

March 13, 2023

MEMORANDUM TO: Honorable Mayor and City Council

FROM: Charles P. Potucek, City Manager

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
RESOLUTION 2023-18, Directing the City Manager to
negotiate a draft Memorandum of Understanding for City
Council consideration with the Professional Fire Fighters of
Sierra Vista, IAFF L4492

RECOMMENDATIONS:

The City Manager does not recommend approval.

BACKGROUND

The Professional Fire Fighters of Sierra Vista, IAFF L4492, presented at the March 7, 2023, work session regarding meet and confer. The Mayor directed staff to place this item on the March 23, 2023, Council meeting agenda.

The draft resolution and draft Memorandum of Understanding provided by Chris Klasen, President of the Professional Fire Fighters of Sierra Vista, IAFF L4492, are attached.

BUDGET APPROPRIATION

Undetermined.



A Resolution Instituting the Meet and Confer Process

Section 1. Findings and Purpose

1. **Whereas**, the members of the community served by the Sierra Vista Fire and Medical Services have a fundamental interest in the development of harmonious and cooperative relations between elected officials, administrators and the employees of the Sierra Vista Fire and Medical Services; and
2. **Whereas**, the City of Sierra Vista recognizes the fundamental rights of public employees to organize into associations; and
3. **Whereas**, the City of Sierra Vista recognizes that engagement in the principles and procedures of full communications between public employers and public employees can alleviate various forms of strife and unrest; and
4. **Whereas**, strikes, work stoppages, slow downs, employer lockouts and other concerted efforts designed to disrupt Fire Department services are contrary to the public good and are strictly prohibited.
5. The City Council of Sierra Vista Arizona hereby resolves that it is the purpose of this resolution to:
 - A. Obligate the Sierra Vista City Council, administrators, department employees and their representatives, acting within the framework of the law, to enter into discussions with affirmative willingness to resolve issues, disputes relating to working conditions, wages, benefits and hours of work.
 - B. Promote harmonious employer-employee relations by providing a uniform basis for recognizing the right of public employees to join, or refrain from joining, organizations of their own choice and to be represented by such organizations in their dealings with the City of Sierra Vista and/or the Fire Department in accordance with the provisions of this policy.
6. The result of agreements regarding wages, hours and working conditions, between the employer and its employees will be drafted into a written Memorandum of Understanding (MOU) that will be in place for a period to be determined. Such MOU shall become effective upon approval by the city council of Sierra Vista.

Section 2. Recognition

1. The City of Sierra Vista recognizes the Professional Fire Fighters of Sierra Vista, IAFF Local 4492 as the executive representative of regular, civilian ems and non-probationary sworn firefighters, in all classifications up to and including the rank of Captain. All other classes above the rank of Captain, contract workers, part-time, temporary and seasonal employees are excluded.

Section 3. Employee Organizations

1. The agreements between the City of Sierra Vista and the Professional Firefighters of Sierra Vista (PFFSV), International Association of Firefighters (IAFF) 4492 will be drafted into a written MOU, signed by the authorized representatives of the employee organization and authorized representatives from the city of Sierra Vista.
2. Authorized representation by the Professional Firefighters of Sierra Vista shall be determined by a majority vote of the employees of the group and a list of the employees of the group shall be submitted to the City of Sierra Vista in writing.

