



RESOLUTION 2020-03

**MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
PROFESSIONAL FIREFIGHTERS ASSOCIATION**

**Effective
July 1, 2019**

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****PREAMBLE****

This Memorandum of Understanding (MOU) is entered into July 1, 2019 through June 30, 2021 between the City of Winters (hereinafter referred to as City) and the City of Winters Professional Firefighters Association (hereinafter referred to as Association) pursuant to Government Code Section 3500 to 3510.

ARTICLE 1 – RECOGNITION

The City recognizes the Association as the exclusive representative for the City employees in the following job classifications hereinafter referred to as "Employee(s)":

Firefighter
Fire Engineer
Fire Captain

This Memorandum of Understanding applies to regular employees hired to fill the positions listed above within the City of Winters Fire Department. This MOU does not apply to any volunteers who perform any services for the Fire Department in any capacity.

The City reserves the right to alter or amend these classifications.

ARTICLE 2 - ASSOCIATION AND CITY COUNCIL APPROVAL

Upon approval by the Association, this MOU will be submitted to the City Council and is of no force or effect until ratified and is adopted by the City Council.

ARTICLE 3 - MANAGEMENT RIGHTS

All management rights and functions except those which are clearly and expressly limited in this MOU shall remain vested exclusively in the City; however, if any modification occurs that effects wages, hours or working conditions, the City shall notify the Association and meet and confer in good faith regarding the impact of such modifications. It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

- A. Manage the City and determine services to be provided.
- B. Determine the necessity and amount of overtime required, and seasonally establish, modify, or change work schedules.
- C. Direct the work force and hire, promote, demote, transfer, suspend, discipline, or discharge any employee and determine the administration of discipline.

- D. Determine the location of any new facilities, buildings, departments, divisions, or subdivisions thereof, and the relocations, sale, leasing, or closing of facilities, departments, divisions, or subdivisions thereof.
- E. Determine the layout of buildings and equipment and determine control and use of City property, materials, and equipment.
- F. Determine processes, techniques, methods, and means of performing work and institute changes in procedures.
- G. Determine the size, character and use of inventories and accounting procedures.
- H. Determine the financial policy, including accounting procedures.
- I. Determine the administrative organization of the City, the size and character of the work force, and allocate or assign work to employees and determine duties to be included in any job classification.
- J. Determine how new employees are selected.
- K. Establish and judge quality and quantity standards.
- L. Determine the methods and means by which operations are to be conducted including placing or contracting work with outside firms.
- M. Require employees, where necessary, to take in-service training courses during working hours.
- N. Take any necessary action to carry out City responsibilities in cases of an emergency.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith, shall be limited only by the specific and express terms of this contract, and then only to the extent such specific and express terms are in conformance with law.

ARTICLE 4 - ASSOCIATION RIGHTS

Pursuant to Article 2, the Association retains the right to engage in the meet and confer process and employer/employee relations including, but not limited to, wages, hours, and other terms and conditions of employment.

ARTICLE 5 - ASSOCIATION DUES AND SECURITY

- A. It is the intent of this Article to provide payroll deductions for Association members to be deducted from their warrants insofar as permitted by law. Following receipt of written certification from the Winters Professional Firefighters Association (WPFA) that it has and maintains voluntary dues deduction authorization forms from members in the unit, the City shall make payroll deductions and transmit to the Association WPFA dues in an amount to be determined by the Association and communicated to the City annually. Membership dues deductions shall be made in equal amounts over 24 pay periods, and a check for the total deductions shall be submitted to the Winters Professional Firefighters Association, at the end of each pay period.
- B. The written certification from the Winters Professional Firefighters Association for Association dues deductions shall remain in full force and effect, unless revoked by written notice to the WPFA. Employee requests to cancel membership dues deductions must be directed to the Association. Upon written notification from the Association that an employee has canceled membership dues, the City shall promptly cease Association dues deductions from the employee's paycheck.
- C. An employee's earnings must be sufficient after legal and required deductions are made to cover the amount of the dues authorized. If an employee is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. Employees who are in a non-pay status during only part of a pay period, whose salary is not sufficient to cover the full amount of the dues authorized, no deduction shall be made. All other legal and required deductions (including healthcare deductions) have priority over Association dues.
- D. It shall be the sole responsibility of the Association to procure and enforce payroll deduction of dues.
- E. The Association shall indemnify, defend and hold the City harmless from and against all claims, demands and liabilities and other actions relating to implementation and compliance with this Article.
- F. Pursuant to Government Code Sections 3555-3557, an Association representative shall receive not less than 10 days' notice, from the City, in advance of a new hire orientation for represented classifications, except in a specific instance where there is an urgent need critical to the City's operations that was not reasonably foreseeable. During the time the employee is scheduled for orientation in the

Personnel Office, a period of fifteen (15) minutes will be allowed to an Association representative to present information about joining the Association.

ARTICLE 6 - NO STRIKE/NO LOCKOUT

The City and Association agree that it is mutually beneficial to resolve differences through negotiation. During the term of the MOU the City agrees that it will not cause a lockout of employees and the Association agrees that it will not sanction or cause a strike, slowdown, sickout, and stoppage of work or other job action. Compliance with the request of other labor organizations is included within this prohibition.

ARTICLE 7 - LAYOFF PROCEDURES

In the event of work force reduction, an employee with the least seniority shall be laid off first. "Least seniority" is determined by date-of-hire with the exception of employees on initial probation.

