

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
CITY OF SOLANA BEACH  
AND  
THE SOLANA BEACH FIREFIGHTERS' ASSOCIATION**

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF SOLANA BEACH  
AND  
THE SOLANA BEACH FIREFIGHTERS' ASSOCIATION**

**SECTION 1. PREAMBLE**

This Memorandum of Understanding (MOU) is made and entered into pursuant to Solana Beach Resolution No. 92-52 (Employer-Employee Relations Resolution), and applicable State law between the designated management representatives of the City of Solana Beach (CITY), and the Solana Beach Firefighters' Association (SBFA), the Recognized Employee Organization (under Solana Beach Resolution No. 92-52) for certain full-time fire department safety employees represented herein.

This MOU is the result of good faith negotiations regarding wages, hours and other terms and conditions of employment under the provisions of the California Meyers-Miliias-Brown Act. The parties to this MOU hereto have met and conferred in good faith exchanging various proposals in an attempt to reach agreement. The parties affirm their mutual commitment to the goals of effective and efficient public service, high employee morale, sound and responsible management of CITY business, and amicable employer-employee relations. The parties encourage the highest possible degree of friendly cooperative relationships between their respective representatives at all levels and with and between all employees.

All provisions in this MOU constitute the entire understanding between the parties regarding the subject provisions. Provisions wherein this MOU is silent, the City's Personnel Rules and Regulations prevail. There are no Special Departmental Policies that supersede the issues addressed by this MOU, unless signed by the City Manager at the time of MOU Adoption. Any subsequent Departmental Policies affecting aspects of provisions contained in this MOU directly or indirectly related to compensation must be authorized and signed by the City Manager and made part of the MOU as a side letter.

**SECTION 2. RECOGNITION**

Pursuant to Solana Beach Resolution No. 92-52 (Employer-Employee Relations Resolution), and applicable State law, the CITY acknowledges SBFA as the Recognized Employee Organization for fire department safety employees in the classifications of Firefighter, Firefighter/Paramedic, Fire Engineer, Fire Captain, and Shift Fire Captain, and all provisions of the MOU shall apply to said classifications.

Nothing in this Article is intended to amend, alter, modify or supersede the provisions of Resolution No. 92-52, the rights of employees thereunder, or the rights of individual employees under the provisions of the Meyers-Milias-Brown Act.

### **SECTION 3. APPROVAL BY THE CITY COUNCIL**

This MOU constitutes a mutual recommendation to be jointly submitted to the City Council for its consideration and approval. If this MOU is approved by the City Council, the CITY will act in a timely manner to implement the changes to ordinances, resolutions, rules, policies, practices and procedures, if any, contemplated by this MOU.

Upon approval by the City Council, this MOU, along with the Solana Beach Personnel Rules and Regulations (as existing on the date of this MOU or as modified by or pursuant to this MOU), Fire Department Policies and Directives (as existing on the date of this MOU or as modified by or pursuant to this MOU), and other Policies or Directives established by the CITY (as existing on the date of this MOU or as modified by or pursuant to this MOU) will govern the wages, hours and terms and conditions of employment of the employees represented by the SBFA, subject to the provisions and limitations of Chapter 2.44 (Personnel System) of the Solana Beach Municipal Code.

### **SECTION 4. AUTHORIZED AGENTS/REPRESENTATIVES**

The CITY'S principal authorized agent shall be the City Manager or the City Manager's authorized representative, unless a particular officer or employee is specifically designated in connection with the performance of a specific function or obligation set forth in the MOU. The SBFA's principal authorized agent shall be its president or a duly authorized designee of the president.

### **SECTION 5. BENEFIT PLAN**

All regular employees in this Unit shall be entitled to receive health, dental and vision insurance in accordance with the group insurance policies acquired by the CITY.

Effective July 2007, the CITY will contribute Flexible Plan Credits in the amount of \$690.00 per employee per month toward the medical, dental, and vision insurance options offered through the CITY's Flexible Benefit Plan (Cafeteria Plan).

Effective July 2008, the CITY will contribute \$715 per employee per month toward the medical, dental, and vision insurance options offered through the City's Flexible Benefit Plan.

