



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Human Resources

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Human Resources Operations Manager

City Manager Approval: 

**TOPIC: SUCCESSOR MEMORANDUM OF UNDERSTANDING WITH THE SAN RAFAEL FIRE CHIEF OFFICERS' ASSOCIATION**

**SUBJECT: DISCUSSION AND CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING PERTAINING TO COMPENSATION AND WORKING CONDITIONS FOR SAN RAFAEL FIRE CHIEF OFFICERS' ASSOCIATION (JULY 1, 2021 THROUGH JUNE 30, 2024)**

**RECOMMENDATION:**

Direct staff to return with a Resolution seeking approval of a successor Memorandum of Understanding between the City of San Rafael and San Rafael Fire Chief Officers' Association.

**BACKGROUND:**

The San Rafael Fire Chief Officers' Association (SRFCOA) represents 4 employees in the San Rafael Fire Department. The most recent Memorandum of Understanding ("MOU") for SRFCOA expired on June 30, 2020 and was extended by side letter through June 30, 2021. Representatives of the City and SRFCOA have met in good faith to negotiate the terms of a successor MOU. The City and SRFCOA are finalizing a tentative agreement for a three-year successor MOU.

**ANALYSIS:**

The following are the highlights that reflect the terms and significant economic items included in the anticipated agreement between the City and SRFCOA. In addition to the economic items, some operational items were also addressed, all of which can be found in the attached draft successor MOU.

1. **Term of the Agreement:** July 1, 2021 through June 30, 2024
2. **Salary Increase:** In keeping with the equity adjustment approach for Unrepresented Mid-Management and Executive management and the police mid-management bargaining unit, salary increases for the Battalion Chief position for each year depend on the extent to which this position is behind the labor market average (either over or under 10% behind the labor market average).
3. **Non-Economic Items:** In addition to items discussed above, agreement was reached on other proposals, which reflect minor changes to existing provisions with no additional cost. The attached

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FOR CITY CLERK ONLY

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

draft redline MOU includes all the changes agreed to by the parties. A brief overview of these negotiated MOU sections includes:

- Retiree Health Savings (Section 4.2.3): SRFCOA employees hired into City employment on or before January 1, 2010 will contribute \$5,000 to an RHS account each July 31<sup>st</sup> in the form of a sick leave conversion of hours.
- Arbitration (Section 7.3.6): Update language to allow the mutually acceptable Arbitrator to provide an alternative recommendation for disciplinary action in addition to the ability to affirm or reject the City's form of discipline.

**FISCAL IMPACT:**

The current total annual salary and benefit cost to the City for the 4 employees of SRFCOA is \$1,516,593. The additional ongoing incremental cost is approximately \$300,000 for the three-year period. The increase in compensation included in this resolution is in line with the City's current budget projections. Funding for these positions is provided for in the City's General Fund. The full, specific break-out of all additional costs will be included when this item comes back for final consideration.

**OPTIONS:**

The City Council has the following options to consider in this matter:

- Direct staff to return at the next meeting with a resolution seeking approval of the successor MOU between the City of San Rafael and San Rafael Fire Chief Officers' Association
- Direct staff to return with more information.

**RECOMMENDED ACTION:**

Staff recommends that the City Council take public comment, and direct staff to return at the next meeting with a resolution seeking approval of the successor Memorandum of Understanding between the City of San Rafael and San Rafael Fire Chief Officers' Association pertaining to compensation and working conditions (July 1, 2021 through June 30, 2024).

**ATTACHMENTS:**

1. Draft MOU (with track changes) between City of San Rafael and San Rafael Fire Chief Officers' Association for July 1, 2021 to June 30, 2024.

**MEMORANDUM OF UNDERSTANDING**

*between*

**CITY OF SAN RAFAEL**

*and*

**SAN RAFAEL FIRE CHIEF OFFICERS' ASSOCIATION**

***JULY 1, 202118 - JUNE 30, 202420***

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Exhibit B	Furlough Plan

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CITY OF SAN RAFAEL  
AND  
SAN RAFAEL FIRE CHIEF OFFICERS' ASSOCIATION**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Section 3500, et seq. the Government Code of the State of California).

The San Rafael Fire Chief Officers' Association 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 said representative unit, and have freely exchanged information, opinions and proposals, and have reached an agreement on all matters relating to the employment conditions and the employer-employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council of the City of San Rafael as the joint recommendation of the undersigned for salary and employee benefit adjustments for the period commencing July 1, 20~~2118~~ and ending June 30, 20~~2120~~2420. When ratified by the City Council, this Memorandum of Understanding shall be binding upon the San Rafael Fire Chief Officers' Association, the employees it represents, and the City of San Rafael.

