

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING made and entered into this 1<sup>st</sup> day of JULY, 2009.

**BY AND BETWEEN**

**CITY OF SAN DIEGO AND  
SAN DIEGO CITY FIREFIGHTERS,  
I.A.F.F. LOCAL 145**

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## **Parties to the Agreement**

This Memorandum of Understanding, hereinafter referred to as the Memorandum, is entered into by and between the City of San Diego, hereinafter referred to as the City, and SAN DIEGO CITY FIREFIGHTERS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS Local 145, hereinafter referred to as the UNION.

## ARTICLE 1

### Payroll Deductions

- A. It is agreed that IAFF, Local 145 dues, assessments, and other authorized deductions shall be deducted in accordance with the provisions of applicable state law, and the Employer-Employee Relations Policy, by management from the salary of each member and past member with a valid withdrawal card, who files with the City and the Union a written authorization requesting that such deductions be made. Remittance of the aggregate amount of all deductions shall be made to the Union by management biweekly. Said deductions shall be wire transferred to the pre-designated Local 145 accounts. There will be no cost to Local 145 for this transfer.
  
- B. Deductions shall be for a specified amount or for total compensation and shall be made only upon the voluntary written authorization of the member or past member with a withdrawal card. Deduction authorization or cancellation shall be made upon clearly marked cards provided by the City and the Union in accordance with past procedures.
  
- C. The Union shall disburse such funds received from the City in accordance with the deduction authorizations received.
  
- D. The Union shall indemnify, defend, and hold the City of San Diego harmless against any claims or suits instituted against the City of San Diego contesting the collection and/or dispersal of any authorized deductions. In addition, the Union shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.
  
- E. **SPECIAL DEDUCTION - FIRE FIGHTERS' AID FUND - MASS CHANGES.**
  - 1. The Auditor's Office upon receipt of notification from Local 145, shall cause the specified amount to be deducted from paychecks of members of the fund.
  
  - 2. Mass changes of this nature shall not require individual authorization.
  
- F. If an employee submits a payroll deduction authorization change to the City which has not been processed by Local 145, the City will forward a copy of the change notice to Local 145.
  
- G. All employees will be required to provide authorization to the City Auditor to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility). Employees shall not have to change financial institutions if their financial institution is not compatible with the wire transfer. The effective date of this requirement will be determined by the City during the term of this agreement.

## **ARTICLE 2**

### **Trades**

- A. The City agrees to continue the practice of allowing employees to trade work schedules, subject to the provisions of the Fair Labor Standards Act. Disputes regarding the impact of trade(s) upon hours worked for retirement/overtime computation purposes, shall be resolved by reference to the records maintained by the Department Payroll.
- B. Approval of trades will be subject to the staffing requirements of the department as determined by the Chief or his designee. Once a trade has been approved, the employee who accepts the trade assumes the responsibility for completing the assigned shift.
- C. Fire Engineers wishing certification on equipment for which they have not previously been certified, shall make a request to the Fire Chief or his designee. To the extent feasible, the Fire Chief shall arrange for such a Fire Engineer to be assigned to a work station where he/she can achieve such certification during his/her normal work shift.
  - 1. Trades shall be limited to the exchange of scheduled work shifts, time for time, between two employees of the same classification.
  - 2. All trades must be between the original employees agreeing to the trade. All trades of scheduled shifts must be completed within one year.
  - 3. Trades of will work assignments four hours or less will be allowed with the proper payroll documentation.
  - 4. The above procedures apply to all trades regardless of the amount of time involved.
  - 5. Employees shall be allowed to trade holidays within the 28-day cycle.

## **ARTICLE 3**

### **Will Work List**

The Union agrees to support a Will Work List consisting of sufficient numbers of volunteers to fill normal staffing vacancies. An employee who has volunteered for the Will Work List may remove his/her name from that List any time prior to being called for work. In the event that there are insufficient numbers of suitable volunteers, the Union agrees to the use of Mandatory Callback according to the agreement in the Transfer Policy Manual.

Members wishing to volunteer for will-work will use the approved methods outlined in the Telestaff manual and in the Transfer Policy Manual as incorporated in this Memorandum of Understanding.



Changes to the existing transfer policies shall be by mutual consent. Local 145 agrees to meet and confer in FY 04, through impasse to the City Council, over SDFD proposed changes to the Transfer Policy Manual.

The parties agree to study the development of a consistent policy regarding transfers between Operations and the Fire Prevention Bureau (and other staff positions) as they relate to Disability Retirements, Light Duty Assignments, and Vocational Rehabilitation.

The City and Local 145 agree to develop a section in the Transfer Policy Manual that will outline a bidding procedure to transfer among the various sections in the Fire Prevention Bureau. Said policy will further clarify the procedures for transferring from 40-hour assignments to 56-hour assignments.

## **ARTICLE 4**

### **Seniority**

A. Parties hereby agree that layoff shall be governed by the provisions of Civil Service Rule V. Changes to Civil Service Rule V which affect members of Local 145 shall be by mutual consent.

B. For purposes of this article:

City-wide seniority shall mean service in a classification regardless of the department or division.

Right of competition shall mean the right of an employee who has been laid off to compete for positions in lower classes in which he or she has served satisfactorily, subject to the superior rights of any other employee who has been laid off.

C. In cases of intra-departmental processes, seniority shall be established as follows:

1. Relative seniority among employees in the same Academy hired into the Fire Fighter classifications will be established by class standing in their Academy.
2. Relative seniority among employees promoted into the same classification on the same effective date shall first be established on the basis of seniority in the classification from which they were promoted. In the event seniority is equal in that classification, standing in the academy will be used to determine seniority. If a tie remains, a lottery shall be used to determine seniority. The Fire-Rescue Department will make a reasonable and documented effort to offer the opportunity to attend the lottery to all parties with a material interest in the results.

## **ARTICLE 5**

### **Savings Clause**

This Memorandum is subject to all current and future applicable federal, state and local laws, regulations and the Charter of the City of San Diego.

If any part or provision of this Memorandum is in conflict or inconsistent with such applicable provisions of federal, state or local laws or regulations, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or provisions shall be suspended and superseded by such applicable law or regulations, and the remainder of the Memorandum shall not be affected thereby.

## **ARTICLE 6**

### **Discrimination**

1. Both parties agree not to discriminate against any employee for the exercise of rights guaranteed by applicable state and/or federal law, which prohibits favor or discrimination because of race, color, sex, age, disability, religion, national origin, political, employee organization affiliation, or pregnancy.
2. The parties mutually recognize and agree fully to protect the rights of all employees falling into the classifications listed in Article 10 herein to join and participate in the activities of Local 145, or not to join and participate in such activities, and all other rights guaranteed by law.
3. No employees shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.
4. The provisions of this Memorandum shall be applied equally to all employees covered hereby without favor or discrimination because of race, color, sex, age, disability, national origin, political or religious opinions or affiliations, or pregnancy.
5. Local 145 agrees to recognize and support Equal Opportunity plans and policies promulgated in accordance with procedures established by the City Council and the Fire-Rescue Department as consistent with state and federal law. Any such policies shall be submitted to Local 145 and shall be met and conferred upon if required by Meyers-Milias-Brown.
6. The parties agree to support and comply with the City's Human Dignity Ordinance.

## ARTICLE 7

### Station and/or Work Site Living Conditions

1. The City agrees to continue to furnish and maintain in proper working condition, those items or facilities now provided for all represented personnel, which are considered to be essential living conveniences. Items that will be replaced include but are not limited to mattresses, microwaves, refrigerators, tables and chairs, carpet, washers and dryers, heating and air conditioning systems, exhaust extraction systems, David Clark Communication Systems, and station fencing. The City agrees to initiate repairs or replace the above referenced equipment within one month of official notification of need. The Fire-Rescue Department must meet and confer with Local 145 on modifications of station sites and/or space utilization of station sites should such modifications impact working conditions.
2. The City will provide the Union with a copy of the Capital Improvement Program as it relates to Fire-Rescue Department facilities, when the City Council has approved the CIP budget.
3. The City will ensure that employees are held reasonably accountable for their uniforms and related equipment, during their assigned shifts.
4. Nothing in this Article shall be interpreted to prevent the City from complying with applicable State health and safety laws. The City shall comply on a timely basis with applicable federal, state, and local health and safety laws. The City and Local shall jointly study National Fire Protection Association standards for training and equipment for future adoption.
5. In the event that a repair should necessitate closure of a facility for more than 48 hours, on-site alternative accommodations will be made available.
6. As soon as the Department Administration determines it to be reasonably practicable, the Department shall participate in the Safe Surrender Program (a program that allows anonymous drop off of newborn infants less than 72 hours old.) To the extent that this program has a significant impact upon terms and conditions of employment, the impact issues shall be subject to the meet and confer process during the term of this MOU.

## ARTICLE 8

### Mileage Allowance

- A. The City agrees to reimburse members of the unit for use of their private vehicles to travel from one work station to another work station when such travel results from a reassignment of work station during the employee's normal work hours. The City agrees to reimburse members of the unit for the use of their private vehicles in the event they are on page and are called back to work.

Effective July 1, 2008, mileage reimbursement shall be at the IRS mandated rate(s).

- B. In the event that an employee is transferred after reaching his/her normally assigned work site and does not have transportation available, which is practical for a mid-shift transfer, the Department will arrange transportation to the new work site. At the end of the duty shift, the employee has the option of leaving the assigned work site upon being relieved or requesting the Department to arrange transportation to the original work site. In the event the employee requests return transportation, the Department shall arrange such transportation as soon as practical. The employee shall be compensated for time spent in excess of one hour waiting for transportation after being relieved by his/her replacement.

## **ARTICLE 9**

### **Appendices and Amendments**

All Appendices and Amendments to this Memorandum shall be numbered (or lettered), dated and signed by the authorized agent of the parties and shall be subject to all provisions of this Memorandum.

All current amendments and appendices resulting from Meeting and Conferring over this agreement shall be listed and published as a part of this memorandum.

## **ARTICLE 10**

### **Formal Recognition**

1. The City recognizes the Union as the exclusive representative for employees in the Fire Fighter Unit.
2. The Fire Fighter Unit consists of all employees in the following classes:

Fire Recruit  
Fire Fighter I  
Fire Fighter II  
Fire Fighter III  
Fire Engineer  
Fire Captain  
Fire Battalion Chief  
Fire Prevention Inspector I  
Fire Prevention Inspector II  
Fire Prevention Supervisor  
Assistant Fire Marshal  
Emergency Medical Technician  
Paramedic I  
Paramedic II  
Fire Helicopter Pilot

Air Operations Chief  
Fire Captain (Emergency Management Coordinator Option)

The parties agree to eliminate the position of Medical Operations Coordinator pursuant to Article 26 of the MOU.

3. The City will agree not to meet and confer with organizations other than Local 145 on matters falling within the scope of representation including but not limited to hours, wages, working conditions, and hiring and promotional policies.
4. In the event that the San Diego Fire-Rescue Department assumes the contract for paramedic services, all paramedic classifications shall be placed in the Local 145 bargaining unit.
5. Fire Fighters who were hired as “limited” employees and are performing at a satisfactory level shall be moved into “permanent” positions as they become available.
6. Effective July 1, 2009, no future hires into the Fire Prevention Bureau will be civilians.

## **ARTICLE 11**

### **Employee Representation**

- A. Employee representation during meetings with management shall be governed by Government Code §§ 3250 et. seq. The parties agree that Government Code §§ 3250 et. seq. shall apply to all unit members.
- B. Battalion Chiefs and Fire Captains shall not represent Fire Fighters or Fire Engineers on matters of discipline or grievances. Battalion Chiefs shall also not represent Fire Captains in such matters. Members of the Board of Directors may represent employees in all Fire classifications in matters of discipline and grievances.

## **ARTICLE 12**

### **Indemnification**

The City agrees that the provisions of Government Code Section 825 are applicable to members of the unit.

## **ARTICLE 13**

### **Fire/Police Coordination**

It is the policy of the City for the Fire-Rescue Department to coordinate their activities with the Police Department.

Fire-Rescue Department employees will not be required to involve themselves in a Police Department situation in which the ranking Fire Officer on scene, reasonably believes that Fire-Rescue Department employees are endangered absent Police support.

The Fire Chief shall coordinate with the Police Chief to provide appropriate support in the event Fire Fighters become involved in threatening situations.

Fire-Rescue Department employees shall not be required to identify suspects while on duty. Fire stations shall not be utilized as suspect I.D. meeting points.

The Fire Chief and representatives from Local 145 will mutually develop a policy on Police and Fire coordination.

## **ARTICLE 14**

### **Bulletin Boards**

1. The City agrees to furnish and maintain suitable bulletin boards in mutually convenient places in each station to be used by the Union for the posting of responsible, non-controversial material related to Union business. The Union shall limit its posting of notices and bulletins to such bulletin boards, and the Union shall furnish the Fire Chief with a copy of each item to be posted, concurrent with the timing of each such posting.
2. Present locations and space allocations are considered adequate.
3. As a courtesy, the Fire Chief shall furnish the Union via US Mail with a copy of all correspondence which is directed to be posted in fire stations. Such correspondence shall be faxed 24 hours prior to being mailed.
4. **Local 145 may use the City's email system to direct employees to information contained on the Local 145 website. No further use or access of the City's email system is authorized unless such use pertains directly to the Employer-Employee relationship. Examples of this relationship include but are not limited to: communicating with management or Labor Relations, responding to disciplinary actions or appeals, submitting grievances, and communicating a tentative agreement for ratification purposes. Local 145 agrees to comply with all City policies on the use of City resources.**

## **ARTICLE 15**

### **Reasonable Notice**

- A. The parties shall provide reasonable written notice of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be

adopted by the City Council or by the Civil Service Commission or by the Fire Chief, and shall be given the opportunity to meet and confer prior to adoption, as required by law.

- B. In cases of emergency pursuant to the City Charter when the City determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with the Union, the City Council or the board or commission of the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

It is recognized that from time to time, the Department may, in its discretion, issue departmental procedures in writing which pertain to matters not within the scope of representation. In order to provide information to Local 145, the Department agrees to direct a copy of proposed written departmental procedures to the Union prior to publication. Nothing in this Article is intended to require or obligate, directly or indirectly, the Department to meet and confer on any subject contained as proposed departmental procedures, which is not within the scope of representation.

- C. All communications or notice required to be served upon the Union by the City shall be delivered to the President of the Union, or to the Vice-President in the noticed absence of the President, at his current address on file in the City Manager's Office by the United States Mail or hand delivered whichever is most convenient. Reasonable notice shall be considered as 72 hours.
- D. Nothing in this article shall limit or otherwise restrict the department from immediately publishing departmental procedures which in the determination of the department are of an emergency nature. Such communications shall be sent by FAX to Local 145 simultaneously.

## **ARTICLE 16**

### **Management Rights**

The rights of the City include but are not limited to the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees, take disciplinary action for just cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

The exercise of such right shall not preclude Local 145 from meeting and consulting or meeting and conferring with management representatives as required by law about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment, and shall not supersede the provisions of this agreement.

## **ARTICLE 17**

### **Special Assignment Pay**

- I. Uniformed members will receive an additional 5% of their base salary, with the exception of the Explosive Ordnance Disposal Squad and all HAZMAT personnel including qualified Battalion Chiefs conditioned under the HIRT contract who oversee the HAZMAT team, who will receive 10% (Station 4 & 41 Heavy/Urban Search & Rescue Personnel are eligible to receive up to an additional 10%), and personnel assigned to the Air Operations program who will receive 10%, as Special Assignment pay, only when assigned to the following duties in a station designated as a specialty station.
- A. Explosive Ordnance Disposal Squad
  - B. Hazardous Materials Squad
  - C. "D" Division (Training) for special assignments.
  - D. Station 4, Rescue
  - E. Station 20, Hose Repair
  - F. Station 23, Small Equipment Repair
  - G. Stations 26 & 9, Emergency Medical Services
  - H. Station 28, Annual Pump Testing
  - I. Station 36, Breathing Apparatus Repair
  - J. Station 40, Ladder Repair
  - K. Airport Station, Staffing Desk
  - L. MAST Personnel
  - M. Administrative Assignment
  - N. Special Tactics and Rescue (STAR) Team
  - O. Canine Handler
  - P. Station 4 & 41, Heavy/Urban Search & Rescue
  - Q. Battalion Medical Officer

#### **Stations 26 & 9 EMS Specialty Pay:**

Effective July 1, 2002, a five percent (5%) specialty pay will be paid to those fire personnel assigned to the EMS Specialty Station(s). At Station 26 three (3) certified paramedics and one (1) firefighter/EMT per shift; and at Station 9 four (4) certified paramedics and one firefighter/EMT, only when assigned to Stations 26 and 9, OR other San Diego Fire-Rescue Department identified EMS Specialty Station, and performing EMS administrative functions.

