

**RESOLUTION NO. 9925**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOUNTAIN VALLEY APPROVING THE MEMORANDUM OF UNDERSTANDING FOR THE FOUNTAIN VALLEY INDIVIDUALLY REPRESENTED BATTALION AND DIVISION CHIEFS RELATING TO WAGES, HOURS, TERMS AND CONDITIONS OF EMPLOYMENT.**

WHEREAS, the City Council of the City of Fountain Valley has established a basic compensation plan for City employees in all classifications of employment; and

WHEREAS, representatives of the City Manager of the City of Fountain Valley and representatives of the bargaining group noted below periodically negotiate in good faith to reach agreement on benefits and compensation pursuant to Government Code Section 3500 et seq; and

<b>Bargaining Group Name</b>
Individually Represented Battalion and Division Chiefs

WHEREAS, the memorandum of understanding relating to wages, hours, and terms and conditions of employment are amended and include adjustments to the salary ranges, benefits, and terms and conditions of employment; and

NOW, THEREFORE, the City Council of the City of Fountain Valley does hereby resolve as follows:

SECTION 1. The Memoranda of Understandings establishing wages, hours, and terms and conditions of employment for the Fountain Valley Individually Represented Battalion and Division Chiefs, attached with this resolution for the term beginning July 1, 2024 through June 30, 2027, is hereby approved and adopted:

PASSED AND ADOPTED by the City Council of the City of Fountain Valley at a regular meeting on this 4<sup>th</sup> day of June 2024.

Ayes: Constantine, Cunneen, Harper, Bui, Grandis

Nays: None

Absent: None

Abstain: None

ATTEST:



Rick Miller, City Clerk



Glenn Grandis, Mayor

APPROVED AS TO FORM



Colin Burns  
Attorneys for the City

Exhibit 1: Memorandum of Understanding 2024-27 Individually Represented Battalion and Division Chiefs

# **MEMORANDUM OF UNDERSTANDING**

**2024 - 2027**

**CITY OF FOUNTAIN VALLEY**

**AND**

**INDIVIDUALLY REPRESENTED**

**BATTALION CHIEFS AND DIVISION CHIEF**



This Memorandum of Understanding sets forth the terms of agreement reached between the City of Fountain Valley and the Individually Represented Battalion Chiefs and Division Chief for the period beginning July 1, 2024 through June 30, 2027. Unless otherwise indicated herein, all provisions shall become effective in the pay period including July 1, 2024.

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF FOUNTAIN VALLEY  
AND  
THE INDIVIDUALLY REPRESENTED  
BATTALION CHIEFS**

(2024-2027)

**PREAMBLE**

Representatives of the City of Fountain Valley and the Individually Represented Professional/Technical Battalion Chiefs and Division Chief (hereinafter referred to as Individually Represented Battalion Chiefs) having requested individual representation by letter pursuant to Resolution 9379 and having met on a number of occasions and having conferred in good faith, exchanging a number of proposals concerning wages, hours, fringe benefits, and other terms and conditions of employment.

The City Manager and the Individually Represented Battalion Chief and Division Chief have reached an understanding as to certain recommendations to be made to the City Council of the City of Fountain Valley and have agreed that the parties hereto will jointly urge the City Council to adopt one or more resolutions which will provide for the changes in wages, hours, fringe benefits, and other terms and conditions of employment contained herein.

Having met and conferred in good faith, the City Manager of the City of Fountain Valley and the Individually Represented Battalion Chiefs agree as follows:

**ARTICLE 1 - RECOGNITION**

Battalion Chief and Division Chief is individually represented on wages, hours, fringe benefits, and other terms and conditions of employment.

Recognition shall mean acknowledgment by the City that an employee organization is the exclusive representative of all employees in an appropriate unit except employees in such bargaining units who have elected to represent themselves. The City has received written correspondence indicating that the designated employee has requested individual representation.

**ARTICLE 2 - REPRESENTED CLASSIFICATION**

The classification of Battalion Chief and Division Chief are represented.

**ARTICLE 3 – PROBATIONARY PERIOD**

**Section 3.01 – New Hires.** New employees hired from outside current City employment after August 1, 2007, shall be subject to an eighteen (18) month probationary period. If the new Individually Represented Battalion Chief and Division Chief is off work for reason other than approved vacation or sick leave for more than thirty (30) calendar days, the

Individually Represented Battalion Chief's probationary period will be extended by the period the Individually Represented Battalion Chief is off work. The Individually Represented Battalion Chief shall be eligible for a merit increase as specified in Section 4.08.

**Section 3.02 – Promotion.** Employees who are promoted to the classification of Battalion Chief effective August 1, 2007 and thereafter shall be subject to a twelve (12) month probationary period. If the Individually Represented Battalion Chief is off work for reason other than approved vacation or sick leave for more than thirty (30) calendar days, the Individually Represented Battalion Chief's probationary period will be extended by the period the Individually Represented Battalion Chief is off work. The Individually Represented Battalion Chief shall be eligible for a merit increase as specified in Section 4.08.

**ARTICLE 4 - COMPENSATION**

**Section 4.01 – Compensation.** Adjustments to the schedule of base salary rates for classifications covered under this contract are outlined below:

Adjustment Effective Date	Adjustment Amount
Pay period ending July 5, 2024	4%
Pay period ending July 4, 2025	4%
Pay period ending July 3, 2026	4%

**Section 4.02 –Division Chief Compensation.** An Individually Represented Division Chief is assigned to Fire Suppression, shall receive a salary differential of 9.0% above top step Battalion Chief. An Individually Represented Division Chief assigned to an administrative position will receive 12.5% above top step Battalion Chief.

**Section 4.03 – Educational Incentive Pay (Chief Officer Certification).** Defined as compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. Designated by 2 CCR § 571 (a) (2) as Educational Pay. Individually Represented Battalion Chiefs and Division Chiefs who have completed all required Chief Fire Officer courses, or possess a Chief Officer Certification by the State of California shall receive educational incentive pay (Chief Officer Certification) in the amount of nine percent (9%) of base pay per month.

*(Revised 8/20/10, 8/9/08, 8/11/07, 8/8/98, 2/17/97, 2/1/96, 8/1/95, 2/1/95, 8/1/94, 8/1/16, 1/1/2024, 7/1/2024)*

**Section 4.04 – Educational Incentive Pay (Chief Officer Management).** Defined as compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. Designated by 2 CCR § 571 (a) (2) as Educational Pay. Individually Represented Battalion Chiefs and Division Chief possessing a Chief Officer Certificate from the State of California who have earned a minimum of 90 semester units at an accredited college or university shall be eligible for sixty-five hundredths of a percent (0.65%) of base pay per month educational incentive

pay (Chief Officer Management Certification). The Individually Represented Battalion Chief must submit a college or university transcript showing completion of a minimum of ninety (90) semester units. Chief Officer Management Pay is in addition to Chief Officer Certification Pay.

*(Effective 8/1/07, 1/1/2024)*

**Section 4.05 – Educational Incentive Pay (Strike Team Leader Certification).**

Defined as compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. Designated by 2 CCR § 571 (a) (2) as Educational Pay. Individually Represented Battalion Chiefs and Division Chief completing all required courses for Strike Team Leader (Engine) Certification from the State of California shall receive educational incentive pay (Strike Team Leader Certification) in the amount of sixty-five hundredths of a percent (0.65%) of base pay per month.

A Battalion Chief or Division Chief who returns to work from a strike team deployment of greater than 24 hours in duration on that Battalion/Division Chief's regularly assigned duty shift, will not be expected to return to duty for the remainder of the regular duty shift. The Battalion or Division Chief will not be required to utilize any accrued leave and the shift will remain backfilled.

*(Revised 8/20/10, 8/9/08, 8/11/07, 9/1/2020, 1/1/2024)*

**Section 4.06 – Hazard Premium Pay (Exposure).** Defined as compensation to employees who are routinely and consistently exposed to toxic, radioactive, explosive or other hazardous substances or perform hazardous activities to implement health or safety procedures. Designated by 2 CCR § 571 (a) (4) as premium pay. Individually Represented Battalion Chiefs and Division Chiefs shall receive hazard premium in the amount of five percent (5%) of base pay per month in addition to their base rate of pay.

*(Revised 2/17/97, 2/16/93, 1/1/2022)*

**Section 4.07 – Physical Fitness Program Pay (Wellness).** Defined as compensation to local safety members who meet an established physical criterion. Designated by 2 CCR § 571 (a) (1) as incentive pay. The Individually Represented Battalion Chief and Division Chief may participate in a voluntary physical fitness/wellness program. Individually Represented Battalion Chiefs successfully passing the semi-annual performance standards shall receive physical fitness program pay (wellness) in the amount of \$50.00 per month for Tier 1. If qualified for Tier 2, the Individually Represented Battalion Chief and Division Chief shall receive physical fitness program pay (wellness) in the amount of four percent (4%) of base pay per month. The employee may elect to use whatever portion of this pay as may be necessary to satisfy their full obligation to pay health insurance premiums.

*(Revised 8/20/10, 8/9/08, 8/11/07, 1/1/2022)*

**Section 4.08 – Management Performance Program.**

- A. Individually Represented Battalion Chiefs shall submit a memo to their supervisor detailing their accomplishments during the rating period within twenty-one (21) days prior to the employee's anniversary date.
- B. Supervisors and/or the Fire Chief complete the Management Performance Evaluation form prior to the employee's anniversary date.
- C. The City Manager reviews each Management Performance Evaluation.

Eligibility for Merit Increase. Individually Represented Battalion Chiefs must receive an overall performance evaluation rating of "Meets Expectations" or "Exceeds Expectations" to be eligible for a merit increase to the next step within the salary range. An overall performance evaluation rating of "Needs Improvement" will not result in a merit increase. If an Individually Represented Battalion Chief receives a "Needs Improvement" rating and, therefore, is not approved for a merit increase, the Individually Represented Battalion Chief may be reconsidered for such merit increase no sooner than thirty (30) days after the evaluation is delivered.

Current Employee Merit Increase. Employees who are promoted to Battalion Chief shall be eligible for a merit increase upon completion of twelve (12) months of continuous City service and successful completion of probation subject to Section 3.02. Thereafter, Individually Represented Battalion Chiefs shall be eligible for a merit increase effective with completion of twenty-four (24) months, thirty-six (36) months then forty-eight (48) months assuming the Individually Represented Battalion Chief starts at Step 1. In no case, will an Individually Represented Battalion Chief be paid more than Step 5 of the salary range for their classification.

Employees who are promoted to Battalion Chief or Division Chief prior to July 1, 2021 shall be eligible for a merit increase upon completion of twelve (12) months of continuous City service and successful completion of probation. Thereafter, sworn, management fire personnel shall be eligible for a merit increase effective with completion of twenty-four (24) months after appointment then thirty (30) months after appointment, then forty-eight (48) months after appointment.

New Hire Merit Increase. Individually Represented Battalion Chiefs hired from outside current City employment after August 1, 2007, shall be eligible for a merit increase upon completion of twelve (12) months of continuous City service and successful completion of probation subject to Section 3.01 of this Memorandum of Understanding. Thereafter, Individually Represented Battalion Chiefs shall be eligible for a merit increase effective with completion of twenty-four (24) months, thirty-six (36) months then forty-eight (48) months of employment assuming the Individually Represented Battalion Chief starts at Step 1. In no case, will an Individually Represented Battalion Chief be paid more than Step 5 of the salary range for their classification.

**Section 4.09 – Fair Labor Standards Act Exemption.** Pursuant to Section 13(a)(1) of the Fair Labor Standards Act, the City hereby determines that the Individually Represented Battalion Chief is exempt from both the minimum wage and overtime provisions of the Fair Labor Standards Act.

Notwithstanding the provisions of Section 4.09, the Individually Represented Battalion Chief assigned to suppression shall be eligible for non-Fair Labor Standards Act/Memorandum of Understanding overtime under the conditions noted below.

**Section 4.10 – Battalion Chief Suppression Overtime.** The Individually Represented Battalion Chief shall be paid at the rate of one and one-half times their regular hourly rate for all suppression hours worked in excess of one hundred twelve (112) hours in a fourteen-day (14) work period (Note: Suppression duty is defined as incident or potentially incident based).

