

MEMORANDUM OF AGREEMENT  
between the  
SANTA CLARA COUNTY CENTRAL FIRE PROTECTION DISTRICT  
also known as the  
SANTA CLARA COUNTY FIRE DEPARTMENT  
and the  
BATTALION CHIEFS UNIT  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1165

November 7, 2016 to November 5, 2017

**PREAMBLE**

This Memorandum of Agreement, hereinafter referred to as the "Agreement," is by and between the Santa Clara County Central Fire Protection District also known as the Santa Clara County Fire Department, hereinafter referred to as the "Department," and the Battalion Chiefs Bargaining Unit, International Association of Firefighters, Local 1165, hereinafter referred to as the "Union."

The Agreement represents the results of the parties having met and conferred in good faith pursuant to Section 3505 of the Meyers-Milias-Brown Act.

## SECTION 1 – RECOGNITION/UNION SECURITY

### A. Recognition

The Department recognizes the Union as the authorized bargaining representative of the unit consisting of the following classifications:

Battalion Chief  
Staff Battalion Chief  
Chief Fire Investigator  
Assistant Fire Marshall

If any new position is created within the Department, representation status shall be determined in accordance with the Department Personnel Rules and Regulations.

The parties agree that retirement classification for new or existing classifications are solely determined by the California Public Employees Retirement System (CalPERS). Any dispute relative to the designation of retirement classification must be made directly to CalPERS.

### Union Security

1. Employees covered by this Agreement who have authorized Union dues deductions as of November 7, 2016 shall continue to have such deductions made by the Department during the term of this Agreement unless there is a work action (slowdown or stoppage) by the employees. Employees may terminate such dues deductions during the month of October 2017 pursuant to paragraph 3 of this section.
2. Each person employed during the term of this Agreement may at the time of employment execute an authorization for the payroll deduction of Union dues or of a service fee equivalent to Union dues on a form provided by the Union and shall continue said authorization in effect, except that such employee may terminate such dues pursuant to paragraph 3 of this section.
3. An employee may terminate his/her authorization for Union dues or service fee deduction by giving notice thereof to the Department Headquarters by individual letter deposited in the U.S. Mail or delivered in person: (1) during the month of October 2017 or (2) within thirty (30) calendar days following the date of first employment, whichever applies.
4. The Department shall promptly forward a copy of the letter of revocation to the Union.
5. An employee who revokes his/her deduction within thirty (30) calendar days following the date of first employment or during the month of October 2017 shall have the deduction removed following receipt of the notification by the Department.

6. Union agrees to indemnify, defend and hold Department harmless from any and all claims, demands, suits, or any other action arising from the provisions of this section or from complying with any demand for termination or revocation hereunder, except for any claims arising because of negligence of the Department.
7. Upon returning from leaves of absence the Department shall reinstate payroll deduction of Union dues for those employees who were on dues check-off immediately prior to taking leave, provided the employee has not authorized cancellation of dues check-off in accordance with the prescribed provisions.

## SECTION 2 - WAGES

A. Salary Adjustments

All covered classifications shall be granted wage increases as follows:

2.0% effective on November 7, 2016

B. Overpayment Errors

When a net of \$500 or more overpayment(s) error occurs, the employee will repay the overpayment in the same amount and within the same number of pay periods in which the error occurred. Overpayment of less than \$500 will be repaid from the net paycheck.

In cases that necessitate payback of overpayments totaling more than \$1000, the employee may request a payment plan within two weeks of discovery which includes signing a promissory note or lien.

The Department will notify the Union and the employee ten (10) working days prior to implementing any repayment action.

C. Underpayment Errors

The Department shall cover shortage of pay errors after written notification of discrepancy is received by the Director of Business Services. Underpayments of \$500 or less will be reflected in the next paycheck. Underpayments of over \$500 will be issued within five (5) working days.

## SECTION 3 – OTHER COMPENSATIONS

### A. Hour-for-Hour Compensatory Time for Battalion Chiefs

Battalion Chiefs will be allowed to accumulate hour-for-hour compensatory time for hours worked beyond normally scheduled shifts hours. Battalion Chief Vacancies will be staffed in accordance with Department Policy 350.

