- c. The “net change in General Fund Balance”, as defined in Section 3.2.2, as presented in the previous fiscal year’s annual audited financial statements, is positive, and
- d. The City’s General Fund Emergency and Cash Flow reserve at the end of the previous fiscal year contains at least 10% of the General Fund budgeted expenditures for that same year.

If all of the above four conditions are met, then a Revenue Sharing salary increase shall be paid prospectively, in accordance with the schedule below, to bring the combination of the Contract Compensation Increase (if any) and the Revenue Sharing Increase up to the level of the CPI, however, in no event shall the Combined Contract Compensation Increase and Revenue Sharing Increase exceed 5% for the contract year under review.

3.2.2 *Revenue Definitions & Revenue Sharing Calculations*

Net Change in General Fund Balance is determined in the course of the City’s annual financial audit, and presented as “net change in fund balance” in the City’s published financial statements.

General Tax Revenues shall be defined to include the following taxes: Sales Tax, Property Tax (Secured, Unsecured and Unitary), Motor Vehicle License Fees, Property Transfer Tax, Hotel Occupancy Tax, Business License Tax and Franchise Fees. No other revenue sources of the City will be included in this definition.

If General Tax Revenues of the City for the fiscal year previous to this contract year (i.e., FY 2013-2014) exceed General Tax Revenues of the City for the prior fiscal year (i.e., FY 2012-2013), then the members of the bargaining unit shall be entitled to apply 20.0% of one-half (1/2) of the excess of fiscal year General Tax Revenues over prior fiscal year General Tax Revenues adjusted for 75% of the total compensation increases provided to members for the contract year, in accordance with the schedule below, for a Revenue Sharing Total Compensation adjustment.

3.2.3 *Schedule*

- a. **September 7th- General Tax Revenues.** The City shall make known to the Association if General Tax Revenues of the most recently ended fiscal year have grown from the prior fiscal year on September 7th of each year of this contract. If no growth in General Tax Revenues has taken place, there shall be no Revenue Sharing for that fiscal year of the contract.
- b. **November 15th - Net Change in General Fund Balance and the funding level of the City’s General Fund Emergency and Cash Flow reserve.** By November 15th of each year, the City shall make known to the Association whether there is a positive change in the General Fund Balance when the most recently ended fiscal year is compared to the previous one. At the same time, the City shall make known to the Association whether the funding level of the City’s General Fund Emergency and Cash Flow reserve is at or

above 10% of budgeted expenditures. If these two conditions are not met, then no Revenue Sharing shall take place for that contract year.

- c. **November 30th - CPI.** If the conditions for revenue sharing have been met for the contract year, the City shall identify the change in CPI in October and make the figure known to the Association by November 30th.
- d. **January 1st** – Base Monthly Pay Increases are calculated. January 1st is the effective start date (for paycheck date of January 31st) for Revenue Sharing Salary increases.

3.3 EDUCATIONAL INCENTIVE

To increase the educational level of the employees in the Fire Department, and to assist in the recruitment of public safety members into the fire service, the City shall pay an educational incentive in accordance with the following:

3.3.1 *Thirty (30) College Units Fire Science*

Employees who have completed their first year of full-time service with the San Rafael Fire Department and have successfully completed 30 accredited college units of Fire Science or Fire Technology shall receive additional compensation amounting to 2.5% of their basic monthly salary.

3.3.2 *AA Degree Fire Science*

Employees who have completed their first year of full-time service with the San Rafael Fire Department and who possess an A.A. or A.S. degree in Fire Science or Fire Technology shall receive additional compensation amounting to 5% of their basic monthly salary.

3.3.3 *EMT I*

Employees who have completed their first year of full-time service with the San Rafael Fire Department and who have successfully completed and who maintain an EMT I certification, accredited by the State of California or State Fire Marshal's Office, shall receive an additional compensation amounting to 2.5% of their basic monthly salary. EMT I re-certification training shall be conducted on duty at times determined by the Fire Chief.

If an employee fails to maintain a valid EMT - 1, said employee shall lose their 2.5% incentive pay. All non-paramedic line employees hired on or after March 7, 1994 shall be required to possess and maintain a valid EMT - 1 certificate as a condition of employment.

3.3.4 *Other Job Related Courses*

It is agreed that college course work other than those specified in "3.3.1." and "3.3.2." completed by non-safety members of the department may be deemed to be job-related by the Fire Chief to qualify for the 2.5% or 5.0% educational incentives. This is provided in lieu of "3.3.1." or "3.3.2." but will not preclude an employee from receiving "3.3.1." or "3.3.2." It is agreed that an employee shall receive not more than one (1) educational incentive. Educational incentive for non-safety members of the department shall not exceed 5.0% exclusive of EMT incentives.

3.4 OUT OF CLASS COMPENSATION

When safety employees work out of their normal classification, they will be compensated and governed by the following rules:

3.4.1 *Firefighters and Firefighter-Paramedics*

All firefighters and firefighter-paramedics with one and one-half (1.5) years or more of line service (line service is defined as active participation as a member of an Engine, Truck Company or Medic Unit working a standard 24 hour work schedule with the City of San Rafael

Fire Department) who provide documentation which proves that they meet the eligibility requirements to take the Engineer's promotional examination are eligible to work out-of-class as an Engineer.

All firefighters and firefighter-paramedics with four (4) years or more of line service (line service is defined as active participation as a member of an Engine, Truck Company or Medic Unit working a standard 24 hour work schedule with the City of San Rafael Fire Department) who provide documentation which proves that they meet the eligibility requirements to take the Captain's promotional examination are eligible to work out-of-class as Captain.

When working out of class as Engineers or Captains, the Firefighter or Firefighter-Paramedic will be paid the appropriate out-of-class compensation for each full shift completed in the out-of-class position. They will be paid at the same step as their regular position, i.e., Step A – Firefighter-Paramedic is paid at Step A, - Engineer or Step A - Captain.

3.4.2 *Fire Engineers*

All Engineers who meet the minimum qualifications of the Captain classification will perform in Acting Captain status as needed, and will be paid out-of-class compensation at the same step as their regular position, i.e., Step A - Engineer is paid at Step A - Captain. Engineers will be paid the out-of-class compensation for each full shift completed in the out-of-class position.

3.4.3 *Fire Captains*

All Fire Captains who meet the eligibility requirement to take the Battalion Chief-Operations promotional exam may work out of class as Battalion Chief-Operations. When working out of class as Battalion Chief-Operations, Captains will be paid the appropriate out-of-class compensation for each full shift completed. They will be paid at the same step as their regular position, i.e., Step C-Captain is paid at Step C–Battalion Chief–Operations.

3.5 SPECIALTY COMPENSATION

3.5.1 *Paramedic Certification*

Fire Captains and Engineers are not eligible for the Paramedic compensation. Fire Captains, Engineers and Firefighter-Paramedics are eligible for an A.C.L.S. incentive equal to 2.5% of their regular monthly salary in lieu of the E.M.T. incentive (applicable only to those employees who have completed their first year of full-time service).

All fees and continuing education expenses associated with license maintenance will be reimbursed by the City upon verification of completion of the required training.

3.5.2 *Paramedic Liaison*

The Paramedic liaison and Assistant Paramedic liaison will be selected by those individuals assigned Paramedic duty and will serve for a minimum of one (1) year and a maximum of two (2) years. The individual selected as the Paramedic Liaison will receive \$200.00 per month premium pay over and above his/her base monthly salary while serving in this capacity. The individual selected as the Assistant Paramedic liaison will receive \$100 per month premium pay over and above his/her base monthly salary while serving in this capacity. Individuals may serve more than the 2 year maximum if no other candidates accept a nomination and run for the position.

3.5.3 *EMT I Ambulance Drivers*

EMT-1 drivers shall receive a ten-dollar (\$10.00) bonus for each shift, full or partial that they are assigned to drive either ambulance. Regular assignment to the paramedic unit as an EMT-1 shall be voluntary. Non-voluntary assignment to the paramedic unit as an EMT-1 shall be made

to cover absence of members regularly assigned to the unit. Association members cannot refuse assignment to staff the paramedic ambulance.

3.5.4 *ALS Transport Units*

The Fire Department operates three ALS transport units. Two full-time ALS units will be staffed with two (2) Firefighter EMT-P. The "cross-staffed" ALS unit will be staffed with a minimum of one (1) Firefighter EMT-P and one (1) EMT Captain, Engineer, or Firefighter. The cross-staffed unit operates from a fire station that will be decided at the discretion of the Fire Chief and may vary on different platoons. Captain or Engineer EMT-Ps may volunteer to staff an ALS ambulance.

The Department will utilize an available fourth ALS Transport Unit at the discretion of the on-duty Battalion Chief or on-duty Fire Captains as needed to maintain adequate service levels.

The City shall have the right to deploy ALS Transport Units where needed as determined by the Fire Chief.

3.5.5 *BLS Transport Unit*

The department may deploy a BLS Transport Unit during the term of this agreement. The management and operational procedures related to this unit will be resolved through negotiations with the Department's Management Staff and the Association.

3.6 OTHER COMPENSATION

3.6.1 *Uniform Allowance*

Uniform members of the Fire Department shall receive a uniform allowance in the amount of \$212.50 at the completion of each six months of service ending May 31 and November 30. Uniform member employees shall receive a pro-rated amount during the first and last six months of service of \$35.42. Effective January 1, 2009 the City shall provide all new hire uniform members with 1 shirt and 1 pair of pants at the time of appointment. When needed, a maximum of 1 shirt and 1 pair of pants per year will be replaced by the City for all members. The uniform shall consist of Workrite Nomex pants and the Workrite Nomex uniform shirt. Fire Association members will be responsible for purchasing all other uniform related product with the uniform allowance provided. When uniform members leave employment, all shirts and pants will be returned to the department.

Fire administration will work with the Fire Association to identify 2 vendors for boot purchase. During odd numbered years, employees will be eligible for 1 pair of boots and will be responsible for any boot cost exceeding \$160.

3.6.2 *Call-Back Pay*

Employees covered by this Memorandum of Understanding shall be paid at a rate of time and one-half of the affected employee's regular hourly rate. Whenever an employee is asked to continue his/her work past the scheduled duty day or is called back to unscheduled duty by the Department. In such cases, a minimum of two hours callback pay shall be paid.

4 BENEFITS

4.1 JOINT BENEFITS COMMITTEE

Both parties agree to continue to utilize the Joint Benefits Committee for on-going review of benefit programs, cost containment, and cost savings options. The committee shall be made up of representatives of Miscellaneous, Supervisory, Police, Fire and Management employees

4.2 HEALTH & WELFARE

4.2.1 Full Flex Cafeteria Plan

Effective January 1, 2010 the City implemented a full flex cafeteria plan for active employees in accordance with IRS Code Section 125. Active employees shall receive a monthly flex dollar allowance to purchase benefits under the full flex cafeteria plan.

The monthly flex dollar allowance effective the first full month following adoption of this MOU shall be \$655 which includes the California Public Employees' Medical and Hospital Care Act (PEMHCA) contribution hereby referred to as the PEMHCA minimum contribution for an Employee, an Employee & One Dependent or an Employee & Two or More Dependents.

The monthly flex dollar allowance effective the first paycheck in December 2017 shall be:

For employee only:	\$ 733.39
For employee and one dependent:	\$1,173.42
For employee and two or more dependents:	\$1,525.46

Effective December 2018, flex dollar allowances shall increase on the first paycheck in December up to a maximum of three percent (3.0%) on an annual basis, based on but not to exceed the Kaiser Bay Area premium rate increase for the upcoming calendar year.

The monthly flex dollar allowance may be used in accordance with the terms of the cafeteria plan to purchase medical insurance, taken in the form of cash to contribute to a deferred compensation (457) plan, or may be converted to taxable income.

Conditional Opt-Out Payment: An employee may elect to waive the City's health insurance coverage and receive \$655 monthly Opt-Out payment in accordance with the terms of the cafeteria plan, and the Affordable Care Act, if the employee complies with the following conditions:

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

Effective the first paycheck in December 2017, the Opt-out payment will be \$300. The City reserves the right to modify at any time, the amount an employee is eligible to receive under this paragraph, if required by IRS Cafeteria Plan regulations, other legislation or Federal and/or California agency guidance.

4.2.2 *Life Insurance and Accidental Death & Dismemberment*

The City pays premiums for a life insurance and Accidental Death and Dismemberment (AD&D) policy for each employee. The life and AD&D policy shall provide a \$5,000 life insurance and a \$5,000 AD&D benefit.

Members of the Firefighters Association may choose to subscribe to a long term disability (LTD) plan other than that offered by the City as long as there is no cost to the City.

4.2.3 *Retirees Health Insurance*

Employees represented by the Association who retire from the Marin County Retirement System are subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans and are eligible to continue in the City's retiree group health insurance program offered through PEMHCA. The City's contribution towards retiree coverage shall be the PEMHCA minimum contribution as determined by CalPERS on an annual basis.

