

DISCUSSION CALENDAR - AGENDA ITEM NO. 5
BOARD OF DIRECTORS MEETING
December 2, 2010

TO: Board of Directors, Orange County Fire Authority

FROM: Zenovy Jakymiw, Human Resources Director

SUBJECT: **Approval of Resolution Adopting GC Section 31664.2 and Amendments to Firefighter Unit Memorandum of Understanding and Health Plan Agreement between the Orange County Fire Authority and the Orange County Professional Firefighters' Association, Local 3631**

Summary:

In accordance with the Meyers-Milias-Brown Act and with the approval of the Board of Directors, staff has been meeting and conferring with the Orange County Professional Firefighters Association in order to agree upon amendments to the 2000-2012 Firefighter Unit Memorandum of Understanding (MOU), and the Health Plan Agreement (in effect 2009-2016). The meet and confer process has been successfully concluded and the attached amendments to the Firefighter Unit Memorandum of Understanding, the Resolution adopting GC 31664.2 and amendments to the Health Plan Agreement are presented to the Board with a recommendation for approval.

Recommended Actions:

1. Approve the proposed amendments to the 2000-2012 Firefighter Unit MOU.
2. Adopt the proposed Resolution implementing GC Section 31664.2 relating to the Orange County Professional Firefighters' Association, Local 3631.
3. Authorize the Fire Chief to enter into the proposed amended Health Plan Agreement.

Background:

The Meyers-Milias-Brown Act provides for recognized employee organizations to meet with employers and represent public employees through the meet and confer process, in matters relating to hours, wages and working conditions. Once agreement is reached, both parties jointly prepare a written memorandum of such understanding, which is presented to the governing body for determination.

On October 20, 2010, representatives from the Orange County Fire Authority, in accordance with direction from the Board of Directors, began the meet and confer process with the Orange County Professional Firefighters' Association, Local 3631, regarding amendments to the current MOU. As a result of this process, the parties have agreed to amend the current MOU and extend its term through June 30, 2014. The specific amendments to the MOU are herein attached as Attachment 1.

As part of the meet and confer process, the parties agreed to a new retirement benefit formula of "3% at age 55," which will apply to employees hired on or after July 1, 2012. This retirement benefit is noted in the MOU amendments, and requires a Resolution by the Board of Directors for implementation by the Orange County Employees Retirement System. The Resolution is herein attached as Attachment 2.

In addition to meeting and conferring on the MOU, the parties also met and conferred on the current Health Plan Agreement, which applies to members of the Firefighter Unit. As a result of this process, the parties have agreed to amendments to the Health Plan Agreement. The specific amendments to the Health Plan Agreement are herein attached as Attachment 3.

Impact to Cities/County:

Not Applicable.

Staff Contact for Further Information:

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Fiscal Impact:

The proposed concession package will produce an estimated saving of \$26.4 million from FY 2010-11 to FY 2013-14.

Attachments: (To be transmitted under separate cover.)

1. Proposed Firefighter Unit Memorandum of Understanding Amendments
2. Proposed Resolution implementing GC Section 31664.2 relating to the Orange County Professional Firefighters' Association, Local 3631
3. Proposed Amended Health Plan Agreement

Lori Zeller
Assistant Chief – Business Services

Ray Geagan
OCPFA Representative

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**MEMORANDUM OF UNDERSTANDING
RELATING TO EMPLOYEES IN THE FIREFIGHTER REPRESENTATION UNIT**

2000-20124

ORANGE COUNTY FIRE AUTHORITY

AND

ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION

IAFF - LOCAL 3631

FOR THE

FIREFIGHTER UNIT

This Memorandum of Understanding sets forth the terms of agreement reached between the Orange County Fire Authority and the Orange County Professional Firefighters Association, IAFF - Local 3631, as the Exclusively Recognized Employee Organization for the Firefighter Unit for the period beginning July 1, 2000, through June 30, 20124. Unless otherwise indicated herein, all provisions shall become effective July 1, 2000.

IMPLEMENTATION

This Memorandum of Understanding constitutes a mutual recommendation that was officially ratified by majority vote of the members of the Orange County Professional Firefighters Association (OCPFA) Local 3631 and the Orange County Fire Authority Board of Directors, on February 22, 2001.

In accordance with Article XXV, the parties to this Agreement have initiated subsequent negotiations on the provisions in Article XXV, Reopener, and have presented a mutual recommendation that was officially ratified by majority vote of the members of the Orange County Professional Firefighters Association (OCPFA) Local 3631 and the Orange County Fire Authority Board of Directors, on May 23, 2002. The provisions set forth in bold face, italic type, and dated 05/23/02, contain the first revisions made to the parties original 2000–2005 M.O.U., which was extended to 2000–2007.

In accordance with Article XXV, the parties to this Agreement have initiated additional subsequent negotiations on the provisions in Article XXV, Reopener, and have presented a mutual recommendation that was officially ratified by majority vote of the members of the Orange County Professional Firefighters Association (OCPFA) Local 3631 and the Orange County Fire Authority Board of Directors, on September 28, 2006. The provisions set forth in bold face, italic type, and dated 09/28/06, contain the second revisions made to the parties original 2000–2005 M.O.U., which was originally extended to 2000–2007 and is currently extended again to 2000–2012.

The parties to this Agreement have initiated subsequent negotiations on provisions within this Agreement, as well as other issues within the scope of representation, and have presented a mutual recommendation that was officially ratified by majority vote of the members of the Orange County Professional Firefighters Association (OCPFA) Local 3631 and the Orange County Fire Authority Board of Directors, on December 2, 2010. The provisions set forth in bold face, italic type, and dated 12/03/10, contain the third revisions made to the parties' original 2000–2005 M.O.U., which was originally extended to 2000–2012 and is currently extended again to 2000–2014.

DEFINITIONS

The following terms as used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

APPROXIMATELY shall mean, when it is used in relation to salaries or special pay provisions, a variance of not more than .0025.

ASSOCIATION shall mean the Orange County Professional Firefighters Association (OCPFA), IAFF - Local 3631, representing the Firefighter Unit.

AUTHORITY shall mean the Orange County Fire Authority (OCFA). The Authority is a joint powers agency that was created to discharge the functions of the Orange County Fire Department and which—effective March 1, 1995—became a successor organization to the Orange County Fire Department.

BOARD shall mean Board of Directors of the Authority.

CONTINUOUS SERVICE shall mean employment in a regular position, which has not been interrupted by resignation, discharge, or retirement. Official Leaves of Absence shall not constitute a break in continuous service. For those employees who transitioned from the County of Orange to Authority employment on March 1, 1995, continuous service shall include prior continuous service with the County of Orange.

COUNTY shall mean the County of Orange and special districts governed by the Board of Supervisors.

DEPARTMENT HEAD shall mean an executive manager of the Authority who is responsible for a department within the Authority (for example, Assistant Chief of Operations, Assistant Chief of Business Services, Assistant Chief of Fire Prevention, and Assistant Chief of Support Services.)

DUAL REPORTING shall mean a situation where, due to Authority error, two (2) or more employees are inadvertently scheduled for and report to the same assignment.

DUTY WEEK shall mean a fifty-six (56) hour average duty week work period.

ELIGIBLE FORMER EMPLOYEE shall mean an employee who meets the coverage and participation requirements set forth in Sections 3.2.1 and 3.2.2 of the Retiree Medical Plan at the time of his/her termination of employment with the Authority. (09/28/06)

ELIGIBLE RETIREE shall mean a retiree who is receiving a monthly retirement allowance from the Orange County Employees Retirement System (OCERS), who meets the coverage and participation requirements set forth in Section 3.1 and 3.2 of the Retiree Medical Plan, and whose coverage has not been terminated under Section 3.3 of the Retiree Medical Plan. (09/28/06)

EMERGENCY shall mean an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, or a pressing necessity.

EMPLOYEE shall mean a person employed by the Authority and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

FIRE CHIEF shall mean the person who is the principal officer or employee of the Authority.

FIREFIGHTER TRAINEE shall mean a classification in which employees are hired and assigned to participate in a Firefighter Basic Training Recruit Academy.

FISCAL YEAR shall mean a period from July 1 through June 30.

FULL-TIME EMPLOYEE shall mean an employee employed in one or more regular or limited-term positions whose normally assigned work hours equal those of a full workweek or work period as described hereinafter.

HUMAN RESOURCES DIRECTOR shall mean the Human Resources Director or his/her designee.

IAFF shall mean International Association of Firefighters.

LIGHT DUTY ASSIGNMENT shall mean an assignment of duties not normally performed by an employee's classification, but necessitated by the employee's injury or illness.

LIMITED-TERM EMPLOYEE shall mean an employee employed in a limited-term position except where a regular position is converted to a limited-term position, the incumbent shall retain his/her former status. As an exception to this definition, a limited-term employee may also be used to fill a regular position when the incumbent employee is on Official Leave of Absence.

LIMITED-TERM POSITION shall mean a position, which the Authority has determined has no anticipated long-range funding or has uncertain future funding.

LOCAL 3631 shall mean International Association of Firefighters ~~Fire Fighters~~, Local 3631, approved by the International Association of Firefighters ~~Fire Fighters~~ as the successor to Local 1014.(12/02/10)

OCPFA shall mean Orange County Professional Firefighters Association, IAFF - Local 3631, approved by the International Association of Firefighters ~~Fire Fighters~~ as the successor to Local 1014.(12/02/10)

PART-TIME EMPLOYEE shall mean an employee employed in one or more regular or limited-term positions whose normally assigned work hours do not equal those required of a full-time employee.

PERSONAL EMERGENCY shall mean an unforeseen event or circumstance of a serious nature, which is beyond an employee's control and which necessitates the employee's absence from Authority duty. This includes—but is not limited to—those events and circumstances requiring the employee's prompt attention to avoid possible financial loss to, or damage to the health of, either the employee or a member of his/her household.

PRACTICABLE shall mean economically feasible or reasonably able to accomplish.

PREMIUM OVERTIME shall mean authorized time worked, which is defined as overtime under the Fair Labor Standards Act (FLSA).

PROBATIONARY EMPLOYEE shall mean an employee who is serving a probation period and is employed in a regular or limited-term position.

PROMOTION shall mean the movement of a regular, limited-term, or probationary employee from one (1) class to another class where the maximum step on the new salary range is at least one (1) full step higher than the maximum step of the old salary range.

REASSIGNMENT shall mean the movement of a regular, limited-term, or probationary employee from one (1) class to another class on the same salary range or to a class where the maximum step on the new salary range is less than one (1) full step higher or lower than the maximum step of the old salary range.

RECRUITING STEP shall mean the first step of the salary range allocated to a class unless otherwise authorized by the Board or the Human Resources Director.

REDUCTION shall mean the movement of a regular, limited-term, or probationary employee from one (1) class to another class where the maximum step of the new salary range is at least one (1) full step lower than the maximum step of the old salary range.

REEMPLOYED EMPLOYEE shall mean an employee who is hired back by the Authority in accordance with the eligibility requirements identified in the OCFA Selection Rules and Appeals Procedure.

REGULAR EMPLOYEE shall mean an employee who is not on probation and is employed in a regular or limited-term position.

REGULAR POSITION shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

SENIORITY shall mean total continuous full-time equivalent service as a regular employee unless the context herein indicates otherwise.

SERVICE for the purpose of determining benefits under the Retiree Medical Insurance Grant shall mean service for the Authority and shall include service for the County of Orange, if the employee/retiree transitioned directly from County employment to Authority employment and has been continuously employed by the Authority from March 1, 1995, until retirement.

SHIFT EMPLOYEE shall mean an employee assigned to a fifty-six (56) hour average duty week.

STAFF EMPLOYEE shall mean an employee assigned to a forty (40) hour workweek.

UNION shall mean Orange County Professional Firefighters Association (OCPFA), IAFF - Local 3631, representing the Firefighter Unit.

Y-RATE shall mean a pay rate outside the assigned salary range of a class.

ARTICLE I

WORK HOURS, OVERTIME, AND PREMIUM PAY

Section 1. Work Hours

- A. The official workweek or work period for employees shall be as follows:
1. Except as otherwise provided below, the official workweek for employees shall be fifty-six (56) hour average duty per week based on a three (3) platoon schedule. The work period for purposes of calculating overtime shall be twenty-four (24) calendar days. Pursuant to the Fair Labor Standards Act (FLSA), hours worked—which exceed one hundred eighty-two (182) hours in a twenty-four (24) calendar day work period—shall be premium overtime paid in accordance with FLSA. For purposes of determining premium overtime, paid time off *including paid time given pursuant to California Labor Code Section 4850*, ~~—other than paid leave given pursuant to California Labor Code, Section 4850—~~ shall be calculated as hours worked. (12/02/10)
 2. The work period for employees assigned to other than a fifty-six (56) hour average duty per week schedule shall be twenty-eight (28) calendar days. Employees assigned to a forty (40) hour workweek shall be entitled to two (2) regularly scheduled consecutive calendar days off. Hours worked in excess of eighty (80) hours in each pay period shall be premium overtime as provided herein. For purposes of determining premium overtime for hours worked within the twenty-eight (28) calendar day work period, paid time off—other than paid leave given pursuant to California Labor Code, Section 4850—shall be calculated as hours worked.
 3. The work period may be established on a pay period basis starting on a Friday and ending on the second Thursday thereafter. Such employees who occupy full-time positions shall be scheduled to work eighty (80) hours in each work period and scheduled days off shall fall on at least two (2) consecutive calendar days. Work ordered and performed in excess of eighty (80) hours of paid time in a work period shall be overtime.
 4. The Authority may modify the work period. Prior to such modification, the Authority shall notify Local 3631 of the proposed changes. Upon request, the Authority shall discuss proposed changes in the work period with Local 3631. The Authority shall provide written notification to Local 3631 of at least fourteen (14) calendar days prior to placing the changes in effect.
- B. Except as otherwise provided, no employee shall be employed in one or more positions, full-time or part-time, more than the total number of hours for the

employee's work period as defined in Section 1.A., of this Article, except on overtime authorized by the department.

