

RESOLUTION NO. 20-7919

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DOWNEY ADOPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF DOWNEY AND THE DOWNEY FIRE MANAGEMENT ASSOCIATION (JANUARY 1, 2020 – DECEMBER 31, 2022)

WHEREAS, the City of Downey, hereinafter referred to as "City," and the City of Downey Fire Management Association hereinafter referred to as "DFMA" have met and conferred in accordance with the requirements of the Meyers-Miliias-Brown Act and Employee Relations Ordinance 1118; and

WHEREAS, the City and the DFMA have memorialized the Agreement in a written Memorandum of Understanding.

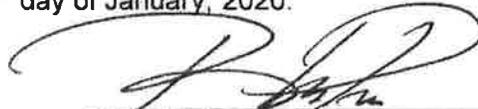
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DOWNEY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Memorandum of Understanding between the City and the DFMA, attached hereto, is hereby approved in substantially the form thereof together with any additions thereto or changes therein deemed necessary or advisable by the City Manager.

SECTION 2. The Director of Human Resources is authorized to sign the Memorandum of Understanding.

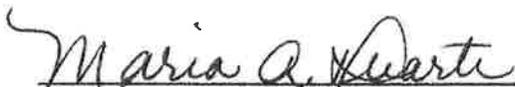
SECTION 3. The City Clerk shall certify to the adoption of this resolution.

APPROVED AND ADOPTED this 14th day of January, 2020.



BLANCA PACHECO, Mayor

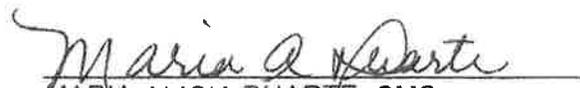
ATTEST:



MARIA ALICIA DUARTE, CMC
City Clerk

I HEREBY CERTIFY that the foregoing Resolution was adopted by the City Council of the City of Downey at a Regular Meeting held on the 14th day of January, 2020, by the following vote, to wit:

AYES:	Council Members:	Ashton, Rodriguez, Saab, Frometa, Mayor Pacheco
NOES:	Council Member:	None.
ABSENT:	Council Member:	None.
ABSTAIN:	Council Member:	None.



MARIA ALICIA DUARTE, CMC
City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF DOWNEY

AND

THE DOWNEY FIRE MANAGEMENT ASSOCIATION

January 1, 2020 – December 31, 2022

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**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF DOWNEY
AND
THE DOWNEY FIRE MANAGEMENT ASSOCIATION**

ARTICLE I

RECOGNITION

Pursuant to the provisions of the Employee Relations Ordinance of the City of Downey, the City of Downey (hereinafter called the "City") has recognized the Downey Fire Management Association (hereinafter called the "Association") as the majority representative of sworn personnel members of the Downey Fire Management Association including all employees in classifications listed on Exhibit A, excluding all other personnel of the Fire Department. The City has recognized the Downey Fire Management Association for the purpose of meeting its obligations under the Meyers-Milias-Brown Act, Government Code Section 3500 et seq, and the Employee Relations Ordinance of the City when City rules, regulations or laws affecting wages, hours or other terms and conditions of employment are amended or changed.

ARTICLE II

NON-DISCRIMINATION

Section 1. The parties mutually recognize and agree to protect the rights of all employees hereby to join and/or participate in protected Association activities or to refrain from joining or participating in protected activities in accordance with the Employee Relations Ordinance and Government Code Sections 3500 to 3511.

Section 2. The City and the Association agree that they shall not discriminate against any employee because of race, color, sex, age, national origin, political or religious opinions or affiliations. The City and the Association shall reopen any provisions of this Agreement for the purpose of complying with any final order of a federal or state agency or court of competent jurisdiction requiring a modification or change in any provision or provisions of this Agreement in compliance with State or Federal anti-discrimination laws.

Section 3. Whenever the masculine gender is used in this Memorandum of Understanding, it shall be understood to include the feminine gender.

Section 4. The City and Association agree to comply with applicable State and Federal laws and regulations regarding employment of the disabled.

ARTICLE III

BASIC COMPENSATION PLAN

Section 1. Salary Increases.

All employees covered by this Memorandum of Understanding shall receive the following salary increases as referenced in Exhibit B – Pay Schedule:

A. Salary Increases

1. Effective the pay period that includes January 1, 2020, a two percent (2%) across the board pay range increase [two percent (2%) base salary increase].
2. Effective the pay period that includes January 1, 2021, a two percent (2%) across the board pay range increase [two percent (2%) base salary increase].
3. Effective the pay period that includes January 1, 2022, a two percent (2%) across the board pay range increase [two percent (2%) base salary increase].

A. “Me Too”: The City agrees that if it reaches agreement with the Downey Firemen’s Association (DFA), Downey Police Officers Association (DPOA), or the Downey Police Management Association (DPMA) that provides a cumulative across-the-board General Wage Increase(s) in excess of the General Wage Increase(s) provided to the Downey Fire Management Association during the period from January 1, 2020 to December 31, 2022, the City shall provide the same cumulative General Wage Increase to the Downey Fire Management Association as provided to the DFA, DPOA, or DPMA. General Wage Increase is defined as an across-the-board wage increase for all members of a bargaining unit that is not based on performance or that is directed at specific assignments or classifications. Any additional across-the-board General Wage Increase(s) provided under this “Me Too” provision will be paid to the Downey Fire Management Association on the same effective date(s) as the effective date(s), after the DFA, DPOA, or DPMA Wage Increase exceeds the first two percent (2%) wage increase above.

Section 2. Salary Ranges. Salary ranges shall be established to reflect the relative value of classifications covered by this Memorandum of Understanding. The salary ranges will have a spread of approximately twenty-two percent (22%) from the minimum to maximum figures with no set steps in between.

A. Description of Schedules. The Pay Plan consists of a set of monthly salary schedules. Each schedule is designated by a schedule number, as approved by Council resolution.

B. Hourly Equivalent Calculation Forty (40) Hour Schedule. For payroll purposes, the hourly equivalent of annual compensation which includes all forms of pay shall be computed by multiplying the monthly rate by twelve (12) months in a year divided by the total number of hours worked in a year which is based on forty (40) hours per week times fifty-two (52) weeks in a year totaling two thousand eighty (2,080) hours.

C. Hourly Equivalent Calculation Fifty-Six (56) Hour Schedule. For payroll purposes, the hourly equivalent of annual compensation which includes all forms of pay shall be computed by multiplying the monthly rate by twelve (12) months in a year divided by the total number of hours worked in a year based on fifty-six (56) hours per week times fifty-two (52) weeks in a year totaling two thousand nine hundred twelve (2,912) hours.

Section 3. Eligibility for Merit Salary Advancement.

A. Progression within the Salary Range. The minimum salary in the range would be appropriate for a new employee who minimally satisfied job requirements. The top of the range is reserved for employees who perform at the highest level of proficiency expected. In a promotional situation, the employee will receive a salary at least equivalent to his prior rate.

Employees, both upon appointment and during the course of their employment, may receive any salary amount not to exceed the maximum of their range. Generally, a new employee is not considered for a merit increase before twelve (12) months of employment. Thereafter, employees will be reviewed for merit salary increases annually in conjunction with the employee's anniversary date. However, employees will not be considered for merit increases after reaching the end of the respective salary range. Employees may be granted merit salary adjustments more frequently than every twelve months with prior City Manager approval.

The sole consideration in the granting of merit increases shall be job performance, as indicated in a detailed corresponding Management Performance Evaluation Report. The following shall apply in the granting of such merit salary increases.

1. Merit salary adjustments for members of this Association shall be made with the recommendation and approval of the Fire Chief.
2. Merit adjustments must be approved by the City Manager. The Fire Chief will provide the evaluation and proposed merit adjustment to the City Manager prior to giving it to the employee.
3. The amount of merit salary adjustment shall be directly related to the employee's progress in satisfying performance expectations. Generally employees, rated as having satisfactory performance, will receive a minimum increase of five and one-half percent (5.5%). Adjustments up to ten percent (10%) within the salary range are permitted. Also, while salary adjustments will normally involve increases, reductions may be made in instances of unsatisfactory performance.

4. After an employee reaches the top of the salary range, the level of proficiency appropriate to that salary rate must be maintained or the employee's salary may drop below the maximum. This may occur through a direct salary reduction or the employee may not be granted increases which may be possible due to adjustments in the range.
5. Salary ranges for Assistant Chief and Battalion Chief shall be adjusted at such time as the City grants cost-of-living adjustments to the rank-and-file employees unless the City Council directs to the contrary. The amount of such cost-of-living adjustments granted to the management classifications will be no less than that granted to the Firemen's Association. In such instances where salary ranges are increased for cost-of-living purposes, the individual employee salaries will be increased in proportion to the amount of the range adjustment, provided that for reasons of unsatisfactory performance an individual employee may be denied such an adjustment. All salary range adjustments shall require the adoption of a resolution by the City Council.

