



**Local 1689 IAFF  
Memorandum of Understanding  
Battalion Chiefs**



**TERM OF AGREEMENT  
JULY 1, 2019 – JUNE 30, 2021**

CITY OF FREMONT  
BATTALION CHIEFS MOU  
JULY 1, 2019 - JUNE 30, 2021

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MEMORANDUM OF UNDERSTANDING  
ON  
WAGES, HOURS, AND OTHER TERMS AND  
CONDITIONS OF EMPLOYMENT  
OF AND BETWEEN  
CITY OF FREMONT AND  
FREMONT BATALLION CHIEFS, IAFF LOCAL 1689

ARTICLE 1 - ADMINISTRATIVE

**1.1: PARTIES TO UNDERSTANDING**

This Memorandum of Understanding (MOU) is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as City), and FREMONT FIRE FIGHTERS INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1689, representing the classification of Battalion Chiefs described below, (hereinafter referred to as the Union), pursuant to Government Code 3500, et seq.

**1.2: RECOGNITION**

The City recognizes the Union, as the exclusive representative for the purposes of establishing wages, hours and other terms and conditions of employment for employees in the classification of Battalion Chief.

**1.3: STATE LAW COMPLIANCE**

This MOU complies with the provisions of Section 3500, et seq., of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

**1.4: CITY COUNCIL APPROVAL**

It is the mutual understanding of the parties hereto that this MOU is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

**1.5: CITY RIGHTS**

The City reserves, retains and is vested with any management rights not expressly granted to the Union by this agreement, the Personnel Rules or the Employer-Employee Relations Resolution. These City rights include but are not limited to the right to:

- 1.5.1 Determine and modify the organization of City government and its constituent work units.
- 1.5.2 Determine the nature, standard, levels and mode of delivery of City services.
- 1.5.3 Determine the methods, means, number and kind of personnel by which services are provided.
- 1.5.4 Impose discipline subject to applicable law and the provisions of this MOU.
- 1.5.5 Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules.

Nothing in this section shall relieve the City of its obligation to meet and confer on the impact of the exercise of rights enumerated in this section.

**1.6: TOTAL AGREEMENT**

- 1.6.1 This MOU sets forth the full and entire understanding of the parties regarding matters set forth herein.
- 1.6.2 All ordinances, resolutions, administrative regulations, departmental rules and regulations, personnel policies and procedures and management rights not specifically addressed within this MOU shall remain in full force and effect.
- 1.6.3 No verbal statement or other amendments, except an amendment mutually agreed upon between the parties and in writing annexed hereto designated as an amendment to this MOU, shall supersede or vary the provisions herein.
- 1.6.4 Except as specifically provided herein, it is agreed and understood that each party hereto waives its right and agrees that the other shall not be required to negotiate with respect to any matter covered in this MOU during the term of this MOU.
- 1.6.5 The waiver of a breach of a term or condition of this MOU by either party shall not constitute a precedent or waiver of the future enforcement of all or any terms and provisions herein.

**1.7: VALIDITY OF MEMORANDUM**

Should any article, section, or portion of this MOU be rendered unlawful and unenforceable by any subsequent legislative enactment, state regulation or court of competent jurisdiction, only the specific article, section, or portion at issue shall become invalid and the remainder of this MOU shall not be affected thereby.

**1.8: NO DISCRIMINATION**

The parties agree that neither of them shall discriminate against any employee by reason of race, color, creed, age, marital status, sexual orientation, gender, disability, or national origin. An employee seeking to utilize the arbitration process, claiming a violation of this paragraph, shall make an election of remedies between arbitration and any other remedy available at law, through local, State or Federal statute, including but not limited to Title VII of the Civil Rights Act of 1964, as amended. No employee shall be allowed to arbitrate claiming a violation of this subparagraph if that employee cites the same underlying facts in pursuing any other remedy available at law, through local, State or Federal statute, including but not limited to Title VII of the Civil Rights Act of 1964. When an employee seeks to arbitrate claiming a violation of this subparagraph, the City, the Union and the employee shall enter into a complete written agreement which provides that in exchange for the agreement to voluntarily settle the dispute through binding arbitration, the employee agrees to waive his/her right to pursue any other remedy otherwise available through local, State or Federal law, including but not limited to those forums available to assert rights pursuant to Title VII of the Civil Rights Act of 1964. Such agreement shall contain a provision that the employee has been advised of his/her right to consult an attorney and/or a local, State or Federal anti-discrimination agency regarding his/her discrimination claim and that his/her consent to the binding arbitration agreement is voluntary and knowing. The above election of remedies shall be made before arbitration (see Sections 6.4, et seq.).

Further, the parties agree that neither shall discriminate by reason of Union membership, non-membership, or protected Union activity.

**1.9: PERSONNEL RULES AND LAYOFF ADMINISTRATIVE REGULATION**

The City and Union agree to meet and confer on the City's Personnel Rules (Resolution #688) and Administrative Regulation 2.20: Layoff Procedure Implementation during the term of this Memorandum of Understanding.

**ARTICLE 2 - SALARIES AND OTHER COMPENSATION****2.1: SALARIES**

2.1.1. Effective June 23, 2019, salaries shall increase by 4.0%.

2.1.2 Effective June 21, 2020, salaries shall increase by 4.0%.

**2.2: LONGEVITY PAY**

In exchange for the elimination of the 26 year longevity pay tier, the salaries and classifications of the positions covered by this MOU of this MOU were be increased by an additional 0.5% retroactive to June 28, 2015 and an

additional 0.5% effective June 26, 2016 as an offset to the additional employer costs associated with longevity pay.

For employees hired on or before December 31, 2015, the following longevity pay provisions will apply:

- 2.2.1 Employees who have completed 19 years of continuous service shall receive an additional 1.8% of current base pay.
- 2.2.2 Employees who have completed 26 years of continuous service shall receive an additional 5.8% of current base pay.
- 2.2.3 For purposes of Longevity Pay, Union City fire service shall count as City of Fremont service for those employees who came to the City of Fremont in 1994 as part of the original Union City fire services contract.
- 2.2.4 Employees hired on or before December 31, 2015 shall be entitled to make a one-time election to be bound by the new longevity plan (Sections 2.2.4 and 2.2.5) and corresponding vacation leave accrual schedule prospectively by providing written notification to the Department of Human Resources. The new longevity and vacation leave accrual schedules will be implemented as quickly as administratively possible but in no event sooner than the first payroll period following receipt of the written notification. The election is irrevocable and once the employee elects to be bound by the new longevity plan (Sections 2.2.4 and 2.2.5) and corresponding vacation leave accrual schedule, they will not be allowed to revert back to the old longevity plan.

For employees hired on or after January 1, 2016, the following longevity pay provisions will apply:

- 2.2.5 Employees who have completed 19 years of continuous service shall receive an additional 2.5% of current base pay.
- 2.2.6 Employees who have completed 24 years of continuous service shall receive an additional 2.3% of current base pay.
- 2.2.7 It is the mutual intent of the parties that the additional compensation resulting from longevity pay shall be deemed "reportable compensation" by the California Public Retirement System (CalPERS). In the event that CalPERS ceases to consider longevity pay, as described in section 2.2, to be reportable compensation, the City will nevertheless continue to pay the additional base salary. Additionally, if this should occur, the City and Union agree to explore other options to fulfill the original intent of this benefit without and increase to the original cost projection of this benefit to the City.

**2.3: TEMPORARY UPGRADE PAY**

- 2.3.1 Any unit member may be assigned to work out-of-class in an acting capacity of a higher rank. A unit member assigned to act in a higher rank or specialty shall be paid at a rate consistent with the City's Personnel Rules for promotions – generally five (5%) percent in addition to the unit member's base rate of pay (i.e. any employee who is promoted from one class to a class in a higher salary range shall be entitled to the step in the higher range which will result in a salary increase of not less than one step).
- 2.3.2 In no event shall any person serving in an acting capacity be compensated for more than twenty-four (24) hours of Temporary Upgrade Pay for any regular twenty-four (24) hour shift.
- 2.3.3 Assignment of employees to serve in an acting capacity, as defined above, shall be based upon methods determined by the Department Head.
- 2.3.4 Nothing in this section shall limit management's authority to assign employees temporarily to a position of a higher class for the purpose of providing training in the work of the position. Such temporary training assignment shall not constitute service in an acting capacity, as defined above.
- 2.3.5 Payroll documentation for authorized Temporary Upgrade Pay must be submitted for payment in the same pay period as the shift worked.
- 2.3.6 The City shall report Temporary Upgrade Pay in accordance with CalPERS Requirements.

