

**FIRE  
SAFETY EMPLOYEES**

**MEMORANDUM  
OF  
UNDERSTANDING**

**JANUARY 1, 2003 TO  
JUNE 30, 2009**

**CITY OF SAN BERNARDINO  
OFFICE OF THE  
DIRECTOR OF HUMAN RESOURCES**



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## **ARTICLE I - ADMINISTRATION**

### **Section 1 - Definition of Terms**

<b><u>Administration:</u></b>	Shall include any elected or appointed official of the City and any employee of the City whose job classification is Management or Confidential employee.
<b><u>Appointing Authority:</u></b>	Fire Chief, Deputy Fire Chief or Assistant Chief of the City of San Bernardino Fire Department.
<b><u>City:</u></b>	The City of San Bernardino.
<b><u>Classification:</u></b>	Firefighter, Paramedic/Firefighters, Engineer, Fire Investigator, Captain. Additional titles may be established by the Mayor and Common Council, but titles for local safety members of the Fire Department shall be placed in the classification having the most nearly equal duties and responsibilities.
<b><u>Department:</u></b>	San Bernardino City Fire Department.
<b><u>Division:</u></b>	Division shall refer to any one of the major Divisions of the Department.
<b><u>Employee Public Safety Officer:</u></b>	The term "employee" shall include all Safety personnel within the Fire Department bargaining unit.
<b><u>Employee Organization:</u></b>	San Bernardino City Professional Firefighters, Local 891
<b><u>Employer:</u></b>	Shall include the City of San Bernardino, the Fire Department or any Management or Administrative representative or Elected Official thereof.
<b><u>Mandatory and Permissive:</u></b>	A "shall" is mandatory, a "may" is permissive.
<b><u>Member:</u></b>	Shall include Fire Safety Personnel as defined by Section No. 20433 of the Government Code in the classifications listed herein.
<b><u>MOU:</u></b>	Memorandum of Understanding.
<b><u>Shift:</u></b>	Means a 24-hour duty for the Fire Department, except for the positions of Fire Chief, Deputy Fire Chief or Assistant Chief, local safety members working in the Fire Prevention Bureau and such members as may hereafter be granted a 40-hour average workweek. For pay purposes only, one 24-hour shift is equivalent to 24 hours.
<b><u>Singular and Plural:</u></b>	The singular also includes the plural.

**Substance Abuse  
Professional:**

A person who evaluates employees who have tested positive for drug and/or alcohol per Article II, Section 9, and makes recommendations concerning education, treatment, follow-up, and aftercare.

**Section 2 - Recognition**

The City hereby acknowledges that Local 891 of the International Association of Firefighters, AFL-CIO, has been and is recognized by the City as the exclusive representative of a representation unit consisting of all employees in the ranks of Firefighter, Paramedic/Firefighter, Engineer, Fire Investigator and Captain in the San Bernardino Fire Department for purposes of meeting and conferring on wages, hours and other terms and conditions of employment and for all other matters related to employer-employee relations for these employees, and that the City shall not assign work within the scope of the duties of these employees to City employees outside of this representation unit, regardless what organization/union is the bargaining agent for this representation unit, at any given point in time in the future, or to other public agencies, or to private contractors, during the term of this agreement.

Notwithstanding the above, nothing herein shall be construed so as to prohibit the City from fulfilling its mutual aid commitments to other public agencies, nor to prohibit the City from assigning its firefighters and/or paramedics to assist other cities, counties, public agencies or any other entity that might request assistance from the City, or from entering into contracts with cities, counties, and other public agencies, to provide fire and/or paramedic services for those other agencies/entities, provided that the City has met and conferred with Local 891 upon its request, or the organization/union that is the bargaining agent for this representation unit at the time such meet and confer may occur, over the impact of any such contract on the wages, hours and other terms and conditions of employment of employees represented by Local 891, or the organization/union that is the bargaining agent for this representation unit at the time such meet and confer may occur.

**Section 3 - Management Rights**

This MOU shall not be deemed to limit or curtail the City in any way in the exercise of the rights, powers and authority, which the City had prior to adopting this MOU, except to the extent that the provisions of the MOU specifically curtail or limit such rights, powers and authority. Except to the extent that the City is required by state law to meet and confer with the Union over these matters before exercising such rights and authority, the City retains all its exclusive rights and authority under City Charter, Ordinance, Resolutions, State and Federal Law, and expressly and exclusively retains its management rights, which include but are not limited to: the exclusive right to determine the mission of its constituent

departments, commissions and boards; set standards of selection for employment and promotions; direct its employees; establish and enforce dress and grooming standards; determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons subject to applicable Civil Service Rules and Procedures; maintain the efficiency of governmental operations; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of work force and allocate and assign work by which the City operations are to be conducted, provided however, that no such measures as threaten the safety of employees shall be adopted; determine and change the number of work locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City; assign work to and schedule employees in accordance with requirements as determined by the City and establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, except such as are mandated by City Charter, or otherwise discipline employees in accordance with the applicable law; establish employee performance standards, including but not limited to, quality and quantity standards; and, carry out its mission in emergencies and exercise complete control and discretion over its organization and the technology of performing its work.

#### **Section 4 - Agency Personnel Rules**

It is understood and agreed that there exists within the City in written or unwritten form, certain personnel rules, policies, practices and benefits, including but not limited to, Resolution No. 10584, Establishing Uniform and Orderly Methods of Communications between the City and its Employees for the Purpose of Promoting Improved Employer-Employee Relations, as amended, and Resolution No. 10585, adopting Rules and Regulations relating to employer-employee relations, as amended. Those documents, rules, policies, practices and benefits will continue in effect without change during the term of this agreement, except for those provisions modified by the Common Council in accordance with state laws and the San Bernardino Charter. The City shall provide the Union with reasonable written notice of said proposed changes and the opportunity to meet and confer over said proposed changes before implementation thereof. In cases of emergency, the Union and City will meet as soon as possible after the change.

#### **Section 5 - Employees' Rights**

Employees shall have all the rights, which may be exercised in accordance with state law, the Charter and applicable ordinances, resolutions, rules and regulations including the right to:

A. Form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

B. Refuse to join or participate in the activities of employee organizations and the right to represent themselves individually in their employment relations with the City.

C. Be free from interference, intimidation, restraint, coercion, discrimination or reprisal by other employees, employee organizations, management or supervisor, as a result of their exercise of rights indicated in (A) and (B) above.

## **ARTICLE II - EMPLOYER-EMPLOYEE RELATIONS**

### **Section 1 - Payroll Deductions**

It is agreed that Union membership dues, agency fees, insurance and premiums for plans sponsored by the Union shall be deducted by the City from the pay warrant of each employee covered hereby who files with the City a written authorization requesting that such deduction be made. Remittance of the aggregate amount of all membership dues and insurance premiums deducted from the pay warrants of employees covered hereby shall be made to the Union within 30 days after the conclusion of the month in which said membership dues and insurance premiums were deducted.

The City shall not be liable to the Union, employees or any other persons by reason of the requirements of this Article for the remittance of any sum other than that constituting actual deductions made from employee wages earned. The Union shall hold the City harmless for any and all claims, demands, suits, orders, judgments or other forms of liability that may arise out of or by reason of action taken by the City under this Article.

