



**Memorandum
Of
Understanding**

Between

The City of Berkeley

And

The Berkeley Police Association

July 1, 2007 – June 25, 2011

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ARTICLE 1 - ADMINISTRATION

SECTION 1: RECITALS

This Memorandum of Understanding, (hereinafter referred to as "Understanding") is entered into pursuant to the Meyers-Milias-Brown Act (Government Code, sections 3500 - 3511), as amended, and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley in employer-employee relations as provided in Resolution No. 43,397 - N.S., adopted by the City Council on October 14, 1969.

The Berkeley Police Association (hereinafter referred to as "the Association") is the recognized employee organization for Representation Unit E (sworn, managerial employees in the Police Department) and Representation Unit F (sworn, non-managerial employees in the Police Department), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Units are hereinafter set forth in Exhibit A, and the Association is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Units E and F, have freely exchanged information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Understanding shall be presented to the City Council as the joint recommendation of the undersigned.

SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION

- 2.1. The Association is the majority representative of all employees within Representation Units E and F and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or as said Resolution may be amended, the Association is no longer certified as the recognized employee organization for employees in Representation Units E and F.
- 2.2. Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by

law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments, set standards of service to be offered to the public and exercise control and discretion over the City's organization and operations. It is also the exclusive right of the City Manager to take disciplinary action for just cause, to implement a layoff pursuant to Section 58 of this Understanding, determine the methods, means and personnel by which the City's operations are to be conducted and to take all necessary actions to maintain uninterrupted service to the community and carry out the City's mission in emergencies; provided, however, the Association shall be notified of any proposed changes affecting wages, hours and other terms and conditions of employment of employees represented by the Association, and the City Manager shall, upon request, meet and confer with representatives of the Association and endeavor to reach agreement on the practical consequences of any such changes in wages, hours and other terms and conditions of employees represented by the Association except as otherwise provided in this Understanding.

SECTION 3: NO DISCRIMINATION

- 3.1. The Association certifies that it has no restriction on membership based on race, color, creed, sex, sexual orientation, national origin, political affiliation, handicap, or age, that it has a positive program for making members of minority groups and women aware of employment opportunities within its jurisdiction, and that it will work with the City Manager to increase recruitment of such minorities and women in the City service. The Association recognizes the City's commitment to the principles of affirmative action and agrees to cooperate with the City to further the ends of affirmative action.
- 3.2. Neither the City nor the Association shall discriminate against any employee covered by this Understanding in a manner which would violate any applicable laws because of race, creed, color, religion, political affiliation, sexual orientation, sex, national origin, disability, or age (including AIDS.) The City and the Association agree that no employee shall be discriminated against on the basis of membership or non-membership in the Association or any lawful activity on behalf of the Association.

SECTION 4: ASSOCIATION SECURITY

- 4.1. All employees who are, or hereafter voluntarily choose to become, members of the Association shall maintain such membership in good standing as a condition of continued employment for the duration of this Understanding; provided, however, that withdrawal from membership shall be allowed during the month which

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precedes the month in which this Understanding expires. Employees may withdraw by sending written notice of withdrawal to the Association (with a copy to the Director of Human Resources of the City) during the withdrawal period.

- 4.2. The Association shall indemnify and save the City harmless from any and all claims, demands, suits, or any other action arising from Section 4 or from complying with any request for termination of employment under Section 4. The Association will not undertake to compensate the City for any time which may be spent by the City Attorney or anyone on the staff of the City Attorney in preparing for or defending any legal action which may be filed. The Association will, however, pay directly any fine or reimburse the City for the payment of any fine which may be assessed against the City by virtue of its agreement to Sections 4.1 and 4.2, and the Association will pay any judgment or award, including the payment of any wages lost by an employee whose services are temporarily or permanently terminated because of his or her failure to comply with the provision of Section 4.
- 4.3. It is understood and agreed that the City Council retains the right, in its sole discretion, to determine that the Association is not discriminating against any employee or class of employees. It is further understood and agreed that the City Council retains the right to withdraw the Association security privilege if at any time it determines that the Association is discriminating against any individual or classifications prohibited by Section 3 of this Understanding.
- 4.4. The City shall furnish the Association, on a monthly basis, the name, date of hire, salary, classification, and work location of all newly hired employees subject to the Understanding. The City shall furnish newly hired employees with information concerning the Association as supplied by the Association.