Effective July 1, 2006, the Paramedic Premium (Article 43) shall be paid to the EMS Battalion Chief if that person is a licensed paramedic conditioned upon the SDMSE contract.

For so long as the SDMSE contract with the City exists and provides for a 5% of base salary Special Assignment Pay for Battalion Medical Officers, the City shall provide this Special Pay to EMS Battalion Medical Officers. This is a Special Assignment Pay only; Battalion Medical Officers is not a new classification.



#### Administrative Assignment Pay:

Effective July 1, 2008, all employees in classes represented by Local 145 who are permanently assigned to straight-day administrative assignments, shall receive 15% Administrative Assignment Pay. This shall not apply to personnel in temporary light-duty assignments.

Individuals so assigned, shall also be subject to the following:

- Absent a management-determined business purpose at the conclusion of an administrative assignment of 2 or less years, the employee shall be permitted to return to the pre-administrative assigned station.
- Upon agreement of management and the effected employee, the administrative assignee shall be assigned to a flexible schedule which shall consist of either a 5/8, 44/36 or 4/10.

#### Special Tactics and Rescue Team Pay:

Effective July 1, 2002, a five percent (5%) specialty pay will be paid to those certified paramedics, only when assigned to Special Tactics and Rescue Team.

#### Canine Handler Pay:

Effective July 1, 2007, a five percent (5%) specialty pay will be paid as a special pay to the Accelerant Canine handler only when the handler is assigned a dog. Up to four (4) members of the US&R Team will be designated as canine handlers. Contingent upon continued availability of grant funding, these handlers will be paid the special pay set forth above only when assigned a dog. All other costs associated with the acquisition, training, maintenance and care of the dog will be through grant funding, with the exception that no vehicle shall be provided. Management agrees to assign a high priority to the use of available grant funds for continuation of the US&R canine program. However, should grant funding to support this program be discontinued, this program, support for the program and associated special pays will be terminated effective immediately upon termination of the grant funding.

#### Station 4 & 41 Heavy/Urban Search & Rescue:

Effective July 1, 2002, Station 4 Heavy/Urban Search & Rescue personnel are eligible to receive an additional five percent (5%) specialty pay pursuant to the agreement on file with San Diego Fire-Rescue Department Human Resources and the Labor Relations Office. Personnel assigned to Station 41, Heavy/Urban Search & Rescue, will be eligible to receive specialty pay of 10% according to the agreement on file with San Diego Fire-Rescue Department Human Resources and the Labor Relations office.

Special assignment pay will only be paid for hours worked in the specialty station designated for the employee's specialty duties. Will-work or light duty work performed in non-specialty stations will not be eligible for specialty pay.

Effective July 1, 2000, Firefighter Paramedics who receive specialty pay as part of a permanent assignment to a specialty station, will not lose the specialty pay when rotated out of the specialty station to meet quarterly training rotational obligation.

## II. Bilingual – English Pay

The City agrees to continue a program, which will provide extra compensation for employees whose job assignment requires ability to communicate orally in Spanish, Tagalog, or Indo-Chinese as well as English. Effective July 1, 2002, participants in this program, who are certified by their appointing authority, and who are otherwise eligible, shall receive 3.5% of base salary while in the job assignment requiring this additional skill. The City reserves the right to establish criteria which will enable candidates in this program to qualify for the extra compensation.

Effective July 1, 2006, employees will be required to be periodically re-tested in order to ensure that their bilingual language skills are current. In order to continue receiving bilingual pay, employees must pass a re-test on their non-English language on or before December 31, 2006. The re-test will be administered on City time by the personnel department. The City may re-test an employee every three years thereafter.

The number of participants eligible to receive bilingual pay shall be limited to a maximum of sixty-five (65) positions per shift.

## **ARTICLE 18**

### **Business Representatives**

1. Authorized Union full-time paid business representatives, or the President or elected officers of the Union, shall be granted access to work locations in which employees covered hereby are employed, for the purpose of conducting grievance investigations and observing working conditions. Authorized Union representatives desiring such access to such work locations shall first request entrance from the Fire Chief or his designee, at which time the authorized representative shall inform the Fire Chief or his designee of the purpose of the visit. The Fire Chief or his designee may deny access to work location if in his or her judgment it is deemed that a visit will unduly interfere with the operations of the department or facility thereof, in which event the Fire Chief or his designee will recommend an alternative time for the visit. The Union representative shall not unduly interfere with the operations of the department during a visit. During lunch or after 5:00 p.m. Union representatives shall be allowed access to work locations.
2. Solicitation of membership and activities concerned with the internal management of the Union such as collecting dues, holding membership meetings, campaigning for office, conducting elections, and distributing literature to individual employees, shall not be conducted during working hours.
3. Elected or appointed officials of Local 145 may, at the discretion of the Fire Chief or his designee, be allowed to use holiday or annual leave credits for time off as is necessary to conduct Union business.

4. Local 145 shall furnish the Fire Chief on July 1 of each year a written list identifying by name all elected officers of the Union and any full-time paid Union business representatives, and such list shall be kept current by the Union.
5. Handling Grievances
  - a. When requested by an employee, a Board member, with permission of his or her supervisor, may investigate any grievance in his or her assigned work area and assist in its preparation and presentation. If no Board member is assigned to the employee's work area or if the Board member so assigned is not available at the time the grievant makes his or her request, another Board member may investigate the grievance.
  - b. After notifying and receiving approval of the immediate supervisor, a Board member shall be allowed reasonable time off during working hours, without loss of time or pay, to investigate, prepare and present such grievances. The immediate supervisor will authorize the Board member to leave his or her work, unless compelling circumstances require refusal of such permission, in which case the immediate supervisor shall inform the Board member of the reasons for the denial and establish an alternate time when the Board member can reasonably be expected to be released from his or her work assignment.
6. Board of Directors Meetings

Three members of the Board shall be permitted to attend, while on-duty, meetings of the Board of Directors (once a month, generally from 8:00 a.m. – 5:00 p.m.; or every two weeks, 8:00 a.m. – 1:00 p.m.) and General Membership meetings (normally scheduled on the third Tuesday from 7:00 p.m. – 10:00 p.m. and third Wednesday of every other month from 8:30 a.m. – 11:30 a.m. Additional members of the Board may be permitted to attend under these arrangements on condition that Local 145 provides relief for them. Effective July 1, 2002, Board members working an overtime shift will be released without pay for the eight (8) hours of the board meeting (or 4 hours if the meeting frequency is two times per month), and will be allowed to return to the station to work the remainder of the shift.
7. Local 145 officers and board members may be granted use of City facilities for meetings, provided space can be made available without interfering with the City's needs.

## **ARTICLE 19**

### **Out of Class Assignment**

Any person covered by this agreement, who is assigned to a position or rank above that normally held, shall be assigned, and credited in accordance with the following provisions:

- A. Out of Class (OCA) budgeted positions shall be made in rotational order from the top of the list of on-duty eligible employees. The list shall be comprised of those employees on the promotional list for each rank or position.

1. Each employee is expected by the City to reasonably consider to accept the assignment when notified. Names of employees who are excused from an OCA by the Chief or designated authority for good reason shall remain in their respective positions on the list for rotational assignment.
  2. Taking all things equal, first consideration will be given for appointment to an OCA assignment of 30 days or more to employees on the eligible list for the class in which a vacancy occurs except in those cases in which the specialized needs of the assignment or a requirement for an employee with specialized skills necessitates appointment of an employee not on the eligible list.
  3. In the event of unavailability of eligible, on-duty personnel, employees not on a promotional list shall be eligible based on Personnel Manual regulations and the section on seniority agreed to in this Memorandum.
  4. Out-of-Class Assignment for straight day employees shall be limited to their functional division.
  5. Employees who fulfill an OCA in a budgeted position shall be rotated to the bottom of the list. For this purpose, an assignment shall be considered a minimum of eight hours.
  6. Under emergency conditions, as determined by the Fire Chief, personnel may be assigned OCA without restriction.
- B. Copies and/or information regarding OCA lists or assignments shall be made available to the Union on request.
- C. Personnel who satisfactorily work OCA shall be eligible for a reduction of the time between promotion and the first step increase according to the following:
1. Each employee wishing to participate in this program shall be responsible for obtaining the approved form and shall have his or her supervisor enter time served in an OCA capacity on each occurrence.
  2. Upon obtaining promotion, such employee shall present the form to the Chief for verification.
    - a. Time served in OCA, during the four year period immediately preceding promotion, shall reduce the time element for the first step increase from the rate received at the time of promotion to the next highest rate for which the employee is eligible. However, such time shall not reduce the normal time for a step increase to less than one-half the normal time nor shall OCA time affect requirements for additional step increases.
    - b. Any employee who loses the form and fails to report such loss to the Chief, shall not be eligible to receive any credits under this provision.

- D. Credit for OCA to operate brush rigs shall be limited to emergency in-service operating time.
- E. The standard for shift conversion to calendar time shall be 9 shifts per month. Time served credit shall be apportioned accordingly.
- F. Employees on OCA will be compensated at the rate of their regular job classification. Employees shall be compensated for out of class assignments at the rate of the higher paid class only after 30 cumulative days of being assigned to the same higher level class. Compensation would begin on the 31st day and would be prospective. Effective July 1, 2002, Emergency Medical Technicians (EMTs) working OCA as a Paramedic, shall be compensated for the out of class assignment at the rate of the higher paid class on the first day of the OCA to the Paramedic classification.
- G. Personnel Manual Index Code H-3 and attendant OCA procedures shall be revised effective July 1, 1995 to require written authorization from the Personnel Director for OCAs extending beyond 60 days, rather than 30.
- H. Mandatory recall of personnel shall be on a rate for rate basis with forty-four (44) hours notice.

## **ARTICLE 20**

### **Hours**

Members of the unit assigned to fire suppression companies shall normally work an average 56-hour week consisting of 24-hour work shifts. All other members of the unit shall work an average 40-hour work week. The City agrees that a permanent alteration to existing work schedules during the term of this agreement shall be subject to meet and confer.

Employees assigned to the 56-hour work schedule will work nine 24-hour shifts each 28-day work period. Each employee will also be assigned to work an additional 8 hours in 12 of the 13 28-day work periods. This additional eight hours will be scheduled as compensated leave. In the other one work period in which they will take their 24-hour holiday they will be scheduled to work 216 hours and compensated for 224.

Straight day schedules will normally fall between the hours of 7:00 a.m. - 6:00 p.m.

In service training will normally not be scheduled for fire suppression companies on City holidays.

Fire Fighters of equal rank assigned to 56-hour work weeks shall be allowed to relieve each other from duty up to 60 minutes prior to scheduled changes of shifts subject to approval of the duty officer:

1. Personnel participating in early relief shall do so on a voluntary basis.
2. Any increase in time that may develop from an early relief will not result in additional compensated hours of work.
3. The City will not be required to keep records of any individual's time worked in early shifts.
  - a. In event of legislative action requiring compensation for time worked in early relief, this policy shall become null and void.

## **ARTICLE 21**

### **Uniforms and Safety Equipment**

#### I. Department Issued Equipment

##### A. The City shall issue and maintain to each fire fighter:

- |                       |                                    |
|-----------------------|------------------------------------|
| 1. Turnout pants      | 7. Gloves                          |
| 2. Turnout coat       | 8. Hose Strap                      |
| 3. Turnout boots      | 9. Hood                            |
| 4. Turnout suspenders | 10. Brush Jacket and Pants         |
| 5. Spanner            | 11. Helmet                         |
| 6. Utility Strap      | 12. Breathing Apparatus Face Piece |

13. Effective July 1, 2008, a Nomex rescue jump suit shall be provided to employees assigned to RESCUE and a Nomex STAR Team jump suit to personnel regularly assigned to the STAR Team.

#### II. Fire Fighter's Uniform

- A. Initial requirement. Each employee in this bargaining unit shall be required to obtain and maintain in a manner acceptable to the City a Class B and Class C uniform. This shall include a knife and a flashlight as specified for department use by the Safety Committee. In recognition of the initial expense, the City shall pay each fire fighter who attains permanent status the current cost of obtaining the Class B and Class C uniform. Current cost is to be determined by the City. The City agrees to immediately provide wild-land brush-boots for all recruits upon successful completion of the academy. The City agrees to provide reimbursement for safety boots and pants to fire fighters as soon as they complete the initial Fire Academy.
- B. At the successful completion of probation, the City agrees to provide a complete Class A uniform to include:

- |                            |                |
|----------------------------|----------------|
| 1. Dress Jacket            | 5. Tie         |
| 2. Dress trousers or skirt | 6. Belt        |
| 3. Shirt                   | 7. Dress Shoes |
| 4. Dress Hat               |                |

- C. Maintenance and Upkeep. Effective July 1, 2009, uniform allowance for all employees will be \$475 a year. On the first pay day in September 2009, the City shall pay those fire fighters who have completed 12 months of service as a Fire Recruit/Fire Fighter I the sum of \$475 for maintenance and replacement of the items described in Paragraphs II. A. and B. Employees who have reached their mandatory DROP ending date and are on terminal annual leave on the first pay day in September, 2005, shall not be entitled to the Maintenance and Upkeep allowance.

The City will provide an ongoing reimbursement in September of each year of up to \$556 for the purchase of tools by twelve (12) employees designated to perform maintenance and repair work by Support Services Division. Effective FY 2001, this allowance will increase to \$584. Effective July 1, 2002, this allowance will increase to \$650. The list of “essential” tools that will be eligible for this reimbursement will be mutually developed by the Fire-Rescue Department and Local 145.

- D. This allowance will be used by members of the unit to purchase and maintain their own linen to include pillow cases and sheets.
- E. The City will continue to maintain brush gear specifications which are equal to or better than equipment currently in use by the department. The City will provide replacement brush gear to all members of the unit. Replacement gear will be provided based on need in accordance with CAL-OSHA standards.

### III. Administration

- A. Fire Fighters reporting for duty are expected to have the uniforms as described in Section II. A. and II. B. Failure to have any of these items may result in discipline of the employee.
- B. For the term of this Agreement, Local 145 agrees that the City of San Diego has discharged the City’s obligation pursuant to State law requirements to provide safety equipment as set forth in Labor Code Section 6401. Both parties agree that this uniform allowance meets the intent of the Court order in Case No. 428571. If a modification of the Court order is necessary, Local 145 will stipulate to such necessary modification.

### IV. Civilian Fire Inspectors

Civilian Fire Inspectors and the Fire Inspector Supervisor in Fire Prevention Bureau will receive \$500, on the first payday in September, for the purchase and maintenance of required uniforms.

## V. STAR/US&R Teams/Rescue

Members of the STAR, USAR Teams and Rescue will receive \$300, on the first payday in September, for the purchase and maintenance of required uniforms. Rescue personnel are responsible for purchasing coveralls, vertical rescue boots and gloves.

## VI. MAST/EDT

MAST/EDT will receive \$300 on the first payday in September for the purchase and maintenance of required uniforms. Personnel regularly assigned to MAST, shall be provided with: 1) hand gun and ammunition, 2) badge, 3) protective vest and cover, 4) mace and nylon mace holder, 5) flashlight, 6) handcuffs and nylon holder, 7) dig out uniform, 8) safety goggles, 9) respirator, 10) polo shirts (3).

## VII. AIR OPERATIONS

Personnel regularly assigned to Air Operations shall be provided with: 1) Nomex jacket, 2) helicopter crew boots, 3) and flight gloves.

## ARTICLE 22

### Flexible Benefits Plan

An IRS qualified cafeteria-style benefits program is offered to all eligible employees called Flexible Benefits Plan (FBP). The plan provides a variety of tax-free benefit options. Eligible employee means any employee in one-half, three quarter, or full-time status. Eligible employee excludes all employees in an hourly status. Eligible employees must have no less than 40 hours of compensated time during each pay period in order to receive City paid benefits. If an eligible employee has less than 40 hours of compensated time during a pay period, the eligible employee will have the right to continue their benefits by paying the City the full cost to continue any or all of the employee's benefits during the period. In the case of FMLA approved absences, the City will continue to pay for the employee's health, life, and dental insurance for up to 12 weeks per year in accordance with FMLA requirements.

The City's contribution to the Flexible Benefits Plan, effective July 1, 2008, will be based on the level of health insurance coverage selected by the eligible employee. The City's contribution to FBP will be pro-rated according to the percentage of time worked if the employee works less than full-time status. The FBP annual value for **FY 2010-2011** will be as follows:

**Health Waiver (for employees who have other comprehensive health coverage) - \$1,750.**

**Employee only - \$4,750**

**Employee and adult - \$7,800**

**Employee and children - \$7,225**

**Employee and family - \$9,400**

The benefits available through FBP and the respective annual cost are reflected in the Flexible Benefits Summary Highlights booklet provided to each employee each year of the agreement.