Section 4. Longevity Pay. Effective July 4, 2016, the City agrees to implement Longevity Pay for all employees covered by this Agreement.

A. Eligibility for Longevity. Regular employees who have completed ten (10) and twenty (20) years of full-time service with the City of Downey shall receive Longevity Pay adjustments as follows.

<u>Years of Service</u>	<u>Pay Adjustment</u>
10 years	5.5000% above the base hourly rate
20 years	8.4020% above the base hourly rate

Eligible employees shall only receive one of the above referenced Longevity Pay adjustments.

Section 5. Education Incentive Pay. Employees covered by this Agreement shall receive additional compensation at the following rates upon attainment of the applicable educational/technical level. Employees are eligible to receive only one level of education pay.

A. Education Pay One - Effective the start of the pay period that includes January 1, 2015, an employee shall receive five percent (5%) of additional compensation for an Associate in Arts degree OR a combination of a California State Fire Officer Certificate AND completed fifteen (15) units of fire technology, fire science, fire administration, or fire engineering courses from an accredited college or university. General Education units may be substituted for fire related units on a two (2) for one (1) basis. Twenty (20) years of experience with the City may be substituted for four (4) technology courses.

B. Education Pay Two - Effective the start of the pay period that includes January 1, 2015, an employee shall receive eight and one-half percent (8.5%) of additional compensation for a Bachelor's degree OR a combination of meeting the criteria for Education Pay One AND completion of the curriculum for California State Chief Officer Certificate or the equivalent National Executive Fire Officer Program.

C. The City and the Association agree to reopen this section on Education Incentive Pay during the term of this Memorandum of Understanding if an agreement is reached between the City and the Downey Firemen's Association during their current bargaining over a successor Memorandum of Understanding to implement greater education incentive (Technical Development Pay) rates than what are specified in this section.

Section 6. Pay for Testifying as a Civil Witness (in line of duty). An employee shall receive his regular salary (and expenses, if any) for time at court and to and from court, while testifying in any civil case on behalf of the City outside his regularly scheduled shift. Payments under this Section shall be reported on the time card. The employee may submit reimbursement for expenses to the Finance Director.

Section 7. Uniforms, Maintenance, and Maintenance Allowance.

A. The parties agree that effective the start of the pay period that includes July 1, 2011, the average annual cost incurred by the City for the purchase and/or rental, and maintenance of employee uniforms will be reported as special compensation pursuant to Section 571(a)(5) of the CalPERS regulations. The amount reportable for the purchase and/or rental and maintenance of uniforms is \$771.63 per employee. This amount is based on the average annual cost paid for by the City for each employee over the previous three fiscal years (FY 2014-2015, FY 2015-2016, and FY 2016-2017). The annual amount shall be reported at the rate of \$29.68 per bi-weekly pay period.

B. In addition to the reportable amount in Section A above, the parties agree that the change in the payment method from yearly to bi-weekly that took effect on or about December 22, 2014 to comply with CalPERS regulations for reporting purposes shall be paid in the employee's regular bi-weekly payroll as follows:

1. Assistant Chief will receive two hundred dollars (\$200.00) per year for supplemental purchases and twenty dollars (\$20.00) per month for uniform and accessory maintenance for an annual total of four hundred forty dollars (\$440.00) paid at the rate of sixteen dollars and ninety-two cents (\$16.92) per bi-weekly payroll.
2. Battalion Chiefs will receive one hundred seventy-five dollars (\$175.00) per year for supplemental purchases and fifteen dollars (\$15.00) per month for uniform and accessory maintenance for an annual total of three hundred and fifty-five dollars (\$355.00) paid at the rate of thirteen dollars and sixty-five cents (\$13.65) per bi-weekly pay payroll.

In accordance with the Public Employees' Pension Reform Act (PEPRA), an employee hired on or after January 1, 2013 and classified as a "new member" within PEPRA (Government Code Section 7522 et. seq.) is not eligible to have the cost of the purchase and/or rental, and maintenance of uniforms and the uniform maintenance allowance that is paid by the City reported to CalPERS as special compensation.

Section 8. Class B Allowance. Effective June 23, 2003, Class B Allowance will be discontinued in lieu of an increase in EMT Certificate pay.

Section 9. Bilingual Pay. Effective July 4, 2016, employees required to speak or translate Spanish as part of their regular duties will be compensated seventy dollars (\$70.00) per biweekly pay period in addition to their regular salary. The Fire Chief has the authority and discretion to assign and/or remove this bonus up to budget authority. To be eligible for this assignment, the employee must pass a conversational examination administered by a certified interpreter designated by the Human Resources Director to administer such examination.

Section 10. Assistant Fire Chief Assignment. The appointment of the Assistant Fire Chief will be at the discretion of the Fire Chief. The Assistant Chief will be compensated at a rate of five and one-half percent (5.5%) above the rank of Fire Battalion Chief.

Section 11. Emergency Medical Technician (EMT) Certificate Pay. Employees covered by this agreement shall receive additional compensation at the following rate upon attainment of an EMT Certificate. Effective June 21, 2004, EMT certificate pay shall be five percent (5%). In order to be eligible for this pay, employees must maintain their certificate as required. Employees shall notify their supervisor should their certificate lapse, become suspended, revoked, or restricted for any reason.

Section 12. Calculating the Value of Special Compensation (Spec Comp). The value of the following special compensation items are calculated using a compounding method that calculates them in the following order: (1) Education Incentive Pay and (2) EMT Pay. Any other special compensation items are not included in the compounding calculation.

If the employee receives one or both of the special compensation items subject to compounding referenced above, the one that is highest in the order above is calculated first, as the applicable percent of the base hourly rate of pay. For each additional special compensation item on the list above, the value shall be determined by multiplying the next one received in the above order as a percentage of the base hourly rate of pay plus the value of the special compensation items already calculated under this method.

An example of the calculation method for a Fire Battalion Chief who works one hundred and twelve (112) hours in a two week pay period is as follows:

Employee Base Hourly Rate \$52.9636	Reportable Earnings @ 112 hrs.	\$5,931.92
1. BA Ed Pay Level II (8.5%)	Spec Comp Earnings	\$ 504.21
2. EMT Pay (5.0%)	Spec Comp Earnings	\$ 321.81

ARTICLE IV

WORK SCHEDULE

Section 1. Hours of Work – Suppression Personnel. Suppression personnel covered by this Agreement shall work an average of fifty-six (56) hours per work week under a three (3) platoon twenty-four (24) hour shift basis.

A. The “48/96 Work Schedule” – For fire suppression personnel, the work schedule known as the “48/96 Work Schedule” consists of two twenty-four (24) hour consecutive days of scheduled work followed by ninety-six (96) hours of consecutive time off duty. The “48/96 Work Schedule” will follow a twenty-four (24) day FLSA work period that is subject to the partial overtime pay exemption set forth in Section 7(k) of the FLSA. Components of this work schedule are as follows and shall apply to Battalion Chiefs accordingly:

B. There is no change to overtime pay practices as described in Article V of this Memorandum of Understanding.

C. The daily work activity schedule for the “48/96 Work Schedule” shall be included in Fire Department Administrative Policy, Volume 1, Chapter 8, Section 1, which is hereby incorporated by reference. The policy shall provide the start and end times of the daily work activity schedule, the list of assigned duties, their allocated times, and the order of performance of said duties which may be changed only pursuant to the meet and confer process between the City and the Association.

Section 2. Hours of Work - Assistant Fire Chief. The assignment shall work a forty (40) hour work week under a 4/10, 5/40, or a 9/80 work schedule

A. “4/10 Work Schedule” – The “4/10 Work Schedule” consists of four (4) consecutive work days of ten (10) working hours each, followed by three (3) consecutive days off in a seven (7) work period. At the discretion of the Fire Chief and if the employee so requests, he may be permitted to work either a “5/40 Work Schedule” or a “9/80 Work Schedule.”

B. “5/40 Work Schedule” – The “5/40 Work Schedule” consists of five (5) consecutive work days of eight (8) working hours each, followed by two consecutive days off in a seven (7) day work period.

C. The seven (7) day Federal Labor Standards Act (FLSA) work period for the “4/10 Work Schedule” and the “5/40 Work Schedule” begins at 12:00 a.m. on Monday and ends at 11:59 p.m. the following Sunday.

D. “9/80 Work Schedule” – The “9/80 Work Schedule” consists of alternating weekly schedules in a two (2) week pay period, one of which consists of four (4) consecutive work days of nine (9) working hours each, followed by three (3) consecutive days off, and the other weekly schedule consists of five (5) consecutive work days of which four (4) days consist of nine (9) working hours each and one (1) work day consists of eight (8) working hours followed by two (2) consecutive days off. The FLSA work period for this work schedule is seven (7) days and shall begin four (4) hours into the eight (8) hour scheduled work day.