When a Battalion Chief fills a vacancy for a regularly assigned Battalion Chief (constant staffing) who is on vacation, personal leave, sick leave, Battalion Chief Release Time; administrative leave with pay; a strike team or overhead assignment; or Workers' Compensation: he or she shall be compensated with comp time on an hour-for-hour basis.

Battalion Chiefs assigned to constant staffing will be allowed to accumulate a maximum of 144 hours of compensatory time at any point in time. Hours in excess of 144 hours will be scheduled as time off or cashed out prior to closure of the next pay period. Accumulated hour-for-hour compensatory time will be used or cashed out at the basic rate of pay listed in the salary table.

Strike team leader assignments will continue to be compensated at the employee's basic rate of pay listed in the salary table. The accumulation of hour-for-hour compensatory time will not be utilized as compensation for out-of-county overhead or strike team leader assignments.

### B. Administrative Leave with Pay for Battalion Chiefs

Battalion Chiefs on suppression assignment are often required to attend meetings, classes, and conferences, and also to serve as raters on non-shift days. When required to work on a non-shift day, the Fire Chief may allow Battalion Chiefs on suppression assignment to accrue "Battalion Chief Extra Time Worked" on an hour-for-hour basis.

Battalion Chief Extra Time Worked is applied to mandatory assignments made by the Santa Clara County Fire Department and the Fire Chief or his/her designee. Extra Time Worked may include, but is not limited to, meetings, classes, committee work, conferences, and serving as raters. Battalion Chiefs on suppression assignment who are required to attend said functions on non-shift days shall record the time in the staffing software program as "BCX."

#### Examples:

- Battalion Chiefs that are required to attend out-of-town FIREScope meetings on non-shift days shall accrue BCX hours during actual meeting times. After-business-hours activities are not eligible for BCX accrual.
- Battalion Chiefs who serve as raters, in-house or out-of-town, on non-shift days shall accrue BCX hours during the period of time that he or she is serving as a rater. After-business-hours activities are not eligible for BCX accrual.
- Meetings of more than three hours are eligible for accrual of BCX hours.

- Battalion Chiefs may carry a maximum balance of 24 BCX hours, which shall be tracked in the staffing software program.
- BCX hours as logged in staffing software program will be taken as Administrative Leave with Pay (ALWP). The BCX balance has no cash value.
- ALWP must be approved in advance by the Operations Chief, and can be taken in six-minute increments up to a maximum of a full 24 hour shift.

C. On-Call

When an employee is assigned by the Fire Chief, or designee, to on-call duty, he/she shall be compensated at the rate of seventy five dollars (\$75) for a short-shift or one hundred twenty-five dollars (\$125) for a long-shift.

E. Holiday Pay

1. The Department shall observe the following holidays:

New Year's Day  
 Martin Luther King, Jr. Day (Third Monday in January)  
 Lincoln's Birthday (Floating Holiday for 40-hour employees)  
 Washington's Birthday (Third Monday in February)  
 Cesar Chavez Day (Observed on March 31)  
 Memorial Day  
 Independence Day  
 Labor Day  
 Columbus Day (Floating Holiday for 40-hour employees)  
 Veterans Day  
 Thanksgiving Day  
 Day after Thanksgiving  
 Christmas Day

2. For 40-hour employees or for 56-hour employees on special assignment and who are assigned to a 40-hour work week, there will be two (2) floating holidays each fiscal year (replacing Columbus Day and Lincoln's Birthday). In a new employee's first year of employment newly hired employees who are hired prior to December 31<sup>st</sup> are entitled to two (2) floating holidays while a newly hired employee hired after December 31<sup>st</sup> is entitled to one (1) floating holiday. For 56-hour employees, upon return to 56-hour duty, the floating holidays no longer apply and if not used are lost.
3. Employees must obtain management approval prior to taking their floating holiday.

## SECTION 4 - RETIREMENT PLANS

### A. PERS Retirement

Classic Safety employees shall refer to those employees who are eligible for and are placed in the 3% at 50 retirement tier. Public Employee Pension Reform Act (PEPRA) safety employees shall refer to those employees who are eligible for and are placed in the 2.7% at 57 retirement tier.