Section 4. Meeting and Confering

1. The designated employee organization may submit a written proposal to the City of Sierra Vista, through the Fire Chief for the purpose of meet and confer by a mutually agreed upon date.
 - A. The Meet and Confer process covers wages, hours benefits, and working conditions, which may include: salary or wage rates or other forms of direct monetary compensation; policy issues; time off (paid and unpaid leaves); insurance benefits; total hours required of an employee on each workday or work week, including overtime, call-in or call-back time; health and safety; training; personnel records review; process for employees discipline and grievance; meet and confer procedure; and rights of the employee group.
 - B. Individual personnel cases of hiring, promotion, or transfer of employees, the type of discipline, or the grounds for promotion, discharge, suspension, or discipline will not be part of the meet and confer negotiations. Personnel policy issues as stated in 1A are subject to Meet and Confer negotiations.
2. Upon receiving a proposal from the recognized employee organization, within a mutually agreed upon time-frame, the Fire Chief or designee and representatives of the recognized employee organization shall begin "meeting and confering" at mutually agreed upon locations and times. The purpose of the meetings are to develop a written Memorandum of Understanding (MOU) relating to working conditions, wages, benefits and hours as defined in 1A. Meeting ground rules shall be initially presented by the City of Sierra Vista and upon agreement by both parties shall be adhered to while meeting and confering. The groups will continue meeting and confering until no other action or movement is occurring. Both parties to the meeting and confering shall discuss the status/progress with their decision-making body to receive direction on the unresolved items. The Fire Chief shall again meet with the governing body and share the status of the meeting and confering, including the unresolved areas. After receiving direction from the governing body the Fire Chief will meet again with the employee group with hope of resolving the outstanding issues. This process will continue as long as progress is being made. Either party can declare an impasse when no further movement is agreeable to either party.
3. Any areas which were not agreed upon shall be outlined as areas in dispute and shall be subject to mediation.
4. A list of three mediators will be requested from federal mediation and reconciliation services or the American Arbitration services, with each party to the meet and confer process eliminating one name. The

remaining mediator will be used. The Fire Chief, employee organization representatives, and the mediator will meet as necessary to reach an agreement.

- A. The cost of the mediator will be shared equally by the City of Sierra Vista and the Professional Firefighters of Sierra Vista.

- 5. If an agreement still cannot be reached after having the assistance of a mediator, the City Council will have the final decision on the area(s) in dispute.
- 6. The designated labor organization representative and the City Manager shall initial all areas of agreement. The recognized labor organization agrees to accept all final decision of the City Council of Sierra Vista, on the areas still in dispute; however, the recognized labor organization will not be obligated to initial areas not agreed to. The areas of agreement, including the City Council's final vote on areas of dispute, shall constitute the Memorandum of Understanding for the defined period.

DRAFT

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SIERRA VISTA
AND
PROFESSIONAL FIREFIGHTERS OF SIERRA VISTA
IAFF, L4492

FISCAL YEARS
2023-2024

Table of Contents

Article 1 Preamble	pg. 1
Article 2 Recognition	pg. 1
Article 3 Management Rights	pg. 1
Article 4 Employee Rights	pg. 2
Article 5 Employee Organization Rights	pg. 2
Article 6 Prohibition of Strikes and Lockouts	pg. 3
Article 7 Duration and Implementation	pg. 4
Article 8 Hours of Work, Working Conditions and Leave	pg.4
Article 9 Grievance Procedure	pg. 5 & 6
Article 10 Effect, Interpretation, and Savings Clause	pg. 7

ARTICLE 1 Preamble

- 1.1 The parties through their designated representatives, met and conferred in good faith in order to reach agreement concerning wages, hours, working conditions, and non-health related benefits of the employees of the City of Sierra Vista Fire & Medical Services.
- 1.2 The parties hereby acknowledge that the provisions of the Memorandum of Understanding (“MOU”) are not intended to abrogate the authority and responsibility of the municipal government of the City provided for under statues of the State of Arizona, the Sierra Vista City Charter, or ordinances of the city; and
- 1.3 The purpose of this MOU is to promote and ensure harmonious and cooperative relations between the Employee Organization and the City, and to set forth the wages, hours, working conditions and non-health related benefits of the Represented Employees.

NOW THEREFORE, for the term specified, the parties agree to incorporate the terms of this MOU into the City’s proposed budget to the City Council with their joint recommendation in order for the Council to consider incorporation into the City budget for the fiscal years reflected herein.

