MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN THE CITY OF PASADENA AND PASADENA FIREFIGHTERS MANAGEMENT ASSOCIATION

April 1, 2010 through March 31, 2011

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MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN THE CITY OF PASADENA AND PASADENA FIREFIGHTERS

MANAGEMENT ASSOCIATION
April 1, 2010 through March 31, 2011

Preamble

- A. The Pasadena Firefighters Management Association, a recognized employee organization, hereinafter referred to as the PFMA, and the City of Pasadena, a Public Agency, hereinafter referred to as City, have been meeting and conferring consistent with Section 3500, et al, of the Government Code and have reached agreement.
- B. It is the intent and purpose of this Memorandum to set forth the total and complete understanding and agreement between the parties regarding wages, hours and other terms and conditions of employment; and this Agreement constitutes the sole and entire existing Agreement between the parties and expresses all contractual rights and obligations as negotiated by the parties.
- C. It is recognized by the signatories to this Memorandum of Understanding and Agreement representing the Public Agency and the recognized Employee Organization that this Agreement has been entered into pursuant to Section 3505.1 of the California Government Code.

ARTICLE 1 Recognition

A. In accordance with State law, the provisions of the Employer-Employee Labor Relations Resolution No. 555, and the request for recognition dated December 9, 1992 in conformance with Section 3507 of the California Government Code (the Meyers-Milias-Brown Act), the City recognizes the PFMA as the exclusive representative bargaining unit for the following classifications: Fire Battalion Chief.

Such representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment.

ARTICLE 2 Term of Memorandum

- A. Except as may be otherwise specifically provided herein, the ordinances/resolutions and other changes to implement this Memorandum shall become effective on April 1, 2010. This Memorandum shall remain in effect through March 31, 2011.
- B. This Memorandum is in all respects subject to the provisions of the Pasadena City Charter, and laws of the State of California. A decision by the City pursuant to the City Charter that has a direct impact on the wages, hours or conditions of employment of those represented by the PFMA will be discussed with the PFMA prior to the implementation of such decision. This section does not preclude employees from raising grievances pursuant to the grievance procedure concerning such decision.

ARTICLE 3 Scope (Management Rights)

The scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. Except as modified by this Agreement or by law, the City shall reserve and retain all its inherent and exclusive rights and authority of management which have not been abridged by this MOU or by law which includes the right to: supervise, hire, transfer, assign and schedule employees; take disciplinary action for just cause; relieve employees from duty because of lack of work or other legitimate reason; determine services to be rendered; utilization of technology and overall budgetary matters; determine the procedures and standards of selection for employment and promotion; determine the methods, means and personnel by which government operations are to be conducted; determine the allocation and content of job classifications; maintain the efficiency of governmental operations; take all necessary actions to carry out its purpose and functions in declared emergencies; and exercise complete control and discretion over its method of organization and the technology of performing its work. The exercise of these rights does not preclude the PFMA from consulting about the impact these decisions have on wages, hours and other terms and conditions of employment, or raising grievance on those matters pursuant to the grievance procedure.

ARTICLE 4 Association Representatives

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

ARTICLE 5 Non-Discrimination

A. The provisions of the Memorandum shall be applied equally to all employees, and the City and PFMA agree that they shall not unlawfully discriminate with respect to age, sex, marital status, race, color, ancestry, religious creed, medical

condition, physical handicap, national origin, or political affiliation of any employees.

- B. All references to employees in the Memorandum designate both sexes, and whenever one gender is used it shall be construed to include both, where appropriate.
- C. In accordance with State law, the parties mutually recognize and agree to protect the rights of all employees to participate in PFMA activities or to refrain from such participation.

ARTICLE 6 Bulletin Boards

The City shall provide bulletin board space for the use of the Association for posting of notices concerning Association business.

ARTICLE 7 No Strike

- A. The parties to this Memorandum recognize their mutual responsibility to provide the citizens uninterrupted municipal services.
- B. No employee of the City of Pasadena shall instigate, participate, afford leadership to a strike against the City of Pasadena, or engage in any form of concerted action to withhold service from said City. Participation in any such strike or concerted action against the City shall constitute cause for discharge.
- C. The City agrees that it shall not lockout its employees during the term of this Agreement. The term "lockout" is hereby defined so as not to include the discharge, suspension, termination, layoff, failure to recall or failure to return to work of the employees of the City in the exercise of its rights as set forth in any of the provisions of this Agreement or applicable ordinance or law.

ARTICLE 8 Modification Clause

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

ARTICLE 9 Savings Clause

Should any part of this Memorandum be rendered or declared illegal or invalid by legislation, decree of a court of competent jurisdiction or other established governmental administrative tribunal or board, such invalidation shall not affect the remaining portions of this Memorandum.

ARTICLE 10 Impasse

Should the possibility of agreement between the representatives of the City and the recognized employee organization be exhausted, the parties agree to resolve the impasse dispute(s) in accordance with State law and City impasse procedures.

ARTICLE 11 Salaries

Effective April 4, 2005, the salary range for all PFMA classifications shall be increased by 3.5%. Effective April 3, 2006, the salary range for all PFMA classifications shall be increased by 3%. Effective April 2, 2007, the salary range for all PFMA classifications shall be increased by 3%. Effective April 1, 2008, the salary range for all PFMA classifications shall be increased by 3%.

In the event the classification of Captain II is eliminated, then the differential between Captain I and Battalion Chief shall be maintained at a level of not less than 23%.

The salary rate for an employee shall not be less than 20% below nor exceed the maximum rate of the salary range. Movement within the range is based upon performance. Placement at the top of the range is contingent upon full and satisfactory performance. Once, following promotion, however, an employee's salary exceeds the top step of the next lower classification (i.e. Captain I or Captain II) they supervise, their salary rate will not be lower than the top step of the classification supervised.

The salary range for all PFMA classifications shall not be increased during the term of the 2010-2011 MOU, which expires on March 31, 2011.

ARTICLE 12 Hours of Work and Overtime

The hours of work shall be those necessary to perform the work assigned and the requirements of the classification.

- 1. Employees may be required to work extended hours in excess of their normal working schedule as part of their regular compensation.
- 2. In those instances where employees are assigned, with department head approval, to work extended hours on a scheduled basis or emergency basis, the employees may be compensated for overtime by leave of absence with pay at 1-1/2 times the hours of overtime or by pay at the rate of 1-1/2 times the hours of overtime, whichever is in the best interests of the department in the opinion of the department head.

3. Overtime in addition to premium rates shall not be paid for the same hours of work; and in no case will there be pyramiding or duplication of overtime pay or premium rates for identical time worked.

ARTICLE 15 Special Pay Practices

A. Management Merit Pay

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

B. EMT-D Bonus

Effective the first pay period following April 1, 1997, Unit employees shall receive an additional four (4%) percent of base pay if they are certified to the EMT-D level. Employees achieving certification by May 1998 shall be eligible to receive this bonus, effective the first pay period following April 1, 1997. Unit employees receiving certification thereafter shall be eligible the pay period following receipt of certification.

C. Differential Pay

The City will provide differential pay for 40-hour employees on specialized assignments for 30 days or more.