Under this Plan, the CITY will make available medical, dental, and vision insurance plans for employees in this Unit. The Plan also provides for employee participation in health care and dependent care reimbursements. This Flexible Benefit Plan is established under Section 125 of the Internal Revenue Code and will be administered by the Personnel Officer. Employees will have the choice of applying Flexible Plan Credits to:

- (a). Medical, Dental, and Vision Insurance. Amounts designated by employee shall be applied to these insurance costs.
- (b). Health Care and Dependent Care Reimbursement Accounts. Amounts designated by employee shall be applied to these reimbursement accounts.
- (c). Cash. Employees shall have the option of cash benefit in accordance with the City of Solana Beach Flexible Benefit Plan Document.

At a minimum, all employees must elect medical insurance for employee only. Exceptions may be made for an employee who provides proof of medical insurance coverage through another non-CITY plan. Requests for exception must be made by the employee and approved by the CITY's Personnel Officer. After the CITY's initial verification of employee coverage under another non-CITY medical plan, the Personnel Officer may request proof of coverage as often as deemed necessary to ensure employee's continued medical insurance coverage. All costs of insurance coverage for the employee or dependents in excess of the CITY contribution shall be borne by the employee.

All Cafeteria Plan elections must be made on forms approved by the Personnel Officer. Elections must be made prior to the beginning of the Plan year and must remain in effect unless there is a qualifying event as defined under IRS regulations and the City of Solana Beach Flexible Benefit Plan, and approved by the Personnel Officer.

The City tries to maintain Flexible Benefit Plan Credits (cafeteria plan) at an equal rate for all of City's represented employees. The City will endeavor to continue this approach for all represented employees in the future, consistent with market and economic conditions.

## **SECTION 6. CALL BACK**

Employees shall be entitled to call back pay as provided in the City Personnel Rules and Regulations. The provisions of Section 9.03 D of the Personnel Rules and Regulations shall not apply to employees covered by this MOU. Stand-by time shall not apply to employees covered by this MOU. Employees subject to this MOU who wear or possess beepers, pagers, cellular telephones or other similar personal communication devices shall be deemed to do so voluntarily. An employee who is requested or chooses to wear or possess such a device, or to whom an inquiry is made as to where the employee might be reached by telephone, but who is not in fact called back to work, shall not be considered as being on stand-by.

## **SECTION 7. CAREER PATH**

The career path for the fire department shall be: Firefighter, Firefighter/Paramedic, Engineer, Fire Captain, Shift Fire Captain, Deputy Fire Chief, Fire Chief. The Fire Chief shall determine the job qualifications and duties for the positions within the career path, with the exception of the Fire Chief position, according to the management rights provisions of this MOU. Nothing in the career path shall be construed as requiring the CITY to promote or hire any employee, or as precluding any lawful method for the selection of employees.

SBFA acknowledges that the CITY shall not be required to compare the compensation of the position of Fire Captain of the Solana Beach Fire Department with the compensation for the position of Captain of any other fire department. SBFA acknowledges that the CITY intends to retain a compensation differential of 2% between the Fire Captain and Shift Fire Captain ranges, and to base salary comparisons on the Shift Fire Captain position.

## **SECTION 8. CITY MANAGEMENT RIGHTS**

The CITY retains and has the exclusive decision-making authority to manage municipal services and the work force performing those services so long as the CITY exercises that exclusive authority in conformity with the express provisions of this MOU.

Subject only to the provisions of this MOU, the CITY has the exclusive decision-making authority to:

- (a). Determine and modify the organization of CITY government and its constituent work units;
- (b). Determine the nature, standards, levels and mode of delivery of services to be offered to the public, provided, however, should the City determine

to change the mode of delivery of services to be offered to the public, it shall first notify SBFA and if an effect on represented employees is identified, shall meet and confer with SBFA regarding the effect of such decision on represented employees;

- (c). Determine the budget for the CITY and its respective departments, to allocate funds and resources and determine revenue sources;
- (d). Determine methods, means, and the numbers and kinds of personnel by which services are to be provided;
- (e). Determine whether goods or services shall be made, purchased or contracted for, provided, however, should the CITY determine to contract out bargaining unit work, it shall first meet and confer with SBFA regarding the effect of such decision on represented employees;
- (f). Determine employee work assignments, including scheduling and assignment of work and overtime;
- (g). Establish employee performance standards and require compliance therewith;
- (h). Promote or hire employees and establish job qualifications, descriptions and requirements;
- (i). Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits, or otherwise discipline employees subject to the provisions of the City's Personnel Rules and Regulations;
- (j). Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons;
- (k). Implement rules, regulations and directives consistent with law and the provisions of this MOU;
- (l). Take all necessary actions to protect the public health, safety and welfare in emergencies.