**Section 4.11 - Non-Suppression Overtime.** The Individually Represented Battalion Chief shall be paid at the regular base hourly rate (straight time) for all ***non-suppression*** hours worked in excess of one hundred twelve (112) hours in a fourteen-day (14) work period. Non-suppression work shall include attendance at meetings, work as a Fire Investigator, work on pre-employment background investigations, etc. The Individually Represented Division Chief shall not be paid for Non-Suppression Overtime.  
(Revised 1/1/2022)

**Section 4.12 – Non-FLSA Overtime.** For purposes of determining eligibility for non-Fair Labor Standards Act/Memorandum of Understanding overtime pay, absences (i.e., sick leave, etc.), whether compensated or uncompensated, shall **not** be counted as hours worked, for the purposes of determining eligibility for non-Fair Labor Standards Act/Memorandum of Understanding overtime pay. Only vacation and bereavement leave hours will be counted as hours worked for determining eligibility for non-Fair Labor Standards Act/Memorandum of Understanding overtime pay.

**Section 4.13 – Compensation to the Fire Operations/Training Division Chief when Assigned to Work as the Suppression Battalion Chief.** On those occasions when the Fire Operations/Training Division Chief is assigned to work as the on-duty suppression Battalion Chief, on the Fire Operations/Training Division Chief's regularly scheduled day off, for those suppression hours only the Fire Operations/Training Division Chief will be paid at one and one-half times the base hourly rate of a fifty-six (56) hour Battalion Chief at the Fire Operations/Training Division Chief's current salary step. (Note: Suppression duty is defined as incident or potentially incident based).

**Section 4.14 Longevity Pay:** (labeled 4.13 in side letter in error) Defined as compensation to incentivize sworn, Individually Represented Battalion Chiefs and Division Chief to remain with the City of Fountain Valley, and defined as special compensation 2 CCR § 571 (a) (1) Longevity Pay. Eligible employees will earn a retention incentive premium at the following rates based on their cumulative, full-time sworn fire department service. Only sworn fire department employees with the rank of Firefighter or higher, as determined by the Fire Chief, shall be included as qualified, sworn fire service experience. Any retention incentive premium shall not commence until the Fire Department is notified by the employee of obtaining eligibility and all required proof of eligibility is received by the Human Resources Department and approved by the Fire Chief and City Manager.

A. After completion of fifteen (15) years of qualified service, and beginning their sixteenth (16<sup>th</sup>) year of service, eligible employees will receive five percent (5%) of base pay only.

B. After completion of twenty (20) years of qualified service, and beginning their twenty-first (21<sup>st</sup>) year of service, eligible employees will receive six percent (6%) of base pay only.

An eligible employee shall only be entitled to receive one retention incentive premium and is not intended to be stacked.

*(Established and effective 1/1/2023)*

**4.15 Deferred Compensation Matching:** Beginning the pay period including July 1, 2024, the City will match employee contributions to their deferred compensation account up to the maximum of one-hundred fifty dollars (\$150) per month (or approximately \$69.23 bi-weekly).

*(Established and effective 7/1/2024)*

## **ARTICLE 5 - UNIFORMS AND SAFETY BOOTS**

**Section 5.01 – Uniforms.** The Individually Represented Battalion Chief and Division Chief shall be required to purchase, maintain, and wear uniforms as specified by the Fire Chief. The City will provide, at no cost to the employee, all turnout and safety clothing and equipment not specified in **Exhibit 3**.

**Section 5.02 – Uniform Allowance.** Defined as compensation paid for the purchase and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. Designated by CCR 571 (a) as statutory items. The City shall provide the Individually Represented Battalion Chief and Division Chief with a uniform allowance of \$800.00 per year. The allowance shall be paid and reported to CalPERS over twenty-six (26) pay periods in the amount of \$30.77 per pay period.

Effective in the pay period including July 1, 2024 the uniform allowance will increase to \$1,600 per year. The allowance shall be paid and reported to CalPERS for Classic Members over twenty-six (26) pay periods in the amount of approximately \$61.53 per pay period. If a Battalion Chief is promoted into this during the calendar year after the first pay period of the calendar year the uniform allowance will be pro-rated.

*(Revised 1/10/09, 1/12/08, 07/01/2024)*

Upon promotion to the rank of Battalion Chief, the City will provide the specified annual uniform allowance and will reimburse the Individually Represented Battalion Chief for City uniforms purchased up to a maximum of \$3,000 (for annual uniform allowance and reimbursement) as long as the employee provides a receipt documenting the expenditure for these uniforms. This is a one-time non-reportable to PERS reimbursement.

If, during the term of the agreement, the Fire Chief requires sworn management Fire personnel to purchase, maintain, and wear uniforms that are substantially more costly than the standard uniform, which was required at the time this agreement was signed, the City and Individually Represented Battalion Chief and Division Chief mutually agree to meet and confer within a reasonable period of time to discuss only the issue of uniform allowance.

*(Revised 7/1/2024)*

**Section 5.03 – Uniforms Damaged in the Line of Duty.** Upon submission of proper documentation by the Department that an employee's uniform has been damaged in the line of duty, the City shall, at its discretion, pay for the cost of repair or replacement of the uniform, unless it is determined that such damage was the result of negligence on the part of the employee. "Damaged in the line of duty" shall not include normal wear and tear.

**Section 5.04 – Safety Boots.** The City shall provide a voucher for one (1) pair of OSHA-approved safety boots for each Individually Represented Battalion Chief and Division Chief at the time of employment and when the Fire Chief certifies that their boots are no longer serviceable. The voucher shall be in the amount of the least expensive pair of OSHA-approved safety boots, plus applicable tax, available at a vendor designated by the City.

**ARTICLE 6 – RETIREMENT**

**Section 6.01 – CalPERS Retirement System:** Employees are members of the California Public Employees’ Retirement System (hereinafter referred to as CalPERS) and are subject to all applicable provisions of the City’s contract with CalPERS for the miscellaneous employees.

**Section 6.02 – Employees Hired July 31, 2011 and Earlier:** Employees whose hire date as a full-time employee is July 31, 2011 or earlier will be covered under the 3% at 50 formula with the benefits specified below.

<b>Provision</b>	<b>Government Code Section</b>
3% at 50	21362.2
Single Highest Year	20042
Service Credit for Unused Sick Leave	20965
2% Cost-of-Living	21329
Prior Service Credit	20055
Post-Retirement Survivor Allowance	21624, 21626, and 21635
Retired Death Benefits	21620
Pre-Retirement Option 2W Death Benefits	21548
Military Service	20996
Military Service Credit	21024
Military Service Credit for Retirees	21027
Peace Corps Service Credit	21023.5
Public Service Layoff Service Credit	21022

Member Cost Sharing (This provision was eliminated and deleted from the CalPERS contract effective March 31, 2012)	20516
Public Service Credit for Service Rendered to a Nonprofit Corporation	21026
Local System Service Credit Included in Basic Death Benefit	21536
Cancellation of Payments for Service Credit Purchase Upon Industrial Disability Retirement	21037

Employee Contribution. Employees have agreed to pay a pension contribution of twelve percent (12%).

Employees agree to share the cost of retirement contribution on a pre-tax basis by paying the full 9% employee contribution and an additional 3% cost sharing of the employer's contribution. It is the intent of the parties to accommodate employees' desire that said sums be deducted on a pre-tax basis as deferred income for federal and state tax purposes. The parties believe the contribution is pre-tax because the City has filed the CalPERS IRS Code section 414(h)(2) resolution. However, any income tax obligations or penalties arising from such tax treatment shall be the exclusive responsibility of the employee. In the event of any adverse tax treatment for the employees, the City shall not be responsible therefore and the City has made no representation regarding such tax treatment and employees shall seek such advice from their personal tax advisors regarding such matters.

City Contribution. The City agrees to pay the employer contribution to CalPERS minus any cost sharing the employees have agreed to in this contract.

**Section 6.03 – Employees Hired August 2, 2011 Through December 31, 2012:** Employees whose hire date as a full-time employee is August 1, 2011 through December 31, 2012 will be covered under the 2% at 50 formula with the benefit specified below.

Provision	Government Code Section
2% at 50	21362
Three year final compensation	20037
Different levels of benefits	20475
Pre-retirement Optional Settlement 2 Death Benefit	21548
Credit for Unused Sick Leave	20965
Public Service Credit for Periods of Layoff	21022
Public Service for Peace Corps or America Corps: VISTA Service	21023.5
Military Service Credit as Public Service	21024
Public Service Credit for Service Rendered to a Nonprofit Corporation	21026
Military Service Credit for Retired Persons	21027
Local System Service Credit Included in Basic Death Benefit	21536
Cancellation of Payments for Service Credit Purchase Upon	21037

Industrial Disability Retirement
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9% Employee Contribution. Employees agree to share the cost of retirement contribution on a pre-tax basis by paying the full 9% employee contribution. It is the intent of the parties to accommodate employees' desire that said sums be deducted on a pre-tax basis as deferred income for federal and state tax purposes. The parties believe the contribution is pre-tax because the City has filed the CalPERS IRS Code section 414(h)(2) resolution. However, any income tax obligations or penalties arising from such tax treatment shall be the exclusive responsibility of the employee. In the event of any adverse tax treatment for the employees, the City shall not be responsible therefore and the City has made no representation regarding such tax treatment and employees shall seek such advice from their personal tax advisors regarding such matters.

City Contribution. The City agrees to pay the employer contribution to CalPERS.

**Section 6.04 California Employees' Pension Reform Act of 2013:** Assembly Bill No. 340 (2012) established the California Public Employees' Pension Reform Act of 2013 (hereinafter referred to as PEPRA). The City is required to comply with the provisions of PEPRA.

**Section 6.05 New Members and New Employees Under PEPRA:**

New Members Defined by PEPRA. New Members are defined by PEPRA as an employee who:

- A. Was brought into CalPERS membership for the first time on or after January 1, 2013 and who has no prior membership in any California public retirement system; or
- B. Was brought into CalPERS membership for the first time on or after January 1, 2013, and who is not eligible for reciprocity with another public retirement system; or
- C. First established CalPERS membership prior to January 1, 2013 and who is rehired by a different CalPERS employer after a break in service of greater than six (6) months.

New Members will be covered under the 2.7% at 57 formula with the benefits specified below.

<u>Provision</u>	<u>Government Code Section</u>
\$500 Retired Death Benefit	Section 21620
2% Annual Cost-of-Living Allowance Increase	Section 21329
2.7% @ 57 Formula for Safety Members	Section 7522.25(d)
Additional Service Credit 2 Years - Local Member	Section 20903
Final Compensation 3 Years	Section 20037
Military Service Credit as Public Service	Section 21024
Military Service Credit for Retired Persons	Section 21027
Pre-Retirement Death Benefits to Continue After	Section 21551

Remarriage of Survivor	
Pre-Retirement Option 2W Death Benefit	Section 21548
Prior Service	Section 20055
Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service	Section 21023.5
Public Service Credit for Periods of Layoff	Section 21022
Unused Sick Leave Credit - Local Member	Section 20965

Employee Contribution. PEPR (Government Code Section 7522.30) states “Equal sharing of normal costs between public employers and public employees shall be the standard.” The standard shall be that employees pay at least 50% of normal costs and that employers not pay any of the required employee contribution.

The “normal cost rate” shall mean the annual actuarially determined normal cost for the defined benefit plan of an employer expressed as a percentage of payroll.

New Members shall pay 50% of the normal cost adjusted annually in accordance with the CalPERS actuarial valuation for the City of Fountain Valley 2.7% at 57 plan. Any change to the New Member and New Employee contribution rate will become effective the first payroll period including July 1 of the appropriate year.

Upon receipt of the annual actuarial valuation from CalPERS for the 2.7% at 57 plan, the Human Resources Department will forward a copy to the Association specifying the New Member contribution rate for the upcoming period. This process shall serve as the meet and confer process for any increase in the employee contribution rate. The Association may request to meet with the City if the New Member and New Employee contribution rate increases but the parties understand and agree that the New Members will be required to pay 50% of the normal cost beginning on the date specified in this Section regardless of whether the parties have concluded the meet and confer process..

City Contribution. The City agrees to pay the employer contribution to CalPERS.

