

# **MEMORANDUM OF UNDERSTANDING**

**between the**

**CITY OF MONTEREY**

**and the**

**FIRE MANAGEMENT ASSOCIATION**

January 1, 2007 through December 31, 2009

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500 -3510) and the Employer-Employee Relations Resolution of the City of Monterey, and is made by and between authorized representatives of the City of Monterey (hereinafter referred to as "City"), and the Fire Management Association (herein after referred to as "Association").

## **Section 1. Recognition**

Pursuant to the provisions of the Employer-Employee Relations Resolution of the City of Monterey and applicable state law, City recognizes the Fire Management Association as the majority representative of all permanent employees in classes assigned to the Fire Management Unit.

## **Section 2. Implementation**

This Memorandum of Understanding constitutes a mutual recommendation to be jointly submitted to the City Council. It is agreed that this Memorandum of Understanding shall not be binding upon the parties either in whole or in part unless and until ratified by the Association's membership, and unless and until the City Council acts, by a four-fifths vote, formally to approve this Memorandum of Understanding; appropriates the necessary funds required to implement the provisions of this Memorandum of Understanding which requires funding; and takes any other action required.

## **Section 3. Nondiscrimination**

- 3.1 The provisions of this agreement shall be applied equally to employees covered herein without favor or discrimination because of race, color, sex, age, national origin, political or religious opinions or affiliations.
- 3.2 Employees covered by this agreement shall have the right to form, join, and participate in the activities of employee organizations of their own choosing; or to refrain from participation, to the extent that such rights have not been mutually waived by this agreement. Employees shall not be discriminated against because of their exercise or non-exercise of these rights.

## **Section 4. City Rights**

- 4.1 City retains all rights not specifically delegated by this agreement including, but not limited to, the exclusive right to:
1. Determine the mission of City;
  2. Set standards of service;
  3. Determine the procedures and standards of selection for employment and promotion;
  4. Direct its employees, take disciplinary action for proper cause;
  5. Relieve its employees from duty because of lack of work;
  6. Maintain the efficiency of City operations;
  7. Determine the methods, means and personnel by which City operations are to be conducted;
  8. Determine the content of job specifications;
  9. Take all necessary actions to carry out its mission in emergencies and exercise control and discretion over its organizations and the technology of performing its work.
- 4.2 The exercise of such rights shall not preclude the Association from conferring with City representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.
- 4.3 Except in an emergency, City decisions shall not supersede the provisions of this agreement.
- 4.4 Actions taken by City to meet an emergency that are not in compliance with this Agreement shall be in effect only during the duration of the emergency.

## **Section 5. Association Security**

### **5.1 Dues Deductions**

Membership dues of the Association and such other deductions as may be properly requested and lawfully permitted shall be deducted by City from the salary of any employee who files with the Finance Director a written authorization requesting that such deductions be made. Remittance of the aggregate amount of all dues and other proper deductions made from the salaries of employees covered hereunder shall be made to the Association by City as promptly as practical.

### **5.2 Use of Bulletin Boards**

City will furnish, for the exclusive use of the Association, adequate space on fire department bulletin boards. The board shall be used for the following subjects:

1. Information on Association elections, reports, and notices
2. Reports of official business of the Association, including reports of committees or the governing boards thereof

3. Scheduled membership benefits, programs and promotions
4. Any other written material pertaining to the official business of the Association

5.3 Activities on City's Premises and Access

Membership meetings, organizing activities, membership campaigns, or dues collecting by the Association or their representatives on City premises or at work locations during normal business hours shall not be permitted. Representatives of the Association shall be granted reasonable access to employee work locations to investigate matters relating to employer-employee relations only if such investigation cannot be conducted elsewhere, unless such access to given work locations would constitute a safety hazard or would interfere with the operations of City. Access to work locations may be regulated by the Fire Chief so as not to constitute a safety hazard or to interfere with operations of City. Representatives of the Association shall not enter a work location without the consent of the Fire Chief, or his designee, in his absence.

**Section 6. Salary**

6.1 General Salary Increases

During the term of this agreement, the following salary increases will be made to the classifications represented by the Association and in accordance with procedures established by the Finance Director.

January 1, 2007	11.0%
January 1, 2008	4.25%
January 1, 2009	4.25%

6.2 Chief Officer Differential

FMA represented employees who have satisfied all requirements listed in this section shall receive a 3.0% salary differential. The requirements to earn and maintain the differential shall be as follows:

Subsections A and B must both be satisfied in order to earn the differential.