- C. The Authority agrees to give forty (40) hour workweek employees a seven (7) calendar day advance notice of a shift change whenever practicable.
- D. In addition to any other position or positions that are held, an employee may also voluntarily work in a capacity authorized for the Registrar of Voters in the course of an election—provided that such election work does not unduly interfere with the employee's regular assignment. Election work shall be compensated at the rate authorized for such work.
- E. No forty (40) hour workweek employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.

Section 2. Rest Periods, Sleep Periods, Cleanup Time, and Meal Periods

- A. The Fire Chief shall have the authority to establish rules and regulations concerning sleep periods, rest periods, cleanup time, and meal periods.
- B. *Personnel assigned to strike teams who travel eight (8) consecutive hours or more during their return to the County of Orange, shall be released from duty upon the disbanding of their assigned strike team. Employees whose regular duty shift is scheduled on the day of the return shall be released from duty for the remainder of the shift and will receive full compensation for the remainder of that shift. (12/02/10)*

Section 3. Treatment of Salary and Benefits for Employees Assigned to a Shift Duty Week

- A. An employee assigned to a shift duty week shall be compensated at the equivalent of an average fifty-six (56) hour duty week for all salary and benefits described within this Memorandum of Understanding. Computations for salary, vacation, sick leave, premium pay, overtime, retirement benefits, and specialty pay shall be based upon the average weekly hours of fifty-six (56) hours per week.
 1. In calculating years of service credit for retirement, shift employee hours shall be converted by a factor of one and four-tenths (1.4). The one hundred and twelve (112) average hours worked in a pay period will be transmitted to retirement as eighty (80) hours.
- B. During major emergencies, all activities related to the emergency are considered to be suppression assignments for both shift employees and forty (40) hour workweek employees, except that duties performed by forty (40) hour workweek personnel during their regularly assigned hours will be compensated at the employee's regular hourly rate.

- C. During a major emergency, Section 3.A. and 3.B., of this Article, shall not apply to employees in the class of Heavy Fire Equipment Operator or to employees who regularly perform the duties of Fire Crew Supervisor, Public Information Officer, or Investigator—provided such employees are performing their regular duties during such major emergency.

Section 4. Overtime

- A. Notification of Employees—If, in the judgment of the Authority, work beyond the normal workday, workweek, or work period is required, the Authority will notify any employee who may be asked or required to perform such overtime of the apparent need for such overtime whenever practicable prior to when the overtime is expected to begin.
- B. Distribution of Overtime—When the Authority determines overtime is required, it shall be distributed in the following order of priorities:
1. Voluntary premium overtime work shall be assigned in accordance with procedures that will, as nearly as possible, distribute premium overtime evenly among employees of the Firefighter Unit who volunteer for such overtime assignments, are of the same rank, and are qualified and capable of performing the work as determined by the Authority.
 2. If overtime is required and the availability of employees identified in Section 4.B.1., of this Article, has been exhausted, the Authority may order premium overtime work and will, when practicable, assign such overtime work in accordance with procedures that will, as nearly as possible, distribute such overtime evenly among employees of the Firefighter Unit capable of performing the work as determined by the Authority. The Authority shall have the right to require the performance of overtime work, including requiring employees to remain at work after conclusion of their shift until relief is available.
- C. Payment for Overtime
1. Overtime for staff employees assigned to a forty (40) hour workweek shall be compensated at one and five-tenths (1.5) times the basic hourly rate. Shift employees assigned to a fifty-six (56) hour average duty week shall be compensated at the fifty-six (56) hour average duty week equivalent and based on the employee's hourly rate as determined by Section 1.A.1. and 1.A.2., of this Article.
 2. For shift personnel, fringe benefits, merit eligibility dates, and probation periods shall be calculated on the basis of a fifty-six (56) hour average duty week. Overtime outside the basic fifty-six (56) hour average duty week shall not be used to earn fringe benefits or to count toward probation or merit increase periods.

3. Premium overtime shall be compensated at one and five-tenths (1.5) times the employee's basic hourly rate.
4. Fair Labor Standards Act (FLSA) will be mandated as long as it is applicable to the Authority.
5. Unless waived by the parties, employees' work schedules shall not be changed during the workweek in progress when the purpose of such change is to avoid overtime.
6. When a shift employee is assigned on his/her scheduled day off to work a non-shift overtime assignment in a work environment where he/she is not assigned to participate in emergency responses, the overtime rate for that non-shift overtime assignment shall be as provided for forty (40) hour workweek employees in Section 4.C.1., of this Article. Such overtime shall not be used to earn fringe benefits or to count toward probation or merit increase periods.
7. A shift employee working an overtime assignment as described in Section 4.C.6., of this Article, who is directed to respond to a major emergency shall be paid for overtime related to the emergency in accordance with Section 4.C.1. or Section 4.C.3., of this Article, whichever is applicable.
8. The Authority agrees to pay all backfill and overtime pay within the same pay period worked.

D. Dual Reporting for Overtime

1. Dual reporting situations are not subject to the call-back provisions of Section 5.B., of this Article.
2. When two (2) employees report for the same shift, fifty-six (56) hour average duty week, assignment due to an Authority error, one (1) shall be assigned to work. The unassigned employee shall be released from work and compensated for his/her work/travel time to a maximum of two (2) hours at the overtime rate for shift employees as provided herein.
3. If two (2) employees report for the same shift, fifty-six (56) hour average duty week, assignment for reasons other than Authority error, one (1) shall be assigned to work; the unassigned employee shall not be compensated.

Section 5. On-Call Pay and Call-Back Pay

A. On-Call Pay

1. When an employee is assigned on-call duty by the department, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall

be compensated at one-fourth (1/4) of his/her basic hourly rate for such assignment.

2. On-call duty requires the employee so assigned to (1) be reachable by telephone or other communications device, (2) be able to report to work in a reasonable time, and (3) refrain from activities which might impair his/her ability to perform assigned duties.
3. When a shift or staff employee has been placed on-call on his/her scheduled day off because he/she is required to be a witness in a matter directly related to his/her assigned duties as an Authority employee and such an employee is not a party to the litigation, the on-call compensation provided herein shall not be subject to the provisions of Section 3.A., of this Article.

B. Call-Back Pay

1. When a shift employee who works a fifty-six (56) hour average duty week returns to work because of an Authority request made after the employee has completed his/her normal work shift and left the work station, the employee shall be credited with five and six-tenths (5.6) hours work plus any hours of work in excess of five and six-tenths (5.6) hours in which the employee continuously engaged in work for which he/she was called back.
2. When a staff employee who works a forty (40) hour workweek returns to work because of an Authority request made after the employee has completed his/her normal work shift and left the work station, the employee shall be credited with four (4) hours work plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he/she was called back.
3. ***When a fifty-six (56) hour duty week employee returns to work as provided above, and such return occurs two (2) hours or less before the established starting time of the employee's next shift, he/she shall be compensated for two and eight-tenths (2.8) hours. (09/28/06)***
4. ***When a forty (40) hour workweek employee returns to work as provided above, and such return occurs two (2) hours or less before the established starting time of the employee's next shift, he/she shall be compensated for two (2) hours. (09/28/06)***
5. Call-back for employees assigned to a forty (40) hour workweek shall be paid at one and five-tenths (1.5) times the basic hourly rate, except that call-back to perform suppression activities shall be paid at the employee's basic hourly rate as determined in accordance with Section 3.B., of this Article.
6. Call-back shall be paid at the employee's basic hourly rate.

7. There shall not be any duplication or pyramiding of rates paid under this Section, except as provided in Section 5.B.2., of this Article.

ARTICLE II

PAY PRACTICES

Section 1. Compensation for Employees

- A. Employees shall receive compensation at the biweekly or hourly rate for the range and step assigned to the class in which they are employed.

Section 2. Pay for New Employees

- A. The Human Resources Director may authorize the appointment of employees at any of the first seven steps of the salary range. Such appointment may be made only when, at the discretion of the Human Resources Director, there is a direct and measurable benefit to the Authority for such appointment.
- B. The Fire Chief may authorize the appointment of employees at a step higher than Step 7 of the range. Such appointment may be made only when, at the discretion of the Fire Chief, there is a direct and measurable benefit to the Authority for such appointment.

Section 3. Merit Increase Within Range

- A. Salary increases within a range shall not be automatic. They shall be based upon merit and granted only upon the affirmative recommendation of the employee's supervisor with the approval of the next level supervisor.
- B. A new or reemployed employee in a regular or limited-term position shall have a merit increase eligibility date, which shall be the first day of the pay period following the completion of the first twenty-six (26) weeks of service within that class. The granting of an Official Leave of Absence, other than a Military Leave, the imposition of a suspension, or the granting of a light duty assignment, **as a result of a non-occupational injury**, ~~to an employee~~ shall cause the merit increase eligibility date to be extended a number of calendar days equal to the Official Leave, suspension, or light duty assignment **as a result of a non-occupational injury**. The extended merit increase eligibility date will be effective the first day of the pay period after said date. Subsequent merit increase eligibility dates shall be the first day of the pay period following the completion of fifty-two (52) week intervals subject to the same postponement for Official Leaves of Absence, suspensions, or light duty assignments **as a result of a non-occupational injury.**(12/02/10)
- C. An employee in a part-time regular or limited-term position who has been assigned to a fifty-six (56) hour average duty week and who has not completed one thousand four hundred fifty-six (1,456) paid hours exclusive of overtime by his/her first merit increase eligibility date shall have the merit

increase eligibility date postponed until the first day of the pay period following completion of one thousand four hundred fifty-six (1,456) paid hours exclusive of overtime. Likewise, an employee in a part-time regular shift position or limited-term shift position who has not completed two thousand nine hundred twelve (2,912) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his/her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand nine hundred twelve (2,912) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.

- D. An employee in a part-time regular or limited-term position who has been assigned to a forty (40) hour workweek and who has not completed one thousand forty (1,040) paid hours exclusive of overtime by his/her first merit increase eligibility date shall have the merit increase eligibility date postponed until the first day of the pay period following completion of one thousand forty (1,040) paid hours exclusive of overtime. Likewise, an employee in a part-time regular staff position or limited-term staff position who has not completed two thousand eighty (2,080) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his/her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand eighty (2,080) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.
- E. An employee on light duty assignment due to an occupational injury, or an employee on leave pursuant to California Labor Code Section 4850 will have his/her merit review extended by the same number of calendar days that the employee is on light duty assignment or 4850 leave. Any merit increase received by the employee at the completion of the extended review period will be made retroactive to the original merit review date..(12/02/10)***
- F. Merit increases may be granted for one (1), two (2), three (3), and four (4) steps within the salary range based upon the employee's performance. Standard performance shall earn a two (2) step increase.
- G. The determination as to whether or not to grant merit increases beyond Step 9—and if granted, in what amounts—shall be within the discretion of the immediate supervisor with the approval of the next level supervisor and shall be based on merit.
- H. If, in the Authority's judgment, the employee's performance does not merit a salary increase on the merit increase eligibility date and a deferral of decision accompanied by an intensive effort at improved performance might be

productive, the Authority shall complete the structured merit rating and defer a decision regarding the merit increase any number of pay periods, but not to exceed thirteen (13) pay periods. A deferral of less than thirteen (13) pay periods may be further extended not to exceed thirteen (13) pay periods from the original merit increase eligibility date. The employee may be reevaluated at any time. However, in any event, the employee shall be reevaluated on the structured merit rating prior to the end of the thirteenth pay period. The employee's merit increase eligibility date shall not be changed by such deferral.

- I. Should an employee's merit increase eligibility date be overlooked through an error and—upon discovery of the error—the employee is granted a merit increase, the employee shall be compensated for the additional salary the employee would have received dating from the employee's merit increase eligibility date.

Section 4. Salary on Promotion

- A. Except as modified by Section 4.B. and Section 4.C., of this Article, a regular, limited-term, or probationary employee promoted to a position in a class with a higher salary range shall receive the recruiting salary for the higher class or such higher amount as would be the closest to a five and five-tenths (5.5) percent increase on the range over the salary received prior to the promotion not to exceed the top step of the range. A new merit increase eligibility date shall be established, which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.
- B. Any employee who is promoted to a class from which he/she was previously reduced without a salary decrease shall be placed at a salary step no higher than the step the employee would have achieved if the employee had remained in the class to which he/she is promoted and had demonstrated at least standard performance. The employee's merit increase eligibility date shall be reestablished in order to credit the employee with any time formerly served in the higher class.
- C. An employee who is promoted to a Firefighter Unit class from which the employee was previously reduced with a salary decrease in order to become a Paramedic Firefighter shall be placed at a salary step in accordance with Section 4.C.1. or Section 4.C.2., of this Article, whichever is higher:
 1. Placement at the same salary step the employee previously held in the class to which he/she is being promoted
 2. Receipt of a pay increase closest to a five and five-tenths (5.5) percent pay increase on the range over the salary received prior to the promotion, not to exceed the top step of the range

A new merit increase eligibility date shall be established, which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.

Section 5. Salary on Reassignment

- A. When a regular, limited-term, or probationary employee is reassigned to a class with the same recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status he/she would have achieved if the employee had been in the new class throughout the period of such service in the old class.
- B. When a regular, limited-term, or probationary employee is reassigned to a class with a higher recruiting step, such employee's salary shall be advanced the number of steps difference between recruiting steps, and the employee shall retain his/her former merit increase eligibility date, except as provided in Section 5.E., of this Article. Such employee shall have the same probation status he/she would have achieved if the employee had been in the new class throughout the period of such service in the old class.
- C. When a regular or limited-term regular employee is reassigned to a class with a lower recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status he/she would have achieved if the employee had been in the new class throughout the period of such service in the old class.
- D. When a probationary or probationary limited-term employee is reassigned to a class with a lower recruiting step, such employee shall have the same salary, step status, probation status, and merit increase eligibility date as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- E. When a regular, limited-term, or probationary employee is involved in a series of reassignments among classes with the same salary range but different recruiting steps, his/her salary and merit increase eligibility date shall be determined by the Human Resources Director.

Section 6. Salary on Reduction

- A. 1. When a probationary employee, an employee who has been on temporary promotion, or a regular employee who was promoted to a limited-term position at the direction of the Fire Chief is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class and shall receive a new merit increase eligibility date as provided in Section 3., of this Article, or the employee's salary and merit increase eligibility date may be determined by the Human Resources Director.