The differential pay schedule shall be applied at the discretion of the Fire Chief or designated representative. Effective April 8, 2002, the differential pay schedule shall be 8% of base salary per month. Effective April 7, 2003, the differential pay schedule shall increase to 9% of base salary per month. Effective April 5, 2004, the differential pay schedule shall increase to 10% of base salary per month.

D. Movie Detail

Employees classified as a Fire Captain II or Battalion Chief shall receive \$55 per hour in recognition of additional supervisory skills and abilities when assigned to work a movie detail. The minimum payment shall be 4 hours at the straight time rate. If the event is canceled after noon of the day previous to the event, employees shall receive the 4 hour minimum.

E. Bilingual Pay

Employees shall be eligible for bilingual pay pursuant to the City's bilingual policy.

Under this policy, employees assigned to shift work will receive bilingual pay at \$140 per month (effective July 1, 2006) provided the employee passes the City's bilingual proficiency test. Employees assigned to non-shift work will receive bilingual pay if the employee passes the bilingual test, is in regular contact with the public and subject to utilizing their bilingual skills. Temporary reassignment to non-public positions will not disqualify an otherwise qualified employee from receiving bilingual pay.

F. Urban Search and Rescue (USAR) Premium

The City shall pay a USAR premium of \$150 per month to employees who possess System Level 2 certification and are assigned on a regular basis to work on the USAR team.

G. Education Pay

Employees holding an Associate of Arts/Science degree from an accredited college shall receive education incentive pay of \$175 per month. Employees holding a Bachelor of Arts/Science degree from an accredited college shall receive education incentive pay of \$275 per month.

H. Special Events

Compensation for special events outside of the normal work schedule will be at time and one half of the forty hour rate for the applicable classification required for the event.

Employees who receive a same day cancellation for a special event shall be paid a four hour minimum at the straight time rate.

ARTICLE 16 Paid Leave Pro-Rata Provisions

Part time employees regularly working at least one-half time or more shall be allowed one-half of the vacation, sick leave, holiday, and bereavement leave benefits provided regular full time employees.

ARTICLE 17 Vacation

Vacation benefits shall be provided in accordance with paragraph 3 of this section and shall be taken within the time limits provided herein except when, for the efficient administration of the City, the City Manager determines that vacation leave of absence cannot be scheduled. In such event, the City Manager shall authorize pay in lieu of vacation, or allow accumulation of more than two vacation periods.

1. Vacation Period and Carry-over

- a. No vacation shall exceed three (3) vacation periods in any calendar year nor shall any employee carry over to the following calendar year more than two (2) vacation periods. A "vacation period" is defined as the maximum amount of vacation provided in any calendar year to one employee. If the employee is unable to use the additional vacation due to illness or disability, then the City Manager shall authorize pay in lieu of vacation or additional accumulation.
- b. On January 1 of each year, the provided vacation carried over by each employee, plus the current years provided vacation allowance, shall be available to the employee to be used, based upon the schedule set forth in Subsection (3) of this section. At any time during said calendar year the employee may use said vacation, provided, however, all vacation shall be taken at such times as shall be approved by the head of the department in which such employee works. Although vacation is available for use as of January 1 of each year, vacation shall continue to be accrued on a pay period basis at the rate of the total vacation allowance per year divided by 26 pay periods.

Vacation shall be a minimum of one (1) full shift unless other arrangements are approved by the department head.

2. Termination

a. Upon termination of employment the City shall deduct from final compensation any vacation time taken in excess of the amount provided under these provisions, including vacation time taken before it is actually accrued on a pay period basis.

b. Unused Vacation

Any employee who terminates shall be allowed regular compensation for unused vacation accumulation due on the last actual work day.

3. Every regular full time employee shall be provided prorata vacation time for each month or major fraction thereof of actual service, but not more than the number of hours for each six months of such service, nor more

than the number of hours in any calendar year shown in the following schedule:

	Shift Employees	Week Employees
<u>Upon Completion of</u>	Annual Vacation	Annual Vacation
6 months of continuous service	3 shifts	48 hours
1 through 5 years of continuous	6 shifts	96 hours
service		
6 years of continuous service	6 ½ shifts	104 hours
7 years of continuous service	7 shifts	112 hours
8 years of continuous service	7 ½ shifts	120 hours
9 years of continuous service	8 shifts	128 hours
10 years of continuous service	8 ½ shifts	136 hours
11 years of continuous service	8 ½ shifts	136 hours
12 years of continuous service	8 ½ shifts	136 hours
13 years of continuous service	8 ½ shifts	136 hours
14 years of continuous service	8 ½ shifts	136 hours
15 years of continuous service	8 ½ shifts	136 hours
16 years of continuous service	9 shifts	144 hours
17 years of continuous service	9 ½ shifts	152 hours
18 years of continuous service	10 shifts	160 hours
19 years of continuous service	10 ½ shifts	168 hours
20 years or more of continuous	11 shifts	176 hours
service		

4. Vacation Cashout

Employees shall use vacation time off each year in a manner consistent with City and Fire Department policies. If an employee takes six (6) or more days of vacation during a calendar year, the employee may cash in lieu, on an hour for hour basis (i.e., one hour of vacation used equals one hour of cash in lieu pay), up to 2/3 of the employee's annual allotment of vacation or 72 hours for 56 hour shift employees, 48 hours for day shift employees, whichever is greater.

In addition, only during an employee's final twelve months of employment prior to retirement, an employee may opt to receive cash in lieu of up to fifteen (15) days of accrued vacation. For employees working a 56-hour schedule, this shall be equivalent to one-hundred eighty (180) hours of vacation time. For employees working day shift, this shall be equivalent to one-hundred twenty (120) hours of vacation time.

^{*} Two-thirds is determined as follows: Multiply the total number of vacation hours that an employee accrues each year by .66. The product is rounded to the nearest whole hour as follows: .4 of an hour or lower is rounded down. .5 of an hour or higher is rounded up.

Payment for accrued vacation time shall be at the employee's current hourly rate at the time of payout. Payment for unused vacation time shall be made to the employee within one month of the employee's written request. After the vacation cashout, an employee must have an accrued vacation balance of at least seventy-two (72) hours.

Should an employee declare that he/she is in the final twelve months of employment prior to retirement, opt to cash out more than six (6) days of unused vacation time, and then subsequently not retire within twelve months, the employee shall reimburse the City for the amount of the cashout that exceeds six (6) days. In addition, the employee shall reimburse the City for any administrative expenses incurred by the City of the cashout of vacation time exceeding six (6) days, not to exceed one-hundred dollars (\$100).

During the term of the MOU, upon written request of the City, the parties shall re-open negotiations on this Vacation Cashout provision. The scope of such negotiations shall be limited to whether requests for vacation cashouts can continue to be made at any time during the calendar year, or be limited to a certain designated time(s) each year.

ARTICLE 18 Holidays

1. 40-Hour Employees - The following days shall be observed as holidays for employees regularly assigned to work a 40-hour work week:

January 1; the third Monday in January; February 12; the third Monday in February; the last Monday in May; July 4; the first Monday in September; the Monday or Friday closet to November 11; the fourth Thursday in November, the day following the fourth Thursday in November, December 25; and any particular day in a given year so designated by the City Council. If any of the foregoing holidays fall upon a Saturday, the preceding Friday is the holiday in lieu thereof. If any of the foregoing holidays falls upon Sunday, the Monday following is the holiday in lieu thereof.