Significant changes to the benefit options FY 2009 are:

1. Eliminate cancer/intensive care protection plans.

**Significant changes to the benefit options FY 2010-2011 are:**

- 1. Effective August 1, 2010, Local 145 will make available its own HMO medical plan through the City's Flexible Benefit Plan.**
- 2. Beginning FY 2011, Local 145 members will have the option of enrolling in the City's Kaiser HMO Medical Plan, the City's PPO Medical Plan, or Local 145 HMO Medical Plan.**
- 3. During the period of August 1, 2009 through August 1, 2010, the City will report eligibility data for Local 145 enrolled employees separately to all medical, dental and vision insurance carriers, in addition to, all premium and claims experience reports.**

It is the intent of the parties that all plans offered in the Flexible Benefits Plan comply with all applicable State and federal laws, including IRS regulations as interpreted by the City Attorney. All disputes over interpretation of the above shall be submitted to the appropriate agencies for interpretation.

The employee must select health insurance unless he/she has other comprehensive health insurance.

Other optional benefits may be purchased with remaining FBP monies, if any, and/or payroll deduction. Such benefits include dental, vision, 401(k), Dental/Medical/Vision (DMV) and Dependent Care reimbursement. Any remaining FBP monies not used on other optional benefits will be paid as a cash payment. All eligible employees are eligible to select any of the optional benefits.

In addition to designating flexible benefits monies to pay for Dental/Medical/Vision or Dependent Care reimbursements, employees may designate a specific amount of pre-tax money (IRS restrictions apply) to be withheld from their paychecks to reimburse eligible out-of-pocket medical, dental, vision or dependent care expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, and monies are forfeited if not used within the fiscal year.

Eligible employees are required to enroll for their benefits each year during the designated open enrollment period. If an employee fails to complete enrollment within the open enrollment period, the employee's current options (or comparable plan if unavailable) will be automatically continued at the same level for the next year as if the employee had elected to keep them. Employees agree that the City may make a payroll deduction for employee and/or dependent health coverage if there is not enough FBP allotment to pay for all benefit options. Any monies remaining from the FBP allotment will be paid out as taxable cash payment. All payroll deductions, including DMV and Dependent Care reimbursement, will continue and may not be eligible to be stopped until the following open enrollment period.

**Effective FY 2010, Hyatt Legal Plan will be eliminated as a benefit option.**

## ARTICLE 23

### Retirement

#### A. SDCERS Employee pickup/offset

**Effective July 1, 2009, the City's offset or "pick-up" of employee pension contributions for employees in Local 145 represented bargaining unit shall be eliminated.**

#### B. DROP

**The DROP annuity option will be eliminated for all employees who enter DROP on or after July 1, 2009 when a unit member transitions from DROP-active status to DROP-retired status.**

**The City will negotiate with Local 145 on the impacts, if any, that result from the City defining DROP's "cost neutrality." The City will also negotiate over the elimination of DROP to the extent any court of competent jurisdiction or PERB decides that DROP is a mandatory subject for meet and confer under the MMBA.**

**Effective July 1, 2009, interest will be credited to the Member's DROP account at a rate determined by the SDCERS Board.**

#### Effect Of New Provisions

Section 1 of this Article reflects the parties' agreement regarding retirement contribution and benefit changes resulting from meet and confer in 2009. Sections 2 through 10 of this Article reflect the parties' agreement regarding retirement contributions and benefits resulting from prior negotiations. Section 1 shall control and supersede Sections 2 through 10 in the event of any inconsistency between Section 1 and Sections 2 through 10.

#### 1. Retiree Medical Benefits

##### A. Definition of Health Eligible Retiree

**Effective with service retirements on and after July 1, 2009, to be a "Health Eligible Retiree" under the SDMC section 24.1201, an employee must have a minimum of 10 years of creditable service in addition to the conditions already stated therein. A service retiree with at least ten (10) years of creditable service will be entitled to 50% of the annual Retiree Medical Benefit. A service retiree with more than ten (10) years but less than twenty (20) years of creditable service will earn 5% more of the annual benefit per year of additional service beyond ten (10). For example, a service retiree with fifteen years of creditable service will be entitled to 75% of the annual Retiree Medical Benefit. A service retiree with twenty (20) years of creditable**

service will be eligible for the current benefit as a “Health Eligible Retiree.” This change will not affect employees who qualify for disability retirements.

**B. Reopening Negotiations, Suspension of Automatic Escalator Provision and Joint Study of Retiree Medical Benefit**

**1. Reopening of Meet and Confer Regarding Retiree Medical Benefits**

By no later than July 1, 2010, the parties will reopen negotiations on Retiree Medical Benefits. The parties will complete negotiations and be in agreement or at impasse no later than April 1, 2011 in order to fulfill obligations under the City’s Impasse Procedure. The purpose of the negotiations will be to address:

- a. The serious threat the unfunded liability poses to the on-going viability of the current Retiree Medical Benefit;
- b. The major implications of the unfunded liability to the City’s long-term fiscal health; and
- c. The threat presented by the unfunded liability to the parties’ ability to reach future agreements on satisfactory terms and conditions of employment.

**2. Joint Study Committee Regarding Retiree Medical Plan**

Beginning no later than July 1, 2009, the parties will conduct a joint study in a concerted effort to address the following:

- a. The three issues stated above;
- b. Determining the appropriate level of contributions and potential recurring funding sources;
- c. Evaluating benefit redesigns that could generate savings or reduce the unfunded liability, including medical plans with favorable premium pricing, blending rates for retirees and actives, increasing the deductibles and co-pays for retirees, fully integrating Medicare benefits for Medicare eligible retirees, and establishing a defined contribution plan;
- d. Evaluating the appropriate legal vehicles for holding and investing contributions, including a retiree medical trust;
- e. Designing a governance structure for any legal vehicle that includes employee representation and that will be responsible for the plan’s administration, the determination of benefit levels for individual or pooled accounts, the investment of the funds, and the employment of actuarial, legal and accounting staff;
- f. Conducting the appropriate actuarial analyses needed by the study group;
- g. Conducting the appropriate legal analyses needed by the study group;

- h. Evaluating whether non-Health Eligible employees should be included in the plan with segregated benefits, or should remain in a plan separate from Health Eligible employees; and**
- i. Evaluating the connection between medical benefits for current employees and the cost of benefits for current retirees; and**
- j. Monitoring any relevant changes in medical care due to federal or state reforms.**

**The Joint Study Committee shall be composed of three representatives appointed by each party, with additional guests or participants being included by agreement when their special expertise is needed. The Committee shall complete a written report to the City and Local 145 by no later than February 1, 2010. In lieu of the above Joint Study Committee, Local 145 may opt to participate in a joint study on this subject with the City and other City Employee Unions on terms acceptable to Local 145 and the City.**

**3. Suspension of the Retiree Medical Escalator Provision**

**For the two fiscal years covered by this MOU during which the parties will be engaged in the aforementioned effort, the Retiree Medical Benefit in effect for Health Eligible Retirees as codified in the SDMC, Article 4: “City Employees’ Retirement System,” Division 12: “Retiree Health Benefits,” will remain in effect in the amount set for FY09. No increase based on the annual escalator feature set forth in SDMC 24.1202, subdivision (d) will be implemented, and this feature of the benefit will be suspended. This means that an employee who retires on or after July 1, 2009, and on or before June 30, 2011, will receive the FY09 maximum Retiree Medical Benefit but that no upward adjustment will be made based on the projected increase for National Health Expenditures published by the Centers for Medicare & Medicaid Services, Office of the Actuary.**

**4. Reservation of Rights, Failure to Reach Agreement and Return to the Status Quo Ante**

- a. Had a successor MOU not been agreed upon, and had the City instead unilaterally implemented a change in the Retiree Medical Plan effective July 1, 2009, the parties acknowledge that litigation challenging the imposition would have been instituted and defended by the parties. The purpose of this subsection (“B. 4”) is to preserve the parties’ claims, challenges and defenses as they existed on June 30, 2009, and at the same time provide incentives to the parties to reach agreement after meeting and conferring as required by subsection “B. 1” of this section. Nothing in this subsection shall be construed as prohibiting the parties from reaching mutual agreement on**

- changes to the Retiree Medical Plan, effective on or before July 1, 2011. This subsection's sole purpose is to address circumstances where the City, after completing the City's impasse procedure, might or might not unilaterally impose a change in the Plan on the issues specified in subsection "B. 1".
- b. If any litigation arises over the suspension of the escalator as described in section "B. 3" or over any future unilateral imposition of a Retiree Medical Benefit change after meeting and conferring as required in subsection "B. 1", neither party will be deemed to have waived any legal position related to Retiree Medical Benefits or the requirements of the City Charter or SDMC by virtue of having entered into this agreement. In addition, if the City imposes a last, best and final offer changing Retiree Medical Benefits effective upon the expiration of this MOU, each party reserves its right to take any and all steps available to it to challenge, defend, or raise any claim related to such unilateral imposition, including but not limited to the ground that a vested benefit has been unlawfully impaired, or that the statute of limitations bars any action. By this agreement, the parties expressly toll any appropriate statute of limitations that would otherwise apply because of the two-year suspension of the medical benefit escalator.
  - c. To avoid impairing any right reserved in subsection "B. 4(b)" above, the parties agree further that:
    - i. For purposes of meeting and conferring in good faith as contemplated by the Meyers-Milias-Brown Act, (MMBA) Government Code section 3500 et seq., the status quo ante will be defined as the same Retiree Medical Benefit as employees would have obtained on June 30, 2009, if the temporary suspension of the escalator had not occurred; and
    - ii. For purposes of any litigation challenging the City's unilateral imposition after negotiations specified in "B. 1" on a change in the Retiree Medical Benefit on any basis other than a violation of the MMBA, and if the challenge is successful, active employees and those individuals who retired on or after July 1, 2009, and before the June 30, 2011, will have the same rights and Retiree Medical Benefits as existed on June 30, 2009.
  - d. In any instance, if the City imposes its last, best and final offer changing any Retiree Medical Benefit, that change will be effective on July 1, 2011, and will only cover those active employees covered by this agreement who retire or leave DROP on or after that date.

## **5. Eligibility Standards for Retiree Medical**

**Effective with service retirements on and after July 1, 2009, to be a “Health Eligible Retiree” under the SDMC section 24.1201, an employee must have a minimum of 10 years of creditable service in addition to the conditions already stated therein. A service retiree with at least ten (10) years of creditable service will be entitled to 50% of the annual Retiree Medical Benefit. A service retiree with more than ten (10) years but less than twenty (20) years of creditable service will earn 5% more of the annual benefit per year of additional service beyond ten (10). For example, a service retiree with fifteen years of creditable service will be entitled to 75% of the annual Retiree Medical Benefit. A service retiree with twenty (20) years of service will be eligible for the current benefit as a “Health Eligible Retiree.” This change will not affect employees who qualify for disability retirements.**

2. 2005 Benefit Changes

A. Retirement Contribution Adjustments

Effective July 2, 2005, the employee pension contribution for employees in Local 145-represented bargaining units will increase by 3.0% of the employee’s base salary. This negotiated increase in the employee pension contributions represents a decrease in the City’s offset or “pick-up” of the employee pension contributions.

The 3% negotiated employee pension contribution increase effective July 2, 2005, is in addition to the employee pension contribution Increase that will take effect automatically upon depletion of the Employee Contribution Rate Reserve in 2005. The City will calculate the amount of this automatic pension contribution increase by September 1, 2005. As initial payment of this automatic pension contribution increase beginning July 2, 2005, the employee pension contribution for IAFF, Local 145 unit members will increase by 1.5% of the employee’s base salary, with the goal of applying the increase in approximately equal amounts over the entirety of FY06. The City will adjust the 1.5% figure as needed following calculation of the actual amount of the automatic pension contribution increase.

B. Use Of Negotiated Employee Pension Contribution Increases

All monies resulting from the 3.0% negotiated employee pension contribution increase effective July 2, 2005 (i.e., City savings that result from substituting those increases for City “pick-up” of employee pension contributions), shall be designated exclusively for payment to support a leveraged mechanism to reduce the SDCERS unfunded actuarially accrued liability (“UAAL”), such as Pension Obligation Bonds, lease capitalization, or a similar mechanism selected by the City. If the City does not implement a leveraged mechanism to reduce the UAAL within the term of this MOU, then these monies shall be deposited into the SDCERS Employee Contribution Rate Reserve and used to defray the pension contribution obligation of employees in Local 145-represented bargaining units.

The parties agree that Local 145 will not contend that the City has breached Article 23(2)(B) of the FY 06 MOU, provided that for FY 07, the City uses the negotiated employee pension contributions of Local 145 members from FY 06 and 07 to support a leveraged mechanism to reduce the SDCERS unfunded actuarially accrued liability (“UAAL”), such as Pension Obligation Bonds, lease capitalization, or a similar mechanism selected by the City. If the City does not implement a leveraged mechanism to reduce the UAAL within the term of this MOU, then these monies shall be deposited into the SDCERS Employee Contribution Rate Reserve and used to defray the pension contribution obligation of employees in Local 145-represented bargaining units.

C. Retirement Contribution Offsets

Upon termination of employment, an employee will have no vested right in employee pension contribution offsets contributed by the City. Substitution of this portion of the employees’ contribution by a City payment will not decrease the total amount applied toward the required retirement contribution, and will not affect retirement benefits. Provided, however, such payment shall not exceed any employee’s total contribution to the system.

D. Retiree Medical Benefit

1. Exclusion Of Employees Hired On Or After July 1, 2005

Employees hired on or after July 1, 2005, are excluded from the existing retiree medical health benefit. Article 4, Division 12 of the Municipal Code, relating to Retiree Health Benefits, will be revised to reflect this change.

2. Definition Of Health-Eligible Retiree

General Members and Safety Members who retire on or after July 1, 2005, and are receiving a retirement allowance from SDCERS pursuant to a reciprocity agreement must have 10 years of service with the City of San Diego to receive 100% of the retiree health benefit and five years of service with the City of San Diego to receive 50% of the retiree health benefit, except in the case of disability retirements by IAFF, Local 145 unit members. The definition of “Health-Eligible Retiree” in Sections 24.0103 and 24.1201 of the Municipal Code will be revised to reflect this clarification.

The City agrees to indemnify and hold IAFF, Local 145 harmless from and against any claims filed by or on behalf of unit members related to this clarification of the definition of a Health-Eligible Retiree.

E. Purchase Of Service Credit

Employees hired on or after July 1, 2005, are not eligible for the purchase of service credit (“airtime”) in SDCERS, except for credit for up to five years of

military service. Article 4, Division 13 of the Municipal Code will be revised to reflect this change.

F. “13th Check” Supplemental Benefit

Employees hired on or after July 1, 2005, are not eligible to receive the “13th Check” supplemental benefit set forth in Section 24.1502(a)(6) of the Municipal Code. Section 24.1503 of the Municipal Code will be revised to reflect this change.

G. Deferred Retirement Option Plan

1. Exclusion Of Employees Hired On Or After July 1, 2005

Employees hired on or after July 1, 2005, are not eligible for the Deferred Retirement Option Plan (“DROP”). Article 4, Division 14 of the Municipal Code will be revised to reflect this change.

H. Calculation Of Service Retirement Allowance

The only service retirement allowance calculation formulae for employees hired on or after July 1, 2005, will be 2.5% at age 55 for General Members and 3.0% at age 50 for Safety Members, with the existing tiers for those formulae. Article 4, Division 4 of the Municipal Code will be revised to reflect this change. For employees hired before July 1, 2005, the retirement allowance calculation formulae will remain as currently provided under Article 4, Division 4 of the Municipal Code.

3. Retirement Contribution Offsets

The City agrees to continue to “pick up” or pay for 4.3% of the employee’s portion of the required retirement contribution to SDCERS. The employee, upon termination, will have no vested right in the amount so contributed by the City. Substitution of this portion of the employee’s contribution by a City payment will not decrease the total amount applied towards the required retirement contribution, and will not affect retirement benefits. Provided, however, such payment shall not exceed any employee’s total contribution to the system.

The following language has been left in the MOU for historical information purposes only, and is of no force and effect during the term of this MOU.