- A. Employees shall be given at least forty-five (45) days notice prior to layoff. Employees on probation can be laid off without regard to seniority order or noticing.
- B. The order of layoff of employees shall be as follow: Temporary part-time employees; Probationary employees; Permanent employees. Part-time employees shall be laid off before full-time employees.
- C. No new employee shall be hired in the Firefighter, Engineer and Captain Classification until employees on layoff have been given the opportunity to return to work. Such employees shall be rehired or reinstated to the previous position in reverse order of layoff.
- D. Probationary employees may be rehired without regard to seniority order, only after regular employees have been rehired. Reinstatement must be exercised within twenty (20) workdays after the City deposits written notice from layoff in the United States mail addressed to the employee's last known address by Certified Mail – Return Receipt Requested.
- E. Employees who are in the laid off status must maintain all certification for the position they previously held to be considered eligible for rehire. The rehire list shall be maintained for a maximum of 24 months.

**ARTICLE 8 - BASE WAGES AND STEPS, BENEFITS, AND WAGE PLAN
ADMINISTRATION**

A. Base Wages and Merit Steps: The following schedule provides a wage range with five (5) merit steps also known as base wage steps.

Monthly Salaries Effective first pay period in July 2019 – 5% COLA

	Step A	Step B	Step C	Step D	Step E
Firefighter	5710	5995	6295	6610	6940
Fire Engineer	5954	6251	6564	6892	7237
Fire Captain	6721	7058	7410	7781	8170

Monthly Salaries Effective first pay period in July 2020 – 2.5% COLA

	Step A	Step B	Step C	Step D	Step E
Firefighter	5852	6145	6452	6775	7114
Fire Engineer	6102	6408	6728	7064	7418
Fire Captain	6889	7234	7596	7975	8374

Within the range, all step advancements will be considered on an employee's anniversary date and if an increase is granted, it shall be effective as of the anniversary date. Step increases shall be based on work performance and completion of required length of service in the previous step. New employees will normally be hired at the "A" step. Employees shall spend at least one (1) year in a particular step before being considered for further Step increases; however, the Fire Chief may advance a probationary employee to "B" step at six (6) months, with a corresponding change in anniversary date. The time required for step advancement shall be extended by any time spent on leave of absence pursuant to Article 19.

B. Benefits - The City provides the following benefits pursuant to the terms and conditions noted. Monthly benefits shall be prorated for any partially worked month.

C. Fair Labor Standards Act provisions shall be used to determine which benefits are required to be used in calculating overtime pay.

1. Uniform Allowance- Each employee in the Fire Department shall be eligible to receive new uniforms annually purchased by the City of Winters, and report to CalPERS in an amount not to exceed \$1000 annually. The City shall report

Uniform Allowance to the California Public Employees' Retirement System (CalPERS) monthly, or on a per pay period basis, and in accordance with the Public Employees' Retirement Law (PERL), the Public Employees' Pension Reform Act (PEPRA), and applicable regulations.

2. Bilingual Pay - An employee who routinely and consistently is required to communicate in both English and Spanish and is certified pursuant to department standards shall receive a bilingual pay incentive in the amount of two hundred dollars (\$200) per month.

3. Insurance -

(a) Cafeteria Allowance (Effective January 1, 2019). The City shall make a monthly allowance available to each full-time employee under the City's Section 125 plan ("Plan") for the purchase of any benefits offered under the Plan including medical, dental, vision and supplemental insurance coverage. The allowance for which the employee will be eligible shall be based on the coverage level in which the employee enrolls for medical insurance as set forth below:

Coverage Level	Monthly Allowance
Employee Only	\$1,200
Employee +1	\$1,700
Family	\$1,950

Any portion of the monthly allowance that is not allocated towards the purchase of benefits under the Plan shall be paid to the employee as taxable wages. Effective January 1, 2020 and every year thereafter during the term of this agreement, the City shall increase the preceding allowance by up to 5% of the aggregate increase in the monthly premiums unless premiums increase by more than 10%, then the City will increase the allowance by 50% of the increase up to 7.5% for: (a) the CalPERS Kaiser Permanente plan in the CalPERS "Region 1", (b) dental plan and (c) vision plan, from the prior year for the applicable coverage level. The employee shall be responsible for any cost in the selected benefits in excess of the allowance, but such out-of-pocket cost shall be made on a pre-tax basis by payroll deduction.

Prior agreements permitted some employees to receive a greater cafeteria allowance than our new cafeteria plan. That excess benefit is being eliminated. Those employees will receive a one time "bridge payment" paid on the next pay period following ratification of this MOU to help ameliorate the loss of the previous benefit. All such bridge payments are subject to applicable payroll taxes and withholdings, and they are not reportable compensation for CalPERS purposes.

(b) Medical Opt-Out Amount (Effective January 1, 2019). Employees eligible for the Allowance pursuant to the preceding section that are covered by another group health plan may receive a monthly taxable payment equal to \$1,200 in lieu of the Allowance. Employees may elect this option by

completing an opt-out agreement provided by the City and providing satisfactory proof of enrollment of the employee and his or her spouse and dependents, if any, in an alternative group health plan. This election will only apply for the calendar year in which it was made. A new opt-out election must be made each calendar year during open enrollment to be eligible to receive the opt-out amount. Employees who opt out of medical, may purchase dental, vision, and supplemental insurance through the City.

(c) Miscellaneous. Employees may be required to purchase other insurance pursuant to terms and conditions established by insurance carriers and as agreed to by the Association.

4. Public Employees Retirement System (PERS) –

Employees shall join the PERS system as a condition of employment.

Tier One Retirement Formula

Safety Employees hired prior to January 1, 2013 will receive 2%@50 with a three Year average compensation formula.

Tier Two Retirement Formula

Safety Employees hired after January 1, 2013 will receive 2.7%@57 with a three Year average compensation formula.

