



DATE: June 20, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Human Resources Department

SUBJECT: **ADOPTION OF A RESOLUTION IMPLEMENTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OCEANSIDE AND THE OCEANSIDE FIRE MANAGEMENT ASSOCIATION (OFMA) EFFECTIVE JULY 1, 2007, THROUGH JUNE 30, 2009**

SYNOPSIS

City management representatives have met and conferred with representatives of the Oceanside Fire Management Association (OFMA). A tentative agreement for a memorandum of understanding was reached on June 5, 2007. OFMA has ratified the agreement. It is requested that the City Council adopt the resolution to implement the proposed agreement.

BACKGROUND

The City's negotiating team and OFMA representatives met and conferred, and on June 5, 2007, a tentative agreement was reached. On June 5, 2007, OFMA ratified the agreement. The proposed agreement is for a term from July 1, 2007, through June 30, 2009, and includes compensation and classification issues, and contract language clarification.

ANALYSIS

The key economic issues in the agreement include increases in compensation, certification pay, and elimination of the "me too" clause for health insurance, wherein if another bargaining unit receives increases in health insurance benefits, OFMA also receives the same increases.

The agreement provides unit employees with a 4 percent base salary increase effective the first full pay period in July 2007; a 5 percent base salary increase effective the first full pay period in December 2007; a 4 percent base salary increase effective the first full

pay period in July 2008 and a 4 percent base salary increase effective the first full pay period in December 2008.

The agreement provides language to include certification pay for California Fire Marshal.

FISCAL IMPACT

The total projected cost to implement the proposed changes from all funds for Fiscal Year 2007/2008 is approximately \$93,542. The projected additional cost for Fiscal Year 2008/2009 is approximately \$90,613. These costs are consistent with the City's adopted and projected budgets.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The resolution has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution implementing the Memorandum of Understanding between the City of Oceanside and the Oceanside Fire Management Association effective July 1, 2007, through June 30, 2009.

PREPARED BY:

SUBMITTED BY:



Brian J. Kammerer
Human Resources Director



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Paul Bussey, Interim Financial Services Director



RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE APPROVING AND IMPLEMENTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OCEANSIDE AND THE OCEANSIDE FIRE MANAGEMENT ASSOCIATION

WHEREAS, representatives of the City Council of the City of Oceanside have met and conferred in good faith pursuant to the Myers-Milias-Brown Act with representatives of the Oceanside Fire Management Association; and

WHEREAS, as a result of the said meet and confer sessions a Tentative Agreement (Agreement) with said Association was signed by the Human Resources Director and representatives of said Association.

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. That the Memorandum of Understanding for the period from July 1, 2007 through June 30, 2009 (attached hereto as Attachment I), between the City of Oceanside and the Oceanside Fire Management Association is hereby approved and adopted. The Memorandum of Understanding hereby approved shall expire at 11:59 p.m., on June 30, 2009, unless extended or modified as set forth in the Memorandum of Understanding.

SECTION 2. That all terms and conditions contained in the Memorandum of Understanding shall prevail over any inconsistent provisions of prior Memoranda of Understanding adopted by the City Council.

SECTION 3. That the City Manager is hereby directed to implement all provisions of said Memorandum of Understanding and to prepare any required amendments to the

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1 Personnel Rules and Regulations of the City of Oceanside and to submit said amendments to
2 this Council for its approval.

3 PASSED AND ADOPTED by the City Council of the City of Oceanside,
4 California, this _____ day of _____, 2007, by the following vote:

5 AYES:

6 NAYS:

7 ABSENT:

8 ABSTAIN:

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MAYOR OF THE CITY OF OCEANSIDE

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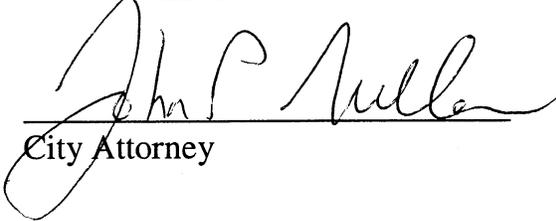
12 ATTEST:

APPROVED AS TO FORM:

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City Clerk



City Attorney

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF OCEANSIDE

AND

**THE OCEANSIDE FIRE MANAGEMENT
ASSOCIATION**



Effective July 1, 2007 – June 30, 2009

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SUMMARY OF CHANGES

1. **TERM** - From July 1, 2007 through June 30, 2009.
2. **COMPENSATION** - Provides employees with a 4% base increase effective the beginning of the first full pay period July 2007; 5% base increase effective the beginning of the first full pay period December 2007; 4% base increase effective the beginning of the first full pay period July 2008; and 4% base increase effective the first full pay period December 2008.
3. **CERTIFICATE PAY** – Provides for inclusion of California State Fire Marshal certificate.
4. **HEALTH INSURANCE** – Eliminates the “me too” clause for the future adjustments to the City’s monthly contribution towards health insurance.
5. **DIVISION CHIEF ASSIGNMENT** – Incorporates Division Chief Assignment pay.
6. **MANAGEMENT RIGHTS** – Updates current language.

MEMORANDUM OF UNDERSTANDING
Between the
CITY OF OCEANSIDE
and the
OCEANSIDE FIRE MANAGEMENT ASSOCIATION

I. GENERAL

A. INTENT AND PURPOSE

It is the intent and purpose of this Memorandum of Understanding to set forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding, but not limited to, matters related to the wages, hours and terms and conditions of employment between employees represented by the Oceanside Fire Management Association and representatives of the City of Oceanside.

The Association agrees to recommend ratification to its membership, and City representatives agree to recommend to the City Council of the City of Oceanside that all terms of the Memorandum be adopted in full by resolution of the City Council. Upon such adoption, all terms and conditions of this Memorandum shall then become effective without further action by either party.

B. UNIT DESCRIPTION

The following classifications are represented by the Association and are members of this unit:

Assistant Fire Chief
Fire Battalion Chief
Fire Marshal

C. MANAGEMENT RIGHTS

Except as limited by law, the City retains all rights not specifically delegated in this agreement and the provisions described herein including, but not limited to, the exclusive right to determine the mission of the Fire Department; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action for proper 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 control and discretion over its organization and the technology of performing its work. The determination of whether or not an emergency exists is solely within the discretion of the City. **The City agrees not to transfer any bargaining unit employee outside of their assigned department without prior notification and**

meet and consult. If a bargaining unit member is transferred outside of their assigned department, the transfer shall not be for a period of time to exceed one year, unless agreed upon by all parties.

D. TIME OFF FOR MEETING AND CONFERRING

The City shall provide reasonable time off without loss of pay or other fringe benefits for up to two (2) duly authorized Association representatives for the purpose of meeting and conferring with City representatives during the term of this Agreement. Any release from duty for such purposes shall have prior approval of the City. No Association representative shall be compensated in any manner for participation in any meet and confer session conducted during such representative's scheduled time off duty.