SECTION 5: DEDUCTION OF ASSOCIATION DUES

- 5.1. The City shall deduct, once monthly, the amount of the Association's regular and periodic dues, service fees, or insurance premiums as may be specified by the Association under the authority of an authorization card furnished by the Association and signed by the employee. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Association office.
- 5.2. Upon receipt of a notice from the Association of an increase in the amount of regular and periodic dues, service fees, or insurance premiums, an employee may, within thirty (30) days, revoke the deduction authorization by furnishing written

notice of such revocation to the Department of Human Resources. An employee may also revoke the deduction authorization by furnishing written notice of such revocation during the thirty (30) day period immediately preceding the expiration of this Understanding.

SECTION 6: ASSOCIATION REPRESENTATIVES

- 6.1. The City shall allow representatives of the Association, subject to the conditions set forth in Sections 6.2 and 6.3, reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memoranda of Understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Understanding in the future.
- 6.2. **Representatives:** With respect to the meet-and-confer process, four (4) Association representatives shall be the maximum number who will be allowed concurrent time off. In all other cases, such as disputes defined in Section 6.1, the maximum number allowed concurrent time off shall be two (2).
- 6.3. **Notice Requirements:** Association representatives seeking time off to carry out functions described in Section 6.1 shall advise their supervisors at the earliest possible time and, except in emergency cases, no later than 24 hours in advance before leaving their work assignments. The Department will not unreasonably deny release time to the Association President (or Acting President) so that he or she may schedule the duties specified in Section 6.1; there may be times, however, when the City will, on short notice, need to modify or adjust such release time because of unpredictable service needs.
 - 6.3.1. In emergency situations which require the immediate attention of said employee, the employee shall notify a supervisor upon his or her return to work. It is understood that employees will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.
 - 6.3.2. To the extent possible, the Association will attempt to schedule all release time to avoid impacting service levels. If necessary, however, Association representatives' workloads will be adjusted on the basis of approved

release time. Employees shall record release time for activities described in Section 6.1 with the appropriate code on their time sheets and cards.

- 6.4. **Meetings:** Reasonable release time will be available so that members can attend periodic meetings of the Association which occur during their shift.
- 6.5. **Bulletin Boards:** The City shall provide bulletin board space for Association use at each of its work centers where covered employees are regularly employed.
- 6.6. **Board of Review:** All time spent in attendance at Board of Review meetings by off-duty officers elected by the Association to serve as members of such boards shall be considered time worked, and shall be compensated in accordance with Section 19 of this Understanding.
- 6.7. Up to three (3) officers designated by the Board of Directors of the Association may meet with the City Manager and Chief of Police every second month to foster communication. These meetings will be scheduled so that Association representatives can attend during regular work hours. Association representatives will record time spent in such meetings as work (rather than release) time.

SECTION 7: ASSOCIATION RELEASE TIME

The Association will be entitled to up to six hundred (600) hours of paid leave of absence each calendar year to be granted collectively to employees who are designated representatives of the Association, subject to the approval of the Chief of Police or the Chief's designee, to attend seminars, conferences, or conventions away from the job site, where employees are not available to respond to emergencies. The Chief may, in his or her discretion, approve additional Association requests. Time spent on such Association business will be recorded with the appropriate code on time sheets.

