

ATTACHMENT B

Exhibit A to Attachment A

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH
FIRE MANAGEMENT
ASSOCIATION**



July 1, 2018 through June 30, 2019

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EXHIBIT A

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH AND
NEWPORT BEACH FIRE MANAGEMENT ASSOCIATION**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into with reference to the following:

1. The Newport Beach Fire Management Association ("NBFMA" or "Association"), a recognized employee organization, and the City of Newport Beach ("City"), a municipal corporation and charter city, have been meeting and conferring, in good faith, with respect to wages, hours, fringe benefits and other terms and conditions of employment.
2. This MOU, upon approval by NBFMA and the Newport Beach City Council, represents the total and complete understanding and agreement between the parties regarding all matters within the scope of representation.

SECTION 1. GENERAL PROVISIONS

A. Recognition

In accordance with the provisions of the Charter of the City of Newport Beach, the Meyers Milias Brown Act of the State of California and the provisions of the Employer's/Employee Labor Relations Resolution No. 2001-50, the City acknowledges that NBFMA is the majority representative for the purpose of meeting and conferring regarding wages, hours and other terms and conditions of employment for all employees in those classifications specified in Exhibit "A" or as appropriately modified in accordance with the Employer/Employee Resolution. All other classifications and positions not specifically included within Exhibit "A" are excluded from representation by NBFMA.

B. Term

1. Except as specifically provided otherwise, any ordinance, resolution or action of the City Council necessary to implement this MOU shall be considered effective as of July 1, 2018. This MOU shall remain in full force and effect *through June 30, 2019*, and the provisions of this MOU shall continue after the date of expiration of this MOU in the event the parties are meeting and conferring on a successor MOU.
2. The *provisions* of this MOU shall prevail over any conflicting provisions of the Newport Beach City Charter, the ordinances, resolutions and policies of the City of Newport Beach, and federal and state statutes, rules and regulations which either specifically provide that agreements such as this prevail, confer rights which may be waived by any collective bargaining agreement, or are, pursuant to decisional or statutory law, superseded by the provisions of an agreement such as, or similar to, this MOU.

C. Scope

1. All present written rules and currently established practices and employee rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU, or in the case of the Department SOP's falling within the scope of representation, the City has given notice to the Association and, upon request, met and conferred on any proposed changes which fall within the scope of representation.

The parties agree to meet and confer changes to department SOP, rule, or regulation if such proposed change materially impacts any matter within the scope of representation.

2. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50.

D. Bulletin Boards

1. Space shall be provided on bulletin boards within the Fire Department at their present location for the posting of notices and bulletins relating to NBFMA business, meetings, or events. All materials posted on bulletins boards *by the NBFMA* shall indicate *that the NBFMA posted it*. Material posted shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of *any protected class under the law* or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material.
2. Material posted and messages sent through electronic mail (E-Mail) shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of *any protected class under the law* or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material. E-Mail may be used for Association business on a limited basis and consistent with Department Policy.

E. Conclusiveness

This MOU contains all of the covenants, stipulations, and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled to meet and confer concerning any issue within the scope of representation except as expressly provided herein or by mutual agreement of the parties. No representative of either party has the authority to make, and none of the parties shall be bound by, any statement, representation or agreement reached prior to the execution of this MOU and not set forth herein.

F. Modifications

Any agreement, alteration, understanding, variation, or waiver or modification of any of the terms or provisions of this MOU shall not be binding upon the parties unless contained in a written document executed by authorized representatives of the parties.

G. Savings

Should any part of this MOU be rendered or declared illegal or invalid by legislation, decree of court of competent jurisdiction or other established governmental administrative tribunal, such invalidation shall not affect the remaining portions of this MOU provided, however, should the provisions of this MOU relating to salary increases, fringe benefits, or the compensation policy be declared invalid the City shall provide alternative forms of compensation such that NBFMA members suffer no financial detriment by virtue of the decision or ruling with the manner and form of the compensation to be determined by the parties after meeting and conferring in good faith.

H. Impasse

In the event of an impasse (the failure to agree on a new MOU after the express term of the existing MOU has expired), the parties may agree on mediation pursuant to the procedure outlined in Section 16 of Resolution No. 2001-50 or a successor resolution. *Upon request by the Association the parties will engage in non-binding fact finding pursuant to State law.*

I. Definitions

For the purposes of this MOU these terms shall have the following meanings:

1. The term "member" or "NBFMA member" shall mean all persons within classifications represented by NBFMA.
2. The term "staff employee" shall mean any NBFMA member who is assigned to work a 40-hour workweek.
3. The term "line employee" shall mean any NBFMA member assigned to work an average 56-hour workweek in 24-hour shift increments.
4. The term "Municipal Fire Departments in Orange County" or "Municipal Fire Departments" shall mean all City operated Fire Departments and the Orange County Fire Authority.