II. THE SALARY/CLASSIFICATION PLAN

A. SALARY PLAN ADMINISTRATION

1. Non-exempt employees shall normally receive salary compensation on a bi-weekly basis with paychecks being distributed on Friday. Each bi-weekly pay period shall normally extend from 12:01 a.m. on the Sunday before a regular payday through 12:00 a.m. on the Saturday following a regular payday. For non-exempt employees scheduled to work a 9/80 work schedule, each bi-weekly pay period shall normally extend from 12:01 p.m. on the Friday before a normal payday through 12:00 (noon) on the Friday following a normal payday.
2. Exempt employees are "salaried employees" for the purposes of the Fair Labor Standards Act and shall receive salary compensation in twenty-six (26) bi-weekly installments with paychecks being distributed on Friday. Employees shall receive full pay for each pay period without regard to the number of hours actually worked within a pay period subject to rules relating to leave.
3. An employee will not receive any compensation of any type while on a leave of absence without pay or while absent from duty without official leave.
4. If the salary range for a particular job classification is either increased or decreased, then all employees within that classification shall maintain their same salary step level in the adjusted salary range.
5. The City may accelerate salary step advancement for individual employees at its discretion.
6. To maintain any given salary level, an employee must continue to maintain a fully satisfactory level of performance. All employees shall receive at least one (1) annual written department evaluation. Additionally, the City may at any time assess an employee's performance by conducting an evaluation. If any such written departmental performance evaluation does not demonstrate an employee's continued successful performance, that employee may be reduced in salary level or demoted in job classification.

Any such reduction will be reevaluated, at the City's discretion, after a specified period of time not exceeding one (1) year.

Any grievance appeal to any performance-based salary reduction or demotion in job classification shall be subject to the disciplinary appeals process as provided in this Compensation Plan.

7. Evaluation Date Defined: The date on which an employee is to receive a performance evaluation in accordance with the salary step plan and the probationary period. Any change in an employee's job classification or salary step shall be considered as an appointment, which establishes a new Evaluation Date.
 - a. This definition shall be utilized, as appropriate, throughout this Agreement unless specifically provided otherwise.
 - b. The Evaluation Date for any employee not present for duty, nor in a pay status for thirty or more calendar days shall be advanced that number of days.

B. ACTING APPOINTMENTS

The City may, at its discretion, appoint an employee to an acting capacity in a job classification different than that one currently held by the employee. The employee shall receive any salary range increase, which may be attendant to such acting service only after 10 consecutive working days of City-recognized successful service in such acting capacity, except as provided below. Employees appointed to an acting capacity shall only be required to complete the ten (10) consecutive work day requirement, for the same acting capacity, once per calendar year to be eligible to receive the salary range increase. Any salary range increase provided to an employee shall be determined in accordance with the promotion provisions of this Agreement. Service in an acting capacity shall not continue for a period of time exceeding 180 days, nor be considered in establishing an employee's Evaluation Date for the purpose of applying the salary plan, nor be applied toward any subsequent probationary period.

C. H-RATING

Defined: "H-Rating" shall mean that the salary for the affected employee shall remain the same until the salary range for the employee's classification equals or exceeds the "H-Rating" level.

The City may, at its discretion, "H-Rate" any employee in the City Service. Such action shall not take effect until that employee has had 15 calendar days advance notice. Upon request, the City shall meet with an employee concerning the impact of the City's decision to apply a "H-Rate".

D. SALARY SURVEY:

The City and the Association agree to meet no later than 90 days prior to the expiration date of this Memorandum of Understanding to develop a total

compensation salary survey. Components of this survey and agencies to be included in this survey will be determined at that time.

III. COMPENSATION

Compensation as provided hereinabove shall not be granted to any employee for services for which the employee has been otherwise compensated. For purposes of this subsection, compensation for paid time-off shall not be considered as compensation for services rendered.

A. SALARY

Effective beginning the first full pay period in July 2007 all classifications represented by the bargaining unit shall receive a 4% increase on base salary.

Effective beginning the first full pay period in December 2007 all classifications represented by the bargaining unit shall receive a 5% increase on base salary.

Effective beginning the first full pay period in July 2008, all classifications represented by the bargaining unit shall receive a 4% increase on base salary.

Effective beginning the first full pay period in December 2008, all classifications represented by the bargaining unit shall receive a 4% increase on base salary.

Effective the first full pay period in July 2005, employees possessing a California Chief Officer's Certificate will receive \$155.00 per pay period.

Effective the first full pay period in July 2007, employees possessing a California State Fire Marshal's certificate will receive \$155.00 per pay period. Under no circumstances shall any employee be compensated for more than one certification pay per pay period.

Fire Battalion Chiefs assigned as Division Fire Chiefs will receive assignment pay in the amount of 15% above the current rate of Fire Battalion Chiefs (40 hour schedule) per month while serving in the assignment as appointed by the Fire Chief.

The Fire Chief shall have sole discretion to appoint and/or remove employees from this assignment capacity with or without cause, for any reason whatsoever, or for no reason at all.

B. STAFF DIFFERENTIAL PAY

Any employee in the classification of Fire Battalion Chief assigned to fill a staff position (40 hour work week) will be paid a 5% differential. Such 5% differential shall be at the 40 hour per week rate with the following criteria:

- a. The Fire Chief or an Assistant Fire Chief must make the assignment in writing.
- b. The assignment must be longer than three continuous months.
- c. This differential is not to be paid for employees who are temporarily assigned to administrative duties or on light duty or related assignments.
- d. This differential is limited to employees who are assigned to work in Administration, Training or Prevention Divisions.

C. RETIREMENT - PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS)

The City shall continue to provide all "Safety Employees", as defined by PERS, retirement benefits under the "3% at 50 Plan", as established by that System. The City shall continue to provide for the same optional retirement including the following:

- a. 1959 Survivor Benefit pursuant to Section 20070 through 21583 of the California Government Code.
- b. Post Retirement Survivor's Benefits pursuant to Section 21624 through 21626 of the California Government Code.
- c. Military Service Credit pursuant to Section 21024 of the California Government Code.
- d. One Year Final Compensation pursuant to Section 20042 of the California Government Code.
- e. Third Level 1959 Survivor Benefits pursuant to Section 21573 of the California Government Code.
- f. Credit for Unused Sick Leave pursuant to Section 20965 of the California Government Code.

The City agrees to include the Employer Paid Member Contribution (EPMC) as additional compensation pursuant to Section 20692 of the California Government Code.

D. HEALTH BENEFITS

The City shall provide every eligible employee (defined as an employee receiving benefits) with the option of selecting medical and/or dental and/or vision insurance for the employee only or for the employee and all eligible family members. If eligible family members are enrolled in the medical plan and the employee elects dental and/or vision coverage, the dependents must be enrolled in the same plan(s) as elected by the employee.

1. The City agrees to contribute a sum not to exceed \$545.00 per month toward City group insurance benefits for the employee and eligible family members. Each eligible employee may elect to use this contribution toward health coverage by enrolling in the City's group insurance plans. If the employee and his/her spouse are both eligible for coverage as City employees and enroll in the same plans under family coverage, the

monthly City contribution may be combined to offset the costs of the premiums. Under no circumstances shall the City be required to pay any of the unused City contribution to the employee in cash or for benefits other than medical, dental or vision.