SECTION 8: SEPARABILITY OF PROVISIONS

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

SECTION 9: FINALITY OF RECOMMENDATIONS

- 9.1. This Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior and existing Understanding, understandings, or agreements, whether formal or informal, are hereby superseded and terminated in their entirety. This Understanding cannot be modified except in writing upon the mutual consent of the parties and ratification by the City Council.
- 9.2. Existing provisions and/or benefits provided by ordinance or resolution of the City Council or as provided in the Municipal Code and which are referred to in the Understanding shall be provided in accordance with the terms of the Understanding.
- 9.3. There is no guarantee that working conditions and practices will be continued if they are not included in this Understanding or if they have not been or are not hereafter specifically authorized by ordinance or by a resolution of the City Council.
- 9.4. It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Understanding shall be administered and observed in good faith.
- 9.5. Although nothing in this Understanding shall preclude the parties from mutually agreeing to meet-and-confer on any subject within the scope of representation during the term of this Understanding, it is understood and agreed that neither party may require the other to meet-and-confer on any subject matter covered herein or with respect to any presentation during the term of this Understanding.
- 9.6. Amendments to this Understanding shall be effective only when adopted by the City Council and ratified by the Association.

SECTION 10: DURATION

The term of this Understanding shall commence when the terms and conditions set forth herein have been adopted by resolution by the City Council but in no event shall this Understanding be effective prior to 0001 hours July 1, 2007. Those provisions which have been assigned effective dates herein will become effective on those dates. This Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 25, 2011.

ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

SECTION 11: SALARIES

11.1. Salaries for the period of July 1, 2007 through June 25, 2011, shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibits "A" through "H" and attached hereto and made part hereof as provided below.

Effective July 12, 1998, the salary ranges for the classifications of Police Captain and Police Lieutenant shall be adjusted in recognition for performance of the duties of the Duty Command Officer. This section is not intended to prohibit a Police Lieutenant from receiving overtime compensation or any other special compensation earned while serving as a Duty Command Officer.

11.1.1. The salary ranges for those classifications covered by this Understanding which went into effect on December 31, 2006, shall remain in effect through December 29, 2007 and are listed in Exhibit "A".

11.1.2. Effective December 30, 2007, the salary ranges for classifications covered by this Understanding and shown in Exhibit "A" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "B".

11.1.3. Effective October 5, 2008 the salary ranges for classifications covered by this Understanding shown in Exhibit "B" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "C".

11.1.4. Effective April 5, 2009, the salary ranges and salary steps for classifications covered by this Understanding shown in Exhibit "C" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "D".

11.1.5. Effective October 4, 2009 the salary ranges for classifications covered by this Understanding shown in Exhibit "D" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "E".

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11.1.6. Effective April 4, 2010 the salary ranges for classifications covered by this Understanding shown in Exhibit "E" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "F".

11.1.7. Effective October 3, 2010 the salary ranges for classifications covered by this Understanding shown in Exhibit "F" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "G".

However, if combined revenue increases from sales tax and property tax are less than three percent (3%) for the period of April 1, 2007 through April 1, 2010 then the parties will reopen negotiations on reducing labor costs to offset the reduction in revenue but any reduction in salary is limited to a maximum of one percent (1%) of salary only for the October 3, 2010 salary increase.

11.1.8. Effective April 3, 2011 the salary ranges for classifications covered by this Understanding shown in Exhibit "G" shall receive a cost of living adjustment increase of two percent (2%) and shall be shown in Exhibit "H".

11.2. Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibits "A" through "H". The minimum rate for the class shall apply to employees upon original appointment to the position except in cases of lateral entry. Lateral entry shall be provided for Police Officer only, and the Chief of Police, with the approval of the Director of Human Resources and City Manager, may pay to lateral entrants a salary above the first step. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit A and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