### **Section 2 - Grievance Procedure**

**Purpose:** The City of San Bernardino and the Union realize the importance of a viable Grievance Procedure to aid in the resolution of disputes among employees, supervisors and management. It is recognized that to maintain high employee morale and harmonious relations, an orderly method of processing a grievance is necessary.

This procedure is intended to establish a systematic means to process a grievance and to obtain fair and proper answers and decisions regarding employee complaints. The representatives of employees and management at all levels will make continuing efforts to secure prompt disposition of grievances. Every effort should be made to resolve grievances in the informal process. This article supersedes the grievance procedure in Resolution 10585.



The initiation of a grievance in good faith by employees shall not cast any adverse reflection on their standing with their supervisors or their loyalty as City employees, nor be a reflection on the employees' supervisors or the department involved, unless it is determined that such department or supervisors have grossly abused management discretion or the employees have grossly abused the grievance process. Retaliation against any employee for filing a grievance in good faith is strictly prohibited.

Definition of a Grievance: A grievance is an alleged violation of this MOU or any other written City law, rule or policy or an appeal of a disciplinary action, which adversely affects the employee's employment status or deprives the employee of pay or benefits to which the employee would otherwise be entitled, provided however, that allegations of discrimination or harassment in violation of the City's equal employment opportunity policies must be submitted to the City's Equal Employment Officer for resolution rather than as a grievance under this grievance procedure, and provided further that an employee who appeals a disciplinary action to the Civil Service Board may not also appeal that disciplinary action under this grievance procedure.

Grievances may be filed either by an affected employee through the Union, or by the Union through its President, and/or such other officers which the Union designates as officers with that authority. Fire Administration will notify the President of any grievance filed by an employee without Union representation.

Grievances over alleged violations of this MOU or other written City rules or policies shall specify the section of this MOU or such other written City rule or policy that is alleged to have been violated, the conduct which constituted the alleged violation and the remedy requested for the alleged violation.

Representation: The aggrieved employee shall have the right to be represented by the Union or by legal counsel. This representation may commence at any step in the grievance procedure. No person hearing a grievance need recognize more than one (1) representative for any employee at any one (1) time, unless the person hearing the grievance so desires. If the employee's legal counsel is not the Union's legal counsel, a representative of the Union will attend the grievance hearing to insure that the solution reached does not violate the terms of this MOU.

Time Limitations: Time limits are established to settle a grievance quickly. Time limits may be modified by agreement of the parties. If at any stage of this grievance procedure the Grievant or the Union is dissatisfied with the decision rendered, it shall be the Grievant's or the Union's responsibility to initiate the action which submits the grievance to the next level of review. The Grievant or the Union may proceed to the next step if a reviewing official does not respond within the time limits specified. A formal grievance may be entertained in or advanced to any step if the parties jointly so agree, and, in those instances in which an employee's immediate supervisor would not have the authority to resolve the grievance, a formal grievance may be initiated at the first step in the grievance



procedure in which the City's representative would have that authority. Unless otherwise agreed jointly by both parties, the time limit for each step shall be 15 calendar days.

Steps in the Grievance Procedure: The procedures outlined herein constitute the informal and formal steps necessary to resolve an employee's grievance. An attempt to settle a grievance in the informal structure at the employee-supervisor level is required, except that grievances involving appeals of disciplinary actions shall be initiated at Step 3 of this grievance procedure. The grievance must be submitted to the first applicable step of this grievance procedure within the required time limitation of the Grievant's or Union's knowledge of the incident's occurrence. The date and the subject of the incident should be provided with the request for the informal meeting.

A. Informal: Initially, the grieving employee and/or the Union shall on a personal face-to-face basis discuss his/her complaint with his/her immediate supervisor informally. Within the required time limitation of the presentation of the grievance, the supervisor shall provide an oral response to the employee and/or the Union.

B. Formal:

Step 1. Written Grievance to Supervisor: If a mutually acceptable solution has not been reached in the informal process, the employee and/or the Union shall submit the grievance in writing to his/her immediate supervisor. This must be accomplished within the required time limitation of being informed of the supervisor's informal decision. Within the required time limitation of receiving the written notification of the employee's and/or the Union's grievance, the supervisor may meet with the employee and/or the Union and thoroughly discuss the grievance. The employee may appear personally and may be represented by a representative of his/her choice. In any event, the supervisor shall give a written decision to the employee and/or the Union within the required time limitation after receipt of the written grievance.

Step 2. Meet with Division Head/Battalion Chief: If the grievance has not been satisfactorily resolved at the supervisor level, it may be appealed within the required time limitation to the Division Head, who may follow the steps outlined in Step 1 above. In any event, the Division Head/Battalion Chief shall give a written decision to the employee and/or the Union within the required time limitation after receipt of the grievance. If the grievance has not been satisfactorily resolved at this level, it may be appealed within the required time limitation to the Chief.

Step 3. Meet with Fire Chief or Designee: Upon receipt of the grievance, the Fire Chief or designee may follow the steps outlined in Step 2 above. In any event, the Fire Chief shall give a written decision to the employee and/or the Union within the required time limitation after receipt of the grievance. If the grievance has not been satisfactorily resolved at this level, it may be appealed within the required time limitation to the Director of Human Resources.

**Step 4. Review by the Director of Human Resources:** Within the required time limitation after receiving the appeal, the Director of Human Resources, or his/her designee, shall meet with the employee and/or the designated Union representative. The Director of Human Resources or designee shall deliver his/her decision, in writing, to the employee and/or the Union within the required time limitation after the meeting.

**Step 5. City Manager:**

1. If the grievance is still not adjusted, the aggrieved party may file a written appeal with the Manager or his/her designated representative within the required time limitation from the date of delivery of said answer.

2. The Manager or his/her designated representative shall deliver his/her decision in writing within the required time limitation after receipt of the appeal.

3. The decision of the City Manager or his/her designated representative is final and binding on all parties, unless reversed by a court decision.

All appeals of disciplinary actions through this grievance procedure shall be treated as confidential and no publicity will be given the final resolution of the grievance.

**Section 3 - Employee Representatives**

When requested by a member of the unit, a job representative may investigate any alleged grievance in the Department and assist in its presentation. The representatives shall be allowed reasonable time therefor during working hours without loss of time or pay, upon notification and approval of their immediate supervisor, with the concurrence of the appropriate Division/Battalion Chief or the Deputy Fire Chief. The privilege of a Job Representative to leave their work during work hours without loss of time or pay is subject to the understanding that the time will be devoted to the proper handling of grievances and will not be abused. Such time shall be excluded in any computation of overtime. Job Representatives will perform their regularly assigned work at all times, except when necessary to leave their work to handle grievances as provided herein. A Job Representative will not be granted time-off, or compensation, for the purpose of handling grievances outside this unit. The Union shall notify the City of names of each Job Representative each January. Anyone not on the list will not be recognized. A ratio of one (1) Job Representative for every 60 permanent employees in the unit, but not less than four (4) shall be recognized by the City.

**Section 4 - Investigation Rights**

When any member is under investigation and subjected to interrogation by the Fire Chief or any other member of the Fire Department, which could lead to punitive action,

such interrogation shall be conducted under the following conditions. For the purpose of this Article, punitive action is defined as dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

A. The interrogation shall be conducted at a reasonable hour, preferably at the time when the member is on duty, or during the normal waking hours for the member. If such interrogation does occur during off-duty time of the member being interrogated, the member shall be compensated for such off-duty time in accordance with regular department procedures, and the member shall not be released from employment for any work missed unless the seriousness of the investigation requires otherwise.