- A. Provide proof of Chief Officer Certification as described in the California Fire Service Training & Education System's State Fire Training Policies and Procedures, or at the time of the application for the differential, have completed all courses comprising the then current educational requirement leading to the Chief Officer Certification as described in the California Fire Service Training & Education System's State Fire Training Policies and Procedures.
- B. Provide proof of current certification status in the Management of Major Hazardous Materials Incidents course.

Subsections C and D must both be satisfied in order to maintain the differential.

- C. Maintain current certification status in the Management of Major Hazardous Materials Incidents course.
- D. Continuing education: This subsection may be satisfied by completion of one of the following forms of continuing education every four years:
  - Provide proof of completion of one of the courses comprising the educational requirement leading to the Chief Officer Certification as described in the California Fire Service Training & Education System's State Fire Training Policies and Procedures, with the specific course taken approved in advance by the Fire Chief, or
  - Provide proof of completion of 36 hours of other relevant coursework, with the specific coursework approved in advance by the Fire Chief.

In order to maintain the differential, the employee must provide proof of completing either form of the continuing education requirement within 48 months of initially earning the differential, and subsequently within 48 months of their previous completion of the continuing education requirement.

### **Section 7. OES Strike Team Response Compensation**

When an employee represented by FMA is assigned by the Fire Chief to respond to a request for mutual aid under the State Mutual Aid Program, (also known as the Six-Party Cooperative Agreement), that employee will be compensated for that time worked that is not normally scheduled work time in the City of Monterey. Such an employee shall be compensated at straight-time pay (at the 56-hour rate) so long as City is reimbursed under the Six-Party Cooperative Agreement.

Division Chiefs will be paid at the 40-hour rate for all six-party agreement responses, for which the City is reimbursed by the State under the six-party agreement.

### **Section 8. Total Compensation**

This is not a total compensation agreement. City and Association agree that the principles of total compensation as traditionally practiced in prior agreements do not apply to this agreement. All adjustments to salary and benefits during the term of this agreement shall only be as set forth herein.

### **Section 9. Compensation Plan Modification**

Step advancement will be in accordance with City Code Section 25-5.05 (b).

### **Section 10. Insurance Plan**

The following is a brief summary of insurance benefits. To the extent that the insurance programs detailed below continue to be available, City will continue to offer these programs. Employees should refer to the plan documents for a complete description of benefits,

coverage and limitations. If, during the term of this agreement, a change in insurance plans or coverage is necessary, City shall provide notice thirty (30) days in advance, and, upon request, meet with representatives of the Association. City's contribution towards the Insurance Plan premium(s) is defined in Section 10.5.

#### 10.1 Dental/Orthodontia Insurance (Dental Plan D)

City shall provide a plan with an annual maximum of \$2,500 dental coverage per covered individual (employee and dependents). Dental sealant is included as part of this basic coverage. Lifetime maximum orthodontia coverage of \$3,000 shall be provided for each individual covered by this plan (both employee and dependents).

#### 10.2 Vision Care (Vision Plan B)

City will continue to provide vision care coverage for employees and dependents. The vision plan will provide fully covered Preferred Provider exam and up to \$105 every twelve (12) months toward the purchase of contact lenses. The employee will pay any difference between the \$105 and the actual cost of the contact lenses if the cost exceeds the \$105.

#### 10.3 Life Insurance

City will continue to provide a \$10,000 Term Life Insurance and Accidental Death and Dismemberment Policy for each employee covered by this agreement.

Additional Term Life Insurance may be purchased by each employee through payroll deductions in increments of \$10,000 up to at least \$50,000. In accordance with IRS regulations, only premiums for up to \$40,000 of employee purchased term life insurance may be paid on a pre-tax basis. The purchase of additional insurance shall be in accordance with payroll deduction procedures established by the Finance Director and the underwriting requirements of the insurance carrier.

#### 10.4 Major Medical Insurance

The provisions of this plan require participation by the Association in the Public Employees Medical and Hospital Care Act (PEMHCA).