2. When a promotional probationary employee, an employee who has been on a temporary promotion, or a regular employee who was promoted to a limited-term position at the direction of the Fire Chief is reduced to a class the employee occupied in good standing, the employee shall have the step status and merit increase eligibility date he/she would have achieved if the employee had remained in the lower class throughout the period of his/her service in the higher class.
- B. When a regular or limited-term regular employee is reduced to a position in a lower class by demotion for reasons of unsatisfactory performance, the employee's salary shall be reduced to a step on the salary range that would be the closest amount to a two (2) step reduction, or the employee shall receive the maximum step of the salary range of the new class, whichever is lower. The employee's merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class unless the employee thereby is placed at the recruiting step of the new salary range. In which case, the employee's merit increase eligibility date shall be the first day of the pay period following the completion of twenty-six (26) weeks of service in the new class.
 - C. When a regular or limited-term employee in good standing is reduced to a position in a lower class for physical disability or reasons other than unsatisfactory performance, the employee shall receive the highest salary in the new salary range that does not exceed the employee's rate of pay immediately prior to reduction and shall retain his/her merit increase eligibility date.
 - D. When a regular, limited-term, or probationary employee is reduced as the result of a position reclassification, the applicable salary shall be determined as follows:
 1. If the salary of the employee is the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.
 2. If the salary of the employee is greater than the maximum of the new class, the salary of the employee shall be designated as a Y-Rate and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee or until the period of calendar time indicated in the schedule below has elapsed, whichever is sooner. If—at the end of the specified period indicated below—the salary of the employee still exceeds the maximum of the new salary range, the salary of the employee shall be reduced to the maximum salary for the new class.

Y-RATE SCHEDULE

Years of Full-Time

Duration

<u>Continuous Service</u>	<u>of Y-Rate</u>
Less than 5 years	2 years from the date of reclassification
5 years but less than 10 years	3 years from the date of reclassification
10 years but less than 15 years	4 years from the date of reclassification
15 years but less than 20 years	5 years from the date of reclassification
20 years but less than 25 years	6 years from the date of reclassification
25 years or more	7 years from the date of reclassification

3. When an employee on Y-Rate accepts a voluntary reduction, his/her salary shall be reduced by the amount of the difference between the maximum salary of the class from which the employee is being reduced and the maximum salary of the new class.

Section 7. Salary on Reclassification

- A. The salary of a regular, limited-term, or probationary employee whose position is reclassified shall be determined as follows:
 1. If the position is reclassified to a class with the same salary range, the employee's salary, merit increase eligibility date, and probationary status remain the same as in the former class.
 2. If the recruiting step is higher, the employee's salary shall be advanced the number of steps difference between recruiting steps.
 3. If the recruiting step is lower, the regular or regular limited-term employee's salary remains the same.
 4. A probationary or probationary limited-term employee reclassified to a class with a lower recruiting step shall have the same salary, step status, probation status, and merit increase eligibility date as he/she would have achieved if the employee had been in the new class throughout the period of such service in the old class.
- B. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Section 4.A. or 4.B., of this Article.

- C. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Section 6.D., of this Article.

Section 8. Salary on Reemployment

- A. A person who is reemployed in the Firefighter Unit may, upon approval of the Human Resources Director, be appointed at a step higher than the recruiting step, but no higher than the step the person received at the time of separation unless appointment is at an advanced step or rate pursuant to Section 2.B., of this Article.
- B. A former employee on paid retirement may be reemployed for not more than one hundred twenty (120) working days or nine hundred sixty (960) hours, whichever is greater, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

Section 9. Changes in Salary Allocation

- A. If a class is reassigned to a higher salary range, each employee in the class shall be compensated at the same step in the new salary range as the employee was receiving in the range to which the class was previously assigned. However, if a class is reassigned to a lower salary range, the salary of each employee shall be determined in accordance with Section 6.D., of this Article.

ARTICLE III

EMPLOYEE PROVISIONS

Section 1. Selection Procedures

- A. The Authority shall meet with the Union and consider its concerns prior to the establishment of selection procedures for the positions of Fire Apparatus Engineer and Fire Captain.
- B. Prior to initiating the testing process, the Authority shall designate an expiration date for the eligibility list. The eligibility list may be extended by mutual agreement of the parties.
- C. Provided a sufficient number of members of the Firefighter Unit apply for and receive a passing score to fill existing vacant positions, all promotions to compete for or be appointed to the positions of Fire Apparatus Engineer and Fire Captain shall be limited to qualified non-probationary Firefighter Unit members. All promotions to the position of Fire Apparatus Engineer and Fire Captain shall be based on merit, which will be identified by a numerical score. The numerical score will be the final score the candidate receives after the testing process is completed.
- D. The testing process for the positions of Fire Apparatus Engineer and Fire Captain shall consist of—but not be limited to—a written examination, practical examination, assessment center, simulator, and/or verification of a required certification. Minimum experience requirements for promotions shall be:
 - 1. Fire Apparatus Engineer: Two (2) years experience as a full-time career Firefighter, who has completed probation as a Firefighter at the time of application.
 - 2. Fire Captain: Five (5) years experience as a full-time career Firefighter or Fire Apparatus Engineer or a combination of the two, who has completed probation as a Firefighter at the time of application.
- E. Based on the numerical scoring system, those candidates receiving a passing score will be considered for filling vacancies as follows:
 - 1. After the final scores are calculated, candidates will be grouped and ranked by final scores in the order of highest score to lowest. Each score group will be comprised of candidates who achieved an identical final score in the testing process. The Authority will notify each candidate of his/her group within the scoring hierarchy.

2. Upon receipt of a request to fill a vacancy, the Human Resources Director will certify the top five (5) score groups for the purpose of selecting a qualified candidate. At any time during the consideration process, should the request to fill vacancies exceed one (1), the Human Resource Director will add—for selection consideration—an additional score group for each additional request. This procedure is illustrated by the following example.

Example: If a request is made to fill one (1) vacancy, the five (5) highest score groups will be reviewed for the purpose of selecting a qualified candidate to fill the one (1) vacancy. Should the request be made for two (2) vacancies, the six (6) highest score groups will be reviewed for the purpose of selecting qualified candidates to fill the two (2) vacancies. Should the request be made for three (3) vacancies, the seven (7) highest score groups will be reviewed for the purpose of selecting qualified candidates to fill the three (3) vacancies.

3. As each score group is depleted, the next highest score group, which has not yet been considered, will be added to the candidate pool for selection consideration. This will be done to ensure the proper number of score groups is maintained for selection consideration, as identified in Section 1.E.2., of this Article.
 4. The above process will continue until the eligibility list expires or there remains less than five (5) score groups.
- F. Appeals regarding candidate placement on the eligibility list are outside the scope of the Grievance Procedures. Disputes regarding candidate placement on the eligibility list will be processed through the OCFA Selection Rules and Appeals Process.

Section 2. Time Off for Selection Procedures

- A. With approval of the Fire Chief, a regular, limited-term, or probationary employee shall be entitled to necessary time off with pay to participate in tests of fitness, examinations, and interviews required by the Human Resources Director during working hours for the purpose of determining eligibility for movement to another class in the Authority service.

Section 3. Probation

- A. New Probation

1. Full-Time Employee

A new or reemployed employee—who has been out of Authority service for more than two (2) years in a regular or limited-term position—shall be placed on new probation for fifty-two (52) weeks from the date of appointment ending with the first day of the pay period following completion of said period.

2. Part-Time Shift Employee (Fifty-six [56] hour average duty week)

A new or reemployed employee—who has been out of Authority service for more than two (2) years in a part-time regular shift position or limited-term shift position—shall be placed on new probation for two thousand nine hundred twelve (2,912) paid hours exclusive of overtime, ending with the first day of the pay period following completion of said period.

3. Part-Time Staff Employee (40 hour workweek)

A new or reemployed employee—who has been out of Authority service for more than two (2) years in a part-time regular staff position or limited-term staff position—shall be placed on new probation for two thousand eighty (2,080) paid hours exclusive of overtime, ending with the first day of the pay period following completion of said period.

4. A regular or reemployed employee—in a regular or limited-term position in the class of Firefighter Trainee—shall be placed on probation for a period equal to the completion of the Firefighter Basic Training Recruit Academy.

B. Promotional Probation

1. A full-time or part-time employee who is promoted shall be placed on promotional probation except as provided in Section 3.B.2. and 3.B.4., of this Article. All promotional probation shall end with the first day of the pay period following completion of the promotional probation period.

a. A full-time employee shall be placed on promotional probation for fifty-two (52) weeks from the date of promotion.

b. A part-time shift employee assigned to a fifty-six (56) hour average duty week shall be placed on promotional probation for two thousand nine hundred twelve (2,912) paid hours exclusive of overtime. A part-time staff employee assigned to a forty (40) hour workweek shall be placed on promotional probation for two thousand eighty (2,080) paid hours exclusive of overtime.

c. When an Authority employee who is employed in a classification not covered by the provisions of this Memorandum of Understanding is appointed to the Firefighter Unit classification of Firefighter Trainee, such employee shall be placed on promotional probation for a period equal to the completion of the Firefighter Basic Training Recruit Academy.

d. When a full-time employee promotes from Firefighter Trainee to another class covered by the provisions of this Memorandum of Understanding, such employee shall be placed on promotional

probation for fifty-two (52) weeks from the date of promotion. A part-time shift employee (assigned to a fifty-six [56] hour average duty week) promoting from Firefighter Trainee to another classification covered by the provisions of this Memorandum of Understanding, shall be placed on promotional probation for two thousand nine hundred twelve (2,912) paid hours exclusive of overtime. A part-time staff employee (assigned to a forty [40] hour workweek) promoting from Firefighter Trainee to another class covered by the provisions of this Memorandum of Understanding, shall be placed on promotional probation for two thousand eighty (2,080) paid hours exclusive of overtime.

2. When a regular or limited-term employee is promoted as a result of the employee's position being reclassified to a higher classification and the classification from which the employee is promoted is subsequently deleted or abolished, the incumbent employee shall not serve a promotional probation period.
3. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the Fire Chief is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that classification.
4. Notwithstanding any other provision of this Agreement, when an employee who has been on temporary promotion to a Firefighter Unit classification is promoted to that same classification without returning to his/her former class, the time served in the temporary promotion shall be credited towards the promotional probation period.

C. Failure of Probation

1. New Probation

- a. An employee on new probation may be released from service at any time without right of appeal or hearing except where an employee alleges his/her release was the result of discrimination by the Authority because of a protected status as defined by the existing Fair Employment and Housing Act or other applicable law. In the case of such allegations, the employee may submit a grievance at Step 2 of the grievance procedure within fourteen (14) calendar days after receipt by the employee of notice of failure of new probation.

2. Promotional Probation

- a. An employee on promotional probation may be failed at the sole discretion of the Authority at any time without right of appeal or hearing except where an employee alleges his/her failure of promotional probation was the result of discrimination as described in Section

3.C.1., of this Article. In case of such allegations, the employee may submit a grievance at Step 2 of the grievance procedure within fourteen (14) calendar days after receipt by the employee of notice of failure of promotional probation.

- b. When an employee fails his/her promotional probation, the employee shall have the right to return to his/her former class provided the employee was not in the class of Firefighter Trainee for the purpose of training for promotion to a higher class.
- c. When an employee is returned to his/her former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class. A regular employee who accepts promotion to a limited-term position, other than at the direction of the Fire Chief, shall not have the right to return to his/her former class.
- d. If the employee's former class has been deleted or abolished, he/she shall have the right to return to a class closest to—but no higher than—the salary range of the class the employee occupied immediately prior to promotion and shall serve the remainder of any probationary period not completed in the former class.

D. General Provisions

1. When an employee's record consists of a combination of full-time and part-time service in regular or regular limited-term positions, except as in Article IV, Section 2.D., part-time service shall be applied proportionately by using total hours worked to appropriate full-time requirements.
2. When the Fire Chief or his/her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and, when practicable, shall be discussed with the employee. A probation period may not be extended, except as provided in Section 3.E., of this Article. An employee who is permitted by the Authority to work beyond the end of a probation period shall be deemed to have passed such probation period.

E. Extension of Probation Periods

1. The granting of an Official or a Military Leave of Absence, the imposition of a suspension, or the granting of a light duty assignment to an employee shall cause the employee's probation period to be extended by the length of the Official Leave, suspension, or light duty assignment, or by the length of the Military Leave in excess of fifteen (15) calendar days. The extended probation period resulting from the Official or Military Leave of Absence, suspension, or light duty assignment shall end with the first day of the pay period after said extended date.

2. The Human Resources Director shall extend the new or promotional probationary periods of incumbents appointed as a result of a selection procedure that is appealed. Such probationary periods shall be extended no longer than sixty (60) calendar days from the date on which the Authority receives the Appeals Officer's findings and decision. In the event an employee's probationary period is extended by the provisions of this Section and he/she has served a probationary period longer than the probationary period normally prescribed for new or promotional probation, such an employee may fail probation during the extended period only upon recommendation of the Appeals Officer and final determination of the Board of Directors.
3. Upon the recommendation of the Assistant Chief/Department Head or his/her designee or at the request of the employee with the concurrence of the Assistant Chief/Department Head or his/her designee, the probation period of an employee may be extended at the discretion of the Human Resources Director for a period not to exceed ninety (90) calendar days provided such action is approved by the Human Resources Director before the normal probation period is completed. Denial of a request to extend a probation period shall not be subject to appeal or hearing.
4. The Human Resources Director shall extend the probationary period of employees with an employment authorization document having an expiration date that would occur after the end of the probation period. Such probation periods shall be extended to coincide with the expiration date of the employment authorization document. In the event an employee's probationary period is extended by the provisions of this Section and he/she serves a probationary period longer than the normal probation period, such an employee may fail probation during the extended period only for failure to obtain a new, valid employment authorization document by the expiration date of the expiring employment authorization document.