2. Each eligible employee may elect to change the selection of optional benefits programs once per year at a time designated by the City and insurance provider.
3. The City shall continue health/dental/vision coverage for employees on approved leaves of absence without pay provided the employee pays the premiums in a timely manner. The City shall provide the employee with a payment schedule. For employees on approved leaves of absence without pay under the Family and Medical Leave Act and/or the California Family Rights Act (CFRA), the City shall continue the monthly insurance contribution as provided by law. Employees who have exceeded FMLA/CFRA protection and are in an unpaid status will be given COBRA rights and will be required to make payments according to state and federal law.
4. The City shall provide every eligible employee with \$30,000 in group life insurance coverage. The City shall contribute, as appropriate, the monthly premiums.
5. The City will provide a voluntary life insurance program option for the employee and dependents. Employees who opt to participate in this program will pay the cost of such insurance purchased under this provision.
6. The City and the Association agree to establish a joint committee to review the feasibility and implementation of a Voluntary Employee Benefit Association (VEBA) or similar plan. Implementation of such a plan will be at no cost to the City, however; it is anticipated that employees will be able to elect to donate accrued sick leave provided such employee has used thirty-two hours or less of sick leave during the calendar year. An employee donating such hours shall be eligible for one half (50%) of the number of hours of sick leave accrued less those hours used for the calendar year period. The employee's accrued sick leave shall be reduced by the number of sick leave hours donated. This voluntary donation shall be in lieu of the sick leave cash out contained in Section IV.C.4.1

E. EXECUTIVE LIFE INSURANCE

The City shall continue to provide all employees with additional life insurance coverage in an amount approximately equal to the employee's annual salary less \$5,000, to a maximum of \$50,000. The premium shall be paid by the City.

F. LONG-TERM DISABILITY INSURANCE

1. The City shall provide long-term disability insurance at the current rates and levels. The current program provides a disability benefit equivalent to $66\frac{2}{3}\%$ of the employee's basic monthly salary up to a maximum benefit of \$6,000.00 per month. Any such disability benefit shall not become payable until the passage of 90 days from the date of disability, or until the use of all the employee's accrued sick leave, whichever is later. Such disability benefits shall be reduced by any disability retirement benefits, workers' compensation benefits, benefits equivalent to those provided in Labor Code Section 4850 or like benefits which may be imposed by state or federal mandate in the future. In no event shall the total benefits provided to any employee by this Subsection exceed $66\frac{2}{3}\%$ of the employee's basic monthly salary up to the maximum benefit.

As an alternative, employees are eligible, at their option to participate in the California Association of Professional Firefighters (CAPF) program according to CAPF rules and regulations. Employees may elect to change insurance only during open enrollment periods or upon a qualifying event (i.e. promotion, demotion, etc.)

2. The City shall contribute, as appropriate, to the premium cost of either the CAPF or City disability program. In no instances will the City contribute to both programs.

G. SHORT-TERM DISABILITY INSURANCE

1. Employees electing the CAPF disability program will not be eligible to participate in the City's Short Term Disability program.
2. The City shall continue to provide Short-Term Disability insurance. Such program shall provide a disability benefit equivalent to 55% of the employee's basic weekly salary up to a maximum benefit of \$336.00 per week. Any such disability benefit shall not become payable until the passage of seven days from the date of disability or until the use of all the employee's accrued sick leave, whichever is later. However, if the employee is hospitalized, there is no waiting period after all accrued sick leave is exhausted. Such disability benefits shall not be paid concurrently with sick leave benefits, disability retirement benefits, workers' compensation benefits, benefits equivalent to those provided in Labor Code Section 4850 or like benefits which may be imposed by state or federal mandate in the future. The maximum benefit period for Short-Term Disability Insurance shall be 90 days.
3. The City shall contribute, as appropriate, up to the full premium cost of the above-described short term disability insurance program.
4. Employees may elect to change insurance only during open enrollment periods or upon a qualifying event (i.e. promotion, demotion, etc.)

H. REPLACEMENT OF PERSONAL PROPERTY

Any employee that suffers damage, destruction or loss of personal property, except a motor vehicle, boat, airplane or similar such vehicle, required in the performance of regular duties and as a result of performing those duties, shall be entitled to replacement or repair thereof upon the approval of the Risk Manager not to exceed \$500.00, provided that such damage or destruction did not result from employee negligence. Any reimbursement provided under this subsection shall not exceed the reasonable value of functional replacement or repair. Specific replacement or repair value limitations on such articles as eyeglasses and watches shall be established by the City.

I. UNIFORMS

Bargaining Unit employees shall be eligible to receive an annual cash uniform allowance payment of \$550.00 each payable in August of each year.

J. SAFETY SHOES

The City shall reimburse any employee required by the City to wear safety shoes in the course of regular job duties for the cost of purchasing and maintaining such shoes up to a maximum of \$120.00 per pair. Any such shoes shall meet City specifications. City reimbursement for safety shoes provided pursuant to this Agreement shall be limited to one (1) pair of shoes at any one time, and no replacement reimbursement shall be provided unless such replacement has been authorized by the City. No limit shall be established on the number of pairs of safety shoes replaced during any specific period of time. No replacement reimbursement shall be made until the shoes to be replaced have been turned in to the City.

K. RECALL PAY

All non-exempt employees recalled to perform job duties after the close of the regularly assigned shift and after departure from City facilities shall receive a minimum of two (2) hours OT or CTO, as agreed upon by the appropriate immediate supervisor and the employee. Any employee required to work longer than two (2) hours after being recalled shall receive overtime pay as provided in this Agreement.

L. BILINGUAL PAY

Employees who are appointed to a position which is enhanced by the use of bilingual skills may request to be tested for bilingual certification. The City shall determine the number of bilingual positions and which languages are needed to perform the service. Bilingual certification examinations may include Spanish, Samoan, and American Sign Language. Bilingual pay is provided at \$100.00 per month to employees who occupy designated positions and who are certified as proficient.

M. TUITION REIMBURSEMENT

The City shall provide reimbursement for tuition, books, lab fees, and mandatory fees within a fiscal year up to a dollar amount which shall not exceed the per unit rate based on a normal semester full-load tuition rate at San Diego State University for courses related to the employee's current job. An employee shall be reimbursed upon submitting evidence that he/she has satisfactorily completed the approved course work. Employees shall obtain pre-approval prior to commencement of classes. Reimbursement will only be granted for courses taken at universities or colleges that are accredited with the Western Association of Schools & Colleges or one of the other five regional associations that accredit public and private schools, colleges and universities in the United States.

Effective January 2002, the City shall also provide reimbursement pursuant to the guidelines outlined above for courses taken as part of a curriculum (general education or classes applicable to a specific major that would lead to an Associate's or Bachelor's Degree.)