#### 10.5 Non-Elective Contributions/Premiums

During the term of the contract, City's contribution to insurance coverage will be as outlined below. Employees shall not have the option of using these contributions for any other purpose. During the term of the contract, should the dental (employee only premium), vision and/or life non-elective contributions/premiums increase, City will pay these increases. Should, during the term of this agreement, the non-elective contributions/premiums for dental (employee only premium), vision, and/or life decrease, City shall retain the savings from the decrease. The non-elective contribution/premium toward the medical per calendar year will be as follows:

January 1, 2007 \$80.80 per month per employee

January 1, 2008 \$97.00 per month per employee

Effective January 1, 2009, and in accordance with State Law, the non-elective contribution/premium paid by the City toward the medical for active employees shall be adjusted annually by the PERS board to reflect any change to the medical care component of the Consumer Price Index and shall be rounded to the nearest dollar.

<u>Plan</u>	<u>Amount</u>
1. Medical	Applied toward premium - \$32.20 mo./employee, with increases in subsequent years as described above.
2. Dental	Employee only premium
3. Vision	Employee & dependents
4. Life	Basic \$10,000 policy

#### 10.6 Elective Contributions/HPSF

City will contribute a monthly sum to the employee's Health Plan Spending Fund (HPSF) based on the employee's participation status in City-sponsored medical health insurance plans in the following amounts per month per employee:

Effective January 1, 2007, the tiered amounts will be as follows:

Employee Opts Out of City Medical Plan	\$ 354.09
PEMHCA Medical—Employee Only	\$ 420.00
PEMHCA Medical—Employee Plus One	\$ 841.00
PEMHCA Medical—Employee Plus Two	\$ 988.00

Effective January 1, 2008, the tiered amounts will be as follows:

Employee Opts Out of City Medical Plan	\$ 354.09
PEMHCA Medical—Employee Only	\$ 420.00
PEMHCA Medical—Employee Plus One	\$ 912.00
PEMHCA Medical—Employee Plus Two	\$ 1084.00

Effective January 1, 2009, the tiered amounts will be as follows:

Employee Opts Out of City Medical Plan	\$ 354.09
PEMHCA Medical—Employee Only	\$ 420.00
PEMHCA Medical—Employee Plus One	\$ 1022.00
PEMHCA Medical—Employee Plus Two	\$ 1228.00

The amounts above may be applied to the following:

- 1) Medical coverage for themselves and dependents under PEMHCA;
- 2) Dependent dental coverage;
- 3) Additional term life insurance to the limits described in Section 10.3;
- 4) To make contributions toward dependent care as described in Section 20 of this agreement;
- 5) To make contributions toward flexible spending as described in Section 20 of this agreement; and/or
- 6) To take any unused cash value after selecting from the above options as taxable cash-in-lieu.

Not to be confused with the non-elective contributions contained in Section 10.5, any increases in PEMHCA rates will be paid by the employee through cash-in-lieu and/or salary deduction. Decreases in PEMHCA rates will remain in cash-in-lieu.

#### 10.7 Pre-Paid Legal Plan

Each represented employee shall have the option of participating in a prepaid legal service. Each participating employee shall pay, via payroll deduction, the monthly fee established by the company providing the prepaid legal service.

### **Section 11. Salary Continuation**

Employees covered by this agreement shall not be covered by the City Salary Continuation Plan.

### **Section 12. Public Employees Retirement System (PERS)**

#### 12.1 PERS Retirement Plan

City will continue to provide the Public Employees Retirement System - Safety (PERS) 3% at 50 for each represented employee.

The following shall be effective in the event that an arbitrator rules that the City shall amend its contract with PERS to provide for the 3% at 55 retirement plan for all newly hired Monterey Fire Fighters Association (MFFA) represented employees: Effective as soon as possible after such a ruling, the City shall amend its contract with PERS to provide for the 3% at 55 retirement plan for all safety employees hired by the Fire Department after the effective date of the PERS contract amendment. This proposal would not affect current City employees who already are under the 3% at 50 program,

such as current Division Chiefs or those employees currently represented by MFFA who may promote to Division Chief.

#### 12.2 Credit For Unused Sick Leave

As permitted by California Government Code Section 20965, a represented employee who retires may convert up to one hundred percent (100%) of the employee's unused accumulated sick leave to additional service credit at the rate of 0.004 years of service credit for each day of unused sick leave (i.e. 250 days of sick leave equals one additional year of service credit.)

If an employee elects to convert unused accumulated sick leave to additional service credit, those sick leave days shall not be "sold back" under Section 18.8 of this Agreement.