## **1 GENERAL PROVISIONS**

### **1.1 INTRODUCTION**

#### *1.1.1 Scope of Agreement*

The salaries, hours, fringe benefits and working conditions set forth have been mutually agreed upon by the designated bargaining representatives of the City of San Rafael (herein-after called "CITY") and the San Rafael Fire Chief Officers' Association (herein-after called "ASSOCIATION") and shall apply to all employees of the City working in the classifications and bargaining unit set forth as follows:

a. Battalion Chief

In accepting employment with the City of San Rafael, each employee agrees to be governed by and to comply with the City's Personnel Ordinance, City's Personnel Rules and Regulations, City's Employer-Employee Resolution, City's Administrative Procedures, and Fire Department Rules and Regulations, General Orders and Procedures.

#### *1.1.2 Term of Memorandum of Understanding (MOU)*

This agreement shall be in effect from July 1, 20~~2118~~ through June 30, 20~~2120~~2420.

### **1.2 RECOGNITION**

#### *1.2.1 Bargaining Unit*

City hereby recognizes Association as the bargaining representative for purpose of establishing salaries, hours, fringe benefits and working conditions for all employees within the San Rafael Fire Chief Officers' Association Bargaining Unit which includes the following:

a. Battalion Chief

### 1.2.2 Available Copies

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

### 1.2.3 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.

### 1.2.4 Employee Representatives

The Association shall, by written notice to the City Manager, designate certain of its members as Employee Representatives.

## 1.3 DISCRIMINATION

### 1.3.1 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, 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.

### 1.3.2 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 Association.

## 1.4 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.

## 1.5 EXISTING LAWS, REGULATIONS & POLICIES

This Memorandum is subject to all applicable laws.

## 1.6 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.



## **1.7 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.

## **1.8 PREVAILING RIGHTS**

All matters within the scope of meeting and conferring which have previously been adopted through rules, regulations, ordinances or resolutions, which are not specifically superseded by the M.O.U., shall remain in full force and effect throughout the term of this Agreement.

## **1.9 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 acts, 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.

## **1.10 FULL UNDERSTANDING, MODIFICATION, WAIVER**

### *1.10.1 Modification/Waiver*

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, 2020.

### *1.10.2 Effective Dates*

This Agreement will be in effect from July 1, 2021~~18~~ through June 30, 2024~~20~~. 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.

### *1.10.3 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.

## **2 MMBA**

### **2.1 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:

- A. 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.

- B. 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.
- C. 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.
- D. 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.

In the case of an employee who is in a non-pay status during a part of the pay period and 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.
- E. 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.

## **2.2 RELEASE TIME**

The City shall allow a reasonable number of Association members 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. Reasonable time off without loss of compensation or other benefits shall also be granted to members of the Association to participate in and prepare for grievances.

## **2.3 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 provide the new 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. In addition, the City will also provide reasonable advance notice to the Association of all employee orientations conducted by the City.

## **2.4 EMPLOYEE INFORMATION**

The City shall provide the Association with the name, job title, department, work location, work, home and personal cell phone numbers, home address and personal email address on file with the City for all employees within the Association every 120 days. In addition, a report with similar information of each Association new hire will be provided to the Association within 30 days of the hire date.

### **3 \_COMPENSATION**

#### **3.1 GENERAL WAGES & COMPENSATION**

##### *3.1.1 General Wage Increase*

In keeping with the equity adjustment approach for all Safety and Unrepresented Mid-Management and Executive groups, salary increases for each year will depend on the extent to which the Battalion Chief position falls behind labor market average.

~~Effective the pay period including September 1, 2018 the City will increase base wages for all employees by 2.0%.~~

~~Effective the pay period including July 1, 2019, the City will increase base wages for all employees by 2.0%.~~

##### ~~3.1.2 One-Time Payments and Benefits~~

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

- ~~1. Effective the first full pay period following City Council approval of the MOU, each employee in the bargaining unit will receive a one-time contribution to their deferred compensation plan in the amount of \$5,000.00. This payment will not contribute to employees' pensions; and~~
- ~~2. Each employee in the bargaining unit will receive two additional Administrative Leave days, as defined in section 5.4.1, during the 2019 calendar year. Unused Administrative Leave will not carry over from one calendar year to the next, nor will unused balances be paid off upon an employee's resignation. These days will expire at the end of the 2019 calendar year if not used.~~

##### 3.1.33.1.2 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 Fire District, and South San Francisco, 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, holiday pay, uniform allowance, employer paid deferred compensation, 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. Total compensation comparisons shall be calculated both with and without the employer's retirement contribution.