The City agrees that it will apply an amount that is approximately equal to 7.3% of the base salary of employees covered by this agreement who are SDCERS Safety Members, into the City Retirement System, thereby reducing the amount deducted from employee’s paychecks as the employee’s retirement contribution by that amount. Effective July 1, 2002, this amount for Safety Members will be increased to 9.0%. This increase to remain in effect until the Employee Contribution Reserve is exhausted. Effective July 5, 2003, this amount, for Safety Members, will increase to 10% of base salary. This increase to remain in effect until the Employee Contribution Reserve is exhausted. For SDCERS



General Members represented by Local 145, effective July 5, 2003, the City agrees that it will apply an additional 1.6%, for a total of 7.0%, of the base salary of employees covered by this agreement, into the City Retirement System, thereby reducing the amount deducted from employee's paychecks as the employee's retirement contribution by that amount. This increase to remain in effect until the Employee Contribution Reserve is exhausted. The employee, upon termination, will have no vested right in the amount so contributed by the City. Substitution of this portion of the employee's contribution by a City payment will not decrease the total amount applied towards the required retirement contribution, and will not affect retirement benefits. Provided, however, such payment shall not exceed any employee's total contribution to the system.

The City agrees not to propose reductions in the retirement offset through 2002.

4. 1981 Pension Plan

Effective July 1, 1991, for the purpose of benefit calculation only, 1981 Plan service will be made equivalent to CERS Service.

5. C.O.L.A.

Effective July 1, 1992, the cost of living adjustment (COLA) for retirees who retired before October 6, 1980, will increase from 1.5% to 2% per year.

6. Widows Benefit

Effective July 1, 1992, and thereafter, a group of widows of deceased safety members from the special safety class will receive a benefit of \$350 per month.

7. 414[H][2]:

Beginning January 3, 1993, the City agrees to implement IRS Section 414[H][2] for Local 145 employees, allowing employee contributions to the retirement system to be made pre-tax.

8. 1997 Benefit Changes

A. The Disability Income Offset provision is eliminated. There will be no reduction of retirement benefits if the retiree has other income.

B. A five-year purchase of service credit provision is established effective January 1, 1997. Under this provision, the Member may purchase up to five years of service credit by paying both employee and employer contributions in an amount and manner determined by the San Diego City Employees Retirement System Board to make the System whole for such time. In addition, members retiring on or after January 1, 1997, may purchase probationary periods, military and veterans code leaves, waiting periods for the 1981 Pension Plan, actual time worked hourly or part time, special leaves without pay occurring prior to January 1, 1997, the difference in time between part time and full time prior to January 1, 1997, long term disability, vocational rehabilitation maintenance (VRMA) and temporary

total disability (TTD), FMLA periods, special leaves of absence with job to be saved periods and any period preceding reinstatement by the Civil Service Commission following a termination appeal.

- C. A Deferred Retirement Option Plan (DROP) is established effective April 1, 1997. DROP provides an alternative form of benefit accrual while allowing a Member to continue working for the City. During the DROP period, a DROP Member retains all rights, privileges and benefits of being an active City employee, except as specifically modified in the DROP Plan Document, and is subject to the same terms and conditions of employment including disciplinary actions up to and including termination. The Member continues to be eligible for the active employee Flex Benefits Program for the classification and is not eligible for “retiree” health benefits until such time as the Member completes or terminates the DROP period. Under DROP, a monthly service retirement allowance along with any COLA increases, Supplemental Benefit checks and any adjustments to such payments applicable to retirements effective on the date the Member entered the DROP are deposited into a trust account. These SDCERS benefits are calculated as if the Member were retiring on the date the Member enters the DROP. The Member’s contributions to the Retirement System cease. The Member and the City each contribute 3.05% of the Member’s salary each pay period that the Member participates in the DROP. The Member’s contribution is made on a pre-tax basis pursuant to Internal Revenue Code Section 414(h)(2). These monies are placed in a trust account and are distributed to the DROP participant upon termination of employment or completion of the DROP period whichever occurs first. No withdrawals may be made from the DROP account until the Member completes or terminates his or her DROP period. Interest will be credited to the Member’s DROP account in the same manner and at the same rate that interest is credited to employee CERS accounts. The Member is 100% vested in the DROP from its inception.

A DROP participant who becomes disabled may apply for conversion of their deferred retirement allowance to a disability allowance calculated at the date of entry into the DROP, and the employee shall retain all of the DROP and matching contributions. A Member who participates in DROP irrevocably designates a specific consecutive period of months for participation, not to exceed sixty months. The Member must terminate City service at the end of the designated period.

At the completion of the DROP period, the DROP account will be distributed as a lump sum, or in any other manner permitted by the IRS as soon as those options are developed by the Retirement Administration.

- D. For retirements effective on or after January 1, 1997, the 50% continuance is available to the spouse to whom the Member was married on the date of retirement. The requirement that the member be married to his or her spouse at least one year prior to retirement for the spouse to receive the 50% continuance is eliminated.

- E. The surviving spouse of a Member who is killed while in the performance of duty is entitled to continued health coverage as provided in California Labor Code Section 4856.
- F. The modified special death benefit provided to the surviving spouse of a Member killed in the line of duty is amended to eliminate the requirement that the benefit be discontinued if the spouse remarries. Any benefit terminated to such spouse as a result of remarriage shall be reinstated effective January 1, 1997.
- G. A retirement allowance cap of 90% of Final Compensation (high one year salary) is established for Fire Safety Members.
- H. The City and Local 145 agree to jointly support a request to the SDCERS Board of Administration to pay 0.49% of the employee's contribution from CERS' undistributed earnings effective 7/1/98. This 0.49% represents a portion of the increase in employee's contribution scheduled to go into effect 7/1/98, as a result of benefit improvements, which were implemented 1/1/97.

9. 2000 Retirement Benefit Changes

The City and Local 145, having met and conferred, and having participated in the settlement of a class action lawsuit challenging the calculation of "compensation earnable" have agreed to benefit changes to SDCERS. The benefit changes resulting from this class action settlement were approved by the SDCERS active and retired membership in June, 2000.

A. Formula Change For Calculation of SDCERS Monthly Retirement Benefit

The Retirement Calculation Factor to be applied to the Fire Safety Member's high one year salary at specified ages may be increased from the current levels to those shown below for all retirements effective on or after July 1, 2000 if the Fire Safety Member selects this option.

Retirement Age	Retirement Calculation Factor effective 1/01/97-6/30/00 [Current]	Retirement Calculation Factor effective 7/01/00 [New]
50	2.50%	3.00%
51	2.60%	3.00%
52	2.70%	3.00%
53	2.80%	3.00%
54	2.90%	3.00%
55+	2.9999%	3.00%

Member Option: Pursuant to the class action settlement, a Member may choose, upon application for retirement, one of the following two options:

1. The Retirement Calculation Factor in effect on July 1, 2000 with no change in the Fire Safety Member's Final Compensation OR
2. A ten percent (10%) increase in the Fire Safety Member's Final Compensation, with the Fire Safety Member's Unmodified Service Retirement Allowance calculated using the Retirement Calculation Factor in effect on June 30, 2000.

This election must be made with SDCERS at the time of application for retirement.

B. Fire Safety Member's SDCERS Contribution Rate Change

1. On July 1, 2001, Fire Safety Members' contribution rates to SDCERS will be increased by 0.53%.
2. Effective July 1, 2000, Fire Safety Members' Contribution rates will increase by an additional 0.16% to pay for the cost of providing the choice of Retirement Calculation Factors described above. The additional 0.16% increase will be paid from the Employee Benefit Reserve described in SDMC Section 24.1507 until the Reserve is exhausted.

C. Eligibility for Industrial Disability Retirement Change

A Fire Safety Member may be eligible for an industrial disability retirement if it has been medically determined that the Fire Safety Member has become psychologically or mentally incapable of performing his or her normal and customary duties as a result of a violent attack on the member with deadly force, such as a shooting or stabbing that causes great bodily injury, and that resulted in a nervous or mental disorder. The violent attack must occur on or after July 1, 2002, and such application for industrial disability retirement must be submitted before July 1, 2005. This provision shall sunset on June 30, 2005, and no such applications may be made after that date.

10. 2002 Benefit Changes

A. Change of Retirement Calculation Factors for City GENERAL Members

The Retirement Calculation Factors used to calculate a General Member's Allowance will increase to the levels shown below (the "New Factors") for all retirements effective on or after July 1, 2002, unless the General Member elects, before retirement, to have his or her Allowance calculated using the Old Factors (2% @ age 55, etc., with 10% added to the Member's Final Compensation) or the Corbett Factors (2.25% @ age 55, etc.). The New Factors will apply to all City employees who join the Retirement System after June 30, 2002, and their Allowances will be capped at 90%. The 90% cap will also apply to: (1) General Members who joined the Retirement System on or before June 30, 2002, except as provided below, and (2) General Members who participated in the Retirement

System on or before June 30, 2002, who left City employment but are rehired by the City on or after July 1, 2002.

Retirement Age	Benefit
55-59	2.50%
60	2.55%
61	2.60%
62	2.65%
63	2.70%
64	2.75%
65 and older	2.80%

Any General Member who's Allowance as of July 1, 2002 is 90% or more using the New Factors may continue to accrue benefits above the 90% cap until December 31, 2002. The General Member's Allowance will be capped at that time.

1. Any General Member who joined the Retirement System before July 1, 2002 may continue to accrue benefits above the 90% cap using either the Old Factors or the Corbett Factors. If the Member selects one of these options, the Member's Allowance will not be capped, and the System will refund to the Member, at retirement, any excess contributions the Member made to fund the New Factors.
2. Any General Member who joined the System before July 1, 2002, and reaches the 90% cap by choosing the New Factors, may continue to accrue benefits above the 90% cap until December 31, 2002, at which time the Member's retirement calculation factor and Creditable Service are capped; the Member's Final Compensation is not capped. On January 1, 2003, the Member must choose one of the following options:
  - a. If the Member is eligible for a service retirement on January 1, 2003, he or she may:
    - i. continue working and contributing to the Retirement System,
    - ii. enter DROP, or
    - iii. retire.
  - b. If the Member is not eligible for a service retirement on January 1, 2003, he or she may:
    - i. continue working and contributing to the Retirement System, or
    - ii. enter the Cap Program [subject to City Council authorization]. If the Member enters Cap Program, the

Member will stop contributing to the Retirement System, and will instead contribute 3.05% of his or her Base Compensation, biweekly at the end of each pay period, to a Cap account established for the Member. The City will match these contributions. The Member may continue participating in Cap until he or she first becomes eligible to retire, at which time the Member must either enter DROP or retire.

- iii. a Cap Program participant who becomes disabled while participating the Cap Program is eligible to apply for disability retirement benefits. If the Cap participant's application for disability retirement is ultimately approved by the Board, his or her disability retirement benefit will be calculated using the participant's age, Creditable Service and Final Compensation as of the day he or she began participating in the Cap Program.

3. A General Member may exceed the 90% cap if the Member:

- a. applied to purchase Creditable Service on or before June 5, 2002, and thereafter signed the contract to purchase that time,
- b. was hired at age 24 or younger, and
- c. will exceed the 90% cap because of the Creditable Service he or she applied to purchase on or before June 5, 2002. The Member may not exceed the cap by Creditable Service that he or she applied to purchase after June 5, 2002.

4. When a Member who meets the conditions of paragraph 3 first becomes eligible for a service retirement, his or her retirement calculation factor and years of Creditable Service will be capped at that time, even if the Member continues to work and contribute to the Retirement System. The Member's Final Compensation will not be capped. When eligible to retire, the Member may:

- a. continue working and contributing to the Retirement System,
- b. enter DROP; or
- c. retire.

**B. GENERAL Members SDCERS Contribution Rate Change**

On December 20, 2003, General Members' contribution rates to SDCERS will be increased by an approximate additional 0.53%.

- C. ANNUAL LEAVE CONVERSION – During the meet and confer between the City and Local 145 for FY09, the parties met and conferred in good faith and reached a tentative agreement on April 11, 2008. During this meet and confer, the parties did not discuss any changes to the below section of the Operating Procedures. It provided as follows:

Effective July 1, 2002, employees in the bargaining unit who have not yet entered DROP will be allowed to convert annual leave cash equivalent to retirement service credit on a pre-tax basis. The amount of service credited will be the employer and employee cost of that service credit as determined by the Retirement Board. Employees in the bargaining unit will no longer be eligible to exercise any cash out feature of annual leave accrued from July 1, 2002 prospectively. Since employees cannot cash out post-July 1, 2002 annual leave, employees who have balances of post-July 1, 2002 annual leave at the end of their DROP period, will be permitted to extend the DROP period beyond the five year maximum by that amount of post-July 1, 2002 annual leave not converted to service credit prior to entering DROP. Specific procedures for implementing this benefit will be subject to Internal Revenue Service (I.R.S.) rules, as interpreted by the City Attorney's Office.

On April 21, 2008, the City Council approved the tentative agreement for FY09 subject to the final MOU returning to the City Council for ratification on a future date. On April 1, 2008, the City Council passed an ordinance amending the Municipal Code to require a lump sum payment for the purchase of San Diego City Employees Retirement System service credit and prohibiting the practice of purchasing service credit with annual leave. The City has not allowed any member to purchase service credit with annual leave since April 1, 2009.

- D. Health Eligible Retiree Benefits

The City and Local 145, having met and conferred, have agreed to benefit improvements to the City Employees Retirement System for Health Eligible Retirees.

1. Effective July 1, 2002, a Health Eligible Retiree, as defined in the Municipal Code, will have the applicable Medicare eligible or Non-Medicare eligible insurance premiums paid for the Health Eligible Retiree-only insurance, or the Health Eligible Retiree will be reimbursed the actual cost incurred from the Medicare eligible or non-Medicare eligible retiree-only premium up to the maximum amount allowed in the Municipal Code Division 12. Municipal Code Division 12 will be amended to set the maximum amounts to be paid on behalf of or reimbursed to a Health Eligible Retiree for retiree-only Medicare eligible or non-Medicare eligible health insurance premiums based on the premium for the City-sponsored PPO plan for Fiscal Year (FY) 2003 and annually adjusted thereafter based on the Centers for Medicare & Medicaid Services, Office of the Actuary, projected increase for National Health Expenditures for the full year period ending in the January

preceding the start of the new plan year; such adjustment shall not exceed 10% of such Medicare-eligible or non-Medicare eligible retiree-only premium. Pursuant to this provision the based monthly maximums are established for FY 2003 as follows:

a. For non-Medicare eligible retirees: \$489.16

b. For Medicare eligible retirees: \$460.67

11. Local 145 represents several general employee classifications. Management shall not fill these positions with newly hired employees. Subject to Personnel Department revision of minimum qualifications to reflect the safety employee status of future hires into the former general employee classifications, employees hired on and after July 1, 2008 into the classifications of Fire Inspector Series I and II, Fire Inspector Supervisor, and Assistant Fire Marshall, shall be classed as safety employees. The existing transfer list for these classifications shall remain valid. Non-safety (general) transfers from the list and current general employees in the above classes, shall not become safety employees.

12. After July 1, 2008, the Union shall have the right to notice the City in writing of the intent to implement a medical expense reimbursement plan to provide a tax-favored benefit to retirees in accordance with the Plan's Trust document. The Union notice shall specify the proposed date of implementation, which shall be no earlier than July 1, 2008. The notice shall include a copy of the trust document and other pertinent operational documents that are sufficient for the City to determine compliance with IRS regulations. It is understood that the trust shall be established, governed and administered by the trust and Union. The City shall not be responsible for the trust and appropriate hold harmless and indemnity provisions shall be endorsed by the Union prior to implementation. Once the City has approved the trust, the City agrees to implement payroll withholding from all employees in the bargaining unit in an amount designated by the trust and approved by the Union for deposit to the trust. The Union will not authorize payroll withholding from employees on a unit wide mandatory basis that has not been approved by the Union membership in the bargaining unit covered by this contract. Membership approval shall be determined by a majority of ballots cast following the notice of election.

The City shall fund an amount not to exceed \$80,000, as and for the purpose of formation of the trust. The maximum \$80,000 City-funding shall be utilized only for the initial formation of the trust, and shall not be a recurring City-funded expenditure. The "formation" process for which the maximum City-funded amount of \$80,000 is applicable, shall terminate when the trust is lawfully empowered to accept employee deposits.

Under no circumstance shall the City be required to participate in administration of the trust or in funding any expenses of or deposits to the trust, other than the amount described above which shall be used solely for trust formation.