Section 3. Authority to Change Work Week Schedule. In order to provide for the public safety and efficiency of operations, the Fire Chief shall have the authority to allocate resources and establish work schedules of employees in work periods of five (5) or four (4) days per week. If, in the opinion of the Fire Chief, restructuring of the regular I work day or work week becomes necessary for the purpose of promoting efficiency, nothing herein shall be construed as preventing the Fire Chief from restructuring the regular work day or week of individual employees.

Section 4. Changes in the Regular Work Schedule. If, in the opinion of the Fire Chief, it should become necessary to establish schedules departing from the regular work day or work week, the Fire Chief shall give written notice of such change as far in advance as is reasonably practical. Excluding a change as described in Section 2(d) above, if the change is other than on an individual basis, the City shall meet and confer with the Association regarding the impact of the decision prior to implementing a general change.

ARTICLE V

OVERTIME (COMPENSATORY TIME)

Section 1. Compensation for Overtime. The nature of Fair Labor Standards Act (FLSA) exempt employment for the Battalion Chief classification is such that intermittent, occasional hours worked beyond the work schedule is needed to fulfill the responsibilities and requirements of the position. Usually, additional time and effort are proportionate to the importance and level of the Battalion Chief position. These factors of time and effort are incorporated when the compensation level of the FLSA exempt position is established. The parties agree that additional compensation shall be provided for such hours worked beyond the work schedule (see 29 CFR 541.604). Accordingly, in those instances where a Battalion Chief works beyond the regularly assigned work schedule for a Battalion Chief, his/her pay for such time shall be as follows:

- A. Straight Time.** All authorized hours worked beyond the employee's regularly assigned work schedule performed in an "Administrative" capacity shall be paid at straight time. This includes, but is not limited to, extra hours worked off duty, excluding shift work or emergency responses, such as attending staff meetings, providing or receiving staff training, serving on examination panels, and addressing other administrative matters.
- B. Time and One-Half.** All remaining authorized hours worked beyond the employee's regularly assigned work schedule not considered "Administrative" in nature, as noted above, shall be paid at time and one-half (1.5) the regular rate of pay for such employees. This includes all hours worked on duty in a suppression capacity during a shift assignment as a Battalion Chief. This also includes all assignments worked as part of a Strike Team, serving as a task force leader, or any assignment requiring response to emergencies.

An employee may elect to accumulate compensatory time in lieu of taking additional compensation for hours worked beyond the work schedule. Hours worked in shift trade shall be excluded as hours worked.

This new provision regarding additional compensation for hours worked beyond the work schedule will become effective upon City Council approval with no retroactivity. This provision shall not alter the FLSA exempt status of the Battalion Chief position, which is and remains classified as an FLSA exempt position (see 29 CFR 541.604).

Section 2. Overtime Policy. It is the policy of the City that overtime work is to be discouraged. However, in cases of emergency or whenever public interest or necessity requires, any department or division head may require any employee in such department or division to perform overtime work. The projects and types of work for which overtime may be authorized shall be approved in advance by the City Manager; except, in the event of emergency, overtime may be authorized by the Fire Chief or his designee.

Section 3. Emergency Service Condition. In the event of a declared emergency or national or State disaster in the City of Downey, the City shall not be required to pay overtime. Regardless of any of the provisions of this Memorandum of Understanding, employees shall not be entitled to receive overtime during the first seven (7) calendar days of the severe emergency or disaster.

Section 4. Compensatory Time Off.

A. Compensatory time may be granted to employees in lieu of overtime pay in accordance with Fire Department Administrative Policy that is hereby incorporated by reference. An employee wishing to take compensatory time off must obtain the prior approval of his supervisor. When a supervisor requests that an employee take compensatory time off, employee needs must be considered and reasonable notice given by the supervisor to the employee. The need for calling in personnel for minimum manning shall not alone justify disapproval of the employee's compensatory time off.

B. Employees may cash in compensatory hours by giving sufficient notice to the Fire Chief and Finance Department. The City shall pay off all compensatory hours in excess of three hundred (300) hours (four hundred eighty (480) hours for 56-hour employees). The excess hours will be paid off the following January.

ARTICLE VI

HOLIDAYS

Section 1. Holidays. Eleven (11) holidays are provided as follows:

1. New Year's Day
2. Martin Luther King Birthday
3. Washington's Birthday (President's Day)
4. Memorial Day
5. Independence Day
6. Labor Day
7. Veteran's Day
8. Thanksgiving Day
9. Day After Thanksgiving
10. Day Before Christmas
11. Christmas Day

Employees covered by this Agreement shall be compensated for holidays as follows:

A. PERSONNEL ON A 4/10, 5/40, or 9/80 WORK WEEK.

1. Employees shall receive eight (8) hours of pay for each holiday. When a holiday falls on a day the employee is scheduled to regularly work nine (9) or ten (10) hours, and the employee takes the day off, the employee shall add the one (1) or two (2) hours to total the number of hours in the regularly scheduled work day by choosing vacation, compensatory time, personal leave (deducted from sick leave), or time without pay. Sick leave other than personal leave may not be used to supplement the holiday hours.
2. If an employee is required to work on a scheduled holiday, he will receive the eight (8) hours of holiday pay. In addition, the employee will receive straight time for each hour worked on the holiday. The additional hours may be taken in the form of compensatory time off.
3. If a scheduled holiday falls on an employee's regular day off, he will receive eight (8) hours of compensatory time off. No additional holiday compensation will be provided.

B. PERSONNEL ON A 56-HOUR WORK WEEK.

1. In lieu of receiving holidays off, each 56-hour employee covered by this Agreement shall receive one hundred thirty-two (132) hours off with pay each year that shall be scheduled in accordance with Fire Department Administrative Policy, Volume 1, Chapter 3, Section 9, herein incorporated by reference. Holiday hours may be accumulated. As an option to using their holiday time, employees may cash in their holiday time by giving sufficient notice to the Fire Chief and Finance Department.

ARTICLE VII

VACATION

Section 1. Accruals. Employees covered by this Agreement shall accrue vacation leave with pay on the following monthly basis:

<u>Years of Service</u>	<u>40-hour Work Week</u>	<u>56-hour Work Week</u>
0-5	10	15
5-10	11.3	17
10+	13.4	20

Section 2. Accrual Limits. Vacation shall be taken as per Fire Department Administrative Policy Volume 1, Chapter 3, Section 10, herein incorporated by reference. All eligible employees, however, shall be allowed to accumulate two (2) years allowance of vacation ("Maximum Accrual"). If an employee's vacation request is denied by the Fire Chief because of manpower shortages or operational needs, the employee shall be permitted to accumulate vacation in excess of two (2) years, which must be scheduled to be taken off within ninety (90) days, at a time mutually agreeable to both the supervisor and the employee or paid to the employee at the rate in effect at the time the employee would have taken his or her requested vacation. If at all possible the supervisor shall accommodate the employee's desires as to the taking of vacation. If the employee does not take the excess time off within the ninety (90) days, the employee shall not accrue additional vacation time until the accumulation drops below the two-year Maximum Accrual.

Section 3. Eligibility for Vacation Payoff. When an employee who has become entitled to receive vacation under this Article, separates from City service, either by retirement, permanent layoff or termination, the employee shall be entitled to be paid for unused earned vacation at the rate of pay in effect at the time of separation. An employee must work the last full pay period of the month in which they separate employment to receive the accrual for that month.

ARTICLE VIII

LEAVES OF ABSENCE

Section 1. Leaves of Absence Without Pay. The City Manager and/or the City Council may grant a permanent employee a leave of absence for a specific purpose without pay for a period not to exceed up to one (1) year. No such leave shall be granted except upon written request of the employee. Approval shall be in writing and a copy filed with the Personnel Office of the City. Upon expiration of a regularly approved leave, the employee shall be reinstated in the position held at the time the leave was granted. The employee shall report promptly upon the expiration of any leave granted. Failure to report within a twenty-four (24) hour period after expiration of the leave shall be considered a voluntary resignation, provided that the employee may appeal this automatic termination through the grievance procedure as though it were a non-voluntary termination. Except as may be provided by law, no employment or fringe benefits such as, but not limited to, sick leave, vacation, health insurance, retirement or any other benefit shall accrue to any employee during leave of absence without pay.

Section 2. Notice of Return to Work. An employee on leave of absence must give the City at least seven (7) days written notice of the employee's intent to return to work.