Employees scheduled to work a 9/80 work schedule shall be allowed a paid leave of absence of 9 hours on 9-hour work days, and 8 hours on 8-hour work days. Employees scheduled to work a 4/10 work schedule shall be allowed a paid leave of absence of 10 hours on 10-hour work days.

Employees shall also be entitled to one 8-hour floating holiday per year which, if not used during the calendar year will be lost. Holidays which fall on a scheduled day off shall be credited at the beginning of each calendar year to the employee for future time off at the rate of 8 hours for each such holiday. Requests for time

off utilizing the floating holiday and holiday credits shall be processed separately from but in the same manner as requests for vacation time off are processed.

- a. Holiday hours are earned at the time the holiday falls on a scheduled day off, but are credited to the employee on January 1 of the calendar year.
- b. Holiday hours may be drawn upon beginning January 1st of the year in which they occur with the prior approval of the employee's supervisor.
- c. Unused holiday hours for a given year may be carried over once to the following year but must be used by December 31st of the following year or lost. The City Manager may approve additional carryover upon written request from the employee, with the approval of the department head.
- d. Employees separating from the City who have taken credited but unearned holiday hours are responsible for reimbursing the City for the time taken at the rate of pay in effect on the date the time was taken. Whenever possible, the City will make the appropriate deduction from the employee's final paycheck.
- 2. 24-Hour Shift Employees The following days shall be observed as holidays for employees regularly assigned to work a 24-hour shift:

January 1, the third Monday in January; February 12, the third Monday in February, the last Monday in May, July 4, the first Monday in September, September 9, November 11, the fourth Thursday and Friday in November, and December 25.

Fire Department shift employees shall be allowed paid leave of absence of 12 hours for each holiday. In the event any Fire Department shift employee's working schedule in the opinion of the head of the department with the approval of the City Manager will not permit such 12-hour leave of absence on the holiday, such person shall receive twelve (12) hours at time and one-half for working on such holiday 12 hours at the straight time rate, and twelve (12) hours holiday pay at straight time.

When shift employees exchange time on a holiday, only the employee who actually works on the holiday shall receive the overtime compensation outlined in the paragraph above.

If any holiday falls on an employee's day off, he/she shall be compensated by leave of absence of twelve (12) hours with pay on another day or he shall receive twelve (12) hours pay at the straight time rate as shall be determined by the head of the department with the approval of the City Manager.

- 3. When off-duty Fire Department shift personnel are called in for the purposes of supplementing the work force (i.e. position coverage overtime) and the shift includes a portion of a holiday, each such employee who works on such holiday shall receive time and one half for hours of actual work on such shift, in addition to twelve hours holiday pay at straight time rate.
- 4. The City agrees to work with PFMA to develop a matrix of examples of current holiday pay practices to be appended to the MOU as an exhibit for clarification of the holiday pay provision. Nothing herein is intended to take away holiday pay hours currently allowed under the existing MOU and practice of the City.

ARTICLE 19 Leaves of Absence

A. Sick Leave

The Sick Leave provision may apply under the following:

- Personal illness or injury to the employee.
- Attendance to an immediate member of the family who is seriously ill and requires the employee's presence.

1. Definition

Personal illness shall be defined as the necessary absence from duty of an employee because of illness or injury. Absence authorized for emergency medical or dental examinations shall also be chargeable to personal illness. Absence for non-emergency medical or dental examinations shall not be chargeable to personal illness unless authorized in advance.

2. Procedure for Application

- a. Every employee who is unable to report to work at their usual time shall either call, or have someone call, the supervisor preceding the scheduled time to report for work to explain the absence.
- b. The department head shall have the authority to approve an application for payment of wages during absence for all employees, and may require proper verification of illness.
- c. Employees requesting payment of wages for more than 48 hours or longer shall secure and have "application for payment of wages during absence" signed by their personal physician, osteopath, chiropractor, or Christian Science practitioner attending the

- employee, and present such application to the Human Resources Department before returning to work.
- d. An eligible employee, who, while on vacation, has suffered a serious disability in excess of three days due to injury or illness requiring professional medical treatment, and who has been confined to bed or seriously restricted in their mobility by the attending physician, may request, subject to departmental approval and proper verification, that any available sick leave credit be used in substitution for scheduled vacation. In order to receive this benefit, the employee shall:
 - i. Notify the department head immediately of any serious disability or confinement and not wait to return to duty.
 - ii. The department head shall make a preliminary determination or investigation based on available information.
 - iii. If the case seems to deserve approval, the department head shall ask the employee for full written information and confirmation and send an "application for payment of wages during absence" form, so the necessary medical report and physician's signature may be obtained before the final decision is made. In lieu of the doctor's signature on the "application for payment of wages during absence," a statement from the doctor on letterhead as to the time, treatment, and extent of disability may be used and attached to the above mentioned form upon return.
 - iv. If the department head approves and endorses the request, all appropriate information with the form, "application for payment of wages during the absence" shall be submitted to the Finance Department.

3. Sick Leave Allowance Provisions

a. From the date of hire and on January 1 of each succeeding calendar year, eighty (80) paid sick leave hours (120 paid sick leave hours for shift employees) shall be made available to every regular full-time employee for absence due to illness or injury not arising out of or during the course and scope of employment. Part-time employees regularly scheduled to work 20 hours or more per week shall be provided one-half the share of sick leave provided to full-time employees.

- b. In the event an employee does not use the maximum days allowed during a calendar year, the unused portion shall be credited to the employee for future use. Such accumulation shall not exceed 120 8-hour or 12-hour days.
- c. On January 1 of each year, the sick leave accumulated from the previous years, plus the current year's sick leave allowance, based upon the above, shall be credited to the employee.
- d. Persons employed on January 1, 1978, were entitled to reserve sick leave under a previous sick leave plan. Such reserve sick leave, as had been calculated and credited to said employee, shall be used only in increments of 10 days or more, and satisfactory evidence of the illness or injury must be presented before those benefits shall apply. The employee will be responsible for designating the use of this reserve.

B. Workers' Compensation Leave

Job-Related Injury or Illness—Any employee incapacitated by reason of an injury or illness arising out of or in the course of employment shall receive, in lieu of any other compensation provided by this Memorandum, a sum which when added to the amount of temporary disability compensation, if any, under the Workers' Compensation Laws of the State of California, will result in payment to the employee a sum equal to his/her regular compensation at the time of the injury. Such payment shall commence with the first day of the approved absence and end with the termination of the temporary disability, or the termination of the approved absence, or the expiration of twelve months, whichever occurs first.

Where the approved absence is of less than twelve months' duration, and illness thereafter recurs or further treatment is necessitated in connection with the same injury or illness, the City Manager may grant additional leave of absence, subject to the limitations provided in the foregoing paragraph, but not to exceed a cumulative total of twelve months.

Provided, however, that this subsection shall not apply to any claim denied by the Workers' Compensation Appeals Board.

C. Military Leave

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

D. Bereavement

Employees absent on leave due to bereavement at the time of death of a relative (spouse, child, parent, brother, sister or parent of spouse, or registered domestic partner as defined by State law) may receive regular compensation for a maximum of three days. Three working days may be defined as days in which the aggregate time off does not exceed 48 hours for shift employees, 27 hours for employees assigned a 9/80 work schedule, or 30 hours for employees assigned a 4/10 work schedule. Three days bereavement are provided separate from the sick leave provision. Under special circumstances, the department head may authorize bereavement time to an employee upon the death of an individual who is not a relative as herein defined.