ARTICLE 2 Recognition

- 2.1 The City recognizes the Employee Organization as the exclusive representative of regular, civilian ems and non-probationary sworn firefighters, in all classifications up to and including the rank of Captain. All other classes above the rank of Captain and all Fire & Medical Services employees are excluded.
- 2.2 The City recognizes the Organizational Cooperative Process. This labor management process is to facilitate positive labor management relationship and provide overall community benefit. It provides a forum for the discussion of mutual concerns and issues that may have a significant impact on service delivery. Furthermore, the process is intended to be an incentive to assure enhancement of the community by establishing the expectation that the Employee Organization and its members will participate in community-based programs.

ARTICLE 3 Management Rights

- 3.1 The Employee Organization recognizes that Arizona and Federal law restricts and protects certain activities of the Employee Organization.

- 3.2 All management rights not expressly addressed by specific provisions of the Memorandum of Understanding shall remain within the exclusive purview of the City's management, including the unilateral and exclusive rights to operate, administer, and manage its municipal services and workforce performing those services.
- 3.3 The Employee Organization recognizes that the exclusive rights of the City shall include, but not limited to the right to determine the organization of City government and the purpose and mission of its constituent agencies. The City shall set standards of service to be offered to the public and through its management officials, exercise control and discretion over its organization and operations, establish effective administrative regulations and employment rules consistent with law and specific provisions of this MOU, direct its employees, take disciplinary action for just cause, relieve employees from duty due to lack of work or other legitimate reasons, determine the methods, means, and personnel by which the City's services are to be provided, including the right to schedule and assign work and overtime, and otherwise act in the interests of efficient service to the community. Nothing herein shall be construed to diminish the provisions of the Ordinance or to alter the rights, obligations, and restrictions set forth in Arizona or Federal law.

ARTICLE 4 Employee Rights

- 4.1 As provided in the Ordinance, Represented Employees have the right to participate on behalf of, or engage in activities on behalf of, the Employee Organization and have the right to refrain from such activity.
- 4.2 All Represented Employees have the right to have the Employee Organization serve as their Meet and Confer representative without discrimination based on membership or non-membership in the Employee Organization.
- 4.3 Represented Employees shall have the right to present their own grievance of any issue not covered by this MOU in person to the appropriate management authority.

ARTICLE 5 Employee Organization Rights

- 5.1 The Employee Organization, as the authorized representative, has the exclusive right to serve as the Meet and Confer representative of the Represented Employees, as certified in accordance with the Ordinance.
- 5.2 Except as provided herein, all of the business of the Employee Organization that requires involvement of employees shall be conducted during non-work time. Employee Organization shall provide the City with no less than three days notification (one-shift) in order to avoid disrupting, delaying, or otherwise interfering with the operations of the City or efficiency of those operations.

- 5.3 The elected Local Chapter President may be assigned solely to Employee Organization activities and released from his/her duties by the Fire Chief. The Local Chapter President may with the permission of the Fire Chief, at his/her discretion, designate one other represented employee to be assigned solely to Employee Organization activities and released from his/her duties.
- 5.3.1 The Local Chapter President and other employees shall be full time, paid members of the Sierra Vista Fire & Medical Services. The Local Chapter President and other employees will continue to receive compensation including benefits for services rendered to the City, and the City shall make all contributions to the Public Safety Personnel Retirement System required by law so as to maintain the Local Chapter President's and other employee's full eligibility under the Public Safety Personnel Retirement System.
- 5.3.2 The Local Chapter President and other employees shall participate in all appropriate training requirements necessary to maintain membership in the department.
- 5.3.3 The Local Chapter President and other employees agree to be bound by the Department's rules, regulations, and orders, including proper notification when utilizing sick or vacation leave.
- 5.4 Upon written request to the Director of Human Resources, the City shall provide the Employee Organization with non-confidential and readily available information that is necessary for the Employee Organization to prepare for an effective and efficient meet and confer process, including the City's analysis of its financial status.
- 5.5 The Employee Organization shall print and provide a copy of the MOU to each represented Employee. The costs of producing and distributing an adequate number of copies of this MOU shall be borne by the Employee Organization.
- 5.6 *Payroll Deductions.* The City shall allow payroll deduction for Employee Organization dues to be deducted from the paychecks of Represented Employees on a bi-weekly basis insofar as permitted by law.
- 5.6.1 The City agrees to deduct and remit to the Employee Organization authorized deductions from Represented Employees who have signed and approved authorization forms for such deduction on a form provided by the City.
- 5.6.2 The amount of dues deducted from the Represented Employee's paycheck shall be paid to the Employee Organization on a bi-weekly basis, less any administrative costs incurred by the City.