13. City Initiation of Retirement-Related Litigation

It has been, and continues to be, the position of the Mayor that the above described DROP and service credit purchase provisions are not vested benefits and are therefore



subject to modification without compliance with the strict rules governing modification of vested retirement benefits. Local 145 disagrees. Therefore, the parties acknowledge that during the term of this agreement, the City shall initiate a declaratory relief and/or other civil causes of action as in the City's the sole determination are deemed appropriate by which to secure a determination as to any or all of the following issues:

- a. Are the above described Deferred Retirement Option Plan (DROP) and/or any and all MOU/Code provisions allowing for the purchase of service credit for retirement benefit calculation purposes, "vested" benefits.
- b. Can the purchased service credits be utilized to determine vesting into the retirement system.
- c. Are benefits subject to modification pursuant to any and all provisions of the City Charter or other applicable rules and regulations.
- d. And/or what, if any, conditions precedent exist to the implementation of City-initiated steps by which to modify and/or eliminate DROP and/or service credits.

Although Local 145 reserves its rights to plead any and all substantive defenses which it deems appropriate as to such future litigation, Local 145 shall not take a position to the effect that initiation of such future litigation is barred.

14. During the term of this MOU, if any provision regarding the level of pension benefits and/or pension contributions and/or the availability of a defined benefit pension plan is invalidated by court order or by an amendment to the State Constitution, the reductions in the "pick-up" contained in Article 24 of this MOU will immediately sunset and revert back to the level of "pick-up" in effect on June 30, 2005, and the parties will reopen negotiations on pension issues.

## **ARTICLE 24**

### **Salaries/Compensation**

**There will be no general salary increase for the two-year term of this MOU.**

## **ARTICLE 25**

### **Grievance Procedure**

- I. Policy
  - A. Employees have the right to file grievances without jeopardizing their positions.

- B. Employees may represent themselves or select whomever they wish to represent them at any or all steps in the grievance procedure.
1. The employee has the right to the assistance of a Local 145 representative in the investigation, preparation, and presentation of a written grievance.
  2. Employees may have no more than one City employee and one non-City employee as representatives for grievance hearings.
  3. Battalion Chiefs and Fire Captains may not represent Fire Fighters and Fire Engineers. Battalion Chiefs may not represent Fire Captains. Members of the Board of Directors may represent employees in all Fire classifications in grievances.
- C. If an employee chooses to have representation on any formal grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of this Memorandum of Understanding, such representation must come from Local 145.
- D. The employee's or employee organization's first contact regarding job and working conditions is with the immediate supervisor who shall attempt to settle grievances informally at this level.
- E. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting in his/her own behalf on City time will not lose pay. In scheduling the time, place and duration of any grievance meeting, the employee, a steward and Management will give due consideration to all the participant's responsibilities in the essential operations of the department. However, the final decision for scheduling hearings rests solely with Management. No overtime pay will be given to the grievant. Representatives, witnesses, or other participants will receive overtime pay if ordered to be present by the appointing authority.
- F. Waivers and Time Limits
1. Failure by Management to reply to the employee's grievance within the time limits specified automatically processes the grievance to the next level. Such automatic referral to the next level shall not be construed as removing the responsibility of management at the next level from hearing the grievance and responding within applicable time limits, if it is within the authority of that level to settle such grievance.
  2. Any level of review, or any time limits established in this procedure, may be waived or extended for good cause and only by mutual agreement confirmed in writing.
  3. If an employee fails to appeal from one level to the next level within the time limits established in this grievance procedure, the grievance shall be

considered settled on the basis of the last decision and the grievance shall not be subject to further appeal or reconsideration.

4. By mutual agreement, the grievance may revert to a prior level for reconsideration.
  5. If a grievant fails to appear for a scheduled grievance meeting, such failure without an excuse approved by the appointing authority shall entitle Management to decide on the grievance without the presence of the grievant, or to schedule another meeting at that level (in which case the time requirements for hearing and decision are automatically waived). Failure to appear at two meetings on the same grievance without an approved excuse automatically terminates that grievance and it is deemed denied. The grievance shall then not be subject to further appeal or reconsideration.
  6. When a grievant is on approved leave the time limits established in this procedure shall be suspended for the period of the leave.
  7. No grievance shall be finally dismissed for an unexcused failure to appear at a scheduled hearing unless the grievant had been given 24 hours notice of the hearing.
- G. The Union agrees to pursue all claims of violation of this MOU through the grievance procedure. Resort to other remedies shall not be pursued until all steps of the grievance procedure have been exhausted.
- H. The Management Team shall provide the Union with copies of all grievances regarding this Memorandum filed by employees, within the Union bargaining unit, who choose to represent themselves.

## II. Definitions

- A. A grievance is a claim or charge of misunderstanding, or difference in interpretation, or violation of provisions of the Civil Service Rules, the Personnel Manual, this Memorandum of Understanding, or management policy or regulations including but not limited to Administrative and Departmental Regulations, which affect wages, hours or other terms and conditions of employment.
- B. Actions which are covered in the Management Rights Article of this Memorandum are not grievable, but this shall not preclude employees or their representatives from consulting with Management about the practical consequences such actions may have on wages, hours, and other terms and conditions of employment. In addition, actions covered by another appeals process as described in the Civil Service Rules, Personnel Manual, or this Memorandum are not grievable and shall not be processed through this Grievance Procedure.

- C. Wherever applicable, in this Memorandum of Understanding the term “working days” means the actual work days of the employee who filed the grievance. In grievances filed by the Union on behalf of a group of its members, “working days” means calendar days, excluding Saturdays, Sundays, and recognized City holidays. For 56-hour employees each working shift shall constitute two (2) “working days” for the purpose of determining time limits for this Grievance Procedure.
- D. If the grievance system is abused by an unreasonable number of submittals by one individual or group designed to thwart orderly processing or if the grievances are patently irrelevant, or incomprehensible, they shall be rejected as “non-grievable” and returned to the grievant.

### III. Procedures

#### A. General

- 1. Management of the Department (i.e. Captains and higher officers) has the responsibility to inform an employee of any limitation of a given level of Management’s authority to fully resolve the grievance. In this regard, Management shall:
  - a. Determine, at any time during the processing of a grievance, if the grievance requires modification or interpretation of Civil Service Rules or Personnel Manual provisions and forward such grievance immediately to the Personnel Director for resolution or referral to the Civil Service Commission.
  - b. Supply the employee with the necessary information to process the grievance to the proper agency or authority.
  - c. Advise an employee when any matter under submission is determined by Management as not grievable according to the definitions in Section II above. The “grievance” paperwork submitted by the employee shall be returned to the employee along with a memorandum explaining why the matter is not grievable and what alternative procedures, if any, the employee may follow to process his/her complaint.
- 2. When a group of identical grievances develop, only one grievance form shall be submitted. The grievants may select not more than two (2) spokespersons who thereafter will be their representative “grievants.” The acceptance of the decision by the spokespersons at any step (or final decision if the grievance moves to the fifth step) will be binding on all parties.

3. A grievance shall be recognized if it is brought to the attention of the immediate supervisor either informally or formally within ten (10) working days, excluding Saturdays, Sundays and recognized City holidays, of the incident's occurrence.
4. If the grievance is between the employee and the immediate supervisor, the initial step may be to the next higher level supervisor.
5. If the Union wishes to process a grievance on behalf of a class of represented employees which will require resolution by the Chief, it may submit the grievance directly to the Chief or his designee, pursuant to Step 4 of this grievance procedure. Thereafter, should this grievance not be resolved, then the remaining steps of this grievance procedure may be implemented by the Union. However, the Union shall meet with the Chief to discuss the matter prior to submitting the matter as a formal grievance.
6. To be recognized, a grievance must state which policy, rule, regulation, is involved in the matter and the nature of the remedy sought by the employee or the Union.

B. Steps.

- Step 1: At the employee's or employee organization's sole option, grievances may be presented to the supervisor either orally or in writing. If the complaint is presented orally, the procedure is informal and may be settled by an oral answer given within five (5) working days. If the grievance is presented in writing, the procedure is formal and the answer must be given in writing within five (5) working days after submission.
- Step 2: If the problem cannot be solved at Step 1, the employee or employee organization may present the complaint in writing to the second level supervisor (if not done at Step 1) within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Management representative shall give a written decision to the employee or the Local 145 representative.
- Step 3: If the problem is not resolved at Step 2, the employee or employee organization may submit the grievance to the division head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the division head shall give written decision to the employee or Local 145 representative.
- Step 4: If the dispute is not solved in Step 3, the employee or employee organization may present the grievance to the Department Head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Department Head or his/her designee shall give a written decision to the employee or Local 145 representative. In non-managerial

departments this shall constitute the final resolution of a grievance involving management policy or regulations.

Step 5: Final Resolution of Grievance: If the grievance is still in dispute after Step 4, the employee or employee organization may request a further hearing, which at the discretion of the Management Team will take place before the Civil Service Commission, on matters over which the Commission has authority, or before the City Manager or his designee, by submitting the grievance within five (5) working days. (If it is determined that the hearing should be held before the Civil Service Commission, a fact-finding hearing to define the issues in the grievance will be held by the Personnel Director with the employee and/or employee organization, prior to the date set for the Commission hearing. The grievance may be settled during such fact-finding hearing, if a mutually acceptable solution is developed.) Within thirty (30) working days a hearing shall be held and the written decision issued. The employee or employee organization may only request a hearing before the Civil Service Commission in matters solely involving Civil Service Rules or the Personnel Manual.

Step 6: Grievances arising out of the disagreement on interpretation or application of this Memorandum shall follow the City-wide grievance procedure. Local 145 may formally request to continue the grievance, not later than ten (10) days following receipt of the answer at the final step of the grievance procedure (provided it was heard by the City Manager), by serving written notice upon the Management Team. The Management Team will refer the grievance to the City Council for hearing and decision.

The City Council shall have one year from the date that Local 145 serves written notice on the Management Team of its desire to have the grievance heard before City Council, within which to calendar the grievance for hearing. If City Council does not calendar the matter for consideration within the one year period, then the grievance shall be considered granted.

## **ARTICLE 26**

### **Implementation**

This Memorandum constitutes a mutual recommendation to be jointly submitted to the City Council and/or Civil Service Commission. It is agreed that this Memorandum shall be binding upon the parties upon:

- A. The City Council and Civil Service Commission act, by majority vote, formally approve and adopt those articles within their respective jurisdictions.
- B. The City shall act as soon as possible to make the necessary changes in ordinances, resolutions, rules, policies and grievance procedures to conform to this agreement. All

such changes shall be submitted to Local 145 prior to their submittal for implementation to insure that the proposed changes are consistent with the agreement.

- C. The members of the Union act, by majority vote, formally to approve and adopt the successor Memorandum of Understanding, no later than **April 18, 2009**. The Union shall notify Management of the result of the Union vote no later than **April 19, 2009**.
- D. The tentative agreement shall be submitted to the City Council and the membership of the Union for their action as soon as possible after agreement has been reached by the Management Team and the Union negotiating team.

## ARTICLE 27

### Term

**The term of this Memorandum shall begin at 12:01 a.m. on July 1, 2009; however, the effective date of all changes affecting payroll shall be July 11, 2009. This Memorandum shall expire and otherwise be fully terminated at the end of June 30, 2011.**

## ARTICLE 28

### Leave Programs

- 1. An eligible employee, upon retirement (except under a deferred retirement), may request that payment for sick leave and annual leave reimbursement, for annual leave accumulated prior to July 1, 2002 only, be paid. Upon retirement, payment for distributable sick leave and annual leave shall be concurrently made in one full payment.
- 2. The maximum accumulation of annual leave for employees hired before 7/1/94 with 15 or more years of service shall be 700 hours for 40-hour workers and 980 hours for 56-hour workers. The maximum accumulation of annual leave for employees hired prior to 7/1/94 with less than 15 years of service shall be 600 hours for 40 hour workers, adjusted appropriately for 56 hour workers. Annual leave will be capped at 350 hours for 40-hour employees hired on or after 7/1/94, adjusted appropriately for 56-hour workers.
- 3. During the term of this agreement, the ability to receive Pay-in-Lieu of Annual Leave will be limited to employees with 160 hours or more of accrued annual leave who may receive a maximum payment-in-lieu of 125 hours per fiscal year adjusted as appropriate for 56 hour workers. Effective July 1, 2002, only annual leave hours accumulated prior to July 1, 2002, will be eligible for use with this Pay-in-Lieu feature.
- 4. Effective July 1, 1998, employees who reach their maximum permitted accumulation of annual leave on their anniversary date shall cease to accrue additional annual leave. Employees who expect to be in this situation may submit a written plan by which to reduce excess leave which will include time off and pay-in-lieu up to 125 hours per fiscal year as necessary. If the Appointing Authority denies the specific time off requested and

provides no alternative time off which is acceptable to the employee, this cease-to-accrue provision shall not apply until such time as the employee is granted and takes the time off. It is the City's intent to accommodate employees' requests to use annual leave and avoid any loss of this benefit.

5. Benefits while on Special Leave Without Pay [SLWOP]
  - a. All benefits will be coordinated and/or offset by benefits the employee receives under any other City program, including but not limited to Long Term Disability, and Family Medical Leave.
  - b. After one year on SLWOP, the City may charge the employee 2% administrative fee and/or offer continuation of benefits under COBRA.
  - c. Employees will not be eligible for City sponsored Supplemental Life Insurance while on SLWOP.
6. Military leave from members of Local 145 will be administered in accordance with Personnel Manual Index Code I-10 and USERRA.
7. Effective July 1, 2002, employees in the bargaining unit who have not yet entered DROP will be allowed to convert annual leave cash equivalent to retirement service credit on a pretax basis. The amount of service credited will be the employer and employee cost of that service credit as determined by the Retirement Board. Employees in the bargaining unit will no longer be eligible to exercise any cash out feature of annual leave accrued from July 1, 2002 prospectively. Since employees cannot cash out post July 1, 2002 annual leave, employees who have balances of post July 1, 2002 annual leave at the end of their DROP period, will be permitted to extend the DROP period beyond the five year maximum by that amount of post July 1, 2002 annual leave not converted to service credit prior to entering DROP. Specific procedures for implementing this benefit will be subject to Internal Revenue Service (I.R.S.) rules, as interpreted by the City Attorney's Office.

The City agrees to submit to the I.R.S. for a Private Letter Ruling the issue of applying this pre tax conversion of leave to service credit for annual leave accrued prior to July 1, 2002. The City agrees to submit such request to the I.R.S. by January 1, 2003.

8. Bereavement Leave

Effective July 1, 2009, an employee who misses a work shift to attend to the death of an employee's spouse, father, mother, brother, sister, son, daughter (including step-, foster, or adopted), or state-registered domestic partner, will receive up to three days of paid bereavement leave, but not to exceed 36 hours of paid time. The paid bereavement leave benefit is limited to one eligible death per fiscal year. The City will require proof of the death as a condition of this payment. **Proof of death, including but not limited to, death certificate, obituary or funeral notice, must be provided in order to receive Bereavement Leave.**



9. Approved Unpaid Leave

The Department can grant so-called “Red A” leave, which is approved unpaid leave, at Management’s sole discretion, per Personnel Manual INDEX Code I-7.

10. Modify Administration Manual Standard Instruction 6, VIII, Letter D by replacing existing language with:

Use of more than twelve (12) consecutive shifts of leave (Trade, Holiday, Compensatory Time, Annual Leave or Annual Leave Trade) shall require approval through the Employee’s chain of command, to Shift Commander or Division Head. Employees who wish to take leave in excess of the twelve (12) 24 hour shifts shall write an FD-7 that details the reasons for the request, and the expected date of return to duty. Reasonable requests that are approved will also require the employee to maintain all appropriate licenses, permits and all training requirements upon their return to duty.

During the period of leave if granted, TeleStaff access will be blocked for that employee, and reinstated upon return to duty.

Employees who request the use of leave in anticipation of retirement shall state that as the reason for their request, and if granted shall be required to:

- Relinquish their Station assignment
- Relinquish Station bidding privileges  
Turn in all Department issued PPE, Identification and equipment as if separation from service was complete
- Lose TeleStaff access and privileges

11. If use of annual leave would require absence on a management-designated “restricted day,” the leave shall only be granted as an annual leave trade.

**12. Effective July 1, 2009, employees are eligible to receive “payment-in-lieu” of annual leave regardless of the total number of annual leave hours the employee has accrued at the time of the request, up to a maximum payment of 125 hours per fiscal year.**

**ARTICLE 29**

**Personnel Regulations**

Reference to the City Personnel Manual or City Administrative Regulations is made in this article with the understanding that the City shall not make modifications to the provisions of such referenced sections that relate to wages, hours or other terms and conditions of employment that would affect employees covered by the Memorandum during the TERM of the agreement.