Section 3. Outside Employment While on Leave. An employee who engages in outside employment during said leave of absence without prior approval of the City Manager shall be subject to termination. Any employee who falsified a reason for the request for said leave of absence or any extension of such leave of absence may be terminated for falsifying such request.

Section 4. Sick Leave Accrual.

A. As soon as practicable, sick leave shall be accrued on a bi-weekly based on the following monthly rate:

56-hour per week personnel – twelve (12) hours accrual each month

40-hour per week personnel - eight (8) hours accrual each month

B. Sick leave shall accrue without any limit on the number of hours an employee is permitted to accumulate. Sick leave shall not be considered as a privilege that an employee may use at his discretion but shall be allowed only in case of necessity and actual sickness or disability or as permitted by law.

Section 5. Use of Protected Sick Leave. Effective the start of the pay period which includes July 1, 2015, the first three (3) shifts or hours equivalent [e.g. thirty (30) hours for employees assigned to a 4/10 work schedule or seventy-two (72) hours for an employee on a 48/96 work schedule] of paid sick leave taken each twelve (12) month period, for any authorized purpose, will be considered sick leave used pursuant to the Healthy Workplaces, Healthy Families Act of 2014 (California Labor Code Sections 245-249). The twelve (12) month period is July 1 through June 30 for employees hired prior to July 1, 2015. For employees hired on or after July 1, 2015, the twelve (12) month period is the twelve (12) month period beginning on the employee's hire date, until the following July 1 at which point the employee's twelve (12) month period will begin the start of the pay period which includes July 1 to the pay period that includes June 30.

A. Employees can use sick leave for themselves for preventive care (such as flu shots or physical exams) or care of an existing health condition;

B. Employees can use one-half of all sick leave accrued in the twelve (12) month period for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee's child, parent, spouse or registered domestic partner, sibling, parents-in-law, grandparent or grandchild. For fifty-six (56) hour per week personnel, seventy-two (72) hours of sick leave per twelve (12) month period is eligible for such use. For forty (40) hour per week personnel, forty-eight (48) hours of sick leave per twelve (12) month period is eligible for such use.

C. Employees can use sick leave for specified purposes if they are victims of domestic violence, sexual assault or stalking as set forth in California Labor Code section 230(f) and 230.1(a).

D. In order to receive compensation while absent on sick leave, the employee shall notify a designated supervisor prior to or within half (1/2) an hour of the time set for beginning duty. In all instances, if an employee is incapacitated, notification shall be waived until a reasonable period has elapsed. For any such absence, the employee shall file a written statement with the Fire Chief stating the cause of the absence. When an employee has taken more than three (3) consecutive work shifts or hours equivalent, the Fire Chief may require a physician's certificate stating the cause for any subsequent absence before said leave shall be approved by the Fire Chief unless the absence is for a statutorily protected leave.

E. The right to benefits under the sick leave plan shall continue only during the period that the employee is employed by the City. This plan shall not give any employee the right to be retained in the service of the City, or any right of claim to sickness disability benefits after separation from the service of the City, except as required by federal or state law.

F. Notwithstanding anything contained in this Section, no employee shall be entitled to receive any payment or other compensation from the City while absent from duty by reason of injuries or disability received as a result in engaging in employment other than employment by the City for monetary gain or other compensation, or by reason of engaging in business or activity for monetary gain or other compensation other than business or activity connected with City employment.

G. At the written request of the appointing authority, based upon job-related grounds and consistent with business necessity, the City Manager may require an employee to submit to an examination by the City's physician to determine fitness for duty. Any employee so examined shall have the opportunity to submit the reports of a competent medical authority of his own selection, and at his own expense, in addition to the report submitted by the City physician. In the event of a conflict of opinion and/or recommendation of the two physicians, a third physician shall be selected by the first two physicians and the final decision shall be made by the City Manager based upon the medical evidence submitted to him.

H. Sick Leave Payoff on Retirement or Death. Upon retirement of an eligible employee, one hundred percent (100%) of the employee's unused accumulated sick leave shall be deposited into the City Retirement Health Savings Plan to be used for eligible medical expenses. Effective June 28, 2016, the maximum number of hours that will be deposited is as follows: Two thousand eight hundred fifty (2,850) hours for a fifty-six (56) hour per week employee and one thousand nine hundred (1,900) hours for a forty (40) hour per week employee.

1. For employees hired on or after July 1, 1974, accrued sick leave shall be valued for the purposes of Section F above, on the following basis:
2. Sick leave earned for such employees shall be costed at the rate prevailing at the end of the fiscal year in which it was earned.
3. Sick leave taken shall be deducted from the oldest, lowest value accrued sick leave first, provided however, when an employee takes sick leave, the employee shall receive for each day of sick leave one (1) day's pay at the employee's rate in effect at the time of taking sick leave. For covered employees, or retirees with 20 years of city service, or retirees with a physical disability or a psychological disability resulting from a direct consequence of on the job trauma, sick leave shall be paid at the prevailing rate.

I. Sick Leave Converted to Vacation. Forty (40) hour per week employees who have accrued three hundred sixty (360) hours of sick leave or five hundred forty (540) hours of sick leave for 56-hour per week employees, may convert each two (2) hours of accumulated sick leave to one (1) additional hour of vacation, provided that not more than eighty (80) hours for forty (40) hour per week employees or one hundred twenty (120) hours for fifty-six (56) hour per week employees of additional vacation days may be so converted in any one (1) fiscal year.

J. Sick Leave Conversion Upon Layoff. In the event of a permanent or indefinite layoff, an employee with ten (10) years of continuous service with the City shall be entitled to the sick leave deposit benefit as specified in H above. If such employee resigns after receiving official notification of his impending layoff, he shall be eligible for the above benefit.

Section 6. Bereavement Leave.

A. Any employee who has suffered a death of an immediate family member, may be allowed bereavement leave with pay not to exceed six (6) work days (for personnel on a forty (40) hour work schedule) or three (3) twenty-four (24) hour shifts (for personnel on a fifty-six (56) hour work schedule) per incident on the basis of one half (1/2) work day for each month of regular employment, which is deducted from the employee’s accumulated sick leave. Immediate family shall include and be limited to the employee’s mother, father, brother, sister, spouse, child, grandchildren, grandparents and current parent-in-laws.

B. All such claims for bereavement leave are subject to verification by the Fire Chief his designee.

Section 7. Workers’ Compensation Injury on Duty. Employees covered by this Agreement shall be entitled to all rights provided under State Law.

Section 8. Employee Disability Leave.

A. This Section establishes a disability leave plan at seventy-five percent (75%) of the base salary for employees having more than one (1) year continuous service with the City and who have exhausted all accumulated sick leave, vacation, and compensatory time due to non-industrial illness or injury under the following eligibility schedule:

Maximum Time Allowance (Working Hours)

<u>Years of Service</u>	<u>Before Reimbursement</u>		<u>Additional After Reimbursement</u>		<u>Total</u>	
	<u>40 hr.</u>	<u>56-hr.</u>	<u>40-hr.</u>	<u>56-hr.</u>	<u>40-hr.</u>	<u>56-hr.</u>
1 through 5	240	360	120	180	360	540
6 through 10	360	540	180	270	540	810
Over 10	480	720	240	360	720	1080

B. Application for disability leave shall be made by the employee to the City Manager through the department head, accompanied by full medical justification from a physician chosen by the City at the direction of the City. Failure to submit to such an examination shall be a basis for terminating disability leave. If the City Manager approves the application, he shall notify the employee of such approval in writing.

C. After the employee returns to work from disability leave, the employee's sick leave accrual shall be reduced to four (4) hours per month for forty (40) hour per week employees and six (6) hours per month for fifty-six (56) hour per week employees and placed on a reimbursement schedule with the Payroll Office to reimburse the City the value of the time used for such employee disability leave. The employee may contribute vacation to accelerate employee's reimbursement to the City for providing the benefits under this Article.

D. No employee shall receive more than the "Total" set forth above for his length of service, during his entire employment with the City.

E. Grounds for termination of disability leave by the City Manager shall include, but not be limited to, the following reasons:

1. The employee has recovered from his illness or injury.
2. The leave is being used as a pre-retirement leave for purpose of postponing retirement or pension.
3. The disability leave was procured by fraud, misrepresentation or mistake.
4. The employee has not cooperated fully in supplying all information and submitting to any examination requested by the City to determine the existence or continuing nature of the employee's disability.

F. In the event an employee becomes ineligible to accrue sick leave or is scheduled to end employment with the City and has not completed the reimbursement schedule for this benefit, the balance due shall be handled by payroll deduction or accounts receivable as appropriate.

Section 9. Military Leave. Military Leave shall be granted in accordance with the provisions of state and/or federal law. All employees entitled to military leave shall give the appointing power an opportunity, within the limits of military regulations to determine when such leave shall be taken.