SECTION 2. COMPENSATION

A. Salary

1. Guaranteed Salary

The salary for the position of Fire Battalion Chief shall maintain at least a 9.5% salary differential between the top step of Fire Captain and the bottom step of the Fire Battalion Chief. Adjustments to the salary of Battalion Chief shall be reflected in corresponding adjustments to other positions represented by NBFMA necessary to maintain the salary differentials listed in Exhibit A.

2. Salary Adjustments – this MOU Period

There shall be no cost of living adjustments to base salary during the term of this agreement.

B. Overtime - Hours Worked

1. The City and Association agree that all unit classifications are properly exempted from the *overtime* provisions of the Fair Labor Standards Act. However, NBFMA members may be required to work additional floor shifts in excess of their regular work schedule. Off-duty employees in the Battalion Chief classification who are assigned by the Fire Chief or designee to additional fire suppression work shift for an emergency assignment, or to replace another Battalion Chief who is on an approved leave, will receive overtime pay equal to one-and-one-half times' the employees base rate of pay.

Use of Flex Leave, Comp Time, or other paid leaves are not considered hours worked for the purpose of determining overtime eligibility. Regular staff meetings or other assignments will not be eligible for overtime at the 1½ rate and shifts exchanges between two Battalion Chiefs do not qualify for overtime compensation.

2. Strike Team Actions. In the event that a Unit employee is assigned to provide fire suppression services as part of a regional, state, or federal strike team organized by State or Federal officials and when all of the below Conditions exist, that Unit employee shall be paid at the time and one-half (1½) 56-hour rate. The Conditions are:
 - The Unit employee is working *outside of his or her regularly scheduled hours*;
 - The Strike Team is operating outside of the city limits;

- The Unit employee is on duty on the Strike Team for more than eight (8) hours;
 - A disaster declaration has been approved by the State or Federal government for the fire suppression action; and
 - The costs for these overtime hours are specifically authorized for reimbursement by the state or federal government.
3. **Compensatory Time.** In lieu of overtime members may elect to accrue compensatory time off. Staff personnel may accrue a maximum of 120 hours. Line personnel may accrue a maximum of 196 hours. The provisions for accrual and use of compensatory time shall be provided in Fire Department Standard Operating Procedure.
4. All other overtime not specified above will be at the straight time rate.

C. Required Uniform

City shall pay the entire cost of providing NBFMA member with each component of the required NBFMA uniform. The required NBFMA uniform includes shoes, badges and insignias, uniform pants, uniform shirts, uniform jackets and liner, belts, sweatshirt, and turnout safety clothing. City shall not be responsible for providing employee with socks, underwear, cap or workout shoes, or other clothing.

PERS Reporting of Uniform Allowance - To the extent permitted by law, the City shall report to the California Public Employees' Retirement System (CalPERS) the uniform allowance for each sworn classification as special compensation in accordance with Title 2, California Code of Regulation, Section 571(a)(5). Notwithstanding the previous sentence, for "new members" as defined by the Public Employees' Pension Reform Act of 2013, the uniform allowance will not be reported as pensionable compensation to CalPERS. Specifically, the City shall report as pensionable compensation the value of provided uniforms at \$1,519 annually (\$58.42 per pay period) in accordance with PERS requirements. The parties agree the reported value of uniforms is intended to reflect clothing such as pants, shirts, jackets, and related attire and excludes health and safety related equipment, including safety boots and turnout gear.

D. Scholastic/Certificate Achievement Pay

NBFMA members are entitled to additional compensation contingent upon scholastic/certificate achievement ("Scholastic/Certificate Achievement Pay"). NBFMA members may apply for increases pursuant to this Section when eligible and scholastic/certificate achievement pay shall be included in the member's paycheck for the pay period immediately after approval by the Fire Chief. It is the responsibility of the NBFMA member to apply for

Scholastic/Certificate Achievement Pay. Approval of the member's application shall not be unreasonably withheld or delayed, and the member shall not be entitled to receive scholastic/certificate achievement pay prior to the date the application is approved even though the member may have been eligible prior to approval. Scholastic/Certificate achievement pay is contingent upon years of service and number of units and/or degrees received by the employee.