B. The member under investigation shall be informed prior to such interrogation of the rank, name and command of the official in charge of the interrogation, the interrogating official and all other persons to be present during the interrogation. All questions directed to the member under interrogation shall be asked by and through no more than two interrogators at one time.

C. The member under investigation shall be informed of the nature of the investigation prior to the interrogation.

D. The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.

E. The member under interrogation shall not be subjected to offensive language or threatened with punitive action, except that a member refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answer any question. The employer shall not cause the member under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

F. The complete interrogation of a member may be recorded. If a tape recording is made of the interrogation, the member shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The member shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or persons, except those which are deemed by the investigating agency to be confidential. No notes or reports, which are deemed to be confidential, may be entered in the member's personnel file. The member being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.

G. If prior to or during the interrogation of a member it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional

rights.

H. Upon the filing of a formal written statement of charges, or whenever a interrogation focuses on matters which are likely to result in punitive action against any member, that member, at his/her request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation.

This article shall not apply to any interrogation of member in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with a supervisor or any other member, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

**Lawful Exercise of Rights; Insubordination; Administrative Appeal:**

1. No member shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this Article, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this Article shall preclude a head of any agency from ordering a member to cooperate with other agencies involved in criminal investigations. If a member fails to comply with such an order, the agency may officially charge him with insubordination.

2. No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the member with an opportunity for administrative appeal.

**Section 5 - Non-Discrimination**

The provisions of this Memorandum of Understanding (MOU) shall be applied equally by the City and the Union to all employees covered hereby without favor or discrimination because of race, sex, age, national origin, or political or religious opinions or affiliations.

**Section 6 - Personnel Files**

No member shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the member having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the member refuses to sign it. Should a member refuse to sign, that fact should

be noted on the document and signed or initialed by a witness who is a union representative, if the union representative is present.

A member shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to and shall accompany the adverse comment.

### **Section 7 - Political Activity**

Except as otherwise provided by law, no member shall be prohibited from engaging, or be coerced or required to engage in political activity. No member shall be allowed to engage in political activity when in uniform or on duty.

### **Section 8 - Polygraph Activity**

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

### **Section 9 - Drug and Alcohol Testing**

**PURPOSES:** (1) To provide testing policies and guidelines to ascertain if Fire Safety employees are under the influence of or have been abusing drugs or alcohol; (2) To be in compliance with the Drugs in the Workplace Act as the City is the recipient of federal grants.

**POLICY:** Fire Safety employees are required on a daily basis to make critical decisions; therefore, the nature of our profession demands that the San Bernardino Fire Department maintain a drug-free workplace. This department cannot tolerate any drug-related misconduct, which would impair judgment and the exercise of lifesaving skills, because such behavior would create an unreasonable risk of harm or danger to our citizens and other employees.

The San Bernardino Fire Department will neither tolerate nor condone substance abuse.

1. During the term of this agreement the City of San Bernardino shall maintain an Employee Assistance Program (EAP) as a referral service for employees who

voluntarily seek treatment for substance abuse/dependency problems. Other treatment programs may be available through the employee's health plan. These services are confidential to employees who contact the EAP and successfully complete the necessary program.

2. Employees shall notify their immediate supervisor when required to use prescription medication that potentially may impair job performance or safety. The supervisor has the responsibility to take appropriate action once impairment has been determined.

**INDICATIONS FOR ALCOHOL AND DRUG TESTING:** The City may require an employee to submit to a drug and/or alcohol screen test under the following circumstances:

1. When a trained Supervisor has reasonable suspicion to believe, based upon specific and articulable facts and observations, that the employee may be under the influence of drugs and/or alcohol.
2. When a trained Supervisor has reasonable suspicion to believe, based upon his/her specific observation and articulable facts and observations, that the employee either possesses, uses, sells, transfers, manufactures, purchases or illegally transports alcohol, drugs, and/or drug-related paraphernalia or attempts to do so.
3. Follow-up testing for employees who have returned to work following a positive test and their participation in a drug and/or alcohol rehabilitation program.
4. When an on-duty employee is contacted by a police officer who has reasonable suspicion to believe the employee is under the influence of alcohol or drugs and/or has been involved in an on-duty, vehicle-related incident and the officer suspects the employee is under the influence of drugs and/or alcohol.

**PROCEDURE:** The department will test any on-duty employee for illegal drug or alcohol intoxication based on the Reasonable Suspicion Standard, which requires more than mere speculation. Reasonable Suspicion may arise from a pattern of articulable abnormal conduct or errant behavior, or information provided by reliable and credible sources, or specific observable conduct which would lead a reasonable prudent person to believe an employee is either under the influence of or has been using illegal drugs or alcoholic beverages.

The department will provide special training in the recognition of signs of illegal drug/alcohol intoxication to officers who shall be designated as officers with authority to order employees reasonably suspected of drug or alcohol intoxication to undergo drug testing.

Employees suspected of illegally possessing or using drugs or of being under the

influence of any drug, whether legal or illegal, are entitled to Union representation or to representation by legal counsel during all of the proceedings set forth herein

A. Employees who have a reasonable suspicion that another employee is illegally possessing or using drugs or is under the influence of any drug, whether legal or illegal, have the duty to report such suspicion to their supervisors immediately.

B. If a supervisor has a reasonable suspicion that an employee is either under the influence of or has been using illegal drugs or alcoholic beverages, or has received a report from a subordinate employee that another employee is suspected of either being under the influence of or has been using illegal drugs or alcoholic beverages, that supervisor has the duty to immediately notify an officer who has been provided with special training by the Department to recognize signs of illegal drug/alcohol intoxication, and to document his/her observations or other reasons for such suspicion in a memorandum.

C. The specifically trained officer will determine based on the supervisor's report and his/her own observations if there are circumstances sufficient to justify drug testing to determine the validity of the allegation. The specifically trained officer has the option to pursue the matter criminally, therefore excluding administrative sample collection and investigation. However, if the specifically trained officer chooses the administrative venue and believes that the employee has violated department policy concerning illegal drug or alcohol use, the specifically trained officer shall request the vendor responsible for the testing to collect a specimen from consumption and shall order the employee to provide such a specimen. The specifically trained officer shall give the employee a verbal summary of the facts which are the basis for the test prior to giving the administrative order to submit to a test. All orders to provide test specimens are mandatory orders and the test results shall not be used in any criminal or civil proceedings pursuant to the restrictions of Government Code Section 3303 (f).

D. The testing methodology will be based on a laboratory examination of a urine specimen except for allegations of alcohol intoxication.

1. Allegations of alcohol intoxication will be verified by a Evidential Breath Testing (EBT) device. Two breath samples will be taken and measured by the (EBT) to determine sobriety, the test will be witnessed by a second supervisor. If the employee requests an alternate verifying chemical test, the employee shall submit to a urine specimen at the time of the EBT testing. The specimen shall be collected, stored and tested in the same manner as cases involving legal dispute of drug screening.

2. Laboratory analysis of urine specimens shall be restricted to those tests authorized by this policy to detect drug abuse. They shall not be used for other purposes such as the analysis of physiological conditions or diseases.