**Section 6.06 Classic/Legacy Employees Under the California Employees’ Pension Reform Act of 2013:** An individual hired on or after January 1, 2013 who was employed by any public employer before January 1, 2013 and who does not meet the definition of “New Member” under the PEPR will be designated as a Classic/Legacy Employee. Classic/Legacy Employees are defined as those individuals who are:

- A. Working for an employer providing CalPERS retirement benefits who begins employment with the City of Fountain Valley without a break in service or a break in service of less than six (6) months; or
- B. Current member of a public retirement system or plan with reciprocity with CalPERS. Classic/Legacy members will be covered under the 2% at 50 formula with the benefits specified below.

Provision	Government Code Section
2% at 50	21362

Three year final compensation	20037
Different levels of benefits	20475
Pre-retirement Optional Settlement 2 Death Benefit	21548
Credit for Unused Sick Leave	20965
Public Service Credit for Periods of Layoff	21022
Public Service for Peace Corps or America Corps: VISTA\Service	21023.5
Military Service Credit as Public Service	21024
Public Service Credit for Service Rendered to a Nonprofit Corporation	21026
Military Service Credit for Retired Persons	21027
Local System Service Credit Included in Basic Death Benefit	21536
Cancellation of Payments for Service Credit Purchase Upon Industrial Disability Retirement	21037

9% Employee Contribution. Employees agree to share the cost of retirement contribution on a pre-tax basis by paying the full 9% employee contribution. It is the intent of the parties to accommodate employees' desire that said sums be deducted on a pre-tax basis as deferred income for federal and state tax purposes. The parties believe the contribution is pre-tax because the City has filed the CalPERS IRS Code section 414(h)(2) resolution. However, any income tax obligations or penalties arising from such tax treatment shall be the exclusive responsibility of the employee. In the event of any adverse tax treatment for the employees, the City shall not be responsible therefore and the City has made no representation regarding such tax treatment and employees shall seek such advice from their personal tax advisors regarding such matters.

City Contribution. The City agrees to pay the employer contribution to CalPERS.

#### **Section 6.07 – Compensation Reportable to CalPERS.**

##### Employees Hired on or Before December 31, 2012.

For purposes of calculating retirement benefits, the City will report to the California Public Employees' Retirement System all regular compensation and special compensation (uniform allowance).

Employees Hired January 1, 2013 and Later. For purposes of calculating retirement benefits, the City will report to the California Public Employees' Retirement System all regular compensation. In accordance with PEPR, for employees hired beginning January 1, 2013 and later, special compensation (uniform allowance) is not pensionable compensation and therefore may not be reported to CalPERS as pensionable compensation. PEPR, amendments to PEPR and CalPERS law will define those special pays which may be reportable as pensionable compensation.

**Section 6.08 – Retiree Health Savings Account.** Individually Represented Battalion Chiefs and Division Chief hired to the City on or after 8/1/2011, will be required to contribute two percent (2%) of the top step salary for Firefighter/Paramedic per payroll period to the employee's retiree health savings account. Contributions to the retiree

health savings are made solely by the employee and all administrative fees for the plan will be deducted from each employee’s individual account assets. The account assets that accumulate, plus investment earnings, will be used in retirement to pay health insurance premiums and other eligible out-of-pocket medical expenses such as deductibles, co-payments and dental care in accordance with Internal Revenue Code Section 213. The employee contribution will be portable if an employee should leave employment with the City of Fountain Valley prior to retirement.

**ARTICLE 7 – HEALTH AND OTHER INSURANCE FOR EMPLOYEES**

**Section 7.01 – Group Medical and Dental Insurance for Employees Hired July 31, 2011 and Earlier.** The City contracts with the California Public Employees’ Retirement System’s Public Employees’ Medical and Hospital Care Act (PEMHCA) for medical insurance for City employees. The payment of premiums towards group medical/dental/life insurance will be through the administration of a flexible benefit package.

The City shall pay the CalPERS statutory minimum employer contribution specified in Section 22892 of the Public Employees’ Medical and Hospital Care Act. In addition to the CalPERS statutory minimum employer contribution, the City shall make contributions to a flexible benefits plan as noted herein.

Employees Defined.

Tier 1 Employees are defined as those individuals employed in a full-time position with the City of Fountain Valley beginning July 31, 2011 and earlier.

Tier 1 Employees’ City Contribution. The City contribution for Tier 1 employees is as follows:

<b>Flex Dollar Allowance</b>	<b>Flex Dollars</b>	<b>Longevity Health Stipend</b>	<b>Total Flex Allowance</b>
Electing <b>Employee Only</b> coverage	\$623.64	\$1,082.75	\$1,706.39
Electing <b>Employee +1 Dependent</b> coverage	\$1,110.61	\$595.78	\$1,706.39
Electing <b>Employee + Family</b> coverage	\$1,428.76	\$277.63	\$1,706.39

The amount identified as flex dollars is inclusive of the CalPERS statutory minimum.

Individually Represented Battalion Chiefs and Division Chief who elect not to be covered under the medical plan provided through the cafeteria plan shall receive the equivalent of the CalPERS statutory minimum as cash wages. However, the employee will be required to pay for dental and life insurance premiums, both of which are mandatory out of the waiver of premium contribution (CalPERS statutory minimum).

Separation then Return to City Service. If an employee separates employment and later

returns to employment with the City of Fountain Valley, the date the employee returned to employment will become the hire date for the employee and they will be considered a Tier 2 employee and only eligible for Tier 2 benefits.

**Section 7.02 – Group Medical and Dental Insurance for Employees Hired August 1, 2011 and Later.**

Tier 2 Employees are defined as those individuals employed in a full-time position with the City of Fountain Valley beginning August 1, 2011 and later.

Tier 2 City Contribution. The City contribution for Tier 2 employees is as follows:

Effective the first pay period in July 2019, the City contribution for Tier 2 employees is as follows:

<b>Flex Dollar Allowance</b>	<b>Flex Dollars</b>
Electing <b>Employee Only</b> coverage	\$774
Electing <b>Employee +1 Dependent</b> coverage	\$1,261
Electing <b>Employee + Family</b> coverage	\$1,579

Tier 2 employees do not qualify for the longevity health stipend.

An Individually Represented Battalion Chief or Division Chief who elects not to be covered under the medical plan provided through the cafeteria plan shall receive the equivalent of the CalPERS statutory minimum as cash wages. However, the employee will be required to pay for dental and life insurance premiums, both of which are mandatory, out of the waiver of premium contribution (CalPERS statutory minimum).

**Section 7.03 – Cafeteria Plan.** The provisions of the Cafeteria Plan are described below.

Benefits Provided Through the Cafeteria Plan. The insurance benefits provided for in this article will be provided through the provision of a cafeteria plan adopted in accordance with the provisions of Internal Revenue Code § 125: medical and dental.

Each month the City will contribute to the cafeteria plan flex dollars for current employees and new hires as specified in Sections 7.01 and 7.02. In addition, the City will contribute a longevity stipend for Tier 1 employees as specified in Section 7.01. The City’s flex dollar contribution includes the CalPERS statutory minimum paid by the City.

Prior to January 1, 2011, dependent dental premiums were fully employee paid. However, due to the provisions of the cafeteria plan, dependent dental premiums are to be deducted from the flex dollars. Upon retirement, retirees are not covered by a cafeteria plan; therefore, dependent dental premiums will be fully retiree paid, if coverage is elected. Nothing in these provisions require City contributions towards dependent dental premiums.

The Purchase of Optional Benefits Through the Cafeteria Plan. The cafeteria plan offers Individually Represented Battalion Chiefs or Division Chief the opportunity to purchase

optional medical insurance, vision insurance, and AFLAC insurance. Eligible employees may select from any of the medical insurance plans offered by CalPERS. If CalPERS changes any of the medical insurance plans by either adding or deleting the plan options, employees will be limited to those plan options offered by CalPERS.

Individually Represented Battalion Chiefs or Division Chief may also elect any of the optional AFLAC insurance options the City offers to employees at the employee's sole cost.

Dental and life insurance are not optional benefits and such premiums will be deducted from each employee's cafeteria plan flex dollars or waiver of premium contribution.

Employee Contributions for Benefit Options. If an Individually Represented Battalion Chiefs or Division Chief chooses optional benefits whose aggregate cost exceeds the total flex dollar City contribution to the cafeteria plan, the City will automatically deduct the excess amount on a pre-tax basis, if applicable, from the employee's bi-weekly payroll.

The Receipt of Cash Through the Cafeteria Plan. Individually Represented Battalion Chiefs or Division Chief will be eligible to receive cash (subject to taxation as wages) through the cafeteria plan if they either opt out of receiving medical insurance or if they choose optional benefits that do not cost as much as the flex dollars provided by the City towards the cafeteria plan. Any such employee shall be eligible to receive in cash up to a maximum of \$350 per month for employees who elect medical coverage or if medical coverage is declined, up to the CalPERS statutory minimum minus dental, life and vision insurance premiums.

Individually represented Battalion Chiefs or Division Chief who are receiving cash through the cafeteria plan in excess of \$350 as of September 1, 2017 are grandfathered (per a side letter of agreement) to continue to receive cash in excess of \$350 per month until they are no longer a Fire Battalion Chief /Division Chief or the receipt of cash falls below \$350.

In order to opt out of the City's medical coverage, employees will be required to maintain and provide proof of group health plan coverage through an alternative source and the alternative group health plan coverage must meet the Affordable Care Act's requirements regarding affordability and minimum value.

**Section 7.04 – Term Life Insurance.** The amount of term life insurance for each Individually Represented Battalion Chief and Division Chief shall be \$50,000.

**Section 7.05 – Long-Term Disability Insurance.** The City shall maintain and pay full premium for a long-term disability insurance policy for all Individually Represented Battalion Chiefs and Division Chief. The purpose of long-term disability insurance is to ensure that the Individually Represented Battalion Chiefs or Division Chief will have a source of income if they are disabled from performing their regular duties for a period longer than sixty (60) calendar days.

Eligibility. An employee's eligibility for long-term disability benefits depends on whether or not the employee's disability is industrial or non-industrial in nature. If the disability is industrially related, the employee's eligibility for long-term disability benefits begins on the sixty-first (61<sup>st</sup>) calendar day of continuous absence from work. If the employee's disability is not industrially related, the employee's eligibility begins either on the sixty-first (61<sup>st</sup>) calendar day of the employee's absence from work or upon expiration of the employee's sick leave, whichever period is longer.

In addition, the eligible employee must meet the insurance carrier's definition of disability prior to eligibility to receive benefits.

Benefits. An employee who is eligible to receive long-term disability benefits will receive 66.67% of the employee's monthly salary up to \$5,000 as of the date the employee's disability began, less any deductible benefits, starting 60 days after you are out of work as provided for in the long-term disability policy.

An employee who is receiving long-term disability benefits is considered to be in an off-payroll status and will not accrue benefits during the time that they is in such status. In addition, employees who are in an off-payroll status while receiving long-term disability benefits are responsible for maintaining group medical insurance coverage and for paying the premiums therefore.

The City reserves the right to self-insure any or all Long-Term Disability benefits, provided that there shall be no change to existing eligibility requirements or coverage unless mutually agreed to in writing by both the City and the Individually Represented Battalion Chief or Division Chief.

### **Section 7.06 – Flexible Spending Program**

The City shall provide a voluntary Flexible Spending Plan (Section 125 Plan under the Internal Revenue Code) to Individually Represented Battalion Chiefs and Division Chief. Enrollment in the plan allows employees to pay for out-of-pocket Health Care and Dependent Care costs with pre-tax dollars. Flexible Spending Account limits will be followed by the City as set each year by the Internal Revenue Service (IRS).

At enrollment and annually thereafter, participants must designate the Flexible Spending Account election amount for the remainder of the year for new hires and for the next year for current employees. The annual amount is deducted from the employee's paycheck in equal installments, on a pre-tax basis, and credited to the employee's Flexible Spending Account. Reimbursement will be paid directly by a third party administrator.

Federal law prohibits any change in a Flexible Spending Account during the calendar year unless the employee or their dependent(s) have a qualifying "life event." A qualifying "life event" is marriage, divorce or legal separation, birth or adoption of a dependent, death of a dependent, or a change in the employee or employee's spouse's employment status. The change in the Flexible Spending Account must be due to and consistent with the "life event" which permits the change.