#### 12.3 1959 Survivor Benefits

Each represented employee shall be enrolled in the PERS 1959 Survivor Benefit, Indexed Level.

As required by Government Code Sections 21380-21387, including Section 21382.4, and related PERS regulations, each represented employee shall contribute any required PERS employee member contribution toward the cost of this benefit.

#### 12.4 Implementation Of Internal Revenue Code Section 414(H) (2)

City shall make the employer contribution to PERS for each employee, and each employee will pay his/her own member contribution, with state and federal income tax on the member contribution deferred to the extent allowed by the Internal Revenue Code 26 USC Section 414(h) (2). During the term of this Agreement, the City shall pay for any increase in the employer rate and shall retain any savings from a decrease in the employer rate and for contribution credits (rebates) from PERS.

### **Section 13. Deferred Compensation—Match Program**

The City will match up to \$10.00 per pay period (\$20.00 per month) of an employee's contribution to a City authorized Deferred Compensation Plan authorized under Internal Revenue Code Section 457. The combined contribution between the City's and the employee's contribution to the City's Deferred Compensation Plan(s) cannot exceed the maximum permitted by law.

Effective January 1, 2008, the City shall increase its matching deferred compensation contribution from \$20.00 per month to \$45.00 per month

### **Section 14. Retirement Health Savings Plan**

#### A. Employee Funded RHSP

The "Retirement Health Savings Plan" is an employer-sponsored health benefit savings program that allows employees to contribute and accumulate assets to pay for medical premiums and allowable health expenses at retirement (or upon meeting eligibility criteria) on a tax-free basis. The "Retirement Health Savings Plan" has the following components:

Eligibility: Employee must retire or separate from City service and have reached a minimum of age 50. Under certain circumstances the age requirement may be waived if the employee qualifies as disabled from work under the PERS retirement plan, the City's Short-Term/Long-Term Disability Income Protection Plan or under Workers' Compensation.

Contributions:

1. An employee may make a one-time irrevocable election to have an ongoing pre-tax salary deduction of 1 – 20% (whole percentages) of the employee's base rate of pay and,
2. An employee may also elect on an annual basis, in a year pre-ceeding retirement or separation, to make an irrevocable pre-tax deduction up to 100% (whole percentages) of his/her accrued vacation, holiday, CTO, and sick leave (in accordance with FMA MOU section 18.8 "Sick Leave Sell-Back Program") separation payoffs.

Contributions into the Retirement Health Savings Plan are voluntary, and are made only by the employee; there are no employer contributions. The employee will pay all administrative fees. The employee will be allowed to make his/her irrevocable election within 30 days of hire as a full-time employee, and/or during the City's annual open enrollment period.

If a participating employee dies without designating a beneficiary, the distribution of any assets contained in the employee's account shall be distributed equally among City-wide participants in the plan.

#### B. City Funded RHSP

Effective April 1, 2007, or as soon as practical after the date of agreement if later, the City will contribute \$50.00 per month per employee to the Retirement Health Savings Plan (RHSP). The City's contribution and related investment results will then be provided to the employee upon separation, or retirement, as long as the employee reaches 15 years of City service.

If an employee does not reach at least 15 years of City service or more, the City's contribution and investment results shall return to the City to offset further contribution costs. If the employee chooses to contribute his/her own funds to the RHSP, the employee's funds and related investment results shall be available to the employee upon separation regardless of vesting.

#### C. Disclaimer

The above descriptions are not intended to supersede current Internal Revenue Service regulations or how these regulations may change from time to time. These Internal Revenue Service regulations may affect the City's ability to provide this program. Further, this section

would be subject to the rules and restrictions of the City's RHSP provider, currently ICMA. The descriptions are for informational purposes only.

## **Section 15. Days and Hours of Work**

This section sets forth the general provisions governing hours of work. City reserves the right to make changes as may be necessary to meet the operational needs of City. If a change in the days of work, hours of work, work schedules, or other working conditions are necessary, City shall notify the affected employee(s) and provide an opportunity to meet and confer prior to implementing the change(s).

### **15.1 Schedules**

The work schedule of Division Chiefs in the Fire Department will be as follows: Division Chief positions allocated to the Operations Division will work a 56 hour A, B & C platoon work shift as described in item 6 below and as illustrated in Attachment A - 56 Hour Work Schedule. Division Chief positions allocated to the Training Division and/or the Prevention Division will work a 40-hour 5/8 work week, or a flexible schedule as approved by the Fire Chief. Working hours are subject to change to meet the Department's needs, including evenings and weekends.