The manner in which the CITY exercises any of the rights under this paragraph shall not be subject to any grievance procedures.

## **SECTION 9. EMPLOYEE RIGHTS**

As a result of this MOU, no person shall be favored or discriminated against by either the CITY or SBFA, to the extent provided by law because of political or religious opinions or affiliations, race, national origin, age, sex, sexual orientation or disability.

Neither the CITY nor SBFA shall interfere with, intimidate, restrain, coerce, or discriminate against employees covered by this MOU because of the exercise of rights to engage or not engage in SBFA activity or because of the exercise of any right provided to employees by this MOU or the Meyers-Milias-Brown Act.

Nothing in this MOU shall be construed as a waiver of any of the following rights of individual employees which may be exercised in compliance with applicable laws, ordinances and rules and regulations:

- (a). The right to form, join and participate in the activities of employee organizations of the employee's own choosing for the purpose of representation on matters of employer/employee relations or not to join or participate in the activities of any organization as provided in Solana Beach Resolution No. 92-52. All employees have a right to be free from interference, intimidation, restraint, coercion, discrimination, or reprisal on the part of the management representatives, the supervisor, other employees, or employee organizations, with respect to his or her membership or non-membership in any employee organization.
- (b). Pursuant to the Meyers-Milias-Brown Act, the right to represent himself or herself individually in employer/employee relations with the CITY or to be represented through a representative designated by the employee.
- (c). The right to review his or her individual personnel file during regular business hours, and at times convenient to the employee and Human Resources. The employee must give written notification of the request at least twenty-four (24) hours in advance to the Human Resources Department.

As the recognized employee organization, SBFA has the following rights which the CITY hereby recognizes:

- (a). To govern its internal affairs;
- (b). To use bulletin boards at CITY offices in locations convenient to SBFA and approved by the City Manager. SBFA shall have exclusive control over the material placed on the bulletin boards designated for its use; provided, however, that SBFA agrees to not post, and to immediately remove any unauthorized material, which is defamatory, violates CITY policies

designed to assure a workplace free from harassment or discrimination, violates rules relating to political advocacy in the workplace, or violates any state or federal law;

- (c). To use, with prior approval of the City Manager, CITY facilities for off-duty meetings of SBFA members; provided, however that use of CITY equipment or supplies other than incidental use during such meetings of items normally used at business meetings such as desks, chairs, blackboards, dry boards, and similar items is prohibited;
- (d). To have reasonable access during working hours to members of SBFA for the purposes of providing representation and consultation; provided, however, that such access shall be subject to the approval of the Fire Chief in order to ensure no interference with the convenient operation of the Department and further provided that personal visits by business agents or representatives shall be subject to reasonable prior notice to the Chief;
- (e). To have up to two of its members designated as representatives for the purposes of meeting and conferring with the CITY and to have those members provided with reasonable time off without loss of pay, during scheduled work hours, when those representatives are meeting and conferring with representatives of the CITY on matters within the scope of representation.

A SBFA representative shall be allowed to be present, at the request of any represented employee, during any hearing or meeting regarding discipline or a grievance:

- (a). SBFA may designate one employee representative to assist an employee in preparing and presenting materials for disciplinary or grievance procedures. The designated employee representative shall be allowed reasonable release time from regularly scheduled duties for the purpose of investigating and preparing material for such procedures. Supervisors shall be given at least one day prior written notice in the event release time is requested, unless the supervisor agrees otherwise. Employee representatives, who investigate, prepare, or present materials during off-duty time shall do so on their own time and shall not be considered to be working. Employee representatives and employees who attend personnel hearings during their off-duty time shall do so on their own time and shall not be considered to be working. If an employee who would otherwise be off-duty during the time of a personnel hearing is subpoenaed or ordered to attend the hearing, then the employee shall be considered to be working during the time the employee is in at the hearing in response to the order or subpoena.