ARTICLE 6 Prohibition of Strikes and Lockouts

- 6.1 Represented Employees shall not engage in strikes, sympathy strike, work stoppage, slowdown, walkout, picketing. Concerted failure to report to work, refusal to cross a

picket line or any other activity, individually or concerted, that would interfere with or adversely affect the operations or mission of the City. The Employee Organization shall not, directly or indirectly, instigate, support, encourage, or participate in any strike, sympathy strike, work stoppage, slowdown, walkout, picketing, concerted failure to report to work, refusal to cross a picket line, or any other interference with employees' work or the City's operations and shall notify represented Employees of such prohibitions.

- 6.2 The City agrees that it will not lock out the Represented Employees as a result of the meet and confer process.

ARTICLE 7 Duration and Implementation

- 7.1 This MOU shall remain in full force and effect commencing on __/__/__ and suspended on __/__/__, provided that notice of reopening is given pursuant to the meet and confer process. If notice is not given, then this MOU shall automatically renew for successive one-year periods.
- 7.2 Except by mutual agreement of the parties and as allowed by the Ordinance, the City shall not be required to meet and confer concerning any other matters, covered or not covered herein, during the terms of this MOU.
- 7.3 In the unlikely event during the term of this MOU the City experiences a budget shortfall or faces legal requirements that, if not resolved during the budget year, would result in the layoff of Represented Employees, a reduction in the pay or benefits, or the curtailment of services provided to the City's citizens, this MOU shall be reopened.
- 7.3.1 This provision shall only apply if the general population of the City's employees is subject to the same or greater reduction of pay or benefits or resulting layoffs.
- 7.3.2 The City and the Employee Organization shall meet and confer in good faith for a period of no less than 30 calendar days in an effort to reach an accord on how best to address the City's shortfall.
- 7.3.3 Recommended modifications to the MOU shall be submitted by the City Manager directly to the City Council which shall make a final determination as to the implementation of the recommended modification.

ARTICLE 8 Hours of Work, Working Conditions, and Leave.

- 8.1 *Hours of Work.* The duty hours for Represented Employees assigned to Operations or Emergency Services, excluding 40 hours per week staff assignments, shall continue to be 56 hours per week. Represented Employees who work 56 hours per week will operate within a three-platoon shift system. Each shift shall continue 24 hours on-shift, 24 hours off-shift, 24 hours on-shift, 24 hours off-shift, 24 hours on-shift and 96 hours off-shift (3/4 schedule). Civilian EMS shall follow a 40 hour on shift and 128 hour off shift or 48

hour on shift or 120 hour off shift schedule. The work hours and schedule of any Represented Employee assigned to the 40-hour schedule shall be at the discretion of the Fire Chief.

- 8.2 *Absent with Relief Leave (AWR)*. Two Represented Employees may exchange shifts; however, shift exchanges shall not qualify any Represented Employee for overtime payments. All shift exchanges are subject to the approval of the Fire chief or his designee.
- 8.3 Vacation leave should be submitted 24 hours prior to leave time so operating and work flow adjustments can be made. The department may or may not grant use of the vacation leave for a particular time based on operating and staffing level considerations. Leave is requested and approved according to departmental procedure.
- 8.4 Sick leave will be charged to the Represented employee's leave time on an hour-for-hour basis. Should an employee exhaust all accrued sick leave, accumulated annual leave and compensatory time shall be automatically used.

