

MEMORANDUM OF UNDERSTANDING
BETWEEN AND FOR
CITY OF MERCED
AND
INTERNATIONAL FIRE FIGHTERS ASSOCIATION
LOCAL #1479

January 1, 2015
Through
December 31, 2017

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MEMORANDUM OF UNDERSTANDING

PREAMBLE

This Memorandum of Understanding is made and entered into this 19 day of October 2015 by and between the City of Merced, hereinafter referred to as the "City," and the Merced Fire Fighters Local 1479, International Association of Fire Fighters, hereinafter referred to as the "Union," has as its purpose: The establishment of wages, hours, and other terms and conditions of employment, and the rendering of more efficient and progressive service to the public.

**ARTICLE I
RECOGNITION**

SECTION 1.01. RECOGNITION. The City acknowledges the Union as the recognized employee organization representing all full-time permanent employees in classified positions within the Fire unit. For purposes of clarity, the classifications represented in this agreement are Fire Fighter, Fire Engineer, and Fire Captain.

**ARTICLE II
NON-DISCRIMINATION**

SECTION 2.01. NON-DISCRIMINATION. The provisions of this Memorandum of Understanding shall apply equally to and be exercised by all employees in the Fire unit with non-discrimination as to age, sex, marital status, religion, race, color, creed, national origin, union or political affiliation.

SECTION 2.02. FREE CHOICE. Any employee shall have the free choice to join or refrain from joining the Union.

**ARTICLE III
DUES DEDUCTION**

SECTION 3.01. DUES DEDUCTION. During the term of this agreement, members of the unit may tender their Union dues to the Union directly. If a member voluntarily signs a release furnished by the City authorizing the City to deduct Union dues from the employee's regular biweekly paycheck, the City will make said deduction provided the employee is on regular pay status and the employee's paycheck is sufficient to cover the amount of the dues.

Each year during the month of December, the Union will certify to the City the amount of the Union monthly dues. If the Union changes the amount of dues, each such change must be certified to the City at least four (4) weeks prior to the change becoming effective.

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If during the term of this Agreement any claims, charges, or lawsuits are brought against the City by any party over the matter of Union dues or Union dues deduction from members' paychecks, the Union agrees to pay any and all costs of such claims, charges, lawsuits, damages or settlements, including reasonable attorney's fees to be determined by a court of competent jurisdiction. In addition, the Union shall refund to the City any amount paid to it in error upon presentation of supporting evidence.

ARTICLE IV
HOURS OF WORK

SECTION 4.01. WORKDAY, WORKWEEK, WORK PERIOD.

- A. **WORKSHIFT** - The normal work shift shall consist of twenty-four (24) consecutive hours. The normal work shift shall begin at 8:00 a.m.
- B. **WORKWEEK** – The normal workweek shall average approximately fifty-six (56) hours for shift employees.
- C. **WORK PERIOD** – The basic work period shall be established by the City in compliance with the Fair Labor Standards Act, with the work period identified as twenty-four (24) days.

SECTION 4.02. OVERTIME.

- A. Overtime is defined, paid, and calculated pursuant to the Fair Labor Standards Act (FLSA), as actual hours worked in excess of the established number of hours in a regular shift schedule and which is paid at time and one-half.
- B. For the purpose of computing the number of hours worked, only actual hours worked shall be considered as time worked by the employee effective June 25, 2012 (PP 14). Straight time is computed up until fifty-three (53) hours in compliance with the Fair Labor Standards Act.
- C. Emergency Recall hours shall be paid at time and one-half effective June 25, 2012 (PP 14). These hours may be used to offset any overtime required under the FLSA.
- D. Employees who are deployed on mutual aid reimbursable incidents shall be paid at time and one-half for all hours worked outside of the employees regularly scheduled shift. Employees who backfill those who are deployed on mutual aid reimbursable incidents, whether voluntarily hired or mandatorily hired, shall be paid at time and one-half for all hours worked outside of the employees regularly scheduled shift. These hours may be used to offset any overtime required under the FLSA.
- E. Overtime earned under 4.02 C and D shall be paid on the payday for the pay period when earned. Employees who are voluntarily hired or mandatorily hired to cover

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vacancies created by leave shall be compensated for actual hours worked as per Sections 4.02 A and B.

SECTION 4.03 CALL-BACK.

- A. Call-back work is defined as work required of an employee when such employee is not on his/her regular shift during the period that begins when the employee has completed his/her regular shift and has been relieved.
- B. Employees called back to work by the department head or his/her representative during the defined period shall be paid for a minimum of two (2) hours at the rate of time and one-half for each call back.

SECTION 4.04 HOLIDAYS.

During the term of this agreement, the following holidays are recognized as City holidays for pay purposes:

- New Year's Day
- Martin Luther King, Jr.'s Birthday
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day
- Christmas Eve
- Two Floating Holidays**

** One of the floating holidays is granted in lieu of Washington's Birthday.

SECTION 4.05 HOLIDAYS WORKED.