**2.4: SPECIAL ASSIGNMENT PAY****2.4.1 Staff Assignment Premium**

All unit members are eligible for temporary assignment to a forty-hour (40) workweek schedule to perform special projects. Any unit member assigned to and serving in a staff assignment with a forty hour (40) work week shall be paid a premium of seven and one-half percent (7.5%) in addition to the unit member's regular base rate of pay (and in lieu of suppression FLSA overtime pay), and this premium pay shall be incorporated into the unit member's compensation reported to CalPERS, in accordance with CalPERS law.

As a general rule, these temporary assignments shall not exceed one hundred eighty (180) days unless agreed upon between the parties. At the end of the limited duration, forty (40) hour workweek Staff Assignment, unit members shall be returned to their regular duties at which time the seven and one-half percent (7.5%) shall cease.

## **2.5: OVERTIME COMPENSATION**

Overtime compensation for employees in the Battalion Chief classification shall be as follows:

### **2.5.1 Definitions**

- 2.5.1.1 FLSA is defined as the Fair Labor Standards Act.
- 2.5.1.2 FLSA Overtime is defined as hours worked in excess of the maximum hours designated by the Fair Labor Standards Act for the FLSA work period adopted by the City.
- 2.5.1.3 Non-FLSA Overtime is defined as hours worked in excess of the employee's normal schedule or shift which is not FLSA overtime.
- 2.5.1.4 Hours Worked is defined pursuant to the FLSA and generally includes time that the employee is performing services that are controlled or required by the City.
- 2.5.1.5 Overtime Pay Rate is defined as one and one-half (1.5) times the regular hourly rate of pay.
- 2.5.1.6 Regular Rate is defined pursuant to the FLSA.
- 2.5.1.7 CalPERS Reporting of Fair Labor Standards Act (FLSA) Premium Pay. The City will report compensation paid for an employee's normal full-time work schedule including the premium pay required by the FLSA. The FLSA states that premium pay must be paid on all hours worked above the normal work week up to the maximum hours designated for the FLSA work period adopted by the City.

### **2.5.2 Work Schedule for Fire Suppression (Shift) Employees**

Employees assigned to Fire Suppression shall have a regular work schedule not to exceed 240 hours within the work period of 28 days. The typical work schedule rotation shall consist of two consecutive 24-hour workdays (48 hours) on-duty followed by four (4) consecutive 24-hour days (96 hours) off-duty. Thus such employees will work an average of 56-hours per week including sleep and meal periods, or 2,912 duty hours per year.

### 2.5.3 Overtime Compensation

The following overtime provisions apply:

- 2.5.3.1 For 7(K), 24-hour shift personnel, overtime shall be paid as follows:
  - 2.5.3.1.1 Hours worked in excess of (1) 48-hour shift shall be paid at one and one half times the employee's regular rate.
  - 2.5.3.1.2 Hours worked beyond 212 in a work period will be paid at one and one-half times the regular rate of pay, plus applicable FLSA differentials.
- 2.5.3.2 For 56-hour shift personnel assigned to a 40-hour assignment, overtime will be paid at one and one-half times the employee's regular rate of pay, plus applicable FLSA differentials, for all hours worked in excess of a regular work shift (8-hour day, 10-hour day, etc.).
- 2.5.3.3 Overtime shall be of at least ten (10) minutes in duration at any one time in order to be compensable.
- 2.5.3.4 Payroll documentation for Overtime Compensation must be submitted for payment in the same pay period as the shift worked.
- 2.5.3.5 FLSA Work Period. The parties agree to a 28-day FLSA work period. Regularly scheduled hours will be 216 hours (9 shifts) or 240 hours (10 shifts) during each 28 day FLSA cycle. Thus the regularly scheduled hours will become 216 or 240, depending on the assigned work schedule for a particular FLSA cycle, and the FLSA threshold will be 212 hours.

### 2.6: CALL BACK

- 2.6.1 Battalion Chiefs shall be guaranteed a minimum of three (3) hours of work or, if not provided, a minimum of three (3) hours of pay when they have left work and are called back to work. This minimum guarantee does not apply to employees who are called to work within two (2) hours of their regular starting time. Such three (3) hour guarantees shall be compensated at the rate of one and one-half (1-1/2) times the employee's regular hourly rate.

## **2.7: EDUCATIONAL PAY**

### **2.7.1. Emergency Medical Technician Premium**

2.7.1.1 As a condition of employment, unit members shall obtain, maintain and provide proof of a valid Fire Department approved Emergency Medical Technician Certificate and shall be paid two and one-half percent (2.5%) of current base pay per month in addition to the unit member's regular base rate of pay. EMT premium shall be incorporated into the unit member's compensation reported to CalPERS, in accordance with CalPERS law.

2.7.1.2 Any unit member who fails to possess and maintain a valid Fremont Fire Department approved Emergency Medical Technician Certificate shall not be entitled to payment of the two and one-half percent (2.5) of base pay per month until the valid Emergency Medical Technician certification is obtained.

2.7.2 Educational Incentive Pay. Educational Incentive Pay (EIP) is intended to encourage, recognize and reward the educational achievements of career employees who contribute to the efficiency and effectiveness of the department and prepare themselves for advancement through their educational efforts. The EIP program is administered by Fire Administration.

2.7.2.1 Eligibility. Except as provided herein, a regular employee covered by this MOU who attains one or more of the educational standards listed below shall receive the amount shown each pay period, in addition to his/her regular salary, provided the particular educational standard is in an approved field, as listed in Section 2.7.12 of this Article 2.

Qualified employees will begin receiving EIP the first full pay period beginning fourteen days after submission of all paperwork establishing eligibility and continuing education to the Fire Department.

EIP is subject to the terms of paragraph 2.7.4, Maintenance of EIP Pay.

2.7.2.2 EIP is established at the following levels:

2.7.2.2.1 "Grandfathered Plan." Employees who (1) have completed the following coursework as of August 1, 2017, (2) who are members of the bargaining unit (including employees in probationary status) on that date, and (3) who complete the necessary maintenance courses, shall receive the following EIP:

(a) (Old) Level I. State Fire Marshal Fire Officers

Certificate plus maintenance classes: (See Section 2.7.4):\$29.54 per pay period

OR

- (b) (Old) Level 2. Associate of Arts or Science Degree or 90 quarter or 60 semester Credits of approved course work or State Fire Marshal Chief Officer I Certification (see Section 2.7.4) (See Section 2.7.12 for a list of approved courses of study) \$59.08 per pay period

OR

- (c) Old Level 3. Bachelor of Arts or Science or Master of Arts or Science or 180 quarter/120 semester credits of approved course work (see Section 2.7.4) (See Section 2.7.12 for a list of approved courses of study) \$100.62 per pay period

Note: An employee may receive only one Level of EIP benefit and the EIP benefit is not Cumulative (e.g., an employee with 180 quarter credits and a State Fire Marshal Fire Officers Certificate will receive the (Old) Level 3 benefit and will not receive either the (Old) Level 1 or Level 2 benefit).

Note (2): The Grandfathered Plan will be closed as of July 31, 2017 and employees (including grandfathered employees) will not be permitted to qualify for any (Old) EIP Levels after that date. For example, an employee earning (Old) Level 2 EIP who achieves 180 quarter credits after July 31, 2017 will not receive (Old) Level 3 EIP.

Note (3): Individuals who are employed in a probationary status as of July 31, 2017 will qualify for the Grandfathered Plan based on coursework completed on or before July 31, 2017 and may enroll in the Grandfathered Plan after they complete probation.