3. The drug screening testing shall be done by a laboratory certified by the National Institute of Drug Abuse (NIDA) guidelines. The sample will be tested for any



of the drugs or classes of drugs listed below:

- a. Amphetamines/Methamphetamines
- b. Cocaine
- c. Cannabinoids (Marijuana, THC)
- d. Opiates (Heroin, Morphine and Codeine)
- e. Phencyclidine (PCP)

E. Employees who refuse to be tested when so ordered will be subject to disciplinary action for insubordination, which may include termination. Attempts by employees to alter or substitute any specimen will be grounds for disciplinary action. Failure to provide a specimen when ordered within a reasonable period of time (usually not more than three hours) may constitute a refusal to take a drug test.

F. The Medical Review Officer (MRO) will obtain the specimen using the least intrusive, most private method available. The sample shall be given a code number to prevent revelation of the employee's name at the testing laboratory. The restroom selected as a collection site shall be equipped with a sink to allow test subjects to wash their hands, a toilet, and be equipped with a stall for privacy. The MRO is responsible for ensuring the integrity of the specimen collection and maintaining the chain of custody. The only authorized personnel at the collection site are the employee and the MRO of the same sex.

G. Employees shall have their urine specimen split and stored in case of legal disputes if the urine specimen is of a sufficient quantity (90 ml - 3.04 fluid ounces) to be tested. The MRO shall collect the specimen samples, seal, label and store the samples in a secured location until delivery to the testing laboratory.

H. The specifically trained officer shall determine when the employee is fit to resume his or her duties after specimen collection and may consider any relevant information submitted by the employee in making this determination. If the specifically trained officer determines that an employee is unfit to perform his/her duties, the employee shall be transported to his or her residence and placed on paid administrative leave pending receipt of the test results.

I. The testing methodology shall consist of a two-step procedure:

1. Initial Screening Process: The specimen shall be screened using a Radio Immonochemical Assay (RIA) or Enzyme Multiplied Immunoassay (EMIT) test. An initial positive test will not be considered conclusive; rather, the same specimen will be subject to a confirmation test. A tentative positive test result is determined by the following concentration levels using NIDA confirmation cutoff guidelines.

Amphetamines/Methamphetamines	1000 ng/ml
Cocaine	300 ng/ml
Cannabinoids (Marijuana, THC)	50 ng/ml

Opiates (Heroin, Morphine and Codeine)	300 ng/ml
Phencyclidine (PCP)	25 ng/ml
Alcohol	.02 GMS %

2. **Confirmation Test:** Any coded sample with results at or above the cutoff values shall be submitted for a confirmation test. The identical coded specimen will be subject to a confirmation test using the Gas Chromatography-Mass Spectrometry Method (GC/MS) for verification. Concentrations of a drug at or above the following levels shall be considered a positive test.

Results below these cutoff values shall be considered negative. Results above these cutoff values shall be positive evidence that an employee has used illegal drugs. Prior to the submission of the confirmation test, the employee shall complete a Medical Review Form documenting any prescription or over-the-counter, nonprescription medications that the employee had taken prior to sample collection and may affect the results.

Amphetamines/Methamphetamines	300 ng/ml
Cocaine	50 ng/ml
Cannabinoids (Marijuana, THC)	20 ng/ml
Opiates (Heroin, Morphine and Codeine)	300 ng/ml
Phencyclidine (PCP)	25 ng/ml
Alcohol	.02 GMS %

J. Employees having an initial screen negative test result shall receive a memorandum stating that no illegal drugs were found. If the employee requests, a copy of such memorandum can be placed in the employee's personnel file. The testing procedure and investigation is confidential. Any employees who breach this confidentiality shall be subject to discipline.

K. If a specimen is found to be positive by the GC/MC process, the laboratory shall submit a written report to the Fire Chief or Fire Chief's designee. The laboratory results and the employee's initial prescription/nonprescription drug usage form shall be submitted to a Medical Review Officer (MRO) who shall be a licensed physician who has a knowledge of substance abuse disorders and had the appropriate medical training to interpret and evaluate an employee's positive test results. The MRO shall report to the Fire Chief or the Fire chief's designee the results of that evaluation.

L. The Fire Chief or the Fire Chief's designee shall notify the employee of the positive drug findings. If the confirmation test is above the cutoff value and the MRO's evaluation doesn't justify those results, the employee will be subject to the necessary disciplinary action. The employee has the option and the right to have the second sample independently tested by a NIDA lab and reviewed by a qualified independent MRO at the City's expense. However, the results will be released to the Fire Chief or the Fire Chief's designee and utilized in the investigation.

If the test results from the independent laboratory examination are positive and the independent MRO does not find appropriate medical justification for a positive test finding, the employee is subject to disciplinary action according to SOP Manual 1, Chapter V, Subject 13.

#### **M. Return-to-Duty Testing**

Before an employee returns to duty after engaging in prohibited drug and/or alcohol use, the employee shall undergo an evaluation of fitness for duty by the SAP, and under the direction of the SAP, submit to a return-to-duty test and received a verified negative result for drug and/or alcohol use.

Before an employee returns to duty after engaging in prohibited drug and/or alcohol use, the employee must have a return-to-duty test that would require the employee to test negative for drugs and/or alcohol.

The testing shall be conducted in accordance with Article II, Section 9, Subsections D, 1-3; E; F; G; H; I, 1-2; J; K; and L and in accordance with State and Federal laws.

#### **N. Follow-Up Testing**

1. Following a determination by a SAP that an employee is in need of assistance in resolving problems associated with drug and/or alcohol use the employee shall be subject to unannounced follow-up testing as directed by the SAP of at least six (6) tests in the first twelve (12) months following the employee's return to duty, and thereafter as determined necessary by the SAP. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary and is supported by the City.

2. Follow-up alcohol testing may also include testing for controlled substance use as directed and determined by the SAP.

3. The time period for "follow-up" testing for drug and/or alcohol use will be determined by the SAP subject to a reasonable minimum of twelve (12) months, and never to exceed thirty-six (36) months.

4. Follow-up testing may be on a daily, weekly, monthly or longer basis at the discretion of the SAP.

### **Section 10 - Financial Disclosure**

No member shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income,

debts, or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under a state law, City policy, or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the member to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

### **Section 11 - Locker Search**

No member shall have his/her locker, or other space for storage that may be assigned to them, searched, except in the employee's presence, or with his/her consent, or unless a valid search warrant has been obtained or where the member has been notified that a search will be conducted. This section shall apply only to lockers or other spaces or storage that are owned or leased by the employing agency.

### **Section 12 - Use of City Resources**

The Union may be granted permission to use Department facilities for the purpose of meeting with employees to conduct its internal affairs provided space for such meetings can be made available without interfering with City needs. Permission to use facilities must be obtained by the Union from the Chief or designated representative. The Union shall be held fully responsible for any damages and for the security of any facility that is used by the Union.

The Union shall be authorized to use City Computers and e-mail for limited union business as approved by the department head. All City protocols, rules and regulations will be followed.

The Department will furnish adequate bulletin board space where currently available. Only areas designated by the appointing authority may be use for posting notices. Bulletin Boards may be used for the following notices:

- A. Scheduled Union meetings, agenda and minutes;
- B. Information on Union Elections and the results;
- C. Information regarding Union special, recreational and related bulletins;
- D. Reports of official business of Union including reports of committees or the Board of Directors;
- E. Pay scales, job announcements, promotion lists, etc.;
- F. Such other items as may be approved by the Department management upon request of the Union.