- A. Every duty day is a workday for employees in this unit. The Union agrees that employees shall work their regularly assigned schedule regardless of holidays, unless directed otherwise by the management of the City.
- B. Employees working a 56-hour workweek shall receive compensation for (12) twelve hours of holiday pay at the straight time hourly rate for each day designated as a holiday in Section 4.04 during the pay period that said holiday occurs.
- C. The two floating holidays shall be paid in the last pay period on or before December 1 of each year.

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SECTION 4.06 ALTERNATIVE SCHEDULING. City and Association agree to a 48/96 work schedule.

SECTION 4.07. MINIMUM DAILY STAFFING LEVELS. Minimum staffing on an engine or truck is three sworn personnel: A captain, an engineer, and a firefighter. Whenever there is an additional member they shall be assigned as the fourth person on Truck-51. Efforts shall be made to prevent unnecessary movement of personnel between stations when movement is required to meet the staffing requirements.

ARTICLE V
VACATION AND SICK LEAVE

SECTION 5.01. VACATION.

- A. VACATION ACCRUAL** – All employees of the unit earn vacation benefits in accordance with their length of continuous service.
1. Employees assigned to a 56-hour workweek and who have less than 5 years of continuous service earn vacation benefits at the rate of 4.312 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 224 hours.
 2. After the completion of 5 years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 6.462 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 336 hours.
 3. After the completion of 10 years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 8.624 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 448 hours.
 4. After the completion of 20 years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 10.774 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 560 hours.
 5. After the completion of 25 years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 12.925 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 672 hours.

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- B. **MAXIMUM VACATION ACCRUAL** – When the maximum number of vacation hours is accumulated by an employee, vacation hours shall cease to accrue to that employee, and hours that would otherwise accrue over the maximum are lost to the employee and will not be reimbursed.
- C. **PAYMENT UPON SEPARATION** – Employees who leave City employment shall be compensated for vacation accrued but not taken up to the date of separation.
- D. **VACATION USE** – Vacation used by an employee shall be charged against the vacation accrued on an hour-for-hour basis. Vacation may not be used during the first six months of employment. Vacation may be taken in twelve (12) or more hour increments.
- E. **VACATION CHANGES** – The Union agrees to give at least 24 hours notice to request vacation changes. The City retains the right to deny vacation change requests.
- F. **VACATION SCHEDULING** – There shall only be two (2) persons per shift allowed off on vacation at any one time. The two (2) members of the unit may be of any classification or combination of classifications.

SECTION 5.02. SICK LEAVE. Notwithstanding Section 18.07A of the Personnel Rules and Regulations, sick leave for the Fire Department is as follows:

- A. **SICK LEAVE ACCRUAL** – Employees accrue sick leave benefits in accordance with their length of continuous service.

Employees assigned to a 56-hour workweek earn sick leave benefits at the rate of 6.003 hours each biweekly pay period of continuous service and may accumulate sick leave benefits to a maximum of 1500 hours.

- B. **MAXIMUM SICK LEAVE ACCRUAL** – When the maximum number of sick leave hours is accumulated by an employee, sick leave hours shall cease to accrue to that employee, and hours that would otherwise accrue over the maximum are lost to the employee and will not be reimbursed.
- C. **SICK LEAVE DURING THE FIRST SIX MONTHS** – Sick leave with pay shall be used or authorized during the first 13 biweekly pay periods of continuous service with the provision that, if the employee is terminated, the sick leave time used will be repaid at the pay rate that it was paid out.
- D. **PAYMENT OF EXCESS ACCRUED SICK LEAVE** – In January of each year, employees assigned to a 56-hour workweek who have unused sick leave hours in excess of 1344 as of the last pay period in the preceding December will be paid at their straight time hourly rate (1/112 of basic biweekly pay) for 50 percent

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of said hours in excess of 1344 but the remaining 50 percent of hours in excess of 1344 will be forfeited.

- E. **SICK LEAVE UPON RESIGNATION OR DISMISSAL** – An employee who resigns or is dismissed forfeits all further eligibility to any accrued but unused sick leave.
- F. **SICK LEAVE UPON RETIREMENT** – An employee of the unit who retires from the City after 10 or more years of continuous service or who retires because of an industrial disability will be paid at the straight time hourly rate (1/112 of biweekly pay) for 50 percent of the hours of accrued but unused sick leave. The remaining 50 percent of the hours of accrued but unused sick leave will be forfeited.
- G. **BEREAVEMENT LEAVE** – Subject to administrative direction, unit employees may receive 48 hours not chargeable to sick leave for the death of an immediate family member within the State of California or 72 hours for the death of an immediate family member outside the State of California. In addition, an employee may use up to two (2) shifts of accrued sick leave when death in the immediate family necessitates that the employee be away from work. Employee's immediate family is defined as any of the following, whether related by blood, marriage or adoption: parent, spouse, domestic partner, child, brother, sister or grandparent.
- H. **SICK LEAVE USE** – Sick leave used by an employee shall be charged against the sick leave accrued on an hour-for-hour basis.
- I. **SICK LEAVE VERIFICATION** – In order to assure compliance by employees of the sick leave and to refrain from creating undue requirements on all employees for the actions of a few, the City will consider and require verification of potential sick leave abuse on a case-by-case basis. In instances where abuse is suspected, or sick leave use begins to lead toward a pattern of abuse, the department head may require written verification by means of a physician's statement or personal affidavit (the choice of which shall be made by the department head, depending on the nature of the circumstances) in order for the employee to receive paid sick leave. If the employee is not currently under a doctor's care, the City may send the employee to the City's physician for verification with costs borne by the City. Otherwise, such absence from work shall be charged to leave without pay. Abuse of sick leave shall be defined as any of the following, unless the employee provides a written verification of illness from a physician:
 - 1. Where an employee demonstrates a pattern of sick leave usage in connection with the day before or after a vacation.