The Department shall provide Classic Safety employees with the 3% at 50 Retirement Plan. Classic Safety tier employees shall pay their member PERS contribution of 9% on a tax deferred basis, subject to the provisions of Internal Revenue Code 414(h)(2). The Department shall pay the employer PERS contribution.

PEPRA Safety tier employees shall pay half of the normal cost of the PERS as their employee contribution. The normal cost shall be adjusted pursuant to PEPRA and is based on actuarial calculations by PERS.

Department agrees to provide employees these options as allowed by PERS and dependent upon their status as either Classic or PEPRA: one-half survivors' continuance; highest single-year compensation; average of the highest three years of compensation, sick leave credit; and military service credit.

The Department agrees to provide 1959 Survivor's Benefit (Level III) for Classic Safety employees. Employees will pay their share of the 1959 Survivor Benefit (Level III) as prescribed by PERS.

### B. Pre-Retirement Optional Settlement 2

The Department agrees to provide the PERS Pre-Retirement Optional Settlement 2 Death Benefit per section 21548.

The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21546, shall instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459 of the California Public Employees' Retirement law.



## SECTION 5 - GROUP INSURANCES AND BENEFITS

### A. Life Insurance

The Department shall pay the cost of maintaining a life insurance policy in the amount of fifty thousand dollars (\$50,000.00) for all active employees.

### B. Medical Benefits

The Department shall provide and pay the full cost of premiums for the Kaiser Health Plan and Drug Plan or an alternate health plan or plans for all active employees and dependents.

### C. Dental Benefits

The Department shall provide and pay the cost of premiums for dental coverage for employees and dependents under the Dental Plan provided employees of Santa Clara County. If, during the term of this Agreement the Department offers a self-funded plan, such dental plan shall provide at least the same or comparable level of coverage as the current Santa Clara County dental plans then in effect.

### D. Long-Term Disability Insurance

The Department shall pay the employee's premium, up to \$20.00 per month, in Local 1165's Long Term Disability (LTD) plan, or the Fire District's LTD plan for each Safety member.

Employees are totally responsible for any reporting of and payment of taxes which might result from such a program.

The 1165 long-term disability plan provided to Safety employees shall be selected by the Union. The Union agrees to allow all Department employees who qualify for participation to elect to participate at their own expense.

The Union agrees to indemnify, defend, and hold harmless the Department, its officers, agents, and employees from all claims demands, liabilities, damages, attorney fees and costs of suits arising out of the services provided under the long-term disability plan.

The Agreement does not provide nor shall it be interpreted to provide that the Union is an administrator or fiduciary within the meaning of applicable trust law, for the purpose of providing benefits or services under the long-term disability plan.

E. Optical Care Benefits

The Department will provide a self-insured vision plan for current employees and dependents. The plan will provide coverage for examinations, lenses (including contact lenses), and frames every 12 months

F. Retiree Life Insurance

The Department shall provide employees who retire under disability retirement or under normal service retirement with six thousand five hundred dollars (\$6,500.00) life insurance coverage at Department expense. "Normal Service Retirement" is intended to mean retirement at age fifty (50) or over for Classic Safety employees and at age fifty-seven (57) or over for PEPRSA Safety employees. Coverage will terminate at age 65.

G. Retiree Health Benefits

For employees hired after December 31, 1994 and who retire under non-service disability or normal service retirement and who have completed seven (7) years of service, the Department shall pay for medical coverage for retiree only. For employees who retire under service disability retirement, the Department shall provide and pay for medical coverage for the retiree only. Retiree dependent coverage will be paid by the retiree at the group rate to the extent the Department does not incur any premium cost.

For employees hired after December 31, 2006 and who retire under non-service disability or normal service retirement and who have completed ten (10) years of service, the Department shall pay for medical coverage for retiree only. For employees who retire under service disability retirement, the Department shall provide and pay for medical coverage for the retiree only. Retiree dependent coverage will be paid by the retiree at the group rate to the extent the Department does not incur any premium cost.