E. Maternity Leave/Reduced Work Week Schedule with Benefits

For regular full time employees, the City will provide an unpaid maternity leave of absence for up to six months, or a combination of unpaid leave for a maximum of six months combined with a reduced work week schedule of at least 20 hours or more per week for 40 hour employees (28 hours on average per week for shift employees). The total combination of unpaid leave plus the reduced work week schedule shall not exceed a total of nine months. In addition, while the employee under this policy is on an unpaid leave of absence or reduced work week schedule, the City will continue providing health and dental contributions to the employee as if the employee is on a regular full time paid status.

F. Personal Leave

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

G. Jury Duty Leave

When a regular employee is called to serve on jury duty by any court, tribunal or commission authorized to compel the attendance of such person for jury duty, the employee shall be paid his/her regular compensation and benefits during the time of service required. The employee shall pay over to the City any and all fees received for such service, except those fees allowed for mileage.

ARTICLE 20 Employee Benefits

A. Life Insurance

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

B. Long Term Disability

The City will define and provide basic long-term disability (LTD) coverage for employees. The City will make available supplemental LTD coverage, which employees may purchase at their expense.

C. Dental Care Program

The City will contribute 100% of the employee's premium plus up to \$57.16 per month for dependent premium, and up to \$69.15 for two or more dependents, for employees who regularly work thirty (30) or more hours per week, (or the equivalent number of hours for shift employees) towards a dental care program as provided by the City of Pasadena.

Effective during the term of this agreement, if the City's contribution for dependent coverage for PFFA, Local 809 increase, equivalent increases shall be provided to bargaining unit employees. Application of this provision shall not result in a decrease in the contributions listed above.

D. Health Insurance/Employee Option Benefit Fund

The City will contribute Sixteen Dollars (\$16.00) per month towards the premium for health insurance provided under the Public Employees Retirement System Medical Program (PERS Medical Program) to eligible employees who enroll in the PERS Medical Program.

In addition to the Sixteen Dollars (\$16.00) per month health insurance contribution, the City shall contribute to employees who are regularly scheduled to work thirty (30) hours or more per week (or the equivalent number of hours for shift employees) an additional Eight Hundred Fifty-Two Dollars and Seven Cents (\$852.07) per month towards an Employee Option Benefit Fund, which may be used by the employee at their option to pay on the balance of their health insurance premium or to allocate to the employee's individual deferred compensation account. Except however, that all EOBF amounts allocated to individual deferred compensation accounts will not exceed a dollar maximum of \$852.07 per month.

Effective during the term of this agreement, should the City's contribution for PFFA, Local 809 increase, an equivalent increase shall be provided to bargaining unit employees. Application of this provision shall not result in a decrease in the contributions listed above.

E. Workers' Compensation

Workers' Compensation benefits shall be the responsibility of the City of Pasadena in accordance with the benefit schedule and ratings under California State law and the Charter of the City of Pasadena.

ARTICLE 21 Retirement

A. Retirement

Retirement benefits shall be provided as currently specified under the City of Pasadena's Contract with the Public Employees Retirement System and the Charter of the City of Pasadena to include the Third Level 1959 Survivor Benefits.

In accordance with Government Code Section 20636 (C) (4), the City has enacted a resolution that designates the 9% Employer Paid Member Contribution as compensation earnable and report it as such for all bargaining unit members.

Effective December 29, 2003, the City's contract with PERS has been amended to implement the 3% at 55 retirement plan.

The following optional retirement benefits have been implemented and remain in effect:

- Single Highest Year
- Credit for Unused Sick Leave
- Post Retirement Survivors Allowance
- Fourth Level 1959 Survivors Benefit
- Pre-Retirement Optional Settlement 2 Death Benefit
- Military Service Buy Back for employees entering service prior to April 30, 1984

B. Retirement Contribution

The City shall contribute nine percent (9%) of the employee's cost towards retirement, for sworn fire managers who are members of the Charter Retirement System or the PERS 3% @ 55 System. All such City contributions made under this section shall be deemed to be member contributions under the Public Employee's Retirement System (PERS), and within the meaning of Article XV, Section 1509.5 of the Pasadena City Charter, (Fire and Police Retirement System), and shall be recoverable by the member as such.

ARTICLE 14 Retiree Health

Effective March 1, 2004, an amount equal to three percent (3%) in base pay shall be afforded to all bargaining unit classifications, for designation to a post retirement medical fund.

The Association shall be solely responsible for maintaining and allocating funds from the post-retirement medical fund. The Association shall indemnify and hold harmless the City from any of its actions or lack of actions in administering the fund.

If permissible under FPRS and PERS rules, the City shall report these contributions as compensation earned for retirement purposes.

ARTICLE 22 Uniforms

The City will provide uniforms, including the safety shoes, all of which will be replaced by the City as a result of normal wear and tear. In accordance with PERS regulations, the City will report a uniform value of \$300 per year to PERS, as well as \$300 per year to the Fire and Police Retirement System for employees covered under that plan, for compensation purposes for each employee who is provided a City Uniform.

If during the term of this 2005-2010 MOU, PFFA Local 809 negotiates an increase to its reported uniform value, the Association reserves the right to re-open negotiations on this issue, consistent with Section B (1)(J) of the MOU.

ARTICLE 23 Reimbursements

A. Tuition Reimbursement

Regular employees pursuing a Bachelor of Arts/Bachelor of Science degree or higher in Fire Management, Public Administration, or other job-related field at an accredited college or university, shall be eligible for tuition reimbursement of up to seven-hundred fifty dollars (\$750) per calendar year. Upon presentation of receipts and grade cards, employees will be reimbursed for the actual costs of tuition, books, lab fees, or other student expenses.

Eligibility for tuition reimbursement shall be in accordance with Section 4.10 – Tuition Reimbursement of the City of Pasadena's Manual of Personnel Rules, Practices and Procedures.

B. Mileage Reimbursement

The City will provide reimbursement to the employee for use of his/her personal vehicle for authorized work related travel. Such reimbursement shall be equal to

the rate allowed for tax deduction by the federal IRS for unreimbursed employee business expenses for the applicable calendar year.

ARTICLE 24 Personal Development Allowance

Effective July 1, 1998, members of the Unit shall be eligible for a Personal Development Allowance as follows: \$750 per fiscal year for Fire Battalion Chiefs, and \$500 per fiscal year for Fire Captain II's. The Fire Chief may approve eligible expenses which contribute to the personal development of the individual manager and/or enhance knowledge in the field work or profession. Eligible expenses shall include one or more of the following: Membership in the community, civic or professional organization, professional conference or training workshops not budgeted, job related personal expenses related to civic and community activities, including testimonials, education tuition reimbursement for specialized programs or as a supplement to the City's tuition reimbursement program, subscriptions to professional and educational journals and publications not budgeted, membership to health and physical fitness facilities, annual medical examination, and computer or other specialized equipment (for home which is compatible with City equipment). The Personal Development Allowance shall not be accumulated or carried forward beyond the fiscal year.