2.7.2.2.2 "New Plan." Effective August 1, 2017, employees who have completed the following coursework shall receive the following EIP:

- (a) (New) Level 1. State Fire Marshal Company Officer Certificate plus maintenance classes (see Section 2.7.4): \$29.54 per pay period.
- (b) (New) Level 2. Associate of Arts or Science Degree from an accredited college or university OR State Fire Marshal Chief Fire Officer Certification: \$59.08 per pay period.
- (c) (New) Level 3. Bachelor of Arts or Science OR Master of Arts or Science from an accredited college or university: \$201.33 per pay period.

Note: An employee may receive only one Level of EIP benefit and the EIP benefit is not Cumulative (e.g., an employee with a BA, a State Fire Marshal Company Officer Certificate, and a State Fire Marshal Chief Fire Officer Certificate will receive the (New) Level 3 benefit and will not receive either the (New) Level 1 or Level 2 benefit).

2.7.3 Pre-approval of course work. The Fire Chief or his/her designee must pre-approve course work taken to fulfill the requirements of this program. This pre-approval is for the purpose of ensuring that all parties understand and agree to the nature and appropriateness of the course work. The approved courses of study are listed in the following subsection 2.7.12.

2.7.4 Maintenance of EIP Pay. All eligible Level 1 participants must complete, with a passing grade of "C" or equivalent, a minimum of 30 hours or 3 units of approved study and training to maintain their EIP, in accordance with the following table. The EIP Maintenance requirements set forth in this subsection shall not apply to those persons that qualify for either Level 2 or Level 3 Education Incentive Pay.

<u>Years of Service</u>	<u>30 hours/3 units of approved course work required</u>
3-9 years	Each year
10-19 years	One course every 2 years
20+ years	One course every 3 years

2.7.5 Forfeiture of EIP Pay. Level 1 participants who fail to complete the required annual course work will forfeit their EIP for the next 12 months on the anniversary of the EIP award. Reinstatement of pay may be achieved on the next EIP anniversary by completing the annual course work requirements.

2.7.6 Ineligible Course work. All course work/study/training attended by employees on their own time for which the City pays all or a portion of the cost of registration, tuition, housing, travel, books/supplies, etc., does not qualify for participation in the program. Course work related to

maintaining a certification that is a work requirement (paramedic certification, EMT certification, EMD certification, driver license, etc.) does not qualify for participation in the program.

2.7.7 City-provided Training. It is expressly understood by the parties that mandatory training required and/or provided by the City of Fremont for which employees receive either regular straight time or overtime compensation does not qualify for payment under the terms of the Educational Incentive Program.

2.7.8 Assignment of Credits.

2.7.8.1 Three (3) units of approved community college, college, or university work shall be equivalent to thirty 30 hours of classroom study. Education must be attained at an educational institution accredited by the Western Association of Schools and Colleges.

2.7.8.2 Credit for special classroom study, training or certificates as approved by the Fire Chief or his/her designee, obtained by participation in California State Fire Training courses, or other approved courses, may be combined with college enrollment to obtain the required thirty hours or three units.

2.7.9 Grade Requirements. Personnel attending schools, colleges or universities will be required to complete the course of study with a minimum of a "C" grade or equivalent. An official transcript or other certified notification from the institution shall be furnished by the employee. For non-graded courses or training programs, a certificate of completion, together with evidence of satisfactory attendance, shall be provided by the employee.

2.7.10 Course Completion Documentation. It is the responsibility of the employee to furnish documentation of course completion within 45 days of course completion. Failure to do so may result in denial of eligibility.

2.7.11 Refresher Course Requirements. Personnel may take "refresher" courses for the purpose of maintaining eligibility for the additional compensation as provided in Paragraph 2.7.2.1. Refresher courses will not be credited for the purpose of establishing eligibility for the program. A "refresher" course is defined as a course of instruction similar but not identical to one already taken. Course titles may be similar or identical as long as there are significant changes in subject matter presented. "Refresher" courses shall be pre-approved by the Fire Chief or his/her designee.

2.7.12 Approved Courses of Study. The following courses are generally accepted as approved courses of study qualifying an employee for participation in the Educational Incentive Program:

- Fire Science
- Business Administration/Management
- Computer Science
- Public Administration/Public Management
- California State Fire Marshal Certificates: Fire Science Certificate of Achievement, Certified Fire Officer, Certified Chief Officer
- Other job-related courses approved by a Division Chief

2.7.13 Appeal of EIP Participation. Employees wishing to appeal EIP participation, approved course work or forfeiture of EIP may submit a written appeal to their Division Chief for consideration within 15 calendar days of notice on the matter being appealed. The decision of a Division Chief shall be final and binding.

## **2.8: UNIFORM ALLOWANCE**

2.8.1 Effective the first pay date in July 2019, the City shall pay to each employee covered by this MOU a uniform allowance of \$26.93 per pay period, for a total of Seven Hundred Dollars (\$700) per year for the purpose of obtaining and maintaining uniforms as specified by the City. Employees shall continue to be required to adhere to the maintenance standards and uniform specifications established by the City. The department shall maintain and publish a list of all approved suppliers.

2.8.2 New employees shall, as soon as practical after the date of initial employment/promotion, receive Seven Hundred Dollars (\$700) for the purpose of reimbursing a portion of the initial uniform expense. New hires shall not be entitled to any additional uniform allowance during the first year of employment with the City. On the first pay date following the completion of one (1) one year of employment, such employees shall begin receiving the biweekly uniform allowance as specified in section 2.8.1 above.

## **2.9: HAZARDOUS MATERIALS EXPOSURE REPORTING SYSTEM**

The City agrees to contribute a maximum of \$20 annually per employee to the California Professional Fire Fighters Hazardous Materials Exposure Reporting System.

# ARTICLE 3 - LEAVES

## **3.1: VACATION LEAVE PLAN**

Vacation Leave for employees covered by this MOU shall be administered as follows:

### 3.1.1 Definitions

For the purposes of this Article, the following terms have the meanings stated below:

- 3.1.1.1 Old Vacation Leave Bank means all Vacation Leave accrued by the individual employee in this bargaining unit on or before December 31, 1993.
- 3.1.1.2 Vacation Leave Bank means all Vacation Leave accrued by the individual employee in this bargaining unit on and after January 1, 1994.
- 3.1.1.3 Benefit Load means the premium, based on an additional cash factor relating to the cost of benefits, which may be liquidated on Old Vacation Leave accrued on and before December 31, 1993, upon termination of employment with the cash value of base salary. The Benefit Load for this bargaining unit is 36.942% of base salary.

### 3.1.2 Vacation Leave Accrual Schedule

3.1.2.1 For employees hired on or before December 31, 2015, and who have not elected to be subject to the new longevity plan (Sections 2.2.4 and 2.2.5), the following vacation leave accrual schedule will apply:

3.1.2.2 Eligible employees assigned to a fifty- six (56) hour per week schedule shall accrue vacation on the following basis. The hours per year will be divided by 26 biweekly pay periods:

Vacation for 56-Hour Personnel Years of Service	Hours Per Year	Hours Per Biweekly Pay Period	Maximum Accrual
1 <sup>st</sup> through 5 <sup>th</sup>	158	6.0769 hours	316 hours
6 <sup>th</sup> through 10 <sup>th</sup>	204	7.8462 hours	408 hours
11 <sup>th</sup> through 15 <sup>th</sup>	250	9.6154 hours	500 hours
16 <sup>th</sup> through 20 <sup>th</sup>	283	10.8846 hours	566 hours
21 <sup>st</sup> through 26 <sup>th</sup>	295	11.3462 hours	590 hours
27+ years	127	4.8846 hours	590 hours

3.1.2.3 Eligible employees assigned to a forty (40) hour per week schedule shall accrue vacation on the following basis. The hours per year will be divided by 26 biweekly pay periods:

Vacation for 40-Hour Personnel Years of Service	Hours Per Year	Hours Per Biweekly Pay Period	Maximum Accrual
1 <sup>st</sup> through 5 <sup>th</sup>	113	4.3462 hours	226 hours
6 <sup>th</sup> through 10 <sup>th</sup>	146	5.6154 hours	292 hours
11 <sup>th</sup> through 15 <sup>th</sup>	179	6.8846 hours	358 hours
16 <sup>th</sup> through 20 <sup>th</sup>	202	7.7692 hours	404 hours
21 <sup>st</sup> through 26 <sup>th</sup>	211	8.1154 hours	422 hours
27+ years	91	3.5000 hours	422 hours