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2. Where an employee uses sick leave more than six (6) times (incidents) in any twelve (12) month period.
3. Where an employee uses any single occurrence of sick leave and it is reasonably believed that the employee used sick leave improperly.

Where it is reasonably determined that sick leave has been abused, those employees responsible for such abuse shall be subject to disciplinary actions.

- J. SICK LEAVE FOR IMMEDIATE FAMILY CARE** – Each member of the unit eligible to use sick leave may be granted up to one-half of their annual accrued sick leave for the required care of a spouse, domestic partner, and parent, or child, as defined by statute. Employee shall be required to identify relationship of family member when requesting Family Sick Leave in accordance with Fire Department Policy F 1023 (Paid Time Off).

ARTICLE VI HEALTH AND WELFARE

SECTION 6.01. BENEFITS PROVIDED AND REQUIRED. City shall provide a “cafeteria” plan. Each employee shall be required to participate in the following five plans to a level that provides for the employee:

- Hospital/medical care plan,
- Dental care plan,
- Vision care plan,
- Disability insurance plan,
- Life insurance plan.

Employees may request a waiver for medical, dental, or vision coverage from the Support Services Department. Such waiver may be granted only if the employee shows proof of other coverage through the employee’s spouse or registered domestic partner in accordance with City of Merced Administrative Policy P-27 effective December 1, 2006. Should an employee who has obtained a waiver to this provision lose such alternative coverage, the employee shall provide proof to the Support Services Department with five (5) business days and enroll in a City-provided insurance program. If waiver of coverage is granted the allowance as outlined in Section 6.03 will be adjusted accordingly.

Participation for the employee’s dependents, and participation in other coverages offered, is optional.

SECTION 6.02. PLAN SELECTION AND EMPLOYEE BENEFIT COMMITTEE. City shall provide a selection of employee health and welfare benefit coverages for eligible employees and retirees, including but not limited to at least two options each for hospital/medical care plan, dental care plan, vision care plan, life insurance plan, and

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SECTION 6.04. MEDICAL/HEALTH, DENTAL AND VISION CARE COVERAGE AFTER RETIREMENT.

A. In accordance with Administrative Policy and Procedure No. P-17, as amended effective August 1, 2015, the City shall provide a hospital/medical care plan for eligible retirees. The hospital/medical care plan shall be selected solely by the City and shall provide essentially the same benefits to retirees as are provided to full-time employees. An employee shall be considered a retiree of the City if the employee retires in the California Public Employees' Retirement System and his/her last active place of full-time employment within the system was with the City. All retirees are eligible except as provided and shall receive hospital/medical care coverage under the following conditions:

1. The retiree is age 50 or over with at least ten (10) years of service with the City; or
2. Retiree is retired because of a service-connected disability; or
3. Retiree is retired because of a non-service connected disability with at least ten (10) years of service.

Spouse or registered domestic partner of eligible retiree may remain on the plan until the retiree is deceased. The spouse or registered domestic partner and retiree shall be responsible for payment of the premium for coverage of spouse or registered domestic partner.

New Unit employees hired after December 31, 2002 will not be entitled to receive the City's health/medical plan coverage after retirement.

B. City Contribution. For those eligible retirees in retirement status prior to January 1, 2007, the City agrees to contribute the amount necessary to provide a comparable hospital/medical plan for each eligible retiree.

For those active unit members who retire after January 1, 2007 the City agrees to contribute the monthly premium for each eligible retiree capped at the following amounts: \$390.55 monthly for Retirees over 65, and \$546.51 monthly for Retirees under 65. The retiree shall pay any amount over the capped premium.

C. Supplemental Retirement Medical Allowance. An employee retiring on or after January 1, 1999, and eligible for retirement medical benefits as provided in this Section, said retired employee and spouse or registered domestic partner and/or other dependents shall continue to be covered under the City's medical care plan until both persons reach age 65. The City shall pay the premium for the retired employee, and the dependent(s) premium shall be the responsibility of the retired employee. At the age of 65, the City's medical plan shall be secondary to

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Medicare medical coverage or any other benefit coverage available to the retired employee and eligible spouse or registered domestic partner.