##### 3.1.43.1.3 Compensation Surveys

To measure progress towards the above-stated goal, the City and the Association will jointly survey the benchmark position of Battalion Chief three (3) months before the expiration of this contract.

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 being on the salary schedule and having a job class description. Other city/agency positions are established as benchmark positions in San Rafael's compensation survey based upon similar work and similar job requirements.

Survey data will include all salary and benefit increases, as defined in 'total compensation' for the purpose of measuring progress towards the goal. The City and the Association shall review the benchmark and related survey data for accuracy and completeness.

### **3.2 SALARY STEP INCREASE**

An employee shall be considered for a step increase annually until the top step has been reached. Advancement to a higher salary within a salary step schedule may be granted for continued satisfactory service by the employee in the performance of his/her duties. Salary step advancement shall be made only upon the recommendation of the Fire Chief, with the approval of the City Manager or his/her designee, and are not automatic, but based on documented, acceptable work performance. Accelerated salary step increases may be granted an employee based upon the recommendation of the Fire Chief and approval of the City Manager for exceptional job performance.

### **3.3 PAY CHECK DATES**

City employees are paid twice per month on the 15<sup>th</sup> and the last working day of the month. When a pay day falls on a holiday, the pay day will be transferred to the following day of regular business unless the Finance Office is able to complete the payroll by the previous work day. The method of distributing the payroll shall be established by the Finance Director.

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

### **3.4 ADDITIONAL PAY**

#### *3.4.1 Education Incentive Program*

The Educational Incentive for all employees represented by this Association is included in the base salary.

#### *3.4.2 Uniform Allowance*

Uniform members of the Fire Department, represented by this Association, shall receive a uniform allowance in the amount of \$805.00 at the completion of each six months of service ending June 1<sup>st</sup> and December 1<sup>st</sup>. A pro-rata at the rate of \$134.17 per month may be given for a portion of the first and last six months of service upon recommendation of the Department Head and approval of the City Manager.

#### *3.4.3 Boot Allowance*

Uniform members of the Fire Department, represented by this Association, shall be entitled to a maximum of \$160 every two fiscal years for a boot allowance. The employee is responsible for

purchasing safety boots and submitting a receipt for reimbursement. The boots must be purchased for City use only and must adhere to safety requirements.

## **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 include representatives from all bargaining groups.

### **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 paycheck of December 20~~2017~~ shall be:

For employee only:	\$ <del>733.39</del> <u>755.62</u>
For employee and one dependent:	\$ <del>1,173.42</del> <u>1,208.99</u>
For employee and two or more dependents:	\$ <del>1,525.45</del> <u>1,571.70</u>

Flex dollar allowances shall increase on the December 15th paycheck of each subsequent year up to a maximum of three percent (3%) on an annual basis, based on but not to exceed the Kaiser Bay Area Region premium rate increase for the upcoming calendar year.

The City shall contribute to the cost of medical coverage for each eligible employee and his/her dependents, an amount not to exceed the California Public Employees' Medical and Hospital Care Act (PEMHCA) Minimum Employer contribution, as determined by CalPERS on an annual basis. This portion of the monthly flex dollar allowance is identified as the City's contribution towards PEMHCA. The monthly flex dollar allowance (including the PEMHCA minimum contribution) may be used in accordance with the terms of the cafeteria plan to purchase health benefits 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 an 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.

The Opt-out payment will be \$760 per month for employees hired into the association on or before January 1, 2017. New members hired into the association after January 1, 2017, shall be eligible for a \$300 Opt-out payment.

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 or other legislation or agency guidance.

#### 4.2.2 *Retiree's Health Insurance*

Employees represented by the Association who retire from the Marin County Retirement System, subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans, 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. **Employees hired by the City before January 1, 2010**

The City shall make a monthly retiree health insurance payment 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 payment shall be the difference between the premium cost of coverage minus the PEMHCA minimum contribution. The City's total payment shall not exceed \$557 per month. This monthly payment shall include the PEMHCA minimum contribution. The City's retiree health insurance payment 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 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.

#### 4.2.3 *Contributions into a Retiree Health Savings Account (RHS)*

For employees hired into City employment after January 1, 2010, the City shall contribute 2% of top step Firefighter-Paramedic base salary into a Retiree Health Savings (RHS) Account and the employee shall also contribute 2% of top step Firefighter-Paramedic base 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 sufficient to make the contribution.

This contribution will occur each pay period beginning the month after the employee has been hired.