Posted notices shall not be obscene or defamatory, nor shall they advocate election or defeat of candidates for public office. All notices to be posted may be dated and signed

by an authorized representative of the Union and should have the prior written approval of the Chief or his authorized representative.

### **Section 13 - Safety Committee**

The City Incident Review Board meets at least monthly to review vehicular accidents/incidents, which after initial assessment by the Risk Management Division, may have been preventable.

The Union may select one of its members to participate as a member of the Incident Review Board when the Board reviews an accident/incident in which Fire personnel are involved. The Chairman of the Review Board will inform the Union of the date and time of Board meetings, which will review such incidents at least 48 hours in advance.

### **Section 14 - Labor Management Committee**

The Union will meet with Fire Department management at least once a year on a mutually agreeable basis to discuss matters pertinent to the welfare of the Department and the employees. Such matters will include, but not be limited to, Standard Operating Procedures (SOP's) and the Policy Manual (PM) of the Fire Department. This will be done in an effort to create harmony between the Union and the City so that there is no confusion on either side as to the content, meaning and direction of the SOP and PM. The Union will designate four (4) representatives to serve on the Committee. Either the Union or the City may have additional members present, when mutually agreed upon in advance of a scheduled meeting. Normally, such meetings shall be during regular working hours.

### **Section 15 - Constant Staffing**

The Fire Department will maintain its authorized daily constant staffing position vacancies through off-duty personnel on an overtime basis.

### **Section 16 - Union Security**

A. No employee shall be required to become a member of the Union as a condition of his/her employment or continued employment by the City, and there shall be no discrimination against any employee on account of his/her membership or non-membership in the Union

B. It is recognized that an employee may or may not join the Union at the individual's discretion.

C. It is further recognized that the Union, as the exclusive bargaining representative of all Fire Safety employees, owes the same duties to all employees, whether Union members or not, and provides benefits and services to all employees whether Union members or not. Therefore, all employees shall, within 30 days of the effective date of this MOU, or within 30 days of the date of hire, whichever is later, either be a member of the Union and pay Union dues or pay an agency fee to the Union in an amount equal to the actual cost of representation which shall not exceed the uniform Union dues assessed uniformly against all Union members. The Union shall notify non-members who pay an agency fee of their rights, duties and responsibilities.

### **Section 17 - Workers' Compensation Injury**

Members should predesignate their choice of doctor and hospital for work-related injuries, in accordance with the California State Labor Code

## **ARTICLE III - COMPENSATION**

### **Section 1 - Salaries**

A. During the term of this MOU, the monthly salaries of members of the San Bernardino Fire Department in the classifications of Firefighter, Paramedic/ Firefighter, Engineer, Fire Investigator and Captain and additional classifications for which the Union becomes the recognized representative during the term of this agreement shall be fixed annually on August 1 of each year at the amount equal to the arithmetic average of the monthly salaries, paid or approved for payment to employees in like or most nearly comparable positions of ten (10) California cities with populations of between 100,000 and 250,000 as shown in the latest Annual Report of Financial Transactions of California cities published by the State Controller.

The ten (10) cities used for fixing the monthly salaries shall be those ten (10) cities remaining from an original and complete list of all California cities in the 100,000 to 250,000 population range based on the latest Annual Report of Financial Transactions of California Cities, published by the State Controller after representatives of the City and the appropriate recognized employee organization have alternately struck the names of cities from the list one at a time until the names of ten (10) cities remain. The representatives to strike the first name from the list shall be determined by lot.

B. In the event one or more of the ten (10) cities does not have one or more of the comparable position classifications, the monthly salary for the particular classification shall be computed as the arithmetic average of the next highest and next lowest comparable position classification of that City. For example,

1. No Captain: next highest - Battalion Chief; next lowest -

Engineer.

2. No Engineer: next highest - Captain; next lowest - Paramedic.
3. No Paramedic: next highest - Captain; next lowest - Firefighter

C. The salaries paid in Step A shall be the same as the arithmetic average of the starting salaries of the comparable positions in the ten (10) cities and the salaries paid in Step E shall be the same as the arithmetic average of the top salaries paid in comparable positions in the ten cities. The salaries paid in Steps B, C and D shall be fixed at amounts, which will cause the Local Safety members in the San Bernardino Fire Department to advance from the starting steps to the maximum pay steps in approximately equal salary advances.

D. New employees shall be hired at the A step of the established base salary range except as otherwise provided in this MOU.

E. Any Local Safety member of the Fire Department temporarily acting in a position in a higher rank during a period of absence of the incumbent or during a vacancy in the position for more than ten (10) consecutive working days or five (5) consecutive shifts, shall receive the same salary for the higher rank to which he would be entitled, were he promoted to that rank during the period in which the employee is acting in the higher rank, to which he would be entitled, were he promoted to that rank. The Fire Chief shall certify as to the assignment and the period of time worked in the higher rank to validate entitlement to the higher salary.

F. Employees in the classification of P-1 and P-3 may provide paramedic service if approved by the Fire Chief to do so and they provide payroll with a copy of their certifications to all state and county regulations.

1. The Fire Chief will assign each P-1 and P-3 approved and certified to "lead" paramedic duties on an engine company and they will be paid 96 hours (4 shifts) of premium pay. Premium pay is defined as the hourly rate difference between a top step P-1 and a top step P-2. The premium pay will be paid 50% on the first semi-monthly check and 50% on the second semi-monthly check.

2. Since the assigned P-1's and P-3's will be compensated for 96 hours of premium pay per month, only for extraordinary circumstances will the individuals be excused from actually working those hours, (e.g. vacation, sick leave, injury.)

3. Fulfillment of the 96 hours can be accomplished by either working full 24-hour shifts, partial shifts of 8-hour increments (up to three, 8-hour partial shifts in any given 24-hour shift) or a combination of both. Hours worked will be recorded on the employee's timesheet and will be tracked by the Department and Payroll. Each employee will receive a minimum of 8 hours credit when called to perform paramedic duties. If an employee actually works less than 8 hours, they will still put 8 hours on their timesheet. If an employee works 8 hours or more, then the actual number of hours worked will be



recorded on the timesheet.

4. If a P-1 or P-3 is assigned and works paramedic duties in excess of the 96 hours per month, he/she would receive additional premium pay for the hours worked over the 96 hours.

G. As per past practice, the following shall be included in computing the salary formula: EMT Pay

### **Section 2 - Special Assignment Pay**

All employees assigned to the following duty shall receive special assignment pay at the rate of \$50 per month. The number of employees eligible to receive such pay shall be determined by the City.

Eligible personnel:

1. Shift Arson Investigators
2. Certified Hazardous Material Specialists
3. Certified Breathing Apparatus Technicians
4. FLSA Statistician

The number of employees assigned to the positions at the time of the signing of the new MOU is: (9) Shift Arson Investigators; (12) Certified Hazardous Material Specialists; (9) Certified Breathing Apparatus Technicians; (1) FLSA Statistician.

### **Section 3 – Administrative Captain Assignment**

Any employees in the job classification of Fire Captain shall be entitled to compensation in the amount of eight percent (8%) over the assigned rate for his or her classification when permanently assigned by the Fire Chief to a forty-hour administrative assignment work week.