Further, the following terms and conditions shall apply:

1. The title of Division Chief shall remain the same.
2. 56-hour platoon schedule work week assignments will be compensated for holidays at 8 hours 40 minutes per month at the 40-hour rate or at 13 hours per month in holiday leave time if accrued.
3. 40-hour work week assignments will not be compensated for holidays but shall take 8 hours of time off duty per holiday.
4. Leave balances as of October 1, 1999 shall not be converted and accrual and use rates shall be based upon the assigned work schedule of a 40 or 56 hour work week.
5. Division Chiefs shall be compensated, at straight time, for working as the Operations Division Duty Chief when they are not regularly scheduled for duty. Straight time compensation is to be calculated at the 56-hour rate. The Fire Chief shall determine when to use a Division Chief or Acting Division Chief to fill a vacancy. Other work time outside of scheduled duty shall be without additional compensation or time off, except for the OES Strike Team provisions of Section 7.
6. The work cycle shall be three (3) alternating twenty-four (24) hour shifts on duty, then four (4) consecutive days off repeating (commonly known as a "three-four schedule"), per the chart below:

XOXOXOOOO

**X** = One 24 hour on-duty period

**O** = One 24 hour off-duty period

## 15.2 Hours of Emergency Work

When it is determined, by the Fire Chief, or his/her designee, that emergency work is required all employees in classifications represented by Association shall render emergency service on a twenty-four (24) hour on-duty basis without interruption.

## 15.3 Absences from Duty

City and Association agree that current United States Department of Labor Regulation 29 CFR Section 541.5(d), (Exhibit B), permits any absence from work or duty by a member of the Association for personal purposes (where the employee is unable to respond to an emergency incident) or for illness or injury shall be deducted from the employee's appropriate accrued leave bank. If insufficient accrued leave exists in the appropriate leave bank, an absence under these Regulations shall be without pay for any portion for which sufficient leave does not exist. Under this concept, the employee's exemption from overtime payments under the Fair Labor Standards Act (F.L.S.A.) is not affected. City and Association agree, for the term of this agreement, that the policies embodied in the United States Regulation 29 CFR Section 541.5(d) as they existed on the date this agreement is approved shall apply as an agreed policy to the members of Association.

## 15.4 Exchange of On-Duty Time

The trading of time between members of Association shall be as established by the Fire Chief.

## **Section 16. Light Duty**

### 16.1 Light Duty in Lieu of Sick Leave

If an employee suffers a debilitating injury (broken bones, strains, sprains, or other injury) or non-contagious illness and does not wish to use sick leave for the recuperation period, the employee may be assigned to a 40-hour duty week at the discretion of the Fire Chief, or his designee, at his/her request without loss or modification of any rights, benefits, salary, accrual rates or other compensation items covered in this agreement.

### 16.2 Light Duty for Industrial Injury/Illness

City, at its option, may assign an employee suffering from an industrial injury or illness to a 56 or 40-hour week at the discretion of the Fire Chief, or his/her designee. Employees so assigned will not lose any rights, benefits, salary, accrual rates, or other compensation items covered by this agreement.

### 16.3 Modified Work Schedule

When an employee is assigned to a 40 hour work week for light duty purposes, all leave banks and accrual rates shall remain the same as provided in Section 18.

## **Section 17. Holidays**

### **17.1 Official Holidays**

All employees covered under the terms and conditions of this agreement shall be entitled to the following holidays, under the provisions of the remainder of this Section:

The first day of January	(New Year's Day)
The third Monday in January	(Dr. King's Birthday)
The third Monday in February	(President's Day)
The last Monday in May	(Memorial Day)
The fourth day of July	(Independence Day)
The first Monday in September	(Labor Day)
The ninth day of September	(Admission's Day)
The eleventh day of November	(Veteran's Day)
The fourth Thursday of November	(Thanksgiving Day)
The day following Thanksgiving Day	
The twenty-fifth day of December	(Christmas Day)
The last working day before Christmas Day	
The first working day following Christmas Day	

### **17.2 Treatment of Division Chiefs Assigned to 56-Hour Work Week**

Employees assigned to a 56-hour schedule shall not receive any additional compensation for working on a holiday and such employees shall not receive the holiday off if they are scheduled to work. In lieu of such holiday benefits, such employees shall be compensated for holidays at eight (8) hours forty (40) minutes per month at the forty (40) hour rate or at thirteen (13) hours per month in holiday time if accrued. Employees must notify the Fire Chief if they wish to receive compensation or accrued leave in accordance with this section at the beginning of the calendar year. Employees may elect to change their selection between accrued leave or pay quarterly. If the employee does not initially make an election between compensation or accrued leave then the employee shall receive compensation.