Employees hired into City employment on or before January 1, 2010, will contribute \$5,000 to an RHS account each July 31<sup>st</sup> in the form of a sick leave conversion of hours.

#### 4.2.4 *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. Participation in a plan is voluntary and the administrative fees to participate in the plan are the responsibility of employees.

The City will make a monthly contribution of 0.83% of base salary to a deferred compensation plan.

#### 4.2.5 *Flexible Spending Account for Health and Dependent Care Reimbursement (125)*

The City will continue to offer a Section 125 Plan pursuant to the IRS Code.

City shall establish annual enrollment period for the Section 125 Plan and each employee must re-enroll if he/she wishes to participate in the Section 125 Plan for the following calendar year. City shall have the authority to implement changes to the 125 Programs to comply with changes in applicable IRS laws without having to go through the meet and confer process but agrees to coordinate all changes through the Employee Benefits Committee.

### **4.3 LIFE INSURANCE**

The City will pay the full premium cost for enrollment in the group term insurance plans for employees represented by this bargaining unit. The basic plan provides \$150,000 of group term life insurance and \$150,000 of AD&D benefit.

### **4.4 LONG TERM DISABILITY POLICY**

The City shall pay premiums for a Long-Term Disability Policy for each employee. The Long-Term Disability policy shall provide for salary replacement of 66.67% of an individual's salary up to a maximum disability benefit of \$7,500 per month through the City's CIGNA coverage.

Members of the Chief Officer's 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.

### **4.5 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. The City will add the full cost of the dental premium as a paid benefit by the City to the Full Flex Cafeteria Plan enrollment form.
- 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.

### **4.6 RETIREMENT**



#### 4.6.1 *City Paid Employee Retirement*

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

Employees represented by this bargaining group who retire from the City of San Rafael within 120 days of leaving City employment (excludes deferred retirements), shall receive employment service credit for retirement purposes only, for all hours of accrued, unused sick leave (exclusive of any sick leave hours they are eligible to receive and they elect to receive in compensation for at the time of retirement, pursuant to Section 5.1.5. of this M.O.U.).

#### 4.6.2 *Retirement Plans*

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 employees' single highest year of compensation with a 3% COLA.

Safety members 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.

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.

#### 4.6.3 *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 members' cost of living rates as allowed under Articles 6 and 6.8 of the 1937 Retirement Act. Safety member contribution rates include both the basic and COLA portions (50% of COLA is charged to members as defined in the 1937 Act).

#### 4.6.4 *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.

## **5 LEAVES**

### **5.1 SICK LEAVE**

#### *5.1.1 Policy Statement*

Each employee represented by this Association shall be eligible to accrue sick leave benefits. Employees may use accrued sick leave, if necessary, during their probationary period. Sick leave shall not be considered as a privilege, which an employee may use at his/her discretion but shall be allowed only in case of necessity and actual sickness or disability.

### 5.1.2 Administration of Sick Leave

An employee eligible for sick leave with pay will be granted such leave with the approval of the Fire Chief for the following purposes: Personal illness or illness within the immediate family (immediate family is defined based on California Paid Sick Leave law as employee's spouse, registered domestic partner, children and/or employee's parents, in-laws, siblings, grandchild and grandparents) or physical incapacity resulting from causes beyond the employee's control; or Enforced quarantine of the employee in accordance with community health regulations. Except that 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 employee is required to notify the Fire Chief according to department rules and regulations at the beginning of his/her workday if said employee will be absent under the provisions of sick leave. Every employee who is absent from his/her duties for two (2) consecutive days, under the provisions of sick leave, shall file with the Human Resources Director, if so requested, a verification in the form of a physician's certificate or the employee's personal affidavit, verifying the employee's eligibility for sick leave. The inability or refusal by said employee to furnish the requested information, as herein required, shall constitute good and sufficient cause for disciplinary action, up to and including dismissal.

In recognition of exempt status from FLSA, time off for Sick leave purposes shall not be deducted from employee's accrual unless the employee is absent for the full workday.

### 5.1.3 Sick Leave Accrual

Represented employees working a 56-hour work week shall earn sick leave credits at the rate of twelve (12) hours per month. Represented employees working a 37.5-hour work week shall earn sick leave credits at the rate of 7.5 hours per month.

Accrual of sick leave for usage purposes is unlimited. The maximum accrual limits for sick leave payoff purposes are 1,200 hours for employees working a 37.5-hour work week and 1,680 hours for employees working a 56-hour work week.

### 5.1.4 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 February 1, 2007 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 5.1.5 – Sick Leave Payoff).