In no event will the total amount for Tuition Reimbursement for any employee, for any combination of classes taken in a fiscal year, exceed the full-load rate at San Diego State University.

If an employee attains a degree in a subject related to his/her current job during, the scope of employment, the employee shall receive a one-time payment of \$300 for an Associate level degree and \$600 for a Bachelor's degree.

N. EMPLOYEE COMPUTER ASSISTANCE PROGRAM

Employees who have satisfactorily completed their initial probationary period, shall be eligible to participate in the Employee Computer Assistance Program. Employees will be eligible for a loan up to a maximum of \$3000 for the purchase of hardware and software approved by the City for home use. The loan will be repaid, by payroll deduction over a period not to exceed 30 months. Any remaining loan balance is due and payable upon termination, and will be deducted from the employee's final check.

O. MILEAGE REIMBURSEMENT/CITY VEHICLES

Vehicles may be provided on a take-home basis for emergencies or operational necessity as determined by the Department Director.

When an employee is authorized to use his/her personally owned vehicle during work assignments, the City shall provide mileage reimbursement at a level equivalent with the current IRS rate. This rate is subject to adjustment up or down based on actions of the Federal government. The set rate is intended to be a total amount paid for use of the vehicle, inclusive of gas, oil, insurance and maintenance.

P. DEFERRED COMPENSATION PLAN

The City shall establish a non-contributory Deferred Compensation Plan. In addition to salary and other forms of compensation, any portion of the following benefits may be diverted to the Plan at the employee's option, subject to restrictions established by the City's adopted Plan and by other provisions of this or successor compensation plans: compensation for unused sick leave and the balance of the authorized holidays. The City reserves the right to accept or reject any particular plan, to change plans, and to impose specific conditions upon the use of any plan.

Q. FLEXIBLE SPENDING PLAN

The City agrees to implement an IRS-approved Flexible Spending Account (FSA) program that will enable employees to defer compensation on a pre-tax basis for eligible health care expenses and dependent care expenses. Administrative fees will be paid by the City.

R. PHYSICAL EXAMINATIONS

The City shall provide for any City-required medical examinations of any employee at no cost to the employee.

IV. ATTENDANCE AND LEAVES

A. HOURS OF WORK

1. FLSA exempt employees shall be considered to work an "indefinite" workweek and not be entitled to overtime compensation.
2. Indefinite workweek is meant to imply some flexibility in the schedule so long as all responsibilities and obligations are covered. Employees who elect to leave a shift early or leave the worksite to conduct personal business shall, when practicable, inform the immediate supervisor or log in the time of departure and how the employee may be contacted in case of emergency. It shall also be the employee's responsibility to provide the oncoming supervisor with sufficient information to insure safe and efficient continuity of operations.
3. The basic workweek for non-exempt employees shall consist of five (5) eight (8) hour days or forty (40) hours per week. However, employees for whom the City deems a different schedule to be desirable or necessary shall work according to such other schedule.
4. The basic workweek for Fire Battalion Chiefs on 24-hour shifts shall be 56 hours. In interpreting this Agreement, a conversion factor of 1.4 shall be used to relate such 56-hour workweek to the 40-hour workweek. All hours shall be as assigned according to the current year's work schedule calendar developed by the Fire Department.

5. For fiscal reasons, the City may designate that each employee be given unpaid furlough days off. Such unpaid days shall be scheduled at the discretion of the City.
6. Nothing herein shall be construed to be a guarantee of a minimum workweek for any employee.
7. Lunch periods and break periods shall be as scheduled by the City.

B. EXEMPT/NON-EXEMPT EMPLOYEES

Non-exempt employees may be assigned work in excess of the normal, regularly scheduled work week which shall be compensated as overtime pay (OT); or as compensatory time off (CTO) as agreed upon by the appropriate immediate supervisor and the employee. Such compensation (except for 56-hour shift personnel) shall be computed at the rate of 1½ times the employee's regular hourly rate of pay for hours in excess of 40 hours per week. Personnel working 56-hour shifts shall be paid overtime for all hours worked over 182 in a 24-day work period. Holidays, Executive Leave, and vacation shifts shall be counted as hours worked for 56-hour shift personnel.

Compensatory time off must be requested in the same manner as any other request for time off (vacation, holiday, etc.). If for any reason the City cannot grant the employee's request for CTO, then the employee will be allowed to request alternate days off or be paid at the applicable overtime rate. All overtime work shall be authorized in advance by an employee's appropriate immediate supervisor; failure to receive proper authorization may be a basis for discipline. All time which an employee spends in a pay status shall be considered in establishing the employee's normal regularly scheduled work week.

1. FLSA exempt employees shall not receive overtime or compensatory time off.
2. Overtime compensation shall not be paid during a leave of absence taken by request or while on Injury-on-Duty (IOD) Status.
3. Non-exempt employees may accrue a maximum of 80 hours of CTO (56 hour shift personnel may accrue a maximum of 112 hours of CTO). Such time off shall be scheduled with due regard to the wishes of the employee and in compliance with FLSA rules and consistent with the City's work requirements. CTO may be taken in half-hour increments. Upon separation, an employee shall receive compensation for all accrued CTO at the employee's then-current salary rate. An employee may cash out any accrued compensatory time off once each quarter upon a written request to the Payroll Division in the Financial Services Department.

Effective July 1, 1998, all Fire Battalion Chief positions shall be classified as "non-exempt" under the Fair Labor Standards Act (FLSA) and shall not be eligible to receive executive leave.

4. When an employee is appointed to an exempt position from a non-exempt position, any compensatory time the employee has accrued, will be cashed out at the employee's current regular rate of pay.
5. Assistant Fire Chiefs will receive compensation at 1.5 times their 56 hours (suppression) hourly rate for all hours worked in excess of their normal work schedule when assigned to an incident that is reimbursable under the California Fire Assistance Act, Cooperative Fire Protection Agreement or successor document. No compensation will be provided for any time spent on a non-reimbursable incident.

C. SICK LEAVE

1. Defined: Sick leave is leave from duty which may be granted by the City to an employee because of illness, injury, exposure to contagious disease, necessary consultation with or treatment by a doctor or dentist, necessary attendance to the illness or injury of a member of the employee's immediate family, or death within the employee's immediate family.

For purposes of this Section, an employee's immediate family shall consist of the employee's spouse; children; the employee's or spouse's grandparents, mother, father, brother, or sister; other members of the employee's family residing in the employee's home; or other members of the employee's family entirely dependent upon the employee.

2. Sick Leave Use.
 1. An employee may be granted sick leave only in the case of actual sickness as defined in Subsection C.1. above. In the event that an employee recovers from any such sickness after being granted sick leave, and during the regularly scheduled hours of work, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.
 2. In case of pregnancy, the beginning date of sick leave usage shall be at the employee's discretion, with the concurring written advice of her personal physician. Date of return shall be based upon the written recommendation of the employee's physician and, when deemed necessary by the City, the concurrence of the City's examining physicians.
 3. In order to apply for sick leave use an employee shall notify the appropriate immediate supervisor no later than one (1) hour after the time established for beginning daily duties if an employee intends to use sick leave. 56-hour shift employees shall notify the appropriate immediate supervisor within 15 minutes after the time established as the beginning of the employee's work day.
 4. Sick leave shall not be granted to any employee absent from duty as a result of any sickness, injury, or disability purposely self-inflicted or caused by willful misconduct.