Section 10. Jury Duty. The City will not provide release time for jury duty to employees covered by this Agreement. If the State and/or Federal Court Jury Commissioners rescind their present policy of granting exemptions from jury service to persons who do not receive paid release time for jury duty from their employers, so as to require jury duty service despite the absence of such pay from their employer, then the City's practice of providing paid leave time to employees for jury duty shall be reinstated immediately upon the effective date of such change for the applicable State and/or Federal Court.

A. In the event that an employee is called for jury duty and wishes to serve, accrued vacation leave, compensatory time or a leave of absence without pay shall be granted subject to the scheduling requirements of the City.

B. In the event that the court fully reimburses the City for the full salary of an employee on jury duty, the City will immediately reinstate the practice of providing paid release time to employees for jury duty.

C. In the event that an employee is called for jury duty and the court does not excuse jury service based on the non-payment of salary by the employer, the City shall grant said employee paid release time for the required jury duty.

Section 11. Executive Leave. The Assistant Fire Chief and Battalion Chiefs are eligible for one (1) day/shift of Executive Leave each four (4) months. Leave time is not cumulative and time off is discretionary with Fire Chief approval.

Section 12. Other Leave Entitlements. The City shall comply with all State and Federal leave entitlement laws.

ARTICLE IX

FRINGE BENEFIT ADMINISTRATION

Section 1. Administration. The City reserves the right to select the insurance carrier or administer any fringe benefit programs that exist during the term of this Memorandum of Understanding except dental insurance. This Article does not apply to health insurance, which is administered by CalPERS pursuant to the Public Employees' Medical and Hospital Care Act (PEMHCA) and related regulations.

Section 2. Selection and Funding. In the administration of the fringe benefit programs, the City shall have the right to select any insurance carrier or other method of providing coverage to fund the benefits included under the terms of this Memorandum of Understanding, provided that the benefits of the employees shall be no less than those in existence as of the implementation of this Agreement.

Section 3. Changes. If, during the term of this Memorandum of Understanding, any change of insurance carrier or method of funding for any benefit provided hereunder occurs, the City shall meet with and discuss the matter prior to any change of insurance carrier or method of funding the coverage.

ARTICLE X

MEDICAL, DENTAL AND LIFE INSURANCE

Section 1. Medical Insurance.

A. Effective October 1, 2012, the City contracted with California Public Employees' Retirement System (CalPERS) for the provision of medical insurance benefits under the Public Employees Medical and Hospital Care Act (PEMHCA).

B. Effective the start of the pay period that includes January 1, 2020 and through December 31, 2022, the City agrees to pay one hundred percent (100%) of the premium for medical insurance for employees hired by the City prior to June 28, 2016. Such City paid medical coverage will include employee plus their qualified dependent(s) up to the highest premium rates for a Preferred Provider Option (PPO) medical plan offered by CalPERS.

C. Effective the start of the pay period that includes January 1, 2020 and through December 31, 2022, the City agrees to pay one hundred percent (100%) of the premium for medical insurance for employees hired on or after June 28, 2016. Such City paid medical coverage will include employee plus their qualified dependent(s) up to the premium rates for the Kaiser HMO medical plan offered by CalPERS. If an employee elects a higher cost CalPERS plan, he must pay the difference in premium between that plan and the Kaiser HMO plan premium for his respective eligible level of coverage.

D. The stated amounts of City paid medical premiums are inclusive of the CalPERS statutory minimum employer contribution under PEMHCA.

Section 2. Employee Waiver of Medical Coverage.

The City agrees to permit an employee to opt out of City-sponsored medical coverage as follows:

1. The employee must presents proof to the Human Resources Director or designee that he and his qualified dependent(s) are covered by another employer's non-City-sponsored medical plan for the plan year;
2. The employee must sign a statement acknowledging the opt out of City offered medical insurance coverage and agreement to hold the City harmless for any consequences, whatsoever, that result from the employee's waiver of City offered medical insurance coverage for employee and/or qualified dependent(s); and
3. The employee must sign a statement acknowledging his understanding that his qualified dependent(s) are not eligible to re-enroll in City sponsored medical coverage until the next Open Enrollment period or as otherwise required by law under COBRA provisions.
4. Effective on or about July 1, 2016, the City agrees that the employee who is approved to opt out of medical coverage shall receive compensation for one of the following, depending on the level of non-City sponsored coverage the employee has provided proof of having:
 - a. Three hundred dollars (\$300.00) per month if waiver eligibility is for "employee only" coverage.
 - b. Four hundred and fifty dollars (\$450.00) per month if waiver eligibility is for "employee plus one" coverage.
 - c. Six hundred and fifty dollars (\$650.00) per month if waiver eligibility is for "employee plus two or more dependents" coverage.

5. Effective the first eligible pay cycle in which medical opt out is due, following City Council adoption of this Memorandum of Understanding, the eligible amount will be deposited in the employee's deferred compensation plan account. A medical opt out election may only be made during an announced Open Enrollment period for medical insurance changes effective January 1.

Section 3. Dental Insurance.

A. HMO Dental Plan. The City shall continue its contribution of thirty-one dollars and ninety-five cents (\$31.95) per month towards a HMO dental benefit plan for employee and his qualified dependent(s). Any amount necessary to cover the monthly premium in excess of the City's contribution is the responsibility of the employee.

B. Delta Dental PPO Plan. The City shall maintain its Delta Dental PPO plan, which is a self-funded plan administered by Delta Dental, and agrees to maintain the employee's contribution rate of fifty-two percent (52%) towards the total monthly premium.

1. Plan premiums are calculated annually based on the prior year's claims experience, administrative fees, and an industry trending projection. This calculation shall be conducted by Delta Dental for communication by the City during the announced annual Open Enrollment period.
2. For cost effectiveness that is mutually beneficial to the City and the Association, the City will continue to evaluate other Delta Dental plan coverage options for implementation to reduce premiums and/or employee out of pocket costs for consideration of a change from a current composite rate to a three-tier rate structure ("Employee only; Employee plus one dependent; and, Employee plus two or more dependents") for monthly premiums effective January 1. In addition, the City changes from a June Open Enrollment to the Open Enrollment Period that coincides with CalPERS medical plan for changes effective January 1. There will be no changes in dental plan coverage without agreement of the parties. The annual CalPERS medical Open Enrollment Period is held generally during September through October.

Section 4. Life Insurance. Each employee covered by this Agreement shall be provided with basic group term life insurance in the amount of \$100,000.00.

Section 5. Long-Term Disability Insurance (LTD). The City shall provide employees covered by this Agreement with group LTD insurance coverage.

ARTICLE XI

RETIREMENT

Section 1. California Public Employees' Retirement System (CalPERS) Coverage. Employees covered by this Agreement participate in the California Public Employees' Retirement System (CalPERS). Employee options are described in a contract between the City of Downey and CalPERS.

Section 2. Retirement Formula and Contributions.

A. FIRST TIER

1. Employees hired in a safety classification prior to December 9, 2011 shall be provided the 3% at age 50 retirement formula as set forth in California Government Code Section 21362.2.
 - a. In accordance with existing practice and Government Code sections 20636(c)(4) and 20691, the City will pay the employees' statutorily required member contribution of nine percent (9%) and report this Employer Paid Member Contribution ("EPMC") to CalPERS as special compensation.
 - b. Effective the pay period that includes January 1, 2015, employees in the first tier shall have deducted a total of five and one-half percent (5.5%) of CalPERS reportable compensation, on a pre-tax basis, pursuant to Government Code Section 20516 (f).
 - c. The City has passed a resolution setting forth that all deductions or contributions under this Section shall be regarded as a pick-up of retirement costs pursuant IRC 414(h)(2).
 - d. First tier benefits are available only to "classic" members (i.e., those members that do not meet the statutory definition of "new member" under the California Public Employees' Pension Reform Act ("PEPRA"), specifically Government Code section 7522.04(f) and who were hired prior to December 9, 2011).

B. SECOND TIER

1. Employees hired into a safety classification on or after December 9, 2011, but before January 1, 2013, shall receive the 3% at age 55 retirement formula pursuant to California Government Code Section 21363.1.
 - a. Employees covered hereunder shall pay, on a pre-tax basis, the nine percent (9%) statutorily required member contribution to CalPERS.
 - b. The City has passed a resolution setting forth that all deductions or contributions under this Section shall be regarded as a pick-up of retirement costs pursuant IRC 414(h)(2).
 - c. Second tier benefits are available only to "classic" members (i.e., those members that do not meet the statutory definition of "new member" under the California Public Employees' Pension Reform Act ("PEPRA"), specifically Government Code section 7522.04(f) and hired on or after December 9, 2011, but before January 1, 2013.