3.1.2.4 For employees hired on or after January 1, 2016, and those employees hired on or before December 31, 2015 who have elected to enter the new longevity plan (Sections 2.2.4 and 2.2.5), the following vacation leave accrual schedule will apply:

3.1.2.5 Eligible employees assigned to a fifty-six (56) hour per week schedule shall accrue vacation on the following basis. The hours per year will be divided by 26 biweekly pay periods:

Vacation for 56-Hour Personnel Years of Service	Hours Per Year	Hours Per Biweekly Pay Period	2X Annual Maximum Accrual
1 <sup>st</sup> through 5 <sup>th</sup>	158	6.0769 hours	316 hours
6 <sup>th</sup> through 10 <sup>th</sup>	204	7.8462 hours	408 hours
11 <sup>th</sup> through 15 <sup>th</sup>	250	9.6154 hours	500 hours
16 <sup>th</sup> through 20 <sup>th</sup>	283	10.8846 hours	566 hours
21 + years	295	11.3462 hours	590 hours

3.1.2.6 Eligible employees assigned to a forty (40) hours per week schedule shall accrue vacation on the following basis. The hours per year will be divided by 26 biweekly pay periods:

Vacation for 40-Hour Personnel Years of Service	Hours Per Year	Hours Per Biweekly Pay Period	Maximum Accrual
1 <sup>st</sup> through 5 <sup>th</sup>	113	4.3462 hours	226 hours
6 <sup>th</sup> through 10 <sup>th</sup>	146	5.6154 hours	292 hours
11 <sup>th</sup> through 15 <sup>th</sup>	179	6.8846 hours	358 hours
16 <sup>th</sup> through 20 <sup>th</sup>	202	7.7692 hours	404 hours
21+ years	211	8.1154 hours	422 hours

3.1.3 For purposes of Section 3.1.2, Union City service counts as City of Fremont service for those employees who came to the City of Fremont in 1994 as part of the original Union City fire services contract.

3.1.4 The City will draw down Vacation Leave accruals based on the "Last In First Out" method.

### 3.1.5 Liquidation Of Old Vacation Leave At Termination

All remaining Old Vacation Leave Bank hours earned on or before December 31, 1993 shall be liquidated at termination at an hourly rate based on the following formula:

Monthly base pay plus 36.942% of monthly base pay multiplied by twelve (months in the year) divided by the number of work hours in the year (2080 for 40 hours/ week employees or 2912 for 56 hours/ week employees).

Vacation Leave accruals will not replenish or replace Old Vacation Leave accruals.

### 3.1.6 Termination Of Liquidation Of Vacation Leave During Employment

All liquidation of Old and/or Vacation Leave during employment shall cease with the Old Vacation Leave accrued through December 31, 1993.

### 3.1.7 Liquidation Of Vacation Leave At Termination

All remaining Vacation Leave Bank hours earned on or after January 1, 1994, shall be liquidated at the hourly base rate in effect at termination.

### 3.1.8 Vacation Leave Accrual Use (Not Annual Selection) and Voluntary Overtime

The following conditions must be satisfied at time of request for use of vacation leave accruals, other than those requested and granted during the annual selection process, and to be approved to work voluntary overtime:

- Training records up to date
- No critical work assignments overdue as a result of the vacation leave
- No incomplete response reports
- No critical conflicts with Training Division – training calendar, post-incident analyses, training, classes, and recertification for EMT's and paramedics (unless the employee submits a makeup plan that will be at no additional cost to the City).

The City will determine whether an employee has satisfied the requirements of this new section and the period during which the already precluded vacation leave accrual use and voluntary overtime and shift trades will not be approved if an employee fails to comply with these MOU requirements. The following would be implemented after a four month grace transition period during which employees could get used to

the following requirements.

“Productivity Reports” (RMS NIRS Reports, and Training Records) will be run prior to the first Wednesday of each month and posted on the Fire Department’s internal website, with the Division Head findings regarding the reason the report(s) are not completed forwarded to the appropriate Division Head.

After the initial Productivity Report is generated, no action will take place for five business days to allow the opportunity to determine if an extenuating circumstance exists. It is understood and agreed that this five business day waiting period is not intended for, and should not be used to, make up work that should have been completed on time. If extenuating circumstances do not exist, the request to initiate shift trades, voluntary overtime and vacation use (other than annual selection) during the following two week pay period (after this five business day waiting period) will be denied.

At the end of the two week period, a Productivity Report will be run to verify the applicable report(s) have been completed. If the report(s) are completed, shift trade, voluntary overtime and vacation privileges will be reinstated. If the report(s) are not completed, the restrictions on shift trade, voluntary overtime and vacation use will remain through the next pay period.

If extenuating circumstances are found, such as an extended on the job injury, or an electronic malfunction, the Division Head may, in his/her discretion, allow the report(s) to be completed past the due date without the 2-week denial of shift trades, voluntary overtime and vacation use (non-annual selection).

To maintain the required number of rated Battalion Chiefs on duty, Battalion Chiefs will be allowed to work overtime without the conditions of item 3.1.8 being satisfied. When this occurs, the Duty Chief will be notified. Additionally, nothing in this section will prevent pre-authorized, trade pay back from occurring as originally scheduled.

### 3.1.9 Liquidation Of Unused Vacation Hours

Internal Revenue Service (IRS) regulations require the City to report and withhold taxes on the value of the paid leave an employee is eligible to sell back. In order to ensure compliance with the IRS requirements and to avoid unanticipated tax consequences:

#### **Effective July 1, 2019:**

On or by the first pay date in December of each calendar year, eligible employees who want to cash out accrued vacation leave in the following calendar year shall make an irrevocable election to cash out vacation leave accrued in the next calendar year, subject to the maximums set

forth in the table below. Payouts will occur on the last pay date in June and the last pay date in December. Employees may specify the number of hours to be paid out in June and the number to be paid out in December (with the total not to exceed the maximums in the chart below). If neither date is selected, the full payout will occur in December.

To be eligible for leave cash-out, an employee must have a combined (old and new) vacation leave balance of at least 75% of their maximum accruable vacation leave by the end of the last full pay period in September in the year of election. On or before the last pay date in November, the City will notify employees whether they qualify for cash-out and in what amount.

<u>Years of Continuous Service</u>	<u>Max Amount per Calendar Year</u>
1 through 10 years	40 hours or 56 for suppression
11 years and after	60 hours or 84 for suppression

### **3.2: SICK LEAVE**

3.2.1 All eligible employees shall accrue sick leave for each calendar month of service, as described below.

3.2.1.1 All eligible employees assigned to a 56-hour work week schedule shall accrue sick leave at the rate of 12 hours per month.

3.2.1.2 All eligible employees assigned to a forty (40) hour per week schedule shall accrue sick leave at the rate of 8.57 hours per month.

3.2.2 Sick leave, either with pay or without pay, shall not be allowed for any absence resulting from illness or injury arising out and in the course of employment by the City of Fremont. If sick leave is claimed and awarded in error, the City shall be entitled to recover the amount of salary paid on account thereof. Such sick leave shall then be restored to the account of the employee upon recovery by the City of the total amount paid.

### **3.3: SICK LEAVE INCENTIVE PLAN**

3.3.1 Fifty-six (56) hour employees who have 500 or more hours of accrued sick leave on the books and who used no more than three shifts of sick leave in the prior fiscal year or 40-hour employees who have 356 hours and use no more than 48 hours will receive 24 hours of leave for personal use as of the first pay period in August each year. If the employee secures a replacement which would not compromise service levels from the short-time overtime signup list, he/she may use up to 24 hours personal time in two (2) to four (4) hour increments. The employee may opt to use the 24 hours in increments of no less than two (2) hours. Personal time not used in a fiscal year will be paid to the

employee on the first pay period in the following August each year of the contract.

The parties shall establish a short-time sign-up list for voluntary overtime. The sign-up may be for as short a period as 2 hours. The normal 3-hour call back minimum shall not apply regarding this list.