NBFMA member shall receive scholastic achievement pay for degrees awarded by accredited community colleges, state colleges, or universities in accordance with the following:

1. Scholastic Achievement

<u>Degree</u>	<u>Scholastic Pay %</u>
AA/AS	3.5%
BA/BS	5.5%

2. Certificate Pay

<u>Coursework</u>	<u>Compensation</u>
Certified Chief Fire Officer	3.0%
Strike Team Leader	\$100 per month

The parties agree that to the extent permitted by law, the Scholastic Achievement pay in this section is special compensation and shall be reported to CalPERS as such pursuant to Title 2 CCR, Section 571(a)(2) Educational Incentive Pay.

E. Bilingual Pay

Employees certified as bilingual (Spanish) shall be eligible to receive One Hundred Fifty (\$150.00) Dollars per month (\$69.23 *per pay period*) in bilingual pay. The certification process will confirm that employees are fluent at the street conversational level in speaking, reading and writing Spanish. Employees certified shall receive bilingual pay the first full pay period following certification.

Additional languages may be certified for compensation pursuant to this section by the Fire Chief.

The parties agree that to the extent permitted by law, the Bilingual pay in this section is special compensation and shall be reported to CalPERS as such pursuant to Title 2 CCR, Section 571(a)(4) Bilingual Premium.

F. Court Standby Pay

NBFMA members who, pursuant to subpoena compelling attendance to testify to acts, observations, or omissions occurring in the course and scope of employment or at the direction of their supervisor, are required, while off-duty, to remain within a certain response time from court, shall be considered to be on "court standby time" and shall receive four hours of pay for each eight hours of court standby time. NBFMA members shall, when required to appear in court pursuant to a subpoena or the direction of their supervisor to testify at to matters relating to their employment with the City, be considered to be on duty and shall be paid accordingly. Members shall remit all witness fees received for testifying or appearing on any matter for which the member is eligible to receive court standby time.

G. Compaction Adjustment

Effective July 1, 2017, the Battalion Chief salary range was adjusted by 3.0% to address compaction between Fire Captain and Battalion Chief.

SECTION 3. LEAVES

A. Flex Leave

NBFMA members shall accrue flex leave as follows.

Years of Continuous Service	LINE EMPLOYEES		STAFF EMPLOYEES	
	Accrual Hours/Pay Period	Maximum Accrual	Accrual Hours/Pay Period	Maximum Accrual
Less than 5	9.77	508.04	6.97	362.44
5 but less than 9	10.69	555.88	7.63	396.76
9 but less than 12	11.62	604.24	8.33	433.16
12 and over	12.54	652.08	8.95	465.40

1. The Flex leave program shall be administered as follows:

- a. *Newly hired* NBFMA members shall not accrue flex leave until continuously employed by the Newport Beach Fire Department for a period of three (3) months provided, however, if a member *in* the flex leave program becomes sick during the first three months of employment, the City will advance up to three (3) months of accrual for line employees (63.50 hours) / staff employees (45.30 hours) for use by the member to recover from illness.

In the event the City advances paid leave time and the employee is terminated or resigns before completing three months of continuous employment, the member's final check shall be reduced by an amount equal to the number of flex leave hours advanced multiplied by the member's hourly rate of pay.

- b. *Newly hired NBFMA members shall accrue three (3) months of flex leave [line employees (63.50 hours) / staff employees (45.30 hours)] immediately upon completing three (3) months continuous employment with the Newport Beach Fire Department, provided however, this amount shall be reduced by any flex leave time advanced during the first three months of employment.*
- c. Earned flex leave in excess of the maximum permitted will be paid bi-weekly at the member's hourly rate of pay ("Spillover Pay"). NBFMA members may not elect to buy down accrued Flex Leave below the current threshold for payment unless, during the twelve months preceding the election, the member has taken at least ninety-six (96) hours of paid leave if a line employee and eighty (80) hours of paid leave if a staff employee.

Employees shall have the option of converting accrued Flex Leave to cash on an hour for hour basis subject to the following: On or before the pay period which includes December 15 of each calendar year, an employee may make an irrevocable election to cash out accrued flex leave which will be earned in the following calendar year. The employee can elect to receive the cash out in the pay period which includes June 30 and the pay period which includes December 15 for those Flex Leave benefits that have been earned during that portion of the year. In no event shall the flex leave balance be reduced below what each employee can accrue for fifty-two pay periods. On or before December 31, 2018, each employee shall have the one-time option of cashing out all or a portion of Flex Leave benefits credited to his/her account as of that date. However, in no event shall the flex leave balance be reduced below what each employee can accrue for fifty-two pay periods.

- d. All requests for scheduled flex leave shall be submitted to appropriate department personnel. In no event shall a member take or request flex leave in excess of the amount accrued.
- e. Members shall be paid for all accrued flex leave at their current hourly rate of pay upon termination.