Section 4. Performance Evaluation

- A. The Authority shall maintain a system of employee performance ratings designed to give a fair **and equitable** evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular and limited-term, full-time and part-time employees. Performance evaluations will occur at least once each year. In addition for employees on probationary status, performance evaluations will occur at least once near the middle of their probation period. (12/03/10)
- B. **Performance evaluations rated substandard shall be grievable through the grievance process up to and including binding arbitration. However, when more than a total of three (3) grievances for all unit members involving substandard performance evaluations are submitted to arbitration within a calendar year, the appealing party(s) shall bear the full cost of the arbitrator starting with the fourth appeal to arbitration. (12/02/10)**

- B.C. The Authority shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.
- G.D. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee.

Section 5. Intra-Departmental Transfers

- A. The Authority shall maintain a fair and equitable intra-departmental transfer system that gives consideration to the following factors:
- Employee request
 - Employee qualifications for specialized assignments
 - Seniority
 - Departmental needs

Section 6. Shift Exchange Policy

- A. Time exchanges may be voluntarily undertaken between two (2) employees upon approval of the employees' immediate supervisors and Battalion Chief prior to such exchange.
- B. Responsibility for arrangement for the repayment of such time rests with the employees involved.
- C. No obligation shall be placed upon the Authority for repayment of time voluntarily traded or repaid between employees.

Section 7. Seniority

- A. Except as provided in Section 7.C., of this Article, the provisions of this Section shall not be used for any purpose or be applicable to any other provision of this Agreement.
- B. Except for employees transitioning pursuant to Section 7.F., of this Article, seniority shall mean continuous full-time equivalent service as a regular employee with the Orange County Fire Department and/or the Authority, which has not been interrupted by resignation, discharge, or retirement. For employees transitioning pursuant to Section 7.F., of this Article, seniority shall mean continuous employment with the transitioning fire service agency in a full-time, regular position, which has not been interrupted by resignation, discharge, or retirement and for which the employee has accrued public safety retirement system credit exclusive of any credit for overtime. Suspensions and unpaid leaves of absence shall not be considered a break in service.

- C. Unless otherwise provided, all regular full-time employees who have successfully completed new probation shall be placed on a seniority list. Seniority for employees hired on the same date will be determined by their ranking in their Academy class at the end of probation, and ties will be broken by lottery. If a tie occurs between a date a new employee is hired into an Academy and a date an employee is reemployed after a break in Authority service, the reemployed employee will be placed on the list ahead of the Academy employee(s). This seniority list shall be used for the sole purposes of:
1. Transfers, as provided in Section 5., of this Article; vacation scheduling, as provided in Article V, Section 14.D.5., of this Article; scheduled backfill, as provided by Authority procedures; and/or for all employees who transition pursuant to Section 7.F., of this Article.
- D. Seniority credit shall be calculated as follows:
1. Two thousand nine hundred twelve (2,912) hours credit shall be given for each continuous year of service with the Orange County Fire Department and/or the Authority. Credit hours totaling seven and ninety-eight hundredths (7.98) hours shall be given for each calendar day of service for any partial year of continuous service with the Orange County Fire Department and/or the Authority. This credit shall apply to seniority as used in this Section and represents a conversion from an eighty (80) hour work period to a one hundred and twelve (112) hour work period.
- E. Former California Department of Forestry employees who became employees of the Orange County Fire Department on or before July 1, 1980, shall receive seniority credit pursuant to Section 7.D., of this Article, for all continuous regular full-time service with the California Department of Forestry.
- F. Except as provided in Section 7.F.1., of this Article, employees—who became employees of the Authority as the result of the Authority taking over responsibility for the provision of fire services for their former employer—shall receive seniority credit pursuant to Section 7.B. and 7.D., of this Article, for all eligible continuous regular full-time service with their former public fire service.
1. Pursuant to Section 7.B., 7.D., and 7.F., of this Article, seniority credit shall be granted to the most senior transitioning employees up to the number of positions created within the Firefighter Unit, as the result of responsibility for the provision of fire services being taken over by the Authority. Transitioning employees in excess of this number shall be placed on the seniority list in descending order of service hours. As former employees from the transitioning cities retire or otherwise separate from Authority service, the next most senior of the excess personnel shall be

granted seniority credit for his/her continuous service with the transitioning city.

- G. An updated seniority list will be distributed (1) annually in November and (2) as soon as possible following the transition of a new agency to the Authority.
 - 1. If this updated list, which is necessitated by the transition of a new agency, is not finalized and distributed at the transition, the Authority shall meet with representatives of the Association to resolve the issue.
- H. An updated seniority list will be prepared as soon as possible whenever an employee's placement on the seniority list is changed pursuant to an agreement between the parties or as a result of a grievance resolution under Article IX or disciplinary appeal resolution under Article VIII.
- I. An updated seniority list will be prepared as soon as possible whenever an employee's placement on the seniority list changes pursuant to Section 7.F.1., of this Article, or whenever additional employees are added to the seniority list.
- J. The Authority and the Association agree that positions created as a result of new agency membership in the Authority will be available to all employees in the corresponding classification(s) based upon their seniority, as provided in Section 7., of this Article.
- K. The number of new positions created in the Firefighter Unit (suppression and staff) will be determined by agreement with the new contract agency, depending upon the level of service for which they have contracted. The number of employees by classification to be transitioned to the Authority will be determined by the number of newly created positions in each class. The new contract agency is responsible for identifying personnel who will transition in each classification, up to the number of positions created. Contract agency employees in excess of the number of positions that are created in each classification within the Firefighter Unit by the transitions, at the discretion of the Authority, may be offered employment. Any such offers would be at the rank of Firefighter. Unless otherwise set forth in this Agreement, employees transitioning to the Authority as a result of such new agency membership shall be entitled to no preferential rights.

Section 8. Contents of Personnel File

- A. Adverse statements prepared by the Authority shall not be included in an employee's official personnel file unless a copy is provided to the employee.
- B. An employee shall have the right to inspect and review the contents of his/her official personnel file at reasonable intervals.

- C. An employee shall have the right to inspect and review the contents of his/her official personnel file in any case where the employee has a grievance related to performance, to a performance evaluation, or is contesting his/her suspension or discharge from Authority service.
 - D. Letters of reference and reports regarding criminal investigations concerning the employee shall be excluded from the provisions of Section 8.B. and 8.C., of this Article.
 - E. An employee shall have the right to respond in writing or personal interview to any information contained in his/her official personnel file. Such reply will become a permanent part of such employee's official personnel file.
 - F. Any contents of an employee's official personnel file may be destroyed pursuant to an agreement between the Human Resources Director and the employee concerned or by an order of an arbitrator, court, or impartial hearing officer unless the particular item is otherwise required by law to be kept.
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ARTICLE VIII

DISCIPLINARY AND PREDISCIPLINARY ACTIONS

Section 1. Written Reprimand, or Denial of Merit Increase, Reduction in Salary or Transfer for Purpose of Punishment

- A. No regular, limited-term regular, or promotional probationary employee shall receive a written reprimand or denial of merit increase *or reduction in salary* except for reasonable cause.
- B. A written reprimand, or denial of merit increase, *reduction in salary, or transfer for purpose of punishment* may be appealed through this appeal procedure. Such appeal shall be initiated at Step 1 of this procedure. (12/02/10)

Section 2. Disciplinary Hearing for Suspension, Reduction, or Discharge

- A. In (a) suspending a regular, limited-term regular, or promotional probationary employee for more than forty (40) regularly scheduled hours (if assigned to a forty [40] hour workweek) or two (2) twenty-four (24) hour shifts (if assigned to a fifty-six [56] hour average duty week) or (b) reducing a regular or limited-term regular employee for reasons of unsatisfactory performance or physical disability or (c) discharging a regular or limited-term regular employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least fourteen (14) calendar days prior to the effective date of the proposed action. Such written notice shall contain:
 - 1. A description of the proposed action and its effective date(s)
 - 2. A statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based
 - 3. Copies of material on which the proposed action is based
 - 4. A statement of the employee's right to respond—either orally or in writing—prior to the effective date of such proposed action
 - 5. A statement of the employee's right to representation
 - 6. A statement of the employee's right to appeal should such proposed action become final
- B. In suspending a regular, limited-term regular, or promotional probationary employee for forty (40) regularly scheduled hours or less

(if assigned to a forty [40] hour workweek) or two (2) twenty-four (24) hour shifts or less (if assigned to a fifty-six [56] hour average duty week), the above notice requirements shall be complied with—if practicable—prior to the effective date of the suspension and, in any event, not more than fourteen (14) calendar days after the effective date of the suspension.

- C. Prior to the effective date of such suspension of more than forty (40) regularly scheduled hours (if assigned to a forty [40] hour workweek) or two (2) twenty-four (24) hour shifts (if assigned to a fifty-six [56] hour average duty week) or reduction or discharge, an employee will be given an opportunity to respond—either orally or in writing at the employee's option—to a designated Authority representative, who has the authority to make an effective recommendation on the proposed disciplinary action.
- D. An employee shall be given reasonable time off without loss of pay to attend a disciplinary hearing.
- E. An employee may represent himself/herself or may be represented by Local 3631 in the disciplinary process.
- F. An employee and his/her representative shall receive written notice either sustaining, modifying, or canceling a proposed discharge on or prior to the effective date of such action.
- G. An employee and his/her representative shall receive written notice either sustaining, modifying, or canceling a proposed suspension or reduction prior to the effective date of such action.
- H. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Section 3., of this Article.

Section 3. Right of Appeal

- A. Suspension
 - 1. No regular, limited-term regular, or promotional probationary employee shall be suspended except for reasonable cause.
 - 2. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.
 - 3. An appeal of suspension will be initiated in accordance with Section 5., of this Article.

B. Reduction

1. No regular employee or limited-term regular employee shall be reduced to a position in a lower class for reasons of unsatisfactory performance or physical disability except for reasonable cause.
2. A written notice of such reduction stating specifically the cause of the reduction shall be given to the employee.
3. An appeal of reduction to a position in a lower class will be initiated in accordance with Section 5., of this Article.

C. Discharge

1. No regular or limited-term regular employee shall be discharged except for reasonable cause.
2. A written notice of such discharge stating specifically the cause of the discharge shall be given to the employee.
3. An appeal of discharge will be initiated in accordance with Section 5., of this Article.

D. Failure of the employee to comply with the time limits set forth in this Article shall signify that the employee has waived his/her right to further process the appeal, and the disciplinary action will stand as intended/administered. Failure by the Authority representative to timely respond under this Article shall permit the employee to progress the appeal to the next step.

E. The time limits for appeals, set forth in this Article, may be extended by mutual agreement between the Authority representative and employee or his/her representative.

Section 4. Polygraph Examination

A. No employee shall be compelled to submit to a polygraph examination. No disciplinary action whatsoever shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be anywhere recorded indicating an employee offered to take, took, or refused to take a polygraph examination, unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind, regarding an employee's offer to take or refusal to take or the results of a polygraph examination, be admissible in any **judicial or administrative proceeding of any kind.** ~~pursuant to this Memorandum of Understanding, unless otherwise agreed to in writing by the parties. (12/02/10)~~

For the purpose of this section, "polygraph" shall mean a lie detector, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. (12/02/10)

Section 5. Appeal Procedure

- A. All Step 1 and Step 2 appeals must be submitted to the Human Resources Director or the employee's Battalion Chief within the time limits outlined in this Article. If the appeal is submitted to the employee's Battalion Chief, a copy will be forwarded to the Human Resources Director. Submission of the appeal may be via mail, hand delivery, or fax; postmarks shall be accepted. Fax deliveries must be received no later than 5:00 p.m. on the last day allowable under the provisions of this Article. Any suspension, reduction, or discharge imposed by the Fire Chief may be submitted directly to arbitration in accordance with Section 6., of this Article. Any notification of intent to discharge or probationary release, where the employee is alleging ***unlawful*** discrimination, may be submitted directly to Step 2 of this procedure. To facilitate submittal of appeals, Local 3631 shall have the right to submit an appeal in the name of the employee at the employee's request. (12/02/10)

1. STEP 1

- a. **Written Reprimand, or Merit Increase Denial** Battalion Chief, Section Manager, Division Manager, or Division Chief (12/02/10)

Upon receipt of a ***written*** reprimand, ***or*** denial of a merit increase, an employee may, within fourteen (14) calendar days of receipt of such notice, submit a request to the Human Resources Director or Battalion Chief for a meeting to address the matter. The Human Resources Director will schedule a meeting with the appropriate Battalion Chief, Section Manager, or Division Chief to hear the employee's presentation. After hearing the employee's presentation, the Battalion Chief, Section Manager, or Division Chief will issue a written determination within fourteen (14) calendar days. (12/02/10)

- b. **Suspension/Reduction, Reduction in Salary, or Transfer for Purpose of Punishment** – Assistant Chief (12/02/10)

Upon receipt of a notice of intent involving suspension or reduction, ***reduction in salary, or transfer for purpose of punishment*** an employee may, within fourteen (14) calendar days of receipt of such notice, submit a request to the Human

Resources Director or Battalion Chief for a meeting to address the charges in the notice. The Human Resources Director will schedule a meeting with the appropriate Assistant Chief to hear the employee's presentation. After hearing the employee's presentation, the Assistant Chief will issue a written determination relative to the intended action within fourteen (14) calendar days. (12/02/10)

2. STEP 2

a. **Written Reprimand, or Merit Increase Denial** - Assistant Chief

If the employee does not agree with the outcome in Step 1, the employee may, within fourteen (14) calendar days of receipt of the Step 1 written determination, submit a written appeal to the Human Resources Director or Battalion Chief. Within fourteen (14) calendar days of receipt of the appeal at Step 2, the appropriate Assistant Chief will meet with the appellant and his/her representative. Within fourteen (14) calendar days thereafter, a written decision will be provided to the appellant and his/her representative. ~~The determination will be final and binding and will not be referable to arbitration.~~ (12/02/10)

b. **Suspension/Reduction , Reduction in Salary or Transfer for Purpose of Punishment** or Probationary Release Alleging **Unlawful** Discrimination or Discharge—Fire Chief or Deputy Fire Chief (12/02/10)