### **3.4: BEREAVEMENT LEAVE AND PERSONAL LEAVE DONATION**

3.4.1. Pursuant to Article XII, Section 2.02 of Council Resolution No. 688, an eligible employee, in case of a death in the immediate family, may be granted emergency leave of absence with pay but such leave is not to exceed:

3.4.1.1. Three (3) shifts for employees assigned to a fifty-six (56) hour per week schedule; or

3.4.1.2. Five (5) workdays for employees assigned to a forty (40) hour per week schedule.

Immediate family for the purpose of emergency leave shall include the child, stepchild, brother and sister, parent, grandparent, and current spouse of the employee, the parent and grandparent of the current spouse of the employee, or a life partner residing in the same household who is not a legal spouse, and any person who at the time of his/her death was related to and resided in the same household as the employee.

#### **3.4.2. Personal Leave Donation**

In the event of a medical, personal or family emergency, employees covered under this MOU may donate prospective future leave accruals to other Union employees, providing the following:

3.4.2.1. Only future, un-accrued vacation may be donated.

3.4.2.2. The recipient employee will accrue seniority up to a maximum of 60 days until he/she is eligible for LTD.

3.4.2.3. The recipient employee will be responsible for payment of taxes due on the salary received when the leave is used.

3.4.2.4. The City will determine whether a leave of absence will be approved for the recipient employee, and the Executive Board will determine whether future leave accruals can be donated for the time off.

3.4.2.5. Neither the City nor the Union shall discriminate in any way with respect to the donation of future leave accruals based on race, religion, creed, political affiliation, color, national origin,

ancestry, sex, marital status, age, sexual orientation, medical condition, or physical or mental disability.

3.4.2.6. The parties agree to follow Family Medical Leave Act guidelines which will generally provide direction for evaluating leave requests.

3.4.2.7. The City may reopen, at its option, this whole section (3.4.2) if it has established a City-wide personal leave donation policy. Changes shall be by mutual agreement.

### **3.5: FAMILY LEAVE ACTS**

It is the City's intent to comply fully with the requirements of the California Family Rights Act (CFRA), the federal Family and Medical Leave Act (FMLA), California requirements regarding pregnancy disability leave (PDL), Labor Code section 233, the City of Fremont Personnel Rules regarding Leave Without Pay, the Sick Leave Plan, and the Vacation Leave Plan.

### **3.6: HOLIDAY PAY/LEAVE OPTION**

3.6.1. The following days of each year are designated as holidays:

- 3.6.1.1 January 1
- 3.6.1.2 The third Monday in January, known as "Martin Luther King Day"
- 3.6.1.3 The third Monday in February, known as "Presidents Day"
- 3.6.1.4 The last Monday in May, known as "Memorial Day"
- 3.6.1.5 July 4
- 3.6.1.6 The first Monday in September, known as "Labor Day"
- 3.6.1.7 November 11, known as "Veterans Day"
- 3.6.1.8 The Thursday in November appointed as "Thanksgiving Day"
- 3.6.1.9 The day following "Thanksgiving Day"
- 3.6.1.10 December 24
- 3.6.1.11 December 25
- 3.6.1.12 December 31
- 3.6.1.13 Every other day appointed by the President or Governor and authorized by the City Manager or designated by the City Council for a public fast, Thanksgiving or holiday.

#### **3.6.2 Additional Holidays**

Should the City Council designate any other day as a holiday for any other employee organization, such holiday shall be accorded employees of this unit.

#### **3.6.3 Annual Accrual of Holiday Hours**

Accrual rates for all members of the bargaining unit on a 56 hour work week shall be 12 hours per month, for a maximum of 144 hours per fiscal year.

### 3.6.4 Holiday Options

3.6.4.1 Option 1 – Bi-weekly Payout. Employees working a 56-hour schedule accrue 12 hours per month and will be paid as accrued (5.538 hours) each pay period.

Option 2 – Holiday Bank. Holiday hours accrue at 12 hours per month (5.538 hours each pay period). Unused bank balances will be automatically paid out at designated time each year.

3.6.4.2 Employees working a 40-hour schedule will continue to receive their regular pay for each holiday (8 hours) observed by the City.

3.6.4.3 Declaration Process for Holiday Options. Failure to elect a holiday option by the designated day will result in status quo holiday option. The annual holiday option process is as follows:

1. May 1 all years, members will elect either holiday Option 1 or holiday Option 2.
2. Option 1, biweekly payout results in pay as described above in 3.6.4.1.
3. Option 2, earned hours for remainder of fiscal year will be earmarked for use or payout by October 1 after fiscal year end.

3.6.4.4 Unused hours payout will occur on the first biweekly pay check in November after fiscal year end.

3.6.4.5 Banked holiday hours shall be used in accordance with guidelines of the current vacation policy.

## ARTICLE 4 - INSURANCE

### 4.1: HEALTH BENEFITS ALLOWANCE

4.1.1 The City shall secure and make available to all eligible employees, medical insurance, dental insurance, accidental death and dismemberment insurance, child care reimbursement, and excess medical expense reimbursement, plans under the Alternative Benefits and Compensation Plan (ABC Plan). The ABC Plan is a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code.

- 4.1.2 The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).

Effective July 1 2019, the Health Benefits Allowance shall continue to be set at \$2,180.00 per month.

Effective January 1, 2020, the Health Benefits Allowance shall increase by \$100 to \$2,280.00 per month.

Effective January 1, 2021, the Health Benefits Allowance shall increase by \$70 to \$2,350.00 per month.

- 4.1.3 In the event premiums and/or costs for the benefits selected by the employee exceed the amount in the Health Benefits Allowance, the balance will be paid by the employee through automatic pretax payroll deduction, as allowed under Internal Revenue Code Section 125. Health Benefit Allowance amounts not exhausted for the purchase of benefits under the Alternative Benefits and Compensation Plan will be paid to the employee in taxable cash as provided below:

4.1.3.1 Effective June 30, 2013 the maximum amount paid in any month to an employee under the Alternate Benefits and Compensation plan shall be \$580.00.

- 4.1.4 The City's contribution as established above shall be the maximum amount required, and the City shall not be responsible for the contribution of any sum in addition to those established by the terms of this MOU.

- 4.1.5 As provided under the Public Employees' Medical and Hospital Care Act (PEMHCA), medical care benefits are provided through the California Public Employees' Retirement System (CalPERS) medical plan. Employees who elect coverage under PEMHCA may also elect coverage for a domestic partner to the extent permitted by and according to the procedures of Government Code Section 22873.

- 4.1.6 In the event that the benefits of this section become subject to federal or state taxation, the City and the Union shall meet in a timely manner to discuss the impact.

- 4.1.7 In the event the federal government implements a nationwide medical plan that mandates changes to the health and welfare sections of this MOU, the City and the Union shall agree to meet and confer in a timely manner to discuss the impact.

- 4.1.8 Dental Plan

Effective August 1, 2009, the City assumed administration of the dental plan. To the extent the plan continues to be offered by Delta Dental, employees will continue to be covered by the same dental plan design

after August 1, 2009. If the same plan is no longer offered by Delta dental, the City and the Union will meet and confer and reach agreement on the new plan design.

Effective August 1, 2009, the City agreed to offer a retiree dental plan to retirees from this bargaining unit who pay for the premium through their carrier.

#### **4.2: RETIREE MEDICAL INSURANCE**

4.2.1 For employees hired on or before December 31, 2011, the City's contribution toward reimbursement of retiree medical insurance premiums for eligible retired employees with between 0 and 24 years of service will be computed as \$10/month for each year of completed service with the City of Fremont. If the employee has 25 or more years of service with the City of Fremont, the City's contribution toward reimbursement of retiree medical insurance premiums will be an amount equal to the Kaiser Health Plan California premium for two-party coverage in effect at the date of retirement.

For employees hired on or after January 1, 2012, the City's contribution toward reimbursement of retiree medical insurance premiums for eligible retired employees with between 0 and 24 years of service will be computed as \$10/month for each year of completed service with the City of Fremont and, if the employee has 25 or more years of service with the City of Fremont, the City's contribution toward reimbursement of retiree medical insurance premiums for this category of retirees will be \$500 per month.

For those employees who came to the City of Fremont in 1994 as part of the original Union City fire services contract, Union City service will be counted as City of Fremont service.