A. Longevity Payment for Employees hired on or before January 1, 2010

The City shall make a monthly longevity payment into a Retiree Healthcare Reimbursement Trust (Retiree HRA Trust) on behalf of employees hired before January 1, 2010 and who retire from the City of San Rafael as described in this Section.

The City's monthly contribution to the Retiree HRA trust shall be the difference between the premium cost of coverage for any two party rate minus the PEMHCA minimum contribution. The City's total payment (PEMHCA minimum contribution plus cost of retiree premiums) shall be \$557 per month. The City's contribution towards a retiree's Retiree HRA Trust account shall continue for the lifetime of the retiree and retiree's spouse, in accordance with PEMHCA eligibility provisions for coverage.

B. Employees hired by the City on or after January 1, 2010 and who meet the eligibility requirements for retiree health insurance are eligible to continue in the City's group health insurance program. The City's maximum contribution towards retiree coverage under this subsection, 4.2.3 B, shall be the PEMHCA minimum contribution as determined by CalPERS on an annual basis. The City shall not be responsible for making any contributions towards the cost of coverage of the retiree's spouse, registered domestic partner, or dependents upon the employee's retirement from the City.

4.2.4 *Contributions into a Retirees' HRA*

For employees hired after January 1, 2010, the City shall contribute 2% of top step Firefighter salary into a Retiree HRA and the employee shall also contribute 2% of top step Firefighter salary into the same account. In the event an employee's salary is not sufficient to contribute the 2%, no City or employee contribution will be made until such time as the salary is able to make the contribution.

This contribution will occur each pay period beginning the month after the employee has been hired and will be open for negotiations at the end of the term of this contract.

4.2.5 *Deferred Compensation Plan*

Over the course of this Agreement, the City will provide up to two deferred compensation plan providers, as allowed under the Internal Revenue Code Section 457. Costs of the plan are solely the responsibility of employees. No City contributions are provided for employees, except under the Payback provision identified in subsection 4.2.1 of this Memorandum of Understanding.

4.2.6 *Flexible Spending Account (125 Plan) for Health & Dependent Care Expenses Reimbursement*

The City will continue to offer a Flexible Spending Account (Section 125 Plan) pursuant to the IRS Code. Flexible Spending Accounts offered by the City include:

- a. Out-of-pocket medical expenses that qualify under the IRS Code effective January 1, 20013 at IRS Code limit, not to exceed \$2,500.
- b. Dependent care expenses that qualify under the IRS Code at the IRS Code limit (currently \$5,000 for calendar year 2006).
- c. Excess Medical premiums shall be deducted from employee's pay with pre-tax dollars as long as such deduction is allowable under the applicable IRS Code.

The City shall establish an annual enrollment period for the Flexible Spending Account and each employee must re-enroll if he/she wishes to participate in the FSA for the following calendar year. The City shall have the authority to implement changes to the FSA programs to comply with changes in applicable IRS laws without having to go through the meet and confer process.

4.3 DENTAL PLAN

4.3.1 *Dental Plan*

- a. The City will provide a dental insurance program providing 100% coverage for diagnostic and preventative care; \$25.00 deductible on corrective care (80/20 cost sharing after deductible) per calendar year per person, with a \$75 deductible limit per family; and orthodontic care (50/50 cost sharing).
- b. The dental plan shall provide for an 80/20 cost sharing for basic services such as casts, crowns and restorations. Major services such as bridgework and dentures are covered using a 50/50 cost sharing formula.
- c. The City will pay the entire premium cost for such a dental plan and shall pay the entire cost for any premium rate increases occurring during the term of this agreement.
- d. The calendar year benefit for each eligible, enrolled member is \$1,500 per calendar year. Orthodontic benefits remain unchanged, and are limited to those dependents up to the age of 19 and subject to a \$1,000 per person, per lifetime benefit.

4.4 RETIREMENT

4.4.1 *Retirement Contribution*

Bargaining unit members shall pay the full share of the employee's contribution to the Marin County Retirement System.

Member Cost of Living Rates. Bargaining unit members who are eligible to participate in the Marin County Employee Retirement Association will pay their full share of member's cost of living rates as allowed under Articles 6 and 6.8 of the 1937 Retirement Act. Miscellaneous and safety member contribution rates include both the basic and COLA portions (50% of COLA is charged to members as defined in the 1937 Act).

4.4.2 *Additional Pension Funding*

Effective the pay period including September 1, 2013, each member shall pay an additional 1.0% of pensionable compensation to the Marin County Employee Retirement Association

through a payroll deduction to help fund pension. This deduction shall be made on a pre-tax basis to the extent allowed by law.

4.4.3 *Retirement Plans*

On January 1, 2007, the City shall provide the Marin County Employee Retirement Association 3% at 55-retirement program to all safety members, as defined under the 1937 Act Government Code Section 31664, subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans. This is based on an employee's single highest year of compensation with a 3% COLA benefit cap.

On January 1, 2007, the City shall provide the Marin County Employee Retirement Association 2.7% at 55-retirement program to all miscellaneous members, as defined under the 1937 Act Government Code Section 31676, subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans. This is based on an employee's single highest year of compensation with a 3% COLA benefit cap.

Safety employees hired on or after July 1, 2011 will receive an MCERA retirement benefit at the formula 3%@55, calculated based on the average of their highest consecutive three years of compensation, with a 2% COLA benefit cap.

Miscellaneous employees hired on or after July 1, 2011 will receive an MCERA retirement benefit at the formula 2% at 55, calculated based on the average of their highest consecutive three years of compensation, in accordance with MCERA regulations. The annual pension adjustment will be a maximum of 2% COLA.

Safety employees hired on or after January 1, 2013 who are defined as "new members" of MCERA in accordance with the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the MCERA 2.7% @ 57 plan for Safety members. The employee is responsible for paying the employee contribution of half of the total normal cost of the plan, as defined by MCERA, through a payroll deduction. Final compensation will be based upon the highest annual average compensation earnable during the thirty six (36) consecutive months of employment immediately preceding the effective date of his or her retirement or some other period designated by the retiring employee.

Miscellaneous employees hired on or after January 1, 2013 who are defined as "new members" of MCERA in accordance with the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the MCERA 2% @ 62 plan for Miscellaneous members. The employee is responsible for paying the employee contribution of half of the total normal cost of the plan, as defined by MCERA, through a payroll deduction. Final compensation will be based upon the highest annual average compensation earnable during the thirty six (36) consecutive months of employment immediately preceding the effective date of his or her retirement or some other period designated by the retiring employee.

5 SICK LEAVE

5.1.1 *Accrual*

Each eligible full-time employee working a 56 hour work week shall earn sick leave credits at the rate of twelve (12) hours per month. Represented employees working a 40 hour work week shall continue to earn sick leave credits at the rate of eight (8) hours per month.

All eligible full time employees shall earn sick leave credits at the rates specified above, commencing with the date of employment. Unused sick leave may be accumulated to any amount but a cap exists for payoff purposes (see Section 5.1.4). The sick leave accrual rate is prorated for eligible part time employees.

5.1.2 *Sick Leave Usage*

An employee eligible for sick leave with pay will be granted such leave with approval of the department head for the following purposes:

- a. Personal illness of the employee or illness within the immediate family (immediate family under subsection 5.1.2 a is defined as employee's spouse, dependent children and/or employee's parents, not in-laws) or physical incapacity of the employee resulting from causes beyond the employee's control; or
- b. Enforced quarantine of the employee in accordance with community health regulations; or
- c. In the event of a death or critical illness in the immediate family, an employee may, upon proper notification, be allowed to be granted an absence up to five (5) consecutive calendar days (combining duty and off duty days), using sick leave as needed during this period of absence, for such a circumstance either in or out of state. Where such death or critical illness has occurred, the employee will be expected to furnish satisfactory evidence of the situation to the Fire Chief if requested. The employee may request, and on approval of the Department Head, receive additional sick leave hours off in the event of such a death or critical illness in the immediate family. The immediate family is defined as spouse, children, parents, grandparents, brothers or sisters.

Except that in a. and b. above, an employee may not use sick leave for a work related injury and/or illness once said employee has been determined permanent and stationary. The Association acknowledges the Fire Chief's right to investigate sick leave abuse.

5.1.3 *Sick Leave Service Credit Option*

Employees who are eligible to accrue sick leave and who retire from the City of San Rafael, on or after July 1, 1999, and within 120 days of leaving City employment (excludes deferred retirement), shall receive employment service credit, for retirement purposes only, for all hours of accrued, unused sick leave (exclusive of any sick leave hours said employee is eligible to receive and elects to receive in compensation at the time of retirement, pursuant to Section 5.1.4 - Sick Leave Payoff).

5.1.4 *Sick Leave Payoff upon Termination of Employment*

Upon termination of employment by resignation, retirement or death, employees who leave the municipal service in good standing shall receive compensation of all accumulated unused sick leave, based upon the rate of two percent (2%) of each year of service to a maximum of fifty percent (50%). The maximum accrual limits for sick leave payoff purposes are 1,200 hours for employees working a 40 hour work week and 1,680 hours for employees working a 56 hour work week. Sick leave payoff would be subject to a maximum of 600 hours for 40 hour per week employees and 840 hours for 56 hour per week employees, subject to the 2% per year formula noted above.

5.2 VACATION LEAVE

5.2.1 *Policy Statement*

Four (4) members per shift shall be allowed off on vacation during all days of the calendar year except for those sets of shifts containing a designated holiday as defined in Section 5.4.1 and including December 24th and 31st. For sets of shifts containing a holiday, three (3) members shall be allowed off on vacation. Vacation shall be administered in accordance with current Fire Department policy, which is incorporated into this MOU by reference of this statement.

5.2.2 *Rate of Accrual*

Vacation benefits shall accrue during the probationary period. Each regular full time employee (part time regular are prorated) shall accrue vacation at the rate shown in the charts below:

For 40 hour per week employees

MONTHS OF SERVICE	ACCRUAL PER YEAR	ACCRUAL PER PAY PERIOD
0 – 35 months	10 days or 80 hours	3.33 hours
36 – 119 months	15 days or 120 hours	5.0 hours
120 – 179 months	20 days or 160 hours	6.66 hours
180+ months	25 days or 200 hours	8.34 hours

For 56 hour per week employees

MONTHS OF SERVICE	ACCRUAL PER YEAR	ACCRUAL PER PAY PERIOD
0 – 35 months	5 shifts or 120 hours	5.0 hours
36 – 119 months	7.5 shifts or 180 hours	7.5 hours
120 – 179 months	10.0 shifts or 240 hours	10 hours
180+ months	12.5 shifts or 300 hours	12.5 hours

5.2.3 *Vacation Accrual Cap*

During each calendar year employees will be limited (capped) in the number of vacation hours they can accrue.

No employee may accrue more than 250 hours for 40 hour per week employees and 396 hours for 56 hour per week employees. Vacation accruals will resume once the employee's accumulated vacation balance falls below the allowable cap limit.

Employees may, for special situations, i.e., extended medical leave, request an increase in their cap. Each request will need to be in writing, submitted through the department, and received the approval of the Fire Chief and the City Manager. Such requests would be reviewed on a case-by-case basis and would be evaluated based on the reason for the request and be consistent with the provisions of the MOU. This additional vacation accrual could not exceed one-half of the employee's regular annual vacation accrual. In no case would the addition of vacation accrual over the cap be extended beyond one additional year.

In the event that one or more City holidays falls within an annual vacation leave, such holidays shall not be charged as vacation leave, unless the employee is on a schedule to be paid for designated holidays in lieu of days off.

Upon termination, an employee shall be compensated in cash at his/her current rate of pay for any vacation accrued but not taken, up to the maximum accrual cap, provided that the employee has successfully completed his/her initial probationary period.

5.2.4 *Vacation Accrual when on 4850 Leave*

While on 4850 leave, if an employee exceeds the maximum vacation accrual (250 for 40 hours/week employees or 396 for 56 hours/week employees) he/she will be bought down to 200 vacation hours for 40 hour employees and 300 vacation hours for 56 hour employees. This buy-down will occur when the employee returns to regular duty and will be documented via a Personnel Action Report (PAR). The buy-down will not prevent employees from participating in the vacation conversion program or the vacation cash in program. Once the employee's hours have been bought down the employee will then continue to accrue vacation hours at their regular rate.

5.2.5 *Vacation Relief*

Beginning January 2005, the City converted to the constant staffing model and was no longer hiring vacation relief positions. Should the City wish to return to using vacation relief, following meeting and conferring with the Firefighter's Association on the implementation of such change, primary selection for vacation relief will occur annually and will be voluntary based on seniority (those employees in the Firefighter job class with the most seniority in the Fire Department will have the first opportunity to sign up for vacation relief.

If through the above reference voluntary selection process the department is unable to identify an adequate number of firefighters for this annual assignment employees will be assigned by the department using a least senior (seniority within the Fire Department) procedure.

Employees volunteering and/or being assigned to the vacation relief assignment must have completed two years with the San Rafael Fire Department as a safety member. At no time will there be more than two (2) Firefighter/Paramedics per shift assigned to Vacation Relief.