### 5.1.5 Sick Leave Payoff

Employees who leave City service in good standing shall receive compensation (cash in) of all accumulated, unused sick leave based upon the rate of three percent (3%) for each year of service up to a maximum of fifty percent (50%) of their sick leave balance. Sick leave payoff would be subject to a maximum of 600 hours for 37.5 hour per week employees and 840 hours for 56-hour per week employees, subject to the 3% per year formula noted above. In the event of the death of an employee, payment for unused sick leave based upon the previously stated formula shall be paid to the employee's designated beneficiary.

## 5.2 VACATION LEAVE

### 5.2.1 Policy Statement

Each employee represented by this Association shall be eligible to accrue vacation leave benefits. Employees shall be eligible to use accrued vacation leave after six (6) months of employment, subject to the approval of the Fire Chief.

**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 following rate for continuous service:

**For 37.5 hour per week employees**

<b>YEARS OF SERVICE</b>	<b>ACCRUAL PER YEAR</b>	<b>ACCRUAL PER PAY PERIOD</b>
1 – 5 Years	15 days or 112.5 hours	4.69 hours
6 Years	16 days or 120 hours	5.00 hours
7 Years	17 days or 127.5 hours	5.31 hours
8 Years	18 days or 135 hours	5.63 hours
9 Years	19 days or 142.5 hours	5.94 hours
10 Years	20 days or 150 hours	6.25 hours
11 Years	21 days or 157.5 hours	6.56 hours
12 Years	22 days or 165 hours	6.88 hours
13 Years	23 days or 172.5 hours	7.19 hours
14 Years	24 days or 180 hours	7.5 hours
15+ Years	25 days or 187.5 hours	7.81 hours

**For 56-hour per week employees**

<b>YEARS OF SERVICE</b>	<b>ACCRUAL PER YEAR</b>	<b>ACCRUAL PER PAY PERIOD</b>
1 – 5 Years	7.5 shifts or 180 hours	7.5 hours
6 Years	8 shifts or 192 hours	8 hours
7 Years	8.5 shifts or 204 hours	8.5 hours
8 Years	9 shifts or 216 hours	9 hours
9 Years	9.5 shifts or 228 hours	9.5 hours
10 Years	10.0 shifts or 240 hours	10 hours
11 Years	10.5 shifts or 252 hours	10.5 hours
12 Years	11 shifts or 264 hours	11 hours
13 Years	11.5 shifts or 276 hours	11.5 hours
14 Years	12 shifts or 288 hours	12 hours
15+ Years	12.5 shifts or 300 hours	12.5 hours

**5.2.3 Administration of Vacation Leave**

The City Manager, upon the recommendation of the Fire Chief, may advance vacation credits to any eligible employee, except that if the employee leaves City employment before accruing the used vacation leave said employee will reimburse the City for the advanced vacation leave.

In recognition of exempt status from FLSA, time off for vacation leave purposes shall not be deducted from the employee's accrual unless the employee is absent for the full work day.

The time at which an employee may use his/her accrued vacation leave and the amount to be taken at any one time, shall be determined by the Fire Chief with particular regard for the needs of the City, but also, insofar as possible, considering the wishes of the employee.

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.

#### 5.2.4 *Vacation Accrual Cap*

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

No employee may accrue more than 265 hours for 37.5 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 would need to be in writing, submitted through the department, and receive 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.

If an employee exceeds the accrued vacation balance (cap) as a result of being on extended leave pursuant to Labor Code Section 4850, those accrued hours would be carried forward and the employee would be allowed to use the additional accrued hours without penalty. In no event will an employee have their vacation hours reduced as a result of exceeding the cap due to having been off on Labor Code 4850 time as a result of an industrial injury, if the time off due to an industrial injury prevented them from taking scheduled vacation.

#### 5.2.5 *Vacation Payoff*

Upon termination of employment by resignation, retirement, or death, employees who leave the municipal service in good standing shall receive compensation of all accrued unused vacation leave earned prior to the effective date of leaving their City position. In the event of the death of an employee, payment for unused vacation leave shall be paid to the employee's designated beneficiary.

### **5.3 HOLIDAYS**

#### 5.3.1 *Days Observed*

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

New Year's Day	Labor Day
Martin Luther King Day	Admission Day**
Washington's Birthday*	Veteran's Day
Lincoln's Birthday*	Thanksgiving Day
Cesar Chavez Day	Day after Thanksgiving

Memorial Day  
Independence Day

Christmas

Notes:

\*For employees working a 37.5-hour work week, Washington's and Lincoln's birthdays are combined as President's Day; with that said, employees shall receive one floating holiday.