4.2.2 Upon adoption of this MOU by the City Council, the City agrees to provide to the surviving spouse of eligible retired employees, a survivor spouse benefit in accordance with the following:

Survivor spouse benefit:    10-14 years = \$90/month  
    15 years = \$97.50/month  
    16 years + beyond = \$100/month

Upon remarriage, surviving spouse will cease to be eligible for the benefit.

4.2.3 The retiree medical reimbursement amount described above shall be reduced by the CalPERS-required employer portion of the premium if the retiree purchases insurance through the CalPERS plan.

4.2.4 Employees who retire from the City of Fremont will be given years of service credit for up to 10 years of paid full-time service as a public safety employee with other fire agencies in applying the formulas above.

4.2.5 It is understood that should the Union elect to continue medical insurance premium coverage for eligible retired employees, any cost increases occurring and projected at the time of negotiation of a new MOU shall be considered a cost to the new agreement.

#### **4.3: LIFE INSURANCE**

All eligible employees in the Battalion Chief classification shall be provided Fifty Thousand Dollars (\$50,000) of group life insurance under a program to be selected and administered by the City.

#### **4.4: LONG TERM DISABILITY**

Effective August 1, 2017, the City will contribute \$24.50 per month to LTD Trust maintained by the Union for the purposes of providing Long Term Disability Insurance.

Any required premium amount greater than the maximum city contribution shall be paid by the employees directly to the carrier or its designated agent, and the City shall not be required to withhold money from paychecks for the purpose of payment of premiums or portions thereof for such coverage. It is agreed and understood that the City shall not be held responsible or liable for any matters, including the determination and payments of benefits arising in the administration of this insurance plan.

All employees in classes of positions covered by this MOU shall be eligible for coverage by such plans, regardless of whether or not they are members of the Union.

#### **4.5: EMPLOYEE ASSISTANCE PLAN**

4.5.1 The Union shall be exclusively responsible for contracting and administration of a Union-sponsored Employee Assistance Plan. Effective January 1, 1994, and for the term of this Understanding, the City shall pay the Union seven dollars (\$7) per month per employee for the purpose of payment of the Employee Assistance Plan contract premium.

4.5.2 If the City implements a Citywide Employee Assistance Plan during the term of this Understanding, the City shall cease making payments to the Union-sponsored Employee Assistance Plan. The City plan shall include all the benefits of the Union plan.

4.5.3 The Union, shall defend, save, indemnify and hold harmless the City, and its officers, agents and employees from any and all liabilities and claims for damages from any cause whatsoever arising from or connected with and on account of the contracting and administration of the Union-sponsored Employee Assistance Plan.

## ARTICLE 5 - RETIREMENT

**5.1: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS)**

The City agrees to continue its contract with CalPERS with the following retirement benefits for all Fire Safety employees:

- 5.1.1 Military service credit, as specified in Section 21024 of the Government Code with the eligible employee required to contribute both the employer's and employee's contributions and interest.
- 5.1.2 "Credit for Unused Sick Leave" (Section 20965 of the Government Code) retirement benefit.
- 5.1.3 The "Increased" and the "Third" levels to the existing '59 Survivor Benefit program in accordance with Sections 21572 and 21573 of the Government Code. In addition, the City will amend its contract with CalPERS as soon as is administratively feasible to contract for the Fourth Level Survivor Benefit.
- 5.1.4 The continuation of the Post-survivor allowance after remarriage in accordance with Section 21551 of the Government Code.

Benefit	Employees hired before 4/8/12	Employees hired from 4/8/12 – 12/31/12 and Classic CalPERS Members Hired After 12/31/12 <small>(as defined by the Public Employees' Pension Reform Act of 2013 (PEPRA))</small>	Employees hired 1/1/13 or later as new CalPERS Members
Retirement Formula	3% at age 50	3% at age 55	2.7% at age 57
Average Highest Comp. Time	Single highest year	Average of three highest years	Average of three highest years
Normal Member CalPERS Contribution	9%	9%	50% of normal cost (currently 11.25%)
Additional Contribution to Employer CalPERS	3%	3%	.75%
Total Required CalPERS Contribution	12%	12%	12%

**5.2: CONTINUATION OF INTERNAL REVENUE CODE SECTION 414(H)(2) EMPLOYER PICKUP**

Employee contributions towards the cost of their CalPERS pension benefits will

be deducted on a pre-tax basis to the extent permitted by law.

## ARTICLE 6 - ISSUE RESOLUTION PROCESS

### 6.1: INTENT

The parties encourage effective communication and resolution of disputes as quickly as possible. If the parties cannot reach a resolution through informal methods, the following formal grievance procedures shall be utilized.

### 6.2: FORMAL GRIEVANCE AND APPEALS

6.2.1 Formal Grievance. A formal grievance shall be defined as any dispute concerning the interpretation or application of this MOU (or side letters thereto) or any ordinance or resolution, or of rules or regulations of the City or Fire Department governing personnel practices or working conditions. A formal grievance shall also include a grievance appealing the imposition of final disciplinary action.

6.2.2 Definition of Time – All references to “day(s)” herein mean “calendar days”, excluding holidays, unless expressly defined differently herein.

### 6.3: GENERAL PROVISIONS

6.3.1 Grievances appealing the imposition of final disciplinary actions shall be filed directly at Step 2 of this dispute resolution process.

6.3.2 The time limitations specified in this grievance process may be extended by mutual consent of the parties.

6.3.3 Probationary Unit Members

A unit member rejected by the City during probation shall have no right to appeal or grieve the rejection, except where the Union alleges discrimination for protected Union activity. Nothing in this subsection shall affect the rights of a promotional probationary unit member.

### 6.4: FORMAL WRITTEN GRIEVANCE PROCEDURE

Step 1. Formal Submission. The employee or Union representative may submit the dispute in writing to the Fire Chief within thirty (30) days of the date the employee or Union could reasonably be expected to know of the issue(s) giving rise to the grievance. The grievance shall state the specific section of the MOU, City ordinance or resolution, or Personnel Rules alleged to be violated, the nature of the grievance, and the proposed resolution. The Fire Chief shall render a decision in writing to the employee and/or Union representative within fourteen (14) calendar days following submission of the grievance. The Fire Chief's failure to respond within the stated time frame shall be considered a denial of the grievance.

Step 2. City Manager or Designee -- Union Representative. Should the grievance remain unresolved following Step 1, the employee or Union representative may, within fourteen (14) calendar days after the due date for the Fire Chief's response, submit the grievance or appeal in writing to the City Manager/Designee. In the case of a grievance appealing the imposition of final discipline, the employee or Union representative may, within fourteen (14) days following the date upon which the employee was notified of the imposition of final discipline, submit the grievance appeal in writing to the City Manager/Designee. The City Manager/Designee shall meet with the employee and/or Union representative within fourteen (14) calendar days following receipt of the grievance/appeal. The City Manager/Designee shall issue a written decision within fourteen (14) calendar days after the date of the meeting. The City Manager's/Designee's failure to respond within the stated time frame shall be considered a denial of the grievance/appeal.

#### **6.5: DISCIPLINE STANDARDS**

Any discipline imposed will be for "just cause."

#### **6.6: ARBITRATION**

The Union and the City agree that the final resolution of any grievance defined in Sections 6.2.1 shall be by binding arbitration.

##### **6.6.1 Filing for Arbitration**

If a grievance or disciplinary appeal is not resolved at Step 2, the Union and the Union alone may submit a matter to arbitration. The submission shall be made in writing to the City's Human Resources Director within fourteen (14) calendar days after the date the Step 2 response was due.

##### **6.6.2 Arbitration Process**

Upon notice of intent to arbitrate, the Union and the City shall select an arbitrator. If unable to mutually agree on the selection of an arbitrator, a list of available arbitrators shall be obtained from the California State Mediation and Conciliation Service, or if by mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, a coin shall be flipped and the party correctly calling the coin flip shall have the choice of determining which party shall first strike a name from the list. In addition, an additional means of deciding by lot who shall strike first may be used by mutual agreement. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the unit member and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

The arbitrator's award shall be final and binding. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this MOU, except by the mutual agreement of the parties.

#### 6.6.3 California Arbitration Act

All arbitration proceedings shall be governed by the California Arbitration Act (C.C.P. Section 1280, et seq.).