Those employees assigned to this annual vacation relief assignment shall be paid \$125.00 per month.

No employee shall serve more than three (3) consecutive years on vacation relief. After three (3) years of not serving on vacation relief, such employee may then work up to three (3) consecutive years on vacation relief.

5.3 LEAVE CONVERSION TO HOUR FOR HOUR

5.3.1 *Accrued Balance Conversion*

On January 1, 1995, each employee covered by this Memorandum of Understanding working a regularly scheduled 56 hour work week had their current balances of accrued sick leave hours and accrued vacation leave hours multiplied by a factor of 1.5. The resulting figures then became each employee's new accrued balances of sick and vacation leave.

5.3.2 *Sick and Vacation Leave Usage*

Each employee covered by this Memorandum of Understanding shall have one (1) hour of sick leave or one (1) hour of vacation leave, as appropriate, deducted from their accrued balance for each hour of leave used during any reportable 24 hour period.

5.3.3 *Hourly Rate for Leave Payoff*

Effective with the conversion to hour for hour reporting, the hourly rate used for leave payoff purposes shall be based on 2080 annual work hours for represented job classes working a 40 hour work week and 2912 annual work hours for represented job classes working a 56 hour work week.

5.4 HOLIDAYS

5.4.1 *Days Observed*

Employees covered under this Memorandum of Understanding shall be entitled to the following holidays:

January 1 st	New Year's Day
Third Monday in January	Martin Luther King Day
February 12 th	Lincoln's Birthday
Third Monday in February	Washington's Birthday
March 31 st	Cesar Chavez Birthday
Last Monday in May	Memorial Day
July 4 th	Independence Day
First Monday in September	Labor Day
September 9 th	Admission Day
As observed by the City of San Rafael	Veteran's Day
As observed by the City of San Rafael	Thanksgiving Day
As observed by the City of San Rafael	Day after Thanksgiving
December 25 th	Christmas Day

5.4.2 *Holiday Pay*

All 56 hour a week shift employees covered under this Memorandum of Understanding are entitled to additional straight time compensation for every holiday given in Section 5.4.1 above. Said compensation shall be paid twice each year on the first pay period of December and the first pay period of June. Holiday pay formula will be based on a 56 hour work week (2,912 hour year for calculating the hourly rate for a twelve hour day).

All 40 hour week shift employees covered under this Memorandum of Understanding are entitled to the aforementioned holidays off or shall be paid in addition to their regular salary for the number of hours worked during such a day at the rate of straight time based on their standard hourly rates.

5.4.3 *Holiday Routine*

Holiday routine shall apply to New Year's Day, Martin Luther King Day, Presidents' Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, the day after Thanksgiving and Christmas. In addition to the emergency responses, the holiday routine shall consist of the normal daily emergency preparedness, routine maintenance of facilities and equipment and the related administrative work, and participation in public education or community events.

5.5 OTHER LEAVE

5.5.1 *Court Appearance*

Employees required to appear in court or other official hearings shall be granted a leave of absence with pay from their assigned duty until released by the Court. Employees required to appear in Court or other official hearings other than during their regular tour of duty shall receive a minimum of four (4) hours pay at the overtime rate and shall appear in Class A uniform. The Fire Department, when informed, shall provide appearance information for the employees. This information shall be made available, if known, by 6:00 p.m. on the last court day preceding the

scheduled appearance date of the employee. Employees will be responsible for calling the dispatcher after 6:00 p.m.

5.5.2 *Jury Duty*

Employees required to report to jury duty shall be granted a leave of absence with pay from their assigned duty until released by the court. The employee shall notify his/her employer in advance when summoned for jury duty. If the employee is a shift employee and is selected to serve on a jury, said employee shall not be required to perform duty during non-court hours until released by the court.

5.5.3 *Military Leave*

Military leave as defined in State law shall be granted to any regular employee.

All employees entitled to Military Leave shall give the Fire Chief a reasonable opportunity, within the limits of military regulations, to determine when such leave shall be taken.

5.5.4 *Workers' Compensation / Industrial Injury Leave*

Safety employees shall be governed by the provisions of Section 4850, et seq. of the Labor Code. Non safety employees shall be governed by applicable state law and City Rules and Regulations. Refer to Section 5.1.2. for qualifications regarding use of accrued sick leave.

5.5.5 *Family Medical Leave / California Family Rights Act*

Family leave shall be granted in accordance with the Federal FMLA of 1993 and the CFRA of 1991. Requests for Family leave are submitted to the Fire Chief for approval and reviewed by the Human Resources Director for consistency with the law prior to approval.

5.5.6 *Catastrophic Leave*

Effective July 1, 2008 Association members have agreed to adhere to the provisions of the City's Catastrophic Leave Policy which is available on the City's Intranet website.

5.5.7 *Bereavement Leave*

In the event of the death of an employee's spouse, registered domestic partner, child, parent, brother, sister, in-law(s), or a relative who lives or has lived in the home of the employee to such an extent that the relative was considered a member of the immediate family and/or another individual who has a legal familial relationship to the employee and resided in the employee's household, up to three (3) days for 37.5 hour per week represented employees (2 shifts for 56 hour per week employees) of paid bereavement leave within the state and up to five (5) days for 37.5 hour per week represented employees (2 shifts for 56 hour per week employees) of paid bereavement leave may be granted to attend an out of state funeral.

In those cases where the death involves an individual other than immediate family, who had such a relationship with the employees, as defined above, the employee shall sign a simple affidavit describing the relationship and submit this to the Fire Chief as part of the request for bereavement leave.

6 TERMS & CONDITIONS OF EMPLOYMENT

6.1 HOURS OF WORK

All suppression employees covered by this Memorandum of Understanding shall work a fifty-six (56) hour work week with a three (3) platoon system. A work shift shall be defined as twenty-four (24) consecutive hours, commencing at 0800 and continuing through 0800 the following day. A set shall be defined as two twenty-four hour shifts worked consecutively.

6.1.1 *Work Schedule / Established Work Week*

Employees in this unit shall be assigned to either 40 hour work weeks or twenty-four hour shifts. All suppression employees work a fifty-six (56) hour work week in twenty-four (24) hour shifts within a twenty-four (24) day cycle as listed below (commonly referred to as the “2X4” schedule):

X = 24 hour on-duty period
0 = 24 hour off-duty period
Example: XXOOOO/XXOOOO/XXOOOO/XXOOOO

Fire prevention personnel may work different schedules according to administrative needs. The work week will consist of 40 hours or 56 hours respectively.

The 2 X 4 schedule shall not change the rules regarding use of sick leave. Employees should notify the Fire Department administration that sick leave use is needed according to current policy and before each 24-hour shift. It is acknowledged by all parties that if a Fire Captain, Fire Division Chief or Fire Battalion Chief determines that an employee is too fatigued to continue work said Officer is authorized to send the employee home on sick leave. Any employee working the suppression schedule described above may agree to transfer to prevention, training or other special assignment, subject to the approval of the Fire Chief. If transferred to the forty (40) hour work week in such a capacity outlined above, such employee shall receive five percent (5%) premium pay. The length of the transfer shall be two (2) years, but may be modified by mutual agreement between the employee and the Fire Chief.

6.1.2 *Shift Trade Policy*

To provide a mechanism which will enable Fire Department members to take a normally assigned work shift off without having to use vacation time, a shift trade policy has been implemented. Refer to Fire Department Policy IVI. In order to maintain appropriate staffing levels, all shift trades will be made on a rank for rank basis only, provided there is no more than a 10% vacancy in the given rank.

6.2 OVERTIME

6.2.1 *Overtime*

All employees covered by this Memorandum of Understanding shall be paid at the rate of time and one-half of their established hourly rate for time worked in excess of their regular forty (40) hour or fifty-six (56) hour work week. There shall be no compensatory time off; all overtime shall be paid overtime. In order to maintain appropriate staffing levels, all overtime coverage will be made on a rank for rank basis only as outlined in Fire Department Policy IVI, or with the assurance all positions within the company are covered to current department standards, including the placement of at least one person licensed as a paramedic on each company.

6.2.2 *FLSA Overtime*

Overtime shall be calculated pursuant to the Fair Labor Standards Act and approved paid vacation and approved paid sick leave shall count as hours worked towards overtime eligibility.

In accordance with the 7k exemption, non-exempt 56-hour personnel shall receive 6.33 hours additional pay per pay period.

6.2.3 *Maximum Continuous Hours of Work*

No employee shall work more than one hundred and twenty (120) consecutive hours without the written approval of the Fire Chief or the Fire Chief’s designee.

6.3 EMD-CERTIFICATION

EMT-D certification is a requirement for each employee with a safety classification. The certification is to be conducted on duty, between the hours 0800 and 1700, and counted as a portion of the eight-hour routine duty day.

6.4 SELECTION PROCESS

6.4.1 Promotional Recruitments

Recruitments in the Firefighter series to the rank of Fire Engineer and Fire Captain shall be promotional. In the event that no qualified candidates are identified through the examination process, the position(s) will remain vacant and another promotional recruitment will begin as soon as feasible, as determined by the Fire Chief. This will continue until a qualified candidate is found. The City will strive to maintain active promotional lists to prepare for vacancies.

6.4.2 Fire Captain Qualifications

Option 1

- A. Four (4) years full time suppression experience in the Firefighter series.
- B. Associate Degree in Fire Science or Fire Technology.
- C. San Rafael Fire Department Engineer Certification or Engineer Rank.
- D. Completion of NWCG S-231 and S-290 curriculum.
- E. State Board of Fire Services Fire Officer Certification.

- or -

Option 2

- A. Five (5) years full time suppression experience in the Firefighter series.
- B. State Board of Fire Services Fire Officer Certification.
- C. San Rafael Fire Department Engineer Certification or Engineer rank.
- D. Completion of NWCG S-231 and S-290 curriculum.

- or -

Option 3

- A. Ten (10) years full time suppression experience in the Firefighter series.
- B. San Rafael Fire Department Engineer Certification or Engineer rank.
- C. Completion of Fire Command 1A and 1B..
- D. Completion of NWCG S-231 and S-290 curriculum.

- or -

Option 4

- A. Seven (7) years full time suppression experience in the Firefighter series, with three (3) of those being in the position of Fire Engineer with the City of San Rafael
- B. Completion of State Board of Fire services Fire Command 1A and 1B.
- C. Completion of NWCG S-231 and S-290 curriculum

For the purpose of definition, in Section 6.4.2., Firefighter series shall mean the following job classes: Firefighter, Firefighter-Paramedic, Fire Engineer and Fire Captain.

6.4.3 *Fire Captain – Administrative Duty*

Application for and acceptance of the position of Fire Captain includes the explicit understanding that Fire Captains may be assigned to either:

- A. Supervise a Fire Company and work a 56 hour per week on a 2 x 4 schedule
or
- B. Perform an Administrative assignment with the following conditions:
 - 1. Employee has cleared probation
 - 2. Employee will serve as the Training/ Safety Coordinator
 - 3. To serve as EMS Coordinator
 - 4. Assignment is for a 40 hour work week
 - Four 10 hour work days per week is optional.
 - Work day will include 1 hour for physical fitness

Assignment to Administrative Duty

In the event Administrative assignments remain vacant following the solicitation of volunteers, the assignment will be filled using reverse seniority based on his/her date of appointment.

Starting with the 2011 bid process, Administrative positions will be filled at the time of the Station bidding and will last for a 2 year period. Any period of time less than 2 years will be considered on a hardship basis at the discretion of the Chief and the incumbent.

In the event that a Captain has fulfilled a 2 year Administrative position but no positions as a Fire Company Captain are available, the Administrative position shall return to the bid process. If no officers choose the Administrative position it shall be filled by the least senior Captain having completed probation.

Once a Captain has served two years in an Administrative position, he/she will not be required to serve again. However, a person serving in the Administrative position may serve in that capacity for more than two years per the discretion of the Chief and the incumbent.

If 2 or more line Captain assignments are vacant at the time of the Station bid, the Administrative position shall be suspended until the Department is able to reach full staffing of the Captain position. When full staffing has been achieved the position shall return to the bid process.

Compensation and Overtime

Captains filling an Administrative position shall receive (5%) Premium Pay as outlined in Section 6.1.1 and shall also receive an additional Incentive Pay of 5% added to the base salary. However, when a Captain works overtime while on Administrative assignment, this additional 10% will not be added to the hourly rate and overtime pay shall be based on the base salary.

Captains filling an Administrative assignment are eligible for shift overtime if it does not conflict with their regular work schedule. If a Captain works shift overtime, the hourly rate of pay will be adjusted to the 56 hour workweek rate and the hourly rate will not include the 5% Premium Pay or the 5% Incentive Pay. Captains filling administrative assignments are exempt from mandatory overtime.

Vacation and Sick Leave Accrual

When a member moves from a 56 hour work week to a 40 hour work week, accrued vacation and sick hours will be multiplied by 0.714 to determine new vacation and sick leave balance.

When a member moves from a 40 hour work week to a 56 hour work week, accrued vacation and sick hours will be multiplied by 1.4, to determine new vacation and sick leave balance.