- (b). A designated employee representative requesting time off under this Section shall direct the request to the Chief in writing within a reasonable time before the date requested. The Chief shall respond to the request as soon as feasible, but not later than 5:00 p.m. on the next business day following the request. The request may be denied only if the Chief determines that it would unreasonably interfere with departmental staffing or sufficient coverage of departmental assignments. If the Chief does not respond to the request within the time provided by this Section, the City Manager may grant the release time. If the Chief or Manager does not grant the release time because of workload or other scheduling reasons, the Chief or Manager shall give notice to the employee of a date or dates when the release time will be provided.

#### **SECTION 10. FULL UNDERSTANDING, MODIFICATION, WAIVER**

It is the intent of the parties that this MOU set forth the full and entire understanding of matters agreed to upon conclusion of the meet and confer sessions that resulted in this MOU. Any other matters not contained herein that were or could have been addressed during the meet and confer sessions are superseded and terminated in their entirety. This MOU may not be amended except by a writing executed by the parties after appropriate negotiations.

During the term of this MOU neither party shall be required to negotiate with the other regarding changes or modifications of the MOU, except as defined and agreed to with respect to re-opener clauses. If during the term of this MOU it becomes necessary for either party to propose changes in matters within the scope of representation and not covered by this MOU, then the party proposing the change shall give written notice to the other party of the proposed change and request consultation or meeting and conferring as appropriate. The party to whom the request is made shall indicate within ten days of receipt of the written notice, in writing, whether they approve of the change as proposed or whether the party desires to consult or meet and confer. If the party desires consultation or meeting and conferring, the parties shall meet promptly in an earnest effort to reach a mutually satisfactory resolution of the matter as quickly as possible. Failure by SBFA to request consultation or meeting and conferring shall not be deemed approval of any action taken by the CITY, but only as a waiver of the right to consult or meet and confer.

Nothing in this MOU shall be construed to limit the authority of the CITY to make changes required to respond to an emergency. However, the CITY shall notify SBFA of such changes as soon as reasonably feasible. Emergency changes shall not extend beyond the period of emergency. "Emergency" means an unforeseen circumstance requiring immediate implementation of the change.

The consent to, or waiver of, any breach, provision or condition of this MOU shall not constitute a precedent in the future enforcement of any or all of the provisions of this

MOU, nor a consent to, or waiver of, any future breach, provision or condition, unless otherwise expressly stated to the contrary in writing.

**SECTION 11. LEAVE PROVISIONS**

SBFA agrees to abide by City's Administrative Policy #31, Vacation, Sick Leave, and Other Leaves Use and Accrual (Attachment A).

Section 1. Vacation

Paid vacation shall be accrued on an hourly basis as follows:

<u>Months of Employment</u>	<u>Accrued Hours</u>
12 – 36 completion months	112 hours/year <u>or</u> 4.308 hours/pay period
37 – 120 completion months	168 hours/year <u>or</u> 6.461 hours/pay period
121+ completion months	224 hours/year <u>or</u> 8.616 hours/pay period

Full-time employees shall be entitled to earn and use vacation time according to the provisions of the City Personnel Rules and Regulations and the Fire Department Vacation Policy as amended as of the date of this MOU.

Section 2. Sick Leave

Fire employees who regularly work a schedule that averages 56 hours per week shall accrue sick leave at the rate of 7.385 hours per biweekly pay period. There shall be no limit to the amount of sick leave that an employee may accumulate.

Full-time employees shall be entitled to earn and use sick leave according to the provisions of the City Personnel Rules.

Sick Leave Conversion: Personnel Rules and Regulations Section 10.02(E) will be revised to reflect that 40 hours of sick leave may be converted to vacation leave when an employee has not used up more than 40 hours of sick leave during the previous year. All other provisions and requirements regarding Sick Leave will remain unchanged.

Section 3. Holiday

Holidays and holiday pay are generally governed by the City Personnel Rules and Regulations. However, because employees subject to this MOU are required to work shifts to provide full time fire protection services, each fire department safety employee working shift work shall receive holiday-in lieu pay as follows: on the first pay day following June 1 –61 hours of pay at the employee's regular hourly rate; on the first pay day following December 1 –61 hours of pay at the employee's regular hourly rate. Holiday-in-lieu pay shall be pro rated from June 1 or December 1 as applicable and paid upon separation of service.

Section 4. Witness Duty

Notwithstanding the Witness Duty Section of the City of Solana Beach Personnel Rules and Regulations Manual, if an employee is required by subpoena to appear in court on a matter arising out of the course and scope of their employment, at a time other than a regular work shift of the employee, the employee shall be entitled to one additional hour of compensation in lieu of travel time.