ARTICLE 25 Transportation Demand Management Program-PRIDEshare II

MODE EMPLOYEE PAYS

Solo Driver Clean Air Trip Reduction/Parking Fee

Automatic payroll deduction
Shift employees will pay one-half
of the solo driver fee

\$35/mo. \$17.50 per payroll period. (\$17.50 per month or \$8.75 per pay period.)

Non-Solo Mode Users

Qualifying participants in this program receive:

A waiver of the Clean Air/Parking Fee Up to two work days per week of free parking. A Guaranteed Ride Home Program in case of emergency or unexpected supervisor approved overtime.

1. 2 OR MORE PERSON CARPOOL

YOU RECEIVE

3 Workdays Per Week Minimum

A. Personal Vehicle Use

Preferential Parking Where Available Ridematching

Free Parking Free Parking

2. BICYCLIST

3 Workdays Per Week Minimum Showers & Lockers Where Available Bicycle Parking Facilities

Free Free

3. TRANSIT

3 Workdays Per Week Minimum Bus Pass Subsidy (per month) Transit Route Planning

\$35.00 (Max.) Free

4. VANPOOLER

3 Workdays Per Week Minimum Preferential Parking Ride Matching Assistance

Free Free

5. WALKER

3 Workdays Per Week Minimum

ARTICLE 26 Payroll

A. Acting Assignments

Acting assignments shall be in conformance with Policy 3.10 of the City of Pasadena Manual of Personnel Rules, Practices and Procedures. Employees in a long term acting assignment shall receive at least a 5% increase to their usual rate of pay and shall receive any regular pay increases to the position the employee holds. Employees in acting assignments shall not be entitled to any other premium or incentive pay for specialized assignments or duties unless the employee continues to actually perform such specialized duties.

C. Promotion

Employees should receive a minimum of a 5% salary increase upon promotion. An employee promoting into the classification of Battalion Chief (EMS Coordinator) who possesses and maintains paramedic certification and works as a fully functional paramedic shall retain paramedic premium pay.

ARTICLE 27 Payroll Deductions and Dues

The City will deduct the regular dues of employee members of the PFMA. Dues deduction shall be made only on the written authorization of the employee and shall continue in effect unless canceled by the employee upon voluntary written notice to the Human Resources Department.

ARTICLE 28 Discipline

The City shall have the right to discipline and discharge employees for cause. Disciplinary actions will be consistently applied, taking into consideration the nature of the cause, the work history of the employee, and past disciplinary actions taken for similar cause. Work assignment will not be used as a disciplinary action.

Disciplinary procedures will be in accordance with State law and the employee and the PFMA will be notified of the proposed action in writing and informed of his/her rights to representation and grievance. The employee may request that the PFMA not be so notified.

ARTICLE 29 Probation

An employee who is promoted from a classification to another classification with a higher salary schedule shall serve a promotional probation period of twelve (12) months.

ARTICLE 30 Rules

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

ARTICLE 31 Grievance

A. Definition

- 1. <u>Grievance</u>: a dispute between an employee or employees and the employer regarding an interpretation or application of the rules and regulations governing conditions of employment.
- 2. <u>Employee</u>: within the context of this policy statement, refers to a full-time, regular employee who has initiated a grievance.

B. Guidelines

1. An employee may file a grievance without jeopardizing the employee's employment. A grievance shall not be filed to establish new rules and regulations, change prevailing ordinances or resolutions, nor circumvent existing avenues of relief where appeal procedures have been prescribed.

- 2. An employee may select one of the following methods of representation. To most effectively utilize the grievance procedure, the method selected should generally be used throughout the processing of the grievance. The employee may:
 - a. Be self represented
 - b. Be represented by another person
- 3. Once a grievance is presented and formal notification has been given to the department that the employee will be represented by another person in the grievance proceedings, then that representative shall be governed by this policy.

The represented employee shall be entitled to:

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

C. Grievance Procedure

1. Step 1 (Supervisor)

The employee shall orally present the grievance to the immediate supervisor within ten (10) working days following the event or events upon which the grievance is based. If the employee elects to be represented (per "Guidelines, Para.2") upon notification to the immediate supervisor, the employee may be assisted by a representative in presenting the grievance.

The immediate supervisor shall make whatever investigation deemed necessary and may arrange a meeting with the employee to discuss the grievance and, if possible, resolve it. In any event, the supervisor shall give an answer to the employee within ten (10) working days following the oral presentation of the grievance. If the employee has requested to be represented, the representative shall be given the opportunity to attend the meeting, and shall be informed of the immediate supervisor's decision on the grievance.

If the employee is not satisfied with the decision of the immediate supervisor, upon indicating the specific areas of disagreement, appeal to Step 2 can be made.

2. Step 2 (Department Head/Human Resources)

If the employee desires to appeal the grievance to Step 2, there shall be submitted in writing the specific grievance and areas of disagreement on forms provided, to the department head, within five (5) working days following receipt of the immediate supervisor's decision at Step 1.

The written grievance must contain a complete statement of the complaint, the facts upon which it is based, the employee's reasons for the appeal, and the remedy being requested. The grievance form shall be signed and dated by the employee.

The department head and the Director of Human Resources, or their designated representatives, shall attempt to resolve the grievance and shall arrange a meeting with the employee and appropriate representative. A decision, in writing, shall be given to the employee within ten (10) working days following the receipt of the written appeal or conclusion of the appeal meeting, whichever is later.

If the employee is not satisfied with the Step 2 decision, upon indicating areas of specific disagreement, appeal of the grievance to Step 3 for resolution may be made.

3. Step 3 (Advisory Arbitration)

If the grievance has been properly processed and is not satisfactorily resolved at Step 2, the employee may appeal the grievance to Step 3. The appeal shall be in writing, shall be signed by the employee, or by the appropriate representative of the City, and shall be submitted to the other party within fourteen (14) calendar days of the written decision at Step 2.

If the employee is being represented, the employee may be assisted by a representative in the appeal.

Within five (5) working days after receiving the notice to appeal a grievance to Step 3, a meeting shall be arranged between the employee and the Director of Human Resources, or their representatives to prepare a joint written statement of issue, or issues, to be presented at arbitration. In the event the parties are unable to agree upon the issue, or issues, to be presented each party will prepare its statements of the issue, or issues, and jointly submit their statements to the arbitrator. The arbitrator shall, at the beginning of the hearing referred to below, state his/her opinion as to what the issue, or issues are.

Within five (5) calendar days following the meeting to prepare the issue(s) statement, the parties shall request the California State Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Attached to such request shall be the joint statement of issue, or issues to be presented, or separate statements, if applicable.

Within five (5) calendar days following receipt of the list of arbitrators, the parties shall meet to select the arbitrator.

The arbitrator shall hold a hearing on the issue, or issues submitted. The arbitrator shall not hear witnesses without the presence of both parties. He or she shall render a written opinion within thirty (30) days following the closing of the hearing unless the period has been mutually extended in writing. The opinion, which shall be bound by the present Memorandum shall be advisory only, shall not be binding on either party, and shall be limited to the issue, or issues, presented to the arbitrator. The opinion shall be sent to the Municipal Employee Relations Officer, with a copy to the employee.

Within fifteen (15) calendar days following receipt of the advisory opinion, the Municipal Employee Relations Officer shall advise the employee by letter whether or not he or she intends to take any further action regarding the issue, or issues, referred to in the arbitrator's advisory opinion. A copy of the Municipal Employee Relations Officer's letter will be sent to the employee and union organization involved, if any.