Vacation and sick leave accrual for employees on a 40 hour work week will be at the rates outlined (per pay period) in the MOU for 40 hour work week employees.

6.4.4 *Rule of Three*

Appointments made off of departmental promotional lists or open lists for Fire Department vacancies which have Fire Department employees on them require filling of vacancies from within the top three names on a certified list as follows:

- 1 opening = 3 candidates
- 2 openings = 4 candidates
- 3 openings = 5 candidates and etc.

The Human Resources Director may remove a name of an eligible employee from a list if he/she has been rejected or passed over three times by the appointing authority.

Nothing herein shall require use of a Rule of Three for entry-level selections, which shall be subject to a Rule of the List. Should the number of candidates fall below the stated number for the vacancy openings, the Human Resources Director may certify an eligibility list in accordance with the City's Personnel Rules and Regulations Article 6.6.

6.4.5 *Duration of Eligibility Lists*

Eligibility lists (entry level and promotional) shall remain in effect for twelve (12) months from the established date and can be extended by an additional six (6) months at the written request of the Fire Chief.

6.5 CAREER DEVELOPMENT PROGRAM

The San Rafael Firefighters Association agrees to conform to the Career Development Guidelines regarding Engineer Certification (Policy 1-V-10) and Firefighter (Policy 1-V-9) as revised 11-18-03 and 9-23-08 respectively, and said policy is hereby incorporated by reference.

6.6 PROBATIONARY PERIOD

6.6.1 *Purpose of Probation*

The purpose of probation is to give the City an opportunity to evaluate an employee's performance prior to the employee entering regular status.

6.6.2 *Periodic Probationary Evaluation*

After passing an examination and accepting appointment, each employee shall serve a probationary period. During this probationary period the employee's performance shall be evaluated at least twice, once during the fourth (4th) month and once during the eighth (8th) month. The results of these evaluations shall be discussed with the employee.

6.6.3 *Length of Probationary Period*

The probationary period on original and promotional appointments shall be for twelve (12) months.

6.6.4 *Rejection During Probation*

During the probationary period an employee may be rejected at any time by the Fire Chief without the right of appeal, except as provided by law.

6.6.5 *Extension of Probationary Period*

The probationary period shall not be extended except in the case of extended illness or injury or compelling personal situation during which time the employee was unable to work. In such cases, the probationary period may be extended for the length of time the ill or injured employee was unable to work.

6.6.6 *Notification of Extension or Rejection*

The Fire Chief shall notify the Human Resources Director in writing of his/her intention to extend the employee's probationary period or reject the employee. After discussion with the Human Resources Director, the Fire Chief shall notify the employee in writing of his/her extension or rejection.

6.6.7 *Regular Status*

For the purpose of this agreement, regular status shall mean; full time, non-probationary status. Regular status shall commence with the day following the expiration date of a probationary period.

6.6.8 *Promotion of Probationary Employee*

An employee serving a probationary period may be promoted to a position in a higher classification. When an employee is promoted under such circumstances, the probationary period of the lower classification shall be suspended. This suspension, the new promotional probationary period and the promotional appointment shall commence on the same date.

6.6.9 *Unsuccessful Passage of Promotional Probation*

An employee who does not successfully pass his/her promotional probationary period shall be reinstated to the position in which the employee held regular status prior to his/her promotion. If the employee was serving a probationary period at the time of promotion, the suspension of the prior probationary period shall be lifted, the employee shall be reinstated to probationary status in the prior classification and the remainder of that period shall be served. Provided, however, that if the cause for not passing the promotional probationary period is sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstated to the lower position. If the employee has completed the probationary period in the prior classification and the employee is subject to dismissal without reinstatement, the employee has the opportunity to appeal pursuant to the provisions of the Firefighters Procedural Bill of Rights Act and this Memorandum of Understanding.

6.7 TRANSFERS / REASSIGNMENTS

6.7.1 *Types of Transfers*

Transfers may be within the same department (intra-departmental) or between departments (inter-departmental). The requirements for each are as follows:

- a. **Inter-departmental transfers.** An employee may be transferred from a position in one department to a position in the same classification in another department, with the recommendation of the two department heads and the approval of the City Manager.
- b. **Voluntary transfers.** An employee may make a written request for transfer to the Personnel Director to a position in the same or similar classification with the same salary range. Such a request may be made on the recommendation of the affected department head(s) and the approval of the City Manager.

6.7.2 *Minimum Qualifications & Probation*

Any persons transferred to a different classification shall possess the minimum qualifications for that classification. In the case of a voluntary transfer, the employee shall serve a six (6) month probationary period.

6.7.3 *Station Transfers*

Station transfer will be in accordance with department policy 1-V-24, Station Bid Preference Guideline, which is hereby incorporated by reference.

6.8 STAFFING LEVELS

6.8.1 *Constant Staffing*

The City determines the level of service and therefore the overall size of the Fire Department's staff. However, the City is committed to provide safe staffing levels for the City's firefighters and the public. The City and the Association agree to continue Constant Staffing as implemented in 2005. This allows the City to maintain staffing needs through current staffing levels and callback when necessary. Constant Staffing levels will consist of a range not to exceed 22 personnel per each shift operating no more than six companies and no more than 2 medic units. The City shall promptly commence hiring and/or promotions to ensure refreshed staff at each rank and to minimize or eliminate forced overtime.

6.8.2 *Minimum Staffing*

Minimum Staffing will consist of a range of personnel per each Company. The range will consist of staffing each engine company with 3 members qualified to function in the following roles, (1) Captain, (1) Engineer, (1) Firefighter or Firefighter Paramedic. Staffing for each Medic unit shall consist of (2) Firefighter Paramedics.

6.8.3 *Hiring Additional Personnel*

In addition to those listed in this paragraph, when the Department reaches full staffing the City may hire up to three additional personnel for permanent vacancies. Hiring additional personnel would require the mutual consent of the Fire Chief and the Firefighters Association.

6.8.4 *Paramedic Staffing*

It is a goal of the fire department to assign at least one Firefighter/Paramedic to each Engine or Truck Company and realize ALS assessment capabilities for those units.

Captain or Engineer EMT-Ps no longer receive the direct paramedic incentive that is now built into base salary and are encouraged to continue participation in the paramedic program in an effort to deliver ALS service from all fire stations. The City will facilitate the continued cost of EMT-P licensure and continuing education. Captain and Engineer EMT-Ps are encouraged to assist with fire department staffing to maximize our ability to field Engine/Truck Companies as Assessment Units.

Firefighter/Paramedics will serve in assignments on Engine or Truck Companies and Medic Units to facilitate the maintenance of firefighting and paramedic skills. Quarterly or less frequent station rotation of non-probationary Firefighter/Paramedics between two fire stations may be employed to enable this alternation of duties. Firefighter/Paramedics are available for occasional relocation from regularly assigned stations when exigent circumstances require a paramedic to maintain the provision of ALS service on Medic Units.

6.9 PERSONNEL RULES & REGULATIONS

The City and the Association met and conferred over a revision to the City's Rules and Regulations and agreement was reached in October of 1995. Prior to final consideration of any future, proposed amendments to these rules that constitute a change in or impacts wages, hours or terms and conditions of employment, said proposed amendment(s) shall be subject to the provisions of the Meyers-Milias-Brown (MMB) Act.

6.9.1 *Wireless Communication Policy*

Effective July 1, 2008 Association members have agreed to adhere to the provisions of the City's Wireless Communication Policy which is available on the City's Intranet website.

6.9.2 *Drug & Alcohol Policy*

The City and the Association both support a drug and alcohol free work place. Association members will adhere to the provisions of the Drug and Alcohol Testing Policy and Procedures attached herein as Exhibit E and will continue to work with the City to develop a mutually agreeable policy within the terms of this Memorandum of Understanding. It is understood that the policy will apply to all represented departmental employees and non-represented fire safety employees.

6.9.3 *Outside Employment Policy*

No regular employee shall engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his/her duties with the City. It is the intent of this provision to exercise the authority granted by Section 1126 of the Government Code, subject to the limitations provided therein. Effective July 1, 2008 Association members have agreed to adhere to the provisions of the City's Firefighters Outside Employment Policy attached herein as Exhibit F and available on the City's intranet website.

6.9.4 *Use of Fire Apparatus for Shopping*

Affected employees will be allowed to use fire vehicles for shopping. Affected employees shall carry a portable radio or alert device and shall remain ready to respond to any call received.

6.9.5 *Light Duty Policy Statement*

Light duty is offered to employees with temporary medical disabilities under the following circumstances:

1. Must be medically authorized by the individual's treating physician.
2. Any and all work restrictions or modifications necessary to accommodate the employee's temporary disability must be thoroughly defined.
3. There must be actual light duty work available that can accommodate the temporary modifications.
4. This option is available to all employees whether the debilitating injury occurred on or off duty.
5. Light duty will be applied in a non-discriminatory manner.
6. All light duty assignments will consist of work, which falls within the scope of regular employment in the Fire Department, which can accommodate prescribed temporary physical limitations. Light duty assignments may include, but are not limited to, departmental work such as: fire prevention, running supplies and administrative projects. Light duty will be the only circumstance where an employee will be

required to perform duties outside of his/her job description. It is understood and agreed that light duty assignments will be confined to the Fire Department.

6.9.6 *No Smoking / Tobacco Use Policy*

Employees hired by the City of San Rafael after 7/1/08 are required to sign a condition of employment statement that they agree not to smoke or use tobacco products of any kind while employed by the City of San Rafael. This signature must be obtained prior to the date of hire.

Employees hired **before** 7/1/08 will not be allowed to smoke or use other tobacco products as follows:

1. While inside any City/Fire Department vehicle
2. While in public when on-duty or in uniform
3. In compliance with State Law and Local Ordinances

The City will provide tobacco cessation assistance to employees who desire to stop using tobacco products. Employees will be referred to the City's employee assistance program for initial assistance and, if needed, will be eligible to receive up to \$2500 in additional funds to complete a certified tobacco cessation program. Written approval from the Fire Chief is required for the additional funding.

6.9.7 *Grooming Standards*

All personnel covered by this Memorandum of Understanding shall conform to the Grooming Standards specified in Departmental Policy 1-VI-2 and said policy is hereby incorporated by reference.

6.10 MISCELLANEOUS

6.10.1 *Safety Committees*

Fire Department Committee: In order to promote health and safety among the Fire Department employees, a joint committee of seven (7) will be established with equal representation and authority, with four (4) employees to be designated by the Fire Chief and three (3) employees designated by the Association. This committee shall be called the Health and Safety Committee. The committee shall strive to meet regularly at least once a month in order to review accident records and other data bearing on the employee's health and safety. The committee shall make recommendations for the correction of any undesirable conditions, which may be found to exist.

City-Wide Committee: If the City reinstates a City wide Safety Committee, one member designated by the Firefighter's Association shall serve on this committee.

6.10.2 *Management & Miscellaneous Positions*

The position of Fire Chief is deemed a management position and included in the Resolution Pertaining to the Compensation and Working Conditions for Unrepresented Management and Mid-Management Employees for salaries and fringe benefits. The Fire Division Chief, Fire Battalion Chief - Operations, and Administrative Chief are deemed mid-management positions and are included in the San Rafael Fire Chief Officers' Association schedules for salaries and fringe benefits. The Fire Department clerical personnel are included in the S.E.I.U. 949 Supervisory and Miscellaneous Units Memorandum of Understanding, with the exception of the Administrative Assistant to the Fire Chief position, which is part of the Association of Confidential Employees.

6.10.3 *Medical Standards*

The City will establish pre-employment medical standards for all classifications represented by the San Rafael Firefighters' Association, I.A.F.F., Local 1775. A medical standards ordinance to be applicable to Fire Department personnel in the classification of Firefighter, Firefighter-Paramedic, Engineer, and Captain will be discussed by the City and the Association and will be adopted only after mutual agreement by both parties.

6.10.4 *Physical Fitness Program*

Members of the Association have agreed to adhere to the provisions of the Employee Wellness/Fitness Program as outlined below:

A. Wellness/Fitness Committee

Fire Management will manage a Wellness/Fitness Committee with representation comprised of both Fire Management and representatives of the Association. The purpose of the Committee is to maintain a comprehensive Wellness/Fitness program to improve the physical and general health of all unit employees.

B. Wellness/Fitness Program

Employees shall participate in a Wellness/Fitness program conducted by a mutually agreed upon provider.