For these purposes, the following Personnel Manual Sections, Administrative Regulations,

and Policies are hereby made part of the M.O.U.:

H-1, Bilingual Pay  
H-2, Holidays  
H-4, Overtime Compensation  
I-2, Annual Leave  
70.30, Tuition Refund Plan  
95.01, Overtime Compensation  
63.00, Industrial Leave  
95.60, Code of Ethics and Conduct  
95.90, Sick Leave and Annual Leave Reimbursement  
97.00, Substance Abuse Policy  
Fire-Rescue Department Infection Control Plan  
Long Term Disability Program (on file with City Clerk)  
Council Policy 300-6  
Will Work Policy, Fire-Rescue Department Transfer Policy Manual.

No changes will be made to any of the above provisions, which would affect hours, wages, or working conditions of employees represented by Local 145 except by mutual consent.

### **ARTICLE 30**

#### **Formal Representation**

- A. The Union may select three representatives to attend scheduled meetings with the Management Team or other management officials on subjects within the scope of representation during regular work hours without loss of compensation. In addition, the Union may also select one representative to attend City Council and Council Committee hearings and Retirement Committee meetings where subjects within the scope of representation are being discussed, all Civil Service Commission meetings and Retirement Board meetings, during regular work hours, without loss of compensation. The Union shall, whenever practicable, submit the names of all such representatives to the Management Team at least two working days in advance of such meetings; provided, further:
1. That no representative shall leave the duty or workstation or assignment without specific approval of the department head or the City Management Team.
  2. That any such meeting is subject to scheduling by City management in a manner consistent with operating needs and work schedules.
- B. Nothing provided herein shall limit or restrict City management from scheduling such meetings before or after regular duty or work hours under appropriate circumstances.

## ARTICLE 31

### Renegotiation

1. In the event Local 145 desires to meet and confer in good faith on the provisions of the successor agreement, it shall serve upon the City not later than **January 19, 2011**, its written request to commence meeting and conferring in good faith, as well as its full and entire written proposals for such successor agreements with the exception of initial salary or other economic proposals which shall be presented no later than **January 26, 2011**.
2. The City will serve Local 145 by **February 9, 2011**, its full and entire written proposal except in the matter of salaries or other economic provisions. Meet and confer shall begin no later than **February 15, 2011**, at which time the City will present its full economic proposal. Notwithstanding the above, if federal or state governments take action that has direct effect upon the areas which fall within meet and confer, the City may submit proposals concerning these areas at later dates.
3. Resolution of Impasses.

## ARTICLE 32

### Impasse Procedure

*Preamble.* The parties intend this Impasse Procedure to be an interim procedure applicable to any impasse which occurs in connection with the current bargaining over a successor MOU and/or any other matter within the scope of representation on which an impasse arises before October 31, 2008, when this Impasse Procedure will sunset. The parties agree to meet and confer pursuant to the Meyers-Milias-Brown Act, Government Code section 3507, in an effort to reach agreement on any modification to this interim procedure to become effective after October 31, 2008. Subsequent to the sunset of this impasse procedure on October 31, 2008, evidence of either party having entered into this impasse procedure article in the fiscal year 2008-2009 MOU, shall not be usable as future precedent in any disputes regarding the future nature of the impasse procedures, the agreement shall not preclude either party from taking future positions contrary to this impasse procedure, and effective November 1, 2008, the impasse procedure language set forth in the 2007-2008 OPERATING PROCEDURES manual (Article 32) shall be reinstated subject to modification pursuant to future invocation of the meet and confer process regarding this issue.

#### A. SCOPE OF JURISDICTION

This Impasse Procedure is applicable to the resolution of any impasse on economic matters within the scope of representation which are: salaries, wages and overtime pay, health and pension benefits, vacation and other leave, reimbursements, incentives, differentials, and all other forms of remuneration. For purposes of this impasse procedure only, Council jurisdiction shall be referred to as being limited to "economic issues," as defined in this paragraph.

#### B. IMPASSE INVOCATION

Either representatives of the Mayor or the recognized employee organization are authorized to make a reasonable determination that a point has been reached during

negotiations where the differences in positions are so substantial or prolonged that future meetings would be futile as to reaching a comprehensive Memorandum of Understanding or reaching an agreement on the matter being bargained, and that accordingly, an impasse exists.

### C. PRE-COUNCIL IMPASSE PROCEDURE

1. Upon a claim being made by either the Mayor or employee organization representatives to the effect that an impasse exists, the pre-Council impasse procedure may be initiated as follows:
  - a. Either or both parties jointly, shall submit writing to the representatives of the other party, advising of the perception that an impasse exists.
  - b. The writing shall request that the parties convene a joint meeting of Mayoral and employee organization representatives.
  - c. At the commencement of the meeting, each party shall provide the other with the following hard copy documentation:
    - (i) A complete statement as to all issues that have been tentatively agreed upon by the parties.
    - (ii) A complete statement as to all issues that have not been tentatively agreed upon by the parties.
    - (iii) A precise statement of the respective positions of the parties on any disputed issue.
    - (iv) Attached to the written document shall be all supporting materials which either party believes supports its respective position(s).
2. The purpose of the meeting shall be to assess each party's respective positions and supporting documentation and to determine whether or not agreement is likely to be arrived at and/or if further meet and confer sessions would be reasonably calculated to result in an agreement.
3. Absent resolution of the impasse or an agreement to reconvene the meet and confer process, either party may invoke the following City Council-impasse jurisdiction as to the "economic issues" only.

### D. INVOCATION OF CITY COUNCIL IMPASSE JURISDICTION

1. A request for City Council resolution of the economic issues impasse, shall be submitted in writing by either party, to the office of the City Council President who shall distribute the notice to all Council members before the close of business on the day of receipt.
2. A writing submitted by the party invoking the City Council-level economic issues impasse procedure shall designate that party's last, best and final economic issues proposal for a resolution of the matter(s) in dispute in a complete and comprehensive package that would resolve the economic issues impasse. The written notice invoking the City Council-level impasse procedure shall be simultaneously served by the invoking party upon representatives of the other party by means of email or in person. Within three (3) calendar days of service of

the invoking party's statement of the last, best offer for a comprehensive economic issues settlement package resolution of the matter(s) in dispute, the opposing party shall file with the City Council President its own written last, best offer of economic issues settlement by means of a complete and comprehensive package, and shall simultaneously serve the document by email or in person, upon the invoking party, as well. The City Council President shall distribute all documents filed in connection with the request for an Impasse Hearing to all Council members before the close of business on the day of receipt.

3. Attached to each party's last, best and final proposal for a complete and comprehensive package that would resolve the economic issues impasse, shall be all supporting materials which the party believes supports its respective position(s).
4. The City Council jurisdiction to resolve the economic issues impasse shall be limited to the following:
  - a. The City Council shall resolve the economic issues impasse by (i) adopting the position of the Mayor on any and all disputed economic issues as a package; (ii) adopting the position of the employee organization on any and all disputed economic issues as a package; or (iii) shall take no action, resulting in maintenance of the pre-impasse status quo.

#### E. THE CITY COUNCIL IMPASSE HEARING

1. At a City Council impasse hearing, the party invoking the impasse procedure shall proceed first with its presentation of information in support of its position(s).
2. The other party shall then be provided an opportunity to present its information in support of its position(s).
3. Although not required to do so, the Council may request further input from either party. In the case of such request being implemented, the other party shall be provided one rebuttal opportunity.
4. After closing the Impasse Hearing, the City Council shall deliberate-in open session and render its economic issues impasse resolution determination in accordance with the limitations set forth above in Section D, 4.a.
5. The determination shall be subject to veto or other limiting procedures as are set forth in the Charter.

#### F. RESOLUTION OF IMPASSE REGARDING “NON ECONOMIC ISSUES”

This impasse procedure defines “economic issues” as matters including salary, wages and overtime pay, health and pension benefits, vacation and other leave, reimbursements, incentives, differentials and all other forms of remuneration. In the event of an impasse existing regarding any other matter within the scope of representation (“non-economic”), the following process shall be followed.

1. A request for the Mayor to resolve the non-economic issues at impasse shall be submitted in writing by either party, to the office of the Mayor.

2. The written submission by the party invoking the Mayor-level non-economic issues impasse procedure shall designate that party's last, best and final non-economic issues proposal for a complete and comprehensive package that would resolve the non-economic issues impasse. The written submission invoking the Mayor-level impasse procedure shall be simultaneously served by the invoking entity upon representatives of the other party by means of email or in person. Within three (3) calendar days of service of the invoking party's statement of the last, best and final offer for a comprehensive non-economic issues settlement package, the opposing party shall file with the Mayor's office its own written last, best and final offer of non-economic issues settlement by means of a complete and comprehensive package, and shall simultaneously serve the document by email or in person, upon the invoking party, as well.
3. Attached to each party's last, best and final proposal for a complete and comprehensive package that would resolve the non-economic impasse, shall be all supporting materials which the party believes supports its respective position(s).
4. The Mayor's jurisdiction to resolve the non-economic impasse shall be limited to the following:
  - a. The Mayor shall resolve the non-economic issues impasse by either adopting the complete, comprehensive non-economic issues package proposed by the employee organization, or the complete, non-economic issues comprehensive package proposed by the Management representatives. The Mayor shall not have jurisdiction to modify either or both proposals or to adopt one or more component parts of any comprehensive non-economic issues package proposal. However, the Mayor also shall have authority to take no action, resulting in maintenance of the pre-impasse status quo.

### **ARTICLE 33**

#### **Transfer of Union Officers**

1. The City agrees to notify the Union as promptly as possible of the intended transfer of an employee who is a union officer. The City agrees to meet with the Union, as mutually convenient, within 10 days after notice is delivered, if the Union so requests, for the purpose of explaining the reasons for the transfer.
2. Transfer, for purposes of this Article, means any permanent change of work schedule, station assignment, or division assignment of a Union officer having a permanent schedule or assignment. Union officer means an employee who has been elected or appointed an officer of Local 145 and whose name has been given in writing to the City as currently holding such office. Assignments expected to exceed eight shifts shall be considered permanent assignments.

## **ARTICLE 34**

### **Vacation Selection Procedure for Fire Suppression Personnel**

1. Appointing authority is responsible for arranging vacations so that adequate personnel are available to carry on necessary City work.
2. Individuals may indicate their list of preferences for vacation and submit them on an FDR7. This information will be used to select a vacation for the individual.
3. Annual leave shall be granted when requested, subject to the needs of the Department.

## **ARTICLE 35**

### **Mandatory Mess**

All uniformed personnel shall participate in a Mandatory Mess unless religious, dietary, medical considerations, or other good causes as determined by the Fire Chief, preclude them from participating.

## **ARTICLE 36**

### **Overtime**

It is agreed that premium compensation at the rate of one and one-half times the base rate shall be paid to employees in the classifications of Fire Fighter, Fire Engineer, Fire Captain and Battalion Chiefs under the following conditions:

- I.
  1. When an employee is called back to work from a non-duty status, he/she shall receive premium pay for all such call-back time worked with a four [4] hour minimum of compensation in each instance.
  2. When an employee is required under subpoena to appear in court during non-duty hours, he/she shall receive premium pay for all such court time with a four (4) hour minimum of compensation in each instance.
  3. When an employee's shift is extended beyond its normal ending time, he/she shall receive premium pay for the time of the shift extension but shall not be eligible for minimums referred to in Sections 1 and 2 above.
  4. The minimum call-back and court time provisions shall not apply in the following situations:
    - a. When an employee is required by subpoena to appear in court prior to his/her scheduled shift, and the appearance is contiguous with the shift; or when an employee attends court then reports to work an hour later,

- b. When an employee is already present at the work station and is required by a supervisor to start work early or to resume work following the end of shift,
- c. When an employee is required to attend a meeting scheduled before or after the employee's shift, and which is contiguous with the shift,
- d. When an employee is required to appear in court during a session which begins during the employee's regularly scheduled shift, but which continues past the end of shift.

In these instances, and any others not specifically identified as entitling an employee to the four-hour minimum, the employee should receive overtime compensation only for the time actually worked, or spent in court or meetings before or after his/her shift.

- 5. For all overtime earned, members shall receive either compensatory time off or pay, at the discretion of the Fire Chief. Only the actual hours worked may be held as "comp time". Any FLSA overtime earned will be paid in the pay period earned. Use of comp time will follow Annual Leave Guidelines. Members of the unit will not be permitted to accrue more than **120** hours of compensatory time for overtime worked.
  - 6. Fire Fighters, Fire Engineers, Fire Captains and Battalion Chiefs mandated to attend training sessions on non-regularly assigned shifts will be compensated at the rate of one and one-half (1-1/2) times their base rate.
  - 7. 40-hour employee working over 8 hours per day if on the 5/8 schedule, or a 40 hour employee working over 9 hours per day on a 44/36 schedule.
  - 8. 40-hour employee working over 40 hours per week.
  - 9. If a suppression employee (56 hour schedule) is scheduled or directed by the department to work on the actual holiday (vs. City observed holiday), he/she shall receive pay at premium rate (no comp time) for the time worked, during the first twelve hours of the shift beginning the morning of the actual holiday only.
- II.
- 1. The City and Local 145 agree to declare a 28-day work cycle for Fire Fighters, Fire Engineers, Fire Captains, and Battalion Chiefs in accordance with Section 7k of the Fair Labor Standards Act.
  - 2. Fire Fighters, Fire Engineers, Fire Captains and Battalion Chiefs who work more than 212 hours in any 28-day work cycle will be paid premium overtime for their hours worked in excess of 212. Compensatory time off, vacation, holidays, annual leave, sick leave, or other compensated leave or unpaid leave will not be counted as hours actually worked during the 28-day work cycle in determining eligibility for premium overtime.



## ARTICLE 37

### Station Transfer Procedures

- A. The Fire Chief may transfer fire fighting personnel to any position within the Fire-Rescue Department if he determines that a position requires specific skills, ability, or knowledge or if he finds that a reassignment is necessary for the efficiency and harmony of the Department.
- B. Any vacancy in Fire Suppression not filled by the provisions in paragraph A above, shall be filled on the basis of seniority as vacancies occur.
  - 1. The Fire-Rescue Department shall make all vacancies known to suppression personnel at the beginning of each bid cycle (approximately one (1) month) prior to filling that vacancy.
  - 2. In the event that additional stations come open for bid during intervening bid cycles, those vacancies will be advertised for the full period of the next complete bid cycle.
- C. All station transfers shall be in accordance with the Fire-Rescue Department Transfer Policy Manual.
- D. The City agrees to operate the foregoing program strictly in conformance with the seniority provisions in Article 4 of this agreement. The City further agrees to treat all employees in the unit fairly and equitably in administering this program. Any alleged violation of this article shall be subject to a grievance to the Fire Chief.
- E. In accordance with existing practice, Fire Battalion Chiefs cannot bid for assignments through the formal bid procedure. Management will continue to give employee preference serious consideration in the assignment of Fire Battalion Chiefs to Fire Operations areas. Upon request from the employee, management will provide feedback to those Battalion Chiefs not selected, based on knowledge, skills and abilities and/or management needs to an assignment where the employee has expressed a preference.
- F. Upon mutual agreement with the Fire-Rescue Department of a suitable program, probationary personnel during their first year of employment will not be allowed to bid for permanent station assignments.
- G. Employees who are married or members of the same immediate family shall not be assigned to the same fire station. This provision will be applied to all station transfers after July 1, 1985.
- H. Except when a specific policy applies, if an employee is absent from their permanent assignment for more than six months due to a non job-related medical condition, then their permanent assignment will be declared vacant. The vacant position will then be filled according to the current procedures pertaining to that position.

- I. The City will comply with OSHA policy for two in/two out, for two firefighters inside a structure and two outside, as required by law.

## **ARTICLE 38**

### **Non-Duty Weekend/Holiday Training**

Training sessions occurring on non-duty shifts will normally not be scheduled on Saturday, Sunday or legal holidays.

## **ARTICLE 39**

### **In House Committees**

The Fire Chief may at his/**her** discretion create advisory committees to provide information which is necessary to administer the Fire-Rescue Department. Such committees shall be precluded from the consideration of subjects which relate to the scope of representation of the recognized bargaining unit.

In the event that the Fire Chief requires input on matters falling within the scope of representation, he/**she** shall consult Local 145. Local 145 will provide data on the subject requested.

The Fire-Rescue Department agrees to meet with Local 145 to receive their input on developing and implementing any training programs for Fire Fighters.

## **ARTICLE 40**

### **Implementation of New Programs**

- A. The parties agree that they will meet and consult and/or meet and confer as required by law on the implementation of any new programs during the Fiscal Year and the impact of any such programs on working conditions.
- B. The provisions of this agreement, together with those provisions of wages, hours and working conditions subject to meet and confer currently in existence and not changed by this agreement shall not be revised to adversely affect the employees in the unit during the term of this agreement.
- C. Any claim of a violation of this provision shall be pursued solely through the grievance procedure.
- D. This Article shall not apply to any policy, procedure or practice established by a member of the unit which was not approved by a superior authority.