5. Sick leave shall only be granted in even one-half hour increments. Excessive absences may reflect upon an employee's performance and may be grounds for discipline, including termination.
 6. Sick leave shall not be granted to any employee absent from duty after separation from City service, or during a City-authorized leave of absence without pay, or any other absence from duty not authorized by the City.
 7. Sick leave shall not be granted to any employee to permit an extension of the employee's vacation.
 8. Sick leave may be granted to any employee during the first six (6) full calendar months of the employee's original probationary period.
 9. In the event that an employee has applied for sick leave use for two (2) or more consecutive scheduled working days/shifts, the City may require a physician's certification attesting to the employee's illness and a prognosis or approval for the employee's return to work. The City may, however, require such certification regarding sick leave use at any time.
 10. Sick leave granted to any employee for necessary attendance to the illness or injury of a member of the employee's immediate family, or death within the employee's immediate family, shall not exceed forty (40) hours in any twelve (12) month period.
 11. In the case of a safety employee for whom an application for disability retirement has been filed and the City has made a final determination of the employee's eligibility for disability retirement prior to the expiration of the employee's Labor Code 4850 time, such employee shall not be authorized to utilize sick leave after termination of such 4850 time for absences caused by the disability for which the retirement application was filed.
 12. Sick leave shall not be authorized for the sole purpose of extending employment.
3. Sick Leave Accrual
1. All employees, except those assigned to 56-hour shifts, shall accrue 3.69 hours of sick leave for each 80 hours spent in a pay status beginning on the first day of service as a City employee. (This accrual amounts to approximately 12 days per year or equivalent.) Employees assigned to 56-hour shifts shall accrue one (1) hour of sick leave for each 20.30 hours spent in a pay status beginning on the first day of service as a City employee. This accrual amounts to 144 hours per year for 56-hour shift personnel. Such accrual shall take place on a pay period basis. Hours spent in a pay status shall include all regular hours worked in the City service and all hours spent in a paid leave status from regular duties, and shall exclude any hours worked as overtime or special time.

2. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
 3. Employees granted a leave of absence with pay or other approved leave with pay shall accrue sick leave as otherwise regularly provided by this Agreement.
 4. Sick leave shall not be accrued by an employee absent from duty after separation from City service, or during a City-authorized leave of absence without pay, or any other absence from duty not authorized by the City.
 5. All employees may accrue unlimited sick leave.
4. Reimbursement for Accrued Sick Leave.
1. Upon separation of any type, other than by disciplinary discharge, employees may be paid 50% (up to a maximum of 1400 hours) of the employee's total unused and accrued sick leave or may apply a portion of or the entire accumulated sick leave accrual balance to PERS service credit at the employee's option. Such reimbursement shall be at the employee's salary rate at the time of separation, and shall reduce the employee's total amount of accrued sick leave to zero.
 2. Each calendar year, employees may elect to receive payment in lieu of accrued sick leave. An eligible employee shall notify the City of the desire to receive such payment prior to the last working day in November of each calendar year. An employee receiving such pay shall receive, at the then-current salary rate, pay for 50% of the number of hours of sick leave accrued less those hours used for the calendar year period. The employee's accrued sick leave shall be reduced by the number of sick leave hours for which pay is provided.

D. BEREAVEMENT LEAVE

1. Employees, except employees assigned to 56-hour shifts, shall be eligible to take three (3) days paid leave (not to exceed 24 hours) of absence due to the death of a member of the employee's immediate family. Employees assigned to 56-hour shifts shall be eligible to take two (2) shifts paid leave of absence.
2. Members of the immediate family shall be limited to spouse; children; the employee's or spouse's grandparents, mother, father, brothers or sisters; and other members of the employee's family residing in the employee's home.
3. Upon approval of the City Manager or Department Director, an additional two (2) days/shifts of bereavement leave may be granted. These two (2) days/shifts, if granted, shall be chargeable to sick leave.

E. EXECUTIVE LEAVE

1. Each exempt employee will be credited with the authorized amount of Executive Leave each July 1 in order to bring the existing balance to fifty (50) hours. In no case will unused Executive hours be carried over and added to the Executive Leave balance for the next fiscal year.
2. Upon separation, the unused portion of an employee's Executive Leave will be provided as direct compensation at the employee's then-current salary rate.
3. The City Manager may grant additional Executive Leave to employees in extraordinary circumstances.

F. MILITARY LEAVE

The State Military and Veteran's Code shall govern the City's granting and an employee's use of military leave.

G. LEAVE OF ABSENCE WITHOUT PAY

1. Any employee who has successfully completed the original probationary period may submit to the appropriate immediate supervisor a written request for leave of absence without pay for a period not exceeding one (1) year for the specific purpose of obtaining improved job training, or recuperating from an extended illness for which sick leave is not available, including maternity leave, or for attending to urgent personal affairs. Use of a leave of absence without pay for a purpose other than that requested shall be considered as an employee's automatic resignation from the City service. No leave of absence without pay shall be utilized to permit an employee to engage in non-City employment. The City shall have sole discretion to approve or disapprove any such request.
2. Any employee having been granted a leave of absence without pay and not reporting for work promptly upon its expiration shall be considered to have automatically resigned from the City Service.

H. LEAVE FOR JURY DUTY

Any employee called to serve, as a juror shall receive compensation from the City for the difference between the pay received as a juror, except payment for mileage, and the employee's regular salary that would have been received but for jury duty.

I. FAMILY AND MEDICAL LEAVE

The City of Oceanside Family and Medical Leave Policy shall govern the granting and employee use of family and medical leave.