1. Comprehensive Fitness Assessment and Profile

A fitness evaluation will be conducted annually by a mutually agreed upon provider. This evaluation may include, but not limited to:

- a. 12 lead EKG printout with computer interpretation at rest
- b. Pulmonary function recording of lung capacity and flow rates
- c. Resting and exercise blood pressure measurement
- d. 12 lead EKG printout during graded exercise treadmill test
- e. Body composition evaluation
- f. Abdominal endurance crunch test
- g. Pushup evaluation of upper body strength and endurance
- h. Grip strength
- i. Lower body strength test
- j. Trunk, legs, shoulder and spinal flexibility tests
- k. Health appraisal and coronary risk questionnaire
- l. Individual fitness profiles compiled from above evaluations

2. Blood Chemistry Panel

The blood chemistry panel shall include, but not limited to the following:

- a. Glucose, Bun, Creatine, Bun/Creatine ration, SGOT, SGPT, LDH, GGTP, Billirubin, Alkaline Phosphate, Calcium, Phosphorus, Magnesium, Sodium, Potassium, Chloride, Uric Acid, Triglyceride, Cholesterol (HDL & LDL and Coronary risk ratio), Globulin, Albumin, Total Protein and A/G Ratio, PSA for male and OCS for female employees.

3. Lecture Series and Individual Presentations

The wellness Portion of the program will include the following:

- a. Lecture series on health, nutrition, injury prevention, and exercise science topics.

- b. Literature for topic specific needs or interests dealing with wellness and fitness to be provided at each work site.

4. Physical Fitness

Unit employees will have up to 2 hours per day for physical fitness and personal and facility readiness, unless an emergency or call for service prevents a workout. Unit employees shall adhere to the physician's recommended physical fitness program. Unit employees must be in their uniforms and ready for duty after completing their workout. Captains shall schedule workout time for each Company. On occasion, Department management may adjust workout times when necessary to accommodate other Department business.

The City will provide funds to purchase additional exercise equipment for each fire station during the term of this agreement. The equipment to be purchased shall be determined by a physical fitness committee and approved by the Chief.

C. The Program

This program is designed to provide an effective method for keeping employees healthy by implementing methods for early detection of potential health issues. The City shall pay for annual examination associated with this program and will adhere to all HIPAA confidentiality issues. All medical records are strictly confidential in accordance with State and Federal law. Participation in this program is mandatory.

D. Annual Examination

The City shall provide a physical examination conducted by a cardiologist annually for all unit employees to include a stress EKG. In addition, each male unit employee shall receive a digital prostate exam and hernia examination. The physician shall provide all female unit employees a mammogram and Pap Smear examination.

The physician will evaluate all employees' EKG, fitness, and blood chemistry plan results and will provide a confidential summary to each employee. Employees are responsible for adhering to the recommendations indented by the Cardiologist, for actually participating in the lectures series and for reading the literature provided by the City.

E. Examinations and Scheduling

The physical examination, including laboratory test, spirometer test, Chest X-ray and Stress EKG shall be administered while employees are on duty as scheduled by the City. Employees agree to take such stress EKG and physical examination when scheduled.

F. Agreement to Abide to Examinations Findings

Employees agree to abide by the findings of the medical examination and to comply with the medical examiner's prescribed plan to correct medical deficiencies, including excess weight. All subsequent additional medical examinations shall be arranged for and paid for by employees. This understanding is not intended to waive any rights of the employee under State law.

G. Findings Make Known to City and Employee

Medical findings determined through such examinations shall be made known to the employee in writing by the physician. The City shall be notified of any work restrictions resulting from said examination, if applicable.

6.10.5 *Association Meetings with the Fire Chief*

The Fire Chief and/or Staff members designated by the Fire Chief, along with the representatives of the Association, shall strive to meet at least quarterly to discuss topics and issues of mutual concern. Meetings may be called by either party. The parties will attempt to schedule the meeting within fourteen (14) calendar days of the request for the meeting, unless otherwise mutually agreed. The parties will develop and share an agenda for the meeting at least twenty-four (24) hours prior to the date of the meeting.

6.10.6 *Shared Services*

The City and the Association agree to pursue opportunities to share services with other agencies, including the potential of the formation of a JPA for fire/rescue services. The City and the Association understand that the Association will be involved in any shared services discussions with any other agency throughout that process.

6.10.7 *Gym Reimbursement*

Employees are eligible to receive up to \$16.50 per month reimbursement for paid gym memberships. Such reimbursement shall be reported as taxable income to the employee.

7 PROCEDURES

7.1 DEMOTION

7.1.1 *Demotion*

The Fire Chief may demote an employee when the following occurs:

- A. The employee fails to perform his/her required duties.
- B. An employee requests such a demotion.

No employee shall be demoted to a classification for which he/she does not possess the minimum qualifications.

When the action is initiated by the Fire Chief, written notice of demotion shall be provided to an employee at least ten (10) calendar days before the effective date of the demotion, and a copy filed with the Personnel Department.

Demotion pursuant to subsection 7.1.1 A of this Memorandum of Understanding shall be deemed disciplinary action and as such shall be handled according to the provisions in Article 7.3, Disciplinary Action, of this Memorandum of Understanding.

7.2 TERMINATION OF EMPLOYMENT

7.2.1 *Resignation*

An employee wishing to leave the City service in good standing shall file with his/her immediate supervisor, at least fourteen (14) calendar days before leaving the service, a written resignation stating the effective date and reason for leaving. A copy of the resignation shall be forwarded to the Fire Chief and the Personnel Department.

7.2.2 *Termination - Layoff (Lack of work or funds)*

The Fire Chief may terminate an employee because of reorganization, abolition of position, and shortage of funds. Said termination shall be considered a Reduction In Force and shall be processed in accordance with Article 7.5, Reduction in Force, of this Memorandum of Understanding.

7.2.3 *Termination - Disciplinary Action*

An employee may be terminated for disciplinary reasons, as provided in Article 7.3, Disciplinary Action, of this Memorandum of Understanding.

7.2.4 *Termination During Probation*

The rejection of an employee during his/her initial probationary period is covered in Article 6.6, Probationary Period, of this Memorandum of Understanding.

7.2.5 *Retirement*

Retirement from the City service shall, except as otherwise provided, be subject to the terms and conditions of the City's contract, as amended from time to time, with the Marin County Retirement System.

7.3 DISCIPLINARY ACTION

7.3.1 *Definition*

Disciplinary action shall mean discharge/dismissal, demotion, reduction in salary, and/or suspension resulting in loss of pay.

7.3.2 *Authority*

The City shall have the right to discharge or discipline any employee for dishonesty, insubordination, drunkenness, incompetence, negligence, failure to perform work as required or to observe the Department's safety rules and regulations or for engaging in strikes, individual or group slowdowns or work stoppages, or for violating or ordering the violation of the Memorandum of Understanding.

7.3.3 *Causes for Disciplinary Action*

The City may discipline or discharge an employee for the following:

- A. Fraud in securing appointment.
- B. Negligence of duty.
- C. Violation of safety rules.
- D. Unacceptable attendance record including tardiness, overstaying lunch or break periods.
- E. Possession, distribution or under the influence of alcoholic beverages, non-prescription or unauthorized narcotics or dangerous drugs during working hours.
- F. Inability, unwillingness, refusal or failure to perform work as assigned, required or directed.
- G. Unauthorized soliciting on City property or time.
- H. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
- I. Unacceptable behavior toward (mistreatment or discourteousness to) the general public or fellow employees or officers of the City.
- J. Falsifying employment application materials, time reports, records, or payroll documents or other City records.
- K. Disobedience to proper authority.
- L. Misuse of City property.
- M. Violation of any of the provisions of these working rules and regulations or departmental rules and regulations.

- N. Disorderly conduct, participation in fights, horseplay or brawls.
- O. Dishonesty or theft.
- P. Establishment of a pattern of violations of any City policy or rules and regulations over an extended period of time in which a specific incident in and of itself would not warrant disciplinary action, however, the cumulative effect would warrant such action.
- Q. Failure to perform to an acceptable level of work quality and quantity.
- R. Insubordination.
- S. Other acts inimical to the public service.
- T. Inability or refusal to provide medical statement on cause of illness or disability.

7.3.4 *Appeal of Disciplinary Action*

Whenever punitive action is undertaken, the offending employee shall have the opportunity for an administrative appeal which will be conducted in conformance with the Administrative Procedure Act and this Memorandum of Understanding. Such appeal must be filed with the City Manager or his/her designee by the employee in writing within fourteen (14) calendar days from the date of the discipline/discharge and unless so filed the right of appeal is lost.

7.3.5 *Arbitration (Disciplinary Action)*

The appellant may have the appeal heard by the City Manager or may request arbitration. If an employee elects to have an appeal heard by the City Manager, the employee must state in writing that he or she waives his/her right to an appeal that conforms to the procedures of the Administrative Procedure Act.

If arbitration is requested, the arbitration will be held in conformance with the Administrative Procedure Act, California Code of Regulations, and other applicable statutes. Representatives of the City and the appellant shall meet within fourteen (14) calendar days to select a mutually acceptable arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the appellant and the City.

A hearing before the arbitrator shall be held within sixty days of the selection of the arbitrator unless the mutually accepted arbitrator's schedule does not so permit, in which case the hearing shall be held not more than 120 days after the selection of the arbitrator. The arbitrator shall not have the power to amend or modify either party's position; but shall rule on the merits of each party's case as presented during the hearing. Decisions of the Arbitrator on matters properly before him/her shall be final and binding on the parties hereto, to the extent permitted by the Charter of the City.

In addition to arbitrators proposed by the State Mediation and Conciliation Service, the parties shall be free to select from a pool of arbitrators mutually agreed to by the City and the Association. The parties shall continue to meet and confer, after the adoption of this MOU on a mutually agreeable panel of arbitrators. Once agreed to the panel shall be identified by a side letter to the MOU.

7.4 GRIEVANCE PROCEDURE

7.4.1 *Definition*

A grievance is any dispute, which involves the interpretation or application of any provision of this Memorandum of Understanding, or any Fire Department policy specifically referenced herein, except issues concerning appeals of punitive action, which is governed by Article 7.3, Disciplinary Action, of this Memorandum of Understanding. Policy 1-VI-3 is specifically incorporated by reference.

7.4.2 *Initial Discussions*

Any employee who believes that he or she has a grievance may discuss his or her complaint with the Fire Chief or with such subordinate management official as the Fire Chief may designate. If the issue is not resolved within fourteen (14) calendar days, or if the employee elects to submit his or her grievance directly to an official of the association, the procedures hereafter specified shall be invoked.

7.4.3 *Referral to City Manager*

Any employee or any official of the Association may notify the City Manager and Fire Chief in writing that a grievance exists, and in such notification, state the particulars of the grievance, and, if possible, what remedy or resolution is desired.

No grievance may be processed under Section 7.4.4 below, which has not been first heard and investigated in pursuance of Section 7.4.2. A grievance which remains unresolved fourteen (14) calendar days after it has been submitted to the City Manager in writing may be referred to arbitration.

Any time limit may be extended to a definite date by mutual agreement of the Association and the appropriate management representative.

7.4.4 *Arbitration (Grievance)*

If the grievance is not resolved, the grievant, the Association, or the City may, after completion of the previous step in the grievance procedure, submit the grievance directly to the City Manager or may request arbitration. If arbitration is requested, representatives of the City and the Grievant shall meet within fourteen (14) calendar days to select a mutually acceptable arbitrator (the selection process shall include the review of the arbitrator's availability). The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Grievant and the City. Each party, however, shall bear the cost of its own presentations, including preparation and post hearing briefs, if any. A hearing before the arbitrator shall be held within 60 days of the selection of the arbitrator unless the mutually accepted arbitrator's schedule does not so permit, and the arbitrator shall render a decision which is binding on the parties hereto, to the extent permitted by the Charter of the City.

7.5 REDUCTION IN FORCE

7.5.1 *Authority*

The Fire Chief may lay off, without prejudice, any regular employee because of lack of work or funds, or organizational alterations, or for reasons of economy or organization efficiency.

7.5.2 *Notice*

Employees designated for layoff or demotion in lieu of lay off shall be notified in writing at least thirty (30) calendar days prior to the anticipated date of lay off or demotion. The Association shall also be so notified.

7.5.3 *Order of Layoff*

Layoffs and/or reductions in force shall be made by classification. A classification is defined as a position or number of positions having the same title, job description, and salary. Extra-hire employees shall be laid off before permanent employees in the affected classification. In effecting the preceding order, a part-time permanent employee with more seniority can displace a full-time permanent employee.

7.5.4 *Seniority*

If two or more employees within a classification have achieved permanent status, such employees will be laid off or reduced on the following basis:

- A. Seniority within the affected classifications will be determinative. Such seniority shall include time served in higher classification(s). The computation of seniority for part-time employees will be credited on a pro-rata basis to full-time service. Time spent on a City Manager approved leave of absence without pay does not count toward seniority.
- B. If the seniority of two or more employees in the affected classification or higher classification(s) is equal, departmental seniority shall be determinative.
- C. If all of the above factors are equal, the date of regular status in City service is achieved shall be determinative.
- D. If all of the above are equal, date of certification for appointment shall be determinative.

7.5.5 *Bumping Rights*

An employee designated to be laid off may bump into a class at the same salary level, or into the next lower classification in which such employee has previously held regular status. An employee, who is bumped, shall be laid off in the same manner as an employee whose position is abolished.