- E. The parties acknowledge that this article in no way diminishes the exercise of management rights as provided for in Article 16.
- F. Local 145 agrees that, should the City introduce a proposal to amend the City Charter in a manner that would change the reporting relationship of the Personnel Director from the Civil Service Commission to the City Manager, that Local 145 will promptly meet and confer, at the time during the term of this agreement, regarding any aspect of that proposal that would effect wages, hours and terms and conditions of employment.

Local 145 further agrees that should the City introduce a proposal to amend the City Charter in a manner that would permit the City to privatize functions which are currently performed by City employees, that Local 145 will promptly meet and confer, at any time during the term of this agreement, regarding any aspects of that proposal that would effect wages, hours and terms and conditions of employment.

#### **ARTICLE 41**

##### **Grocery Shopping**

- 1. One company from each fire station will be allowed to shop for groceries once a day.

#### **ARTICLE 42**

##### **Holidays**

**Effective July 1, 2009, 140 hours of annually accrued holiday time is eliminated. This includes the reduction of 24 hours for a Floating Holiday, 12 hours for Cesar Chavez Day, and 104 scheduled holiday hours for all 56-hour employees who were not previously relieved from D-Division.**

- I. Fixed Holidays will be:
  - A. January 1;
  - B. Third Monday in January, known as “Dr. Martin King, Jr.’s Birthday”;
  - C. Third Monday in February, known as “Washington’s Birthday”;
  - D. March 31st, known as “Cesar Chavez Day”
  - E. Last Monday in May, known as “Memorial Day”;
  - F. July 4;
  - G. First Monday in September, known as “Labor Day”;
  - H. November 11, known as “Veteran’s Day”;
  - I. Fourth Thursday in November, known as “Thanksgiving Day”;
  - J. December 25; and
  - K. Every day appointed by the City Council for a public fast, Thanksgiving or holiday.

For personnel working straight days, if January 1st, March 31st, July 4th, November 11th, or December 25th fall upon a Sunday, the Monday following is a holiday, and if they fall on a Saturday, the preceding Friday is a holiday.

For suppression personnel working a shift schedule, all holidays will be observed on the day of the actual holiday, not the City observed holiday.

## II. Floating Holiday

Each eligible employee assigned to a 40-hour work shift that is available for a duty assignment on July 1, of each fiscal year (as defined in Personnel Regulation H-2), shall accrue credit for eight (8) hours of holiday time. Each employee accruing such time shall schedule it so as to comply with the following conditions:

- A. Schedule the day off prior to June 1 of each fiscal year.
- B. Take the day off prior to the last day of the last full pay period in June of each fiscal year.
- C. In a one time absence;
- D. At a time convenient to the employee's appointing authority

## III. If an employee in suppression (56 hour schedule) is scheduled or directed by the department to work on the actual holiday, he/she shall receive pay at premium rate (no comp time) for the time worked, during the first twelve hours of the shift beginning the morning of the actual holiday only.

Employees who are scheduled to or work a nine (9) hour shift on a fixed holiday shall be credited with one (1) additional hour of floating holiday time. Employees who are scheduled to or work a ten (10) hour shift on a fixed holiday shall be credited with two (2) additional hours of floating holiday time. The additional floating holiday time will be subject to all of the provisions of floating holidays, on a use it or lose it basis.

## **ARTICLE 43**

### **Disciplinary Actions and Appeals**

To the extent that Government Code §§ 3250-3262 are applicable to disciplinary actions and appeals, those Government Code sections shall govern the process, and shall be applicable to all unit members.

Assembly Bill 220 (Government Code §§ 3250 et. seq.) is effective January 1, 2008 and shall govern administrative appeals of "punitive action or denial of promotion on grounds other than merit," as those terms are defined in Government Code § 3251(c). Accordingly, "punitive

action” means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

Section 3254(b) provides that any firefighter who has successfully completed the probationary period shall be provided an opportunity for administrative appeal by which to challenge punitive actions. Section 3254.5 provides that:

“An administrative appeal instituted by a firefighter under this chapter shall be conducted in conformance with rules and procedures adopted by the employing department or licensing or certifying agency that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2.”

Government Code § 11501(c) provides that:

“Chapter 4.5 (commencing with Section 11400) applies to an adjudicative proceeding required to be conducted under this chapter, unless the statutes relating to the proceeding provide otherwise.”

Therefore, the City shall conduct administrative appeals mandated by Section 3254.5, as follows:

A. Disciplinary sanctions not involving discharge, demotion or suspension.

Pursuant to Government Code § 11445.20, the City shall use an informal hearing procedure in those situations where a disciplinary sanction against an employee does not involve discharge, demotion or suspension. Section 11445.20, is specifically incorporated into Sections 11500 et. seq. (see Section 11501(c) above.)

Accordingly, Section 11400 et. seq. is incorporated into this MOU, with specific reference being made to Section 11445.40, which provides the basis for an informal hearing in matters subject to Section 11400 et. seq.

In an informal hearing, the Fire Chief or designee shall be the presiding officer. The Fire Chief or designee shall conduct the informal hearing in accord with the procedural guidelines set forth in Section 11445.40-11445.60. The determination of the Fire Chief shall be final and binding.

B. Disciplinary sanctions involving discharge, demotion or suspension.

In those instances where the procedures in Sections 11400 et. seq. are inapplicable to an administrative appeal, the administrative appeal shall be conducted in procedural compliance with Section 11500 et. seq. Pursuant to Section 11512, the City has determined that in those instances that shall be presided over by an administrative law judge, the agency shall continue to hear the case through pre-existing processes (Civil Service Commission,) with the administrative law judge presiding at the hearing pursuant to Section 11512(b). Accordingly, pursuant to Section 11517, it shall be the Civil

Service Commission that shall issue its decision, with the administrative law judge being present during the consideration of the case and if requested, providing assistance and advice to the Commission in the conduct of its hearing.

- C. Disciplinary actions shall remain a permanent part of the employee's file, with the exception of the following:

Employees may petition to the Fire Chief for removal of a warning or reprimand from their Human Resources Division file after three years if there is no additional discipline given to the employee. The Fire Chief or his designee shall consider the petition and make a final decision regarding the removal of the warning or reprimand.

1. It is mutually agreed that employee performance evaluations with satisfactory or above ratings are not eligible for appeal.
2. When an employee is placed on a Performance Development Plan for less than satisfactory performance, the employee will remain under the oversight of the supervisor that issued the PDP for the entire review period. If the employee or supervisor successfully bids into another station, or is accepted for a specialty assignment, then the station or assignment will be held until the completion of the Performance Development Plan.
3. Nothing shall be included in an employee's personnel file, which is uncomplimentary, disparaging or negative without prior notification.
4. Employees shall have the right to not have prior grievances, filed by them, in their personnel files.

## **ARTICLE 44**

### **Emergency Medical Services**

#### I. PARAMEDIC ASSESSMENT ENGINE PROGRAM

1. Effective October 1, 1991, a paramedic premium will be paid to Firefighters, Engineers, and Captains, certified as paramedics. Battalion Chiefs are not eligible for the premium (in accordance with Article 17, this exclusion does not apply to the EMS Battalion Chief).
2. The paramedic premium shall be the difference between E step Firefighter and E step Engineer per month.
3. Effective October 1, 1991, a paramedic certification bonus of \$500 shall be paid to all certified personnel in the bargaining unit, with the exception of Battalion Chiefs, upon certification or re-certification as a paramedic. EMS Battalion Chiefs, if certified as a paramedic, will be eligible for the \$500 bonus.

4. During the term of this agreement, additional Firefighters to be trained as paramedics will be determined by mutual agreement.
5. Effective July 1, 1997, and on the condition that the City enters into an Agreement with the Fire & Life Safety Department/Rural Metro to provide Emergency Medical Services, only employees qualified under "1." above, who are assigned to budgeted paramedic positions will receive the paramedic premium.
6. Effective July 1, 2006, unless sufficient profit exists from the LLC, or the San Diego Medical Enterprise Services LLC Board votes to fund the 5% rated Paramedic Specialty Pay for FY 07, then the 5% Paramedic Specialty Pay will be paid only to certified paramedics working in a posted paramedic position. This specialty pay will be paid on a per diem basis when a certified paramedic is working in a posted paramedic position if not permanently assigned to a posted position on a full-time basis. Rated, non-posted paramedics will no longer receive 5% specialty pay to maintain paramedic licensure. Effective July 1, 2007, to remain eligible to receive the 5% Paramedic Specialty Pay, rated, non-posted paramedics must agree to:
  - a. Participate in a chart audit program wherein they will audit the patient charts of paramedics (chart audits will be equally distributed among rated paramedics); and
  - b. Participate in the continuing education, quality assurance and ambulance rotation programs; and
  - c. Serve as a back-up Battalion Medical Officer (BMO)
7. The Fire Chief agrees to recommend to the San Diego Medical Services Enterprise LLC Board that the 5% Paramedic Specialty Pay for rated, non-posted paramedics be funded through the LLC budget and not be dependent on sufficient profit distribution.

## II. EMT

Effective July 1, 2000, all Battalion Chiefs, Captains, Fire Engineers, Firefighters, Fire Prevention Inspectors and Single-role Paramedics that are EMT certified will receive an EMT premium of 4.5% of employee's base pay. Effective June 30, 2001, the EMT premium will be increased to 5%. Effective July 1, 2002, the EMT premium will increase to 7%. Effective June 30, 2005, the EMT premium will be increased to 8.5%. Effective July 1, 2006, Fire Inspection Supervisors and Asst. Fire Marshals that are EMT certified will receive the EMT premium.

### III. PARAMEDIC PROGRAM

Should the City Council elect to bring the outside privately contracted dedicated paramedic program into the Fire-Rescue Department, the parties agree to meet and confer on all mandatory subjects of bargaining in a timely manner.

### IV. EMERGENCY MEDICAL SERVICES (EMS)

1. The provisions of this article related to EMS employees listed below will supersede any other provisions contained in this Agreement in the event those other provisions conflict with the provisions as they apply to personnel in the following new classes added to the bargaining unit effective July 1, 1997 who work exclusively in the Emergency Medical Services program.

Paramedic I  
Paramedic II  
Emergency Medical Technician

2. Annual Leave Accrual

Employees working a 24 hour shift schedule will receive their maximum regular bi-weekly accrual of Annual Leave based on full completion of their work schedule which averages 112 hours per pay period. Annual Leave credits are not earned during period of unpaid leave.

3. Overtime

Notwithstanding the provision of Personnel Manual Section H-4, overtime will be based only on all hours actually worked beyond 40 in a work-week. For purposes of the above provision, compensated leave will count as hours worked in the overtime calculation. If employees in the future become eligible for the 7(k) exemption in the Fair Labor Standards Act (FLSA), 7(k) exemption provisions will apply and compensated leave (excluding industrial leave) will not count as hours worked in the overtime calculation. If there are any other changes in the FLSA overtime provisions, or the interpretation of those provisions by the Department of Labor (DOL) or the courts, this provision may be reopened by either party.

4. Holidays

City holidays for single role EMS employees working 24-hour shifts will be accrued and used in the same manner as Firefighters who work 24-hour shifts (112 standard). For employees working 12-hours shifts, City Holidays will be accrued on the official City designated Holiday.

5. Special Assignment Station Pay



Employees who work 12-hour shifts will be eligible to receive a special add-on pay of approximately 8.6% per hour worked or on compensated leave.

6. Uniforms and Safety Equipment for EMS Employees

Single role Paramedics, Emergency Medical Technicians, and Medical Operations Coordinators are not eligible for the Firefighters uniform provisions of Article 21.

- a. The following items of a Class B uniform will be furnished by San Diego Fire-Rescue Department as needed for EMT's and Paramedics.

Belt (1)  
Class B Shirt (3)  
Class B Pants (2)  
Station Shoes (1 pair)

- b. The safety items listed below will also be furnished by San Diego Fire-Rescue Department.

Brush Jacket (1)  
Personal Protective Equipment Pack (1)  
Eye Protection  
Respiratory HEPA Mask  
One-way mouth-to-mouth valve/mask

- c. Maintenance and Upkeep

On September 1 of each year, the City shall pay those single role EMT's, Paramedics and Medical Operations Coordinators who have completed 12 months of service, the sum of \$800 for maintenance and replacement of the items described in "a" above. Effective the first pay day of September 2003, this amount shall increase to \$900.

- d. Employees reporting for duty are expected to have the uniforms as described above. Failure to have any of these items may result in discipline of the employee.

7. Will Work

As is the case with fire fighters, EMS Program employees who "will work" for employees on a different shift schedule and different standard hour rate will have hours worked in the "will work" assignment adjusted by a factor of 1.4 to reflect the different hourly pay rate in effect for the shift worked.

8. Drug/Alcohol Screening

The existing random drug/alcohol testing program shall be expanded to include those Emergency Medical Service employees identified above.

Employees will be deemed in violation of this policy if alcohol percentage of 0.04 or greater is detected in their system during working hours.

9. **STUDY LANGUAGE**

City agrees to evaluate transferring the Single Role Paramedics into the Safety Retirement System. City shall determine the cost of the transfer by January 1, 2001.

**ARTICLE 45**

**Transportation Incentives**

- A. Employees who utilize the Concourse Parkade and pay on a monthly basis will be charged 50% of the prevailing general public monthly rate. Participation in this program is limited, and available on a first-come first serve basis.

Employees participating in the Employee Transportation Incentive Program (ETIP) shall pay 50% of the public daily rate, for up to 52 instances per year.

- B. The City will provide 75% reimbursement up to \$100.00 per month to those employees who wish to purchase monthly passes for transportation on the public bus and/or trolley, and commuter rail service. Such pass will be for the exclusive use of the employee/purchaser. The City will provide an equal amount to employees who utilize the bay ferry and to employees participating in a vanpool program. Employees must utilize these subsidized transportation services to commute to and from work at least three days a week to be eligible for reimbursement.
- C. The City will provide reimbursement to employees who utilize the Concourse Parkade and carry riders. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.
- D. Violation of Transportation Alternative Program rules may disqualify the employee from further participation in the program.

**ARTICLE 46**

**Driver's License and Certification**

All Fire Engineers shall maintain a valid Class B driver's license (with appropriate endorsement) and training certificate for triple combination, tractor/trailer, aerial ladder, brush apparatus and aerial platform. Any Fire Fighter, Engineer or Captain required by special circumstances (Bomb

apparatus with trailer, HRT truck with trailer or **US&R** (tractor trailer) to drive and operate a department Class A vehicle shall maintain a Class A license with appropriate endorsement and medical examiner certificate.

Management will provide 24 hours of compensated Engineer Preparatory Course (EPC) classroom training for all Fire Fighters to include information necessary for the triple combination pumper certification and Class B Driver's License (with appropriate endorsement).

In addition, management will make available for off-duty members not presently certified, a minimum of four (4) hours of instructor provided training to facilitate the fire fighter meeting the Department of Motor Vehicle licensing requirements and also to demonstrate their skills as a pump operator. Firefighters must be certified on the following fire apparatus to be eligible to take Fire Engineer's promotional exam:

- Triple Combination
- Tractor/Trailer
- Aerial Ladder
- Brush Apparatus

Fire Fighters participating in the EPC may schedule on-duty a D.M.V. physical through the Personnel Department Medical Clerk. Fire-Rescue Department will pay for the cost of the physical. DMV fees for Class B license will be paid by the employee.

The Fire-Rescue Department will pay for DMV fees and the physical of Fire Fighters regularly assigned to drive fire support equipment requiring a Class A or Class B driver's license.

The City reserves the right to implement a drug and alcohol testing program (urinalysis) for all employees undergoing the biennial medical examination required by State Law for Department of Motor Vehicles Class A and B driver's licenses. All employees required to have a Class A and/or B license for the performance of their regular duties must have the medical examination and drug/alcohol test conducted by the medical examiner and testing laboratory designated by the City. The scheduling of such medical examinations, to include drug testing, will be determined by management.

The City shall evaluate, during the term of this contract, the feasibility of combining the DMV physical, the annual respiratory fitness test, and random drug screening into a single examination.

## **ARTICLE 47**

### **Copies of the Agreement**

The Union may obtain copies of this agreement from the City by reimbursing the City for their cost. The City will provide 70 copies to the Local at no expense and will supply each fire station with one copy. The City shall print and publish this Memorandum of Understanding within 90 days after final approval of the MOU language by both parties. In addition, the City shall provide to Local 145 a copy of this Memorandum of Understanding on disk.