11.3. No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

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- 11.3.1. An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.
- 11.4. Salary reductions may be made as a result of an employee's diminished service value or as part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program. No reduction shall be made below the minimum rate established for the class to which the reduced employee's position is allocated. Notice of the reduction shall be given to the employee not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall be entitled to receive a written statement of the reasons for such action.
- 11.4.1. Salary reductions which are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program shall not be subject to the provisions of Sections 11.4, 11.5 or 56.
- 11.4.2. The parties agree that during the contract period from July 1, 2007 through June 25, 2011, the City will not exercise the rights granted in sections 11.4 and 11.4.1. The parties further agree that the City's agreement to not exercise its rights during that specific term is not deemed a waiver of the City's rights to exercise this option after June 25, 2011.
- 11.5. **Y Rate:** Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a "Y" rate. When an employee on a "Y" rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.2.
- 11.6. **Pay Periods:** Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

11.7. For purposes of calculating pay and benefits, the end of the year shall be defined as the last day of the last full pay period of the calendar year.

SECTION 12: SALARY ADVANCEMENT

12.1. Effective July 7, 2002, employees in the classification of Police Officer will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

Length of Service – Police Officer	Salary Step
0 to completion of 12 months	Step A
Beginning of 13 th month to completion of 24 th month	Step B
Beginning of 25 th month to completion of 36 th month	Step C
Beginning of 37 th month to completion of 48 th month	Step D
Beginning of 49 th month to completion of 60 th month	Step E
Beginning of 61 st month to completion of 72 nd month	Step F
Beginning of 73 rd month and beyond	Step G

12.2. Effective July 7, 2002, employees in the classifications of Police Sergeant, Police Lieutenant and Police Captain will be placed in the salary step according the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

Length of Service – All Ranks Above Police Officer	Salary Step
Beginning of 25 th month to completion of 36 th month	Step A
Beginning of 37 th month to completion of 48 th month	Step B
Beginning of 49 th month to completion of 60 th month	Step C
Beginning of 61 st month to completion of 72 nd month	Step D
Beginning of 73 rd month and beyond	Step E

12.3. Upon promotion, the employee shall be placed at the step of the higher rank that is commensurate with the employee's length of service in any classifications represented by the Association.

12.4. **Lateral Entry Step Placement:** An employee appointed through lateral entry may be appointed at either a salary step or longevity range level commensurate with his or her experience as a sworn peace officer.

SECTION 13: PREMIUM/SPECIAL ASSIGNMENT

- 13.1. **Explosives Ordinance Technician:** An employee assigned as an Explosives Ordinance Technician shall receive double his or her regular straight-time rate for that time spent (from call to completion) in dealing with explosives. Said double time shall be the total compensation for such time spent, whether on regular duty time or when called in from off-duty. If an employee is assigned as an Explosive Ordinance Technician while on regular duty and not while on overtime, those hours worked as an Explosive Ordinance Technician on regular duty shall be reported to CalPERS as Hazard Premium Pay.
- 13.2. **Barricaded Subject Hostage Negotiation Team (B.S.H.N.T.):** An employee assigned as a member of the Barricaded Subject Hostage Negotiation Team (B.S.H.N.T.) shall receive a five percent (5%) salary differential when involved in an active B.S.H.N.T. incident. If an employee is assigned as a member of the Barricaded Subjects Hostage Negotiation Team while on regular duty and not while on overtime, those hours worked as a B.S.H.N.T. member on regular duty shall be reported to CalPERS as Hazard Premium Pay.
- 13.3. **Lead Worker/Supervisor Special Assignment:** When a Police Sergeant is assigned to function as the Lead in the Communication Center, or as Field Training Officer Supervisor, he or she shall receive a five percent (5%) salary differential while occupying that position. If an employee is assigned as the Lead in the Communication Center, or as Field Training Officer Supervisor, while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Lead Worker/Supervisor Special Assignment Pay.
- 13.4. **Field Training Officer Special Assignment:** Employees assigned as Field Training Officers shall receive a ten percent (10%) differential during any calendar year when actually working as a Field Training Officer. If an employee is assigned as a Field Training Officer while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Lead Worker/Supervisor Special Assignment Pay.
- 13.5. **Crowd Management Team (CMT):** Employees assigned as a member of the Crowd Management Team (CMT) shall receive a five percent (5%) differential when involved in an active CMT incident. If an employee is assigned as a member of the Crowd Management Team while on regular duty and not while on overtime, those hours worked as a C.M.T. member on regular duty shall be reported to

CalPERS as Hazard Premium Pay.