C. THIRD TIER (“PEPRA” TIER)

1. Employees who meet the definition of “new member” set forth in Government Code section 7522.04(f) shall be eligible for the benefits provided by PEPRA, which include but are not limited to the following:
 - a. Retirement formula of 2.7% @ 57 (Government Code section 7522.25);
 - b. Employees covered hereunder shall pay a member contribution of fifty percent (50%) of normal cost as determined from time to time by CalPERS [employee contribution is twelve and one-fourth percent (12.25%) for FY 2015-2016];
 - c. There shall be no Employer Paid Member Contribution (EPMC) by the City;
 - d. Retirement benefit calculations shall be based on pensionable compensation, as defined by Government Code section 7522.34; and
 - e. Retirement benefits shall be calculated based on the three (3) year highest average annual pensionable compensation.

Section 3. City Contribution to a Retirement Health Savings (RHS) Plan. As a result of the City contracting for CalPERS medical insurance pursuant to PEMHCA provisions effective October 1, 2012, this Section is revised to comply with PEMHCA and avoid any added cost to the City’s mandated contribution for retirees. The City will contribute the following monthly amount toward a retiree’s RHS account upon meeting eligibility at retirement.

A. The following City contribution amounts shall be referred to herein as the “retiree medical contribution”:

Employees who retire after July 1, 1987 -	\$ 98.00
Employees who retire after July 1, 2002 -	\$ 200.00
Employees who retire after July 1, 2003 -	\$ 235.00
Employees who retire after July 1, 2004 -	\$ 270.00

1. The City’s retiree medical contribution is inclusive of the Public Employees’ Medical and Hospital Care Act (PEMHCA) statutory minimum employer contribution as specified in Cal. Government Code § 22892(c).

B. Eligibility Requirements. The maximum monthly City retiree medical contribution amount specified in Section A above shall be deposited on a quarterly basis to the retiree’s RHS account for the reimbursement of qualified medical expenditures. To be eligible to enroll in the City’s CalPERS health plans, pursuant to CalPERS rules and regulations, and receive the maximum monthly City retiree medical contribution amount specified in Section A above, the employee must satisfy the following eligibility criteria:

1. At the time of retirement the employee has a minimum of ten (10) years of service, or is granted a service-connected disability retirement; and

2. At the time of retirement the employee is employed by the City; and
3. Effective the day after official separation from the City the employee has been granted a retirement allowance by the California Public Employees' Retirement System.
4. The City's obligation to pay said monthly contributions shall be modified downward or cease during the lifetime of the retiree upon the happening of any one of the following:
 - a. During any period the retired employee is eligible to receive or receives health insurance coverage at the expense of another employer the payment will be suspended. "Another employer" as used herein means private employer or public employer or self-employed or the employer of a spouse. As a condition of being eligible to receive the premium contribution set forth above, the City shall have the right to require any retiree to annually certify that the retiree is not receiving any such paid health insurance benefits from another employer. If it is later discovered that misrepresentation has occurred, the retiree will be responsible for reimbursement of those amounts inappropriately expended and the retiree's eligibility to receive benefits will cease.
 - b. If the retired employee becomes eligible to enroll, automatically or voluntarily, in Medi-Cal or Medicare, the City's plan shall provide secondary coverage only and the City's contribution rate set forth above shall be adjusted downward accordingly.
 - c. In the event the Federal government or State government mandates an employer funded health plan or program for retirees, or mandates that the City make contributions toward a health plan (either private or public plan) for retirees, the City's contribution rate set forth above shall be first applied to that plan. If there is any excess, that excess may be applied toward the City medical plan as supplemental coverage provided the retired employee pays the balance owing for such coverage if any.
 - d. Upon the death of the retired employee, the monthly contributions shall cease. The surviving spouse shall be able to continue coverage by paying the appropriate premium.

ARTICLE XII

TUITION REIMBURSEMENT

Section 1. Reimbursement Rates. Employees may be reimbursed for tuition and books for courses taken to improve their value to the City. In accordance with City policy and procedures, tuition shall be reimbursed for courses as recommended by the department head with job related justification and approved by the City Manager or designee. Employees must receive a passing grade in order to be reimbursed for approved coursework. Reimbursement shall be made at the rate of tuition charged at California State University, San Bernardino (CSUSB) for courses on the quarter system and California State University, Long Beach (CSULB) for courses on the semester system. The employee will be reimbursed for required books only. The parties agree that quarter system tuition reimbursement will no longer be based on California State University, Los Angeles (CSULA), as that institution will convert to a semester system in the Fall, 2016.

ARTICLE XIII

PROBATIONARY PERIOD

Section 1. Length of Probation/Extensions. An original appointment will be tentative and subject to a probationary period of not less than eighteen (18) months, except that the City Manager may extend the probationary period for a class up to an additional six (6) months or for a marginal employee for up to an additional three (3) months. The promotional appointment will be tentative and subject to a probationary period of not less than twelve (12) months. Should the appointing authority desire to terminate any probationary employee, the appointing authority shall notify such employee not later than two (2) weeks prior to the end of the probationary period.

Section 2. Process for Retention/Termination. If the service of the probationary employee has been satisfactory to the appointing authority, then the appointing authority shall file with the personnel officer a merit rating including a statement, in writing, to such effect and stating that the retention of such employee in the service of the City is desired. In the case of an original appointment, if such a statement is not filed, the employee will be deemed to be unsatisfactory and his employment terminated at the expiration of the probationary period. In the case of a promotional appointment, the employee shall be reinstated to the position from which he was promoted.

Section 3. First of the Month. All probationary periods shall extend to the first day of the month following the period of probation.

ARTICLE XIV

SENIORITY

Section 1. Definition. Seniority is defined as the length of an employee's continuous service within rank from his last date of promotion, and shall apply in the manner and to the extent set forth in the remainder of the Article.

Section 2. Probationary Employees Excluded. Probationary employees shall have no seniority rights, but shall acquire seniority from date of hire upon completion of his probationary period.

Section 3. Layoff and Recall. Seniority shall apply between employees in a rank for purposes of layoff and recall.

Section 4. Bumping Rights. An employee who is subject to layoff pursuant to this Section may exercise his seniority in the next lower rank within the Fire Department provided that the employee has satisfactorily held the same position in the rank in which the employee seeks to exercise seniority. The employee with the earliest promotion date to that rank will be considered to have seniority for that position.

ARTICLE XV

CITY RIGHTS

Section 1. Management Rights. The City reserves, retains, and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provisions of the Memorandum of Understanding or by law to manage the City, as such rights existed prior to the execution of this Memorandum of Understanding. The rights of management, as they are not abridged by this Agreement or by law, shall include, but not be limited to, the following rights:

- A.** To manage the City generally and to determine the issues of policy.
- B.** To determine the necessity and organization of any service or activity conducted by the City and expand or diminish services.
- C.** To determine or change the nature, manner, means, and technology, types of equipment and extent of services to be provided to the public.
- D.** To determine or change methods of financing.
- E.** To determine and/or change the facilities and size of the work force by which the City operations are to be conducted.
- F.** To determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions.

G. Establish and/or change work schedules and/or work assignments in accordance with this Agreement and existing departmental rules, regulations and procedures.

H. To relieve employees from duties for lack of work or lack of funds.

I. To establish and modify productivity and performance programs and standards and to require compliance therewith.

J. To discharge, suspend, demote or otherwise discipline permanent non-probationary employees for proper cause.

K. To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with this Memorandum of Understanding.

L. To determine policies, procedures and standards for selection, training and promotion of employees.

M. To maintain order and efficiency in its facilities and operation.

N. To establish and promulgate and/or modify rules and regulations to maintain order and safety in the City which are not in contravention with this Agreement.

O. To take any and all necessary actions to carry out the mission of the Agency in emergencies.

Section 2. Impact of Management Rights. Except in emergencies, or where the City is required to make changes in its operations because of the requirements of law, whenever the exercise of management's rights shall impact on employees of the bargaining unit, the City agrees to meet and confer with representatives of the Association regarding the impact of the exercise of such rights, unless the matter of the exercise of such rights is specifically provided for in this Memorandum of Understanding or in Personnel or Departmental Rules and Regulations and/or salary resolutions of the City which are incorporated by this reference in this Agreement.

Section 3. Health and Safety. The City shall not exercise any of the foregoing rights in an arbitrary, capricious or invidiously discriminatory manner as to injure the health and/or safety of the employees.

ARTICLE XVI

EMPLOYEE ORGANIZATION RIGHTS AND RESPONSIBILITIES

Section 1. Dues Deductions. The City shall deduct dues on a regular basis from the pay of all employees in the classifications and positions recognized to be represented by the Association who voluntarily authorize such deduction, in writing, on a mutually agreed upon form to be provided for this purpose. The City shall remit such funds to the Association within thirty (30) days following their deduction.