### **Section 4 - Educational Incentive Pay**

All members shall be entitled to receive in addition to their regular salary and as may be appropriate, one of the levels of incentive pay as set forth below;

A. Fifty (\$50) dollars additional compensation per month shall be paid each member who has a Firefighter II Certificate issued by the State of California; or,

B. One hundred fifty (\$150) dollars additional compensation per month shall be

paid each member who has a Fire Officer Certificate issued by the State of California; or,

C. Two hundred fifty (\$250) dollars additional compensation per month shall be paid any member who has a Chief Officer Certificate issued by the State of California.

#### **Section 5- Bilingual Pay**

Each full-time employee who meets the City's bilingual certification and eligibility requirements shall be compensated at the rate of \$50/month. The City shall reserve the right to determine languages for which testing will be conducted.

#### **Section 6- Overtime**

Overtime worked in excess of an employee's regular work schedule shall be paid at the applicable time-and-a half overtime rate under either the Fair Labor Standards Act or Charter Section 186.

A. **Policy:** It is the policy of the City to discourage overtime except when necessitated by abnormal or unanticipated workload situations. The City has the right to require overtime to be worked as necessary. Consistent with this policy, the Fire Chief, Deputy Chief and Battalion Chiefs, will make every effort to assign overtime evenly among the employees with similar skills or assignments.

B. **Definition:** Overtime is defined as all hours worked in excess of the regularly scheduled workweek. All overtime shall be reported in increments of six (6) minutes and is non-accumulative and non-payable when incurred in units of less than six (6) minutes. Holiday leave, sick leave, vacation leave and court time shall be considered as time worked for purposes of computing overtime compensation.

C. **Compensation:** Payment for overtime shall be made on the first regular payday following the pay period in which overtime is worked, unless overtime compensation cannot be computed until some later date, in which case overtime will be paid on the next regular payday after such computation can be made.

#### **Section 7- Retirement Plan**

A. The City shall continue to participate in an employees' retirement plan for Public Safety Officers, by contract with the California Public Employees' Retirement System (PERS) under the current 3% @ 55 formula. Effective December 31, 2008, the City shall contract with the PERS system under the 3% @ 50 formula. In the event any act, including but not limited to the enactment of legislation, eliminates this benefit prior to implementation, the City agrees to a reopener to discuss this issue.

B. The City shall continue to provide the "highest 12 month" retirement formula and Military Service Credit.

C. The City shall contract with PERS to provide the Fourth Level 1959 Survivor Benefit. All costs will be borne by the employee.

D. The City shall continue to provide the Post-Survivors' Retirement Benefit.

E. The City shall continue to provide the Post-Retirement Survivor Allowance to Continue after Remarriage benefit.

F. City will increase the base salary of all employees covered by this agreement by converting the nine percent (9%) Employer-Paid Member Contribution (EPMC) to base salary. This base salary is "compensation earnable" as defined in Section 20636 ( c ) of the California Government Code and shall be reported to the Public Employees' Retirement System (hereinafter "PERS"). Employees will then assume responsibility for payment of the nine percent (9%) employee retirement contribution to PERS and all associated costs for the conversion of the EPMC to base salary. The City shall designate such payment as an Employer Pick-Up as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code (26 USC §414(h)(2)). The employee contribution to PERS shall be made through automatic payroll deductions from the base salary in accordance with PERS regulations.

For purposes of determining overtime compensation and other salary payments, including but not limited to, payoffs of sick leave, vacation accruals, holiday accruals and comp time balances, the aforementioned nine percent (9%) base salary increase shall not be considered.

G. The City shall provide written notification to representatives of the union prior to the end of each fiscal year, which identifies the applicable rate for the next fiscal year.

#### **Section 8- On-Call/Call-Back/Standby**

Any employee on "on-call" status will receive a minimum of two- (2) hours' pay at time- and-a-half for all or any portion of a 24-hour day. If called back any time within the first two (2) hours of on-call, the time worked will be deducted from the two (2) hours on-call. If the call-back occurs after two (2) hours expire, call-back time will be clocked from the time the employee receives the call to report. Compensation for that time is in addition to the on-call status.

In the event an employee is placed on "standby" for court subpoena, the employee will receive two (2) hours standby pay at time-and-a-half. If the employee is called to court and does not go beyond 12:00 hours on that day, it will be considered part of the two (2)

hours standby. If the employee has to appear after the noon recess, any additional time will be added to the two (2) hours standby, plus one-half hour travel time. In cases where the subpoena is for 13:30 hours, or another time, the standby will start with time stated on the subpoena. In those cases where the subpoena is for 13:30 or later, the employee's time will be computed at the amount of time between the time of subpoena and 17:00, plus 30 minutes travel time. In the event the employee is required to pay parking fees, the employee will be reimbursed. If the employee is required to stay through noon recess, he will be paid for the actual time spent. All on-call, call-back and standby pay will be at the time-and-a-half overtime rate.

### **Section 9- Court Fines**

The City shall pay for court fines imposed upon each member as a result of his conviction of a traffic violation when such member was directed to operate any faulty vehicle or vehicular equipment which was the proximate cause of the mechanical or other traffic violation, provided that such violation did not result from improper or negligent operation of the vehicle on the part of the member.

## **ARTICLE IV - FRINGE BENEFITS**

### **Section 1 - Health/Related Insurance**

A. The City shall contribute monies toward health premiums for the employee plus one (1) dependent, at the rate equivalent to the total of the Kaiser South premium and the Delta Dental High Option plan premium or its equivalent, plus an additional \$100 per month for the employee plus one (1) dependent. The City's contribution will change to equal the cost in the Kaiser South premium and the Delta Dental High Option plan or its equivalent during the term of the MOU.

The City shall contribute monies toward health premiums for employees with employee only coverage at the rate equivalent to the total of the Kaiser South premium for employee only and the Delta Dental High Option plan or its equivalent for Employee Only, plus an additional \$100 per month.

Any contribution not utilized by an employee shall revert to the City.

B. Insurance benefits available for purchase by employees include medical, dental, vision, life and accidental death and dismemberment insurance.

C. An employee must purchase medical insurance offered through the City in order to utilize the contributions described in Section A.

D. Included in the contribution described in Section A, effective January 1, 2006, the City shall contribute the PERS adopted schedule amount (currently \$64.60) per month per retired employee to be used exclusively for the purchase of medical insurance benefits.

E. Employees may use any of the amounts described in Section A to purchase any or all of the insurance benefits described in Section B.

F. Cafeteria monies may be redesignated or a change of plans may be made in accordance with the rules established by the insurance plan selected by the employee.

G. The City shall provide each employee with \$5,000 life insurance.

H. The City shall pay funeral expenses of up to \$10,000 for a firefighter who becomes deceased as the result of an on duty injury or illness.

I. The following provision will go into effect, unless and except it conflicts with PERS regulations in the future: When a fire safety employee is married to another City employee, each of the employees will be permitted to enroll in their own separate health plan during designated open enrollment periods. Neither employee may receive double coverage under the City's health plans.

## **Section 2 - Work Uniforms**

A. **Work Uniforms:** The City will furnish and replace as needed four (4) work shirts and three (3) pairs of work trousers to each member. Guidelines for Fire Safety Employees include obtaining approval from the Battalion Chief, obtaining a "chit" from the Storekeeper, and going to the vendor for uniforms.

B. **Safety Boots:** The City will furnish safety boots to each member. Boots will be California-OSHA approved boots. Guidelines for Fire Safety Employees include obtaining a "chit" from the Fire Department and going to the vendor designated by the Department for their boots.