#### 6.6.4 Confidentiality of Discipline

The Union and the City endorse the principle that disclosure of information relating to contemplated unit member discipline may, in many instances, serve no public purpose and may be harmful to the City, the Union, and the unit member concerned. This endorsement of principle is not intended to create any enforceable rights on the part of any person or entity.

#### 6.6.5 Costs of Arbitration

The Union and the City agree to share equally all costs of arbitration, including, but not limited to, the arbitrator's fees and costs, but each party shall be responsible for their own respective costs of making their presentation to the arbitrator, including, but not limited to, their own attorneys' fees, expert witness fees, regular witness fees, etc. If the services of a court reporter are utilized by mutual agreement or requirement of the arbitrator, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.

#### 6.6.6 Abuse of Subpoena Process

Notwithstanding the above, if either party abuses the subpoena process, the arbitrator may impose the full cost of proceedings upon the abusing party. The issue must be raised during the arbitration hearing.

#### 6.6.7 Post-Hearing Briefs

The parties are interested in minimizing legal expenses, getting an arbitrator's decision as soon as possible, and having the arbitrator make a just decision. With these interests in mind, the parties shall mutually agree to either argue the evidence orally or prepare written argument at the conclusion of the hearing. If the parties are unable to mutually agree, the final decision shall be made by the arbitrator weighing the above interests. Nothing in this section precludes either party from preparing and presenting a pre-hearing brief.

### 6.6.8 Union's Right to Grieve

The Union may initiate a grievance if a member of the bargaining unit could grieve.

## 6.7: FIREFIGHTERS PROCEDURAL BILL OF RIGHTS

The City will comply fully with the Firefighters Procedural Bill of Rights Act (Government Code sections 3520-3262) and, to the extent any aspect of the discipline process described in Section 6.6 does not satisfy the requirements of the Act or needs to be supplemented by the requirements of the Act, the parties will comply with the requirements of the Act.

## 6.8: DUTY TO BARGAIN – NOTICE AND OPPORTUNITY

6.8.1 For matters within the scope of representation as defined by Government Code section 3500 *et seq* and case law interpreting those provisions, if the City wishes to make a change it shall notify the Union and, upon request, shall meet-and-confer in good faith within the meaning of the above-mentioned Government Code sections. This section shall be applied and interpreted consistent with Article 1, Section 1.6 of this MOU.

### 6.8.2 Existing Benefits

Except as provided herein, this MOU does not modify existing wages and benefits contained in the current salary resolution, other compensation and benefits resolutions, or in the Personnel Resolution or Personnel Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this MOU. In addition, existing benefits and practices within the scope of representation that are a part of an employee's total compensation package may not be changed without mutual agreement. Total compensation includes any economic benefit to an employee, which has a specific ascertainable cost to the City. Trades or overtime are not part of the total compensation package; furnishings and housekeeping supplies are included.

### 6.8.3 Urgent And Pressing Circumstances

In the event that the City believes that an urgent and pressing circumstance exists which requires that a decision or change be quickly implemented, the Union will be notified of the circumstances. Urgent and pressing circumstances include but are not limited to those that require immediate action based on health, safety, service delivery, and/or liability. A representative of the Union will be given the opportunity to have input into the interim remedy. If prior notification is impossible, notification will be made as soon as possible after implementation. In either event, the remedy imposed will only be

temporary until the parties have an opportunity to meet as described above in this Section 6.8.1.

## ARTICLE 7 - UNION ISSUES

### **7.1: DUES DEDUCTION**

Upon written notification from the Union, the City shall deduct regular monthly membership dues from bargaining unit employees' paychecks. Amounts deducted and withheld by the City shall be transmitted promptly to the officer designated in writing by the Union as the person authorized to receive such funds at the address specified by the Union.

Deductions may be revoked only pursuant to the terms of the member's written authorization. The City shall direct member requests to cancel or change deductions to the Union and shall rely on information provided by the Union regarding whether deductions for a member were properly canceled or changed. However, the parties agree that the City shall automatically cease deductions for any member who is no longer employed in a classification represented by the Union.

The Union, shall defend, save, indemnify and hold harmless the City, and its officers, agents and employees from any and all liability and claims for damages from any cause whatsoever arising from or connected with and on account of dues deductions made by the Union.

### **7.2: MEET AND CONFER TIME OFF**

Those employees who are authorized to attend scheduled meetings with the Municipal Employee Relations Officer or other management representatives for the purpose of meeting and conferring or representing members shall not suffer any loss of compensation for such time. In addition, such employees shall be allowed up to one (1) hour off, without loss of compensation, immediately prior to and immediately following such scheduled meetings. Such time off shall not be deducted from the Union Time Bank. Such time off shall be counted as hours worked for all purposes.

Any employee who intends to use such time shall notify the Fire Chief as soon as practical after the time and date of the scheduled meeting is established.

### **7.3: UNION RELEASE TIME**

A bank of hours has been established for Union business in another MOU. With regard to that bank of hours, the parties agree that Union release time will not be charged when the City invites Union participation in a topic of discussion involving this bargaining unit. Union release time may be used as provided in the other MOU, including the manner in which such usage is approved.

**7.4: COMMON MESS**

All employees on each shift at each station shall attend an organized mess at the station for consumption of meals. Employees shall contribute in equal shares for the cost of such meals. The Department shall not be responsible in any manner for the cost of such meals, for the preparation thereof, for the collection of any funds or for the enforcement of or any other costs connection to this section.

ARTICLE 8 - OPERATIONAL ISSUES

**8.1: MAINTENANCE OF CERTIFICATIONS AND LICENSES**

8.1.1 All personnel are required to maintain any and all applicable certifications and licenses required of the classification and/or assignment.

The Fire Department shall make every effort to provide the necessary opportunities to enable personnel to remain certified. Noncompliance with these provisions shall result in reassignment from the Suppression division to a 40-hour week assignment in the Training division for remedial skills work until such time as the certifications and/or licenses are renewed/re-certified.

8.1.2. For the purposes of this section, certifications and licenses include but are not limited to the Emergency Medical Technician - I certification, appropriate California driver's license and any other licenses and/or certifications which may be mandated by outside regulatory agencies.

**8.2: SUPPRESSION DIVISION WORK SCHEDULE**

The work schedule for employees assigned to the Suppression Division shall be 56-hours per week; two (2) consecutive days on-duty, followed by four (4) consecutive days off-duty.

The only exception to this article is if the Fire Chief anticipates extraordinary incidents of extended duration requiring significant call back. Examples of extraordinary incidents include but are not limited to a major fire in our outside of the City limits, an extended major hazardous materials incident, an earthquake or other natural or man-made disaster. During extraordinary incidents the Fire Chief has the authority to alter the work schedules until normal routine resumes.

Workdays for employees assigned to the Suppression Division will begin at 0800 hours and end at 0800 hours the following day. A shift shall be two consecutive workdays. All employees must be in uniform and ready to work by 0800 hours including the second workday of the shift. Weekdays, weekends and holidays shall be considered normal workdays. Personnel shall engage in the full breadth of activities assigned including but not limited to training, drills,

inspections, apparatus maintenance, station maintenance, hydrant maintenance, district preplanning, department logistics, Public Relations Activity Requests and program management.

## ARTICLE 9 - MODIFIED DUTY POLICY FOR EMPLOYEES INJURED OFF THE JOB

### **9.1: PURPOSE OF THE MODIFIED DUTY POLICY FOR EMPLOYEES INJURED OFF THE JOB**

9.1.1 To provide a fair and equitable procedure for Fire Department personnel, represented by the Union, who are temporarily disabled as the result of an off-the-job injury or illness, the opportunity to return to a modified duty position for a limited duration.

9.1.2 Modified duty assignments resulting from implementation of this policy will only be made to an existing duty assignment. This Modified Duty Policy does not create or modify any existing job or duty assignment. It is not the intent of the City of Fremont to create new positions or classifications of employment for an employee with a temporary disability.

### **9.2: OBJECTIVE OF THE MODIFIED DUTY POLICY FOR EMPLOYEES INJURED OFF THE JOB**

9.2.1 To provide an opportunity for employees covered by this policy and who are injured or become ill as a result of an off-the-job activity or illness to return to modified duty. The employee will be allowed modified duty when it is appropriate and will not interfere with employee's medical rehabilitation. The employee should be expected to fully recover from his/her injury or illness within forty-five (45) calendar days. Modified duty will be made available for a maximum of forty-five (45) calendar days per separate injury.