7.5.6 *Transfer Rights*

The Personnel Director will make every effort to transfer an employee who is to be affected by a reduction in force to another vacant position for which such employee may qualify. The length of eligibility for such transfer will be the period of notification as provided in Section 7.5.2, but no longer than the effective date of such layoff or reduction.

7.6 RE-EMPLOYMENT

7.6.1 *General Guidelines*

Individuals who have been laid off or demoted shall be offered re-appointment to the same classification in which they held status in the order of seniority in the classification. Individuals demoted in lieu of reduction in force shall be offered restoration to the highest class in which they held status and in which there is a vacancy prior to the appointment of individuals who have been laid off.

7.6.2 *Right to Re-Employment*

Each person who has been laid off or demoted in lieu of a layoff from a position the person held, shall, in writing, be offered re-appointment in the same classification should a vacancy occur in the classification within two years after the layoff or demotion. Prior to being re-employed, the employee must pass a physical exam administered by a City appointed physician and must pass the background check administered by the City.

7.6.3 *Time Limits*

Should the person not accept the re-appointment within seven (7) calendar days after the date of the offer, or should the person decline or be unable to begin work within two weeks after the date of acceptance of the offer, the person shall be considered unavailable for employment, shall forfeit the right to re-employment and be removed from the re-employment list.

7.6.4 *Availability*

Whenever a person is unavailable for re-employment, the next senior person who is eligible on the re-employment list shall be offered re-employment.

7.6.5 *Probationary Status*

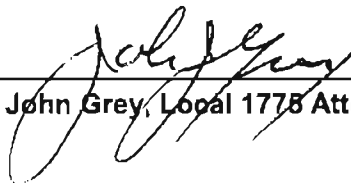
Employees re-appointed under the provisions above will not be required to complete a new probationary period if they had previously held permanent status in the classification.

Employees who had not completed their probationary period shall serve the remainder of the probationary period upon re-appointment.

7.6.6 *Restoration of Benefits*

Employees restored to previously held positions shall be deemed to have returned from a leave of absence for the purpose of all rights and benefits legally permissible. Time not on the payroll will not count as time worked for the purposes of seniority accrual.

**SAN RAFAEL FIREFIGHTERS'
ASSOCIATION, I.A.F.F., LOCAL 1775**



John Grey, Local 1775 Attorney



Andrew Rogerson, Fire Captain

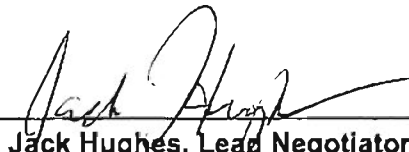


Evan Minard, Fire Captain

Date

10/17/16

CITY OF SAN RAFAEL



**Jack Hughes, Lead Negotiator
Attorney, Liebert Cassidy Whitmore**



Cristine Alilovich, Assistant City Manager



Stacey Peterson, Human Resources Director



Danielle Ferrigno, Management Analyst

Date

10/24/2016

SAN RAFAEL FIREFIGHTERS' ASSOCIATION
BASE PAY SCHEDULE
July 1, 2016 through June 30, 2018

Exhibit A

NOTE: Hourly wage is calculated by multiplying the monthly wage by 12 then dividing by 2,912 annual hours, except for Fire Mechanic which is divided by 2,080 annual hours.

Grade Code	Title		A	B	C	D	E
7105	Fire Captain*	Monthly	\$ 8,516	\$ 8,942	\$ 9,389	\$ 9,858	\$ 10,351
		Hourly	\$ 35.0939	\$ 36.8486	\$ 38.6910	\$ 40.6256	\$ 42.6569
1107	Fire Captain Specialist	Monthly	\$ 8,942	\$ 9,389	\$ 9,859	\$ 10,352	\$ 10,869
		Hourly	\$ 36.8499	\$ 38.6924	\$ 40.6270	\$ 42.6584	\$ 44.7913
7106	Fire Engineer	Monthly	\$ 7,713	\$ 8,099	\$ 8,504	\$ 8,929	\$ 9,376
		Hourly	\$ 31.7857	\$ 33.3750	\$ 35.0437	\$ 36.7959	\$ 38.6357
7109	Fire Mechanic (40 hr/week)	Monthly	\$ 6,989	\$ 7,338	\$ 7,705	\$ 8,090	\$ 8,495
		Hourly	\$ 40.3197	\$ 42.3356	\$ 44.4524	\$ 46.6751	\$ 49.0088
7110	Firefighter (without PM license)	Monthly	\$ 6,772	\$ 7,111	\$ 7,466	\$ 7,840	\$ 8,232
		Hourly	\$ 27.9069	\$ 29.3023	\$ 30.7674	\$ 32.3058	\$ 33.9211
7126	Firefighter-Paramedic** (after probationary year)	Monthly	\$ 7,595	\$ 7,934	\$ 8,289	\$ 8,663	\$ 9,055
		Hourly	\$ 31.2991	\$ 32.6944	\$ 34.1595	\$ 35.6979	\$ 37.3132

*Fire Captain assigned to Administrative Duty receives an additional 5% Premium pay and 5% Incentive pay

**Includes Paramedic Pay

**Entry Level Firefighter pay for probationary year:			Months 1-2	Months 3-6	Months 7-12*
2126	Entry Level Firefighter	Monthly	\$ 6,095	\$ 6,433	\$ 6,772
		Hourly	\$ 25.1163	\$ 26.5116	\$ 27.9069

*After probationary year move into Firefighter-Paramedic grade code

**SAN RAFAEL FIREFIGHTERS' ASSOCIATION
MEMORANDUM OF UNDERSTANDING**

**REPRESENTED BENCHMARKS
AND
INTERNAL RELATIONSHIPS**

Effective JULY 1, 2008

Benchmark Job Class: Firefighter*

Internal Relationship: Fire Captain Specialist = Fire Captain + 5% (base salary)**

*Firefighter is identified as the benchmark job class for compensation survey purposes. Under the current system any increase granted to the Firefighter would also be granted to other job classes.

**New Fire Captain Specialist internal relationship established July 1, 2008. The Fire Dispatcher internal relationship was terminated June 30, 2008.

The Fire Mechanic position shall be based on the City's ability to pay and the labor market comparison for mechanic positions that perform similar duties to those of the Fire Mechanic.

Note: This exhibit is used to display salary relationships; the MOU document itself must be reviewed to see specifics of compensation changes.

DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES

The procedures outlined in this document relating to drug and alcohol abuse and drug and alcohol testing shall also be subject to all applicable provisions of the Memorandum of Understanding between the City of San Rafael (hereinafter "Employer") and the San Rafael Firefighters Association, Local 1775 (hereinafter "Association") as well as any Rules and Regulations or Policies and Procedures which have been agreed to following the meet and confer process.

Section 1. **Policy:** The Employer and the Association, recognize that drug use by employees would be a threat to public welfare and safety of department personnel. It is the goal of this policy to provide an alcohol/drug free workplace and to eliminate illegal drug use and alcohol abuse through education and rehabilitation of the affected personnel. The possession, use or being under the influence of alcoholic beverages or unauthorized drugs shall not be permitted at the Employer's work sites and/or while an employee is on duty. Exception: Alcohol may be stored at the workplace for use at social events which may or may not be held at City facilities. Employees on duty shall not consume alcohol under any circumstances.

Section 2. **Informing Employees About Drug and Alcohol Testing:** All employees shall be fully informed of the Fire Department's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the Employer shall inform the employees on how the tests are conducted, what the test can determine and the consequence of testing positive for drug use. All newly hired employees will be provided with this information on their initial date of hire. No employees shall be tested before this information is provided to them. Prior to any testing, the employee will be

required to sign the attached consent and release form. Employees who wish to voluntarily seek assistance may do so by contacting the Fire Chief or The Association. The person contacted will contact the employer on behalf of the employee and make arrangements to implement the rehabilitation portions of this policy. No disciplinary action will be taken against an employee unless he/she refuses the opportunity for rehabilitation, fails to complete a rehabilitation program successfully, or again tests positive for drugs within two (2) years of completing an appropriate rehabilitation program.

Section 3. **Employee Testing:** Employees shall not be subject to random medical testing involving urine or blood analysis or a similar or related test for the purpose of discovering possible drug or alcohol abuse. If, however, there is reasonable suspicion that an employee's work performance is currently impaired due to drug or alcohol abuse, the Employer may require the employee to undergo a medical test consistent with the conditions set forth in this Policy. This reasonable suspicion may be based upon the following:

Involvement in a fatal or serious bodily injury accident or in an accident involving substantial property damage (i.e., in excess of \$25,000); or

An observable phenomena, such as direct observation of drug/alcohol use or the physical symptoms of being under the influence of a drug or alcohol; or

An arrest or conviction of a drug related offense; or

Involvement in a physical altercation while on duty.

Section 4. **Sample Collection:** The collection and testing of the samples shall be performed only by a laboratory and by a physician or health care professional qualified and authorized to administer and determine the meaning of any test results. The laboratory performing the test shall

be one that is certified by the National Institute of Drug Abuse (NIDA). The laboratory chosen must be agreed to between the Association and the Employer.

The laboratory used shall also be one whose procedures are periodically tested by NIDA where they analyze unknown samples sent to an independent party. The results of employee tests shall be made available to the Medical Review Physician.

Collection of blood or urine samples shall be conducted in a manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain of custody procedures must be followed for all samples as required by the NIDA. The Association and the Employer agree that security of the biological urine and blood samples is absolutely necessary, therefore, the Employer agrees that if the security of the sample is compromised in any way, any positive test shall be invalid and may not be used for any purpose.

Blood or urine samples will be submitted as per NIDA Standards. Employees have the right for Association or legal counsel representatives to be present during the submission of the sample.

A split sample shall be reserved in all cases for an independent analysis in the event of a positive test result. All samples must be stored in a scientifically acceptable preservation manner as established by NIDA. All positive confirmed samples and related paperwork must be retained by the laboratory for at least six (6) months for the duration of any grievance, disciplinary action or legal proceedings, whichever is longer. Employer retained sample will be stored in the evidence locker of the San Rafael Police Department. At the conclusion of this period, the paperwork and specimen shall be destroyed.

Tests shall be conducted in a manner to ensure that an employee's legal drug use and diet does not affect the test results.

Section 5. **Drug Testing:** The laboratory shall test for only the substances and within the limits for the initial and confirmation test as provided within NIDA standards. The initial test shall use an

immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites ¹	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the following listed cutoff values.

Marijuana metabolites ²	15 ng/ml
Cocaine metabolites ³	150 ng/ml

Opiates

Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml

Amphetamines

Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml

¹ If immunoassay is specific for free morphine the initial test level is 25 ng/ml.

² Delta-9-tetrahydrocannabinol-9-carboxylic acid

³ Benzoyllecgonine

If confirmatory testing results are negative all samples shall be destroyed and records of the testing expunged from the employee's file.

Section 6. **Alcohol Testing:** A breathalyzer or similar test equipment shall be used to screen for alcohol use and if positive shall be confirmed by a blood alcohol test performed by the laboratory. The screening test shall be performed by an individual qualified through and utilizing equipment certified by the State of California. An initial positive alcohol level shall be .08 grams per 210 L. of breath. If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file. If initial testing results are positive, the test shall be confirmed using a blood alcohol level. Sampling handling procedures, as detailed in Section 4, shall apply. A positive blood alcohol level shall be .08 grams per 100 ml of blood. If confirmatory testing results are negative all samples shall be destroyed and records of the testing expunged from the employee's file.

Section 7. **Medical Review Physician:** The Medical Review Physician shall be chosen and agreed upon between the Association and the Employer and must be a licensed physician with a knowledge of substance abuse disorders.

The Medical Review Physician shall be familiar with the characteristics of drug tests (sensitivity, specificity, and predictive value), the laboratories running the tests and the medical conditions and work exposures of the employees. The role of the Medical Review Physician will be to review and interpret the positive test results. The Medical Review Physician must examine alternate medical explanations for any positive test results. This action shall include conducting a medical interview with the affected employee, review of the employee's medical history and review of any of the relevant biomedical factors. The Medical Review Physician must review all medical records made available by the tested employee when a confirmed positive test could have resulted

from legally prescribed medication.

Section 8. **Laboratory Results:** The laboratory will advise only the employee and the Medical Review Physician of any positive results. The results of a positive drug or alcohol test can only be released to the Employer by the Medical Review Physician once he has completed his review and analysis of the laboratory's test. The Employer will be required to keep the results confidential and it shall not be released to the general public.

Section 9. **Testing Program Costs:** The Employer shall pay for all costs involving drug and alcohol testing as well as the expenses involved of the Medical Review Physician. The Employer shall also reimburse each employee for their time and expenses, including travel incurred, involved in the testing procedure.