ARTICLE 9 Grievance Procedure

- 9.1 The City and the Represented Employee's agree that the procedure provided in this MOU will be the sole and complete remedy for grievances under this MOU. Grievances on issues outside the terms of this MOU may not be grieved under the provisions of this MOU. Grievances on issues contained in the Personnel Rules and Regulations will be processed in accordance with the Personnel Rules and Regulations Grievance procedure.
- 9.2 *Informal Resolution*. It is the responsibility of employees who believe that they have a bona fide complaint concerning violation of the MOU to promptly inform and discuss it with their Battalion Chief in order to, in good faith, endeavor to clarify the matter expeditiously and informally at the employee-immediate supervisor level.
 - 9.2.1 If such informal discussion does not resolve the problem to the employee's satisfaction, and if the complaint constitutes a grievance as herein defined, the employee may file a formal grievance in accordance with the following procedure.
- 9.3 *Definition of Grievance*. A "grievance" is a written allegation by an employee, submitted in a timely manner in accordance with this provision, alleging specific violations of the term of this MOU. The grievance will identify the article or articles of the MOU, which are alleged to be violated and the specific remedy requested. Failure to identify the said article or articles of the MOU and the specific remedy will automatically terminate the grievance.
- 9.4 *Procedure*. In processing a formal grievance, the following procedure will apply:

- 9.4.1 *Step 1.* The employee will reduce his/her grievance to writing by signing and completing all parts of the grievance form provided by the City, and submit it to his/her Battalion Chief as designated by the City within fourteen (14) calendar days of the initial commencement of the occurrence being grieved. Either party may then request a meeting be held concerning the grievance, or they mutually agree that no meeting be held. The supervisor will, within fourteen (14) calendar days of having received the written grievance, or such meeting, whichever is later, the second level or review will submit his/her response in writing to the grievant and the grievant's representative, if any.
- 9.4.2 *Step 2.* If the response of the first level of review does not result in a resolution of the grievance, the grievant may appeal the grievance by signing and completing the form and presenting it to the Deputy Fire Chief within seven (7) calendar days of the grievant's receipt of the level one response. Either party may request that a meeting be held concerning the grievance or may mutually agree that no meeting be held. Within twenty-one (21) calendar days of having received the written grievance, or the meeting, whichever is later, the second level of review will submit his/her response to the grievance to the grievant and the grievant's representative, if any.
- 9.4.3 *Step 3.* If the response of the second level of review does not result in resolution of the grievance, the grievant may appeal the grievance by signing and completing the form and presenting it to the Fire Chief within seven (7) days of the grievant's receipt of the level two response. Either party may request that a meeting be held concerning the grievance or may mutually agree that no meeting be held. Within twenty-one (21) calendar days of having received the written grievance, or the meeting, whichever is later, the third level of review will submit his/her response to the grievance to the grievant and the grievant's representative. If any.
- 9.4.4 *Step 4: Grievance Committee.* If the response of the third level of review does not result in resolution of the grievance, the grievant and the Employee Representative may submit the grievance to a Grievance Committee for review and recommendation within seven (7) calendar days of the receipt of the level three response. The Grievance Committee will include two (2) representatives of the City Manager who were on the negotiating committee and two (2) representatives of the Professional Firefighters of Sierra Vista that were on the negotiating committee. These four (4) individuals will review the grievance and make a recommendation for resolution of the grievance, within fourteen (14) calendar days of having received the appeal.
- 9.4.5 *Step 5: Arbitration.* If the response of the fourth level of review does not result in resolution of the grievance, the grievant and the Employee Representative may jointly invoke the Step 4 procedure. Department management and the grievant, or their designated representatives, will agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request the Federal