An annual open enrollment period will be provided for the upcoming year’s program. Administrative Officers must affirmatively enroll in the Flexible Spending Account for each year. There is no automatic renewal.

When estimating annual expenses, Individually Represented Battalion Chiefs and Division Chief are cautioned to only consider those expenses they is reasonably certain they will incur. Any amount left in a Flexible Spending Account at the end of the year is forfeited.

Deductions for Flexible Spending Accounts shall not reduce earnable compensation for purposes of calculating benefits or contributions for the California Public Employees’ Retirement System.

The City maintains the right to select and change, if needed, the vendor to administer the Flexible Spending Account program.

**ARTICLE 8 – MEDICAL/DENTAL INSURANCE FOR RETIREES**

The City shall provide group medical/dental insurance to Individually Represented Battalion Chiefs and Division Chief who retire from the City meeting the criteria and subject to the conditions and limitations noted below. The City contracts with the California Public Employees’ Retirement System’s Public Employees’ Medical and Hospital Care Act (PEMHCA) for medical insurance for City employees and retirees. Benefits are grouped in tiers based upon hire date and years of continuous City service.

Tier	Hire Date	Years of Continuous Service	Provisions the Employee in the Specified Tier is Eligible for
1A	2/15/86 and earlier	15 or more years	1,3,4,5,6,8,11,13,15,16
1B	2/16/86-10/25/04	15 or more years	1,3,4,5,6,8,12,13,15,16
1C	10/26/04-7/31/11	15 but less than 20 years	1,3,4,5,6,9,12,13,15,16
1D	10/26/04-7/31/11	20 or more years	1,3,4,5,6,8,12,13,15,16
1E	2/15/86 and earlier (Disability Retirement)	N/A	2,3,4,5,6,8,11,13,15,16
1F	2/16/86 -7/31/11 (Disability Retirement)	N/A	2,3,4,5,6,8,12,13,15,16
1G	7/31/11 and earlier if City service does not fit into Tiers 1A-1F		1,4,6,7,14
2A	8/1/11 and later	N/A	1,4,6,7,10,14
2B	8/1/11 and later (Disability Retirement)	N/A	2,4,6,7,10,14

The provision numbers listed below correspond to the code above designating which benefits each retiree is eligible for. If a code is not included in the "Provisions the Employee in the Specified Tier is Eligible for" section, the employee in the specified tier is not eligible for that specific provision.

**Provision No. 1 - Retired Employee Definition.** An Individually Represented Battalion Chief or Division Chief is a retired employee when they:

- A. Has reached 50 years in age or greater;
- B. Has been employed for at least five (5) years;
- C. Is a vested member of CalPERS;
- D. Retires with a service retirement after October 1, 1980;
- E. Retires directly from active duty and maintains continuous coverage both prior to and subsequent to their retirement.
- F. Any lapse in coverage will make the employee permanently ineligible for City contributions towards such retiree's premiums in excess of the CalPERS statutory minimum employer contribution.

**Provision No. 2 - Disability (Totally) Retired Employee Definition.** An Individually Represented Battalion Chief or Division Chief is disability (totally) retired when:

Any of the following permanent disabilities shall be conclusively presumed to be total in character (total disability):

- A. Loss of both eyes or the sight thereof.
- B. Loss of both hands or the use thereof.
- C. An injury resulting in a practically total paralysis.
- D. An injury to the brain resulting in incurable imbecility or insanity.

In all other cases, permanent total disability shall be determined in accordance with the fact.

Totally disabled employees may apply to the life insurance carrier for continued life insurance coverage under the waiver of premium provision. Coverage is subject to the annual provision, review and approval of the insurance carrier.

**Provision No. 3 - Eligible Qualified Dependent Coverage Limitation.**

For Retirements Effective July 31, 2011 and Earlier.

Qualified dependent coverage is limited to the eligible retiree and those specific dependents as defined in the service provider's group benefit agreement that were

covered at the time of the employee's retirement, except for new spouses and newborn children who are eligible for coverage if enrolled pursuant to the group health benefit agreement.

For Retirements Effective August 1, 2011 and Later.

**Definition of Qualified Dependent.** A spouse and/or dependent child covered on the employee's medical and dental plan for a minimum of two (2) full years (24 months) prior to retirement. Such dependent will be classified as a qualified dependent.

**New Spouse Exception.** An exception will be made for employees who get married and add their spouse to their medical plan within thirty (30) calendar days of the marriage. In such cases, the spouse must be on the plan for a minimum of one (1) full year (12 months) prior to their retirement in order to receive City contributions towards retiree medical and will be classified as a qualified dependent. No other exceptions will be made.

**Dependent Children.** City contributions for dependent children will end the month during which the dependent child turns age 23. The dependent child may continue on the plan until age 26, in accordance with plan provisions; however, the City will not pay any contributions toward the dependent child's medical premium past age 23. The following examples illustrate the impact to the City contribution when a dependent child turns age 23:

- A. If the retiree covers 1) himself/herself and 2) a dependent child, the month during which the dependent child reaches age 23, the City ceases contributions for the dependent child and pays only single coverage for the retiree.
- B. If the retiree covers 1) himself/herself, 2) a spouse and 3) a dependent child, the month during which the dependent child reaches age 23, the City ceases contributions for the dependent child and pays two-party coverage for the retiree and spouse.
- C. If the retiree covers 1) himself/herself, 2) a spouse and 3) more than one (1) dependent child, the City will continue to pay family coverage. Effective during the month during which the youngest child reaches age 23, the City ceases contributions for the dependent child(ren) and pays two-party coverage for the retiree and spouse.

**Definition of Non-Qualified Dependent.** A dependent added to the employee's medical and dental plan less than two full years (24 months) prior to retirement or at a later date is ineligible for any City contribution towards medical insurance. A newly-married spouse not added to the employee's medical and dental plan within thirty (30) calendar days of marriage and on the plan for a minimum of one full year prior to the employee's retirement is ineligible for any City contributions towards medical insurance. The non-qualified dependent may enroll in the medical plan; however, premiums for such enrollment are entirely dependent paid. The City will not pay any contributions towards the medical premium for non-qualified dependent(s).

Premiums for additional covered dependent(s) or dependent(s) added on at a later date in accordance with plan provisions will be paid entirely by the retiree and will be classified as non-qualified dependent(s). Dependent dental premiums will be paid entirely by the retiree. Failure to pay premiums for non-qualified dependent(s) will result in loss of

coverage.

**Provision No. 4 - Separation then Return to City Service.** If an employee separates employment and later returns to employment with the City of Fountain Valley, the date the employee returned to employment will become the hire date for the employee and they will be considered a new hire and only eligible for new hire benefits.

**Provision No. 5 - Limitation.** There is no cash back provision if the premiums for the medical and dental plans for qualified dependents is less than the difference between the CalPERS statutory minimum and the medical premium for the plan selected for the retiree and eligible qualified dependent(s) and retiree only dental premium up to the maximum the City contributes for active Individually Represented Battalion Chiefs or Division Chief for Tier 1 employees.

**Provision No. 6 - Life Insurance.** Retirees are not eligible for life insurance coverage through the City.

**Provision No. 7 - CalPERS Statutory Minimum Employer Contribution.** Only while participating in the CalPERS medical plan will the City pay the CalPERS statutory minimum employer contribution specified in Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA) to CalPERS. Should the City discontinue contracting with PEMHCA at any time, the City will not be responsible for paying any contribution towards health insurance premiums for such retiree and those premiums shall be entirely retiree paid. No City contributions towards dental insurance.

**Provision No. 8 - City Contributions.**

**For Retirements Effective July 31, 2011 and Earlier.**

The City will contribute towards the monthly medical premium for the retiree and eligible qualified dependent(s) as specified in Provision No. 3 for retirements effective July 31, 2011 and earlier and retiree only dental premium up to the maximum the City contributes for active Individually Represented Battalion Chiefs or Division Chief. At no time, will the maximum City contribution be less than the maximum City contribution at the time the employee retired from the City.

**For Retirements Effective August 1, 2011 and Later.**

The City will contribute towards the monthly medical premium for the retiree and those eligible qualified dependent(s) as specified in Provision No. 3 for retirements effective August 1, 2011 and later and retiree only dental premium up to the maximum the City contributes for active Individually Represented Battalion Chiefs or Division Chief. At no time, will the maximum City contribution be less than the maximum City contribution at the time the employee retired from the City.

**Provision No. 9 - City Contributions (75%).**

**For Retirements Effective July 31, 2011 and Earlier.**

The City will contribute towards the monthly medical premium for the retiree and eligible qualified dependent(s) as specified in Provision No. 3 for retirements effective July 31, 2011 and earlier and retiree only dental premium up to **75%** of the maximum the City

contributes for active Individually Represented Battalion Chiefs or Division Chief. At no time, will the maximum City contribution be less than the maximum City contribution at the time the employee retired from the City.

For Retirements Effective August 1, 2011 and Later.

The City will contribute towards the monthly medical premium for the retiree and those eligible qualified dependent(s) as specified in Provision No. 3 for retirements effective August 1, 2011 and later and retiree only dental premium up to **75%** of the maximum the City contributes for active Individually Represented Battalion Chiefs or Division Chief. At no time, will the maximum City contribution be less than the maximum City contribution at the time the employee retired from the City.

**Provision No. 10 - Retiree Health Savings Account.**

See Section 6.08

**Provision No. 11 - Supplemental to Medicare City Contribution.** Coverage will become supplemental to Medicare at age 65. The City will pay the medical premium, as applicable for the retiree and eligible qualified dependent(s) and retiree only dental premium up to the maximum the City contributes for active Individually Represented Battalion Chiefs for Tier 1 employees. At no time, will the maximum City contribution be less than the maximum City contribution at the time the employee retired from the City

**Provision No. 12 - Termination of City Contribution.**

For Retirements Effective July 31, 2011 and Earlier.

Medical coverage will terminate upon the retiree or covered dependent reaching age 65, at which time, the employee and covered dependent(s) continues coverage at their own expense for medical insurance. Only while participating in the CalPERS medical plan will the City pay the minimum employer contribution specified in Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA) to CalPERS. Retiree only dental premiums will continue to be paid by the City until the retiree's death.

For Retirements Effective August 1, 2011 and Later.

Medical coverage will terminate upon the retiree or covered dependent reaching age 65, at which time, the employee and covered dependent continues coverage at their own expense for medical insurance. Only while participating in the CalPERS medical plan will the City pay the minimum employer contribution specified in Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA) to CalPERS. City contributions for retiree dental premiums will continue until the retiree's death but effective the month immediately following the retiree reaching age 65, the City contribution for dental will be limited to the single premium for the HMO dental plan. Should the employee elect the PPO dental plan, the employee will be billed for the difference between the HMO and PPO single premium. Failure to pay the difference in premiums will result in a change to HMO single dental coverage.

**Provision No. 13 – Surviving, Eligible Qualified Dependent(s) City Contribution.**

While eligible for City contributions, the City pays the actual supplemental to Medicare/basic medical premium for the surviving spouse and eligible qualified dependent(s) up to the maximum the City contributes for active Individually Represented

Battalion Chiefs or Division Chief for Tier 1 employees minus the CalPERS statutory minimum employer contribution during the time period the survivors are eligible for City contributions. No City contributions towards dental premiums.

**Provision No. 14 - Retiree Contributions.** The retiree enrolls in the medical plan at their own expense for medical insurance.

The retiree may elect dental coverage through COBRA continuation for 18 months. If elected, the retiree will pay the full premium plus the 2% administrative fee. Failure to pay premiums will result in loss of coverage.

**Provision No. 15 - Retiree Contributions.**

Premiums for Plan Selected Exceeds the Total City Contribution.

If a retiree chooses benefits whose aggregate premium cost exceeds the total City contribution, the retiree will be responsible for paying the excess premiums.

Non-Qualified Dependent(s).

If non-qualified dependent(s) are covered under the plan, the retiree will be responsible for paying for the full premium for such dependent(s).

Dependent Dental Premium.

If dependent dental coverage is elected, the dependent dental premium is deducted from the City's reimbursement to the retiree for health premiums or the retiree will be billed because such premiums continue to be employee/retiree paid.