- f. Concurrent with the July 1, 2017, 3% compaction salary range adjustment as stated in Section 2, G, the Longevity Pay incentive program in Section 3, A, 1 was eliminated for all members.

B. Holiday Time

1. Accrual

The provisions of this subsection shall apply to all NBFMA members on a pro-rata basis. NBFMA members who are line employees shall accrue holiday time at the rate of 5.54 hours per pay period. NBFMA who are staff employees shall accrue holiday time at the rate of 3.96 hours per pay period.

All employees including Staff Employees shall receive their holiday time in pay. Holiday pay shall be paid bi-weekly with the regular check. *The parties agree, to the extent permitted by law, the compensation in this section is special compensation for those employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(5) Holiday Pay.*

2. Staff Employees

Staff Employees may be required to take specified City holidays off, in the sole discretion of the Fire Chief. Time will be charged against the employee's flex leave bank.

C. Bereavement Leave

Bereavement leave shall be defined as "the necessary absence from duty by an employee because of a death or terminal illness in his/her immediate family." Staff employees shall be entitled to) *forty (40) hours* of Bereavement Leave per event while Line Employees shall be entitled to ninety (90) hours of Bereavement Leave per event (terminal illness followed by death is considered one event). Leave hours need not be used consecutively, but should occur in proximate time to the occurrence *but no more than 90 days from the date of the death of the family member. Exeptions to the 90 day requirement may be made at the sole discretion of the Fire Chief.* Bereavement leave shall be administered in accordance with the provisions of the Employee Policy Manual. For the purpose of this section immediate family shall mean an employee's father, stepfather, mother, stepmother, brother, sister, wife, husband, *registered domestic partner*, child, stepchild, or grandparent, and the employee's spouse/domestic partner's mother, father, brother, sister, child or grandparent. An employee requesting bereavement leave shall notify his/her supervisor as soon as possible of the need to take leave.

D. Jury Duty

NBFMA members who are assigned to line positions and are called to jury duty shall be excused for each 24-hour shift during which the member is required to attend court and sit on a jury or await assignment.

E. Family Sick Leave

Unit employees shall be entitled to use *their annual leave accrual as set forth in Labor Code section 233*.

F. Workers' Compensation Leave

Any employee who has been incapacitated by reason of any injury or illness which has been determined to have arisen out of or in the course of his or her employment shall receive compensation in accordance with the provisions of Section 4850 et. seq. of the Labor Code of the State of California.

G. Reassignment

In the event a line employee is reassigned to a staff position, or a staff employee is reassigned to a line position, the City shall automatically convert the Flex Leave, Bereavement Leave and other benefits from the position previously held to the newly assigned position provided. The ratio for conversion of staff employee benefits to line employee benefit shall be 7/5 and the ratio for converting line employee benefits to staff employee benefits shall be 5/7.

SECTION 4. FRINGE BENEFITS

A. Medical Insurance

1. Benefits Information Committee

The City has established a Benefits Information Committee (BIC) composed of one representative from each employee association and up to three City representatives. The Benefits Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate coverage levels and other health programs. The purpose of the BIC is to provide each employee *association* with information about health insurance/programs and to receive timely input from associations regarding preferred coverage options and levels of coverage.

2. City Contribution

The City has implemented an IRS qualified Cafeteria Plan. In addition to the amounts listed below, the City shall contribute the minimum CalPERS

participating employer's contribution towards medical insurance. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurance/programs. The City and NBFMA will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules and during regular open enrollment periods.

Effective the pay issue that includes:

January 1, 2019, the City's contribution towards the Cafeteria Plan will increase by \$200.00, to \$1,824.00 (plus the minimum CalPERS participating employee's contribution).

Unit members who do not enroll in any health care plan offered by the City must provide *proof of minimum essential coverage ("MEC") through another source (other than coverage in the individual market, whether or not obtained through Covered California)* and execute an opt out agreement releasing the City from any responsibility or liability to provide health care insurance coverage, on an annual basis.

Employees electing to opt out of medical coverage offered by the City because they have provided proof of minimum essential coverage ("MEC") through another source (other than coverage in the individual market, whether or not obtained through Covered California) will receive a maximum cafeteria allowance of \$1,000.00 per month.

3. Dental Insurance

The existing or comparable dental plans shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

4. Vision Insurance

The existing or a comparable vision plan shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

B. Additional Health Insurance/Programs

1. IRS Section 125 Flexible Spending Account

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income for payment of allowable expenses such as child care and

medical expenses. The City shall maintain a “reimbursable account program” in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which an Association member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee’s account. The base salary of the employee will be reduced by the amount designated by the employee for reimbursable expenses.