~~Suspension/Reduction—If the employee does not agree with the outcome in Step 1, the employee may—within fourteen (14) calendar days of the receipt of the Step 1 written determination—submit a written appeal to the Human Resources Director. Within fourteen (14) calendar days of receipt of the appeal, the Fire Chief or, if designated, the Deputy Fire Chief will meet with the appellant and his/her representative. Within fourteen (14) calendar days thereafter, a written decision will be provided to the appellant and his/her representative.~~

~~Probationary Release Alleging Discrimination or Discharge—If the employee receives a notice of intent to discharge or is alleging his/her probationary release is due to *unlawful* discrimination, the employee may begin his/her appeal process at Step 2 by submitting a written appeal to the Human Resources Director within fourteen (14) calendar days of receipt of such written notification. Within fourteen (14) calendar days of receipt of the appeal, the Fire Chief or, if designated, the Deputy Fire Chief will meet with the appellant and his/her representative. Within fourteen (14) calendar days~~

thereafter, a written decision will be provided to the appellant and his/her representative. (12/02/10)

Section 6. Referrals to Arbitration

- A. If the **written reprimand, reduction in salary, transfer for purpose of punishment, suspension**, reduction, or discharge is imposed by the Fire Chief, the employee may submit the matter directly to arbitration in accordance with Section 6., of this Article. (12/02/10)
- B. If the employee does not agree with the outcome at Step 2 regarding a **written reprimand, reduction in salary, transfer for purpose of punishment**, suspension, reduction, or discharge, the employee may appeal the matter to arbitration by submitting the appeal to the Human Resources Director within fourteen (14) calendar days from the date of receipt of such Step 2 decision. As soon as practicable thereafter or as otherwise agreed to by the parties, an arbitrator shall hear the appeal. (12/02/10)
- C. All disciplinary appeals shall be signed by the appellant or his/her representative of the Association and shall be submitted in writing.
- D. Finding of Facts and Remedies
 - 1. An arbitrator may sustain, modify, or rescind an appealed disciplinary action as follows and subject to the following restrictions:
 - a. All Disciplinary Actions

If the arbitrator finds the disciplinary action was taken for reasonable cause, he/she shall then determine if the disciplinary action imposed on the employee was appropriate. The arbitrator shall have the right, and the responsibility, to modify the discipline if, in his/her opinion, it is not appropriate.
 - b. Suspension/Reduction

If the action is modified or rescinded, the appellant shall be entitled to restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision and consistent with Section 6.E., of this Article.
 - c. Discharges
 - 1. If the arbitrator finds the order of discharge should be modified, the appellant shall be restored to a position in his/her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time

the appellant was removed from duty, as determined by the arbitrator and consistent with Section 6.E., of this Article.

2. If the arbitrator finds the order of discharge should be rescinded, the appellant shall be reinstated in a position in his/her former class and shall receive pay and fringe benefits for all of the period of time he/she was removed from duty and consistent with Section 6.E., of this Article.

d. Reduction in Salary

If the arbitrator finds that the reduction in salary was not appropriate, he/she shall determine the appropriate remedy. (12/02/10)

e. Transfer for Punishment

If the Arbitrator finds the transfer was not appropriate, he/she shall determine the appropriate remedy. (12/02/10)

E. Restriction on Remedies

1. Restoration of pay and benefits shall be subject to deduction of all unemployment insurance, applicable taxes and withholdings, and outside earnings the appellant received since the date of discharge.

F. Probationary Releases Alleging Discrimination

1. The issues to be submitted to the arbitrator in appeals filed pursuant to Article VIII shall be as follows and shall be submitted consistent with Section 6., of this Article:
 - a. Was the probationary release of (employee's name) in whole or in part the result of ***unlawful*** discrimination?(12/02/10)
 - b. If so, what shall the remedy be under the provision of Section 6.F.2., Findings of Facts and Remedies, of this Article?
2. Findings of Facts and Remedies
 - a. In the event the arbitrator finds no ***unlawful*** discrimination, the appeal shall be denied and the issue of remedy becomes moot. (12/02/10)
 - b. In the event the arbitrator finds ***unlawful*** discrimination but also finds such discrimination was not a substantial cause of the

employee's probationary release, the appeal shall be denied, and the issue of remedy becomes moot. (12/02/10)

c. In the event the arbitrator finds **unlawful** discrimination and also finds such discrimination was a substantial cause of the probationary release of the employee, the arbitrator's award shall depend upon the significance of the violation and shall be in keeping with the following alternatives: (12/02/10)

- The probationary release may be sustained.
- The employee may be reinstated in a position in his/her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.
- The employee may be reinstated in a position in his/her former class with full back pay and benefits for all the period of time the employee was removed from duty. The

employee may be required to serve the remainder of any outstanding probation period.

Section 7. General Provisions

- A. If the appeal is decided by an arbitrator, the appellant and his/her representative relinquish any current or future claim to seek or obtain remedy through any other Authority appeal procedure.
- B. The cost of an arbitrator shall be shared equally in all cases by the Authority and the appealing party, except when the appealing party solely alleges **unlawful** discrimination. In which case, the Authority shall bear the full cost. When the appeal involves both discrimination and other arbitrable issues, the proper division of costs shall be determined by the arbitrator. (12/02/10)
- C. Appeal hearings by an arbitrator shall be private.
- D. Arbitration appeal hearings for suspensions of less than forty (40) hours (if assigned to a forty [40] hour workweek) or two (2) twenty-four (24) hour shifts (if assigned to a fifty-six [56] hour average duty week) shall be limited to one (1) day unless both parties agree a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The one (1) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the Fire Chief.

- E. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Conciliation Service, the American Arbitration Association, or some other agreed upon source. Then, each party shall alternately strike one (1) name from the list until only one (1) name remains.
- F. Upon written request by the opposing party in a pending hearing given at least twenty-eight (28) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the requested copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than fourteen (14) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing, except that any such documentary evidence discovered by a party after such a request for copies—but not soon enough to comply with the above time limits—may be admitted provided it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.
- G. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable and scheduled in advance.
- H. At the hearing, both Local 3631 and the Authority shall have the right to be heard and to present evidence. The following rules shall apply:

 - 1. Oral evidence shall be taken only on oath or affirmation.
 - 2. Each party shall have these rights: (1) to call and examine witnesses, (2) to introduce exhibits, (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, (4) to impeach any witness regardless of which party first called the witness to testify, and (5) to rebut the evidence against the witness. If the employee does not testify on his/her own behalf, the employee may be called and examined as if under cross-examination.
- I. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil

actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are not—or hereafter may be—recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

- J. The Authority shall be allowed to have at least one (1) employee who may be called upon to testify as a witness present at the arbitration hearing at all times.
- K. The decision of the arbitrator shall be final and binding on all parties.
- L. ***The Firefighter Procedural Bill of Rights Act provides that administrative appeals shall be conducted in conformance with rules and procedures that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code. The Authority and the Association agree that the General Provisions set forth in Section 7 are in accordance with said statutes. (12/02/10)***

ARTICLE IX

GRIEVANCE PROCEDURE

Section 1. Scope of Grievances

- A. A grievance may be filed if a management interpretation or application of the provisions of this Memorandum of Understanding adversely affects an employee's wages, hours, or conditions of employment. In addition, disputes involving performance evaluations rated "substandard" and Authority procedures that implement specific provisions of this Agreement in the areas of overtime, intra-departmental transfers, vacations, and shift exchanges may be processed through the grievance procedure.
- B. Specifically excluded from the Scope of Grievances are:
 - 1. Subjects involving the amendment or change of Board of Directors resolutions, ordinances, and minute orders, which do not incorporate the provisions of this Memorandum of Understanding
 - 2. Matters which have other means of appeal including—but not limited to—matters which may be appealed through the Workers' Compensation Appeals Board
 - 3. Position classification
 - 4. Performance evaluations rated "standard" or above

Section 2. Basic Rules

- A. If an employee does not present a grievance or does not appeal the decision rendered regarding his/her grievance within the time limits, the grievance shall be considered resolved.
- B. If an Authority representative does not render a decision to the employee within the time limits, the employee may within fourteen (14) calendar days thereafter appeal to the next step in the procedure.
- C. If it is the judgment of any management representative that he/she does not have the authority to resolve the grievance, he/she may refer it to the next step in the procedure. By mutual agreement of the Authority and Local 3631, Step 1 of the grievance procedure may be waived.
- D. Upon prior written consent of the parties (i.e., the representatives of the Authority and the employee or his/her representative), the time limits at any step in the procedure may be extended.

- E. Every reasonable effort shall be made by the employee and the Authority to resolve a grievance at the lowest possible step in the grievance procedure.
- F. No claim shall be granted for retroactive adjustment of any grievance prior to ninety (90) calendar days from the date of filing the written grievance at Step 1.
- G. Local 3631 shall have the right to a representative present throughout the grievance process.
- H. To encourage candid discussion and compromise in attempting to resolve grievances, the Authority and the Association agree the grievance files of the respective parties shall be confidential.

Section 3. Submission of Grievances

- A. Any employee or group of employees shall have the right to present a grievance. The Association shall have the right to file grievances on behalf of the general membership; however, when the Association files a grievance on behalf of the general membership, it shall provide the Authority with the names of individuals who have been adversely affected. The Association has the right to grieve and arbitrate issues that solely affect the rights of the Association. No employee or group of employees shall be hindered from or disciplined for exercising this right.
- B. If any two (2) or more employees have essentially the same grievance, they may, and if requested by the Authority must, collectively present and pursue their grievance if they report to the same immediate supervisor.
- C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the Authority, appoint one (1) or two (2) employees to speak for the collective group.

Section 4. Employee Representation

- A. An employee may represent himself/herself or may be represented by the Association in the formal grievance procedure.
- B. Authorized grievance representatives shall be designated by the Association to represent employees for purposes of grievance procedures. The Association shall notify the Human Resources Director of the names and titles of such representatives. This notice shall be updated each time a change in designated representative(s) occurs.

Section 5. Time Off for Processing Grievances

- A. Reasonable time off without loss of pay shall be given to:

1. An employee who has a grievance, in order to attend a meeting with his/her supervisor or other person with authority to resolve the matter, as prescribed herein.
 2. An authorized grievance representative, in order to attend a meeting with the represented grievant's supervisor or other person with authority to resolve the grievance, as prescribed herein, or to obtain facts concerning the action grieved through discussion with the grievant or other employees.
- B. The following restrictions shall apply in all cases to activity authorized in Section 5.A., of this Article:
1. Before performing grievance work, the grievant or grievance representative shall obtain the permission of his/her supervisor and shall report back to the supervisor when the grievance work is completed.
 2. Neither the grievant nor the grievance representative shall interrupt or leave his/her job to perform grievance work unless his/her supervisor determines such interruption or absence will not unduly interfere with the work of the unit in which the grievant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.
 3. When an authorized grievance representative must go into another section or unit to investigate a grievance, the representative shall be permitted to do so provided both that:
 - a. The representative checks in and checks out with the supervisor of the unit
 - b. Such investigation does not unduly interfere with the work of the unit

Section 6. Informal Discussion

- A. If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with his/her immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively toward settlement.

Section 7. Formal Grievance Steps

- A. The grievance procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.
- B. All Step 1 and Step 2 grievances must be submitted to the Human Resources Director, the employee's Battalion Chief, Section Manager, Division Manager, or Division Chief within the time limits outlined in this Article. If the grievance

is submitted to the employee's Battalion Chief, Section Manager, Division Manager, or Division Chief, a copy will be forwarded to the Human Resources Director. Submission may be via mail, hand delivery, or fax; postmarks shall be accepted. Fax deliveries must be received no later than 5:00 p.m. on the last day allowable under the provisions of this Article. A grievance may be filed by an employee—or the Association in the name of the employee—at the employee's request.

1. STEP 1: Battalion Chief, Section Manager, Division Manager, or Division Chief

- a. If an employee has a grievance, the employee or the Association, on behalf of the employee, may formally submit a grievance to the Human Resources Director, Battalion Chief, Section Manager, Division Manager, or Division Chief within fourteen (14) calendar days from the occurrence that gave rise to the problem. A Step 1 grievance will be heard by a Battalion Chief, Section Manager, Division Manager, or Division Chief. In those cases where the Battalion Chief is the immediate supervisor and is the subject of the grievance, the Battalion Chief and Division Chief shall meet with the grievant within the time limit.
- b. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution. Within fourteen (14) calendar days after receipt of the written grievance, the Battalion Chief, Section Manager, Division Manager, or Division Chief shall meet with the grievant.
- c. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant. The written decision at Step 1 shall be signed by the reviewing officer.

2. STEP 2: Fire Chief, Deputy Fire Chief, or Assistant Chief

- a. If the grievance is not settled under Step 1 and it concerns an alleged misinterpretation or misapplication of this Memorandum of Understanding or a substandard performance evaluation, it may be appealed in writing to the Human Resources Director within fourteen (14) calendar days after receipt of the written decision from Step 1. Within fourteen (14) calendar days after receipt of the written grievance, the Fire Chief or, if designated, the Deputy Fire Chief or appropriate Assistant Chief shall meet with the grievant and his/her representative. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant and his/her representative. ~~The decision of the Fire Chief or his designee, regarding a substandard performance evaluation, shall be final and binding and shall not be referable to arbitration. (12/02/10)~~

Section 8. Referrals to Mediation

- A. As an alternative to proceeding directly to arbitration after completion of Step 2, the parties may mutually agree to submit a grievance to mediation. A request for mediation may be presented in writing to the Human Resources Director within fourteen (14) calendar days from the date a decision was rendered at Step 2. A request for mediation will automatically suspend the normal processing of a grievance until the mediation process is completed. The Authority will respond to a request for mediation within fourteen (14) calendar days. The mediation process will be optional, and any opinion expressed by the mediator will be informal and will be considered advisory. Should the mediation process not be successful, within fourteen (14) calendar days after completion of the mediation process, an arbitration request may be filed pursuant to Section 9., of this Article.
- B. ***An employee shall not suffer loss of pay for time spent as a witness at a mediation hearing held pursuant to this procedure. The number of witnesses requested to attend shall not exceed two (2), unless additional witnesses are mutually agreed upon by both parties. The scheduling of witnesses shall be reasonable and scheduled in advance.(12/02/10)***

Section 9. Referrals to Arbitration

- A. If a grievance is not resolved under Step 2 or mediation, an arbitration request may be submitted in writing by the Association to the Human Resources Director within fourteen (14) calendar days from the date a decision was rendered at Step 2 or the completion of the mediation process. As soon as practicable thereafter—or as otherwise agreed to by the parties—an arbitrator shall hear the grievance.
- B. The parties shall either sign a joint issue submission statement or execute and sign separate alternative issue statements after discussing the issue(s). In either case, the parties shall send copies of their joint or separate submission statement(s) to each other within fourteen (14) calendar days before the first scheduled date of the arbitration hearing.