Medicare Premium.

Medicare premiums are fully retiree paid.

**Provision No. 16 - Surviving Eligible Qualified Dependent(s) Coverage - Continuation on the Medical and Dental Plans.** The surviving spouse and dependent(s) of a deceased retiree or dependent survivors of employees killed in the line of duty may continue on the City's medical and dental plan which will become supplemental upon eligibility of the surviving spouse or dependent children for other group health insurance or Medicare at age 65. If the surviving spouse remarries, all coverage, including supplemental coverage paid by the City will terminate. If none of the events listed above which would terminate coverage occurs, coverage for surviving dependent(s) of deceased retirees or employees killed in the line of duty under the City's group medical insurance plan will continue in accordance with the provisions of the City of Fountain Valley's group medical insurance carrier, after which the surviving dependent(s) will be provided an opportunity to continue their coverage under the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). City contributions will continue until such time as any of the conditions listed above render the surviving dependent(s) ineligible for coverage or until coverage otherwise is terminated. Dental premiums for the surviving spouse and eligible qualified dependent(s) are paid by the survivor and will be deducted from the City reimbursement or the survivor will be billed if coverage is elected.

**ARTICLE 9 - LEAVES**

**Section 9.01 – Holidays.** The Individually Represented Battalion Chief and Division Chief shall be entitled to eleven (11) paid holidays per calendar year except as otherwise provided for in this Memorandum of Understanding. The eleven (11) eight (8) hour paid holidays to which Individually Represented Chiefs are entitled shall be as follows:

- New Year's Day
- Martin Luther King Jr. Day
- President's Day (Washington's Birthday)
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day
- Thanksgiving and the day after Thanksgiving
- Christmas
- "Floating Holiday"

**Section 9.02 – Holiday Payoff.** This is defined as additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. Designated by 2 CCR §571 (a) (4) as statutory items. Payment for holidays shall be based on a forty (40) hour per week hourly base rate and shall be made in the payroll period in which the holiday is observed.

New hires will only be entitled to holiday payoff for the holidays observed in accordance with the Administrative Regulation for holidays for the specific calendar year, starting with their employment date moving forward. Holidays that were observed in the calendar year previous to the employee's hire date are not compensable to the new hire.

**Section 9.03 – Administrative Leave and Holidays.** The Individually Represented Battalion Chief/Fire Operations/Training Division Chief (administrative position) will have, in addition to regular base pay, the option of taking holiday time off or using Administrative Leave with the approval of their supervisor, or of being paid for the unused holiday time. Accrued vacation may not be used in lieu of holiday time. Payment for holidays shall be based on a forty (40) hour per week base hourly rate and paid in accordance with Section 9.02 and are non-reportable to PERS.

**Section 9.04 – Vacation Accrual Rate.** The Individually Represented Battalion Chief and Division Chief assigned to a 56-hour schedule shall accrue vacation time at the following rates:

Years of Service	Hours Per Year	Hours Per Payroll Period
Less than 1 year	112	4.31
2-5 years	168	6.46
6-7 years	180	6.92
8-9 years	192	7.38
10-11 years	204	7.85

12-14 years	216	8.31
15 or more years	280	10.77

The Individually Represented Battalion Chief or Division Chief assigned to a forty (40) hour schedule shall accrue vacation time at the following rates:

Years of Service	Hours Per Year	Hours Per Payroll Period
Less than 1 year	80	3.08
2-5 years	120	4.62
6-7 years	128	4.92
8-9 years	136	5.23
10-11 years	144	5.54
12-14 years	152	5.85
15 or more years	200	7.69

**Section 9.05 – Maximum Vacation Accruals.** The Individually Represented Battalion Chief or Division Chief shall be entitled to accrue a maximum of three hundred thirty-six (336) hours of vacation time when assigned to a fifty-six (56) hour per week shift and a maximum of 240 hours of vacation time when assigned to a forty (40) hour per week shift. An exception will be made for an employee who is absent from duty as a result of an industrial injury/illness, and who is concurrently precluded from utilizing vacation time, shall be allowed to accrue more than 336 hours as long as they remain absent from duty as the result of an industrial injury.

**Section 9.06 – Vacation Buy Back.** The Individually Represented Battalion Chief or Division Chief will have the option to request cash payment for accrued vacation in accordance with the following:

When assigned to a fifty-six (56) hour per week shift.

At the end of each calendar year, the Individually Represented Battalion Chief or Division Chief assigned to a fifty-six (56) hour shift shall have the option of receiving a cash payment for accrued vacation up to a maximum of fifty-six (56) hours if the following criteria are met:

- A. A minimum of 112 hours of vacation have been used during the calendar year. Vacation may be utilized in any increment as approved by their supervisor as long as a minimum of 112 hours have been used.
- B. A minimum accrual of thirty-four (34) hours of vacation remains after payoff.

If the aforementioned criteria have been met, the Individually Represented Battalion Chief or Division Chief may request a cash payment of fifty-six (56) hours maximum to be included in the holiday warrant to be issued within the first ten (10) days in December.

When assigned to a forty (40) hour per week shift.

At the end of each calendar year, the Individually Represented Battalion Chief or Division Chief assigned to a forty (40) hour per week shift shall have the option of receiving a cash payment for accrued vacation up to a maximum of forty (40) hours if the following criteria are met:

- A. A minimum of eighty (80) hours of vacation have been used during the calendar year. Vacation may be utilized in any increment as approved by their supervisor as long as a minimum of eighty (80) hours have been used.
- B. A minimum accrual of twenty (20) hours of vacation remains after payoff.

If the aforementioned criteria have been met, the Individually Represented Battalion Chief or Division Chief may request a cash payment of forty (40) hours maximum to be included in the holiday warrant to be issued within the first ten days in December.

To request a vacation payoff, the employee must submit an irrevocable election form specifying the number of hours the employees is requesting which must be received in the Human Resources Department before December 31 of the year prior to the payoff. For example, to receive a payout in 2021, a Fire Battalion Chief or Division Chief must submit a completed irrevocable election form to Human Resources before December 31, 2020. If during the 2021 calendar year, the employee meets the criteria specified herein to be eligible for vacation payoff, they will receive the requested payoff. If the employee does not submit the irrevocable election form within the required timeline or they does not meet the criteria for payoff, no payoff will be given.

**Section 9.07 Sick Leave Accrual Rate.** The Individually Represented Battalion Chief or Division Chief shall accrue sick leave at the rate of twelve (12) hours per month when assigned to a fifty-six (56) hour per week schedule and eight (8) hours per month when assigned to a forty (40) hour per week schedule.

**Section 9.08 – Sick Leave Usage.** Sick leave for the employee's own illness may be used for the following purposes in accordance with Labor Code sections 245-249:

- A. The diagnosis, care or treatment of an existing health condition or preventative care.
- B. For an employee who is a victim of domestic violence, sexual assault or stalking to obtain or attempt to obtain any relief, including but not limited to, a temporary restraining order, restraining order or other injunctive relief, to help ensure the health, safety or welfare of the employee or their child(ren) and also:
  - 1. Seek medical attention for injuries caused by domestic violence, sexual assault or stalking.
  - 2. Obtain services from a domestic violence shelter, program or rape crisis center as a result of domestic violence, sexual assault or stalking.

3. Obtain psychological counseling related to an experience of domestic violence, sexual assault or stalking.
4. Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault or stalking including temporary or permanent relocation.

The use of sick leave shall be subject to the approval of the Fire Chief, who may request a physician's statement or other documentation substantiating the illness at any time, and may require a release to duty before allowing an employee to return to duty.

Sick leave may be used for absences resulting from industrial injuries or illnesses.

**Section 9.09 - Sick Leave Usage for Family Illness.** The Individually Represented Battalion Chief or Division Chief may use accrued sick leave up to a maximum of one-half of one year's annual accrued sick leave seventy-two (72) hours for employees on a fifty-six (56)-hour work schedule or forty-eight (48) hours for employees on a forty (40-hour work schedule) for family illness. In accordance with Labor Code sections 245-249, family sick leave may be used for the diagnosis, care or treatment of an existing health condition or, or preventative care for an employee's family member as defined below:

A child (biological, adopted, foster child, step child, legal ward or a child to whom the employee stands in loco parentis) regardless of age or dependency status.
A biological, adoptive, or foster parent, step parent or legal guardian of an employee or the employee's spouse or registered domestic partner or a person who stood in loco parentis when the employee was a minor child.
A spouse.
A registered domestic partner.
A grandparent.
A grandchild.
A sibling.
An employee may designate one person per 12-month period at the time the employee requests family sick leave.
Individuals who live in the same household or whose relationship to the employee is that of a dependent or near-dependent.

**Section 9.10 – Sick Leave Payoff.** Upon completion of ten (10) years of continuous service with the City, the Individually Represented Battalion Chief or Division Chief who separates from the City for any reason other than termination for cause shall be paid 25% of the employee's accrued, unused sick leave balance at the time of separation. In the event of death, if the employee has completed ten (10) years of continuous service with the City, the value of 25% of the employee's accrued, unused sick leave will be paid to the employee's estate.

**Section 9.11 – Retirement Credit for Unused Sick Leave.** Pursuant to Government Code Section 20862.8 and the City's contract with CalPERS, the Individually Represented Battalion Chief who retires from the City may receive service credit towards their retirement for a maximum of two-thousand (2,000) hours of accrued, unused sick

leave for which they do not receive compensation. This provision shall apply to the Individually Represented Battalion Chief or Division Chief whose effective date of retirement is within four (4) months, one-hundred twenty (120) days of separation from employment with the City.

**Section 9.12 – Sick Leave Upon Reinstatement.** In accordance with Assembly Bill 1522, beginning July 1, 2015, should a sworn, non-management fire employee separate from employment with the City of Fountain Valley then is rehired by the City within one year from the date of separation, their accrued, unused sick leave hours at the time of separation or hours reported to CALPERS after any sick leave payoff if any, shall be reinstated once the employee is rehired by the City.

**Section 9.13 – Bereavement Leave.** The Individually Represented Battalion Chief or Division Chief who have been employed for at least thirty (30) days with the City shall be entitled to a maximum of five (5) working days of absence (AB 1949) in which three (3) working days of absence will be paid as Bereavement Leave, when they are compelled to be absent from duty by reason of death of an immediate family member, or in the event of critical illness where death appears to be imminent.

For purposes of bereavement leave, "immediate family member" refers to spouse, registered domestic partner, child, step-child, grandchild, sibling, parent, step-parents, parents-in-law, grandparents, or legal guardian.

**Section 9.14 – Administrative Leave.** The Individually Represented Battalion Chief assigned to suppression and working a fifty-six (56) hour per week schedule shall eligible to receive forty-eight (48) hours of Administrative Leave per calendar year or prorated for less than a calendar year. These hours are meant to compensate those assigned to suppression who attend conference(s) each year that may fall on an employee's regularly scheduled day(s) off. When assigned to Fire Operations/Training Division Chief working a forty (40) hour per week schedule, they shall be eligible to receive Administrative Leave equivalent to one (1) day per month (maximum ninety-six (96) hours each calendar year). If a suppression employee is promoted to a Fire Operations/Training Division Chief during the calendar year, they will receive the difference between the suppression administrative leave hours and the Fire Ops/Training Division Chief administrative leave hours on a prorated amount.

**Section 9.15 – Industrial Injury Leave.** The Individually Represented Battalion Chief or Division Chief may be entitled to a maximum of one (1) year industrial injury leave with full salary and benefits, pursuant to Labor Code Section 4850.

**Reassignment to a Forty (40) Hour Schedule.** Employees reassigned from a fifty-six (56) hour to a forty (40) hour schedule to work light duty shall continue to accrue vacation and sick leave at the fifty-six (56) hour rate. In addition, an employee reassigned to a forty (40) hour schedule and using accrued vacation or sick leave shall be charged one (1) hour for each hour of vacation or sick leave used.

**ARTICLE 10 - ILLEGAL/CONTROLLED SUBSTANCE SCREENING**

The Individually Represented Battalion Chief or Division Chief acknowledges the City's right to, at its discretion, include illegal/controlled substance screening as part of the pre-employment physical examination for employees hired.