J. HOLIDAYS

1. Employees, except those assigned to 56-hour shifts, shall receive the following paid holidays on a straight-time basis:
 - a. January 1st, "New Year's Day";
 - b. The third Monday in January, "Martin Luther King Jr. Day";
 - c. The last Monday in May, "Memorial Day";
 - d. July 4th, "Independence Day";
 - e. The first Monday in September, "Labor Day";
 - f. November 11th, "Veterans' Day";
 - g. The Thursday in November "Thanksgiving Day";
 - h. The Friday following "Thanksgiving Day";
 - i. December 25th, known as "Christmas Day".
2. In the event that one of the above holidays falls on a Sunday, the Monday following will be observed as the holiday. In the event that any of the above holidays falls on a Saturday, the Friday preceding will be observed as the holiday.
3. Except for FLSA exempt employees, in the event that a holiday falls on an employee's regularly scheduled work day, and the employee is required to work, then the employee shall be entitled to accrue another day off in lieu thereof.
4. For 40 hour employees only: All recognized holidays scheduled and accrued between January 1 and June 30 shall be credited to each unit member on January 1. All recognized holidays scheduled and accrued between July 1 and December 31 shall be credited to each member on July 1. If the time credited is not approved for scheduled time off during the identified six month period, the employee shall be paid for any such hours at the employee's current hourly rate on the first full pay period after June 30 or December 31. Such holiday time may be scheduled and taken prior to the date of the holiday, provided that any such pay for time off so advanced shall be deducted from the final pay check of any employee separating from City employment prior to the date of the holiday.
5. Floating Holidays. In addition to the above holidays, each employee (except those assigned to 56 hour shifts) shall be credited with 48 hours of floating holiday. Floating holidays hours are to commemorate other holidays including President's Day, Admission's Day, Columbus Day, State wide election day and other holidays that may be celebrated by employees. All employees will be credited with 48 floating holidays hours on July 1 of each year. The hours shall not exceed 48 and unused hours from the prior year shall have no cash value.
6. Upon separation of any type, an employee shall receive full compensation for all such unused, accrued holiday time.

7. Floating holiday leave shall be scheduled at the discretion of the City with due regard to the wishes of the employee and the work requirements of the City.
8. Such leave shall only be taken in even whole hour increments.
9. Fifty-six hour shift employees shall be granted seven (7) shifts off per calendar year, in lieu of the holidays specified in J.1., above, to be scheduled according to City needs. Subsection J.4 above, shall not apply to 56-hour shift employees. A 56-hour shift employee may elect to cash in one or more of these holiday leave shifts at straight time. The election to be compensated for holiday leave time will occur in December of each year with the cash pay-off occurring during the first full pay period of January of the following year

K. VACATION LEAVE

1. Vacation Use

- a. All employees shall be entitled to annual vacation leave with pay as provided in this Agreement.
- b. Scheduling of an employee's vacation leave shall be at the discretion of the City with due regard to the wishes of the employee and the work requirements of the City.
- c. Vacation leave shall only be granted in even whole hour increments. Employees shall be responsible for assuring adequate supervisory coverage during the employee's absence and for providing the oncoming supervisor with sufficient information to assure safe and efficient continuity of operations.
- d. Vacation leave shall not be granted to any employee after separation from City service, or during a City-authorized leave of absence without pay or any other absence from duty not authorized by the City. Vacation leave shall not be granted to any employee for the sole purpose of extending employment. This section does not prohibit the use of approved vacation time prior to a pre-identified separation date.
- e. Vacation leave shall not be granted to any employee during the first six (6) full calendar months of the employee's original probationary period. However, on the successful completion of the probationary period, the employee shall then be credited with vacation leave that would otherwise have been accrued during the probationary period as provided in this Agreement.
- f. All employees are encouraged to take annual vacation leave away from their jobs.

2. Vacation Accrual

- a. All employees shall accrue vacation leave on the basis of all hours spent in a paid status based on City Service (excludes any time worked as overtime or special time as provided below). Such accrual shall take place on a payperiod basis.
- b. Vacation Accrual Rates
 - (1) During an employee's first five (5) full consecutive years of employment, the employee shall accrue 3.08 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 10 days per year or equivalent.)
 - (2) During an employee's 6th consecutive year of employment, the employee shall accrue 3.39 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 11 days per year or equivalent.)
 - (3) During an employee's 7th consecutive year of employment, the employee shall accrue 3.69 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 12 days per year or equivalent.)
 - (4) During an employee's 8th consecutive year of employment, the employee shall accrue 4.00 hours of vacation leave for each 80 hours in a pay status. (This accrual amounts to approximately 13 days per year or equivalent.)
 - (5) During an employee's 9th consecutive year of employment, the employee shall accrue 4.31 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 14 days per year or equivalent.)
 - (6) During an employee's 10th consecutive year of employment, the employee shall accrue 4.62 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 15 days per year or equivalent.)
 - (7) During an employee's 11th consecutive year of employment, the employee shall accrue 4.93 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 16 days per year or equivalent.)
 - (8) During an employee's 12th consecutive year of employment, the employee shall accrue 5.24 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 17 days per year or equivalent.)

- (9) During an employee's 13th consecutive year of employment, the employee shall accrue 5.55 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 18 days per year or equivalent.)
 - (10) During an employee's 14th consecutive year of employment, the employee shall accrue 5.86 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 19 days per year or equivalent.)
 - (11) Beginning with an employee's 15th consecutive year of employment, the employee shall accrue 6.15 hours of vacation leave for each 80 hours spent in a pay status. (This accrual amounts to approximately 20 days per year or equivalent.)
 - (12) Beginning with an employee's 16th consecutive year of employment, the employee shall accrue 6.46 hours of vacation leave for each 80 hours spent in pay status. (This accrual amounts to approximately 21 days per year or equivalent.)
 - (13) Beginning with an employee's 17th consecutive year of employment, the employee shall accrue 6.77 hours of vacation leave for each 80 hours spent in pay status. (This accrual amounts to approximately 22 days per year or equivalent.)
 - (14) Beginning with an employee's 18th consecutive year of employment, the employee shall accrue 7.07 hours of vacation leave for each 80 hours spent in pay status. (This accrual amounts to approximately 23 days per year or equivalent.)
 - (15) Beginning with an employee's 19th consecutive year of employment, the employee shall accrue 7.38 hours of vacation leave for each 80 hours spent in pay status. (This accrual amounts to approximately 24 days per year or equivalent.)
 - (16) Beginning with an employee's 20th consecutive year of employment, and extending through the remaining years of employment, the employee shall accrue 7.69 hours of vacation for each 80 hours spent in a pay status. (This accrual amounts to approximately 25 days per year or equivalent.)
- c. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation leave.
 - d. Employees granted a leave of absence with pay or other approved leave with pay shall accrue vacation leave as otherwise regularly provided by this Agreement.
 - e. Vacation leave shall not be accrued by any employee absent from duty after separation from City Service, during a City-authorized leave of absence without pay, or any other absence from duty not authorized by the City.

- f. All 40 hour a week employees covered by this Agreement hired prior to July 1, 1995, may accrue vacation up to a maximum of 360 hours. Employees hired after July 1, 1995, may accrue vacation hours up to a maximum of 240 hours.
- g. All 56 hour per shift employees hired prior to July 1, 1995 may accumulate vacation leave up to a maximum of 504 hours. 56 hour shift employees hired July 1, 1995, or after may accrue vacation up to a maximum of 336 hours per year. Once that maximum cap is reached, the employee shall stop accruing vacation credits until the accumulated vacation leave balance is less than 504/336 hours, except that employees assigned to 56 hour shifts may accrue vacation in excess of the cap hours during the calendar year. Hours accrued in excess of cap during the calendar year have no cash value and must be utilized prior to the first payday of January each year. Employees separating will be paid accrued vacation up to a maximum of 504/336.
- h. Employees with Leave Bank Accounts (LBA) shall be permitted to use, pursuant to departmental rules, the LBA as paid leave or be paid cash for these hours upon separation from City service.