5. Social Security (FICA) - Employees are required to join the Federal Social Security System as a condition of employment. The employee shall pay the employee's contribution to Social Security on the employee's applicable wages. The City shall pay the City's contribution on applicable employee wages.
6. Education Incentive - An employee who provides evidence of having received a degree from a recognized college/university or a POST certificate which the City deems appropriate to the needs of the job being performed shall receive incentive pay as indicated.

CERTIFICATE/EDUCATION

WAGE INCREASE

AA/AS Degree

4% above base wage

BA/BS Degree

10% above base wage

Upon completion of a course, the City will reimburse up to \$1,000 per semester, per employee, toward continuing college education relevant to the needs of the job being performed. Employees must earn a "pass" in a pass/fail or a "C" or better grade to be eligible for reimbursement. Employees seeking to be

reimbursed must receive approval from the Fire Chief prior to enrolling in the course of study.

7. Longevity Recognition - An employee who has completed five (5) consecutive years employment is eligible to receive an amount equal to one-half (1/2) month's base wage during the sixth (6th) year and every year of service thereafter until the employee leaves City service. Payment shall be made on the employee's full time hire date.
8. Jury Duty - Employees may be excused from the regular responsibilities of their position when called for jury duty. Employees called for jury duty shall notify the Fire Chief of the call. If, in the opinion of the City, the absence of the employee would result in undue disruption of work, the City may direct the employee to request an exemption from jury duty. An employee shall not suffer loss of pay or benefits while actually serving on jury duty. All court approved jury pay received by the employee shall be remitted to the City.
9. Deferred Compensation – An employee who has increased their personal deferred compensation contribution in to a deferred compensation plan offered by the city, the City will contribute up to \$500.00 annually. (Frozen at this time)
10. CALGOVEBA – For Safety Employees hired prior to July 1, 2019 The City will annually deposit \$2,500 in to an account for each employee with California Government Voluntary Employees' Beneficiary Association (CALGOVEBA) July 1st of each year.
11. The City shall pay the cost of Long-Term Disability Insurance and the cost of a \$50,000 Life Insurance Policy for each employee in this Association.

D. SALARY PLAN ADMINISTRATION

1. Employees shall be paid according to a bi-weekly payroll plan which has twenty-six (26) pay periods in a calendar year.
2. Employees shall normally be paid by twelve noon (12:00 noon) on or before every other Wednesday.
3. When the normal pay day falls during an employee's annual vacation leave, the employee may receive a vacation advance on the last working day prior to beginning vacation leave provided a written request is submitted to the Administrative Services Department at least five (5) working days in advance

and the amount requested is less than the employee's regular paycheck, based on straight time hours.

4. Work performance evaluations shall be completed by the employee's supervisor prior to the employee's anniversary date. At this time, consideration may be given for a merit step advance. The evaluation shall include the following elements:
 - a. A written record to be reviewed and acknowledged in writing by the employee. No change will be made after this review and without the acknowledgment of both the supervisor and employee. However, an addendum by the superior officer may be attached with the acknowledgement of the employee.
 - b. A discussion between the supervisor and employee on the content of the performance evaluation.
 - c. A provision whereby an employee may submit a written response to any statement made on the evaluation which must be filed with the evaluation and forwarded to the supervisor. Such responses, and any written acknowledgement by a reviewing official, shall become attached to the evaluation. If the evaluation is satisfactory or better the employee can be granted a merit increase provided that an increase does not exceed the established range. If the evaluation is below standards, a step increase may not be granted. A withheld step increase may be granted following any subsequent review period of satisfactory work performance by the employee. The review period shall be no less than ninety (90) days. A step increase granted after this review shall not be retroactive back to the anniversary date.

ARTICLE 9 - PROBATION, NEW CLASSIFICATION, RECLASSIFICATION, ACTING APPOINTMENT, AND PROMOTION

- A. Probation - The probationary period is a time to obtain the best fit for an employee in a new job or classification and for terminating the employer/employee relationship if work performance or adjustment to the City does not meet the expectations of the employee or the City.
 1. All original appointments shall be tentative and subject to a probationary period of twelve (12) months for an employee.
 2. The probationary period may be extended up to six (6) months in two (2) three (3) month increments as a result of an employee's unfavorable job performance as determined by the Fire Chief. The probationary period may be extended for any leave of absence granted.
 3. During the probationary period, an employee will be evaluated every four (4) months. If an employee is under an extended probation the evaluations shall be given each month during the extension.

- B. **New Classifications** - The City may establish new job classifications. Employees desiring to compete for such positions will be evaluated in the same manner as any candidate aspiring to receive appointment.
- C. **Reclassification** - Reclassification is a change to an existing job class as a result of changes in the function, duties, and/or responsibilities as determined by the City.
- D. **Temporary Acting Appointments** - The City may temporarily appoint an employee to an acting capacity in a higher job classification. The employee shall receive \$200.00 (two hundred dollars) per month for each full month of service. This amount will be prorated for less than a full month's service.
 - 1. Acting appointments will not continue beyond six (6) months except by mutual agreement of the City and employee.
 - 2. An employee having served in an acting capacity and subsequently promoted to the position shall establish a new anniversary date as of the first date of formal promotion.
- E. **Promotion** - The City may advance an employee to a job classification having a higher base wage range.
 - 1. A promoted employee shall receive an increase to the next higher wage step above that currently held provided that the increase does not exceed the wage range established for the promoted classification.
 - 2. A promoted employee shall be subject to a one (1) year probationary period. An employee rejected during this time shall be reinstated to the job classification previously held at the same wage step the employee had prior to the promotion.
 - 2. Nothing in this section shall be construed as limiting the City to advertise a promotional position to any candidate desiring to apply. Any qualified employee may apply and will be evaluated in the same manner as any candidate aspiring to receive appointment to the position.
- F. **Acting Battalion Chief** - The Fire Chief may appoint an eligible Captain to fulfill the role of Battalion Chief on an on-call basis, where needed to ensure coverage. The Captain will receive the amount of \$50 per shift whenever assigned on-call duty as Battalion Chief. No additional compensation is provided (other than appropriate hourly compensation at the applicable hourly rate), in the event the Captain is called to report to an incident or otherwise report to duty.