- 13.6 **Homicide Detail:** A Police Sergeant assigned to the Homicide Detail shall receive a four percent (4%) salary differential. If a Police Sergeant is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay. A Police Officer assigned to the Homicide Detail shall receive a three percent (3%) salary differential. If a Police Officer is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay.
- 13.7. **Peace Officer Standards and Training:** Effective December 28, 2008, in addition to the salary set forth in the Exhibits "B" through "H" of this Memorandum of Understanding, employees covered by this contract who qualify under regulations promulgated by the California Commission on Peace Officer Standards and Training shall receive the following educational/training incentive compensation.
- 13.7.1. **Intermediate Certificate:** After successful completion and presentation of a Peace Officers Standards and Training Intermediate Certificate, the employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay.
- 13.7.2. **Advanced Certificate:** After successful completion and presentation of a Peace Officers Standards and Training Advanced Certificate, the employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay.
- 13.7.3. An employee may simultaneously receive the Intermediate and Advanced Certificate differential for a total differential of four percent (4%).

SECTION 14: BILINGUAL PREMIUM PAY

The Chief of Police may make a Bilingual Premium Pay Special Assignment of an employee who is able to demonstrate verbal communication skills in a language

other than English, including Braille and sign language, and who routinely and consistently utilizes these bilingual skills for the City of Berkeley. Candidates for the Bilingual Premium Pay Special Assignment will be selected in a manner similar to the manner used to select Field Training Officers. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay shall be a five percent (5%) to base pay, shall apply to all hours in a paid status and shall be reported to CalPERS as Bilingual Premium Special Assignment Pay.

SECTION 15: LONGEVITY PAY

Effective July 8, 2001, employees completing twenty-seven (27) years of service in a classification represented by the Association shall receive a five percent (5%) differential beginning with the anniversary date of beginning the twenty-eighth (28th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

Effective June 28, 2009, language in the preceding paragraph is deleted and employees completing nineteen (19) years of service in a classification represented by the Association shall receive a five percent (5%) differential beginning with the anniversary date of beginning the twentieth (20th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

SECTION 16: SUPPLEMENTAL RETIREMENT INCOME PROGRAM

Effective December 25, 1988, the City will pay two percent (2%) of the employee's regular annual salary for the first \$32,400 in salary, into a Supplemental Retirement Income Program.

SECTION 17: HIGHER CLASS PAY, TEMPORARY APPOINTMENTS, PROVISIONAL APPOINTMENTS

- 17.1. **Higher Class Assignment:** When an employee occupying a position in any of the classifications covered by this Memorandum of Understanding is specifically assigned by the Chief of Police or his or her authorized representative to temporarily serve in a higher classification for a minimum of one (1) entire shift (either 8 or 10 hours depending on the employee's shift schedule), said employee shall be paid at the lowest step of the higher classification which provides at least a five (5) percent differential or the lowest step of the higher classification to which the employee is assigned, whichever is greater. To be eligible for a higher class

assignment the employee must meet the minimum qualifications, as outlined in the class description, and perform the duties of the higher classification. In no case, however, will an employee acting in a higher classification be paid in excess of the top step of the salary range of the higher class.

- 17.2. **Temporary Vacancy:** When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary assignment from that list.
- 17.3. **Provisional Appointment:** An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.
- 17.4. **Duration:** Temporary and provisional assignments may be made up to six (6) months in any calendar year.