### **17.3 Employees Assigned to a 40-Hour Schedule**

Employees assigned to a forty (40) hour work schedule shall not be additionally compensated for holidays but shall take eight (8) hours of time off duty per holiday in accordance with Monterey City Code Section 25-12.04.

## **Section 18. Leave Accrual and Usage**

All leave accruals for employees represented by Association shall be based on the applicable work week (e.g. 56-hour duty schedule or 40-hour duty schedule) as identified in Chapter 25 of the Monterey City Code.

Leave balances as of October 1, 1999, shall not be converted and accrual and use rates shall be based upon the assigned work schedule of a forty (40) or fifty-six (56) hour work week.

### **18.1 Vacation/Entitlement**

Employee entitlement of vacation hours shall be in accordance with Municipal Code Section 25.12.01.

Effective April 16, 2007, employees with more than 20 years of service shall accrue annual vacation leave at the following rates:

- For those on a 40 hour week: 184 hours annually
- For those on a 56 hour week: 256 hours annually

### **18.2 Vacation/Selection and Use**

The selection and use of vacation hours shall be in accordance with Monterey Fire Department Policy as established by the Fire Chief.

### **18.3 Management Compensation Pay**

Due to the unique aspects of their normal job duties, members of the Association shall receive Management Compensation Pay in lieu of paid management leave in the amount of 1.92% of the employee's base salary. This will be administered in accordance with the definition of Management Compensation Pay in the City of Monterey Personnel Rules and Regulations (Chapter 25 of the Municipal Code).

### **18.4 Management Unpaid Leave**

With advanced department head approval, an employee on a forty (40) hour work week schedule may take up to forty (40) hours of Management Unpaid Leave per calendar year or fifty six (56) hours of management unpaid leave for employees on a 56-hour work week schedule. Such leave may be taken in one (1) hour minimum increments. Further, so long as the employee is in a paid status at least half of the month, such unpaid leave shall not result in a loss of benefits or leave accruals.

### **18.5 Management Leave (Paid)**

Effective April 16, 2007, employees shall be provided with 40 hours of "use it or lose it" management leave. These 40 hours, if not used by December 31, 2007, will not rollover to the next calendar year, and there shall be no cash value for this management leave time.

Effective January 1, 2008, employees shall be provided with 40 hours of “use it or lose it” management leave at the beginning of each calendar year. Unused time may not rollover to the next year, and there shall be no cash value for management leave time.

For those employees who are new to FMA (for example—a newly promoted Division Chief, or one who is hired to the Division Chief classification from another agency), the amount of provided management leave in the initial calendar year of appointment shall be prorated based on the following schedule according to hire date:

If hired January 1 to March 31	40 hours of Management Leave
If hired April 1 to June 30	30 hours of Management Leave
If hired July 1 to September 30	20 hours of Management Leave
If hired October 1 to November 30	10 hours of Management Leave
If hired December 1 to December 31	0 hours of Management Leave

#### 18.6 Sick Leave/Accumulation and Use

Sick leave accumulation and use shall be in accordance with Municipal Code Section 25-12.02. The use of sick leave for the care of a sick family member as identified in MCC 25-12.02d shall be limited to 72 hours for 56-hour shift personnel and 48 hours for 40-hour duty personnel per calendar year.

#### 18.7 Sick Leave/Bereavement Leave

The use of Sick Leave for Death or Critical Illness of an immediate family member shall be in accordance with Municipal Code Section 25-12.02e.

#### 18.8 Termination of Sick Leave Balances Upon Eligibility for An Industrial Disability Retirement (4850 Clause)

This Section shall not apply to employees represented by the Association on May 7, 1997. Such employees will retain the right to use sick leave balances upon eligibility for industrial disability retirement, when they are promoted or reassigned to a classification represented by FMA.