ARTICLE 10 - PERSONNEL RECORDS

Personnel records, except payroll records, are confidential; however, certain personnel records may be released to the public in accordance to applicable law.

Access to personnel records shall be limited to the City Manager, Human Resources Manager and the Fire Chief or their designee in accordance to applicable law.

An employee and/or their representative, designated by the employee in writing, will be allowed to review the employee's personnel records during regular business hours (8:00 A.M. - 5:00 P.M., Monday through Friday). An employee shall receive, upon written request, a copy of any document placed in the employee's personnel file.

ARTICLE 11 - HOURS OF WORK

A. Fire Suppression personnel shall work 48/96 schedule with a work period of 28 days under section 207k of the FLSA.

B. The normal workday for Fire Suppression shift personnel is twenty-four (24) hours and 8 hours for non-shift personnel

C. Fire Suppression personnel assigned to Fire Operations Shift shall work a fifty-six (56) hour work week on a 48/96 work schedule with shift changes made at 8:00 AM.

D. Duty Schedule & Rotation – Employees assigned to On Call Duty status will be on a 24-hour duty schedule on a weekly basis as scheduled by the Fire Chief.

E. Alternate 40 hours Work Schedule: Fire suppression personnel may be assigned to a 40-hour work week as determined by the needs of the department and the Fire Chief.

ARTICLE 12 - OVERTIME

The Professional Firefighters Association acknowledges the City's adoption of the FLSA 207K work period of 28 days creating and FLSA overtime threshold of 212 hours each 28 days. For eight (8) hours employees, the work period is seven (7) days/forty (40) hours.

ARTICLE 13 - SICK LEAVE

A. Employees shall accrue sick leave at the rate of 11.2 hours per month for each calendar month of service. Sick leave time shall accrue on a per pay period basis. Each employee has one (1) hour deducted from the employee's accrued sick leave time for each hour of sick leave taken. There shall be no limit to the amount of sick leave accrued.

- B. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
- C. Employees shall not accrue sick leave when they are not in a City-paid leave status.
- D. After three (3) consecutive shifts, a physician's certificate or otherwise may be required to determine the adequacy of reasons for the sick leave absence.
- E. Bereavement Leave - Up to three (3) consecutive shifts may be granted per incident for death or illness involving members of an employee's family defined as: spouse, mother, father, sister, brother, children, grandparents, grandchildren, mother or father-in-law, and aunt or uncle. Evidence of family relationship may be required before such sick leave is granted. Use of Bereavement Leave shall not be counted as part of the sixty-seven (67) hours Incentive Sick Leave Bonus but will be subtracted from accrued sick leave.
- F. If an employee dies in the line of duty, that is carrying out their duties and responsibilities during a work shift, then the employee's designated beneficiary shall receive fifty (50) percent of the employee's accumulated sick leave in straight time pay. The formula for such a payment is:

$$\frac{\text{Accumulated Leave}}{2} \times \text{Base Hourly Wage} = \text{Sum Total of Payout}$$

- G. Employees having ten (10) years or more of service with the City, upon retirement may receive straight time pay for one third (1/3) of their accumulated sick leave hours, up to 320 hours.
- H. Upon request of an employee and upon approval of the City Manager, sick leave credits may be transferred from one or more employees to another employee due to a catastrophic illness, under the following conditions:
 1. When the receiving employee faces financial hardship due to injury or the prolonged illness of the employee, employee's spouse or child,
 2. The receiving employee has exhausted all leave credits,
 3. The donations must be a minimum of eight (8) hours and in additional eight (8) hour increments.
- I. Sick Leave Incentive - An employee who has used sixty-seven (67) hours or less of sick leave in a one (1) year period from December 1 until November 30 shall receive one percent (1%) of their base yearly salary in a separate check payable to the employee during the first week of December of that year. New hires are eligible for a pro-rated incentive if hired by June 1 based on number of months worked (i.e. can't use more than 33 hours if only employed 6 months).

ARTICLE 14 - HOLIDAYS

A. The City observes the following holidays:

- | | |
|--|-------------------------------|
| 1. New Year's Day | 7. Independence Day |
| 2. Martin Luther King's Day | 8. Labor Day |
| 3. President's Day | 9. Veteran's Day |
| 4. Caesar Chavez Day | 10. Thanksgiving Day |
| (Recognized Only – Monday through Friday) | 11. Day After Thanksgiving |
| (No additional day off if falls on Saturday or | 12. December 24th |
| Sunday) | 13. December 25 th |
| 5. Half Day Good Friday | |
| 6. Memorial Day | |

Each unit member will receive a Holiday Differential as compensation for the holidays specified above on a bi-weekly basis regardless of whether or not the unit member is scheduled to work on a City observed holiday as part of their regular schedule. The differential will be based 6% (percent) of the member's straight time base payrate, paid in every pay period. Unit members shall not earn any additional holiday pay above and beyond this differential.

Every employee covered by this MOU shall receive one (1) floating holiday per year. Employees shall receive credit for one floating holiday on July 1. If an employee fails to take their floating holiday off, between July 1 and June 30, the employee will forfeit their floating holiday credit. This floating holiday has no cash value and may not be cashed at separation. Each floating holiday is equivalent to one work day (one 24-hour shift or one 8-hour shift) and cannot be broken up by hours.