Section 5. Special Leaves of Absence Without Pay

An employee who has been employed by the CITY for at least 12 months and who has been employed for at least 1250 hours of service during the 12-month period immediately preceding the commencement of leave shall be entitled to a leave or leaves of absence, without pay, with right to return to the position, as specified by the Family Leave and Medical Act of 1993 (California Government Code 12945.2) and California Family Rights Act or other such provisions by Federal and State Statute.

**SECTION 12. LIFE INSURANCE**

The CITY shall provide life insurance coverage through group policy acquired by the CITY for all CITY employees with basic coverage at an amount equal to the employee's annual base salary.

**SECTION 13. NEGOTIATIONS FOR A SUCCESSOR AGREEMENT**

Negotiations for a successor MOU shall begin by the submission by either party of a proposal or a written request to meet and confer not later than February 1, 2012.

If a proposal or request is submitted, meet and confer sessions shall begin by February 15, 2012, and shall continue until an agreement is reached or until an inability to reach agreement (impasse) is declared. The parties agree to use good faith efforts to conclude meet and confer sessions before May 31, 2012.

If neither party submits a proposal or request to meet and confer, the wages, hours and terms and conditions of employment of this MOU shall automatically continue in full force and effect for an additional one-year term. In the event of such automatic extension, the time for exchanging proposals and opening negotiations as set forth in this Article shall be adjusted accordingly. This process of automatic extensions in the event of a failure by either party to submit a proposal or written request to meet and confer may continue from year to year.

#### **SECTION 14. OVERTIME**

Employees shall be entitled to overtime pay or compensatory time off in lieu of overtime pay as provided in Section 9.02 of the City's Personnel Rules and Regulations and as specified below. Nothing in this MOU or the Personnel Rules and Regulations shall be construed as guaranteeing that overtime work will be available.

##### **Definitions:**

##### **Work Period**

The "Work Period" for members of the Solana Beach Firefighter's Association shall be defined as a 24-day work-period cycle coinciding with the 24-day Firefighter's Shift Schedule.

##### **Sick Leave as Good Time**

When an employee has used sick leave the time off shall be counted as time worked for purpose of overtime, provided however that the sick leave charge did not exceed twelve hours per incident of sick leave usage. If the sick leave charge exceeds 12 hours per incident, then the entire amount of sick leave used by the employee for that particular incident shall not be counted as time worked for the purpose of overtime.

##### **Fire Chief Authority and Emergency Provision**

In the event of an emergency, the Fire Chief or his designee, has the authority to waive any and all requirements for overtime compensation eligibility as specified within this Overtime section of the MOU, in order to require a sufficient amount of employee resources for purposes of staffing during an emergency. The Fire Chief, or his designee, has full authority to grant or deny all overtime and leave requests, in accordance with applicable Department of Labor rules and regulations.

**SECTION 15. PARAMEDIC INCENTIVE PAY**

The City will continue to provide \$500 per year as Continuing Licensure Incentive (CLI) pay for SBFA members who maintain an active County Paramedic License. SBFA eligible members must provide the City (Human Resources Department) with evidence of their renewed license each year on the anniversary date of their employment with the City. SBFA eligible members who provide the appropriate documentation, will receive CLI pay divided into two payments in conjunction with their Holiday – in – Lieu pay.

Any employee in the rank of Engineer who holds a current Paramedic license will be placed on the Engineer w/Paramedic Cert salary range at the appropriate step resulting in an incentive pay of approximately 9% for as long as the Paramedic license is valid or until such time as the employee is promoted to the rank of Captain. This Paramedic Incentive Pay will be in addition to their base salary and in addition to their eligibility for Continuing Licensure Incentive (CLI) of \$500 per year and in addition to temporary out-of-class compensation.

Promotion to Engineer: If a Firefighter/Paramedic is promoted to Engineer w/Paramedic Certification, the employee will be placed at the step in the promotional salary range resulting in a minimum of 5% compensation.

Promotion to Captain: If a Firefighter/Paramedic or Engineer is promoted to the rank of Captain, the employee will not be entitled to the 9% Paramedic Incentive Pay during the term of this contract.