## **ARTICLE 48**

### **Presidential Leave**

**Effective July 1, 2009, the Presidential Leave Program (City-paid Presidential Leave) for the President of Local 145 shall be eliminated.**

## **ARTICLE 49**

### **Rehabilitation Program**

The City agrees to ensure that employees in the Fire Unit who suffer serious industrial injuries and are off the job for a significant period of time, undergo an appropriate physical rehabilitation program prior to return to full duty.

When an employee is injured and is in light duty or off the job for a period in excess of 60 days, the City will ensure that the employee has completed an appropriate rehabilitation program prior to returning to full duty.

City agrees to provide critical incident stress debriefings at no cost to employees requesting such counseling, as management deems appropriate.

## **ARTICLE 50**

### **Employee Privacy of Information**

No employee shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his/her property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his/her family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his/her official duties, or is necessary for the employing agency to ascertain the desirability of assigning the employee to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

## **ARTICLE 51**

### **Access to Department Provided Equipment**

Employees of the Fire-Rescue Department may be assigned departmentally owned vehicles, lockers, desks, cabinets, and cases for the mutual convenience of the department and its personnel. All personnel are reminded that the retention of personal items in such containers or facilities is at the risk of the employee and the department will not be responsible for any losses. Search of Department provided equipment shall be pursuant to Government Code § 3259.

## **ARTICLE 52**

### **Polygraph Examinations**

No employee shall be compelled to submit to a polygraph examination against his/her will. No disciplinary action or other recrimination shall be taken against an employee refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the employee refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the employee refused to take a polygraph examination.

## **ARTICLE 53**

### **Health Management Program**

- A. The City and Local 145 agree to support a Health Management Program. Effective July 1, 1991, Local 145 will be allowed to provide input into the design of the Program prior to its implementation. Local 145 input must be received by Fire Management prior to September 1 of each fiscal year. The selection of the provider will be in accordance with Council Policy 300-7.
- B. During the term of this agreement, the City shall continue to fund the Overall Wellness Program up to \$35,000 per year. This fund will be utilized for the Wellness Program, or the maintenance or purchase of weight machines and/or similar equipment by mutual agreement of the parties.
- C. During the term of this agreement, the City shall provide Hepatitis B vaccinations to all members of the unit.

## **ARTICLE 54**

### **Fire Fighter Career Ladder**

Local 145 and the City agree to support the establishment of a career ladder as follows:

Fire Recruit  
Fire Fighter I  
Fire Fighter II

Promotions to all classes represented by Local 145 will be at the steps that have been established by past practice, during the term of this agreement.

City and Local 145 agree to study and propose changes to City Personnel regarding MQ's for fire recruit, the promotional process, and the candidate physical abilities exam.

Fire-Rescue and Local 145 agree to cooperatively work together to develop a Career Ladder.

## **ARTICLE 55**

### **Special Salary Adjustments**

Both parties agree not to submit any special salary adjustment proposals to the Civil Service Commission or the City Council under the terms of Charter Section 130 which would change salaries during the term of this agreement.

## **ARTICLE 56**

### **Side Letters**

Effective July 1, 2007, all side letters executed by both parties not specifically referenced by the current Memorandum of Understanding shall expire and be of no further force or effect. The current MOU as printed will represent all MOU agreements between Local 145 and the City.

## **ARTICLE 57**

### **Drug and Alcohol Screening**

Effective July 1, 1991, it is mutually agreed that a random drug/alcohol testing program shall be implemented to include all firefighter unit personnel. The term firefighter hereinafter refers to members of the firefighter unit which consists of the following classifications:

- Fire Recruit
- Fire Fighter I
- Fire Fighter II
- Fire Fighter III
- Fire Engineer
- Fire Captain
- Fire Battalion Chief
- Fire Prevention Inspector I
- Fire Prevention Inspector II
- Fire Prevention Supervisor
- Assistant Fire Marshall
- Emergency Medical Technician
- Paramedic I
- Paramedic II
- Fire Helicopter Pilot
- Air Operations Chief
- Fire Captain (Emergency Management Coordinator Option)

The parties agree to eliminate the position of Medical Operations Coordinator pursuant to Article 27 of the MOU.

I. PROCEDURES

- A. The San Diego Fire-Rescue Department Human Resources Manager, City Labor Relations Director and Personnel Department Medical Liaison will administer the Drug Screening Program.
- B. The firefighters will be tested twice every 18 months through the provision of a urine sample which will be screened for the presence of specific drugs.
- C. The drug screening shall be conducted to detect the following drug groups at the following testing levels:

Drug group	Screen Level	Confirmation
1. Amphetamines/Methamphetamine (e.g., Speed, Crystal)	1000 ng/mL	500 ng/mL
2. Benzodiazepines (e.g., Valium, Librium, Oxazepam, Serax, Dalmane, Ativan);	300 ng/mL	300 ng/mL
3. Barbituates (e.g., Amobarbital, Butabarbital, Pentobarbital, Phenobarbital, Secobarbital);	300 ng/mL	200 ng/mL
4. Cocaine;	300 ng/mL	150 ng/mL
5. Methadone;	300 ng/mL	200 ng/mL
6. Ethanol;	* See Section IV, D & E	
7. Opiates (e.g., Codeine, Heroin, Morphine);	2000 ng/mL	2000 ng/mL
8. Phencyclidine (PCP);	25 ng/mL	25 ng/mL
9. THC (marijuana)	50 ng/mL	15 ng/mL

- D. Firefighters may provide appropriate documentation of legally prescribed drugs. Such documentation shall be included in the review of the test results.

II. SAMPLE COLLECTION

- A. Designated medical personnel will be responsible for obtaining the urine sample from the firefighter being tested.
- B. Designated medical personnel will be available for taking urine samples between 0800 and 2400 hours, seven (7) days a week, to allow firefighter to be tested during normal work hours.

- C. Medical personnel will not observe as the sample is being given.
- D. Firefighters to be tested will be notified at the start of their shift. They will present themselves for testing at the earliest possible time during the shift and no later than four (4) hours after the firefighter's shift begins.
- E. At the testing site, the firefighter being tested will:
  - 1. Identify himself/herself by presenting his/her S.D.F.D. identification.
  - 2. Complete requested paperwork.
  - 3. Remove turnouts, jackets, boots, or other bulky items of clothing prior to entering the lavatory to give a urine sample.
  - 4. Provide a urine sample
    - a. Firefighters will be required to stay within the urine collection area until the required sample is given.
    - b. Sample must be at least 120 ml, the minimum amount required for testing purposes.
    - c. Refusals to complete the test will be referred to the San Diego Fire-Rescue Department Human Resources Manager for investigation.
- F. At the urine collection site, the medical personnel will:
  - 1. Direct the firefighter being tested to a private lavatory.
  - 2. Place a colored dye in the toilet
  - 3. Wait outside of the lavatory for the sample.
  - 4. Upon receipt of the urine sample, and in the presence of the fire fighter, the medical personnel will:
    - a. Split the sample into two separate containers.
    - b. Seal the containers.
    - c. Direct the firefighter to sign and initial the chain of custody forms and documents.
  - 5. Complete the appropriate chain of custody forms and procedures for the samples.



6. Arrange transportation of both samples to the laboratory by approved courier.

### III. SCREENING PROCEDURE

- A. The screening of all collected samples will be conducted within 48 hours by a City designated laboratory certified by the National Institute on Drug Abuse (NIDA).
- B. Initial screening of urine samples will be conducted using a testing methodology such as the “Enzyme Immunoassay” or other technique.
- C. If a confirmation test is required, it will be conducted by Gas Chromatography/Mass Spectrometry (GC/MS) or other testing methodology of equivalent quality and acceptability.
- D. Upon receipt of the samples for testing, the designated Laboratory Technician will:
  1. Check the containers to ensure they are not damaged, and that the seals are intact.
  2. Complete the appropriate chain of custody forms for the samples.
  3. Conduct the initial testing of one of the samples using the “Enzyme Immunoassay” or other technique.
  4. If the sample tests “negative”, all urine samples will be discarded.
  5. If the urine sample tests “positive”, a confirmation test will be conducted.
    - a. The confirmation test will be determined by the specific drug found in the sample during the initial test.
    - b. The confirmation test will be conducted using the GC/MS or other alternative technique.
  6. If the confirmation test confirms the presence of drugs, both samples will be retained in a locked freezer for a minimum of one year.
  7. If the confirmation test is “negative”, the whole test will be considered negative.
- E. Alcohol Test
  1. The standard for alcohol testing will be the converted urinalysis equivalent of a blood alcohol level of 0.04.

2. An alcohol testing level of 0.04 or greater will be treated as a “positive” result and may be cause for disciplinary action.

#### IV. REPORTING TEST RESULTS

- A. Test results will be provided to the City Personnel Department Medical Liaison Officer via the City’s contract medical provider.
- B. If the test results are “negative”, the firefighter will be notified in writing without delay.
- C. If the test results are positive for legally prescribed drugs, the City Personnel Department will request the firefighter to provide written substantiation from his/her private doctor prescribing the drugs.
- D. If test results are “positive” for alcohol (0.04 or above), illegal drugs, or inadequately explained legal drugs, the San Diego Fire-Rescue Department Human Resources Manager will be notified, and will be responsible for initiating an investigation resulting in the issuance of a disciplinary action to be held in abeyance, and a Last Chance Agreement may be offered by the City to an Employee in the City’s discretion. Any Last Chance Agreement will be held in a sealed envelope in the Department Personnel file for the duration of the Employee’s employment. Violation of the Last Chance Agreement may result in termination of employment. The discipline will be removed upon successful completion.
- E. Alcohol tests results below the 0.04 level shall be cause for mandatory referral of the firefighter to the City’s Employee Assistance Program. However, no disciplinary investigation shall be initiated solely on the basis of the result, including those instances where the firefighter is on a last chance agreement. The Personnel Department shall be responsible for making the referral of the firefighter to the City’s Employee Assistance Program. It is agreed that the test results are confidential and the Personnel Department will not notify anyone including the Department, of the test result or the referral of the firefighter to the City’s Employee Assistance Program. If an employee fails or refuses to follow through with the initial mandatory EAP referral, the Personnel Department will notify San Diego Fire-Rescue Department for appropriate action. San Diego Fire-Rescue Department will not inquire of the Personnel Department or the employee as to the basis for the EAP referral, including, but not limited to whether there was an alcohol test and the results thereof.

#### V. INDEPENDENT TESTING

- A. If the drug screening test results are positive, the affected firefighter may request that the second sample obtained at the time he or she provided the urine sample be sent for independent testing.

- B. The testing will be conducted at a NIDA certified laboratory designated by the affected firefighter.
- C. The second sample will be transported by approved courier to the testing laboratory.

#### VI. PROGRAM RECORDS

- A. All drug testing information relating to individual firefighters is strictly confidential.
- B. All records related to the program shall be maintained as directed by the Assistant Fire Chief.

#### VII. USE OF TEST RESULTS

The Random Drug Screening Program shall be considered an administrative matter, and the results of this test shall not be used in any criminal action. However, if additional information is available through other means to support criminal action against an employee, San Diego Fire-Rescue Department shall not be precluded from taking further action.

#### VIII. LAST CHANCE AGREEMENT

The Last Chance Agreement will be held in a sealed envelope for 4 years after the conclusion of testing for the Last Chance to be considered for additional action up to termination. Any employee violating a Last Chance Agreement will be terminated, and a Last Chance Agreement will be offered only once during an employee's employment with the City.

### **ARTICLE 58**

#### **Catastrophic Leave Plan**

The City Catastrophic Leave Plan is as follows:

##### Purpose

Establish a City of San Diego administered Catastrophic Leave Bank permitting City employees to assist other City employees who face extended leaves without pay due to a catastrophic occurrence in their lives. For the purpose of this plan, a catastrophic occurrence is defined as any event that would qualify the employee under the Family Medical leave Act as determined by the City Manager. Catastrophic Leave determinations are non-grievable.

##### Procedures

- A. The employee must have exhausted or expect to exhaust his/her accrued leave (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a leave bank.

If an employee is diagnosed as terminally ill, a leave bank may be established without meeting this requirement. In such cases, the donated leave will be paid out at termination. A recipient's total annual leave balance including donated leave cannot exceed 2080 hours.

The employee has received approval for an unpaid leave of absence from his/her Department Head.

- B. Requests to establish a Catastrophic Leave Bank for receipt of donations will be processed by the City Manager's office.
1. An eligible employee will submit a completed "Request to Establish Catastrophic Leave Bank" form to the Labor Relations Director, accompanied by:
    - a. A medical statement from the attending physician, including a brief statement of the nature of the illness or injury and an estimated time the employee will be unable to work, or other appropriate documentation supporting the request.
    - b. Evidence of the Department Head's approval of leave of absence.
- C. Donations of annual leave may be made to an employee eligible for catastrophic leave. The Donor Department will be billed for the dollar amount of the Donor's Annual Leave donation. The Department shall not advertise/solicit donations. Such advertisement/solicitations shall only be sought by Local 145.
1. Donation leave will be strictly voluntary; the identity of leave donors will be held in absolute confidence.
  2. Employees may only donate accrued annual leave.
  3. Donations may be made in whole hour increments. There is no tax benefit to the donor.
  4. Donors must have an overall annual leave balance of 160 hours remaining after donated time has been deducted.
  5. Once donated to an individual, donated leave cannot be reclaimed by the donor.
  6. Employees wishing to donate time shall complete a "Confidential Authorization for Catastrophic Leave Donation" form and submit to their Department Payroll Specialist who will:
    - a. verify that donating employee has the minimum required leave balance (160 hours),

- b. convert the donated time to dollars at the hourly rate of the donor and subtract from designated leave category, and
- c. forward to the Labor Relations Manager for tracking and submission to the Auditor-Controller.

Donation authorization forms which do not contain all requested information shall not be processed.

D. Upon receipt of donation authorizations, the Auditor-Controller shall take the following action:

- 1. Convert donated dollars as computed above to hours at the hourly rate of the recipient, and add to recipient's annual leave balance. Recipient will be taxed for the leave when taken.
- 2. Retain a confidential file of donation authorizations.
- 3. All deductions (e.g. health premiums, parking, credit union, union dues, etc.) which have previously been authorized by the recipient will be made unless notified in writing by the recipient to cancel deductions.

E. Donated time is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.

- 1. Donated time does not alter the employment rights of the City or the recipient, nor extend or alter limitations otherwise applicable to Leaves of Absence or Annual Leave, except as noted in this Article.
- 2. Employees who are utilizing donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Section I-2, Annual Leave.

## **ARTICLE 59**

### **Long Term Disability Plan and Industrial Leave**

#### Long Term Disability Plan

During the term of this MOU, the Long Term Disability (LTD) plan shall be subject to a meet and confer reopener in order to better reflect industry standard practices.

## Industrial Leave

For a claim filed based on a work related illness or injury occurring on or after July 1, 1994, the City will implement the following changes to the Industrial Leave Policy. The actual policy [A.R. 63.00 attached] should be consulted for detailed language.

- Industrial Leave payments will not be granted for any injury which occurs as a result of a motor vehicle accident where the injured employee did not have available safety restraints in use, unless such failure is consistent with prudent police practices, training, and department policies.
- Industrial Leave benefits will be terminated when an employee misses a medical appointment designed to determine the employees work status, upon the determination that the failure to attend the appointment was not excusable.

## **ARTICLE 60**

### **Agreement to Joint Study**

**The City agrees to include in its City-wide study of employee salaries and benefits, in which Local 145 will participate, and which will commence in FY 2011.**

### **Smoking Policy Addendum for Employees Represented by Local 145, International Association of Fire Fighters**

There will be no smoking allowed in City facilities or vehicles.

**IN WITNESS THEREOF, the undersigned agree to submit this tentative Memorandum of Understanding, effective July 1, 2009– June 30, 2011, to their respective constituents for approval.**

**SAN DIEGO CITY FIREFIGHTERS,  
I.A.F.F. LOCAL 145**

**CITY OF SAN DIEGO  
(OFFICE OF THE MAYOR)**

\_\_\_\_\_  
Mike McGhee

\_\_\_\_\_  
Timothy Davis, Lead Negotiator

\_\_\_\_\_  
Frank DeClerq

\_\_\_\_\_  
Scott Chadwick

\_\_\_\_\_  
Cory Beckwith

\_\_\_\_\_  
Judy von Kalinowski

\_\_\_\_\_  
Alan Arrollado

\_\_\_\_\_  
Kim Nguyen

\_\_\_\_\_  
John Wood (Woody)

\_\_\_\_\_  
Javier Mainar

\_\_\_\_\_  
George Balgos

\_\_\_\_\_  
Brian Fennessy

\_\_\_\_\_  
Joan Dawson

\_\_\_\_\_  
Valerie Van Deweghe