2. Disability Insurance

The City shall provide Short-term (STD) and Long-term (LTD) disability insurance to all regular full time employees with the following provisions:

Weekly Benefit	66.67% gross weekly wages
Maximum Benefit	\$10,000/month
Minimum Benefit	\$15 (STD) and \$100 (LTD)
Waiting Period	30 Calendar Days (STD) 180 Calendar Days (LTD)

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Employees have a one (1.0%) percent reduction for the cost of this benefit from base salary.

3. Life Insurance

The City shall provide life insurance for all full-time employees in \$1,000 increments equal to one times the employee’s annual salary up to a maximum of \$50,000. At age 70 the City-paid life insurance is reduced by 50% of the pre-70 amount. This amount remains in effect until the employee retires from City employment. *Employees may also purchase supplemental life insurance at their own cost.*

4. Employee Assistance Program

City shall provide an Employee Assistance Program (EAP) *for Association members* through a properly licensed provider. Association members and their family members may access the EAP subject to provider guidelines.

C. Retirement Benefits

1. Retirement Formula

The City contracts with the California Public Employees Retirement System ("CalPERS" or "PERS") to provide retirement benefits for its employees. Pursuant to prior agreements and state mandated reform, the City has implemented first, second and third tier retirement benefits as follows:

Tier I: Employees hired by the City on or before November 23, 2012, the retirement formula shall be 3%@50, calculated on the basis of the highest consecutive 12 month period selected by the employee.

Tier II: *For classic members (as defined in the Public Employees' Pension Reform Act) employees first hired by the City on or after November 24, 2012, and who are not new members as defined in Government Code Section 7522.04(f), the retirement formula is 2%@50. For these same employees, final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or any other three consecutive year period chosen by the employee as set forth in Government Code section 20037.*

Tier III ("PEPRA"): Employees first hired by the City on or after January 1, 2013, who are new members as defined in the Public Employees' Pension Reform Act), the retirement formula shall be 2.7%@57 provided for by the Public Employees' Retirement Law at Government Code section 7522.25(d).

For these same employees, final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or any other three consecutive year period chosen by the employee as set forth in Government Code section 7522.32(a).

2. Employee Contributions

Unit members shall contribute amounts toward the PERS retirement benefit, to the extent permissible by law, as set forth below. Should any such provision be deemed invalid, the City and Association agree to meet for the purpose of renegotiating employee retirement contributions or other equivalent economic adjustments.

Employee retirement contributions that are in addition to the normal PERS Member Contribution shall be made in accordance with Government Code §20516(f) and calculated on base pay, special pays, and other pays normally reported as pensionable compensation, and will be made on a pre-tax basis through payroll deduction, to the extent allowable by the Internal Revenue Code.

Tiers I and II:

Tier I and II members shall contribute the full statutory member contribution, equal to 9% of pensionable compensation, plus an additional 3% of pensionable compensation of the Employer rate, for a total contribution of 12%.

Tier III:

The normal member contribution rate for Tier III members is 50% of the total normal cost and is calculated annually for possible adjustments, as provided in the PERS valuations.

Tier III members will contribute the full statutory member contribution, plus, if the statutory amount is below 12% an additional percentage of pensionable compensation of the Employer rate to achieve a total contribution of 12%. If the member contribution for Tier III members is above 12%, they will not need to contribute any additional amount towards the Employer rate.

3. The City's contract with PERS shall also provide for:
 - a. The military buy-back provisions pursuant to Section 20930.3 of the California Government Code and the highest year benefit pursuant to Section 20042.
 - b. The Level 4 1959 Survivors Benefits.
 - c. The pre-retirement option settlement 2 death benefit (Section 21548).
4. To the extent allowed by PERS, the IRS and other applicable regulatory agencies and laws, unit members who shall be enrolled in the 2% @ 50 retirement formula or 2.7% @ 57 formula, shall be eligible to participate in a defined contribution plan to be administered by the City or its designee in accord with said regulatory agency regulations and laws. The defined contribution plan shall be funded by allowing each affected employee to contribute a percentage of base salary each payroll period. The City shall match any such employee contributions up to a maximum of 1.5% of base salary. The employee only contributions shall be deemed fully vested at the time of its deposit. The employer only matching contribution shall vest upon a PERS retirement being implemented as follows: 100% - age 55+; 80% - age 54; 60% - age 53, 40% - age 52; 20% - age 51.