Section 10. **Rehabilitation Program:** Any employee who tests positive for illegal drugs or alcohol, shall be medically evaluated, counseled and referred for rehabilitation as recommended by the EAP Counselor (The EAP Program selected for use in conjunction with this policy will be one agreed to by the employer and the union. It is anticipated that a specific EAP/drug alcohol counselor will be selected and named in this policy.) Employees who successfully complete a rehabilitation program will be retested once every quarter for the following twenty-four (24) months. An employee may voluntarily contact the EAP Counselor and/or may voluntarily enter rehabilitation without having previously tested positive. Employees who enter a rehabilitation program on their own initiative shall not be subject to retesting as outlined above. Employees covered by this policy will be allowed to use their accrued and earned annual leave and/or sick leave for the necessary time off involved in the rehabilitation program. If an employee, subject to retesting, tests positive during the twenty-four (24) month period, they shall be subject to

disciplinary action as per the Department Rules and Regulations and/or Memorandum of Understanding. Any employee testing positive during the twenty-four (24) month period shall be re-evaluated by the E.A.P. counselor to determine if the employee requires additional counseling and/or treatment. The employee must participate in any additional rehabilitation and/or counseling as directed by the E.A.P. counselor. Subsequent to completion of additional counseling and/or treatment, the employee will again be subject to random retesting for a twenty-four (24) month period. If an employee tests positive during this subsequent twenty-four (24) month period, the employee will be subject to discipline as per the Department Rules and Regulations and/or Memorandum of Understanding.

Section 11. **Duty assignment after treatment.** Once an employee successfully completes rehabilitation, they shall be returned to their regular duty assignment. Once treatment and any follow-up care is completed, and three (3) years have passed since the employee entered the program, the employee's personnel file shall be purged of any reference to his/her drug or alcohol problem.

Section 12. **Right of Appeal:** The employee has the right to challenge the results of the drug or alcohol tests and any discipline imposed in the same manner that any other Employer action under the terms of this agreement is grievable.

Section 13. **Association held Harmless:** The Employer assumes sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this collective bargaining agreement relating to drug and alcohol testing. The Association shall be held harmless for the violation of any worker rights arising from the administration of the drug and alcohol testing program.

Section 14. **Changes in Testing Procedures:** The parties recognize that during the life of this agreement, there may be improvements in the technology of testing procedure which provide for more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements.

Section 15. **Conflict with Other Laws.** This Article is in no way intended to supersede or waive any constitutional or other rights that the employee may be entitled to under Federal, State or local statutes.

APPROVED: _____

Dated: _____

By: _____

APPROVED: _____

Dated: _____

By: _____

CONSENT AND RELEASE FORM
FOR DRUG/ALCOHOL TEST PROGRAM

I acknowledge that I have received a copy of, have been duly informed, and understand the San Rafael Fire Department's drug and alcohol testing policy and procedures. I have been provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, I have been informed on how the tests are conducted, what the test can determine and the consequence of testing positive for drug use.

I have been informed of the San Rafael Fire Department's Employee Assistance Program. I understand that if I voluntarily come forward and ask for assistance to deal with a drug or alcohol problem through the Employee Assistance Program, that I will not be disciplined by the Employer.

I understand how drug/alcohol tests are collected and further understand that these are medical tests that are conducted under the auspices of a Medical Review Physician. I understand that the Medical Review Physician will review and interpret any positive test results, and that I will have an opportunity to be interviewed by the Medical Review Physician to review my status, my medical history and any relevant biomedical factors prior to the San Rafael Fire Department being informed whether I passed or failed the test.

I understand that a confirmed positive drug or alcohol test result will result in my referral to the San Rafael Fire Department Employee Assistance Program and that I will be required to complete a rehabilitation program. No disciplinary action will be taken against me unless I refuse to take a drug/alcohol test, refuse the opportunity for rehabilitation, fail to complete a rehabilitation program successfully, or again test positive for drugs/alcohol within two (2) years of completing an

appropriate rehabilitation program. I understand that such disciplinary action, as described herein, may include dismissal from the San Rafael Fire Department.

Printed or Typed Name of Employee

Signature of Employee

Date

CITY OF SAN RAFAEL POLICIES AND PROCEDURES



Subject:	Firefighters Outside Employment
Resolution No.	N/A
Issue Date:	July 9, 2008
Revision Date:	N/A
Prepared By:	Leslie Loomis, HR Director
Approved By:	Ken Nordhoff, City Manager

FIREFIGHTERS OUTSIDE EMPLOYMENT POLICY

PURPOSE:

In order to avoid actual or perceived conflicts of interest for employees engaging in outside employment, all employees shall complete an annual outside employment notification form and submit it to the Fire Chief between January 1-15 of each calendar year. Outside employment shall be administered in accordance with the provisions of this policy.

RESPONSIBILITY:

All City Departments, Divisions, and City Officials. Any substantial violation of the provisions contained herein respecting outside employment or use of City property or resources shall constitute sufficient grounds for disciplinary action, up to and including termination.

REFERENCES:

Government Code 1126

DEFINITIONS:

- A. **Outside Employment:** Any employee who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with the City for services, product(s) or benefits rendered. For purposes of this section, the definition of "Outside Employment" includes those employees who are self employed and not affiliated with the City for services, product(s) or benefits rendered.
- B. **Outside Overtime:** Any employee who performs duties or services on behalf of an outside organization, company or individual for the City of San Rafael. Such outside overtime shall be requested and scheduled directly through the employee's department so that the City may be reimbursed for the cost of wages and benefits (see section on Procedure, item H for more details).
- C. **Employee:** For the purposes of interpretation of this policy, "employee" shall mean any person holding full time or part time employment in a position in the classified service except when referred to by job title.

POLICY:

Employees shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his/her duties as a City officer or employee, or would tend to impair their independence of judgment or action in the performance of their official duties, functions or responsibilities.

PROCEDURE:

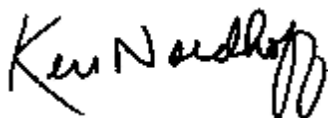
- A. City employees who find it necessary or desirable to engage in employment, including self-employment, in addition to their City duties shall present, in writing, to the Fire Chief, notification of outside employment (see Attachment A). The form shall provide the following information about the employees job:
1. Name and telephone number of prospective/present employer (if prior to the implementation of this policy)/self employment.
 2. Position to be held and anticipated start date.
 3. Overview of job duties.
 4. Extent of commitment – approximate hours per week.
- B. Those City Employees represented by the San Rafael Firefighters Association who find it necessary or desirable to engage in outside employment, including self-employment, within the City of San Rafael, with duties that are related to the San Rafael Fire Department, in addition to their City duties shall present, in writing, to the Fire Chief, a request for authorization to engage in outside employment (see Attachment B). Examples would include Fire Extinguisher and/or Systems sales, design, installation and/or maintenance and inspection, vegetation management, EMS provider. The form shall provide the following information about the job the employee desires to engage in:
1. Name and telephone number of prospective/present employer (if prior to the implementation of this policy)/self employment.
 2. Address of work site.
 3. Position to be held and anticipated start date.
 4. Anticipated end date (if applicable).
 5. Detailed description of duties to be performed.
 6. Days/hours of work to be performed.
 7. Average number of hours of work per month.
- C. **Employees shall not engage in activities that (Government Code Section 1126):**
1. Involves the use for private gain or advantage of City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of one's City office or employment.
 2. Involves receipt or acceptance by an employee of any money or other consideration from anyone other than the City for the performance of an act which the employee would be required or expected to render in the regular course of their City employment or as a part of their duties as a City employee.

3. Involves the performance of an act in other than their capacity as a City employee, which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which they are employed.
 4. Involves time demands that would render performance of the employee's duties for the City less efficient.
 5. Involves employment which reasonably may be considered a potential conflict under the joint employment provisions of the Fair Labor Standards Act, Section 522.
- D. The employee engaged in outside employment shall advise the Fire Chief if the nature, character, and/or the extent of the outside employment has changed or if the outside employment is terminated. Outside employment will be reviewed at the time of the employee's annual evaluation. Any promotion or reassignment will automatically require a review. The employee shall not use outside employment to justify any failure of his/her employment performance or failure to respond promptly to the needs of the department when summoned.
- E. Employees are prohibited from using any City equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or data bases of the City or other agencies through the use of the employee's position with the City.
- F. No employee shall allow any unauthorized person to rent, borrow or use any City equipment or resources in the course of or for the benefit of any outside employment.
- G. Outside Employment While on Disability:**
Employees who are placed on disability leave or modified/light duty by the City of San Rafael shall adhere to the City's light duty policy and to State and federal laws.

ATTACHMENTS:

- Notification of Outside Employment
- Request for Authorization to Engage in Outside Employment

APPROVED BY:



9-23-2008

Ken Nordhoff, City Manager

Date

APR 01 2008

LIEBERT CASSIDY WHITMORE

A PROFESSIONAL LAW CORPORATION

LOS ANGELES | FRESNO | SAN FRANCISCO

Exhibit E

153 TOWNSEND STREET, SUITE 520
SAN FRANCISCO, CALIFORNIA 94107
T: (415) 512-3000 F: (415) 856-0306

GCHAN@LCWLEGAL.COM
(415) 512-3014

March 26, 2008

ATTORNEY-CLIENT PRIVILEGED

VIA FIRST CLASS U.S. MAIL

Leslie Loomis
Human Resources Manager
City of San Rafael
P.O. Box 151560
San Rafael, CA 94915

Re: *Firefighters' Memorandum of Understanding & Firefighters Bill of Rights*
Client-Matter: SA026-001

Dear Ms. Loomis:

This is in follow-up to your e-mail exchange of March 12, 2008 with Cynthia O'Neill. You requested that we review the Memorandum of Understanding between the City of San Rafael and San Rafael Firefighters' Association, I.A.F.F., Local 1775 (hereinafter "MOU") and to provide proposed changes to the language contained in the MOU in order to comply with the Firefighters Procedural Bill of Rights (hereinafter "FBOR"). Pursuant to your request, we have reviewed the MOU to determine what language should be revised in light of the FBOR and we are available to discuss the proposed changes with you at your convenience.

The FBOR mainly governs two areas: 1) permissible interrogation and investigation processes; and 2) administrative appeals of "denials of promotion on grounds other than merit" or "punitive action", which is defined in the FBOR as "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."¹ This has been interpreted to mean that an employee is entitled to an administrative appeal of any action that results in loss of pay,² except in the case of a transfer. An employee is not entitled to an administrative appeal of a transfer unless it is considered punitive, meaning it is imposed for disciplinary purposes.³ As such, all provisions of the MOU that touch upon disciplinary action, investigation of allegations of misconduct, interrogation procedures, grievance procedures, transfers for purposes of punishment, and appeals of disciplinary actions may be affected by the FBOR. We have reproduced those affected provisions below and have underlined our suggested revisions.

¹ Cal. Gov. Code § 3251(c)

² *White v. County of Sacramento* (1982) 31 Cal.3d 676, 682-684

³ *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 844-846

Please note that since it is generally in the City's best interest to keep the MOU as short as possible, there are portions of the MOU which are affected by the FBOR, but have been left unchanged. We have also reproduced those MOU provisions in this letter for your reference. You will note that we have included comments and recommendations with regard to these unchanged portions to ensure the City is aware of how to comply with the FBOR's provisions.

CHAPTER 1.0 GENERAL PROVISIONS

1.4. Management Rights

12. To discharge, suspend, demote or otherwise discipline employees for proper cause in accordance with the provisions and procedures set forth in City Personnel Rules and Regulations, the Firefighters Procedural Bill of Rights, and this Memorandum of Understanding.

Comments: This acknowledges the requirement that all firefighters be afforded the rights and protections delineated in the FBOR⁴.

14. To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with this Memorandum of Understanding and the City's Rules and Regulations.

Comments: We do not recommend any changes to this provision. However, please be advised that a demotion or a transfer that results in loss of pay may entitle the firefighter to the opportunity for an administrative appeal under the FBOR.

CHAPTER 2.0 COMPENSATION

2.2.3. EMT I

Employees who have completed their first year of full-time service with the San Rafael Fire Department and who have successfully completed and who maintain an EMT I certification, accredited by the State of California or State Fire Marshal's Office, shall receive an additional compensation amounting to 2.5% of their basic monthly salary. EMT I re-certification training shall be conducted on duty at times determined by the Fire Chief.

If an employee fails to maintain a valid EMT I, said employee shall lose their 2.5% incentive pay. All non-paramedic line employees hired on or after March 7, 1994 shall be required to possess and maintain a valid EMT I certification as a condition of employment.

Comments: We do not recommend any changes to this provision. However, please be advised that the loss of an employee's 2.5% incentive pay may entitle the firefighter to the

⁴ *Id.* § 3260

opportunity for an administrative appeal under the FBOR.

CHAPTER 3.0 PROBATIONARY PERIOD

3.9 Unsuccessful Passage of Promotional Probation

An employee who does not successfully pass his/her promotional probationary period shall be reinstated to the position in which the employee held regular status prior to his/her promotion. If the employee was serving a probationary period at the time of promotion, the suspension of the prior probationary period shall be lifted, the employee shall be reinstated to probationary status in the prior classification and the remainder of that period shall be served. Provided, however, that if the cause for not passing the promotional probationary period is sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstatement to the lower position. If the employee has completed the probationary period in the prior classification and the employee is subject to dismissal without reinstatement, the employee has the opportunity to appeal pursuant to the provisions of the Firefighters Procedural Bill of Rights Act and this Memorandum of Understanding.