ARTICLE 15 – VACATIONS

A. Employees shall earn paid vacation leave on a pro rata basis each pay period during the month. Employees will earn vacation based upon length of government service years as full-time employees. Employees accrue the following amounts on a yearly basis, accrued on a pro rata basis each pay period.

<u>40-hour week employee</u>		<u>24-hour shift employee</u>	
0 – 3 years	96 hours	0 – 3 years	134 hours
4 – 6 years	120 hours	4 – 6 years	168 hours
7 – 9 years	136 hours	7 – 9 years	190 hours
10 – 12 years	160 hours	10 – 12 years	224 hours
13 – 16 years	176 hours	13 – 16 years	246 hours
17 – 22 years	200 hours	17 – 22 years	280 hours

23 + years 216 hours

23 + years 302 hours

- B. Vacations shall be scheduled by the employees with the approval of the Fire Chief, and with regards to the needs of the City. Preference in scheduling shall be based on seniority.
- C. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation balance. Vacation leave shall not be granted to an employee after separation from City service.
- D. Employees granted an unpaid leave of absence or absent from duty when not authorized by the City shall not earn vacation leave.
- E. In the event that a holiday occurs during an employee's scheduled vacation leave, that holiday shall not be considered as vacation leave.
- F. With approval of the City Manager, employees may cash in up to 80 hours of their accrued vacation hours per year providing the employee takes at least one week off.
- G. An employee separated from City service shall be compensated for vacation hours on the books.
- H. All employees shall take at least two consecutive shifts away from the job each year, which can be a combination of vacation and a floating holiday.

ARTICLE 16 - TRAINING SCHOOLS/FEES

- A. If, as a condition for continued employment, the City requires attendance at a school or training establishment and fees are charged, such fees shall be paid by the City.
- B. The City will make available a City vehicle to travel to and from training. If no City vehicles are available, and upon approval of the Fire Chief, the employee may drive their personal vehicle and be compensated mileage to and from the Fire Department to the training location according to the City's Travel Policy.

Employee's utilizing a City vehicle to travel from their residence to the training location will not be compensated time unless the training location is in excess of 50 miles from the Winters Fire Department.

If the employee opts to drive their personal vehicle from their residence to the training location in lieu of a City vehicle, mileage and travel time will not be compensated.

ARTICLE 17 - TIME OFF TO EMPLOYEE REPRESENTATIVES

The City shall allow two (2) Association employees time off from normal duties without loss of compensation or benefits when formally meeting and conferring with representatives of the City on matters within the scope of representation. In no case shall any overtime be paid for such meeting and conferring.

ARTICLE 18 - WORKERS' COMPENSATION INSURANCE

Worker's compensation Benefits shall be provided in accordance with State law, Yolo County Public Agency Risk Management Insurance Authority and any other applicable rules and regulations.

- A. Industrial Injuries and Accidents.
 - 1. Employees shall report any work-related injury or illness which requires medical treatment to the appropriate department supervisor as soon as physically possible. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
 - 2. Employees shall report any work-related injury or illness which does not require medical treatment to the appropriate department supervisor as soon as possible, in any event by the end of the employee's shift during which the injury or illness occurred. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
- B. Accident Reporting. Employees shall report any accident which results in any injury or property damage to other parties to the appropriate department supervisor as soon as physically possible.
- C. Medical Treatment. Any employee suffering from any work-related injury or illness which requires emergency medical treatment shall immediately seek such treatment from a City designated physician or medical facility.
- D. Leave of Absence for Industrial Disability Qualification. An employee suffering a work-related injury or illness which disables that employee from the performance of regular job duties, may request a leave of absence for industrial disability. Such a request may be submitted in the form of a worker's compensation claim. Any dispute regarding such claim shall be resolved in the appropriate jurisdiction as defined by statute or policy.
- E. Compensation for any employee on a leave of absence pursuant to the

worker's compensation sections of the California Labor code may have accumulated sick leave, vacation, and compensatory hours prorated to supplement temporary disability compensation payments provided that the total amount does not exceed the employee's base monthly salary.

- F. Temporary light duty. The City may make jobs available for the employee who can perform light duty assignments approved by the employee's physician and the City.

ARTICLE 19 - LEAVE OF ABSENCE

A leave of absence is time away from work at the request of the employee. As used in this Article, leave of absence does not include vacation, compensatory time off, sick leave, industrial disability, holiday, or administrative leave.

- A. An employee who has successfully completed the original probationary period may request, and the City may grant, a leave of absence. Requests for leave in excess of thirty (30) days must be approved by the City Manager (Inability to return to work after an employee's sick leave has been exhausted shall be considered an urgent and substantial reason for the granting of a leave of absence). The City provides leaves of absence to eligible employees as required by law.
- B. Employee use of leave of absence for purpose other than that requested shall be considered as an employee's automatic resignation from City service.
- C. The City shall have sole discretion in approving or disapproving any employee request for a leave of absence or in granting any pay or benefits.
- D. An authorized leave of absence shall not be deemed a break in City service.
- E. As approved by the Fire Chief an employee may return to work prior to the expiration of a leave of absence.
- F. Military leave shall be granted in accordance with the provision of appropriate law. The City shall be allowed the opportunity, within the limits of law and military regulations, to determine when such leave shall be taken.

ARTICLE 20 – DISCIPLINE AND DISCHARGE

No regular employee who has completed the applicable probationary period shall be disciplined or discharged without just cause. Any investigations of possible misconduct shall be conducted in accordance with the applicable provisions of the FBOR, including a grant of immunity where required as a condition of participation.