- D. An eligible employee who retires after August 1, 1998, and his/her spouse or registered domestic partner and/or dependents, shall be eligible to continue coverage under the City's dental and vision plans. The premiums shall be the responsibility of the retired employee. At the age of 65, or upon the dropping of coverage by the employee, or the death of the eligible employee, the City's dental and vision plans will no longer be available to the retired employee and his/her eligible spouse or registered domestic partner and/or dependents.

SECTION 6.05. HEALTH SAVINGS PLAN. The City and the Association agree to meet and confer during the contract term with respect to the possible establishment, by the Association, of a health savings program, to be administered by the Association for the benefit of current employees to save for medical cost during retirement. The Association's program shall result in no cost to the City (other than minor costs associated with payroll deductions and transmittals of such funds to the program.) The Association agrees to incorporating a Clause indemnifying, defending and holding harmless the City, if the health savings program is agreed upon and established.

ARTICLE VII LEAVES OF ABSENCE

SECTION 7.01. RETURN FROM LEAVE OF ABSENCE. At the end of the leave period, or within 48 hours of receipt of written notice of early return to duty issued by the City, an employee must return to duty. Failure to return to duty shall be considered a resignation from the City service and the employee shall have no right of appeal or hearing.

ARTICLE VIII SPECIAL BENEFITS

SECTION 8.01. UNIFORMS.

The City shall provide a maximum of \$750.00 on an annual basis effective July 1 of each year of this agreement for uniform/maintenance for each non-probationary employee required to wear a uniform. This allowance shall be available as a purchase order through a City-approved vendor; and all applicable deductions will be paid by employee. The City will report the uniform maintenance allowance as a special compensation to CalPERS for employees covered under 3% @ 50 and 3% @ 55 retirement formulas. Any uniform maintenance allowance amount not utilized by June 30 shall not carryover and shall not be available for use by the employee after that date.

Uniform maintenance allowance will not be paid during the first 12 months of an employee's 18 month initial probationary period. Upon the employee's completion of the initial 12 months and submission of receipts, the City agrees to reimburse up to the

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maximum uniform maintenance allowance amount for that period less applicable deductions.

SECTION 8.02. CLASS B DRIVER'S LICENSE.

- A. In those instances where the City requires, as a condition of employment, an employee to renew a driver's license for which the law requires a medical examination, City agrees to make such medical examination available to the employee without cost to the employee. The physician will be selected by the City.

The employee may choose to obtain an additional medical examination from his/her personally selected physician or from any source other than that provided by the City. The cost of such medical examination shall be borne by the employee.

If the results of such medical examinations are in conflict, the City shall provide a medical examination without cost to the employee. The City shall select a physician of its choice, other than the prior selected physician in that same medical group practice, and shall act on the results of the medical examinations most in agreement.

- B. The City agrees to pay the cost difference between California Class C driver's license and the required Class B or A license renewal fee.

SECTION 8.03. APPLICABLE PAY FOR WORKING IN A HIGHER CLASSIFICATION.

- A. On occasion, an employee may be required to work in a higher classification. In such cases, the salary of the employee will be adjusted to compensate for the higher level of duties.

- B. In order to receive adjusted compensation for working in a higher classification, the employee must 1) be certified by the Personnel Manager as to possessing the qualifications and requirements to perform the duties of the higher classification, 2) be able to perform all the duties and responsibilities of the position, and 3) be able to perform all the duties and responsibilities of the position for at least the full number of work hours of the workday. Adjusted compensation for working in a higher classification shall be subject to the following:

1. Each unit employee will serve 72 hours qualifying time without additional compensation.
2. No out-of-class pay shall be granted for time served in an out-of-class situation of less than 12 hours.

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- 3. Out-of-class pay shall be granted for a full shift if the assignment is for 12 hours or more.
- C. An employee who is assigned to and performs the duties of a higher classification as set forth in this section shall be entitled to receive the first step in the pay range for the assigned position. If the salary at such step is less than or equal to the employee's present salary, such employee may receive the salary at the next step in the pay range of the acting position which is immediately above his/her present salary, but not less than four percent (4%).
- D. The City Manager or his designee must approve in writing an employee working in a higher classification.
- E. Under Section 6.17D of the Personnel Rules and Regulations, "extenuating circumstances" only applies to health-related issues.

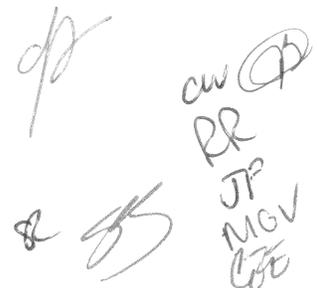
SECTION 8.04. SHIFT EXCHANGE. Employees, with the approval of the department head or his/her designee, may exchange shifts when the change does not interfere with the operation of the Fire Department. Shift change requests shall be submitted on the appropriate forms and shall be submitted at least 24 hours in advance. Employees, and not the City, shall be responsible for record keeping and payback of shift trades in accordance with the provisions of the Fair Labor Standards Act. The City shall not be liable for the failure of any employee to pay back another employee for a shift trade.