D. Retiree Medical Benefit

1. Background

In 2005, the City and all Employee Associations agreed to replace the previous “defined benefit” retiree medical program with a new “defined contribution” program. The process of fully converting to the new program will be ongoing for an extended period. During the transition, employees and (then) existing retirees have been administratively classified into one of four categories. The benefit is structured differently for each of the categories. The categories are as follows:

- a. Category 1 - Employees newly hired after January 1, 2005.
- b. Category 2 - Active employees hired prior to January 1, 2006, whose age plus years of service as of January 1, 2005 was less than 50 (46 for public safety employees).
- c. Category 3 - Active employees hired prior to January 1, 2006, whose age plus years of service was 50 or greater (46 for public safety employees) as of January 1, 2005.

2. Program Structure

This is an Integral Part Trust (IPT) Retiree Health Savings Plan (“RHS”, formerly the MERP plan):

- a. For employees in Category 1, the program is structured as follows:

Each employee will have an individual RHS account for bookkeeping purposes, called his or her “Employee Account.” This account will accumulate contributions to be used for health care expenses after separation. All contributions to the plan are either mandatory employee contributions or City paid employer contributions, so they are not taxable to employees at the time of deposit. Earnings from investment of funds in the account are not taxable when posted to the account. Benefit payments are not taxable when withdrawn, because the plan requires that all distributions be spent for specified health care purposes.

Contributions will be in three parts.

Part A contributions (mandatory employee contributions): 1% of Salary.

Part B contributions (employer contributions): \$2.50 per month for each year of service plus year of age (updated every January 1st based on status as of December 31st of the prior year).

Part C contributions (leave settlement as determined by Association):

The Association will determine the level of contribution for all employees it represents, subject to the following constraints. All employees within the Association must participate at the same level. The participation level should be specified as a percentage of the leave balance on hand in each employee's leave bank at the time of separation from the City.

For example, if the Association wishes to specify 50% of the leave balance as the participation level, then each member leaving the City, or cashing out leave at any other time, would have the cash equivalent of 50% of the amount that is cashed out added to the RHS, on a pre-tax basis. The remaining 50% would be paid in cash as taxable income. Individual employees would not have the option to deviate from this breakout.

The Association has decided to participate in Part C contributions at the level of zero percent (0%) Flex. This amount may be changed, on a go forward basis, as part of a future meet and confer process. However, the participation level must be the same for all employees within the Association. Additionally, the purpose and focus of these changes should be toward long-term, trend type adjustments. Due to IRS restrictions regarding "constructive receipt," the City will impose restrictions against frequent spikes or drops that appear to be tailored toward satisfying the desires of a group of imminent retirees.

Spillover pay and Compensatory Time are not eligible for Part C contributions.

Nothing in this section restricts taking leave for time off purposes

Part A contributions may be included in PERS compensation. Part B and Part C contributions will not be included in PERS compensation.

Part A contributions begin upon enrollment in the program and are credited to each RHS Employee Account each pay period. Eligibility for Part B contributions is set at five years of vested City employment (*i.e. five years at full time status*). At that time, the City will credit the first five years' worth of Part B contributions into the Employee Account (interest does not accrue during that period). Thereafter, contributions are made bi-weekly. Part C deposits, if any, will be made at the time of employment separation.

Each Employee has a right to reimbursement of medical expenses (as defined below) from the Plan until the Employee Account balance is zero. This right is triggered upon separation. If an employee leaves the City prior to five years employment, only the Part A contributions and Part C leave settlement contributions, if any, will be in the RHS Employee Account. Such an employee will not be entitled to any Part B contributions. The exception to this is a full-time employee, participating in the program, who leaves the

City due to industrial disability during the first five years of employment. In such cases, the employee will receive exactly five years' worth of Part B contributions, using the employee's age and compensation at the time of separation for calculation purposes. This amount will be deposited into the employee's RHS account at the time of separation.

Distributions from RHS Employee Accounts are restricted to use for health insurance and medical care expenses after separation, as defined by the Internal Revenue Code Section 213(d) (as explained in IRS Publication 502), and specified in the Plan Document. In accordance with current IRS regulations and practices, this generally includes premiums for medical insurance, dental insurance, vision insurance, supplemental medical insurance, long term care insurance, and miscellaneous medical expenses not covered by insurance for the employee and his or her spouse and legal dependents – again only as permitted by IRS Publication 502. Qualification for dependency status will be determined by guidelines in IRC 152. If used for these purposes, distributions from the RHS accounts will not be taxable. Cash withdrawal for any other purpose is prohibited. Under recent IRS Revenue Ruling 2005-24, any balance remaining in the Employee Account after the death of the employee and his or her spouse and/or other authorized dependents (if any) must be forfeited. That particular RHS Employee Account will be closed, and any remaining funds will become general assets of the plan.