Section 2. Indemnification. The Association agrees to hold the City harmless and indemnify the City against any claims, causes of actions or lawsuits arising out of the deduction or transmittal of such funds to the Association, except the intentional failure of the City to transmit to the Association monies deducted for the employees pursuant to this Article.

ARTICLE XVII

NO STRIKE - NO LOCKOUT

A. PROHIBITED CONDUCT

Section 1. No Job Action. The Association, its officers, agents, representatives and/or members agree that during the term of this Agreement they will not cause or condone any strike, walkout, slowdown, sick-out, or any other job action by withholding or refusing to perform services.

Section 2. No Lockout. The City agrees that it shall not lockout its employees during the term of this Agreement. The term "lockout" is hereby defined so as not to include the discharge, suspension, termination, layoff, failure to recall or failure to return to work employees of the City in the exercise of its rights as set forth in any of the provisions of this Agreement or applicable ordinance or law.

Section 3. Consequence for Prohibited Conduct. Any employee who participates in any conduct prohibited in Section I above shall be subject to termination by the City.

Section 4. Suspension of Employee Organization Rights. In addition to any other lawful remedies or disciplinary actions available to the City, if the Association fails, in good faith, to perform all responsibilities listed below in Association Responsibility, Section I, the City may suspend any and all of the rights and privileges, accorded to the Association under the Employee Relations Resolution in this Memorandum of Understanding including, but not limited to, suspension of recognition of the Association, grievance procedure, right of access, check-off, the use of the City's bulletin boards and facilities.

Section 5. Association Responsibility. In the event that the Association, its officers, agents, representatives, or members engage in any of the conduct prohibited in Section I above, the Association shall immediately instruct any persons engaging in such conduct that their conduct is in violation of this Memorandum of Understanding and unlawful, and they must immediately cease engaging in conduct prohibited in Section I above and return to work.

Section 6. Hold Harmless. If the Association performs all of the responsibilities set forth in Section I above, its officers, agents, representatives or members shall not be liable for damages for prohibited conduct performed by employees who are covered by this Agreement in violation of Section I above.

ARTICLE XVIII

GRIEVANCE PROCEDURE

Section 1. Grievance. Grievance shall be defined as a dispute between the Association, employee or employees and the City, regarding interpretation or application of specific provisions of this Memorandum of Understanding and departmental rules and regulations or as an appeal of a disciplinary action.

A. Procedural Due Process Rights. Appeals of punitive action pursuant to Government Code §3254.4 (the Firefighters Procedural Bill of Rights Act) shall be conducted pursuant to the procedures set forth in Government Code Sections 11512-11519.

Except, however, that appeals of written reprimands only, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 which provides for an informal hearing procedure.

The informal hearing procedures shall be conducted pursuant to Government Code sections 11445.40 to 11445.50. The presiding officer shall be selected from a list of seven neutral hearing officers from the State Mediation and Conciliation Service. In the event that the parties cannot agree upon a mutually acceptable hearing officer from the list of seven (7), the parties shall alternately strike names from the list, with the City striking the first name. The identity of the last remaining individual on the list will be selected as the hearing officer. The presiding officer shall regulate the course of the proceeding. The presiding officer shall permit the parties and may permit others to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, and argument, and may limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences, and rebuttal. A request for an appeal of a written reprimand shall be submitted in writing to the Human Resources Director within ten (10) calendar days of receipt of the written reprimand.

Section 2. Conduct of the Grievance Procedure. An employee may request the assistance of another person of his own choosing in preparing and presenting his grievance at any level of review, or may be represented by a recognized employee organization or may represent himself/herself.

A. Any retroactivity on monetary grievances shall be limited to ninety (90) days prior to the date that the grievance was filed, in writing, except in cases where it was impossible for the employee to have had prior knowledge of an accounting error.

B. All time limits specified may be extended to a definite date by mutual agreement of the employee or his Association representative, and the decision-making management representative involved at each step of the grievance procedure. Such mutual agreement shall be evidenced in writing and signed by the employee or Association representative and management representative.

Section 3. Grievance Steps. Grievance procedure shall provide for the following steps:

Step One. Informal Procedure. An employee must first attempt to resolve a grievance without delay through discussion with a supervisor on an informal basis. The grievance shall begin at the level of supervision that ultimately took the action that resulted in the grievance. If, after such discussion, the employee does not believe the problem has been satisfactorily resolved, he shall have the right and obligation to discuss it with his supervisor's immediate superior, if any, and through the chain of command to the Fire Chief if necessary. Every effort shall be made to find an acceptable solution by these informal means at the most immediate level of supervision. At no time may an informal process go beyond the Fire Chief. In order that this informal procedure may be responsive, all parties involved shall expedite this process.

In no case may more than fourteen (14) calendar days elapse from the date of the alleged incident or action giving use to the grievance or fourteen (14) calendar days from the date the employee should have reasonably known about the alleged incident and the first meeting with the supervisor discussed in this section. The employee shall have up to seven (7) additional days for each level of supervision; however, the time shall not be cumulative. Failure to meet any of these time lines shall mean that the grievance shall be barred and waived.

Appeals of disciplinary action begin one level of supervision above the supervisor taking the disciplinary action. Terminations are appealed in accordance with Step Four.

Step Two. Formal Procedure. If the grievance is not resolved through the informal process and the employee has complied with all time limits, then the employee shall have the right to file the grievance in written form and present it to the Fire Chief within ten (10) calendar days from the decision or completion of the informal process. The written grievance shall state all facts plus the specifics of the alleged dispute. Failure of the employee to take action within the time limit set forth above will constitute termination of the grievance.

The Fire Chief shall review the written material submitted by the employee and may require the employee's supervisor and/or superior officers to submit written material regarding this grievance. Copies of these materials will be given to the employee prior to meeting with the Fire Chief. The department head shall render a decision and comments in writing which shall be given to the employee within ten (10) calendar days of the meeting between the employee and the department head.

Step Three. Employee Relations/Human Resources Director. If the grievance is not resolved in Step Two, the employee may, within ten (10) calendar days present the grievance in writing to the Employee Relations/ Human Resources Director for processing. Failure of the employee to take this action will constitute termination of the grievance. In the event the employee is not being represented by a recognized employee organization, the Employee Relations/ Human Resources Director shall forward the grievance to the designated management representative who shall attempt to resolve the grievance with the employee. If the employee is being represented by a recognized employee organization, the Employee Relations/ Human Resources Director shall convene a joint meeting of the recognized employee organization and management representative who shall attempt to resolve the grievance. In the event the grievance is not satisfactorily adjusted or settled through discussion at this level, both parties shall advise each other, in writing, as to their respective positions.

Step Four. Grievance Hearing. If the grievance is not resolved in Step Three, the employee may, within ten (10) calendar days of the receipt of the written position from management representatives, present a "request for hearing" in writing to the Human

Resources Director. Failure of the employee to take this action will constitute termination of the grievance. The Human Resources Director shall request from the State Mediation and Conciliation Service, or mutually agreed upon alternative organization, a list of seven (7) neutral hearing officers. In the event that the parties cannot agree upon a mutually acceptable hearing officer from the list of seven (7), the parties shall alternately strike names from the list, with the City striking the first name. The identity of the last remaining individual on the list will be selected as the hearing officer.

The hearing officer shall preside over a full and fair evidentiary hearing and, within thirty (30) calendar days of its conclusion, render a written decision that includes findings of fact and a recommendation to the City Manager. That decision shall be served jointly upon the grieving party and the City Manager

Step Five. City Manager's Decision. Within thirty (30) calendar days of receipt of the decision of the hearing officer, the City Manager shall, in writing, adopt, modify or reject that decision. The decision of the City Manager shall be the final administrative decision.

ARTICLE XIX

MISCELLANEOUS

Section 1. Third Party Legal Actions Against Assistant Fire Chief and Battalion Chiefs. If a determination is made by the department that the employee involved has met the condition that the action given rise to the legal proceeding was taken by the employee during the course and scope of the employee's employment, without malice and in the apparent best interest of the City, then the City shall afford legal representation to the employee in any civil or criminal process.

Section 2. Substance Abuse Policy. The City of Downey and the Association have a vital interest in maintaining safe, healthful and efficient working conditions. Being under the influence of a drug or alcohol on the job may pose serious safety and health risks not only to the user but to co-workers and the citizens of Downey. The possession, use or sale of an illegal drug or of alcohol on the job also poses unacceptable risks for safe, healthful and efficient operations. "On the job" means while on City premises, at work locations, or while on duty or being compensated on an "on call status."

The City of Downey and the Association recognize that their future is dependent on the physical and psychological wellbeing of all employees. The City and the Association mutually acknowledge that a drug and alcohol-free work environment benefits Downey's employees and citizens.