Section 10. General Provisions

- A. If the grievance is decided by an arbitrator, the grievant and his/her representative relinquish any current or future claim to seek or obtain remedy through any other Authority appeal procedures.
- B. The cost of an arbitrator shall be shared equally in all cases by the Authority and the appealing party. An exception is when the appealing party ***except as noted in B.1. and B.2., of this section. (12/02/10)***
 - 1. ***When the appealing party solely alleges discrimination—in which case, the Authority shall bear the full cost. When the grievance involves both***

discrimination and other arbitrable issues, the arbitrator shall determine the proper division of costs. (12/02/10)

2. ***When the Association brings more than three (3) arbitrations for all unit members regarding substandard performance evaluations, the Association shall bear the full cost of the arbitrator beginning with the fourth (4) arbitration. (12/02/10)***
- C. Grievance hearings by an arbitrator shall be private.
 - D. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Conciliation Service, the American Arbitration Association, or some other agreed upon source. Then, each party shall alternately strike one (1) name from the list until only one (1) name remains.
 - E. Upon written request by the opposing party in a pending hearing given at least twenty-eight (28) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the request copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than fourteen (14) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing, except that any such documentary evidence discovered by a party after such a request for copies—but not soon enough to comply with the above time limits—may be admitted provided it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.
 - F. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable and scheduled in advance.
 - G. At the hearing, both Local 3631 and the Authority shall have the right to be heard and to present evidence. The following rules shall apply:
 1. Oral evidence shall be taken only on oath or affirmation.
 2. Each party shall have these rights: (1) to call and examine witnesses, (2) to introduce exhibits, (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, (4) to impeach any witness regardless of which party first called the witness to testify, and (5) to rebut the evidence against the witness. If the employee does not testify on his/her own

behalf, the employee may be called and examined as if under cross-examination.

- H. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
 - I. The Authority shall be allowed to have at least one (1) employee who may be called upon to testify as a witness present at the arbitration hearing at all times.
 - J. The decision of the arbitrator shall be final and binding on all parties.
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ARTICLE XII

SAFETY

Section 1. General Provisions

- A. The Authority shall make reasonable efforts to provide and maintain a safe place of employment. Employees shall be alert to unsafe practices, equipment, and conditions and shall report any such unsafe practices, equipment, or conditions to their immediate supervisors.
- B. Any employee may directly contact the designated Authority Safety Officer if he/she either (a) does not receive an answer to a safety-related question from his/her supervisor within three (3) calendar days or (b) receives an answer the employee deems unsatisfactory.
- C. Any employee, who is directed to perform a task which the employee, in good faith, feels is unsafe, may request an immediate investigation from the designated Authority Safety Officer. During the period the designated Authority Safety Officer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the task is ruled to be safe by the designated Authority Safety Officer, the employee shall be required to perform the duties assigned.
- D. ***The Authority shall revise in accordance with OCFA's Standard Operating Procedures (SOP) AM 115.02. In the SOP revisions the Authority shall institute establish guidelines to notify the investigative team which shall include a designated Association representative, policy and procedures that establish an incident review program which includes a review team, and shall include a designated Association representative. of the existence of a serious injury or fatality involving an employee and to secure the scene until such time as the investigative team can conduct an investigation of the serious injury or fatality involving an employee and to secure the scene until such time as the investigative team can conduct an investigation of the serious injury or fatality. This would involve securing the equipment directly involved, the immediate area to the incident, and the apparatus involved. The review program shall include and involve securing the equipment directly involved, the immediate area to the incident, and the apparatus directly involved. The review team shall review incidents whereby on-duty bargaining unit members, or members of other fire departments operating in-county under OCFA's command, have suffered a work related injury or illness or near-miss as defined by the California Code of Regulations, Title 8, Section 330. Definitions under Incident and Serious Incident. The SOP shall also contain the following elements: (12/02/10)***

1. ***SOP AM 115.02 shall establish guidelines, where practicable, for securing the incident scene, personal protective equipment, tools, equipment or apparatus that was being used at the time of the incident and injury, illness, or near-miss occurring to a bargaining unit member, or member of another fire department operating in-county under OCFA's command, and provide the review team an opportunity to review. (12/02/10)***
2. ***SOP AM 115.02 shall establish notification protocols for Operations Department Incident Commander for notifying the designated Association representative of a bargaining unit member injury, illness or near-miss. as defined in SOP AM 115.02. The OCFA Emergency Communications Center shall immediately make the notification once notified by the OCFA Incident Commander. (12/02/10)***

- E. The Authority shall furnish all equipment necessary for employees to perform their job in a safe manner.
- F. Wherever practicable, the Authority shall provide the necessary first aid kits in Authority facilities.

Section 2. Safety Inspection

- A. During an inspection of Authority facilities conducted by the appropriate State agency for the purpose of determining compliance with the California OSHA requirements, an Association designated representative shall be allowed to accompany the inspector while the inspector is on site. The employee, so designated, shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3. Safety Representative

- A. The representative of the Association who serves as the co-chairperson of the Authority's Safety and Occupational Health Committee and one (1) safety representative from each platoon may be selected by the Association to meet at least once a month, upon request, with the designated Authority Safety Officer and/or the Authority's Operations Training and Safety Officer to discuss matters affecting employee health and safety.
- B. A safety representative who has received a complaint involving a possible health and safety violation shall be given reasonable time off without loss of pay to gather appropriate information on such complaint provided:
1. The safety representative requests permission of the immediate supervisor prior to performing such duty.
 2. The safety representative shall not be allowed to leave the worksite if in the opinion of the immediate supervisor it will unduly interfere with the

work of the unit. However, the Authority will make every attempt to grant such time off as soon as it is feasible to do so.

- C. When an authorized safety representative enters into another section or work unit to gather said information, the safety representative shall be permitted to do so provided:
 - 1. The safety representative checks in and out with the supervisor of the unit.
 - 2. The safety representative does not unduly interfere with the work of the unit.

Section 4. Resolution of Safety or Health Complaints

- A. If a safety or health complaint is not satisfactorily resolved, the safety representative may request to meet with the designated Authority Safety Officer to resolve the complaint. If the complaint is not resolved, a grievance may be filed.

ARTICLE XV

RETIREMENT

Section 1. Eligibility

- A. Eligible employees of the Firefighter Unit are included in the Orange County Employees Retirement System as determined by their date of entry into eligible service.

Section 2. Employer's Contribution

- A. The Authority will pay toward general and safety members the employee's share of retirement contribution as follows and in the following order:
1. Pursuant to Government Code Section 31581.1, fifty (50) percent of the contributions normally required of members in the Firefighter Unit.
 2. Pursuant to Government Code Section 31581.2, an additional one hundred (100) percent of the remaining fifty (50) percent of contributions required to be paid by members of the Firefighter Unit.

Section 3. Cost-of-Living Adjustments

- A. Members' normal cost-of-living contributions shall be adjusted subsequent to and in accordance with actuarial recommendations adopted by the Board of Retirement and the Board of Supervisors.

Section 4. Retirement Formulas—3% at 50 (5/23/02)

A. Employees Hired Prior to January 1, 2011

- 1 Effective June 28, 2002, the Authority shall implement the three percent at fifty (3% at 50) retirement formula for ~~current~~ active employees for all years of service, as specified under California Government Code Section 31664.1., **as follows: (12/02/10)**

~~**B—Effective October 2002 (Pay Period 22), the Authority shall deduct an amount equal to two (2) percent of the employee's base hourly rate for each hour in each pay period to reduce the cost to the Authority of implementing the 3% at 50 retirement formula. Effective October 2003 (Pay Period 22), the Authority shall increase the deduction to an amount equal to four (4) percent of the employee's base hourly rate for each hour in each pay period to reduce the cost to the Authority of implementing the 3% at 50 retirement formula. This deduction shall continue until October 2004 (which will include Pay Period 21); at which time, it shall end. (05/23/02)**~~

- a. **Effective October 2010 (Pay Period 22), the Authority shall make a deduction from the employee's Compensation Earnable in the amount equal to two and five-tenths (2.5) percent to offset the cost to the Authority for this retirement benefit. The deduction shall be credited in accordance with GC Section 31581.2. and shall continue during the employee's employment period with the Authority or until such time that the employee qualifies under GC 31664.1(c). (12/02/10)**
- b. **Effective October 2011 (Pay Period 22), the Authority will increase the deduction from the employee's Compensation Earnable to the amount equal to five (5) percent to offset the cost to the Authority for this retirement benefit. The deduction shall be credited in accordance with GC Section 31581.2. and shall continue during the employee's employment period with the Authority or until such time that the employee qualifies under GC 31664.1(c). (12/02/10)**
- c. **Effective October 2012 (Pay Period 22), the Authority will increase the offset of the cost to the Authority for this retirement benefit to a total of seven (7) percent. The increase will consist of a five (5) percent deduction from the employee's Compensation Earnable, which shall continue during the employee's employment period with the Authority or until such time that the employee qualifies under GC 31664.1(c), and a credit, in the amount of two (2) percent, for savings obtained as a result of modifications to the OCPFA Health Plan Agreement. This credit is herein referred to as the "Healthcare Converted Retirement Contribution" or "HCRC" and will continue for the term of the current MOU extension. The deduction from the employee's Compensation Earnable and the HCRC shall be credited in accordance with GC Section 31581.2. (12/02/10)**
- d. **Effective October 2013 (Pay Period 22), the Authority will increase the offset of the cost to the Authority for this retirement benefit to a total of nine (9) percent. The increase will consist of a seven (7) percent deduction from the employee's Compensation Earnable, which shall continue during the employee's employment period with the Authority, or until such time that the employee qualifies under GC 31664.1(c), and the two (2) percent "HCRC" credit, which will continue for the term of the current MOU extension. The deduction from the employee's Compensation Earnable and the HCRC shall be credited in accordance with GC Section 31581.2. (12/02/10)**

B. Employees Hired From January 1, 2011 Through June 30, 2012

1. **Effective January 1, 2011, the Authority shall implement the three percent at fifty (3% at 50) retirement formula for active employees for all years of service, as specified under California Government Code Section 31664.1, as follows: (12/02/10)**

- e. **Effective upon the employee becoming a member of the bargaining unit, the Authority shall make a deduction from the employee's Compensation Earnable in the amount equal to nine (9) percent to offset the cost to the Authority for this retirement benefit. The deduction shall be credited in accordance with GC Section 31581.2. and shall continue during the employee's employment period with the Authority or until such time that the employee qualifies under GC 31664.1(c). (12/02/10)**

C. Employees Hired On or After July 1, 2012

1. **Effective July 1, 2012, the Authority shall implement the three percent at fifty-five (3% at 55) retirement formula for active employees who become members of this bargaining unit on or after July, 1, 2012 for all years of service, as specified under California Government Code Section 31664.2, as follows: (12/02/10)**

- f. **Effective upon the employee becoming a member of the bargaining unit, the Authority shall make a deduction from the employee's Compensation Earnable in the amount equal to nine (9) percent to offset the cost to the Authority for this retirement benefit. The deduction shall be credited in accordance with GC Section 31581.2. and shall continue during the employee's employment period with the Authority or until such time that the employee qualifies under GC 31664.1(c). (12/02/10)**

ARTICLE XXIV

COMPENSATION

Section 1. Base Salary Adjustments

- A. Effective the first "full" pay period in October 2000 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase.
- B. Effective the first "full" pay period in October 2001 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase.
- C. Effective the first "full" pay period in October 2002 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase.
- D. Effective the first "full" pay period in October 2003 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase.
- E. Effective the first "full" pay period in October 2004 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase.
- F. ***Effective the first "full" pay period in October 2005 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase. (05/23/02)***
- G. ***Effective the first "full" pay period in October 2006 (Pay Period 22), each position covered by this Agreement will receive a four (4) percent base salary increase. (05/23/02)***
- H. ***Effective the first "full" pay period in October 2007 (Pay Period 22), each position covered by this Agreement will receive a three (3) percent base salary increase. (09/28/06)***
- I. ***Effective the first "full" pay period in October 2008 (Pay Period 22), each position covered by this Agreement will receive a three (3) percent base salary increase. (09/28/06)***
- J. ***Effective the first "full" pay period in October 2009 (Pay Period 22), each position covered by this Agreement will receive a three (3) percent base salary increase. (09/28/06)***
- K. ***Effective the first "full" pay period in October 2010 (Pay Period 22), each position covered by this Agreement will receive a three (3) percent base salary increase. (09/28/06)***

- L. **Effective the first "full" pay period in October 2011 (Pay Period 22), each position covered by this Agreement will receive a three (3) percent base salary increase. (09/28/06)**
- ~~M. **Three (3) of the four (4) percent base salary increase set forth in Section 1.G., of this Article, shall be applied to either the Retiree Medical Grant described in Article XIII, Section 2, or the Defined Contribution Plan described in Article XIII, Section 3, during the term of the employee's employment with the Authority. (09/28/06)**~~
- ~~N. **In addition to the base salary increases identified in Section 1.A. through 1.L., of this Article, the classifications of Fire Captain, Fire Apparatus Engineer, and Firefighter shall receive compensation adjustments in accordance with Article XXIX, COMPENSATION POLICY – Labor Market Adjustment. (09/28/06)**~~
- M. **Effective the first "full" pay period in February 2013 (Pay Period 5) each position covered by this Agreement will receive a base salary increase, if warranted. The calculation and implementation of the base salary increase will be in accordance with the methodology identified in Section 1.P, of this Article.(12/02/10)**
- N. **Effective the first "full" pay period in February 2014 (Pay Period 5) each position covered by this Agreement will receive a base salary Increase, if warranted. The calculation and implementation of the base salary increase will be in accordance with the methodology identified in Section 1.P, of this Article.(12/02/10)**
- O. **Effective the first "full" pay period in February 2015 (Pay Period 5) each position covered by this Agreement will receive a base salary Increase, if warranted. The calculation and implementation of the base salary increase will be in accordance with the methodology identified in Section 1.P, of this Article.(12/02/10)**
- P. **Effective January 1, 2013, the salary adjustments in Section 1. M, N and O N of this Article will be based on the dollar amount of the corresponding fiscal year's "General Fund Surplus/(Deficit)" line item in the document identified as Five Year Financial Forecast – Baseline Model, which is included with the adopted annual budget. The dollar amount calculation and application relative to salary adjustments shall be as follows: (12/02/10)**

1. UPDATING FIVE YEAR FINANCIAL FORECAST-BASELINE MODEL

- a. **During the Authority's mid-year financial review, the Five Year Financial Forecast – Baseline Model document will be updated by replacing the adopted "Secured Property Tax" dollar amount, found in Section A of the document, with the actual "Secured**

Property Tax” dollar amount calculated by using the data submitted by the County of Orange in the document identified as Tax Ledger Detail - Orange County Fire Authority.