H. Employee Contribution Toward Retiree Medical Obligation Unfunded Liability

Employees shall contribute an amount equivalent to 1% of their annual base wage up to a maximum amount of \$1,500 annually. That amount shall be divided by 26 pay periods; and the pro-rata amount shall be paid each pay period.

## **SECTION 6 - FAIR LABOR STANDARDS ACT**

The Department implemented the provisions of the Fair Labor Standards Act (FLSA). In the event a relevant provision of FLSA is found invalid, the Department and the Union will meet and confer on the impact.

## SECTION 7 - SICK LEAVE

### A. Accrual Rates

Sick leave shall be accrued at the rate of 5.6 hours per pay period. 56 hour employees shall be charged at the rate of sixteen (16) hours per twenty-four (24) hour shift. 40-hour employees shall be charged on an hour-for-hour basis.

Unused sick leave may be accrued without limitation. All sick leave must be approved by the Department.

### B. Sick Leave for Medical Appointments

Each calendar year, all 40-hour employees shall be allowed to use a maximum of ten (10) hours of sick leave for medical appointments.

### C. Sick Leave Payoff

#### 1. Industrial Disability Retirement

In view of the court decisions rendered on the issue of sick leave payoff for employees retiring under industrial disability and of subsequent negotiations between the parties on this matter, it is agreed that the provisions set forth below shall serve as the final and full disposition of this matter.

For employees retiring under an industrial disability retirement, the following provisions shall apply:

- a. Employees retiring under industrial disability prior to attaining the minimum retirement age shall be entitled to exhaust twenty percent (20%) of their unused sick leave or accept cash payment of fifty percent (50%) of their unused sick leave computed on their 40-hour base salary.
- b. Employees retiring under industrial disability upon or after attaining the minimum retirement age shall have their unused sick leave added to their service years as permitted by law. (Two thousand (2,000) hours of sick leave equals one (1) year of service for 56-hour and 40-hour employees.) Employees who cannot receive any service years from PERS sick leave credit shall be entitled to a cash payment of fifty percent (50%) of their unused sick leave computed on their 40-hour base salary.

#### 2. Other Sick Leave Payoffs

It is further agreed that the following provisions shall govern all other forms of sick leave payoffs:

- a. Death or Resignation: An employee with ten (10) or more years of service who resigns in good standing or dies shall be paid fifty percent (50%) of their unused sick leave computed on their 40-hour base salary.
- b. Ordinary Disability Retirement: An employee who retires due to a disability which is not service connected prior to attaining the minimum retirement age shall be entitled to exhaust up to a maximum of one (1) year of their unused sick leave or accept cash payment of fifty percent (50%) of their unused sick leave computed on their 40-hour base salary.

An employee retiring under such a disability upon or after attaining the minimum retirement age shall have their unused sick leave added to their service years as permitted by law. (Two thousand (2,000) hours of sick leave equals one (1) year of service for 56-hour and 40-hour employees.) Employees who cannot receive any service years from the PERS sick leave credit shall be entitled to a cash payment of fifty percent (50%) of their unused sick leave computed on their 40-hour base salary.

- c. Service Retirement (Other than Disability): An employee who retires prior to attaining the normal retirement age shall be entitled to exhaust 20% twenty percent their unused sick leave or accept payment of seventy-five percent (75%) of their unused sick leave computed at their base hourly rate of pay, excluding differentials, at retirement to the extent that sick leave balance does not contribute to years of service.
- d. An employee retiring upon or after attaining the normal retirement age shall have their unused sick leave added to their service years as permitted by law. (Two thousand (2,000) hours of sick leave equals one (1) year of service for 56-hour and 40-hour employees.) Employees who cannot receive any service years from the PERS sick leave credit shall be entitled to a cash payment of seventy-five percent (75%) of their unused sick leave computed at their base hourly rate of pay, excluding differentials, at retirement to the extent that sick leave balance does not contribute to years of service.