A. Purpose.

1. To provide regular permanent Fire Department employees covered by the FBOR and who are subject to disciplinary actions with all rights to which they are entitled under the Constitution of the United States, the Constitution of the State of California and State and Federal Law including California Government Code and the Firefighters Bill of Rights.
2. To provide an orderly procedure for notice, pre-action response meetings (Skelly), administrative review of minor disciplinary action and formal hearing on appeal of major disciplinary action.

B. Definitions.

1. Punitive Action: Any action as defined in the FBOR that can lead to dismissal, demotion, suspension, reduction in pay, written reprimand, or transfer for purposes of punishment.
2. Parties: The affected employee, the appointing authority or other members of supervision and management.
3. Response (Skelly) Meeting: An informal meeting in which the employee has the opportunity to respond to proposed punitive action prior to implementation. (The response normally is to a person with authority to rescind the proposed actions.)
4. Hearing: A formal hearing held following an appeal of an employee of punitive action taken by the appointing authority.
5. Notice: Notice shall be given by personal delivery or by certified mail or, upon mutual agreement of the parties, by fax followed by regular mail.
6. Service/Receipt of Notices/Orders. The date of service/receipt of notices/orders shall be that date when the notice/order is actually received by the employee or that date when the last good faith effort at delivery is made and confirmed. Avoidance of service shall not waive time limits within this section.
7. Day. All days are calendar days unless otherwise specified.

C. Oral or Written Reprimands.

1. Issuance of Reprimands. When the Department Head or immediate supervisor determines more severe action is not immediately necessary, an oral or written reprimand can be prepared detailing the deficiency or problem. If the reprimand is put in writing, a copy is to be filed in the employee's personnel file after being signed by and a copy given to the employee. Refusal to sign shall be noted before filing. Failure to correct deficiencies and improve to meet standards may

result in further discipline including suspension, reduction in pay, demotion, and discharge.

2. **Removal of Reprimand.** A written reprimand shall remain in an employee's file for a period of three (3) years. A written reprimand may be withdrawn from an employee's official personnel file after two (2) years from the date of issuance by making a written request to the Fire Chief. Approval of removal will be based upon improved performance. A documented oral counseling shall remain in an employee's file until the next evaluation period.

D. Time Limits

1. Time limits specified throughout this procedure shall be strictly observed. Time limits may be modified only by mutual agreement of the parties in writing.

E. Exclusive Procedure.

1. This procedure shall be the exclusive procedure for taking disciplinary actions and appealing disciplinary actions against regular permanent employees. This process does not apply to informal efforts, including oral counselings, taken to address performance issues.

2. The provisions of this disciplinary procedure shall supersede the procedures of the City ordinances or policies.

3. Punitive actions shall be subject to appeal only as outlined in this article.

F. Notice of Proposed Punitive Action.

1. The employee shall be given written notice of a proposed Punitive Action not less than five (5) days in advance of the date the action is proposed to be taken.

2. In an emergency situation, an employee may be suspended with pay or temporarily reassigned without loss of pay for the period between the date notice is given and the date that action is taken (subject to the provisions of applicable law).

3. The notice shall contain:

a. The reasons for the proposed action, including the rule(s) or regulations(s) or ordinance(s) violated and a complete explanation of the reasons.

b. An explanation of the charges and the recommended action.

- c. Notice that the employee is entitled to an opportunity to respond to the charges orally or in writing, or both, personally or by or with a representative, which may be an attorney, at the meeting with the appointing authority (or his/her designee).
- d. The date and the time of the response meeting with the appointing authority (or the appointment authority's representative) during which the employee and his/her representative shall have an opportunity to refute the charges or present facts which may not be known to management. The stated time and date herein may be moved to accommodate the employee's representative and agreed to by both parties.
- e. If the employee chooses not to participate in the response meeting and prefers to advance to appeal, he/she shall notify the appointing authority of his/her decision in writing. If no written response or request to advance to an appeal is received by the appointing authority by the time scheduled for the response meeting and the employee fails to participate in the response meeting, the appointing authority may proceed to implement the proposed action and the employee shall be deemed to have waived all rights to hearing or appeal from any action taken. Failure to request an opportunity to respond shall constitute a failure to exhaust administrative remedies.
- f. Accompanying material. Copies of material on which the proposed discipline and recommendations are based shall accompany the notice.
- g. The employee may copy and inspect his/her personnel file.

G. Scheduling.

The date and time for the response meeting may be rescheduled for good cause upon mutual agreement of the parties. If a response meeting is rescheduled after the proposed date of the imposition of the disciplinary action, the appointing authority shall not take the proposed action until after full consideration of the information presented at the response meeting.

H. Response (Skelly) Meeting.

1. At the time and place set for the meeting giving the employee opportunity to respond, the employee may respond either orally and/or in writing, personally, or with a representative.
2. Neither the representative of the appointing authority nor the employee shall be

entitled to call witnesses or take testimony.

3. At the meeting, the representative of the appointing authority may consider information contained in the charges and recommendations and other information, as well as information presented by the employee or his/her representative.
4. At the conclusion of the response meeting or within ten (10) days, the representative of the appointing authority shall issue an order, taking, amending, or determining not to take the action, and shall give written notice thereof to the employee, which shall include:
 - a. An explanation of the basis for the action;
 - b. The charges upheld or not upheld;
 - c. The effective date(s) of the imposed discipline if any;
 - d. A list of items upon which action is based; and
 - e. Notice of the employee's right to appeal.