\*\*A floating holiday is provided in lieu of Admission's Day off.

7.5 hours for these floating holidays are automatically added to an employee's Floating Holiday accrual on a semi-annual basis.

### 5.3.2 *Holiday Pay*

All 56 hour a week shift employees represented by this Association are entitled to additional straight time compensation for every holiday given 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).

## 5.4 OTHER LEAVE

### 5.4.1 *Administrative Leave*

Represented employees working a 37.5-hour work week shall receive ten (10) Administrative Leave days (75 hours) each calendar year (56-hour work week represented employees shall receive 5.0 shifts [120 hours]) subject to the approval of the department head. Unused Administrative Leave does not carry over from one calendar year to the next, nor are unused balances paid off upon an employee's resignation.

In recognition of exempt status from FLSA time off for Administrative leave purposes shall not be deducted from employee accrual, unless the employee is absent for the full workday.

### 5.4.2 *Bereavement Leave*

In the event of the death of an employee's spouse, registered domestic partner, child, parent, ~~brother, sistersibling~~, in-law(s), grandparent, grandchild or 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 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 out of state bereavement leave may be granted to attend the funeral.

In those cases where the death involves an individual 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.

### 5.4.3 *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.

#### *5.4.4 Workers Compensation 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.

#### *5.4.5 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.

#### *5.4.6 Leave of Absences Without Pay*

Leave of absences without pay (for non-medical reasons which are covered by Section 5.4.7.) may be granted in cases of emergency or where such absence would not be contrary to the best interest of the City. Such leave so granted is not a right but an authorized privilege. Employees on authorized leave of absence without pay may not extend such leave without the expressed approval of the Appointing Authority. All other applicable leaves must be exhausted and no vacation, sick leave, or any other paid benefit shall be accrued or used during such leave. The Fire Chief, as Appointing Authority, may grant up to 30 days of leave without pay depending upon the merit of the case. Any leave without pay in excess of 30 days may only be granted upon the recommendation of the Fire Chief and approval of the City Manager and may not exceed a total of six months.

#### *5.4.7 Family Medical Leave*

Such leave shall be in accordance with applicable State and Federal law.

#### *5.4.8 Catastrophic Leave*

Association members shall abide by City Policy.

#### *5.4.9 Absence Without Authorized Leave*

An unauthorized absence of an employee for three consecutive work days may result in an investigation as to the circumstances of the situation and disciplinary action up to and including termination, if warranted.

### **5.5 ACCRUAL BALANCE ADJUSTMENT**

When a member moves from a 56-hour work week assignment to a 37.5-hour work week assignment, accrued vacation, sick, and administrative leave hour balances will be multiplied by .67 to determine new leave balances.

When a member moves from a 37.5-hour work week assignment to a 56-hour work week assignment, accrued vacation, sick, and administrative leave hours will be multiplied by 1.49 to determine new leave balances.

This does not apply to temporary reassignments.

## **6 TERMS & CONDITIONS OF EMPLOYMENT**

### **6.1 WORK WEEK**



The established work week for suppression employees covered by this Memorandum of Understanding shall consist of a fifty-six (56) hour workweek 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.

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 "2 X 4" schedule):

X = 24 hour on-duty period

0 = 24 hour off-duty period

Example: XXOOOO/XXOOOO/XXOOOO/XXOOOO

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.

The established workweek for 37.5-hour employees shall be negotiable between the Employee and the Fire Chief, with the final schedule determined by the Fire Chief's approval.

## 6.2 HOURLY RATE

The hourly rate for personnel covered by this MOU shall be based on 1950 annual work hours for represented job classes working a 37.5-hour work week and 2912 annual work hours for represented job classes working a 56-hour work week.

## 6.3 OVERTIME

Employees in the FLSA exempt classifications of Administrative Chief/Fire Division Chief or Battalion Chief will be paid overtime for additional days authorized and worked in excess of their regular work week schedule provided that:

1. The employee is assigned to overtime relief duty as shift commander, Strike Team Leader, or other authorized emergency overhead assignment; and
2. The Fire Chief has authorized the overtime work in writing and in advance of the performance of the work. The overtime authorized in this section will be paid at time and one half of the 56-hour rate, regardless of whether the employee normally works a 37.5 hour or 56-hour schedule.

## 6.4 CONTRACTUAL OVERTIME LEAVE

With the Fire Chief's approval, contractual Overtime Leave, in lieu of overtime pay, may be taken subject to the following rules:

### 6.4.1 *Accrual Limit*

Battalion Chiefs filling a Specialty Assignment on a 37.5-hour work week schedule, who work overtime as specified in Section 6.3, may accrue up to 75 hours of Contractual Overtime Leave after which said employee must accept overtime pay in lieu of accruing additional Contractual Overtime Leave.