"Illegal/Controlled Substance" is defined as a drug, substance, or immediate precursor which are included in Schedules I through V, inclusive of the "California Uniform Controlled Substances Act" (Health and Safety Code Sections 11054-11057), as well as defined in Health and Safety Code Sections 11018-11020.

The random, reasonable suspicion and post-accident drug and alcohol testing is detailed in Administrative Regulation No.1060.

**ARTICLE 11 – PHYSICAL FITNESS PROGRAM AND HEALTH EVALUATIONS**

**Section 11.01 – Physical Fitness/Wellness Program.** The voluntary physical fitness/wellness program shall involve the following elements:

- A. Performance testing shall be completed in May and September of each year. A representative from the Human Resources Department may preside over the testing process.
- B. Performance testing standards shall be calibrated according to the age of the candidates as specified in Exhibit 1.
- C. Performance testing shall be conducted while the Individually Represented Battalion Chief is on duty; however, workouts in preparation for the testing shall be carried out on off-duty hours.
- D. Eligible personnel who have previously met all performance standards and are unable to re-qualify due to an injury or illness shall continue to receive Wellness Pay subject to the determination of the Fire Chief that the person is unable to participate in the performance test. However, said personnel shall be required to submit to a performance test as soon as they are released to full duty.
- E. Eligible personnel who fail any or all standards of the performance testing process shall be given the opportunity to retest within thirty (30) days of the failure.

**Section 11.02 – Health Evaluations.** The City of Fountain Valley agrees to contract with a qualified health-care provider to conduct periodic health/fitness evaluations of Individually Represented Battalion Chiefs and to pay the cost of such evaluations subject to the provisions listed below.

- A. **Confidentiality of Information.** The medical portion of the results of the health/fitness evaluations shall be protected as confidential, medical information and shall not be disclosed to anyone other than the employee, unless a condition or situation exists where it appears as though an employee has sustained a job-related illness, injury, or disease, or where the evaluation reveals a condition, illness, injury or disease which might jeopardize the health and safety of others. In either of these situations, the

employee and the City shall be notified of any limitations on the ability to perform the essential job functions and the nature and/or extent of the limitations.

B. The City of Fountain Valley and the Individually Represented Battalion Chief have met and conferred on several occasions to discuss integration of the current health evaluation program for Public Safety Personnel and have reached agreement on a new program effective March 2010 to include the following provisions:

1. Wellness Program for Public Safety Personnel. The City's Qualified Health Provider will provide:

- a. Comprehensive fitness assessment and individualized fitness profile.
- b. Blood chemistry panel for general health and coronary risk screening.
- c. Lecture series on health, nutrition, injury prevention, and exercise science topics.

2. Health Evaluation Components for Employees Age 35 and Under. Employees 35 years and under shall receive:

a. Health Evaluations to be Conducted by the City's Qualified Health-Care Provider:

1. Lung x-ray every other year.
2. Doctor's examination annually.
3. HIV screening annually.
4. Tuberculosis screening annually.
5. Hepatitis B screening as needed.
6. Respirator examination annually.
7. Review stress EKG results annually.
8. Review lab results annually.
9. Heavy metal exposure annually.
10. Blood screening (comprehensive metabolic panel and lipid/cardio risk profile) annually.
11. Stress EKG annually.\*
12. Pulmonary function annually.

3. Health Evaluation Components for Employees Over Age 35: Employees age 35 and over shall receive:

a. Health Evaluations to be Conducted by the City's Qualified Health-Care Provider:

1. Lung x-ray annually.
2. Doctor's examination annually.
3. HIV screening annually.
4. Tuberculosis screening annually.
5. Hepatitis B screening as needed.
6. Respirator examination annually.
7. Review stress EKG results annually.
8. Review lab results annually.
9. Heavy metal exposure annually.

10. Blood screening (comprehensive metabolic panel and lipid/cardio risk profile) annually.
11. Stress EKG annually.\*
12. Pulmonary function annually.

C. Individually Represented Battalion Chiefs shall attend the health evaluations on duty. Individually Represented Battalion Chiefs may not attend the health evaluation while not on duty without the express pre-approved authorization of the Fire Chief.

## ARTICLE 12 - GRIEVANCE PROCEDURE

**Section 12.01 - General.** The following grievance procedure is for the purpose of affording employees a means of obtaining appropriate consideration by supervisory and management personnel of problems within their power to resolve.

**Section 12.02 - Scope of Grievance Procedure.** A grievance may be initiated by any employee who believes that the application of a policy, practice, rule, or procedure has been incorrect or inappropriate, and has adversely affected their employment.

A. The following subjects are excluded from the scope of the grievance procedure:

1. Matters which have other means of appeal within the City, including disciplinary actions.
2. Matters which are within the exclusive jurisdiction of another agency and for which a means of appeal is provided.
3. Matters pertaining to clarification of any of the provisions of this Memorandum of Understanding are within the scope of the grievance procedure.
4. Classification content.

**Section 12.03 - Form.** All grievances must be submitted in writing and must contain the following information:

- A. Employee's name, title, department, and division.
- B. The name of the individual or organization, if any, representing the employee in the grievance procedure.
- C. The date the grievance is being submitted.
- D. The nature of the grievance, including a statement of the specific rules, regulations, policies, procedures, ordinances, or resolutions, if any, which are alleged to have been violated, the date the alleged violation occurred and the specific decision or action which constituted the alleged violation.
- E. The facts and/or circumstances which gave rise to the grievance.
- F. Any available support documentation or other material which is to be considered in conjunction with the grievance.

G. A statement of efforts that have been undertaken to resolve the grievance informally.

**Section 12.04 - Informal Discussion.** If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with their immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively towards resolution.

**Section 12.05 - Formal Grievance Procedure.**

A. Step 1

1. An employee shall submit a grievance to their immediate supervisor within fifteen (15) calendar days of the occurrence giving rise to the grievance, or within fifteen (15) calendar days of the date that the employee became aware of the occurrence giving rise to the grievance. Grievances submitted pursuant to this section shall include a statement of efforts that have been undertaken to resolve the grievance informally.
2. Upon receipt of a formal grievance, the employee's supervisor shall make an initial determination as to whether or not they have the authority to resolve the grievance. If so, the supervisor shall proceed as outlined in subsection (3) below. If the supervisor determines that it is not within their authority to resolve the grievance, the grievance shall be forwarded to the appropriate individual within the chain-of-command for consideration and the employee shall be so notified.
3. Within fifteen (15) calendar days after receipt of a formal grievance, the supervisor to whom the grievance is directed shall meet with the employee who may be accompanied by their designated representative. Within fifteen (15) calendar days after meeting with the employee, the supervisor shall forward their decision in writing to the employee.

B. Step 2

1. A formal grievance that has not been satisfactorily resolved at the supervisory level may be submitted to the employee's Department Director within fifteen (15) calendar days after receipt of the decision rendered by the appropriate supervisor.
2. Within fifteen (15) calendar days after receiving the grievance, the Department Director shall schedule a meeting with the employee who may be accompanied by their designated representative. Within fifteen (15) calendar days after meeting with the employee, the Department Director shall notify the employee in writing of their decision.

**Section 12.06 - Appeal to City Manager.**

- A. Grievances which are not satisfactorily resolved under Step 2, and which meet the conditions set forth below, may be submitted to the City Manager within fifteen (15) calendar days after receipt of the written decision from Step 2.

- B. Grievances which meet one or more of the following conditions may be submitted to the City Manager:
1. The grievant alleges an abuse of discretion on the part of the Department Director during the grievance process.
  2. The remedy sought is not within the authority of the Department Director to approve or implement.
- C. Grievances submitted to the City Manager shall be accompanied by the following information:
1. Copies of the written decisions at Steps 1 and 2.
  2. Information indicating how or in what manner the Department Director abused their discretion, if an abuse of discretion is alleged and/or how the remedy sought is not within the authority of the Fire Chief to approve or implement.
- D. Within fifteen (15) calendar days after receipt of the grievance, the City Manager shall schedule a meeting with the employee who may be accompanied by their designated representative. The date, time, and location of the meeting shall within reason be acceptable to both parties, and shall be scheduled so as to accommodate those individuals whose presence may be required at the meeting.
- E. The City Manager may conduct such activities as are necessary and appropriate to properly resolve the employee's grievance.
- F. The City Manager shall submit a written response to the employee within fifteen (15) calendar days after meeting with the employee or within fifteen (15) calendar days after completing their investigation.

**Section 12.07 - Extension or Waiver of Time Limits.** Any of the time limits contained in this grievance procedure may be extended or waived upon mutual agreement of the City and the employee or their representative.

**Section 12.08 - Conduct of Grievance Procedure.**

- A. An employee may be represented by a person of their choosing at any step of the grievance procedure.
- B. Employees shall be assured freedom from reprisal good faith utilization of the grievance procedure.
- C. Proceedings held pursuant to this grievance procedure shall not be evidentiary hearings. This limitation shall not preclude the grievant from presenting witnesses or other relevant evidence as matter as part of the proceedings.

**Section 12.09 - Interpretation of MOU.** Questions regarding the interpretation and/or application of any of the provisions of this Memorandum of Understanding shall be formally raised only by the parties to the MOU, subject to the following conditions:

- A. The party raising the question of interpretation/application of the MOU shall notify the other party of the nature of the question within ten (10) working days after the matter is brought to their attention.
- B. Both parties shall attempt to resolve the dispute at the supervisory or departmental level, if appropriate. If it is not possible to resolve the matter at the supervisory or departmental level, both parties shall submit a statement of the facts concerning the matter to the City Manager for their findings and determination.

**Section 12.10 - Appeals of Testing and Selection Procedures.**

- A. An employee who wishes to appeal a testing or selection procedure or the results thereof, shall present his or her appeal to the immediate supervisor, who shall forward the appeal through the chain-of-command to the City Manager/ Human Resources Director or their designated representative. Appeals of testing or selection procedures may not be filed until the testing and selection process is completed, and shall be filed within fifteen (15) calendar days after the certification of the eligibility list. All persons who participated in the testing and selection process shall be notified of the date on which the eligibility list is certified.
- B. Upon receiving an appeal of a testing or selection procedure or the results thereof, the City Manager shall investigate, or cause to be investigated, all relevant facts regarding the appeal, and shall make a determination which shall be final. Such an appeal shall not require a hearing.
- C. An employee can only appeal a selection/testing procedure if the result would place him/her on the eligibility list, or change their position on this list. An individual appealing a testing/selection procedure must have been an applicant, or would have been, but for the procedure being appealed.
- C. If the City Manager makes a determination sustaining the appeal and such determination results in the invalidation of all or part of the testing and selection procedure, a new recruitment shall be initiated.

**ARTICLE 13 - APPEALS OF DISCIPLINARY ACTIONS**

**Section 13.01 - General Provisions.**

- A. City agrees to afford Individually Represented Battalion Chiefs and Division Chief the protections of the Firefighters Procedural Bill of Rights Act (hereinafter "FBOR") as enacted in AB 220, Chapter 591 Stats 2007, as set forth in Government Code Section 3250 et seq.

- B. No Individually Represented Battalion Chief or Division Chief shall be disciplined unless the person imposing the disciplinary action believes, in good faith, that reasonable cause exists for imposing disciplinary action.
- C. Any permanent employee (this article does not apply to a probationary employee) shall have the right to appeal any punitive action imposed on him/her, subject to the conditions contained in this section.
- D. For purposes of this section, "Punitive Actions" refer to the following: written reprimand, suspension without pay, demotion, reduction in pay, termination, or transfer for purposes of punishment (Government Code Section 3251(c)). Discipline involving punitive actions may be appealed to an Administrative Law Judge.
- E. Oral reprimands may be appealed only to the next level within the chain-of-command. All other discipline not involving discharge, demotion, suspension or reduction in salary may be appealed up to the City Manager.
- F. At all times prior to and during the imposition and appeal of a disciplinary action, the City shall take whatever steps necessary to ensure compliance with procedural due process requirements including but not limited to the FBOR. Pre-disciplinary efforts will include at a minimum and where appropriate and required by case law, notice to the employee of the intent to take disciplinary action, a description of the action, a statement of reasons on which the action is based, copies of material on which the notice is based, the opportunity to be heard prior to the rendering of a decision, and a statement of the right to appeal.
- G. An appeal is an application for review of the type and degree of discipline at issue, and may result in increased discipline.