## SECTION 8 - LEAVES

### A. Personal Leave

1. On July 1<sup>st</sup> of each year of this Agreement, all 40 hour employees shall be credited with twenty-four (24) hours personal leave and all 56 hour employees shall be credited with forty-eight (48) hours personal leave.
2. 40 hour employees may convert up to 32 hours of sick leave to 32 hours of personal leave. 56 hour employees may convert up to 32 hours of sick leave to 44.8 hours of personal leave.
3. 40 hour employees may cash out up to 40 hours of available personal leave at any time. 56 hour employees may cash out up to 56 hours of available personal leave at any time.
4. All personal leave must be used or cashed out each fiscal year or it will be deemed relinquished at the end of each fiscal year.

### B. Bereavement Leave

Leaves of absence with pay shall be granted to employees in order that they may discharge the customary obligations arising from the death of a member of their immediate family. "Immediate family" shall mean an employee's child, adopted, or stepchild, spouse, domestic partner, father, mother, or stepparents, grandparents and grandchildren, brother, sister, or any of the above related to the spouse or domestic partner.

For 40-hour employees, three (3) days of leave will be granted and will not be charged to any leave bank. For 56-hour employees, two (2) shifts days will be granted and will not be charged to any leave bank. Additional leave with or without pay may be granted with the approval of the Fire Chief and charged to the employee's leave banks if available.

### C. Vacation Accrual

Vacation accrual will be determined per Personnel Rules and Regulations Section 110.

Each July, 40 hour employees may convert 48 hours of accrued sick leave to 48 hours of vacation time. Each July, 56 hour employees may convert 48 hours of accrued sick leave to 67.2 hours of vacation time. Such requests to convert time shall be made in writing.

## **SECTION 9 - EDUCATION & CAREER DEVELOPMENT**

Education and career development reimbursement shall not exceed two thousand six hundred dollars (\$2,600) per employee per fiscal year for classes successfully completed at a college or university in the California State System or meeting career goals through seminars, workshops and lectures, etc.

Said funds shall be available to all employees represented by the Union. The intent of this funding is to assist employees in meeting their career goals through formal education or meeting career goals, through seminars, workshops and lectures, etc.

## **SECTION 10 - SEPARABILITY**

In the event that any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of the Agreement shall be null and void. However, such nullification shall not affect any other provision of this Agreement, all of which shall remain in full force and effect.

If the State of California notifies the Santa Clara County Central Fire Protection District also known as the Santa Clara County Fire Department or the County of Santa Clara that legislation has been implemented which assesses monetary penalties to local governments which settle wages and/or benefits with increases in excess of certain limits (an example of such legislation is AB 1040 which was introduced in Spring 1991), those benefits and/or wages shall not be implemented or continue to be paid. The parties shall immediately enter into negotiations for the sole purpose of arriving at a mutually agreed upon alternative. The County and the Department reserve the right to cease payment or seek repayment of wages and/or benefits upon which the State of California is basing monetary penalty.

It is understood that the purpose of this Section is to ensure that the County and the Department do not incur any liability or penalties on either the original Agreement provisions, or the negotiated alternate provisions.



## **SECTION 11 – PROBATIONARY PERIOD**

All newly appointed Battalion Chiefs, Chief Fire Investigators and Assistant Fire Marshalls will serve a 12 month probationary period pursuant to Section 109 of Santa Clara County Fire Department: Personnel Rules & Regulations. The 12 months shall be counted as 26 complete pay periods.

## SECTION 12 – GRIEVANCE PROCEDURE

### Grievance Defined

- A. A grievance shall be any dispute concerning the interpretation, application, or compliance with the Memorandum of Agreement, Department Rule, Department Written Policy, Department Regulation or the Meyers-Milias-Brown Act.

Items excluded from the grievance procedure are:

1. Disciplinary actions taken under Section 112 of Santa Clara County Fire Department: Rules & Regulations;
2. Probationary releases;
3. Position Classification;
4. Examination procedures pursuant to Sections 106, 107 & 108 of Santa Clara County Fire Department: Rules & Regulations;
5. Items requiring capital expenditures;
6. Items within the scope of representation and subject to the meet & confer process.

### B. Procedure

The Department and the Union recognize that early settlement of grievances is essential to sound employer/employee relations and to the uninterrupted continuation of service to the community. Therefore, it is agreed that during the term of this Agreement, grievances shall be resolved in the manner set forth herein.