1. Employees who want to upgrade to a higher quality safety boot of greater cost than the Department's current issue shall be reimbursed for the amount of money equal to the cost of the Department issue. Reimbursement requires prior supervisory approval and a receipt from employee.

2. Employees who want to upgrade any safety gear to a higher quality of greater cost than the Department's current issue shall be reimbursed for the amount of money equal to the cost of the Department issue. Reimbursement requires prior supervisory approval and a receipt from the employee.

C. **Rain Gear:** The City shall continue its current method to provide appropriate

duty rain gear for personnel.

### **Section 3 - Tuition Reimbursement**

The City will continue, under its formalized procedures, to pay tuition costs for members who complete job-related courses of instruction with a grade consistent with the City's policy, which will increase their value to the City.

**Eligibility:** Approval will be limited to courses given by accredited colleges and universities, city colleges or adult education courses under the sponsorship of the Board of Education. No mail-order courses will be approved. Workshops, seminars, conferences and similar activities not identified as a formal course of instruction within the curriculum of a recognized educational institution, do not fall within the purview of this program, but may be authorized and funded by the Department upon approval of the City Administrator.

**Reimbursement:** The amount of reimbursement shall be 50% of the equivalent of the tuition costs for up to six (6) units per quarter as charged by the California State University, San Bernardino, or one-and-a-half times that amount, if on a semester system. The Director of Human Resources will recommend approval or disapproval based on the availability of budgeted funds for education tuition assistance. Reimbursement for books required for the approved course or courses will be authorized.

**Procedures:** Employees will submit copies of their approved applications to the Human Resources Department, according to City policies and procedures. Employees must include official verification of their final grades with appropriate receipts for tuition costs. These will be returned to employees upon request. Applications not submitted to the Human Resources Department according to City policies following completion of the course become void. The Human Resources Department will advise members of the procedures and policies upon request.

### **Section 4 - Deferred Compensation**

The City shall continue to sponsor a deferred compensation plan, which shall be available to employees on a voluntary basis.

### **Section 5 - Safety Equipment**

All employees who are required by state law to have safety equipment will be furnished the required safety equipment.

The Fire Administration and Fire Union will meet on standards, specifications and applications for all safety equipment. This will be accomplished in the Labor Management

Committee meetings.

### **Section 6 - Replacing/Repairing Personal Property**

The City shall continue to provide for the cost of replacing or repairing personal property, of any employee, which is lost or damaged in the performance of duty, as provided in Administrative Directives.

### **Section 7 - Vacation and Holiday Sell-Back**

Once per year, each person in the bargaining unit who has passed probation will be granted the option of selling their vacation and holidays back to the City. Employees may sell back prospective holiday and/or vacation time up to six (6) shifts of holiday and ten (10) shifts of vacation. The Union has committed to encourage holiday sell back, at an annual savings of \$50,000 or more.

Holiday and/or vacation usage picks will be made no later than December 31 each year. The Fire Department will provide this information to the Finance Department, by February 1 of the following year. The Finance Department will process sell back information for a lump-sum payment on the first payday in March each year.

Individuals who do not use all of the available holidays within the calendar year will have the balance of holiday hours remaining paid by the following March.

### **Section 8 – Welfare Benefit Trust**

If during the term of this agreement, the City Attorney's Office and the IRS approve the welfare benefit plan and trust agreement, the City agrees to a reopener at the union's request to discuss this benefit.

## **ARTICLE V - LEAVE PROVISIONS**

The provisions of City Resolution No. 6433, as amended, concerning sick leave, injury leave, vacation, holiday leave, leave of absence without pay and other leave as they apply to Fire Safety personnel, shall remain in effect, except as they are modified by this MOU. In circumstances in which either the Federal Family Leave Act or the State Medical and Family Leave Act apply, the City shall adhere to the requirements of the Acts.

### **Section 1 - Vacation**

All members within the bargaining unit shall be entitled to annual paid vacation as



follows:

A.	<u>Completed Years of Continuous Service*</u>	<u>Days/Shifts of Paid Vacation</u>	<u>Rate of Accrual Per Month</u>
	1 Year**	10 days or 5 shifts	0.833 working days
	10 Years	15 days or 7 1/2 shifts	1.25 working days
	20 Years	20 days or 10 shifts	1.667 working days

\*A service year begins on the initial date of employment in a full-time, regular status.

\*\*No vacation shall be granted if service is less than one (1) year.

B. When an employee resigns or otherwise leaves the service of the City and has not used earned vacation since his or her last anniversary date, payment shall be made to the employee for the earned portion of his or her vacation.

Calculation of payment for earned vacation, or deduction for unearned vacation upon termination shall be made in accordance with the wage rate in effect on the final day of employment.

C. When an employee returns to work after a break in continuous service, and when such break in continuous service shall have been by leave of absence with approval of the Mayor and Common Council, vacation time shall not accrue during such a break in continuous service, but shall accrue monthly from the date of return to service from such approved leave of absence based upon the total length of service of the employee.

D. Whenever the term "year or years of employment" appears herein, it shall be deemed to include all services for the City of San Bernardino. (Reference \* above in Section A.)

E. Vacation credits may accrue and accumulate for a maximum of two (2) years total accumulated vacation credits on a carryover basis from year to year. Vacations or portions thereof from any one year so accrued may run consecutively with vacations or portions thereof of the next succeeding year, subject to the approval of the appointing authority. Employees who exceed the two (2) year vacation accrual limit while on 4850 time or sick leave shall continue to accrue vacation hours at their current accrual rate without penalty.

F. In the event an employee has been permitted to take vacation which exceeds the number of hours actually accrued, a deduction shall be made from the employee's final compensation for the number of hours in excess of the accrual.

G. Employees shall not be permitted to work in their City position in lieu of taking

vacations in order to receive additional compensation from the City.

H. The Fire Department's practice is to schedule all members' vacations prior to January 1st for the following calendar year. Each calendar year, members will be permitted to have eight (8) shifts of banked vacation days that are not already scheduled in advance. In order to use banked vacation days, members must obtain approval in advance through their immediate supervisor and their Battalion Chief.

### **Section 2 - Holidays**

As of January 1, 2000, all members within the bargaining unit shall be entitled to 11 holidays per year, or 5.5 shifts, to offset the cost savings lost to the City by removal of Article III, Section 6, Paragraph G, of the MOU, per Article III, Section 6, Subsection H.

Effective January 1, 2006, all members within the bargaining unit shall be entitled to 12 holidays per year or six (6) shifts per year.

### **Section 3 - Sick Leave**

**Definition of Sick Leave:** Sick leave means the absence from duty of any employee because of illness or injury (except as noted below), exposure to contagious disease, or attendance upon a member of his/her immediate family who is seriously ill and requires the care of or attendance of an employee. Immediate family means: husband; wife; grandmother; grandfather; mother; father; sister; brother; son; daughter; uncle; aunt; mother-in-law; father-in-law; stepparents; stepchildren; and, with approval of the department head, this may include a person with whom the employee lives and has a familial relationship.

**Sick Leave Guidelines:** Not more than five (5) days of sick leave for 40-hour personnel, or three (3) shifts of sick leave for shift personnel, within any calendar year may be granted to employees for the care of or attendance upon members of their immediate family. Sick leave for this situation shall be granted in compliance with the Federal Family Leave Act of 1993.