**Section 13.02 - Appeal Procedures for Discipline Not Involving Discharge, Demotion, Suspension or Reduction in Salary.**

- A. Disciplinary action imposed against an employee may be appealed for any of the following reasons:
  - 1. A disagreement or dispute over the facts giving rise to the imposition of disciplinary action.
  - 2. Abuse of discretion by the supervisor imposing discipline, or by a reviewing authority. Abuse of discretion includes, but is not limited to: exceeding or acting without authority, denying an employee procedural due process, or imposing discipline that is not warranted in either type or degree by the offense.
- B. Appeal of a disciplinary action must be filed with the Fire Chief within fifteen (15) calendar days of the date the disciplinary action was imposed.
- C. Appeal of a disciplinary action must be in writing, and must include, as a minimum, the following:

1. If the employee is alleging a disagreement over facts, a statement regarding what facts, if any, are in dispute. If there is no dispute over the facts, the appeal should so state.
  2. If the employee is alleging abuse of discretion by the supervisor who imposed disciplinary action, on him/her, a statement setting forth the manner in which the supervisor imposing the disciplinary action abused their discretion. Specifically, the statement must show that the supervisor has exceeded or acted without authority; that the employee was denied procedural due process; or that the disciplinary action imposed was not warranted by the facts of the situation.
  3. The remedy being sought by the employee.
- D. Upon receiving an appeal of a disciplinary action, the Fire Chief shall first determine whether or not the appeal complies with Sections 13.02 B and 13.02 C 1, 2, and 3. If not, the appeal shall be denied on the basis of one or more of the following:
1. The appeal was not filed in a timely manner, pursuant to Section 13.02B.
  2. The appeal does not allege a dispute over the facts, or abuse of discretion, or is otherwise incomplete.
- E. If the appeal complies with Sections 13.02 B and 13.02 C 1, 2 and 3, the Fire Chief shall take the necessary steps to determine the merits of the appeal. Included in such steps will be the opportunity for the employee and their designated representative to meet with the Fire Chief, and to review any additional evidence which supports the disciplinary action.
- F. Within five (5) working days after completing their investigation of appeal, the Fire Chief shall notify the employee in writing of their decision, and rationale.

**Section 13.03 - Appeal to the City Manager for Discipline Not Involving Discharge, Demotion, Suspension or Reduction in Salary.**

- A. The decision of the Fire Chief may be appealed to the City Manager within fifteen (15) days after the Fire Chief's decision is rendered. Upon receiving such an appeal, the City Manager shall proceed in the same manner as outlined in Section 13.02D except that the rights provided by the FBOR shall be afforded.
- B. If the disciplinary action imposed involves a significant property right, an employee shall be assured the right to a formal hearing in compliance with the FBOR, unless such right is specifically waived by the employee. If the disciplinary action does not involve a significant property right, the City Manager may conduct a formal or informal hearing, or no hearing.
- C. Within fifteen (15) calendar days after completing the investigation of the appeal, the City Manager shall notify the employee in writing of their decision and the

reasons. The decision of the City Manager shall be final, except as provided in Section 2.52.200 of the Fountain Valley Municipal Code.

**Section 13.04 – Appeal Procedures For Suspension, Reduction in Pay, Demotion and Termination.** The administrative appeal process provided for discipline involving punitive action is established pursuant to Government Code §3254.5 of the Firefighters Procedural Bill of Rights. This administrative appeal process shall apply to Individually Represented Battalion Chiefs and Division Chief.

A. Definitions:

1. The term “fire personnel” means an employee who is considered a firefighter under Government Code § 3251(a) as well as any fire personnel who are peace officers pursuant to Penal Code § 830.37.
2. The term “punitive action” means any action defined by Government Code § 3251 (c), i.e., “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.” A layoff is not punitive action subject to a disciplinary appeal.

B. Notice of Appeal: In accordance with California Government Code Section 11506(a), within fifteen (15) calendar days following receipt of notification of punitive action, the employee shall notify the Human Resources Director in writing of the employee's intent to appeal the punitive action.

C. The appeal hearing shall be before a State Administrative Law Judge (“ALJ”) and shall be conducted in accordance with Chapter 5 (commencing with § 11500) Part 1 of Division 3 of Title 2 of the California Government Code.

1. Notice of Discipline as Accusation: The final notice of discipline which may be issued at the conclusion of any pre-disciplinary procedures shall serve as the Accusation as described in Government Code § 11500, et seq.
2. Timing: Pursuant to Government Code § 3254(f), the discipline shall not be effective sooner than forty-eight (48) hours following issuance of the final notice of discipline and the notice shall be given in writing within thirty (30) calendar days of the decision to impose discipline.
3. Notice: The notice shall be prepared and served in conformity with the requirements of Government Code § 11500, et seq. A copy of Chapter 5 (commencing with § 11500) of Part 1 of Division 3 of Title 2 of the California Code shall be provided to the employee concurrently with the notice of discipline.
4. Time and Place of Hearing: Pursuant to Government Code § 11508, unless otherwise decided by the ALJ, the hearing shall be conducted at City Hall at a date and time to be determined by the ALJ.
5. Notice of the Hearing: Notice of the hearing shall be provided to the parties pursuant to Government Code §11509.

6. Discovery: The employee shall be entitled to all discovery rights set forth in California Government Code § 11507.6.
7. Burden/Proof: The burden of proof and production of evidence shall be borne by the City. The standard of proof shall be by a preponderance of the evidence.
8. Written Decision: The proposed decision of the administrative law judge shall be in writing. Copies of the proposed decision shall be delivered to the parties personally or sent to them by registered mail and accompanied by a proof of service.
9. Post Decision Action: Following receipt of the proposed decision, the City Council, or any designee (e.g., the City Manager) to the extent authorized by law, may take any of the actions set forth in Government Code Section 11571(c)(2) A through B.

#### **ARTICLE 14 - MANAGEMENT RIGHTS**

Except as otherwise specifically provided in this MOU, the City has and retains the sole and exclusive rights and functions of management, including, but not limited to, the following:

- A. To determine the merits, necessity, nature or extent of services to be performed, as well as the right to determine and implement its public function and responsibility and the mission of its constituent departments, commissions and boards; and to determine budgets and appropriations of funds and to set municipal fees and charges.
- B. To manage all facilities and operations of the City, including the methods, means, and personnel by which the City's operations are to be conducted.
- C. To schedule working hours, allot, and assign work.
- D. To establish, modify, or change work schedules or standards.
- E. To direct the working forces, including the right to hire, promote, demote, or transfer any employee.
- F. To determine the location of all plants and facilities.
- G. To determine the layout and the machinery, equipment, or materials to be used.
- H. To determine processes, techniques, methods and means of all operations, including changes or adjustments of any machinery or equipment.
- I. To determine the size and composition of the working force.
- J. To determine the policy and procedure affecting the selection or training of new employees.

- K. To establish, assess and implement employee performance standards, including, but not limited to, quality and quantity standards; the assessment of employee performances; and the procedures for said assessment.
- L. To control and determine the use and location of City's property, material, machinery and equipment.
- M. To schedule the operation of and to determine the number and duration of shifts.
- N. To determine measures to promote safety and to protect health and property.
- O. To transfer work from one job to another or from one plant or unit to another.
- P. To introduce new, improved or different methods of operations or to change existing methods.
- Q. To relieve employees from duty for lack of work or for other reasons deemed legitimate by management.
- R. To reprimand, suspend, discharge or otherwise discipline employees for cause. The judgment of management shall govern except for an abuse of discretion.
- S. To establish and determine job classifications.
- T. To contract or subcontract construction, services, maintenance, distribution or any other work with outside public or private entities.
- U. To take such other and further action as may be necessary to organize and operate the City in the most efficient and economical manner for the best interest of the public it serves.

#### **ARTICLE 15 - NON-DISCRIMINATION**

Neither the City nor the Individually Represented Battalion Chief or Division Chief shall discriminate or harass against any employee actual or perceived based on ancestry, age, color, disability, genetic information, gender expression, gender identity, marital status, medical condition, military or veteran status, national origin, race, religion, reproductive health decision-making, sex/gender, sexual orientation, or for any other reason provided for by applicable law.

The City and the Individually Represented Battalion Chief or Division Chief shall reopen any provision of this agreement for the purpose of complying with any final order of any federal or state agency or court of competent jurisdiction requiring a modification or change in any provision of this agreement in compliance with state or federal anti-discrimination laws.

**ARTICLE 16 - GENERAL PROVISIONS**

Maintenance of Benefits. It is understood that existing ordinances, resolutions and policies with the City govern matters pertaining to employer-employee relations, including but not limited to salaries, benefits, hours and other terms and conditions of employment, and the same are not affected by this agreement except as specified herein.

Severability. In the event that any provision of this Memorandum of Understanding is declared by a court of competent jurisdiction to be illegal or unenforceable, or is rendered void by virtue of statutory or legislative enactment, that provision of the Memorandum of Understanding shall be null and void, but such nullification shall not affect any other provision of this Memorandum of Understanding, which other provisions shall remain in full force and effect.

Integration, Modification and Ratification. This memorandum sets forth the entire agreement of the parties with respect to improvements or changes in the wages, hours, benefits and other terms and conditions of employment for the Individually Represented Battalion Chief and Division Chief for the term of this agreement. This memorandum may be modified or amended only by written agreement between the parties hereto. This memorandum shall be of no force and effect unless or until duly adopted, ratified and approved by the City Council of the City of Fountain Valley, or in the alternative, the substantive provisions hereof are adopted by resolution of the City Council.

Term. The term of this Memorandum of Understanding shall be beginning July 1, 2024 and ending June 30, 2027.

IN WITNESS WHEREOF, the parties hereto executed this Memorandum of Understanding on 6-4-2024.

CITY OF FOUNTAIN VALLEY

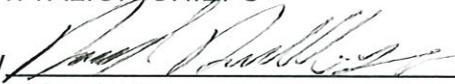
By   
Maggie Le  
City Manager

APPROVED TO FORM:

By   
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BATTALION CHIEFS

By   
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**EXHIBIT 1**

**PHYSICAL FITNESS/WELLNESS PROGRAM**

Performance Testing. For the purposes of physical fitness testing, three (3) areas of physical ability will be evaluated:

- A. Cardiovascular fitness
- B. Upper body strength
- C. Flexibility

The tests used in this program to evaluate fitness in these areas shall be:

A. Cardiovascular Fitness

- 1. Life cycle test

B. Upper Body Strength

- 1. Push-ups
- 2. Crunches
- 3. Pull-ups

C. Flexibility

- 1. Forward Stretch

Cardiovascular Fitness. Cardiovascular endurance is the measurement of the rate at which a person can utilize metabolic reactions requiring oxygen to create energy.

Problems such as high blood pressure, heart and pulmonary congestion, obesity, etc., are the major contributors to premature retirement of Battalion Chiefs.

Testing for cardiovascular fitness is completed by the use of a lifecycle. The Battalion Chief shall be required to ride the lifecycle for twelve (12) minutes on the basic "Hill Profile Program" at the level specified below for their age group.

TIER	UNDER 30	30-39	40-49	50+
1	Level 6	Level 6	Level 4	Level 3
2	Level 8	Level 8	Level 6	Level 5

Upper Body Strength. Upper body strength contributes to the Battalion Chief's ability to meet physical demands made on him/her in their work environment, while avoiding the possibility of injury. This test will be administered through the use of push-ups, crunches, and pull-ups.

A. Push-ups.

The participant shall maintain their body in a prone position, supported by straight arms with hands resting on the ground and with toes resting on the ground. The administrator shall place their fist on the ground below the participant's chest. The participant must keep their back straight at all times, and from the up position, lower him/herself to the floor until their chest touches the administrator's hand. Once the participant touches the administrator's hand with their chest, the participant shall then push him/herself to the up position, attain, and repeat the process for the required number of times. The participant may rest in the up position.

Battalion Chiefs shall be required to complete the number of push-ups specified below for their age group.