ARTICLE IX
WAGES

SECTION 9.01. WAGES. The City and the Association agree that the Pay Plan shall be amended for the classifications represented by the bargaining unit to reflect increases effective the first full pay period following City Council approval of this MOU (no retroactivity) in 2015 (2.00%), the first pay period of the fiscal year in 2016 (2.25%), and 2017 (2.50%). Wages are listed in Attachment A, which is hereby incorporated herein and made part of this Memorandum of Understanding.

SECTION 9.02. BILINGUAL PAY. In accordance with administrative policies and procedures, employees in the unit required to speak or write in Spanish, or other eligible languages in addition to English, and including sign language, as part of the regular duties of his/her position shall be compensated at the following monthly rates in addition the employee's rate of pay:

Verbal Skills Only	\$50.00
Written Skills Only	\$75.00
Verbal and Written Skills	\$100.00



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The City Manager shall designate which languages shall be eligible for bilingual pay based on community needs and will determine the number of employees who will be eligible for bilingual assignments.

SECTION 9.03 PROFESSIONAL DEVELOPMENT. The Professional Development program is available to all unit employees who have completed their initial 18 month probationary period.

Upon completion of a degree in Fire Science or a related field, as approved by the Fire Chief, and after City receipt of documentation of completion, an employee shall be paid for an AA or AS at a rate of \$75.00 per month and a BS or BA at a rate of \$150.00 per month. These benefits are not stackable.

Course work and training falling under this program which require on-going weekly attendance will require shift trades instead of overtime payment for shift coverage. Coverage for other courses will be as determined by the Fire Chief.

Funding to offset the cost of coursework is outlined in the Educational and Tuition Reimbursement Policy, P-6.

Effective the first full pay period following City Council approval of the MOU (no retroactivity), Association employees who have received a Fire Fighter II certification from the State Fire Marshall shall receive \$75.00 per month in addition to regular base wages. Association employees who have received their Fire Officer Certification from the State Fire Marshal shall receive \$150.00 per month in addition to the regular base wages. These benefits are not stackable.

An employee becomes eligible for reimbursement for the Fire Fighter II Certification pay or the Fire Officer Certification pay on the first pay period immediately following the filing of the Certification in the Personnel Department accompanied by the appropriate fully executed Personnel Action Form.

Fire Certification payments may be stacked together with the educational degree payments.

SECTION 9.04. PAYROLL INFORMATION. City agrees to make good faith efforts to revise its payroll information system to show increased detail of deductions and pay types, including hours worked and premium hours.

ARTICLE X **RETIREMENT**

SECTION 10.01. PUBLIC EMPLOYEES RETIREMENT SYSTEM. The City shall maintain in effect the 3% at 50 PERS Retirement Program for current bargaining unit employees. The City has implemented a two-tiered retirement system, and all new bargaining unit employees hired on or after October 7, 2011 will be covered in the 3% at

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55 plan if they are eligible for reciprocity as defined by CalPERS. "New Members", as defined by CalPERS, shall be covered by the 2.7% at 57 benefit formula.

Employees shall pay the entire employee contribution.

SECTION 10.02 CALPERS OPTIONAL BENEFITS. As soon as allowable by PERS the City shall provide the following optional benefits of which all associated costs shall be paid by employees:

Government Code 21574 – 1959 Survivor Fourth Level Optional Benefit
Government Code 21548 – Option 2 Death Settlement

ARTICLE XI **GRIEVANCE PROCEDURE**

SECTION 11.01. DEFINITIONS. The following words used in this Article are defined as follows:

Grievance:

- A. A claimed violation, misapplication or misinterpretation of a specific provision of this Memorandum of Understanding which adversely affects the grievant.
- B. City rules and regulations governing personnel practices.

Grievant: An employee who is filing a grievance. Any alleged violation, misapplication or misinterpretation that affects more than one employee in a similar manner may be consolidated and thereafter represented by a single grievance. The Union shall have the option to be considered as the grievant on any grievance that affects more than one employee.

Workday: A day in which the City's main administrative office is open for business.

SECTION 11.02. TIME LIMIT FOR FILING GRIEVANCE. A grievance shall be barred and not considered if based upon a condition or event which occurred or existed more than ten (10) workdays immediately prior to the date on which the grievance occurs.

SECTION 11.03. PROCEDURE. The City and the Union agree to the following exclusive procedure of presenting and adjusting grievances that must be processed in accordance with the following steps, time limits and condition.

SECTION 11.04. STEP ONE. The aggrieved employee shall discuss the matter with the employee's immediate supervisor. If the grievance is not settled within five (5) workdays following this discussion, the grievance, within such time, shall be reduced to

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writing on the form provided by the Personnel Department and submitted to the grievant's immediate supervisor. Within five (5) workdays after receipt of the written grievance, the immediate supervisor shall answer the grievance in writing.