3. Reimbursement for Accrued Vacation Leave

Upon separation, all employees covered by this Agreement shall receive compensation for accrued vacation leave. Such compensation shall be at the employee's salary rate at the time of separation.

- 4. In the event that a holiday recognized in this Agreement occurs during an employee's scheduled vacation leave, then such holiday shall not be considered as vacation leave used by the employee.

V. SEPARATION FROM CITY SERVICE

- a. Separation of an employee from the City Service may be accomplished for any of the following reasons:
 - 1. Completion of work assignment or project.
 - 2. Resignation, which may be either deliberate or automatic. Any deliberate resignation shall be submitted to the appropriate immediate supervisor at least seven (7) calendar days prior to an employee's actual separation from the City Service.
 - 3. Retirement which may be either deliberate or by virtue of disability.
 - 4. Layoff as provided in the Personnel Rules and Regulations.
 - 5. Discharge as a result of disciplinary action as provided in this Memorandum of Understanding.
 - 6. Death.

- b. Employees shall not use accumulated leave time to extend the effective date of the employee's separation from City service.

VI INDUSTRIAL INJURIES AND ACCIDENTS

The State Workers' Compensation Laws and this Agreement shall govern all aspects of duty-related injuries, illnesses and accidents.

A. Injury and Illness Reporting

1. Any duty-related injury or illness, which requires medical treatment, shall be reported to the immediate supervisor by any injured or ill employee as soon as possible.
2. Any duty-related injury or illness which does not require medical treatment shall be reported to the appropriate immediate supervisor by any injured or ill employee by the end of the workday schedule in which the injury or illness occurred, or as soon as possible.
3. Within one working day of receiving notice or knowledge of injury, the supervisor will provide a claim form and a notice of potential eligibility benefits pamphlet to the injured worker.

In the case of the employee's death, this information will be given to his or her dependents.

4. The completed claim form will be filed with the Employee Services Division by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent.

A copy of the completed form indicating date received will be provided by the Employee Services Division to the employee, dependent, or agent who filed the claim form.

Claim forms and benefit pamphlets will be available through the Employee Services Division.

B. Accident Reporting

1. Any duty-related accident which results in any injury or property damage shall be reported to the appropriate immediate supervisor by any accident-involved employee as soon as possible.
2. Any duty-related accident which does not result in any injury or property damage shall be reported to the appropriate immediate supervisor by any accident-involved employee by the end of the workday schedule in which the accident occurred, or as soon as possible.

C. Medical Treatment for Injury or Illness

Any employee suffering any duty-related injury or illness which requires either immediate or continued medical treatment shall immediately seek such treatment from a City-approved physician or medical facility, except as provided herein.

1. If an employee has notified the City in writing prior to the date of injury that the employee has a personal physician as defined by State Law, then the employee shall have the right to be treated by such physician from the date of injury.
2. After 30 calendar days from the date any such injury or illness is reported, the employee may be treated by a physician of choice or at a facility of choice within a reasonable geographic area.

D. Absence for Industrial Injury or Illness

1. Any employee suffering a duty-related injury or illness which prohibits that employee from the performance of regular job duties may request an absence from duty. Such request shall be submitted in the form of a Workers' Compensation claim. Upon the acceptance of any such claim by the City or the State Workers' Compensation Appeals Board, the employee shall be granted an absence from duty. Any dispute regarding any such claim shall be resolved through the State Workers' Compensation Appeals Board process.
 - a. Pursuant to Section 4850 of the State Labor Code which is applicable to public safety employees, any such authorized absence from duty shall begin with the first day following such disability for the period of disability, but not exceeding one year. If the disability extends beyond one year, then Section 4650 applies.
2. Compensation: Any employee granted a leave of absence for industrial injury/illness shall receive salary and fringe benefit compensation from the City for the duration of any such leave, as delineated in the State Workers' Compensation Laws.

VII. STANDARDS OF CONDUCT

Employee misconduct may be cause for disciplinary action including, but not limited to, reprimand, reduction in pay, transfer/demotion, suspension without pay or discharge. Such misconduct shall include, but is not limited to, any of the following:

1. Commission of an act which results in a felony criminal conviction or conviction as a misdemeanor or infraction involving moral turpitude.
2. Misuse, misappropriation, negligent handling or unauthorized use or possession of City property, equipment or funds.
3. Causing damage to or waste of public property through misconduct or negligence.
4. Unauthorized or Excessive absences from regularly assigned duties.
5. Excessive or unexcused tardiness in reporting to regularly assigned duties.
6. Use of fraud or material misrepresentation but for such fraud or material misrepresentation the employee would not have secured employment.
7. Use of an employee's official position or office for personal gain or advantage.
8. Deliberate dishonesty or theft related to the performance of an employee's duties.
9. Asking for, agreeing to accept, or accepting favors, bribes or gratuities in return for services as a part of the employee's official duties and responsibilities.
10. Discourteous treatment of the public or other City employees.
11. Wrongdoing, misconduct or failure to carry out assigned duties promptly, adequately or efficiently.
12. Insubordination.
13. Incompetence, inefficiency, inability or negligence in the performance of duties.
14. Violation of the City Code, Personnel Rules, Memoranda of Understanding, safety rules or departmental rules and regulations.
15. Being in the unauthorized possession of, or being under the influence of, any alcoholic beverages or controlled substances while on duty.
16. Engaging in any outside employment or enterprise for financial gain determined by the City Manager to be conflicting employment.
17. Gambling on City property or while on duty.
18. Other serious or socially reprehensible conduct either during or outside of duty hours which is of such a nature that it causes public discredit to the employee's department or the City.

No employee shall be discharged for a minor violation of the standards of conduct-delineated hereinabove as letter 11 or 14 without first having received a prior written warning concerning a related or similar violation.

VIII. DISCIPLINE

1. Prior to the imposition of any discipline, excluding reprimand, of any permanent employee, the following procedure shall be utilized.
2. The employee shall be given written notice of the proposed disciplinary action including a statement of the reason therefore.
3. The notice of proposed disciplinary action must include a copy of the charges of misconduct and, whenever practical, a copy of the material or documents upon which the charges are based, a statement of the rules, regulations or policies violated, and an explanation of the employee's right to respond. If it is impractical to provide the employee with a copy of such materials or documents, the employee and/or his/her representative shall be allowed reasonable time to review such materials or documents and the notice of proposed disciplinary action shall set forth the procedure for such a review.
4. Notice of discipline should be handed to the employee, whenever feasible, before the employee has left the work premises. In any event, proof of delivery and the date of delivery is mandatory so there will be no doubt as to the beginning of any appeal period. If the notice cannot be given to the employee before leaving the work premises, a postal return receipt for certified mail must be used.
5. The employee shall be given the right to respond to the proposed discipline, either orally or in writing, to the appropriate City appointing authority. The City shall give the employee a reasonable time to submit a response and in no event shall such time period be less than 48 hours from the completion of service of the notice of disciplinary action.
6. An employee waives all rights to respond to the proposed discipline if he/she fails to submit such response within the time limit established by the City.
7. Following the response period, the proposed discipline may be imposed, modified, or not imposed, as the situation warrants. The Department Director's decision shall be provided to the employee in writing and will include a statement of the charges upon which the action is based and notice of the employee's right to appeal, if any.
8. This shall put the disciplinary action into effect and discipline so imposed shall not be stayed by the initiation of a grievance by the employee as provided for herein.
9. Notwithstanding the provisions of Subsection 2 hereinabove, any discipline which, in the judgment of the appointing authority, must be imposed immediately to protect the health, safety, or welfare of the community or other City employees, may be summarily imposed without affecting the predisciplinary procedure of Subsection 2. Such procedure shall be completed, however, within five (5) working days of the imposition of the discipline.