For employees hired or promoted after May 7, 1997 into a classification represented by the Association, the following will apply. Upon either the approval of an application by an employer for an industrial disability retirement, or upon the independent determination of the employer that an employee is industrially disabled, the employee shall not be entitled to use any remaining sick leave or any such remaining sick leave balance in the employee's account and, any remaining sick leave in the employee's account shall be void. This language is intended to give the employer rights to terminate sick leave under the provisions of Government Code Section 21025.2 as a "provision[s] of a . . . rule[s] or regulation[s] of the employer [which] provide[s] to the contrary". An application for industrial disability retirement, either employee or employer originated, shall not affect the employee's right under Worker's Compensation laws, such as any otherwise existing right to temporary disability (including Labor Code

Section 4850 benefits for safety officers).

#### 18.9 Sick Leave Sell-Back Program

A represented employee with at least twenty (20) years of Monterey Fire Department service who retires on a regular, non-disability retirement may "sell back" up to forty percent (40%) of the represented employee's unused accumulated sick leave. Effective on the date of Council adoption of this MOU, the City agrees to increase the percentage of the sick leave "sell back" from 40% to 50% for those represented employees with at least twenty (20) years of service who retire on a regular, non-disability retirement. City shall pay for the sick leave at the base rate of pay on the day of retirement.

Any sick leave days a represented employee "sells back" shall not be converted to additional retirement service credit as provided under Section 12.2 of this Agreement.

#### 18.10 Sick Leave Used as Personal Leave

Effective April 16, 2007, up to twenty-four (24) hours of accrued sick leave may be taken as Personal Leave during the calendar year so long as the employee has a minimum of 160 hours of accrued sick leave on the books at the time their Personal Leave is taken. Approval for the use of Personal Leave shall otherwise be subject to the same use rules as vacation.

### **Section 19. Tuition Reimbursement Program**

Tuition Reimbursement allowance shall be \$500 per fiscal year per employee. Effective July 1, 2005, the City agrees to increase the Tuition Reimbursement allowance from \$500 to \$1000 per fiscal year per employee. The program shall permit reimbursement for seminars and other accredited courses that are job related and course textbooks.

### **Section 20. Section 125 Plan**

Employees may elect to participate in three (3) Section 125 programs offered by City. The available programs are Premium Conversion, Dependent Care, and Flexible Spending Account. Each of these programs will be administered in accordance with the IRS Code. Employees will pay any administration fee for this service through payroll deductions. The Flexible Spending Account carries a maximum participation of \$5,000 per employee per year.

For purposes of information, the following is a description of premium conversion, dependent coverage and flexible spending account.

Premium Conversion: Permits payment of health insurance premiums subject to salary deduction with pre-tax income.

Dependent Care: Permits payment of eligible dependent care expenses (minor and/or adult) with pre-tax income.

Flexible Spending Account: Permits payment of eligible health care expenses not reimbursed by health insurance with pre-tax income.

The above descriptions are not intended to supersede current Internal Revenue Service (IRS) definitions or how these definitions may change from time to time. The descriptions are for informational purposes only.

## **Section 21. Wellness**

### **21.1 Implementation of a Random Drug and Alcohol Testing Program**

City and Association agree it is to their mutual benefit to insure the workplace is drug free. The Substance Abuse Policy, attached as Exhibit "D", is intended to insure employees are: (1) not using illegal drugs in or out of the workplace; (2) not using prescription or controlled medications in a manner other than as prescribed; or (3) not under the influence of drugs or alcohol while on duty. City and Association recognize that separate from testing employees for drug use based on "reasonable suspicion", a random drug testing program will achieve these goals, and the parties agree to participate in such a random testing program, as set forth in Exhibit "D". Attached as Exhibit "D" is the policy to which the parties have agreed.

### **21.2 Sports Center Pass**

Upon submission of a completed City of Monterey Doctor Visitation form, employees shall receive annual, renewable and nontransferable employee-only passes to the Monterey Sports Center in order to implement their personal fitness programs. The Doctor Visitation form may be obtained from the Personnel Department. These passes shall be subject to renewal by City in accordance with a medical examination or an examination that is required as part of the Fire Department Physical Exam Program and may be discontinued on an individual basis for failure to comply with the program procedures or upon separation from City employment. Use of the Sports Center will be limited to off-duty hours, unless the Fire Chief grants an exception in specified circumstances.