9.2.2 To establish for the benefit of the Fremont Fire Department and employees covered by this policy a means for integrating him or herself through this modified duty program to a return to unrestricted duty.

9.2.3 To specify guidelines for administering a modified duty program for employees covered by this policy who have sustained an illness or injury off-the-job.

### **9.3: AUTHORITY AND RESPONSIBILITY FOR ADMINISTRATION OF THE MODIFIED DUTY POLICY FOR EMPLOYEES INJURED OFF THE JOB**

9.3.1 The employee is responsible for obtaining a written report from his or her treating physician which provides a description of limitations from full duty and prognosis for recovery including the anticipated date of recovery permitting return to full unrestricted duty.

- 9.3.2 The employee must submit a written request for a modified duty assignment within seven (7) days of receiving the treating physician's report. An employee must submit the written request for a modified duty assignment, with a copy of the treating physician's written report, to the Fire Chief or designee.
- 9.3.3 The Fire Chief or designee will determine if suitable work exists to accommodate the physician's workplace restrictions.
- 9.3.4 The Fire Chief or designee shall be responsible for notifying the employee of the disposition of the request in writing.
- 9.3.5 If the request is approved, it shall be the responsibility of the employee to report to the Fire Chief or designee at 0800 hours each morning for assignment unless pre-assigned duties or different work hours are provided.
- 9.3.6 The Fire Chief or designee shall be responsible for assigning the modified duty employee work which is consistent with the agreed upon physical restrictions or limitations.
- 9.3.7 It shall be the responsibility of the modified duty employee to immediately report any discomfort, change of status, or scheduled absences to the Fire Chief or designee.

**9.4: ADMINISTRATIVE PROCEDURE FOR IMPLEMENTATION OF THE MODIFIED DUTY POLICY FOR EMPLOYEES INJURED OFF THE JOB**

- 9.4.1 An employee covered by this policy sustaining an off-the-job injury or illness may apply to return to work as soon as released by a treating physician. In order for the employee to apply for modified duty after sustaining an off-the-job injury or illness, the employee must submit a medical report completed by a treating physician which clearly states that the prognosis supports a conclusion that the employee is expected to return to full unrestricted duty within forty-five (45) calendar days of return to work on the modified duty assignment.
- 9.4.2 If the employee is unable to perform all duties associated with his/her position, the department will temporarily assign the employee to an alternate duty assignment consistent with the medical restrictions of the employee and the duties of the alternate duty assignment.
- 9.4.3 The City and the Fire Department retain the exclusive right to require a confirming medical opinion as to the suitability of an employee being assigned to a modified duty assignment. This confirming opinion shall be requested from a physician designated by the City. Any expense associated in obtaining a confirming opinion shall be assumed by the employer.

- 9.4.4 The City and the Fire Department retain the exclusive right to require the employee to submit to a periodic medical evaluation by the employee's treating physician. Any expense associated in obtaining a periodic medical evaluation by the employee's treating physician shall be assumed by the employee.
- 9.4.5 An employee afflicted with a contagious disease shall remain off the work site until a physician certifies he/she is no longer contagious to co-workers and the public during the course of a normal work week.
- 9.4.6 The employee's existing leave bank shall be converted from a fifty-six (56) hour to a forty (40) hour week. Any absences from the normal forty (40) hour work week shall be deducted from the appropriate leave bank. For example, appointments with a personal physician would be counted as sick leave; vacation leave would be deducted from the vacation bank.
- 9.4.7 An employee granted modified duty status will be allowed to work for a maximum of forty-five (45) calendar days starting on the first day of modified duty.
- 9.4.8 An employee granted a modified duty assignment shall report to the Business Manager at 0800 hours each duty day for assignment unless pre-assigned duties or different work hours. Duty hours and days may be modified at the discretion of the Fire Department to accommodate special work assignments. For example: night inspections, fire alarm watches, etc.
- 9.4.9 Modified duty shall be assigned by the Business Manager consistent with the limitations specified by the physician.
- 9.4.10 The employee may request an extension of the maximum forty-five (45) calendar days of modified duty status from the Fire Chief. The Fire Chief shall have exclusive authority to accept or reject the request for an extension based on the needs of the City and the Fire Department.

## ARTICLE 10 - TERMS OF UNDERSTANDING

This MOU incorporates all modifications regarding wages, hours, and other terms and conditions of employment. The term of this MOU shall be July 1, 2019 through June 30, 2021.

## ARTICLE 11 - MISCELLANEOUS

### **11.1 SICK LEAVE USAGE**

The City and Fremont Firefighters Local 1689 acknowledge that the impact of the 48/96 schedule on sick leave use is unknown. Therefore, the parties agree to re-open negotiations on sick leave if annual sick leave use exceeds the 5-year sick leave average (14,172 hours in a calendar year for IAFF and IAFF-BC combined). Nothing in this provision excludes the parties from meet-and-confer during regularly scheduled negotiations.

### **11.2 HEALTH SAVINGS PLAN**

The City commits to establishing a citywide Retiree Health Savings Plan as promptly as is administratively feasible with a defined monthly contribution in which all employees may participate.

Executed this 8<sup>th</sup> day of October, 2019, by the Employer-Employee representatives whose signatures appear below:

Employer Representatives:  
City of Fremont

  
\_\_\_\_\_  
Mark Danaj, City Manager

  
\_\_\_\_\_  
Allen DeMers, HR Director

  
\_\_\_\_\_  
Tina Gallegos, HR Manager

  
\_\_\_\_\_  
Amiel Thurston, Deputy Fire Chief

  
\_\_\_\_\_  
Charles Sakai, Attorney at Law  
Sloan Sakai Yeung & Wong LLP

Employee Representatives: Battalion  
Chiefs, International Association of Fire  
Fighters, Local 1689

  
\_\_\_\_\_  
Kyle Adams, IAFF Local 1689

  
\_\_\_\_\_  
Timothy K. Talbot, Attorney at Law  
Rains Lucia Stern St. Phalle & Silver

Approved as to Form:



~~Randolph Hom, Assistant City Attorney~~



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APPENDIX A  
CITY OF FREMONT  
SICK LEAVE GUIDELINES  
BATTALION CHIEF UNIT

It is the intent of the parties to jointly develop guidelines for the administration of sick leave in the Fremont Fire Department. The parties acknowledge that sick leave is intended to be taken when employees are legitimately unable to work because of illness or injury.

These sick leave guidelines are developed to address instances where sick leave utilization is problematic and not related to a catastrophic or singular event. The parties acknowledge that while legitimate sick leave use does not equate to abuse, sporadic, frequent unscheduled absences are disruptive of company routine and teamwork, administratively burdensome, and costly.

The parties have determined that the use of one hundred and forty-four (144) hours or less of sick leave in a twelve (12) month period represents an acceptable level of utilization (96 hours for 40-hour personnel). The parties have agreed to meet as necessary to review sick leave utilization. The parties will:

- a. Review sick leave utilization in excess of 144 hours (96 hours for 40 hour personnel) to sort out those instances of known severity; the remainder will constitute the group for individual discussion between Union and Management;
- b. If there is a pattern of high use, one Union representative and one Management representative will talk with the individual employee about the causes of absence. The purpose of the discussion will be to determine if help is needed and/or to develop action steps to be taken to improve sick leave utilization;
- c. A pattern of high sick leave use could include but is not limited to the following:
  1. High sick leave use (in excess of 144 hours; 96 hours for 40 hour personnel);
  2. Number of occurrences per employee (in excess of six per year);
  3. Sick leave use as sick leave is earned.

These sick leave guidelines can be modified through discussion between Union and Management. The parties agree to provide employees with a copy of these guidelines on their adoption.

Nothing herein is intended to diminish the Fire Chief's authority to achieve compliance with the Personnel Rules nor prohibit disciplinary action involving sick leave abuse.

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MEMORANDUM OF UNDERSTANDING  
BATTALION CHIEFS, I.A.F.F. LOCAL 1689  
2019 – 2021

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