SECTION 11.05. STEP TWO. The answer from the immediate supervisor shall be final unless the grievance is appealed in writing to the involved department head within five (5) workdays from the date of the supervisor's written answer. The department head shall investigate and provide a written answer to the grievant.

SECTION 11.06. STEP THREE. The answer from the department head shall be final unless the grievance is appealed in writing to the Director of Support Services or designee within five (5) workdays from the date of the department head's written answer to Step Two. The Director of Support Services or designee shall discuss the grievance with the grievant or the Union representative at a time mutually agreeable to both parties. Within five (5) workdays after the close of discussion, the Director of Support Services or designee shall give his/her written answer.

SECTION 11.07. STEP FOUR. The answer from the Director of Support Services or designee shall be final unless the grievance is appealed in writing to the Personnel Board Chairperson within five (5) workdays after receipt of the Director of Support Services' or designee's written answer in Step Three. The Personnel Board, after conducting such hearing, shall forward its recommendation to the City Manager for final determination. The City Manager, after consideration of the Personnel Board's recommendation, shall provide his written final determination to the aggrieved employee within ten (10) workdays.

SECTION 11.08. EFFECT OF TIME LIMITS. The parties agree to follow each of the foregoing steps in the processing of a grievance and if, in any step, the City's representative fails to give his/her written answer within the time limit therein set forth, the grievance shall automatically be transferred to the next step at the expiration of such time limit. Any grievance not moved by the grievant or the Union to the next step within the time limits provided following the City's answer will be considered settled on the basis of the City's last answer.

ARTICLE XII MANAGEMENT RIGHTS

SECTION 12.01. MANAGEMENT RIGHTS. All City rights and functions, except those that are expressly abridged by this Memorandum of Understanding, shall remain vested with the City.

Except to the extent that the rights, powers and authority of the City are specifically limited by the provisions of this Memorandum of Understanding, the City retains all rights, powers and authority granted to it or which it has pursuant to any law or the City Charter and the City shall not be required to meet and confer with respect to the exercise of such rights, powers and authority reserved herein.

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ARTICLE XIII
EMPLOYEE RIGHTS

SECTION 13.01. EMPLOYEE RIGHTS. Nothing in this Memorandum of Understanding is intended to deny a unit employee of any rights contained in applicable State, Federal, or Municipal law.

SECTION 13.02. AMERICANS WITH DISABILITIES ACT (A.D.A.). The City and the Union recognize that the City has an obligation under law to meet with individual employees who allege a need for reasonable accommodations in the workplace because of a disability. If by reason of the aforesaid requirement, the City contemplates actions to provide reasonable accommodation to an individual employee in compliance with the A.D.A. which are in potential conflict with any provision of this Memorandum of Understanding, the Union will be advised of any such proposed accommodation prior to implementation by the City.

ARTICLE XIV
UNION RESPONSIBILITY

SECTION 14.01. UNION RESPONSIBILITY. The Union agrees that during the term of this agreement, neither it nor its officers, employees or members will engage in, encourage, sanction, support or suggest any strikes, work stoppages, boycotts, slow downs, mass absenteeism, picketing or any other similar actions which would involve suspension of or interference with the normal work of the City. In the event that any concerted action as described above occurs, Union will notify the members that such activity is a violation of this Memorandum of Understanding and Union will notify the members that such concerted action shall cease and the members shall return to work.

The Union shall take whatever legal actions are necessary to see that its members return to work. Failure to do so may result in sanctions taken by the City against the Union.

ARTICLE XV
SCOPE OF UNDERSTANDING

SECTION 15.01. SCOPE OF UNDERSTANDING. For the term of this agreement, this Memorandum of Understanding fully and completely incorporates the understanding of the parties hereto and constitutes the sole and entire understanding between the parties; provided, however, that nothing shall prohibit the parties from changing the terms of this memorandum by mutual agreement.

ARTICLE XVI
SEPARABILITY

SECTION 16.01. SEPARABILITY. If any article or section of this Memorandum of Understanding should be found invalid, unlawful or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other articles and sections of this Memorandum shall remain in full force and effect for the duration of this Memorandum. In the event of invalidation of any article or section, the City and the Union agree to meet within thirty (30) days for the purpose of meeting and conferring upon said article or section in an attempt to agree upon a replacement of such article/section.

ARTICLE XVII
MISCELLANEOUS

SECTION 17.01. PROFESSIONALISM. Unit members shall be required to perform all duties related to the fire service as determined by the Fire Chief.

SECTION 17.02. MAINTENANCE OF BENEFITS. All written rights, privileges, benefits and terms and conditions of employment within the scope of representation as of the date of this Memorandum of Understanding which are not specifically set forth herein shall remain in full force and unchanged during the term of this Memorandum of Understanding unless changed by mutual agreement.

SECTION 17.03. PERSONNEL RULES AND REGULATIONS. The City and the Association have met and conferred on the March 1989 Personnel Rules and Regulations and exceptions to those Rules and Regulations are contained in this Memorandum of Understanding.