- b. **The actual “Secured Property Tax” dollar amount is calculated by starting with the dollar amount reported on the Tax Ledger Detail – Orange County Fire Authority for the line item identified as “Secured Initial Tax Levy” and then adjusting that amount by the same roll change/refund factor used in the Adopted Budget. As an example, the following are calculations for FY 2010/11:**

2010/11 Secured Initial Tax Levy	\$166,802,437.30
2010/11 Roll Change/Refund Factor of 0.75%	\$ (1,251,018.28)
2010/11 Actual Secured Property Tax	\$165,551,419.02

- c. **Upon replacing the adopted “Secured Property Tax” dollar amount with the actual “Secured Property Tax” dollar amount, Section A of the Five Year Financial Forecast – Baseline Model will be recalculated, which will result in an updated “General Fund Surplus/(Deficit)” amount.**
- d. **Following completion of this update to the Five Year Financial Forecast – Baseline Model, the values from the Forecast will be reformatted into the OCPFA Simplified Format, focusing on current fiscal year data for the General Fund only (see Appendix B for an example of the OCPFA Simplified Format). The amount of the updated “General Fund Surplus/(Deficit)” shall be the same on both the OCPFA Simplified Format and the Five Year Financial Forecast – Baseline Model. Based on the amount of the “General Fund Surplus/(Deficit)”, one of the following actions will be initiated:**

- **If the updated “General Fund Surplus/(Deficit)” amount is less than or equal to five (5) percent of General Fund Expenditures, no salary adjustments will be implemented.**
- **If the updated “General Fund Surplus/(Deficit)” amount is greater than five (5) percent of the General Fund Expenditures, the Authority will distribute the amount in excess of the five (5) percent fund to those employee bargaining units and unrepresented units that have agreed to similar**

terms in a manner that will provide an equal percent of base salary increase to each of the units/groups.

- Q. Section 1.P, of this Article, shall remain in effect through February 2015. Should the Authority desire to change any of the terms contained in Section 1.P, of this Article, the Authority will notify the Association and engage in the meet and confer process, regarding the impact of such changes, prior to implementation of such changes.**
-

ARTICLE XXIX

COMPENSATION POLICY—Labor Market Adjustment

Section 1. Intent

- A. It is the intent of the Authority to maintain the classifications of Fire Captain, Fire Apparatus Engineer, and Firefighter at the average of the top quarter (top three [3]) non-Authority Fire Departments in Orange County, through the process of parity surveys. The purpose of this policy is to attract and retain highly qualified personnel as employees of the Orange County Fire Authority. This goal will be accomplished through a joint effort process between OCPFA and OCFA, as outlined in this Article. The classification of Firefighter Trainee **and Hand Crew Firefighter** will be adjusted in the same manner as that applied to the classification of Firefighter. The classifications of Heavy Fire Equipment Operator and Fire Pilot will be adjusted in the same manner as that applied to the classification of Fire Captain. (12/02/10)

Section 2. Effective Dates

- A. The Authority will make adjustments to the aforementioned classifications as a result of conducting a series of parity surveys during the term of this agreement. These surveys will commence no later than thirty (30) days prior to the scheduled effective dates. Should the survey results warrant adjustments, such adjustments will be made effective as follows:
1. The first "full" pay period in January 2002 (Pay Period 3).
 2. The first "full" pay period in January 2006 (Pay Period 2). **Any adjustment made effective this period shall not exceed three (3) percent.** (05/23/02)
 3. **No adjustments shall be made from January 2007 through January 2009. In exchange for not providing parity adjustments from January 2007 through January 2009, the Authority will contribute one million dollars (\$1 million) towards the existing "Retiree Medical Grant," as set forth in Article XIII, Section 2., of this Agreement. In addition, the Authority agrees to contribute six million dollars (\$6 million) to the Plan over the term of the Agreement (2007–2012) equal to one million two hundred thousand dollars (\$1.2 million) per year, or as such earlier date as determined by the Board of Directors, consistent with Article XIII, Section 2.C.** (09/28/06)
 4. **The first "full" pay period in January 2010 (Pay Period 2).** (09/28/06)
 5. ~~The first "full" pay period in 2011 (Pay Period 3)~~ (09/28/06)

~~6. The first "full" pay period in January 2012 (Pay Period 5 3) (00/28/06)~~

5. The first "full" pay period in February 2015 (Pay Period 5) in accordance with Article XXIV, Section 1. P. (12/02/10)

Section 3. Survey Agencies

A. Both parties have agreed that the survey agencies will be the cities in Orange County maintaining their own Fire Departments. These cities are identified as follows:

B.

- Anaheim
- Costa Mesa
- Fullerton
- Huntington Beach
- Laguna Beach
- Orange
- Brea
- Fountain Valley
- Garden Grove
- La Habra
- Newport Beach
- Santa Ana

B. If the Authority assumes the fire service responsibilities of any of the above cities, those cities will be removed from the list and the remaining cities will continue to be used as survey agencies.

Section 4. Survey Criteria

A. The purpose of the survey of the above cities is to determine the "Total Compensation" for each of these cities. Total Compensation is defined as the total of the following elements:

1. Base Salary Rate—This element is defined as the base salary established for the classification.
2. EMT Pay—This element is defined as the compensation an employee receives—in addition to his/her base salary—for certification as an Emergency Medical Technician (EMT).
3. Employer Paid Retirement—Retirement contributions are divided into two (2) categories: (a) the amount the employer is required to contribute and (b) the amount the employee is required to contribute. This element is defined as the amount of contribution the employer pays on behalf of the employee's required contribution.

The comparison with the survey agencies will be made based on the percentage the employer has assumed of the employee's required contribution. Such percentage will translate into a dollar amount. It is understood that the employee's required contribution, under the Orange County Employees Retirement System, may vary for each employee. As a result, an average contribution rate for employees within the Firefighter

Unit will be determined and will be used for comparison to the survey agencies. This rate will be determined on each occasion prior to the commencement of the survey.

On the first full pay period in the November prior to the survey effective date identified in Section 2., of this Article, the rate will be determined by summing the Authority retirement contributions for all active members of the Firefighter Unit. The sum will then be divided by the total sum of the Firefighter Unit's base pay at that time, which is subject to retirement.

4. Educational Incentive—This element is defined as the compensation the employee may receive for obtaining college/university course work units or obtaining a college/university degree. The data reflecting the highest payment obtainable for the classifications of Fire Captain, Fire Apparatus Engineer, or Firefighter, in the surveyed agency, will be used as the comparison.

- B. Data regarding the above elements will be based on what is being paid at the time of the survey on January 1, prior to the scheduled adjustment date.
- C. Unless otherwise agreed upon, this compensation policy shall only be in force and effect for the duration of this Memorandum of Understanding.

Section 5. Compensation Adjustment Methodology

A. Adjustments will be made in accordance with the adjustment schedule identified in Section 2., of this Article. The method, which will determine when an adjustment is required and the amount of the adjustment, will be in accordance with the following steps:

<i>STEP</i>	<i>PROCEDURE</i>
1	A survey will be conducted using the agencies and criteria identified in this Article. The purpose of this survey is to determine the "Total Compensation" within these agencies as defined in Section 4., of this Article.
2	After the survey is completed, the top quarter (top three [3]) cities containing the highest "Total Compensation" for the classification of Fire Captain will be selected. These cities will be used to calculate the average "Total Compensation" for each of the classifications of Fire Captain, Fire Apparatus Engineer, and Firefighter.

3	If required, adjustments will be made to the classifications of Fire Captain, Fire Apparatus Engineer, and Firefighter based on the "Total Compensation" average of comparable classifications in these top quarter (top three [3]) cities. Each classification will be adjusted individually based on the survey results of each classification.
---	---

- B. *Upon determination of the adjustment amount, the adjustment will be applied to salary according to the adjustment schedule. If the survey results reveal the classifications surveyed are at or above the average of the top quarter (top three [3]) agencies—as determined by the compensation adjustment methodology above—no adjustment will be made.*

**ADVISORY DEFERRED COMPENSATION COMMITTEE
BETWEEN
ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3631
AND
ORANGE COUNTY FIRE AUTHORITY
TERM: DECEMBER 3, 2010 THROUGH JUNE 30, 2014
PAGE 1 OF 1**

The Orange County Fire Authority (OCFA) agrees to establish a standing joint labor/management advisory committee to oversee the deferred compensation program currently administered by Nationwide Retirement Solutions. The committee shall include two representatives from the Firefighter Unit. The committee chairperson shall be the current fiduciary of the OCFA deferred compensation plan. Meetings will be scheduled for January and July or on an as needed basis. The first meeting will be on or before January 31, 2011. The general purpose will be to review and make recommendations on the following matters:

1. Review and provide input on selection of independent deferred compensation consultants.
2. Review and provide input on the consultant's fund lineup recommendations
3. Review and provide input on new plan features being offered.
4. Review and provide input on customer service and internal educational workshops for plan participants.
5. Review and provide input on service delivery o the current service contract.
6. Review and provide input on the future competitive bidding process for deferred compensation.

ORANGE COUNTY FIRE AUTHORITY

**ORANGE COUNTY PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
IAFF LOCAL 3631**

Ron Blaul, Deputy Fire Chief

Dave Rose, OCPFA Chief Negotiator

Zenovy Jakymiw, Human Resources Director

Ray Geagan, OCPFA Vice President

Date

Date

OCPFA SIMPLIFIED FORMAT - TRIGGER FORMULA

(Reformatted from the Five Year Financial Forecast - Baseline Model)

FY 2010/11

This document represents the "OCPFA Simplified Format" as referenced in Article XXIV, Section 1. P. d. It contains the values from the Five Year Financial Forecast - Baseline for FY 2010/11, as adjusted for Secured Property Taxes. Values for subsequent fiscal years will be presented in this format, as the Five Year Financial Forecast - Base Line Model is calculated for these years.

GENERAL FUND REVENUES

Property Taxes	178,297,955
State Reimbursements	4,575,101
Federal Reimbursements	100,000
One-Time Grant Proceeds	1,041,900
CRA Pass-thru's	3,457,556
Cash Contracts	45,872,471
Haz Mat Services Section	1,095,161
Fire Prevention Fee	4,633,104
ALS Supplies & Transport Reimbursement	4,810,426
Interest Earnings	736,028
Other Revenue	512,000

TOTAL REVENUES (A) 245,131,702

GENERAL FUND EXPENDITURES

Salaries & Employee Benefits	221,201,034
Services & Supplies/Equipment	19,801,872
One-Time Grant Expenditures	645,500
TRAN Debt Service - Interest Expense	0
Incremental Increase to Contingency Re	864,023 (a)

TOTAL EXPENDITURES (B) 242,512,429

(a) *This item is in addition to the total shown for General Fund expenditures on the Five Year Financial Forecast. For purposes of the Forecast, this item is reflected in Section B. Should additional increases be needed to replenish Contingency Reserve funds that may have been used for budget deficits, these increases will be funded first from the cashflow reserve.*

GENERAL FUND SURPLUS/(DEFICIT) = (A-B) 2,619,273

(12,082,420)

Fund 5% of General Fund Expenditures to CIP
(excludes incremental increase to Contingency Reserve)

TRIGGER FORMULA FUNDS AVAILABLE - ALL GROUPS (9,463,147)

**POSITION VACANCY UNDERSTANDING
BETWEEN
ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3631
AND
ORANGE COUNTY FIRE AUTHORITY
TERM: DECEMBER 3, 2010 THROUGH JUNE 30, 2014
PAGE 1 OF 1**

The Orange County Fire Authority (OCFA) and the Orange County Professional Firefighters Association, Local 3631 (OCPFA) enter into this understanding concerning Firefighter Unit positions. The parties agree:

1. It is the OCFA's intent that when economically and operationally feasible and as a general practice, the OCFA will hold a total of 15 positions vacant within the classifications of Firefighter, Fire Apparatus Engineer, and Fire Captain
2. These 15 vacancies will be filled through the backfill process in accordance with the applicable provisions within the current Memorandum of Understanding.
3. Both parties recognize that there are mutual benefits of such a practice, however, should the OCFA determine that it is in the best interest of the agency to hold less than 15 positions vacant, or to fill all vacant positions, the OCFA retains its prerogative to do so. Nothing within this agreement should be construed to obligate the OCFA to bargain over decisions which are not mandatory subjects of bargaining under the law.