**SECTION 16. PEACEFUL PERFORMANCE OF CITY SERVICES**

No Strike. During the term of this MOU, and any authorized extensions, or subsequent negotiations, neither SBFA nor any represented employee, agents or representatives will instigate, promote, sponsor, engage in, or condone any strike (including any sympathy strike), slowdown, concerted stoppage of work, sick-out, or any other intentional disruption of the operations of the CITY, regardless of the reason for doing so. SBFA recognizes and agrees that the concerted activity described in this paragraph would have a significant adverse impact on the public health, safety and welfare.

Penalty. Any employee engaging in the activity prohibited by “No Strike” under this Article, or who instigates or gives leadership to such activity, shall be subject to discipline, up to and including termination of employment.

No Lockout. During the term of this MOU, the CITY will not instigate a lockout over a dispute with employees so long as there is no breach as stated in this Article. The CITY recognizes and agrees that a lockout would have a significant adverse impact on the public health, safety and welfare.

Association Official Responsibility. Each employee or other person who holds the position of an officer of SBFA occupies a position of special trust and responsibility in maintaining and bringing about compliance with the provisions of this Article; therefore, such employees or other persons agree to inform its members of their obligations under this Article, and to inform them of the penalty for failure to comply.

Enforcement. In the event the CITY is required to enforce the provisions of the Article "Peaceful Performance of City Services," by court action, or in the event that SBFA is required to enforce the provisions of said Article, by court action, a temporary restraining order, preliminary injunction and permanent injunction may be issued.

#### **SECTION 17. PRIOR AGREEMENTS**

The provisions of this MOU shall supersede and replace the provisions of the Memorandum of Understanding last executed between SBFA and the CITY. The benefits and other terms and conditions of employment provided pursuant to the City's Personnel Rules and Regulations shall continue to apply except to the extent modified by this MOU.

#### **SECTION 18. RETIREE HEALTH BENEFITS**

During the term of this MOU, the City agrees to remain in CalPERS in order to provide healthcare coverage to active employees and retiree healthcare benefits to retired employees. The City agrees to pay Retiree Health Benefits as follows:

1. Staff members currently employed who retire from the City at a future date, and who elect to continue their health insurance at the time of their retirement with the City shall receive the following additional compensation as supplemental benefits in recognition of their vested rights and service to the City:
2. Staff members hired prior to January 1, 2007 shall receive maximum of \$290.00 per month, minus the minimum PEMCHA contribution provided upon retirement to offset medical insurance costs.
3. Staff members with a date of hire on or after January 1, 2007, who subsequently retire from the City, will receive only the "minimum" retirement benefit contribution amount required under PEMCHA to offset medical insurance costs.

#### **SECTION 19. RETIREMENT SYSTEM CONTRIBUTIONS**

The CITY will continue to provide a three percent at 50 (3%@50) retirement benefit from the California Public Employee Retirement System (CalPERs) for SBFA

employees hired on or before December 31, 2010. The SBFA will pay the entire employee share (9%) of the cost for this benefit.

Employees hired on or after January 1, 2011 will be eligible for a two percent at 50 (2% @50) retirement benefit in the California Public Employees Retirement System (CalPERS), with the use of the average of the employee's highest-three-year-salary. These employees will pay the entire employee share (9%) of the cost for this benefit.

## **SECTION 20. SALARY ADJUSTMENT**

No cost of living salary adjustments or general salary increases shall be provided for the duration of the term of this MOU.

- Fire Captain (Fully Qualified) will maintain a 2% salary differential below the Shift Fire Captain classification.
- The Fire Captain (Otherwise Qualified) classifications will maintain a 5% differential below Fire Captain (Fully Qualified).
- Fire Engineer with Paramedic Certification will maintain a 9% differential above the Fire Engineer classification.

## **SECTION 21. SAVINGS CLAUSE**

If any provisions of this MOU should be found invalid, unlawful or unenforceable by reason of any existing or subsequently enacted legislation or by judicial authority, all other provisions of this MOU shall remain in full force and effect for the duration of this MOU.

In the event of invalidation of any of the provisions of this MOU, the SBFA and CITY agree to meet and confer within thirty days of notice by either to the other for the purpose of renegotiating said provision.

## **SECTION 22. SEVERABILITY**

It is understood and agreed that this MOU is subject to applicable law. In the event any part or provision of this MOU is in conflict or inconsistent with such law, or is otherwise held to be invalid or unenforceable by a court of competent jurisdiction, such part or provision shall be deemed severable and the remainder of this MOU shall not be affected.