The City and Association shall contribute equally to the cost of facilities, fees and expenses of the arbitrator, including transcripts required which shall be determined in advance of the hearing. Each party shall bear its own witness and attorney fees.

There shall be no arbitration of oral reprimands. The decision at Step II shall be the final administrative step.

ARTICLE 32 Layoff

A. The City Manager shall have the authority to accomplish reduction in force.

B. PROCEDURE

- 1. The City will make every effort to accommodate those employees who may be subject to layoff through the process of normal attrition.
- 2. Within the bargaining unit, individuals will be laid off based upon seniority.

<u>Seniority</u> is defined, for purpose of layoff, by the employee's continuous service employment date within a Pasadena Fire Department's management classification. If several employees have the same seniority in the management classification, seniority shall be determined by the employee's continuous service employment date with the City of Pasadena.

- 3. The layoff priority employment categories, shall be as follows:
 - a. Temporary or provisional employees
 - b. Probationary, regular, part-time employees
 - c. Probationary, regular, full-time employees
 - d. Permanent, regular, part-time employees
 - e. Permanent, regular, full-time employees (for purposes of this policy, employees who work 30 hours per week or more based on a 40-hour work schedule (or the equivalent number of hours for shift employees) are defined as "full-time").
- C. A management employee to be laid off shall be given written notice thereof at least two weeks before the effective date of the layoff. The department head may relieve the employee of further duties at any time after the notice is given. However, the employee shall receive full pay for any remaining portion of the two week notification period.
- D. Employees who may be laid off shall be certified to available vacancies for which they qualify.
- E. At the time of layoff, management employees may request to be placed on a Reemployment List for twenty-four (24) months provided their performance

evaluation is rated "Above Average" or better, and shall be certified to vacant City positions within their job classification or classification series, if qualified. If the vacant position occurs in the department from which the employee was laid-off, reappointment shall be made.

- F. Employees who are laid off may remain in a lay-off status for a maximum of twenty-four (24) months and the following provisions shall apply:
 - 1. Employees will not continue to accumulate any longevity-based benefit during the period that they are laid off, but will retain any benefits accumulated to the date of layoff.
 - 2. Employee retirement and insurance benefits cease at the time of, and will not be paid during a layoff period.
 - 3. If employees are reinstated all rights and benefits will be restored as a regular employee from the date of first appointment within the period of the most recent continuous service, with an appropriate adjustment for the time that was not actually worked on the job.
 - 4. Laid-off employees will have the option of receiving payment for any accumulated vacation at any time during the layoff period.
 - 5. Laid-off employees who are not recalled within the 24-month period will be completely separated from the City service and will automatically receive payment for any accumulated vacation which has not been previously claimed.
- G. At the discretion of the City Manager, an administrative assignment may be made, in accordance with Policy 3.13 of the City of Pasadena Manual of Personnel Rules, Practices and Procedures.
- H. Prior to the effective date of any layoffs, the City shall give notice to the Association and shall meet and confer on the impact of the layoffs. These negotiations shall include discussion of appropriate severance packages.
- I. Employees who are laid off shall receive a severance pay benefit based on the following terms and conditions:
 - a. Severance pay shall be at the rate of 70 percent of the employee's current monthly base salary. The employee will be entitled to one monthly payment for each year of continuous, regular employment, to a maximum of six payments. Severance pay will be reduced by the amount of unemployment compensation, if any, received by the employee so that the total payment does not exceed 70 percent of monthly salary.

- b. Severance payments shall be prepared with the regular payroll and paid at the end of each month that the employee has not been recalled for the duration of his/her benefit.
- c. Employee must have completed at least one year of service before being entitled to this severance pay.

If the layoff is for less than one month, the employee shall receive a benefit proportional to the length of time of the layoff.

ARTICLE 33 Duty Hours

- A. Duty schedules are defined as an employee's regularly assigned hours of the day and days per week.
- B. Shift One shift is 24 consecutive hours over a two-day period.
- C. Day A day is defined as one half of a 24 hour shift.
- D. Hourly rates are based on a duty week of 56 average hours.
- E. The starting time for 24-hour shifts is 7:00 am. Should the City wish to change the starting and stopping times for scheduled work shifts, it shall first give the Association notice and the opportunity to meet and confer on the work hour change.

ARTICLE 34 Alcohol and Substance Abuse Prevention

It is the responsibility of the City, the PEMA, and employees to maintain a safe, healthy and productive work environment. Therefore, employees shall not report for work under the influence of drugs, or alcohol, nor use or possess alcohol or illegal substances while at work, nor have their ability at work impaired as the result of the use of drugs or alcohol, as such conduct is likely to result in reduced productivity, an unsafe work environment, poor morale, and a danger and liability to employees and the City.

"Under the influence of drugs or alcohol" means the use of alcohol or any illegal substance, or misuse of a prescribed drug, in a manner and to a degree that causes impairment in the employee's work performance or the ability to use City property or City equipment safely.

It is the responsibility of the employee to notify their supervisor before beginning work when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment.

The parties agree to take all necessary steps to fulfill these responsibilities and minimize potential dangers.

The City of Pasadena has established an Employee Assistance Program to assist those employees who voluntarily seek help for alcohol or drug problems. Employees who have job performance problems related to alcohol or drug abuse may also be referred to the Employee Assistance Program by the department administration.

The parties to this MOU hereby adopt and support the Drug and Alcohol Prevention Policy attached to this MOU as Exhibit II.

ARTICLE 35 Gainsharing

CONCEPT: Employees represented by PFMA have an opportunity to share in the City savings resulting from their efforts to reduce costs and improve productivity in the areas of (1) sick leave reduction; (2) reduction of new claims for job-related illness or injury; and (3) reduction of vehicular accidents causing damage.

Division	Number of Employees	Avg. # of Sick Hours Used	Avg. # of Lost- Time Workers'	Avg. # of Vehicular
			Comp. Claims	Accidents
PFMA	9	80	5	1

Pasadena Firefighters Management Association Gainsharing Plan

Employees will receive a portion of the savings generated based upon the following table:

Annual Savings	Percent of Savings to Employees
0 - \$5,000	20%
\$5,001 - Above*	40%

^{*}The maximum amount an employee can receive is limited to \$2,500 per year.

The following example shows the potential savings to the City and to the employees. This is based on the assumption that the goals outlined in the gainsharing program are met. If the goals were met, the total cost savings would be \$90,039. Of this portion, the employees would receive 20% of \$5,000, or \$1,000. In addition, they would receive 40% of \$85,038, or \$34,015. The total gainsharing dollars that would be returned to the employees is \$35,015, which divided among 15 employees would be a \$3779. Since the maximum amount an employee can receive is limited to \$2,500, there would be a \$2,500 Gainshare bonus for each employee.

Goal 1: Reduce the Hours of Sick Leave Used

Over the past five years (Fiscal Years 2000 - 2004), employees in the Pasadena Firefighters Management Association have used an average of 80 hours per year in sick leave. Goal 1 is to reduce the number of sick-leave hours used, and to not exceed an average of 40 hours per employee over a 12-month period. If this is accomplished, the cost savings is estimated at

\$13,349, which is calculated as follows: 40 hours per employee x 9 employees = 360 Hours x average hourly rate of \$37.08 = \$13,349.