10. Grievances of discipline must be initiated by the employee within five (5) calendar days after the imposition of the discipline or, in the case of discipline imposed under Subsection 9 after the completion of the informal response procedures. Failure to initiate a grievance within such time limit shall constitute a waiver by the employee of all rights to grieve such discipline hereunder.

11. All disciplinary grievances shall be initiated at Step 3 - City Manager of the Grievance Procedure delineated herein except grievances of disciplinary action involving reprimand which shall be initiated at Step 1 and concluded at Step 3 (City Manager).

IX. GRIEVANCE PROCEDURE

a. Defined. A grievance is an alleged violation of a specific clause of this Agreement. Matters for which another method of review are provided by this Agreement, by Resolution, by Ordinance, by Charter, or by State Law shall be excluded from this procedure.

b. Procedure. All grievances shall be presented in the following manner:

1. Step 1 - Supervisor: The aggrieved employee, who may be represented by another person, shall present the facts relative to the grievance to the appropriate immediate supervisor in writing within 30 working days of the date on which the grievance arises, except as provided otherwise in this Agreement. Prior to filing any such written grievance, every effort will be made to resolve the matter informally. The supervisor shall render a decision in writing to the grievant within five (5) working days from the day the grievance is presented.
2. Step 2 - Department Head: If the grievance is not resolved in Step 1, the grievant may appeal it to the Department Director within five (5) working days from the date a decision was rendered in Step 1, above. Such appeal shall be in writing, and shall include: a statement of the grievance and the facts relative to it, a statement of the alleged violation of the Agreement, and a statement of the remedy requested. Within ten (10) working days of receiving such appeal, the Department Director shall arrange a meeting between himself/herself, the aggrieved employee, the employee's representative (if applicable), and a representative of the Personnel Office to review the grievance. The Department Director shall render a written decision on the grievance within ten (10) working days after the meeting.
3. Step 3 - City Manager: If the grievance is not resolved in Step 2, the grievant may appeal it in writing to the City Manager within five (5) working days from the date a decision was rendered in Step 2, above. The City Manager, or a designated representative, may render a decision solely on the basis of a review of the record or may arrange a meeting between those affected before rendering a decision. The decision shall be rendered within ten (10) working days of the meeting.

4. Step 4 - Advisory Arbitration: If the grievance is not resolved in Step 3, the grievant may submit it to an advisory arbitrator by filing a written request to do so with the City Manager within five (5) working days from the date a decision was rendered in Step 3, above.
 - a. The City Manager shall request a panel of seven (7) advisory arbitrators from the California State Conciliation Service within 15 working days of receiving such a request. The advisory arbitrator shall be selected to hear the grievance by alternately striking names from such a panel beginning with the aggrieved employee.
 - b. The advisory arbitrator shall issue subpoenas to compel the attendance of witnesses if such be necessary at the request of either party.
 - c. The hearing shall be recorded by a certified shorthand reporter or tape recorder as agreed by the parties. Expenses for such recording services shall be borne equally by the City and the employee, provided, however, that each shall be responsible for any specialized or extraordinary services they might individually request.
 - d. In rendering a recommendation to the City Manager, the advisory arbitrator shall be limited to the express terms of the Agreement and shall not modify, amend, or delete any terms or provisions of this Agreement. Failure of either party to insist upon compliance with any provision of this Agreement at any given time or times under any given set or sets of circumstances shall not operate to waive or modify such provision, or in any manner whatsoever to render it unenforceable, as to any other time or times as to any other occurrence or occurrences, whether the circumstances are, or are not, the same.
5. Step 5 - City Council Review: The City Council may, if it deems appropriate, review any recommendation rendered by an advisory arbitrator on the basis of a review of the materials prepared by the arbitrator and/or record of the hearing conducted in Step 4, above. Any such City Council review must be concluded within 30 working days of the City's receipt of the advisory arbitrator's recommendation, and any City Council action as a result of that review shall be final and binding upon the parties. Any City Council decision shall not be arbitrary, and shall be based on substantial evidence as contained in the record of the advisory arbitrator's hearing.
 - a. Working Days Defined: As used in this procedure, the term "working days" shall mean regular work days Monday through Friday between 8:00 a.m. and 4:30 p.m., except holidays on which the City Administrative Offices are closed to the public. For employees working a 9/80 work schedule, the term "working days" shall mean regular work days Monday through Friday between 7:30 a.m. and 5:00 p.m., except holidays and Fridays on which the City administrative officers are closed to the public.

- b. The fees and expenses of the arbitrator shall be shared equally by the parties involved, except that if either party rejects the advisory decision of the arbitrator, that party must pay the entire cost of the arbitrator's fees and expenses. All other expenses and costs incurred by the parties during arbitration shall be the responsibility of the individual party incurring same.
- c. The time limits in this procedure may only be waived by mutual agreement of both parties, in writing.

X. REEMPLOYMENT RIGHTS/ELIGIBILITY

The Reemployment List shall be made an addendum to any existing regular eligible list for each job classification of employees who are laid-off or demoted in lieu of lay-off. A classified employee shall be eligible for re-employment for a period of 24 months from the date of lay-off or demotion in lieu of lay-off.

XI. SAVINGS PROVISION

If any provision(s) of this Agreement is held to be contrary to the law by a court of competent jurisdiction, such provision(s) will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

XII. BINDING ON SUCCESSORS

This Agreement shall be binding upon the successors and assignees of the parties hereto.

XIII. TERM OF THE AGREEMENT

This agreement is **effective July 1, 2007**, and shall continue in full force and effect until **June 30, 2009**.

XIV. RATIFICATION AND EXECUTION

This Agreement shall be in full force and effect upon formal approval by the City Council of the City and implementation of its terms and conditions by appropriate ordinance, resolution or other lawful action. Subject to the foregoing, this Agreement is hereby executed by the authorized representatives of the City and the Association.

DATED _____, OCEANSIDE FIRE MANAGEMENT ASSOCIATION

BY _____
Peter Lawrence, Fire Battalion Chief

BY _____
Ken Matsumoto, Fire Battalion Chief

DATED _____, CITY OF OCEANSIDE

BY _____
Brian J. Kammerer, Human Resources Director