The parties agree that the City's Part B contributions during active employment constitute the minimum CalPERS participating employer's contribution *i.e., the CalPERS statutory minimum amount*) towards medical insurance after retirement. The parties also agree that, for retirees selecting a CalPERS medical plan, or any other plan with a similar employer contribution requirement, the required City contribution will be withdrawn from the retiree's RHS account.

- b. For employees in Category 2, the program is the same as for those in Category 1, with the following exception:

In addition to the new plan contributions listed above, current employees who fully convert to the new plan will also receive a one-time City contribution to their individual RHS accounts that equates to \$100 per month for every month they contributed to the previous "defined benefit" plan, to a maximum of 15 years (180 months). This contribution will be made only if the employee retires from the City and at the time of retirement. No interest will be earned in the interim.

Employees in Category 2 who had less than five years' service with the City prior to implementation of the new program will only receive Part B contributions back to January 1, 2006 when they reach five years total service.

- c. For employees in Category 3, the program is the same as for those in Category 2, with the following exception:

For employees in this category, the City will make no Part B contributions while the employees are still in the active work force. Instead, the City will contribute \$400 per month into each of their RHS accounts after they retire from the City, to continue as long as the employee or spouse is still living.

Each employee will contribute a flat \$100 per month to the plan for the duration of their employment to partially offset part of this expense to the City. The maximum benefit provided by the City after retirement is \$4,800 per year, accruing at the rate of \$400 per month. There is no cash out option for these funds, and they may not be spent in advance of receipt.

Employees in this category will also receive an additional one-time City contribution of \$75 per month for every month they contributed to the previous plan prior to January 1, 2006, up to a maximum of 15 years (180 months). This contribution will be made to the RHS account at the time of retirement, and only if the employee retires from the City. No interest will be earned in the interim.

3. Administration

Vendors have been selected by the City to administer the program. The contract expense for program-wide administration by the vendor will be paid by the City. However, specific vendor charges for individual account transactions that vary according to the investment actions taken by each employee, such as fees or commissions for trades, will be paid by each employee.

The City's Deferred Compensation Committee, or its successor committee, will have the authority to determine investment options that will be available through the plan.

E. Tuition Reimbursement

Maximum tuition reimbursement for NBFMA members shall be \$1,500 per fiscal year.

1. College Courses

NBFMA members attending accredited community colleges, colleges, trade schools or universities may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, books, fees or other student expenses for approved job-related courses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade of "C" or better for undergraduate courses and a grade of "B" or better for

graduate courses. All claims for tuition reimbursement require the approval of the Human Resources Director.

2. Non-College Courses

NBFMA members attending job-related classes, courses, and seminars given by recognized agencies, organizations or individuals other than accredited college institutions may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, parking fees, travel and lodging expenses.

Job-related courses and seminars will be considered pre-authorized in the following areas: management and supervision, oral and written communications, conflict resolution, fire ground operations, rescue systems, legal issues, media relations, risk management, EMS, health and safety, apparatus operator, auto extrication, fire prevention, arson investigation, and critical incident stress management.

Reimbursement is contingent upon the successful completion of the course. Successful completion means a document or certificate showing successful completion of the class or seminar. All claims for tuition reimbursement require the approval of the Fire Training Chief before submittal to Human Resources.

F. Annual Physical Examinations

All NBFMA members shall participate in the Department Fitness Program as outlined in Department SOP.

G. Physical Conditioning Equipment/Apparel

City shall provide workout apparel for each NBFMA member, to be replaced on an "as needed" basis. NBFMA members shall wear City provided workout apparel when working out on duty.

SECTION 5. MISCELLANEOUS PROVISIONS

A. Reductions in Force/Layoffs

The provisions of this section shall apply when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions

- a. "Layoffs" or "Laid off" shall mean the non-disciplinary termination of employment.
- b. "Seniority" shall mean the time an employee has worked in a specific Classification within a Series calculated from the date on which the employee was first granted *regular* status, subject to the following:
 - i. Credit shall be given only for continuous service (*as described in the next paragraph*) subsequent to the most recent appointment to *regular* status in the Classification or Series;
 - ii. Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.
 - iii. For purposes of determining layoffs within any Classification, seniority shall mean the time an employee has worked within any Series.
- c. "Classification" shall mean one full time position identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part-time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- d. *In this bargaining unit, there is one "Series" made up of the two classifications represented by the Association – Fire Battalion Chief, 80 hours (+7.5%) and Fire Line Battalion Chief 112 hours.*
- e. "Bumping Rights", "Bumping" or "Bump" shall mean the right of an employee in a higher Classification who is subject to layoff to displace a less senior employee in a lower Classification within the Series. No employee shall have the right to Bump into a Classification for which the employee does not possess the minimum qualifications such as specialized education, training or experience, provided, however, the City shall allow an employee to become re-certified as an EMT or a paramedic in the event the employee's certification has expired due to promotion to another position. An employee has the right to "Bump" into only those positions the employee has previously held with the Department.