Goal 2: Reduce New Claims for Job Related Injury or Illness (Workers' Compensation)

Over the past four years (Fiscal Years 2000 - 2004), employees in the Pasadena Firefighters Management Association have averaged 5 lost-time injury claims per year. The average cost of a lost-time claim is \$50,502, not including supplemental pay to the employee while they are off work.

Goal 2 is to reduce the number of claims to 0 over a period of 12 months. The cost savings of reducing new lost-time injury claims to 0 in a 12-month period is \$252,510. This is calculated as follows:

Past 5 Years Experience

2 claims x \$50,502 per claim = \$101,004 cost/year.

Goal: No claims in 12 Months

Savings = \$101,004 Total

Goal 3: Reduce Vehicular Accidents Causing Damage

Over the past five years (Fiscal Years 2000 - 2004), there was an average of 1 vehicle accident that resulted in damage, either to our own vehicles, or damage to a third party (automobile liability claims). The average cost of each vehicular accident was \$1,250.

Goal 3 is to reduce the total number of vehicular accidents (damage and liability claims), to not exceed 0 accidents in a 12-month period. Achieving this goal will result in a cost savings of \$1,250. This savings is calculated as follows:

Past 5 Years Experience

1 Accident x \$1,250 = \$1,250/year

Goal: No More Than 0 Accidents in 12 Months

0 Accidents $x $1,250 = $1,250 \cos t/year$

Savings = \$1,250 Total

IF ALL THREE GOALS ARE MET, THE SAVINGS ARE AS FOLLOWS:

GOAL	TOTAL SAVINGS	GAINSHARE AMOUNT TO
		EMPLOYEES

Reduce Sick Leave to no	\$13,349	
more than an average of 40		
hours per employee in a 12-		
month period		
Reduce new lost-time injury	\$101,004	
claims to 0 in a 12-month		
period		
Limit new claims for	\$1,250	
Vehicular Accidents to no		
more than 2 in a 12-month		
period		
Totals	\$115,603	\$1,000 (20% x \$5,000)
		\$34,015 (40% x \$85,038)
		\$35,015 Gainshare Total
		\$3779 total per employee before applying maximum limit of \$2,500.
		\$2,500 Amount each employee would receive.
		* Bonus is calculated as follows: \$35,015 / 9 employees; \$2,500 maximum limit.

EXHIBIT I

Classification	Effective April 2, 2007
Fire Captain II – 40 Hours	\$97,921.20 - \$122,401.34
Fire Battalion Chief – 40 Hours	\$102,360.96 - \$133,044.91
Fire Captain II – 56 Hours	\$97,876.11 - \$122,345.64
Fire Battalion Chief – 56 Hours	\$102,335.54 - \$132.984.34

^{*} Please note that the above control rates may change depending upon differential increases resulting from increases to the PFFA, Local 809, salary rates.

Conversion to hourly rate is as follows: 40 hour employees - Divide by 2080 hours per year

56 hour employees - Divide by 2912 hours per year

Exhibit II

City of Pasadena and Pasadena Firefighters Management Association Drug and Alcohol Policy

Article 1

Purpose

It is the purpose of this policy to maintain a drug free work environment, to eliminate substance abuse and its effects in the workplace and to ensure that all employees are able to perform their duties safely and efficiently in the interests of the public, the City, their fellow employees and their own interests as well.

Policy

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

Application

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

Article 2

Notice and Education

All bargaining unit employees shall be provided with a copy of this agreement. Newly - hired employees represented by this association shall be given a copy of this agreement upon hire. Supervisors shall be familiar with the provisions of the agreement and shall be

available to respond to questions. The City shall periodically disseminate educational materials regarding drug and alcohol use and abuse to all management as well as represented employees.

All employees including management and supervisory personnel shall be trained, with periodic updating, to correctly identify symptoms of being under the influence of drugs and alcohol. Training shall include observation, documentation and reporting procedures and methods to identify workplace substance abuse. Any supervisor who has not received appropriate training shall be deemed incapable of having "reasonable suspicion" under this agreement unless such reasonable suspicion is consistent with the criteria outlined in Article 4 - C.

Article 3

Prohibited Conduct and Employee Responsibility

- 1. No employee shall possess or use any illegal substance or drugs while on duty.
- 2. While on duty, no employee shall bring onto City property or have in his or her possession or ingest any alcoholic beverage, controlled substance or drug, illicit or legal, unless such employee has lawfully been prescribed the controlled substance by his or her physician.
- 3. Employees shall not present themselves for duty while under the influence of drugs or alcohol.
- 4. Determination of "being under the influence of' must be made on a case by case basis as described in Article 4 C.
- 5. The employee shall notify their supervisor of the effects or possible effects of medications or drugs, prescription, which may interfere with the safe and effective performance of equipment. The employee is not required to disclose the name of the drug or the reason for which the drug was prescribed.
- 6. Employees must provide, within a reasonable period of time, bona fide verification of a valid prescription for any potentially impairing drug or medication identified when a drug screen and confirming (Gas Chromatography-Mass Spectrometry) test is positive.

Article 4

Reasonable Suspicion Drug Testing

A. The City may require an employee to submit to a medical evaluation or a drug screen only where the employer has a reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty, and where the specific procedures provided below are followed.

- B. Random, mass or individually scheduled testing of employees for drug or alcohol, which is not based on reasonable suspicion and not performed pursuant to the specific procedures described below, is prohibited by this article of the collective bargaining agreement.
- C. Reports of drug use or aberrant behavior which are not confirmed by specific observations as provided below shall not constitute reasonable suspicion.

"Reasonable suspicion" exists only when all of the following elements are present:

- 1. An employee observes another employee exhibiting aberrant or bizarre behavior, inability to do their job, using an illegal substance at the worksite, possessing drugs or alcohol at the worksite or other signs or symptoms of being under the influence;
- 2. The employee's behavior or symptoms are observed and confirmed by a supervisor;
- 3. The symptoms and/or behavior are of the type recognized and accepted by medical science as being under the influence caused by alcohol or controlled substances; and
- 4. In determining if reasonable suspicion exists the supervisor shall consider other factors (such as, but not limited to, fatigue, lack of sleep, side effects of prescription and/or over the counter medications, reactions to noxious fumes or smoke, etc.) which may explain the behavior of the employee.
- D. The involvement of an employee in an accident or on-the-job injury shall not, standing alone, constitute the reasonable suspicion required by this agreement.
- E. Each supervisor, employee or other witness who observes on-duty conduct tending to establish reasonable suspicion will document in writing the specific symptoms or behaviors observed at the time of the observation. The supervisor must record the date, time and location of their observations.
- F. When a bargaining unit employee has reasonable suspicion that a management or other non-bargaining unit employee may be under the influence or impaired while on duty, the bargaining unit employee or employees may report that suspicion to the next level supervisor (up to and including the Department Head) who is then under an obligation to investigate.