Mediation and Conciliation Service to submit to them a list of seven (7) arbitrators who have experience in the public sector. The parties will, within seven (7) calendar days of the receipt of said list, select the arbitrator by alternately striking names from said list until one name remains. Such person will then become the arbitrator. The arbitrator so selected will hold a hearing as expeditiously as possible at a time and place convenient to the parties, and will be bound by the following:

- a. The arbitrator will not add to, detract from or modify the language of the MOU or of Department rules and regulations in considering any issue properly before him/her.
- b. The arbitrator will expressly confine himself/herself to the precise issues submitted to him/her and will have no authority to consider any other issue not so submitted to him/her.
- c. The arbitrator will be bound by applicable State and City law.
- d. The arbitrator will, within thirty (30) days from close of the arbitration hearing, submit a recommendation to both parties.
- e. The costs of the arbitrator and any other mutually incurred costs will be borne equally by the parties.

9.5 *Time Limits.* Failure of Department representatives to comply with time limits specified in Step 1 and 2 will entitle the grievant to appeal to the next level of review; and failure of the grievant to comply with said time limits will constitute abandonment of the grievance. Except, however, the parties may extend time limits by mutual written agreement in advance.

Article 10 Effect, Interpretation, and Savings Clause.

- 10.1 This MOU constitutes the entire agreement of the City and the Employee Organization, arrived at as the result of meeting and conferring. This MOU shall supersede all previous agreements, understandings, and prior practices related to matters included within this MOU.
- 10.2 The parties acknowledge that during the meet and confer process which resulted in this MOU, each had the opportunity to make proposals with respect to any subject or matter not removed by law as a subject matter of the meet and confer process, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU.
- 10.3 All provisions of this MOU and all terms used herein shall be interpreted in such a manner as to be consistent in all cases with the Ordinance. In the event of any inconsistent provision or use of a term, the Ordinance shall take precedent.

10.4 If any provision of this MOU is held to be contrary to law by a court of competent jurisdiction or government agency having authority over the provisions, such provision will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions of this MOU will continue in full force and effect. The parties will meet within (60) days after a request by the City or the Employee Organization to discuss the invalidated provision.

The City of Sierra Vista

**Professional Firefighters of Sierra Vista
Local 4492, International Association
of Firefighters
(Employee Organization)**

Chuck Potucek, City Manager
President

Christopher Klasen, Chapter

Acknowledged by:

Brian Jones, Fire Chief

Clea McCaa, Mayor

Approved as to form:

City Attorney

DRAFT

RESOLUTION 2023-14

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; DIRECTING THE CITY MANAGER TO NEGOTIATE A DRAFT MEMORANDUM OF UNDERSTANDING FOR CITY COUNCIL CONSIDERATION WITH THE PROFESSIONAL FIRE FIGHTERS OF SIERRA VISTA, IAFF L4492; AND DIRECTING THE CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS, TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THE RESOLUTION.

WHEREAS, the Mayor and City Council may desire to establish a new policy of negotiating Memorandums of Understanding with employee associations; and

WHEREAS, the Sierra Vista Code of Ordinances Chapter 31: City Manager, Section 07: POWERS AND DUTIES, Part (B) *Authority over employees* states it shall be the duty of the Manager, and he or she shall have the sole authority to control, order, and give directions to all heads of departments and to subordinate officers and employees of the city;

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

Section 1

The Mayor and City Council may establish a policy of the City of Sierra Vista to negotiate memorandums of understanding with employee associations.

Section 2

The Mayor and City Council direct the City Manager to attempt to negotiate a draft Memorandum of Understanding for City Council consideration with the Professional Fire Fighters of Sierra Vista, IAFF L4492, pursuant to his authority under § 31.07, Part (B), of the Sierra Vista Code of Ordinances.

Section 3

That the City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY
OF SIERRA VISTA, ARIZONA, THIS 23rd DAY OF MARCH, 2023.

Clea McCaa II
Mayor

Approval as to Form:

Attest:

Nathan J. Williams
City Attorney

Jill Adams
City Clerk

PREPARED BY:
Victoria Yarbrough
Assistant City Manager