TIER	UNDER 30	30-39	40-49	50+
1	24	20	16	12
2	30	25	20	15

B. Crunches.

The participant shall begin by lying down on their back, knees bent and heels flat on the floor. Curl the shoulders toward the pelvis with hands placed behind, beside the neck or crossed over the chest and move forward. This is a continuous exercise with no resting. The total minimum number of correct crunches is specified below according to age:

TIER	UNDER 30	30-39	40-49	50+
1	50	40	30	20
2	62	50	37	25

C. Pull-ups.

The participant shall hold the bar with the palms away from the body. Arms shall be extended straight up in a locked position with the feet off the ground. The participant must pull their body up to a position where their chin is above the bar for one repetition. The total minimum number of correct pull-ups is specified below according to age:

TIER	UNDER 30	30-39	40-49	50+
1	7	6	5	3
2	9	8	7	4

A pull-down exercise on the Universal Weight Machine with a weight equaling one-half of the participant's body weight may be substituted by those having difficulty with pull-ups. The participant in the pull-down exercise shall be required to assume a seated or kneeling position and shall pull the bar of the Universal Weight Machine down to either the back of the base of the neck or down to the top of the chest. The

total minimum number of correct pull-downs that must be completed according to age shall be the same as the schedule for the minimum number of pull-ups as cited above.

Flexibility. There is a high incidence of lower back disabilities among middle-aged people. In many cases, this is related to reduced flexibility of the hip and back along with reduced elasticity of the hamstrings. It is possible that some cases can be improved by a well-designed program of stretching exercises to increase flexibility.

In addition to a short warm-up prior to the test, it is recommended that the participant refrain from fast or jerky movements which may increase the possibility of an injury.

The participant shall sit on the ground with their legs out straight in front of him/her. Shoes should be removed and the heels of the feet are placed flat against a 4" x 4" board. The participant shall slowly reach forward with both hands as far as possible towards their toes with their hands, holding this position momentarily. The participant shall keep the hands parallel and not stretch or lead with one hand. The distance between the fingertips and the toes shall be recorded as plus or minus inches. Plus inches shall be below the toes and negative is above the toes. The Administrator shall ensure that the knees of the participant are kept straight and held in place throughout the test for the participant. The minimum standards for the flexibility test are as follows:

UNDER 30	30-39	40-49	50+
-4"	-5"	-6"	-7"

**EXHIBIT 2  
CITY OF FOUNTAIN VALLEY  
ESTABLISHED SALARY RANGES FOR THE FOUNTAIN VALLEY  
INDIVIDUALLY REPRESENTED BATTALION CHIEFS**

Effective July 1, 2024, Pay Period Ending July 5, 2024

Bargaining	Effective	Class	Classification	Type	Step 1	Step 2	Step 3	Step 4	Step 5
BC	7/1/2024	P23	Battalion Chief	Annual	\$ 158,775.39	\$ 166,714.15	\$ 175,049.86	\$ 183,802.35	\$ 192,992.47
				Monthly	\$ 13,231.28	\$ 13,892.85	\$ 14,587.49	\$ 15,316.86	\$ 16,082.71
				Bi-weekly	\$ 6,106.75	\$ 6,412.08	\$ 6,732.69	\$ 7,069.32	\$ 7,422.79
				Hourly	\$ 54,524.6	\$ 57,250.7	\$ 60,113.3	\$ 63,118.9	\$ 66,274.9
BC	7/1/2024	P23	Battalion Chief - 40 Hour	Annual	\$ 158,775.39	\$ 166,714.15	\$ 175,049.86	\$ 183,802.35	\$ 192,992.47
				Monthly	\$ 13,231.28	\$ 13,892.85	\$ 14,587.49	\$ 15,316.86	\$ 16,082.71
				Bi-weekly	\$ 6,106.75	\$ 6,412.08	\$ 6,732.69	\$ 7,069.32	\$ 7,422.79
				Hourly	\$ 76,334.3	\$ 80,151.0	\$ 84,158.6	\$ 88,366.5	\$ 92,784.8
BC	7/1/2024	P56	Division Chief	Annual	\$ 173,065.17	\$ 181,718.43	\$ 190,804.35	\$ 200,344.57	\$ 210,361.80
				Monthly	\$ 14,422.10	\$ 15,143.20	\$ 15,900.36	\$ 16,695.38	\$ 17,530.15
				Bi-weekly	\$ 6,656.35	\$ 6,989.17	\$ 7,338.63	\$ 7,705.56	\$ 8,090.84
				Hourly	\$ 59,431.7	\$ 62,403.3	\$ 65,523.5	\$ 68,799.6	\$ 72,239.6

Effective July 1, 2025, Pay Period Ending July 4, 2025

Bargaining	Effective	Class	Classification	Type	Step 1	Step 2	Step 3	Step 4	Step 5
BC	7/1/2025	P23	Battalion Chief	Annual	\$ 165,126.41	\$ 173,382.72	\$ 182,051.85	\$ 191,154.44	\$ 200,712.17
				Monthly	\$ 13,760.53	\$ 14,448.56	\$ 15,170.99	\$ 15,929.54	\$ 16,726.01
				Bi-weekly	\$ 6,351.02	\$ 6,668.57	\$ 7,001.99	\$ 7,352.09	\$ 7,719.70
				Hourly	\$ 56,705.5	\$ 59,540.8	\$ 62,517.8	\$ 65,643.7	\$ 68,925.9
BC	7/1/2025	P23	Battalion Chief - 40 Hour	Annual	\$ 165,126.41	\$ 173,382.72	\$ 182,051.85	\$ 191,154.44	\$ 200,712.17
				Monthly	\$ 13,760.53	\$ 14,448.56	\$ 15,170.99	\$ 15,929.54	\$ 16,726.01
				Bi-weekly	\$ 6,351.02	\$ 6,668.57	\$ 7,001.99	\$ 7,352.09	\$ 7,719.70
				Hourly	\$ 79,387.7	\$ 83,357.1	\$ 87,524.9	\$ 91,901.2	\$ 96,496.2
BC	7/1/2025	P56	Division Chief	Annual	\$ 179,987.78	\$ 188,987.17	\$ 198,436.52	\$ 208,358.35	\$ 218,776.27
				Monthly	\$ 14,998.98	\$ 15,748.93	\$ 16,536.38	\$ 17,363.20	\$ 18,231.38
				Bi-weekly	\$ 6,922.61	\$ 7,268.74	\$ 7,632.17	\$ 8,013.78	\$ 8,414.47
				Hourly	\$ 61,809.0	\$ 64,695.5	\$ 68,144.4	\$ 71,551.6	\$ 75,129.2

Effective July 1, 2026, Pay Period Ending July 3, 2026

Bargaining	Effective	Class	Classification	Type	Step 1	Step 2	Step 3	Step 4	Step 5
BC	7/1/2026	P23	Battalion Chief	Annual	\$ 171,731.47	\$ 180,318.03	\$ 189,333.92	\$ 198,800.62	\$ 208,740.66
				Monthly	\$ 14,310.95	\$ 15,026.50	\$ 15,777.83	\$ 16,566.72	\$ 17,395.05
				Bi-weekly	\$ 6,805.06	\$ 6,935.31	\$ 7,282.07	\$ 7,646.18	\$ 8,028.49
				Hourly	\$ 58,973.8	\$ 61,922.4	\$ 65,018.5	\$ 68,269.5	\$ 71,682.9
BC	7/1/2026	P23	Battalion Chief - 40 Hour	Annual	\$ 171,731.47	\$ 180,318.03	\$ 189,333.92	\$ 198,800.62	\$ 208,740.66
				Monthly	\$ 14,310.95	\$ 15,026.50	\$ 15,777.83	\$ 16,566.72	\$ 17,395.05
				Bi-weekly	\$ 6,805.06	\$ 6,935.31	\$ 7,282.07	\$ 7,646.18	\$ 8,028.49
				Hourly	\$ 82,563.2	\$ 86,691.4	\$ 91,025.9	\$ 95,577.2	\$ 100,356.1
BC	7/1/2026	P56	Division Chief	Annual	\$ 187,187.29	\$ 196,546.66	\$ 206,373.98	\$ 216,692.68	\$ 227,527.32
				Monthly	\$ 15,598.94	\$ 16,378.89	\$ 17,197.83	\$ 18,057.72	\$ 18,960.61
				Bi-weekly	\$ 7,199.51	\$ 7,559.49	\$ 7,937.46	\$ 8,334.33	\$ 8,751.05
				Hourly	\$ 64,281.3	\$ 67,495.4	\$ 70,870.2	\$ 74,413.7	\$ 78,134.4

**EXHIBIT 3****UNIFORM SPECIFICATIONS**

The uniforms to be work by Individually Represented Battalion and Division Chiefs shall meet the following specifications:

**Chief Officer – Formal Dress Uniform (Class A)**

- A. Coat
  - 1. Flying Cross, #34892, navy, badge tab, gold fire department buttons.
- B. Shirt
  - 1. Flying Cross, #35W54, white, long sleeve.
- C. Tie
  - 1. Black.
- D. Pant
  - 1. Flying Cross, #34291, navy.
- E. Belt
  - 1. Black leather, basket weave, 1 ½ inch in width, department issued buckle.
- F. Shoes
  - 1. High gloss Oxford shoes.
- G. Service
  - 1. Gold pin-on Maltese crosses (left sleeve only).
- H. Collar
  - 1. Collar insignias are 1 inch in size for jackets and ¾ inch for shirts.
- I. Hat
  - 1. Standard fire service dress hat.
  - 2. Gold Fire Department buttons.
  - 3. Gold hatband.
  - 4. Department issued hat insignia.

**Chief Officer – Dress Uniform (Class B)**

- A. Shirt
  - 1. Flying Cross, #47W6610 L/S, add gold fire department buttons on shoulder straps/pocket folds. Maltese crosses embroidered on left sleeve. Fountain Valley Fire Department patch on left shoulder only
  - 2. Badge.
  - 3. Name tag, gold pin with black.

4. Department issued collar ornaments depicting rank.
- B. Tie
  1. Black regulation or breakaway with Velcro back, #45115.
- C. Pants
  1. Black Workrite Nomex (WR-400NX-75 or WR-402NX75).
- D. Belt
  1. Black leather, basket weave, #1521U, brass clasp.
  2. 1½ inch in width.
  3. Gold department issue buckle.
- E. Shoe
  1. Black, low quarter, plain toe.

### **Chief Officer – Daily Uniform**

- A. Shirt
  1. Black Workrite Nomex long sleeve, (WR-735NX45), or short sleeve (WR-730NX45), embroidered first initial and last name in gold.
  2. Gold department issued badge.
  3. Gold department collar ornaments depicting rank.
  4. Patch on left sleeve.
  5. T-shirt, crew neck (black cotton) plain.
- B. Pants
  1. Black Workrite Nomex (WR-400NX-75 or WR-402NX75).
- C. Belt
  1. Black leather, basket weave, 1½ inch in width, brass clasp.
  2. Gold department issue buckle.
- D. Shoe/Boot
  1. 5.11 Tactical – Company 3.0 CST Boot.
  2. Blauer – Breach Composite Waterproof 6" Boot.
  3. Haix – Airpower XR1 Pro.
  4. Redback – Easy Escape or Rescue.

All boots to be OSHA approved and NFPA compliant, steel toe, non-slip heels and soles.

- E. Jacket
  1. 5.11 Chameleon Softshell Jacket 2.0.
  2. Shoulder patch on both shoulders, ½ inch below seam.
  3. Department logo 1¾ inches above left pocket.
  4. First initial and last name embroidered 2½ inches above right pocket. Embroidered letters shall be ½ inch full block, gold thread.
  5. Rank embroidered above name. Embroidered rank shall be ½ inch full block, gold thread.

F. Baseball Hat

1. Black, ball cap with approved department logo.

**Chief Officer – Physical Fitness Uniform**

A. T-Shirt

1. Black or white t-shirt, cotton, plain or with approved logo.
2. Black or white tank top, cotton, plain or with approved logo.

B. Sweatshirt

1. Black, plain or with approved logo.

C. Sweatpants

1. Black, plain or with approved logo.

D. Shoes

1. Any good quality athletic shoe suited to each individual's needs and requirements for the type of activity (high top shoes for basketball).

E. Socks

1. Black or white, stripes acceptable.

F. Shorts

1. Black, plain or with approved logo.