SECTION 17.04. RESIDENCY REQUIREMENT. Included in the Department O.A.G. there will be a section dealing with residency. It has been agreed that there will be a 60 mile residency requirement, with the first emergency call back going to those employees residing in the 0-15 mile radius from the station. Employees shall call in between 6:00 a.m. and 6:30 a.m. for unscheduled absences.

Employees may request a temporary waiver of the residency requirement from the Director of Support Services in the event of circumstances that would create a hardship for the employee if required to reside within the defined residency area. The determination made by the Director of Support Services is not grievable.

SECTION 17.05. STATION/SHIFT ASSIGNMENT POLICY. It is the policy of the City of Merced Fire Department to uniformly administer the station and shift assignments and transfer of personnel in a manner that fulfills the needs of the department and considers the desires of the individuals who are affected.

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A. ANNUAL STATION ASSIGNMENT BID PROCESS. The following guidelines define policy for shift transfers and station assignments and will assist in the interpretation and administration of these processes.

1. Between November 1st and November 15th of each year a bid sheet consisting of a blank roster will be presented to the Captain with the highest time in grade on each shift.
 - a. The Captain with the highest time in grade will place their name on the apparatus with the open Captain slot they desire on their shift. This process will be repeated by the Captains in descending order of seniority until all Captains have placed their name on the bid sheet.
 - b. The bid sheet will then be given to the Engineer with the highest time in grade and the process repeated until all Engineers have placed their names on the bid sheet.
 - c. The bid sheet will then be given to the senior Fire Fighter on each shift until all Fire Fighters have placed their names on the bid sheet.

Members may designate a proxy to complete their bid.

B. SHIFT TRANSFER POLICY.

1. When shift transfer assignments become necessary due to promotion, retirement, or other reasons which create an absence, consideration will be given to those persons wishing to be transferred or reassigned.
2. When all things are considered equal, seniority within the City of Merced Fire Department shall be the major factor in determining station assignment.
3. When a vacancy is created on a specific shift, the department will announce the intent to permanently fill the vacant position. This may not occur until promotional examinations or new firefighter recruitment has been completed.
4. The shift vacancy will be filled in the following manner:
 - a. The most senior department member who holds the same rank as the vacant position will be provided the opportunity to transfer to the open position.
 - b. If the most senior member opts to not transfer, the position will be offered to the next most-senior member who holds the same rank.

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- c. This process will continue until the vacancy is filled.
- d. Members who hold different ranks than the vacant position will not be allowed to bid for the position.
- e. If a member chooses to transfer shifts, the vacancy created by this movement will be filled as outlined above. Offered to the next most senior member. NOTE: The filling of this vacancy will not be restarted with the most senior member.

C. **RESOLUTION OF DISPUTES.** Prior to the initiation of a formal complaint or grievance regarding the administration of the transfer policy, employees shall seek to resolve the issue with their Battalion Chief.

In the event that the issue is not resolved by the Battalion Chief it will be brought to the Office of the Fire Chief by the employee bargaining unit representatives for mutual resolution.

D. **ADMINISTRATIVE DISCRETION.** The Fire Chief shall have the discretion to reassign or transfer an employee due to unsatisfactory performance or when disciplinary actions are involved. Probationary employees shall be assigned at the discretion of the Fire Chief.

Inter-shift transfers shall be at the discretion of the Fire Chief. Consideration shall be given to keep all shifts as equal as possible in terms of seniority. Based on administrative or operational needs of the Merced Fire Department, the Fire Chief retains the authority to assign personnel to vacant positions.

SECTION 17.06. TOBACCO PRODUCT USE. The City of Merced declares a hiring policy which disqualifies habitual users of tobacco products from eligibility for employment. Employees hired for positions in the bargaining unit after January 1, 2006 (except reinstatements and rehires after layoff after the effective date of this agreement) shall not be permitted to habitually use any tobacco products, consistent with this policy. Failure to follow this policy will lead to disciplinary action, up to and including dismissal.

Employees hired into the bargaining unit prior to December 31, 2005 will be permitted to use tobacco products in a manner consistent with any restrictions established by State law, City administrative policy, and this agreement.

Under no circumstances shall any tobacco product be used at any time inside a City building or vehicle.

SECTION 17.07. TRANSPORTATION WHILE ON DUTY. If an employee is required to relocate to another station during the course of a shift, the City shall either provide transportation or reimburse employee at the then-current mileage reimbursement rate per City policy. Employees shall request mileage reimbursement on a monthly basis.

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SECTION 17.08. RETURNING TO DUTY AFTER CALIFORNIA EMERGENCY MANAGEMENT AGENCY (CaIEMA) DEPLOYMENT. An employee who has been deployed to an O.E.S. incident for at least 4 days or 96 consecutive hours, and returns on his regular duty day shall have the option of returning to work to finish the shift, or using vacation time or leave without pay to finish the shift as long as no more than two employees are on vacation at the same time. During CaIEMA demobilization an employee shall endeavor to contact the department to give advance notice of selection.

ARTICLE XVIII
LAYOFF

SECTION 18.01. LAYOFF.