No employee's absence due to illness in excess of five (5) days for 40-hour personnel, or three (3) shifts for shift personnel, shall be approved, except after the presentation of satisfactory evidence of illness; and, a certificate from a practicing physician shall be required by the Chief for approval concerning such absence.

In order to receive compensation while absent on sick leave, employees shall notify their immediate supervisor prior to the time set for beginning their daily duties, or as may be specified by the Chief.

Sick leave shall not be considered as a right which employees may use at their discretion, but shall be allowed only in case of necessity and actual personal illness, except as otherwise provided herein.

All members will be authorized to use earned sick leave after six (6) months of continuous employment with the City.

For semimonthly payroll, sick leave will accrue at the rate of 4.0 hours per pay period for employees scheduled to work 40 hours per week, or 6.0 hours per pay period for shift employees, with no limit as to the number of days/shifts that may accrue.

For purposes of usage, one (1) hour of sick leave shall be deducted from an employee's accrued, unused sick leave for each hour of absence. Resolution No. 6433, Section Five, shall remain in effect where applicable to the bargaining unit members, except as modified by this MOU.

#### Payment of Unused Sick Leave

A. After completion of five (5) years of continuous full-time employment with the City, every member shall, upon retirement or death, receive compensation for, excluding Sections B and C:

Fifty percent (50%) of all accumulated sick leave.

B. A continuous, active, full-time employee with the City shall, upon receiving a disability-connected retirement, receive compensation for accumulated, unused sick leave, as follows: One hundred percent (100%) of all unused sick leave.

C. Upon the death of a continuous, active, full-time employee, his/her surviving spouse and /or surviving children shall receive compensation for accumulated, unused sick leave, as follows: One hundred percent (100%) of all unused sick leave.

#### Section 4 - Union Leave

Employees elected to the Union Board shall be granted time off to perform official Union functions, including but not limited to, attendance at conventions, conferences, educational training and seminars, without loss of pay, up to a maximum of 600 hours total time per calendar year in the aggregate for such employees. Cumulative time not to exceed two (2) years. As a general practice, a minimum of 24 hours notice prior to requested time off will be given to on-duty Battalion Chiefs.

#### Section 5 - Trading Time

Subject to the authorization of the Fire Chief or Deputy Fire Chief and Battalion

Chiefs, members of the bargaining unit should be allowed to trade time with other employees of equal ability on the following basis, if they pass probation:

A. Trading time shall be with persons of equal ability and be agreeable with both parties and shall be requested in a memo signed by both employees.

B. In the event one part of a trade (either first part or second part) is not fulfilled for any reason, the employee not fulfilling his/her part shall owe the department for the amount of time missed. This shall be designated as an owed department payback at straight time. In the event the above does occur, the employee who did not fulfill his/her part may turn down a payback one time but must accept the payback on the second request.

### **Section 6 - Military Leave**

The City shall comply with any applicable State and/or Federal laws.

## **ARTICLE VI - WORKING CONDITIONS**

### **Section 1 - Workweek**

The average workweek for shift personnel shall be 56 hours. Shift calendars shall be provided to employees by the City.

### **Section 2 - Probationary Period**

1. The probationary period for positions in this unit shall be 12 months from the date of hire. All newly promoted employees must also serve a one-year probationary period.

2. The aforesaid period of probation excludes the entire period or periods of any leave of absence without pay and/or Military leave of absence in excess of 15 days.

### **Section 3 - Seniority**

Seniority is herein defined to be an employee's length of service with no break in service within the Fire Department and/or classification to which the employee is presently assigned. The Department may use seniority in vacation scheduling, shift assignments and transfers within classifications.

#### **Section 4 – Re-employment**

A member who has terminated City employment, and who is subsequently rehired in the same classification in a regular position within a 90-day period, may receive restoration of salary step. Seniority shall begin anew as of the rehire date. All other authorized benefits shall accrue as of the date of rehire.

#### **Section 5 - Physical Examinations**

The City shall pay medical fees for the physical examination of any firefighter when such examination is required and directed by the City.

#### **Section 6 - Paramedic Assignment**

P-2 Paramedic/Firefighters must meet and maintain the following standards:

- A. Recertify after completion of probation.
- B. Recertify according to state and county regulations.

P-2 Paramedic/Firefighters failing to meet the above standards may be subject to termination from employment. The City will pay initial recertification fees charged by the County. Paramedics will pay for a repeat test, if they fail a previous test.

Subject to approval of the Fire Chief, continuing education for paramedics may be met during on-duty hours. In addition, with the approval of the Fire Chief for each overtime requested, paramedics will be allowed to receive overtime for said courses taken during off-duty hours., but in no case will overtime paid for off-duty training exceed eight (8) hours per paramedic per fiscal year. Continuing education is the responsibility of each paramedic.

Compensation: See Article III, Section 1G. In the event the City increases its level of service to include ambulance transport, the Fire Department will within a reasonable amount of time implement continuing education during on duty hours, wherever possible. Under such circumstances, overtime will be paid for any off duty required training to maintain a paramedic certification. Each such overtime request requires the approval of the Fire Chief or designee.

#### **Section 7 - Related Work Standards**

During the term of this MOU, the City and the Union agree to meet and confer on related work standards as used in job descriptions in an effort to establish reasonable guidelines for employees in that unit.

## **ARTICLE VII - GENERAL PROVISIONS**

### **Section 1 - Severability**

If any provision of this MOU is held by the proper legislative or judicial authority to be unlawful, unenforceable, unconstitutional, or not in accordance with applicable status or not applicable to Charter Cities, all other provisions of the MOU shall remain in full force and effect for the duration of this MOU. If there is any conflict between the provisions of this MOU and the provisions of federal, state or local government regulations, the provisions of the federal, state or local government regulations shall be controlling. Upon the issuance of a decision declaring any Article, section or portion of this MOU to be unlawful, unenforceable, unconstitutional or not applicable to Charter Cities, the parties agree to meet and confer immediately concerning only those Articles, sections or portions.

### **Section 2 - Term**

With the exception of specific time frames and effective dates for individual Articles, this MOU shall be effective from January 1, 2003, through June 30, 2009.

### **Section 3 - Notice of Intent to Reopen**

The parties agree that if either party desires to propose changes in the terms or conditions of this MOU for the period following expiration of this MOU, the City and Union will strive to meet 60 days prior to the expiration of the MOU and discuss their intent to negotiate. Such notice shall request a meeting to begin negotiations and establish ground rules which shall include at a minimum the date beyond which no further proposals may be submitted by either party.

### **Section 4 - Prevailing Benefits**

All benefits, privileges and working conditions authorized for the members at the present time, which are not included in this MOU, shall remain in full force during the term of this MOU unless changed by mutual consent.

### **Section 5 - Maintenance of Benefits**

Upon expiration of the MOU and until a new MOU has been negotiated between the Union and the City, all articles in this MOU shall remain in full effect, unless otherwise stated in this MOU.

FIRE SAFETY EMPLOYEES'  
MEMORANDUM OF UNDERSTANDING  
2003-2009

\_\_\_\_\_  
Mayor  
City of San Bernardino

\_\_\_\_\_  
San Bernardino City Professional  
Firefighters' Local 891

\_\_\_\_\_  
City's Designated Representative

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form  
and legal content:

\_\_\_\_\_  
City Attorney



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