I. Appeal of Punitive Action.

1. If an employee has requested and participated in a response meeting with the Appointing Authority as set forth above regarding or notified the appointing authority of his/her desire to advance to appeal, the employee shall have the right to appeal the Appointing Authority's Punitive Action. Such appeal may include the severity of the penalty imposed.
2. Nothing in this subsection shall prohibit a firefighter from exercising his/her rights under applicable law and/or the Firefighter Bill of Rights.
3. Filing of an appeal shall not stay the effective date of the order of disciplinary action.
4. A written demand for an appeal and hearing must be served on the Appointing Authority by the employee or his/her representative within ten (10) days of receipt of the Appointing Authority's order affirming, reversing or modifying the proposed major disciplinary action.
5. The failure to serve written demand for hearing within the prescribed period shall be deemed a waiver of the right to an appeal hearing and the order of disciplinary action shall be final. Said failure constitutes a failure to exhaust administrative remedies.
6. The demand for hearing shall include:

The specific grounds for appeal; and copies of materials on which the appeal is based.

7. Upon receipt of the written request for a hearing, the City shall schedule the matter for hearing consistent with the Administrative Procedures Act and the informal or formal hearing procedures listed below. The employee and Appointing Authority shall have the opportunity to present evidence and argument related to the Punitive Action.

8. Hearing Procedure:

a. Informal Hearing Procedure: The following informal hearing procedure shall be utilized for an appeal of a punitive action involving a written reprimand and a transfer for purposes of punishment (not involving a loss in pay). The Fire Chief or the Fire Chief's designee shall be the presiding officer. The hearing shall be conducted as a full evidentiary hearing, with full due process rights, including the right to present witnesses, present evidence, and cross examine opposing witnesses, the right to counsel, and findings to support the decision. The formal rules of evidence do not apply, although the Fire Chief or the Fire Chief's designee shall have discretion to exclude evidence which is incompetent, irrelevant, or cumulative, or the presentation of which will otherwise consume undue time. The hearing shall be tape recorded, with the cost borne equally by the parties. The firefighter may be presented by a representative of his or her choice, with all costs of such representation borne by the firefighter. The decision of the Fire Chief or the Fire Chief's designee shall be in writing and shall advise the firefighter that the time within which judicial review of the decision may be sought is governed by section 1094.6 of the Code of Civil Procedure.

b. Formal Hearing Procedure: The following formal hearing procedure shall be utilized for an appeal of a punitive action involving a dismissal, demotion, suspension, and reduction in salary. The City shall obtain a hearing officer who is an administrative law judge on staff of the State Office of Administrative Hearings (referred to here as the ALJ). The ALJ shall preside at the appeal hearing, rule on the admission and exclusion of evidence, and determine and rule on all matters of law, both procedural and substantive. In conducting the appeal hearing, the ALJ shall follow the provisions set forth in section 11513 of the California Government Code. In all respects, the conduct of the hearing will be conducted in compliance with the California Administrative Procedures Act. The ALJ, within fifteen (15) calendar days of the conclusion of the hearing (and submission of briefs, if any), render a proposed written decision and/or order and shall submit it to the City Manager. Within 60 days of receiving the ALJ's proposed decision, the City Manager may take any of the following actions:

- (1) Adopt the proposed decision in its entirety;
- (2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision;
- (3) Make technical or other minor changes in the proposed decision and adopt it

as the decision. Action by the City Manager under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision;

- (4) Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to the ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision based on the additional evidence and the transcript and other papers that are part of the record of the prior appeal hearing. A copy of the revised proposed decision shall be furnished, and the decision shall be served to each party and his or her attorney.
- (5) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties the City Manager may decide the case upon the record without including the transcript.

10. The City Manager's decision will be reduced to writing and shall be final and binding on the parties. The City Manager's written decision shall be served on the parties in accordance with Code of Civil Procedure 1094.6 and the decision shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

ARTICLE 21 – STRIKE TEAM ASSIGNMENTS AND COMPENSATION

Employees assigned to an engine or a strike team within the State Mutual Aid or Officer of Emergency Services Mutual Aid system shall receive full salary as if he/she is at work at the station. The remaining personnel shall be required to pick up the On-Call Duty Schedule while the emergency exists.

ARTICLE 22 - OUTSIDE EMPLOYMENT

(A) The intention, construction and application of this Section shall be to provide guidelines for employees who wish to secure outside employment so that such outside employment does not create the appearance and/or existence of a conflict of interest and/or incompatible activities involving an employee's obligations and responsibilities to the City. Each situation will be determined based upon all factors relevant to that particular situation.

(B) Outside employment is defined as any paid employment performed by an employee in addition to his/her job with the City.

(C) An employee contemplating outside employment shall notify the Fire Chief in writing in advance of commencing such employment. Any employee currently holding outside employment shall so notify the appointing authority. Any new hire shall disclose any outside employment. The notification shall contain the name of the employer (or statement of self-employment), the hours

worked, and the nature and duration of employment.

The Fire Chief shall evaluate the outside employment and either approve or disapprove. The Fire Chief shall disapprove outside employment if the employment creates an actual or perceived conflict of interest with the employee's assigned duties. The Fire Chief can provide a conditional approval, setting forth the circumstances under which the approval is provided. If outside employment is disapproved or if the conditions are subsequently not satisfied, the employee shall cease outside employment and shall provide supporting written confirmation.