- A. In lieu of being laid off an employee may elect demotion (“bumping”) to:
 - 1. Any class in the same class series with a lower maximum salary;
 - 2. A class in the same line of work (as determined by the City) as the class of layoff, but of lesser responsibility, and with substantially the same or a lower maximum salary.
- B. In order to bump to a new classification, the employee must have more seniority than the employee that will be displaced.
- C. The employee bumping to a new classification must have held that classification at some time in his/her career in the City of Merced.
- D. Seniority is determined by time in the class from which the employee is bumping, plus time in any higher classification in the same series. The following provisions apply in computing total continuous service:
 - 1. Time spent on military leave shall count as service in the event the leave was taken subsequent to employment;
 - 2. Time worked in regular and/or probationary status shall count as service;
 - 3. Time worked in an extra help, seasonal, provisional, temporary, grant or other limited term status, shall not count as service.
- E. To be considered for demotion in lieu of layoff, an employee must notify the Personnel Manager within five (5) calendar days of receipt of the notice of layoff.
- F. In cases where there are two or more employees in a class from which the layoff is to be made, such employees shall be laid off in inverse order of seniority, with seniority defined as time in the class from which the layoff is to be made plus time in any higher classification in the same series.

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- G. Employees bumping to a lower or similar class shall be placed at the salary step representing the least loss of pay, without exceeding the employee's current rate of pay.
- H. The names of persons laid off or demoted in accordance with this policy shall be entered upon a re-employment list in the order of lay off. Such list shall be used by the City Manager and each department head when a vacancy arises in the same or lower class.
- I. Names of persons laid off shall be carried on a re-employment list for two (2) years, except that persons appointed to regular positions of the same or higher level shall be dropped from the list upon such appointment. Persons re-employed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for the two (2) years.
- J. Refusal of a person to accept the first offer of re-employment with the same classification or a classification at the same or higher range shall cause the name of the person to be dropped from the re-employment list. Failure of a person to respond within seven (7) work days to the offer of re-employment shall be considered a refusal.
- K. If the provisions of this policy are in conflict with the provisions of a Memorandum of Understanding, the MOU shall be controlling without further action.
- L. An employee may not demote to a frozen position or a position that is being eliminated as part of the layoff, and an employee electing demotion must meet the minimum qualifications for the new classification.

ARTICLE XIX
TERM OF AGREEMENT

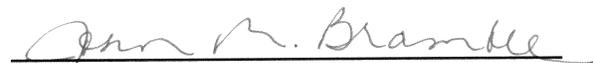
SECTION 21.01. TERM OF AGREEMENT. Except as otherwise set forth in this Memorandum of Understanding, the specific provisions of this Agreement shall be effective as of January 1, 2015, and shall remain in effect through December 31, 2017.

DATED: October 21st 2015

DATED: 10/20/2015

FOR THE UNION:


CHAD ENGLERT
PRESIDENT

FOR THE CITY:


JOHN M. BRAMBLE
CITY MANAGER

Handwritten notes:
d2 awd
RR
MOR
CIB



JEREMY FRANKLIN



RICHARD RAMIREZ



MATT VAN HAGEN



CASEY WILSON



STEVE LEONASIO
INTERNATIONAL FIRE FIGHTERS
LOCAL 1479



DENEEN L. PROCTOR
DIRECTOR OF SUPPORT SERVICES



SHELLINE K. BENNETT
CITY NEGOTIATOR

**Attachment A
FIRE WAGE SUMMARY**

Effective first full pay period following City Council approval of this MOU

<u>Class</u>	<u>Grade</u>	<u>Title</u>		<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
4620	467	Fire Fighter	Month	\$ 4,291	\$ 4,505	\$ 4,730	\$ 4,967	\$ 5,215
4610	477	Fire Engineer	Month	\$ 4,938	\$ 5,185	\$ 5,445	\$ 5,717	\$ 6,003
4580	497	Fire Captain	Month	\$ 5,684	\$ 5,969	\$ 6,267	\$ 6,580	\$ 6,909

Effective PP14 - 6/20/16

4620	467	Fire Fighter	Month	\$ 4,387	\$ 4,607	\$ 4,837	\$ 5,079	\$ 5,333
4610	477	Fire Engineer	Month	\$ 5,050	\$ 5,302	\$ 5,567	\$ 5,845	\$ 6,138
4580	497	Fire Captain	Month	\$ 5,812	\$ 6,103	\$ 6,408	\$ 6,728	\$ 7,065

Effective PP14 - 6/19/2017

4620	467	Fire Fighter	Month	\$ 4,497	\$ 4,722	\$ 4,958	\$ 5,206	\$ 5,466
4610	477	Fire Engineer	Month	\$ 5,176	\$ 5,435	\$ 5,706	\$ 5,992	\$ 6,291
4580	497	Fire Captain	Month	\$ 5,958	\$ 6,256	\$ 6,568	\$ 6,897	\$ 7,242

All numbers have been rounded to the nearest \$1

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