### 6.4.2 *Overtime Rate*

Battalion Chiefs filling a Specialty Assignment on a 37.5-hour work week schedule, who work overtime as specified in Section 6.3, may elect to accrue Contractual Overtime Leave on an hour for hour basis subject to the limitations in Section 6.4.1. Employees who elect Contractual Overtime Leave must take the time off and will be paid based on the 37.5-hour rate when the Contractual Overtime Leave time is taken.

## **6.5 SPECIALTY ASSIGNMENT**

If through mutual agreement with the Fire Chief operations personnel are assigned to the 37.5-hour work schedule, as opposed to the 56-hour schedule, for assignments such as training, fire prevention, or other administrative functions, such employee shall receive five percent (5%) premium pay. The length of the assignment shall be based on mutual agreement between the employee and the Fire Chief. When an employee filling a specialty assignment works overtime beyond the regularly scheduled work day as a shift commander, strike team leader or other authorized emergency overhead assignment, the five percent (5%) specialty assignment premium pay will not be paid on the overtime hours.

## **6.6 SELECTION**

### *6.6.1 Selection Process*

The City's Human Resources Department shall be responsible for the administration of all recruitments.

### *6.6.2 Referral Process*

All qualified candidates, based upon competitive examination, shall be placed on the Eligibility List for the appropriate job classification. The Fire Chief shall have the authority of "the Rule of the List" and all candidates on a current Eligibility List shall be eligible for referral to the Fire Chief for final selection.

### *6.6.3 Battalion Chief Qualifications*

In addition to other qualifications described in the Fire Department's Career Development Guide, qualifications for candidates for Chief Officer positions represented by this Association in the Fire Department will include three (3) years of line captain experience or two (2) years of line captain experience if appointed to an acting assignment.

## **6.7 PROBATIONARY PERIOD**

### *6.7.1 Purpose of Probation*

Each employee shall serve a period of probation beginning on the date of initial appointment to their position. The purpose of probation shall be to determine the employee's ability to perform satisfactorily the duties prescribed for the position, prior to the employee entering regular status.

### *6.7.2 Length of Probationary Period*

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

### *6.7.3 Rejection During Probation*

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



#### 6.7.4 *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.

#### 6.7.5 *Notification of Extension or Rejection*

On determining that a probationary employee's work is not satisfactory, 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.

#### 6.7.6 *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.

#### 6.7.7 *Promotion of Probationary Employee*

An employee serving a probationary period may be promoted to a position in a higher position classification provided he/she is certified from the appropriate Eligible List. The employee promoted in this manner shall serve a new probationary period for the position to which the employee is promoted and the new probationary period and promotional appointment shall be effective the same date.

#### 6.7.8 *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 and all previous rights and privileges restored. 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.

### **6.8 PERSONNEL RULES & REGULATIONS**

#### 6.8.1 *Drug & Alcohol Policy*

SRFCOA agree to adhere to the Drug and Alcohol Policy as outlined in the San Rafael Firefighters' Association contract.

#### 6.8.2 *Outside Employment Policy*

Association members shall abide by City's policy dated June 27, 2007.

#### 6.8.3 *Temporary Light (Modified) Duty Policy Statement*

SRFCOA agrees to follow the City of San Rafael's Modified Light Duty Work Policy dated June 6, 2008.

#### 6.8.4 *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 tobacco products as follows:

1. While inside any City of San Rafael structure or space
2. While inside any City/Fire Department vehicle
3. While in public when on-duty or in uniform
4. In compliance with State and local ordinance

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.

#### 6.8.5 *Medical Standards*

The City will establish pre-employment medical standards for all classifications represented by the San Rafael Fire Chief Officers' Association.

### **6.9 MISCELLANEOUS**

#### 6.9.1 *Return of City Equipment*

Upon termination of employment, all tools, equipment, and other city property assigned to any employee shall be returned to the Fire Department.

#### 6.9.2 *Political Activity*

The political activity of employees shall comply with pertinent provisions of State and Federal law.

#### 6.9.3 *Staffing Levels*

Any changes in the current staffing levels of positions represented by this Association will be subject to meet and confer.

#### 6.9.4 *Career Development Program*

The San Rafael Fire Chief Officers' Association agrees to the Career Development Guidelines as written.

#### 6.9.5 *Gym Reimbursement*

Employees are eligible to receive up to \$16.50 per month reimbursement for paid gym memberships, workout classes or similar ongoing fitness activities. Such reimbursement shall be reported as taxable income to the employee.