(D) In considering outside employment, the Fire Chief shall consider all relevant factors, including but not necessarily limited to the following:

- (1) Whether such employment would interfere with or be inimicable to the efficient performance of the employee's duties with this City.
 - (2) Whether such employment would involve a conflict of interest or conflict with the employee's duties with the City.
 - (3) Whether such employment would involve the performance of duties that the employee could or should perform as part of his/her employment with the City.
 - (4) Whether such employment would occur during the employee's regular or assigned working hours.
 - (5) Whether such employment would interfere with satisfactory service because of time away from the job or cause physical or mental fatigue, which impairs regular service.
 - (6) Whether such employment would be compatible with the proper discharge of City duties and shall not tend to impair judgment or action in the performance of such duties.
- (E) An employee shall not utilize in such employment any City tools, equipment, computer or technological equipment, manuals, or other materials, nor shall the employee utilize any documents, reports or other information obtained in the course of his/her employment with the City or otherwise using City tools, equipment, manuals or other materials, which are not made available by the City to the general public upon request
- (F) The outside employment of full-time personnel whose duties are not readily confined to a standard workday and/or workweek may necessarily be restricted. Because of the nature of job duties, flexibility of hours and potential for conflict of interest, certain employees may be restricted from accepting outside employment.

- (G) Any employee approved to engage in outside employment shall not perform any work for such outside employment during working hours for the City.
- (H) Employees not following the above provisions are subject to disciplinary action including, but not limited to, written reprimand, suspension without pay, and termination of employment.

ARTICLE 23 - GRIEVANCE PROCEDURES

A grievance is an alleged violation of a specific clause of this MOU. The Association may grieve an action or inaction pursuant to the procedures herein specified.

- A. Informal Grievance Procedure - The first attempt to settle a grievance will be through discussion with the immediate supervisor. If the matter is not settled, the employee shall then have the right to file a formal appeal in writing to the Fire Chief within fifteen (15) calendar days after receiving a decision from the immediate supervisor.

If grievance involves supervisors, employee can discuss the matter with the Chief.

- B. Formal Grievance Procedure - An employee filing a formal appeal shall do so in accordance with the following:
 - 1. First Level of Review - The appeal shall be presented in writing to the Fire Chief who shall render a decision in writing within fifteen (15) work days after receiving the appeal. If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Manager. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the Fire Chief, the appeal shall be deemed to have been abandoned and terminated.
 - 2. City Manager Review - The City Manager or a designated representative shall discuss the grievance with the employee and other persons as may be needed. The City Manager may designate a fact-finding committee for advice concerning the appeal. The City Manager shall render a decision in writing to the employee within fifteen (15) work days. If the employee does not agree with the decision, the employee shall have the right to file a formal appeal in writing to the City Council within fifteen (15) work days after receiving a decision or non-decision from the City Manager.
- C. Appeal to the City Council - On receipt of an appeal, the City Council may make such investigations as it deems necessary. The City Council will decide whether or not to hear the appeal or appoint a hearing officer or hearing body. The employee may request that the appeal be considered at a public or closed meeting. The City shall notify the employee requesting the hearing of the date, time, and place of the

hearing. Unless incapacitated, the employee making an appeal shall appear personally at the hearing before the City Council or appointed hearing officer or body.

Upon concluding any investigation or hearing, the City Council shall cause its findings to be prepared in writing and shall certify same. Such findings shall be

countersigned and filed as a permanent record by the City Manager. Any member of the City Council may submit a minority or supplemental report which shall be part of the permanent record.

If, due to the absence from the City, or illness or disability of a majority of the City Council, an employee would be deprived of a right of a hearing, and in the event the employee were demoted, reduced in pay, or dismissed from City employment, the City Manager shall defer action until the Council is able to function, unless the case is deemed an emergency, in which event, the City Manager may suspend the employee with pay until the Council is able to function.

D. Conduct of Grievance Procedure.

1. The time limits specified in this Article may be extended to a definite date by mutual agreement of the employee and the appellate person or body.
2. The employee may be represented by a person or persons of their choosing in preparing and presenting the appeal at any level of review.
3. The employee shall be assured freedom from reprisal for using the grievance procedures.

ARTICLE 24 - NON-DISCRIMINATION

Neither the City nor the Association shall discriminate against any employee or applicant for employment because of race, color, creed, age, sex, national origin, or Association or Non-Association activities.

ARTICLE 25 - SAVINGS PROVISION

If any provision(s) of this MOU are held contrary to law, such provision(s) will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

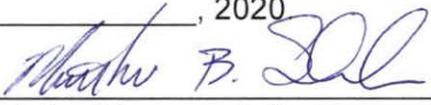
ARTICLE 26 - TERM OF MEMORANDUM OF UNDERSTANDING

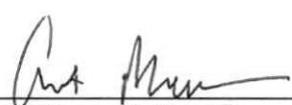
This Memorandum of Understanding shall remain in full force and effect from July 1, 2019 through June 30, 2021 and from year to year thereafter unless one party serves notice on the other.

ARTICLE 27 - CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

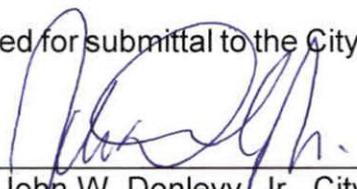
The parties acknowledge that during the negotiations which resulted in the MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understanding set forth in this MOU constitute the complete and total contract between the City and the Association with respect to wages, hours, and terms and conditions of employment. Accordingly, all wages, hours and terms and conditions of employment shall remain in full force and effect for the term of this MOU, provided, however, that the parties may upon mutual agreement, renegotiate any part or provision of this MOU during its term. Any prior or existing MOU between the parties, past practices or conflicting rules and regulations regarding matters within the scope of representation are hereby superseded and terminated in their entirety.

Approved by the City of Winters Professional Firefighters Association on the 15th day of January, 2020

BY: 
Association Representative

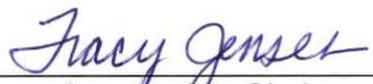
BY: 
Association Representative

Accepted for submittal to the City Council on the 16th day of January, 2020.

BY: 
John W. Donlevy, Jr., City Manager

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the 21st day of January, 2020.


Bill Biasi, Mayor

ATTEST: 
Tracy Jensen, City Clerk