Comments: The administrative appeal provisions of the FBOR only apply to firefighters who have successfully completed the probationary period. It states that “punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal⁵.” Although there is no case law to help interpret this provision of the FBOR, it does seem clear that there is no right to an administrative appeal after rejection from the initial probation that one serves with an employer, or even a promotional probation if merit-based reasons are the reason for rejection from probation. Until there is case law that interprets this provision, a cautious approach would be to provide an opportunity for an administrative appeal to any employee who has been dismissed from promotional probation “for reasons other than merit” and not returned to his or her original position.

CHAPTER 5.0 HEALTH AND WELFARE

5.7 Sick Leave

5.7.2 Sick Leave Usage

An employee eligible for sick leave with pay will be granted such leave with approval of the department head for the following purposes...

Except that in a. and b. above an employee may not use sick leave for a work related injury and/or illness once said employee has been determined

⁵ *Id.* § 3254(b)

permanent and stationary. The Association acknowledges the Fire Chief's right to investigate sick leave abuse.

Comments: Although we do not recommend any changes in the language of this provision, we would like to bring to your attention that any and all investigation and/or interrogation of an employee is subject to the rights and provisions contained in the FBOR. As a result, those who investigate sick leave usage must be briefed on proper interrogation and investigation procedures to ensure compliance with the FBOR.

CHAPTER 7.0 TERMS & CONDITIONS OF EMPLOYMENT

The Fire Chief may demote an employee when the following occurs:

- A. The employee fails to perform his/her required duties.

Comments: We do not recommend any changes in the language of this provision. We would, however, like to bring to your attention that any demotion, including the one described above, would likely be subject to the FBOR, and most significantly, its appeals processes which are discussed at length below.

7.8.3. Termination – Disciplinary Reasons

An employee may be terminated for disciplinary reasons, as provided in Chapter Eight (8) Disciplinary Action of the Memorandum of Understanding.

Comments: We do not recommend any changes in the language of this provision. However, please note that termination, as it results in a loss of pay, would be considered "punitive action." This stands even if the termination was not carried out for disciplinary reasons. As such, the FBOR would likely be applicable and the terminated employee must be afforded the opportunity for an administrative appeal.

CHAPTER 8.0 DISCIPLINARY ACTION

8.1 Authority

The City shall have the right to discharge or discipline any employee for dishonesty, insubordination, drunkenness, incompetence, negligence, failure to perform work as required or to observe the Department's safety rules and regulations or for engaging in strikes, individual or group slowdowns or work stoppages, or for violating or ordering the violation of the Memorandum of Understanding.

Comments: We do not recommend any changes in the language of this provision. However, please note that the FBOR provides that, subject to several exceptions⁶, punitive action

⁶ *Id.* § 3254(d)

or denial of promotion on grounds other than merit may be imposed for misconduct only if the investigation of the alleged misconduct is completed within one year of discovery by the "Fire Department." It is critically important to act on misconduct as soon as *any* member of the fire department becomes aware of it; the one year time clock is arguably triggered when any member of the Department learns of the misconduct. In addition, if it is determined that disciplinary action will be taken, the offending firefighter must also be served with Notice of the proposed discipline within that same one year as well. Please note that this one year statute of limitations applies only to alleged misconduct that occurred after January 1, 2008⁷. We recommend that all management be aware of this one year statute of limitations and its exceptions, so that the City does not lose the opportunity to discipline because of the time taken to investigate.

Another notice requirement contained in the FBOR is that the offending employee must be notified of the imposition of discipline within the following time constraints. The Notice of Discipline must occur no later than 30 days after the decision to discipline, but not less than 48 hours prior to the effective date of the discipline. Since the earliest that the decision to discipline occurs is at the *Skelly* conference, it is a good idea to issue the Notice of Discipline no later than 30 days after the *Skelly* conference. The 48-hour notice provision serves to delay the effective date of a discipline by at least two days.

8.4 Appeals

Whenever punitive action is undertaken, the offending employee shall have the opportunity for an administrative appeal which will be conducted in conformance with the Administrative Procedure Act and this Memorandum of Understanding. Such appeal must be filed with the City Manager or his/her designee by the employee in writing within fourteen (14) calendar days from the date of the discipline/discharge and unless so filed the right of appeal is lost.

Comments: One of the key protections of the FBOR is that all firefighters must be afforded the right to an administrative appeal of any punitive action.⁸ This language clearly states that the MOU is in conformance with the APA and does afford the right to an administrative appeal.⁹

8.5 City Manager and Arbitration

The appellant may have the appeal heard by the City Manager or may request arbitration.

⁷ *Id.*

⁸ *Id.* § 3254(b)

⁹ *Id.* § 3254.5

8.5.1 Proceeding Heard by City Manager

If an employee elects to have an appeal heard by the City Manager, the employee must state in writing that he or she waives his/her right to an appeal that conforms to the procedures of the Administrative Procedure Act.

8.5.2 Arbitration

If arbitration is requested, the arbitration will be held in conformance with the Administrative Procedure Act, California Code of Regulations, and other applicable statutes. Representatives of the City and the appellant shall meet within fourteen (14) days to select a mutually acceptable arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the appellant and the city.

A hearing before the arbitrator shall be held within sixty days of the selection of the arbitrator unless the mutually accepted arbitrator's schedule does not so permit, in which case the hearing shall be held not more than 120 days after the selection of the arbitrator.¹⁰ The arbitrator shall not have the power to amend or modify either party's position;¹¹ but shall rule on the merits of each party's case as presented during the hearing. Decisions of the Arbitrator on matters properly before him/her shall be final and binding on the parties hereto, to the extent permitted by the Charter of the City.

In addition to arbitrators proposed by the State Mediation and Conciliation Service, the parties shall be free to select from a pool of arbitrators mutually agreed to by the City and the Association. The parties shall continue to meet and confer, after the adoption of this MOU on a mutually agreeable panel of arbitrators. Once agreed to the panel shall be identified by a side letter to the MOU.

Comments: Please note that the Administrative Procedure Act (hereinafter "APA") allows for alternative dispute resolution, namely binding arbitration, as well as non-binding arbitration and mediation. By affording the covered employees with the option to enter into binding arbitration, and following the APA procedures regarding binding arbitration, the requirement that an employee may make an administrative appeal under the APA is satisfied. However, should binding arbitration be negotiated out of the MOU, an alternative hearing method as prescribed by the APA must be included. Please do not hesitate to contact us should this be the case so we can discuss alternative administrative appeal procedures.

In addition, all arbitration procedures must be in conformance with the APA¹² and the

¹⁰ 1 Cal. Code Regs. § 1240

¹¹ We do not understand how an arbitrator could ever modify a party's "position."

¹² Cal. Gov. Code §§ 11420.10-11420.30

California Code of Regulations.¹³ Please note that the current arbitration procedures, as amended in this letter, are consistent with both the APA and the California Code of Regulations.

CHAPTER 9.0 GRIEVANCE PROCEDURE

9.1 Definition

A grievance is any dispute, which involves the interpretation or application of any provision of this Memorandum of Understanding, or any Fire Department policy specifically referenced herein, except issues concerning appeals of punitive action, which is governed by Chapter 8.0. Policy 1-VI-3 is specifically incorporated by reference.¹⁴

Comments: So as to avoid any confusion in determining when the appeals processes contained in the APA and FBOR must be followed, this clarifies that all appeals of punitive action must be undertaken in accordance with Chapter 8.0 of this MOU, and that all other grievances will be resolved in accordance with Chapter 9.0.

This concludes our comments and suggested revisions of the MOU as it pertains to the FBOR. Thank you for your attention to the above. Should you have any questions or would like to discuss this further, please do not hesitate to contact us.

Sincerely,

LIEBERT CASSIDY WHITMORE



Grace Y. Chan

CJO/GYC/ab

¹³ 1 Cal. Code Regs. §§ 1200–1258

¹⁴ We have not reviewed Policy 1-VI-3 so we do not know its relevance to FBOR issues.

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CITY OF



San Rafael

 Mayor
 Albert J. Bora

 Council Members:
 Paul M. Cohen
 Barbara Heller
 Gary D. Phillips
 David J. Zappacini

September 25, 1995

Mr. James Lydon, President
 San Rafael Firefighters' Association
 P.O. Box 2518
 San Rafael, CA 94912

Subject: Personnel Rules Letter of Agreement

Dear Jim,

The City Council met with its labor negotiators in closed session on Monday, 9-18-95 to discuss the unresolved issue associated with the experience qualifications for the Fire Chief officer classifications, which the City and the Association have been discussing as a part of finalizing the meet and confer process on the revised Personnel Rules and Regulations. The final proposal from the City, on this issue, as well as a summary of the second, agreed "rules" issue, is as follows:

1. **Experience qualifications of Fire Chief Officer classifications, excluding Fire Chief:**
 - A. **3 yrs. line captain experience for promotion/appointment to any current or future chief officer class that has emergency incident commander responsibilities. 2 yrs of line captain experience for acting assignment to such a position.**
 - B. **No impact on the status of incumbent chief officer employees in their current positions.**
 - C. **Chief officer classifications, minus Fire Chief, include: Fire Division Chief, Fire Marshal, and Fire Training Officer. (Note: Fire Marshal and Fire Training Officer presently hold the rank of Battalion Chief.)**
 - D. **The incumbent Fire Marshal remains eligible to serve as an acting incident commander, in accordance with the 11-93 arbitrated special agreement. The training program, once completed, detailed in this special agreement serves to qualify the incumbent, as to the experience necessary, to compete for promotion to other chief officer opportunities.**
2. **Section 1.5 of Personnel Rules: Collective Bargaining Agreements.**

As per our tentative agreement dated 3-21-95, section 1.5 of the revised Personnel Rules will be changed to read:

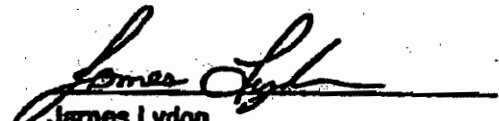
Mr. James Lydon, President
San Rafael Firefighters' Assn.
September 25, 1995
Page 2

These rules are not intended to supersede any provisions of an existing collective bargaining agreement. What this means is that if any section of these Rules and Regulations is covered by a provision of a collective bargaining agreement, the collective bargaining agreement shall prevail and the parallel provisions in the Rules and Regulations shall not apply to the affected Unit.

In addition to the above two items, we agreed that the experience section of each of the current chief officer job descriptions included in the Fire Department's Career Development Guide will be updated to reflect the qualifications conditions noted in # 1 of this letter.

This letter constitutes the agreement of the parties, as evidenced by their signatures below. It is intended that this letter shall be appended to the current Memorandum of Understanding (MOU) and shall be appended to future MOU's, unless modified by the meet and confer process set forth in Resolution No. 4027.


Suzanne Golt
Assistant City Manager


James Lydon
President, San Rafael Firefighters'
Association

cc: Mayor and City Council
Pamela J. Nicolai
Robert Marucci
Daryl Chandler
Dick Whitmore
John Grey

**SIDE LETTER AGREEMENT
BETWEEN CITY OF SAN RAFAEL AND
SAN RAFAEL FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 1775
REGARDING ACTING CAPTAIN REQUIREMENTS**

Representatives of the City of San Rafael (City) and IAFF Local 1775 (Union) have met and conferred and reached agreement on this Side Letter of Agreement. The following provisions represent the mutual understanding and consent of both parties:

Section 3.4.2 – Engineer Out of Class Compensation

The incumbent Fire Engineers listed below are not required to meet the minimum qualifications of the Captain classification in order to perform in Acting Captain status:

Rick Brown
Matt Locatelli
Cameron Mrsny
Rich Nettleman


Arthur Phillips
Jason Schmitt
Dan Sutherland

**SAN RAFAEL FIREFIGHTERS' ASSOCIATION,
I.A.F.F., LOCAL 1775**

CITY OF SAN RAFAEL



Andrew Rogerson, Fire Captain



Jack Hughes, Lead Negotiator
Attorney, Liebert Cassidy Whitmore



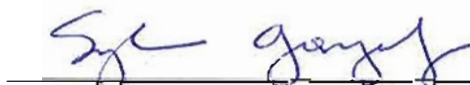
Kyle Hamilton, Fire Captain



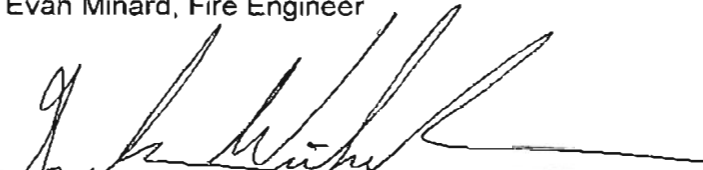
Deirdre Dolan, Human Resources Director



Evan Minard, Fire Engineer



Sylvia Gonzalez, HR Coordinator



Graham Winkelman, Firefighter-Paramedic



John Grey, Local 1775 Attorney