The purpose of this section is to define the City's drug and alcohol policy as well as the possible consequences of policy violation.

A. Possession, sale, use or being under the influence of drugs or alcohol while on the job is strictly prohibited. This prohibition shall not apply to legitimate undercover activities of Officers that are undertaken in accordance with the direction of the Police Department.

B. When reasonable suspicion exists, the City may require an employee to submit to a medical examination, including, but not limited to, a substance screening. Substance screening means the testing of urine or other body fluids as reasonably deemed necessary by a physician to determine whether an employee has a restricted substance in their system.

1. Reasonable suspicion is cause based upon objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

C. Any manager or supervisor requesting an employee to submit to a substance screening shall document in writing the facts constituting reasonable suspicion and shall give the employee a copy. The employee shall be given an opportunity to provide additional facts. An employee who is then ordered to submit to a substance abuse screening may request to be represented. Because time is of the essence in drug screening, a representative must be available within a reasonable time or the employee will then be ordered to submit to substance screening. An employee who refuses to submit to a substance screening may be considered insubordinate and shall be subject to disciplinary action up to and including termination.

D. The supervisor, or designee, shall transport the suspected employee to the testing facility. Testing shall occur on City time and be paid for by the City. Employee urine samples, or other body fluids, will be collected in a DOX Security Container System or other system which includes methods or mechanisms designed to assure the integrity of the sample. The facility used for testing shall be certified by the National Institute on Drug Abuse and comply with established guidelines for "chain of custody" to insure that identity and integrity of the sample is preserved throughout the collecting, shipping, testing and storage process.

E. Any positive test for alcohol or drugs will be confirmed by a scientifically sound method. An employee who tests positive on a confirmatory test will be given the opportunity to discuss the results with a physician to be designated by the City. The employee should be prepared at that time to show proof of any valid medical prescription for any detected substance or to otherwise explain, if he or she so chooses, a positive test result.

F. While use of medically prescribed medications and drugs is not per se a violation of this policy, this policy shall establish that no employee shall operate a City vehicle or dangerous machinery or equipment while taking any kind of medication or drugs which are clearly marked that they may cause significant drowsiness or impair an employee's performance. An employee shall notify his/her supervisor, before beginning work, when taking such medications or drugs. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a physician designated by the City may be required. The City reserves the right to send an employee home on sick leave under these circumstances.

G. Employees with substance abuse problems are encouraged to participate voluntarily in the City-sponsored Employee Assistance Program (EAP). Assistance through the EAP may be sought by an employee with complete confidentiality and without adverse consequences to his/her employment. Employees should be aware, however, that a request for assistance through the EAP will not insulate the employee from disciplinary action already contemplated. Depending upon the facts surrounding the reasonable suspicion determination, positive test result, and/or other violation of this policy or other City/department rules and regulations, the

City may refer an employee to the EAP. Such referral could, at the discretion of the City, be made available to the employee as an alternative to disciplinary action. Referral would be subject to agreement by the employee to enroll, participate in and successfully complete a rehabilitation/counseling program and other terms and conditions in a "Last Chance Agreement."

1. It is the City's intent to use the EAP option for first offenders except the City reserves the right to discipline for those offenses which are a significant violation of City/department rules and regulations or where violation did or could have resulted in serious injury or property damage.

ARTICLE XX

SOLE AND ENTIRE MEMORANDUM OF UNDERSTANDING

Section 1. Sole Source. It is the intent of the parties hereto that the provisions of this Memorandum of Understanding shall supersede all prior agreements and memorandums of understanding, or memorandums of agreement, or contrary salary and/or personnel resolutions and ordinances of the City, oral or written, expressed or implied, agreements between the parties or understandings between the parties, and shall govern their entire relationship and shall be the sole source of any and all rights which may be asserted hereunder. This Memorandum of Understanding is not intended to conflict with Federal or State Law or City Charter.

Section 2. Inclusion of Other Rules and Regulations. Notwithstanding the provisions of Section 1 above, there exists within the City of Downey, certain personnel resolutions, ordinances, and departmental rules, regulations and procedures. To the extent that this Memorandum does not specifically contravene provisions of these personnel resolutions, ordinances, and departmental rules, regulations and procedures; these personnel resolutions, ordinances, and departmental rules, regulations and procedures are specifically incorporated herein.

ARTICLE XXI

WAIVER OF BARGAINING DURING TERM OF THIS AGREEMENT

During the term of this Memorandum of Understanding, the parties mutually agree that they will not seek to negotiate or bargain with regard to wages, hours, and terms and conditions of employment, whether or not covered by this Memorandum or in the negotiations leading thereto and irrespective of whether or not such matters were discussed or were within the contemplation of the parties hereto during the negotiations leading to this Memorandum. Regardless of the waiver contained in this Article, the parties may, however, by mutual agreement, in writing, agree to meet and confer about any matters during the term of this Memorandum.

ARTICLE XXII

RE-OPENER

Section 1. The City and the Association agree to reopen discussion during the term of this Memorandum of Understanding regarding changes to the City's Cafeteria Plan to ensure compliance with legal requirements.

Section 2. The parties agree to reopen discussions during the term of this Memorandum of Understanding to discuss tuition reimbursement and to address California State University, San Bernardino's transition from the quarter to semester system.

Section 3. The City and the Association agree that the City may request a reopener during the period of March 2021 through April 2021, if the two major revenue sources for the City (Property Tax and Sales Tax) are projected to decrease by five percent (5%) or more for FY 2021/22 when compared to FY 2020/21. The City and the "Association" agree to meet in order to review potential options for cost saving measures. Any changes to the MOU as a result of this re-opener will be based on mutual agreement.

Section 3. After adoption of the MOU by the City Council and during the term of the Agreement, the parties agree that upon the written request of the Association, the parties will reopen the MOU to meet and confer regarding the addition of 25 Year Longevity Pay.

ARTICLE XXIII

EMERGENCY WAIVER PROVISION

In the event of circumstances beyond the control of the City, such as acts of God, fire, flood, insurrection, civil disorder, national emergency, or similar circumstances, provisions of this Memorandum of Understanding or the Personnel Rules or Resolutions of the City, which restrict the City's ability to respond to these emergencies, shall be suspended for the duration of such emergency. After the emergency is over, the Association shall have the right to meet and confer with the City regarding the impact on employees of the suspension of these provisions in the Memorandum of Understanding and any Personnel Rules and policies.

ARTICLE XXIV

SEPARABILITY

Should any provision of this Memorandum of Understanding be found to be inoperative, void, or invalid by a court of competent jurisdiction, all other provisions of this Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding.

ARTICLE XXV

TERM OF MEMORANDUM OF UNDERSTANDING

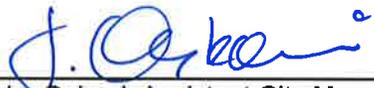
The term of this Memorandum of Understanding shall commence on January 1, 2020 and shall continue in full force and effect until December 31, 2022.

ARTICLE XXVI

RATIFICATION AND EXECUTION

The City and the Association acknowledge that this Agreement shall not be in full force and effect until ratified by the Association and adopted by the City Council of the City of Downey. Subject to the foregoing, this Agreement is hereby executed by the authorized representatives of the City and the Association and entered into this 14th day of January, 2020.

CITY OF DOWNEY:

By: 
John Oskoui, Assistant City Manager

By: 
James McQueen, Human Resources Director

THE DOWNEY FIRE MANAGEMENT ASSOCIATION:

By: 
Dan Hurlock, President

By: 
Jay Ibey, Treasurer

By: 
Scott Devereux, Member

By: 
Mike Whitney, Member

APPROVED AS TO FORM:



EXHIBIT A

CLASSIFICATIONS REPRESENTED BY THE DOWNEY FIRE MANAGEMENT ASSOCIATION

FIRE BATTALION CHIEF
ASSISTANT FIRE CHIEF (Assignment)

EXHIBIT B

PAY SCHEDULE

PAY SCHEDULE EFFECTIVE December 30, 2019

Position Title	A	B	C	D	E
Fire Battalion Chief	47.4339	50.0426	52.7949	55.6990	57.8693
Assistant Fire Chief	70.0598	73.9131	77.9783	82.2671	85.4728

PAY SCHEDULE EFFECTIVE December 28, 2020

Position Title	A	B	C	D	E
Fire Battalion Chief	48.3826	51.0435	53.8508	56.8130	59.0267
Assistant Fire Chief	71.4610	75.3914	79.5379	83.9124	87.1823

PAY SCHEDULE EFFECTIVE December 27, 2021

Position Title	A	B	C	D	E
Fire Battalion Chief	49.3503	52.0644	54.9278	57.9493	60.2072
Assistant Fire Chief	72.8902	76.8992	81.1287	85.5907	88.9260