**SECTION 23. TEMPORARY ASSIGNMENT**

Whenever a temporary vacancy occurs in a higher classification and the Fire Chief determines that the vacant position should be temporarily filled by a current employee, the Fire Chief may assign a qualified, lower-classified employee to temporarily fill the position. Whenever practical, the Fire Chief shall assign employees who have demonstrated ability to perform the duties of the position to which the assignment is made.

Less than 6 hour assignment: It is understood and agreed that temporary assignments for less than 6 hours may be made as part of the normal operation of the department and therefore, no extra compensation shall be paid for temporary assignments of less than 6 hours.

Assignment of 6 hours or more: If an employee is temporarily assigned to a position with a higher pay classification for 6 hours or more, the employee shall be paid at the lowest pay step of the higher classification, but not less than 5%, which shall constitute "Acting Pay." However, Acting Pay shall not be provided for the temporary assignment of Fire Captain to Shift Fire Captain position.

The CITY shall continue the current practice of filling vacancies on a rank for rank basis. If a long-term temporary position becomes available, the Public Safety Director or Fire Chief at his or her discretion may choose a qualified person from the current active list to fill that position during the time of the vacancy.

**SECTION 24. PLACEMENT & HIRE OF NEW AND TEMPORARY "PART-TIME" SOLANA BEACH EMPLOYEES**

If a temporary vacancy occurs due to a specific incident (\*), the Fire Chief has the discretion to use a temporary part-time Firefighter to fill the vacant position.

Filling the vacant position created by an incident is authorized as follows: The first six (6) shifts will be covered on a rank for rank basis consistent with the current practice of the CITY as agreed to in Section 24, which will allow the part-time firefighter sufficient time to be evaluated through an on-the-job orientation mini-academy. After the first six (6) shifts, the temporary employee will fill the vacancy for an additional six (6) shifts, which provides a total period of 31 days to allow the Department time to evaluate the employee and, when appropriate, perform interviews, background investigations, and physical examinations of employment candidates to fill a position due to resignation or termination.

Following the 12 shifts of evaluation as described above (6 filled by in-house personnel and 6 filled by the temporary employee), if the temporary employee is

deemed qualified to perform the duties of the position, the Public Safety Director/Fire Chief has the discretion to extend the use of the temporary employee as appropriate and necessary to provide emergency services. If at any time the temporary employee is deemed unqualified and the temporary appointment terminated, the new vacancy created by the termination will be deemed a new incident for purposes of providing in-house shift availability.

Definitions:

- *Incident:* An incident is defined as a vacancy resulting in the absence of an employee. If the incident is due to a personal or family injury or illness, once the employee is returned to full duty or returns to work for 45 days, the specific incident is considered closed. Any new absences for the same employee would be considered a new incident and follow the use of Temporary "Part-time" Employees as defined herein Section 25.
- *Qualified Employee:* A qualified employee must meet the minimum qualifications as specified in the appropriate Classification Specification.

**SECTION 25. TERM**

The term of this MOU shall commence on July 1, 2011, subject to formal approval by the City Council, and shall expire at 12:00 a.m. (midnight), on June 30, 2012.

**SECTION 26. TOBACCO USE**

Use of tobacco or tobacco products by any employee of the Fire Department whether on or off duty is prohibited.

APPENDIX A

SBFA represents that this Memorandum of Understanding has been duly ratified by its membership. Following approval of this Memorandum of Understanding by the City Council, its terms and conditions shall be implemented by appropriate ordinance, resolution, or other appropriate lawful action.

CITY:

SBFA:

By: W. J. [Signature]

By: [Signature]

By: Paula [Signature]

By: W. Ross [Signature]

By: \_\_\_\_\_

By: [Signature]

By: \_\_\_\_\_

By: [Signature]

Date: \_\_\_\_\_

Date: 8-23-2011

APPROVED AS TO LEGAL FORM:

CITY COUNCIL:

By: [Signature]  
JOHANA N. CANLAS  
CITY ATTORNEY

By: [Signature]  
LESA HEEBNER  
MAYOR

Date: 8/24/11

Date: \_\_\_\_\_

ATTEST:

By: [Signature]  
ANGELA IVEY  
CITY CLERK

Date: 8-30-11