Article 5

Pre-Testing Procedure

- A. No drug testing or medical evaluation of the employee may be ordered without the written consent of the Fire Chief or designee. When a manager has reasonable suspicion that an employee is under the influence or impaired by alcohol or a controlled substance, he or she shall notify the Fire Chief or designee and provide the information of reasonable suspicion required by Article 4. Upon such notification the Chief or designee shall, if possible, observe the employee exhibiting the suspicion conduct and/ or symptoms and shall interview the employee. The suspected employee shall have the right to PFMA representation during such interview, if he or she requests, and the employee shall be advised of that right by the Chief or his/her designee prior to the interview. The employee and, if applicable, the PFMA representative shall upon request be given copies of all available documentation of reasonable suspicion and have sufficient time to review these documents before the interview commences. During the interview the Chief or designee shall give the employee the opportunity to explain his or her condition, and the Chief or designee shall keep a record of the interview.
- B. If, after observing and conversing with the employee, reviewing the reporting manager's documentation and fairly considering the employee's explanation, the Chief or designee believes reasonable suspicion exists that the employee is under the influence of alcohol or controlled substance, he/she may order the employee to undergo drug screening pursuant to the following procedures. Such order shall be in writing, signed by the Chief or designee and provided upon request to the employee and/or the PFMA.
- C. If reasonable suspicion exists, the employee shall have two options if ordered to submit to a drug test:
 - 1. Submit to urine/blood testing for the presence of a controlled substance and release the results to the Director of Human Resources and the Department Head; or
 - 2. Decline testing.
- D. If the drug test results for a controlled substance are positive, the employee will be subject to disciplinary action which may result in discharge.
- E. After careful review of the employee's record, with the approval of the Fire Chief, the employee may elect to enter a drug rehabilitation program. If the employee fails to complete the rehabilitation program the City may initiate disciplinary action up to and including discharge. If returned to his or her former position and will be subject to random testing.
- F. If the employee meets the criteria for reasonable suspicion and refuses to comply with an appropriate order to submit to drug testing the employee must be advised that such refusal constitutes insubordination and that serious disciplinary action up to and including discharge may result.

Article 6

- A. Employees ordered to submit to a medical evaluation or drug test shall be referred to a designated medical facility. The employee shall be driven to the clinic by a person designated by the City and may be accompanied by the PFMA or other representative if the employee chooses.
- B. The employee shall produce and submit a urine sample or blood specimen or other appropriate specimen for analysis.
- C. The employee can be required to submit urine samples in accordance with appropriate chain of custody procedures. The employee shall, upon request provide a blood sample or other specimen in lieu of a urine sample.
- D. The employee may request that the PFMA representative be allowed to accompany the employee to the testing site and observe the process consistent with the chain of custody procedures.
- E. The collection of the specimen shall be in accordance with standard protocol procedures. All specimen containers shall be sealed with tamper-proof evidence tape and labeled with the employee's identification number in the presence of the employee and the PEMA representative, if applicable.
- F. All the testing shall be done by a laboratory certified by the National Institute on Drug Abuse (NIDA) and licensed by the State of California. Such laboratory shall perform such quality assurance measures as will ensure the accuracy of the results it reports.
- G. All samples shall be tested using a screening test such as Enzymes Multiplied Immuno Technology, Thin Layer Chromatography, High Pressure Liquid Chromatography or Antibody/Immunological testing. Following the screening test all positive samples must be subjected to a confirming test using Gas Chromatography-Mass Spectrometry (GC-MS). Both City samples must be determined to be "positive" on the screening and confirmation tests to be deemed positive.
- H. The standard for a finding of "positive" shall be in accordance with the standards established by the U.S. Department of Health and Human Services.
- I. Using scientifically accepted protocol a sample of the urine shall be set aside for independent testing at the employee's request for 180 days.

Article 7

Interpreting Test Results

- A. The results of the urine or blood test shall be reported to the Fire Chief/ Personnel Director.
- B. If the results are negative, the physician or health care practitioner shall immediately report that fact to the Fire Chief/Personnel Director. The Fire Chief/Personnel Director shall notify the affected employee. When results are negative the employee shall be entirely vindicated of any wrongdoing related to substance abuse.
- C. If the sample is positive, it may be concluded that the employee was recently exposed to the drug. Neither the City nor the physician may conclude that the individual was under the influence on the job on the basis of the test results alone. The City may consider the positive result together with the symptoms observed pursuant to Article 6 above, and form a judgment as to whether or not the employee was under the influence of alcohol or a controlled substance at the time of the test. Such conclusions shall be reported, in writing with the reason therefore, to the employee.
- D. The City shall, if requested, present the employee with a copy of all of the laboratory reports including, but not limited to all test results, computer printouts, interpretations, graphs, reports and chain of custody forms and a copy of all materials upon which a disciplinary action is based. If the PFMA and/or the employee elects not to have a split sample test within 120 hours the City can proceed with appropriate action.
- E. After considering the results of the split test performed for the employee, if presented, the City may impose discipline on the employee in accordance with Article 8, below.
- F. The City may discipline employees in accordance with the Discipline section of the MOU.
- G. Except as provided in Item D (above), the test results and other related lab test reports if any shall be transmitted directly to the Fire Chief/Director of Personnel and shall not appear in an employee's general personnel folder. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Fire Chief/Director of Personnel. The reports or tests results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in formal dispute between the employer and employee; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by

medical personnel for diagnosis or treatment of the patient who is unable to authorize disclosure.

Article 8

Voluntary Treatment or Rehabilitation

- A. Employees on their own volition may seek voluntary assistance for alcohol or substance abuse problems without prejudice. Voluntary assistance does not include situations where the substance abuse problem has been discovered by the City. An employee who seeks voluntary assistance shall not be disciplined or illegally discriminated against for seeking such assistance. Requests for such assistance shall remain confidential and shall not revealed to other employees or management personnel without the employee's consent.
- B. Treatment in such programs may be covered by the employee or by the group medical plan.
- C. Any drug or alcohol testing performed pursuant to a voluntary treatment or rehabilitation program shall remain confidential.

Article 9

Miscellaneous Provisions

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

Article 10

Employee Assistance Program

The City and Association encourage the voluntary utilization of Employee Assistance Program (EAP). All EAP contacts are held in strict confidence by the EAP unless the employee requests, through specific written release of information that the Human Resources Director, supervisor, bargaining unit or other parties to be notified.

The employee's compliance with the EAP program is voluntary. Absent just cause, the employee's job security and/or promotional opportunities will not be jeopardized by voluntary participation in the EAP or any other treatment service. Use of the program does not represent absolution for unsatisfactory job performance or conduct.

Sick leave can be made utilized for self referral appointments during regular work hours if the employee is unable to schedule them during off duty hours. Any earned leave time may be utilized for EAP participation. If any employee requires additional leave time he/she may request a medical leave of absence subject to approval by the Fire Chief.

The EAP is available for assessment, diagnosis and referral to treatment. Any employee wishing confidential assistance can call the EAP provider and arrange an appointment with a counselor.

IN WITNESS WHEREOF, the parties hereto have caused their duty authorized representative to execute this Memorandum of Understanding the day, month, and year noted.

PASADENA FIREFIGHTERS
MANAGEMENT ASSOCIATION

Raymond Gordon

President

Kevin Costa

Negotiating Committee

Brett Gibson

Negotiating Committee

CITY OF PASADENA AUTHORIZED MANAGEMENT

Michael J. Beck City Manager

Karyn S. Ezell

Director of Human Resources

Dennis Downs

Fire Chief

Calvin Wells Deputy Fire Chief

Arthur Chavez

Human Resources Manager

Approved as to form:

City Attorney's Office

Date