2. Procedures

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

- a. Employees within a Classification shall be laid off in inverse order of seniority;
- b. An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series, provided, however, that the determination of the employee to be terminated from the position of Firefighter shall be based on seniority within the Series. An employee who has Bumping Rights shall notify the Department Director within seven (7) working days after notice of layoff of his/her intention to exercise Bumping Rights.
- c. In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice

Employees subject to lay-off shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days pay in lieu of notice. In addition, employees laid off will be paid for all accumulated paid leave, holiday leave (if any).

4. Re-Employment

Regular employees who are laid off shall be placed on a Department re-employment list in reverse order of layoff. Re-employment lists will be valid for two (2) years. The re-employment list shall remain in effect until exhausted by removal of all names on the list. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re-employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her past known address. Any employee shall have the right to refuse to be placed on the re-employment list or the right to remove his or her name from the

re-employment list by sending written confirmation to the Human Resources Director.

5. Demotion

Regular employees who are demoted because of reduced staffing levels shall be placed on a Department promotional list in reverse order of demotion. This promotional list shall remain in effect until exhausted by removal of all names on the list.

6. Severance Pay

Regular employees who are laid off shall, as of the date of lay-off, receive one week severance pay for each year of continuous service with the City of Newport Beach, but in no case to exceed ten (10) weeks of severance compensation.

B. Fire Suppression Staffing Levels

Move-up and move-down coverage shall be used to staff the fire suppression battalion chief position in the absence of available battalion chiefs.

C. Staff Assignment Schedule

NBFMA members assigned to staff positions shall have the option to work a 5/40, 4/10 or 9/80 schedule; the staff member and the Fire Chief must mutually agree to the schedule selected prior to it becoming effective. The Fire Chief retains the right to assign the staff member to a different schedule, or deny the member's request for a change of schedule, if the Fire Chief determines that the member is not able to perform their job duties or the operational needs of the department are not being met. Employees will be given 2 weeks' notice if the Fire Chief determines a change in schedule is needed in order to minimize disruption of the member's personal/professional obligations. In addition, occasionally and at the discretion and approval of the Fire Chief, *unit employees (who are all FLSA exempt)* working a 4/10 or 9/80 schedule may adjust their regularly scheduled day off if such change does not disrupt departmental operations.

D. Consecutive Shifts

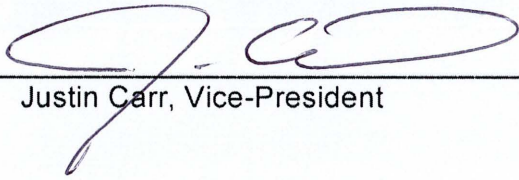
Members shall be limited to working four (4) 24-hour shifts in a row, after which time the employee shall not work during the next consecutive 24-hour shift. *Additional* consecutive shifts may be permitted with Fire Chief or designee approval, based upon *exigent circumstances*.

Signatures on the following page

Executed this _____ day of August, 2018.

FOR THE NEWPORT BEACH FIRE MANAGEMENT ASSOCIATION:

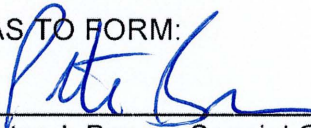
By: _____
Brian McDonough, President

By:  _____
Justin Carr, Vice-President

FOR THE CITY OF NEWPORT BEACH:

By: _____
Duffy Duffield, Mayor

APPROVED AS TO FORM:

BY:  _____
Peter J. Brown, Special Counsel

ATTEST:

By: _____
Leilani Brown, City Clerk

Exhibit A

Newport Beach Fire Management Association Classifications and Pay Rates

MOU Term: July 1, 2018 – June 30, 2019

	<u>Hourly Pay Rate</u>		<u>Monthly Pay Rate</u>	
	Min	Max	Min	Max
Effective January 1, 2018 (2.75% adjustment)				
Fire Battalion Chief 80 Hrs (+7.5%)	\$71.29	\$86.67	\$12,358	\$15,022
Fire Line Battalion Chief 112 Hrs	\$47.37	\$57.58	\$11,495	\$13,972