## **7 PROCEDURES**

### **7.1 DEMOTION & SUSPENSION**

#### 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 Human Resources Department.

Demotion pursuant to Section 7.1.1 (a) shall be deemed disciplinary action and as such shall be handled according to the provisions of the Section titled "Disciplinary Action" of this Memorandum of Understanding.

#### *7.1.2 Suspension*

On the recommendation of the Fire Chief, the City Manager may suspend an employee from a position at any time for a disciplinary purpose. Intended suspension action shall be reported immediately to the Human Resources Director and shall be taken in accordance with the Section titled Disciplinary Action of this Memorandum of Understanding and provisions for exempt status employees.

## **7.2 TERMINATION OF EMPLOYMENT**

#### *7.2.1 Resignation*

An employee wishing to leave 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 Human Resources Department.

#### *7.2.2 Termination/ Demotion - 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 7.6, Reduction in Force, of this Memorandum of Understanding.

#### *7.2.3 Termination - Disciplinary Reasons*

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 - Probation*

The rejection of an employee during his/her initial probationary period is covered in Article 7.3, Probationary Period, of this Memorandum of Understanding.

#### *7.2.5 Retirement*

Retirement from 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 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.

### *7.3.2 Definition*

Disciplinary action shall mean discharge/dismissal, demotion, reduction in salary, and/or suspension resulting in loss of pay. Any disciplinary action taken shall be consistent with the provisions of the Fair Labor Standards Act as it relates to exempt employees.

### *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 towards (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 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 Procedures Act and this Memorandum of Understanding. If an employee feels he or she has been unjustly disciplined/discharged, he or she shall have the right to appeal his or her case through the appropriate procedure established in this Memorandum of Understanding. Such appeal must be filed with the City Manager by the employee in writing within ten (10) working days from the date of the discipline/discharge and unless so filed the right of appeal is lost.

### *7.3.5 Proceeding Heard by City Manager*

The appellant may submit the appeal directly to 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.

### *7.3.6 City Manager and 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) 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 60 calendar days of 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. 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 arbitrator shall ~~hear~~rule on the merits of each party's case as presented during the hearing and shall subsequently have the power to affirm, reject, or provide a lesser form of discipline. 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.

## **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 (excluding Article 1.3 and Article 1.5 of this M.O.U.), or any Fire Department policy specifically referenced herein, except issues concerning appeals of punitive action, which is governed by Article 7.3. Policy 1-VI-3 is specifically incorporated by reference. Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be grievable.

### *7.4.2 Initial Discussion*

Any employee who believes that he or she has a grievance may discuss his or her complaint with the Fire Chief. If the issue is not resolved within ten (10) working 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 ten (10) working days after it has been submitted to the City Manager in writing may be referred to the next step.

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

#### *7.4.4 City Manager and Arbitration*

If the grievance is not resolved in the previous Section 7.4.3 of this Memorandum of Understanding, the grievant, the Association, or the City, after completion of the previous step in the grievance procedure, may 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 ten (10) working days to select a mutually acceptable arbitrator. The selection process will include a review of the arbitrator's availability for the hearing. 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 calendar days of 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. No Arbitrator shall have the power to amend or modify this Memorandum of Understanding or written agreements or addenda supplementary hereto or to establish any new terms or conditions of employment.

### **7.5 FURLOUGH PROGRAM**

The employees of this Association endorse the Furlough Program described in Exhibit "B" attached to this Memorandum of Understanding.

### **7.6 REDUCTION IN FORCE**

#### *7.6.1 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 organizational efficiency.

#### *7.6.2 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.

#### *7.6.3 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.

#### *7.6.4 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 shall be determinative.
- d. If all of the above are equal, date of certification for appointment shall be determinative.

#### **7.6.5**     *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.

#### **7.6.6**     *Transfer Rights*

The Human Resources 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 7.6.2, but no longer than the effective date of such layoff or reduction.

### **7.7 RE-EMPLOYMENT**

#### **7.7.1**     *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.

#### **7.7.2**     *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.

#### **7.7.3**     *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 shall be removed from the re-employment list.

#### **7.7.4**     *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.

**7.7.5 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.

**7.7.6 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 FIRE CHIEF OFFICERS' ASSOCIATION:**

**CITY OF SAN RAFAEL:**

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**Matt Windrem, Battalion Chief**

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**Cristine Alilovich, Assistant City Manager**

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**Kyle Hamilton, Battalion Chief**

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**Sylvia Gonzalez-Shelton, HR Operations Mgr**

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**Date**

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**Date**