Time limits may be extended or waived only by written agreement of the parties.

The Department shall not be required to reconsider a grievance previously settled with an employee or closed by the parties.

Step 1 An employee who believes he or she has a grievance shall promptly discuss the matter with their immediate supervisor and attempt an informal resolution. The attempt at informal resolution must be completed within fifteen (15) calendar days of the occurrence or discovery of the alleged grievance.

Step 2 If informal resolution is not possible under Step 1, within fifteen (15) calendar days of the conclusion of Step I, the aggrieved shall state the grievance in writing prior to scheduling a meeting with the first level manager of the battalion or the division to which the aggrieved is assigned. The written grievance shall be sent to the division manager with a copy to the Director of Personnel Services. The written grievance shall include the following:

- (1) the specific nature of the grievance;

- (2) the time or place of its occurrence;
- (3) the Department Rule, Department Written Policy, Department Regulation, Memorandum of Agreement, or provision of the Meyers-Milias-Brown Act alleged to have been violated, improperly interpreted, applied or misapplied, if any;
- (4) the consideration given or steps taken to secure informal resolution;
- (5) the corrective action desired.

A decision by the first level manager of the division shall be made in writing within fifteen (15) calendar days of the meeting.

### Step 3

If the aggrieved is not satisfied with the decision under Step 2, he or she may, within fifteen (15) calendar days after receipt of that written decision, move the matter forward to the Fire Chief or designee for a decision with a copy to the Director of Personnel Services.

The Fire Chief or designee shall convey the decision by certified mail to the aggrieved in writing within fifteen (15) calendar days of receipt of the grievance. A copy will be sent to the Union with a copy to the Director of Personnel Services. The date of receipt of the decision by the Union via certified mail shall dictate time limits. The Fire Chief's, or designee's, decision shall be final.

### **SECTION 13 - FULL AGREEMENT**

It is understood this Agreement represents a complete and final understanding on all negotiable issues between the Department and the Union. This Agreement supersedes all previous memoranda of understanding or memoranda of agreement between the Department and the Union except as specifically referred to in this Agreement. All ordinances or rules covering any practice, subject or matter not specifically referred to in this Agreement shall not be superseded, modified or repealed by implication or otherwise by the provisions hereof. The parties, for the term of this Agreement, voluntarily and unqualifiedly agree to waive the obligation to negotiate with respect to any practice, subject or matter not specifically referred to or covered in this Agreement even though such practice, subject or matter may not have been within the knowledge of the parties at the time this Agreement was negotiated and signed. In the event any new practice, subject or matter arises during the term of this Agreement and an action is proposed by the Department, the Union shall be afforded all possible notice and shall have the right to meet upon request. The union waives its right to utilize impasse procedures. In the absence of agreement on such a proposed action, the Department reserves the right to take necessary action by Management direction.

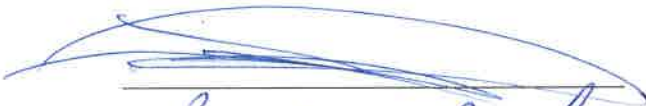
**SECTION 14 - TERM OF AGREEMENT**


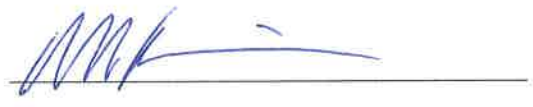
This Agreement shall become effective November 7, 2016, provided it is approved by the Board of Supervisors acting as the Board of Directors for the Santa Clara County Central Fire Protection District and has been ratified by the Union. The Agreement shall remain in full force and effect to and including November 5, 2017 and from year-to-year thereafter; provided that either party may serve written notice on the other at least sixty (60) days prior to November 5<sup>th</sup> of its desire to terminate this Agreement or amend any provision thereof.

Date: 2/2/2017

FOR THE SANTA CLARA COUNTY  
CENTRAL FIRE PROTECTION  
DISTRICT

FOR THE BATTALION CHIEFS UNIT,  
INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 1165

  
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D. J. B. [unclear]  
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Paul Scholberg  
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