Orange County Fire Authority

**Orange County Professional Firefighters
Association, IAFF Local 3631**

Ron Blaul, Deputy Fire Chief

Dave Rose, OCPFA Chief Negotiator

Zenovy Jakymiw, Human Resources Director

Ray Geagan, OCPFA Vice President

Date

Date

**UNDERSTANDING
REGARDING
GENERAL FUND CONTINGENCY RESERVE FUND EXPENDITURES
BETWEEN
ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3631
AND
ORANGE COUNTY FIRE AUTHORITY
TERM: DECEMBER 3, 2010 THROUGH JUNE 30, 2014
PAGE 1 OF 1**

The Orange County Fire Authority (OCFA) and the Orange County Professional Firefighters Association, IAFF Local 3631 (OCPFA), have engaged in negotiations regarding changes to the existing Memorandum of Understanding (2000-2010). One component to those negotiations was the use of the Authority's expenditure priorities involving the General Fund Contingency Reserve Fund. As a result of these negotiations, the Authority recognizes that one of the future uses of this Fund may involve expenditures that could defer operational reductions in *activated* regular post positions within the Firefighter Unit. As a result of these negotiations, an understanding between the parties has been reached.

In exchange for securing amendments to the Memorandum of Understanding with the OCPFA, the OCFA agrees to spend up to 25% of its General Fund Contingency Reserve Fund, if needed to bridge a General Fund budget deficit, and thereby to defer operational reductions.

Furthermore, in the event that funds are used as described above from the General Fund Contingency Reserve, the depleted funds shall be immediately replenished by reallocating funds from the General Fund Cash-Flow Reserve to the Contingency Reserve.

As of June 30, 2014, any remaining funds in the General Fund Cash-Flow Reserve shall be used to pay down OCFA's unfunded retirement liability with the Orange County Employees Retirement System.

ORANGE COUNTY FIRE AUTHORITY



Ron Blair, Deputy Fire Chief



Zenovy Yakymchuk, Human Resources Director



Date

**ORANGE COUNTY PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
IAFF LOCAL 3631**



Dave Rice, OCPFA Chief Negotiator



Ray Gagan, OCPFA Vice President



Date

RESOLUTION NO. 2010-XX

A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY BOARD OF DIRECTORS REGARDING ADOPTION OF SECTION 31664.2 RELATING TO THE ORANGE COUNTY PROFESSIONAL FIREFIGHTERS' ASSOCIATION, LOCAL 3631

WHEREAS, the governing body of the Orange County Fire Authority (“OCFA”) has the authority to adopt certain provisions of the County Employees Retirement Law of 1937 for calculating the benefits available to safety members of the OCFA; and

WHEREAS, Government Code Section 31664.2 establishes an alternative retirement benefit formula commonly referred to as “3% @ 55” for calculating the benefits of safety members of retirement systems governed by the County Employees Retirement Law of 1937; and

WHEREAS, the OCFA has concluded meeting and conferring with the Orange County Professional Firefighters’ Association (“OCPFA”), Local 3631, representing certain classifications designated as safety members of the Orange County Employees Retirement System; and

WHEREAS, the OCFA desires to implement the retirement benefit formula set forth in Section 31664.2 for certain new safety member employees in accordance with the terms of the agreement reached with OCPFA reflected in the Memorandum of Understanding approved and adopted by the OCFA on December 2, 2010 (the “MOU”);

WHEREAS, the retirement benefit formula set forth in Section 31664.2 will be effective for new OCFA safety member employees designated in the MOU hired on or after July 1, 2012.

WHEREAS, as required by Government Code Section 7507, the OCFA has been provided with and made public at a public meeting an actuarial statement showing the impact on future annual costs of the implementation of the benefits provided pursuant to the MOUs as implemented herein and the acknowledgement required by Section 7507 has been completed;

NOW, THEREFORE, BE IT RESOLVED that Section 31664.2 shall be applicable in the OCFA to implement the terms of the MOU for new OCFA safety member employees designated in the MOU on or after July 1, 2012.

PASSED, APPROVED, AND ADOPTED this 2nd day of December 2010.

NEIL C. BLAIS, CHAIRMAN
Board of Directors

ATTEST:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

HEALTH PLAN AGREEMENT
by and between
The Orange County Fire Authority
and
The Orange County Professional Firefighters Association, Local 3631

IN CONSIDERATION OF the mutual covenants, promises and conditions set forth hereinbelow and pursuant to Article XIII, Section I, of the Parties' 2000-2014~~214~~Memorandum of Understanding (MOU), the Orange County Fire Authority ("Authority") and Orange County Professional Firefighters Association, Local 3631 ("OCPFA") agree as follows:

1. The term of this Agreement shall begin on January 1, 2009 **2010** and will terminate at 12:00 a.m. on December 31, 2016
2. Employees' contributions, towards health plan premiums shall be determined by OCPFA, but shall not fall below the percentage of employee contributions in effect in 2008 for Kaiser coverage and Blue Cross coverage. For employees who are on approved Family Leave pursuant to the Parties' MOU and applicable law, the OCPFA shall continue to pay health insurance premiums to the same extent the Authority would be required under applicable law.
3. The Authority shall contribute to an OCPFA medical benefit trust fund the following amounts for provision and administration of health and related benefits:
 - a. The Authority shall contribute toward health benefits (~~excluding~~ **including medical** dental, vision, life and disability insurance benefits) ~~\$1,045 per month effective January 1, 2009 for each actively employed enrollee member of the Firefighter Bargaining Unit, \$1,201~~ **\$1,279** per month effective January 1, 2010 **2011** for each actively employed enrollee member of the Firefighter Bargaining Unit, ~~\$1,310 per month effective January 1, 2011 for each actively employed enrollee member of the Firefighter Bargaining Unit, \$1,427~~ **\$1,344** per month effective January 1, 2012 for each actively employed enrollee member of the Firefighter Bargaining Unit, ~~\$1,556~~ **\$1,446** per month effective January 1, 2013 for each actively employed enrollee member of the Firefighter Bargaining Unit, ~~\$1,696~~ **\$1,598** per month effective January 1, 2014 for each actively employed enrollee member of the Firefighter Bargaining Unit, ~~\$1,849~~ **\$1,742** per month effective January 1, 2015 for each actively employed enrollee member of the Firefighter Bargaining Unit and ~~\$2,015~~ **\$1,900** per month effective January 1, 2016 for each actively employed enrollee member of the Firefighter Bargaining Unit, for the term of this agreement.
 - b. ~~The Authority will contribute for other related benefits (e.g., dental, vision, life and disability insurance benefits) an additional \$68 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2009, \$78 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2010, \$86 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2011, \$93 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2012, \$102 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2013, \$111 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2014, \$121 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2015 and \$132 for each actively employed member of the Firefighter Bargaining Unit effective January 1, 2016, for the term of this agreement.~~
4. OCPFA shall maintain a medical benefit trust fund for the sole purpose of providing

health/dental/disability benefit plans, which may include medical prescriptions, vision care, life and/or disability insurance, ("Health Benefit Plans"), for employees and retirees in the Firefighters' Unit. Said medical benefit trust fund shall be administered by medical benefit trustee(s) designated by OCPFA. Funds in said medical benefit trust shall not be co-mingled with other OCPFA funds. It is intended that the administration of the Health Benefit Plans by the trust fund shall not survive the expiration of this Agreement without mutual written consent of the Parties.

5. The OCPFA agrees to return to OCFA the amount of ~~\$1,000,000~~ **\$2,000,000** from the medical benefit trust fund. The return of these funds shall occur **in two increments as follows: the most recent date noted in the signature section of this agreement. \$500,000 within 10 days from July 1, 2011, and \$1,500,000 within 10 days from July 1, 2012.**
6. Beginning with the calendar year ending December 31, 2009 and every year thereafter, OCPFA shall return any excess fund balance being held in the Trust (excluding the 1% Supplemental Benefit Investment Account) as of December 31 to OCFA. Excess fund balance shall be defined as any amount that exceeds four-times the total insurance premiums minus the employee's share of the premium contribution paid for the month of December (per the OCPFA Premium Accounting for December 1) for the year just ended. Payment by OCPFA to OCFA of the excess fund balance shall occur within 30 days following completion of the annual audit conducted by OCFA's auditors of the OCPFA Medical Benefit Trust.
7. Health Benefit Plans provided through the medical benefit trust fund shall be made available by OCPFA to all employees in the representation unit and retirees of the representation unit on an equal basis regardless of membership status. Employees must sign a written authorization for deductions. Annual predetermined rate increases shall be automatically adjusted with the approval of OCPFA, without a requirement for new payroll deduction forms.
8. The level of benefits for each type of plan shall be substantially similar to those provided by the Authority for employees not in the Firefighters' Bargaining Unit during the 12 month period immediately preceding this Agreement.
9. Health Benefit Plans must receive prior approval from the Human Resources Director or the Deputy Fire Chief whose approval shall not be unreasonably withheld. Group policies must be designated as such in the California Insurance Code and issuance must be lawful in this state. Retirees who move out of the group plan area and, therefore, may not be eligible to participate in the group plans, may enroll in a qualified individual plan. Retirees in such individual plans are eligible for retiree medical grant funding under the same conditions as applied to group plan members, provided that they submit a valid proof of payment, i.e. payroll stub showing payroll deduction for insurance or a copy of an insurance invoice accompanied by the paid check used for payment.
10. All costs of providing and administering the Health Benefit Plans shall be the sole responsibility of OCPFA. The Authority shall not be responsible for any cost of providing or administering said plans in excess of the amounts specified in this Agreement. The use of OCFA contributions to cover the administrative costs of the program shall not exceed \$50,000 during

calendar year 2009. Each calendar year thereafter, the maximum amount of administrative costs funded using OCFA contributions will be adjusted by the annual percentage change in the Medical Care Services CPI for all urban consumers as of November for the preceding year (i.e., the 2010 administrative fee will be adjusted by the annual change in CPI between November 2008 and November 2009). Administrative costs are defined as costs incurred as a result of administering said plans exclusive of premium payments. The Authority shall continue to take deductions from employees' pre-taxed earnings in accordance with Section 125 Plan of the Internal Revenue Code.

11. OCPFA will be responsible for ensuring that best investment practices shall be used in accordance with applicable laws and regulations when investing the Trust's funds.
12. OCPFA will be responsible for all accounting practices relating to the disbursement of all trust funds. Accounting practices will be in accordance with industry standards.
13. Upon completion of the annual audit, OCPFA shall provide the Authority with a copy of the annual audit within 30 days of the report's issuance. The annual audit report shall include actual cost of Health Benefit Plan premiums, total amount of contributed funds spent on all plans, and details of how all remaining contributed funds are spent or administered. As used in this Agreement, "remaining contributed funds" means any part of the Authority's contribution that has not been spent on health benefit premiums. All books and records related to the administration and provision of such plans shall be available to audit and/or inspection by the Authority or its agents upon request and a 30-day notice.
14. All regular, full-time, limited-term or part-time (at least twenty (20) hours per week) or probationary employees in classifications represented by OCPFA shall be eligible and offered an opportunity to enroll in the OCPFA plan options. No such employee shall be eligible for Authority-provided Health Benefit Plans.
15. Any employee who retires while in the OCPFA bargaining unit and who is otherwise eligible under the Authority's retiree medical benefit plan shall have coverage available from the OCPFA Health Benefit Plan. No such employee shall be eligible for Authority-provided Health Benefit Plans.
16. OCPFA shall have an open enrollment at least once a year.
17. The waiting period for Health Benefit Plan coverage of new employees may not exceed sixty (60) days.
18. OCPFA may not terminate its Health Benefit Plans during the term of this Agreement. If OCPFA or health provider terminates Health Benefit Plan coverage, the Authority will terminate its contribution for the medical benefit trust fund 30 days prior to plan termination unless OCPFA provides a suitable replacement plan approved by the Human Resources Director or the Deputy Fire Chief whose approval shall not be unreasonably withheld.
19. Employees eligible for coverage under an OCPFA plan as a result of change of Authority

representation unit shall be enrolled without regard to pre-existing conditions of illness or injury for plan benefits for themselves and their enrolled dependents. Employees eligible for coverage under an Authority health plan as a result of change of Authority representation unit shall be enrolled without regard to pre-existing conditions of illness or injury for plan benefits for themselves and their enrolled dependents.

20. In the administration and provision of health care plans, OCPFA shall comply with COBRA, HIPAA and all other applicable state and federal laws and regulations to the same extent the Authority would be required to comply.
21. OCPFA shall comply with all laws applicable to health and welfare benefit, and/or medical or similar benefit, trust funds and the administration and management thereof.
22. Any dividends paid, premiums refunded or other rebates or refunds made under any plan or policy shall be the property of the Authority; provided, however, that said funds will be transmitted to the OCPFA medical benefit trust fund for medical benefit trust fund purposes.
23. OCPFA shall take all steps necessary to ensure the confidentiality of Health Benefit Plan user information.
24. Plan eligibility shall terminate at the end of the calendar month in which any of the following occur:
- a. Employee terminates. However, this will not interfere with a former employee's right to continue insurance coverage at his/her option as provided for under law.
 - b. Change of representation unit.
 - c. Disenrollment of a dependent (for the dependent).
25. The provisions of the Agreement shall not be subject to the grievance and arbitration provisions of the Parties' separate Memorandum of Understanding.
26. Upon expiration or breach of this Agreement, the Authority shall have the right to unilaterally change the plans or assume or assign administration of the plans without meeting and conferring with OCPFA; provided however, that in the event that the Authority makes such a change, benefits provided under new plan(s) shall be substantially similar to the benefits provided under the existing plan(s).
27. OCPFA shall defend, indemnify and hold the Authority harmless from any claims or legal action arising out of, or in any way related to, Health Benefit Plans administered and/or provided pursuant to this Agreement. This obligation shall not arise with respect to any claim or legal action brought by OCPFA or employees concerning coverage overlap between the respective Authority and OCPFA plans.

28. This Agreement is the entire, integrated agreement with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements and discussions. The Parties also agree that no modification of this Agreement shall be valid unless it is in writing and signed by all of the Parties to this Agreement.

29. This Agreement shall not be construed in favor or against any party, regardless of which party drafted or participated in the drafting of its terms.

ORANGE COUNTY FIRE AUTHORITY

By: _____
Keith Richter, Fire Chief
OCFA

Date: _____

APPROVED AS TO FORM:
TERRY C. ANDRUS
GENERAL COUNSEL

Date: _____

**ORANGE COUNTY PROFESSIONAL
FIREFIGHTERS ASSOCIATION, LOCAL
3631**

By: _____
Joe Kerr, President
OCPFA

By: _____
David Rose, Director
OCPFA

Date: _____