Employees may apply the dollar value of the employee-only pass to the Monterey Sports Center towards the purchase of a family pass to this facility. The employee shall be responsible for the cost differential between the credit value of the employee-only pass and the family pass. Every twelve (12) months from the date of the purchase of the family pass, the employee shall be afforded the opportunity to make an election to continue crediting the value of the employee-only pass towards the family pass, which shall be irrevocable for the next twelve (12) months.

Employees electing to receive a family pass under this program shall have a payroll deduction for the cost of maintaining the family pass active from month to month based on the difference between the cost of the family pass and the employee-only pass. Upon separation from City, the family pass shall be cancelled unless the separated employee elects to maintain the pass under the same conditions available to the general public.

### 21.3 No Smoking Policy

Association and City agree that smoking is prohibited on and off duty, and that violation of this policy can subject an employee to discipline. The specifics of this policy are outlined in Exhibit "C", entitled No Smoking Policy. The provisions of this policy applicable to smoking off duty shall not apply to employees hired or promoted before May 7, 1997 into a classification represented by Association.

### 21.4 Physical Fitness Policy

The parties have agreed that Division Chiefs assigned to the 56-hour work week may participate in the Fire Department's physical fitness program.

## **Section 22. Uniforms**

The parties agree that represented employees shall wear a uniform while on duty and while representing the Monterey Fire Department. The Fire Chief may provide exceptions. Uniforms are not required for standby duty.

City agrees to pay for three (3) uniforms per calendar year for represented employees, with prior approval by the Fire Chief, and shall include this cost in future budgets for the Monterey Fire Department. It shall be the obligation of represented employees to maintain uniforms purchased by City in good condition, and FMA acknowledges that City's obligation is limited to providing the uniforms and that no uniform allowance will be provided by City. Should City determine that it is in its best interest to cease funding uniforms for employees represented by the FMA, it may do so without consultation or meeting-and-conferring with FMA, provided that employees represented by the FMA will similarly be relieved of wearing the uniform. The provision of uniforms to employees represented by FMA shall not be considered an employee benefit.

City agrees to provide a written departmental policy to provide specifications for the uniforms as agreed to by both parties to this agreement.

## **Section 23. Provisions of Law**

This agreement is subject to all current and future applicable federal and state laws and regulations. If any part or provision of this agreement is in conflict or inconsistent with such applicable laws or regulations, or is otherwise held to be invalid or unenforceable by any tribunal or competent jurisdiction, such part or provision shall be suspended and superseded by such applicable law or regulation and the remainder of this agreement shall not be affected thereby.

## **Section 24. Full Understanding, Modification and Waiver**

24.1 This agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters contained herein are hereby superseded or terminated in their entirety.

- 24.2 Except as specifically provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required to negotiate with respect to any subject or matter covered herein or with respect to any other matters within the scope of representation during the term of this agreement.
- 24.3 No agreement, alteration, understanding, variation, waiver or modification of any of the terms or provisions contained herein shall in any manner be binding on the parties thereto unless made and executed by all parties.
- 24.4 In the event any new practice, subject or matter arises during the term of this agreement, that is within the scope of meet and confer, and an action is proposed by City, Association shall be afforded all possible advance notice and shall have the right to meet and confer upon request. In the absence of an agreement on such a proposed action, City reserves the right to take necessary action by management direction.
- 24.5 Nothing herein shall limit the authority of City to make necessary and reasonable changes during emergencies. However, City shall notify Association of such changes as soon as practicable. Such emergency assignments shall not extend beyond the period of the emergency.
- 24.6 The waiver of any breach, term or condition of this Memorandum of Understanding by either party shall not constitute a precedent in the future enforcement of all of its terms and provisions.

## **Section 25. Term and Effect of Memorandum of Understanding**

This Memorandum of Understanding shall remain in full force and effect commencing January 1, 2004 through December 31, 2006, and it is understood and agreed that the terms, conditions, wages, and all provisions of this Memorandum of Understanding shall continue in effect until a new Memorandum of Understanding is negotiated and subsequently ratified by the Association and the City Council, or until this Memorandum of Understanding is superseded in accordance with City Code Section 25-16.12(e). The parties agree that the next negotiations will commence on or before October 15, 2006.

The parties hereto have caused their duly authorized representative to execute this Memorandum of Understanding the day, month and year noted below.

*(\*See next page for signatures)*