SECTION 18: HOURS AND DAYS OF WORK

- 18.1. Hours and days of work shall be governed by rules established by the City Manager and the Chief of Police.
- 18.2. **Shift Trades:** The practice of trading of work shifts (where one Unit F employee trades a shift with another of the same rank) shall be limited as set forth in Police Department General Orders which include the following provisions:
 - 18.2.1. Each Unit F employee shall be allowed no more than two (2) trades of shifts in any calendar month. Employees desiring in excess of two (2) trades of shifts must first seek and receive permission for additional trades of shifts from the Commanding Officer of the division involved.
 - 18.2.2. Notwithstanding the foregoing, under no circumstances will employees be allowed to regularly or systematically trade shifts with one another in a manner that negates or converts the hours or days any employee is regularly scheduled to work (e.g., to work a four [4] day work week on a regular basis).
 - 18.2.3. Permission for additional trades of shifts shall generally be granted if the request is supported by a bona fide reason and the request will not circumvent the requirements of Section 18.2.2. above.

18.2.4. In no event shall compensatory time off be transferred to compensate for a trade of shift by one employee for another.

18.3. Lunch Period

18.3.1. **Five (5) Day Per Week Schedule:** Employees who work a 5-day per week schedule may, upon clearance by the on-duty supervisor, extend their lunch period by thirty (30) minutes in order to work out. Employees availing themselves of this opportunity agree to limit their workout to the Public Safety Building weight room during the entire period and remain available in the event of a specific need. As is the case with any lunch period, the needs of the City and department take precedence. The thirty (30) minute extension for the lunch period is limited to three (3) days per week per employee.

18.3.2 **Four (4) Day and/or Three (3) Day Per Week Schedule:** Employees who work a 4-day week schedule or any future 3-day week schedule may, upon clearance by the on-duty supervisor, extend their lunch periods by thirty (30) minutes in order to work out. Employees availing themselves of this opportunity agree to limit their workout to the Public Safety Building weight room during the entire period and remain immediately available in the event of a specific need. As is the case with any lunch period, the needs of the City and Department take precedence. The thirty (30) minute extensions for the lunch period are limited to two (2) times per week per eligible employee.

18.4. **Patrol Division Hours of Work:** Employees assigned to the Patrol Division, Detective Division and the Traffic assignment shall work a four (4) day week consisting of ten (10) hours per day.

18.5. **4/10 – 3/12 Work Schedule:** The parties agree that the City will retain a professional independent consultant who will be directed to create a viable 4/10-3/12 shift plan configuration for the Department. The consultant will be instructed to meet with the Department command staff and any City officials as well as members of the Association to develop a comprehensive and viable plan for the Department to be effective no later than January 1, 2009. The consultant will be required to take into consideration, among other things, Department-wide Community Involved Policing performance especially in the Patrol Division; impact on Patrol Division and overall Department staffing; impact on members of the Association; impact on delivery of police services to the community; cost impact;

clear evaluation criteria.

The consultant will be required to provide a final report with recommendations both to the City and to the Association as soon as practicable after his/her retention. Once the consultant prepares the final report/recommendation, the parties will meet to address outstanding issues and jointly prepare a final plan to be considered for implementation.

SECTION 19: OVERTIME/SHIFT EXTENSION

19.1. Employees of the rank of Lieutenant or below shall be entitled to receive overtime pay. No employee may work overtime or extend his or her shift without express prior approval of his or her supervisor. Overtime shall be defined as all time worked by an employee in excess of forty (40) hours per week. Time spent in a paid status but not actually worked (i.e., sick leave, vacation leave, workers' compensation, holiday time when receiving pay, when being represented, or other approved leaves with pay) shall be considered "time worked" for the purposes of this section. Unless specifically requested by a commanding officer, employees shall not work overtime on their regularly scheduled shift on days they would normally work. On days when they have taken paid time off for any reason other than workers' compensation, they are not automatically restricted from working overtime during those same days on shifts other than their own.

19.1.1. Employees of the rank of Lieutenant or below shall be compensated for as follows:

19.1.1.1 The overtime rate applicable under this section shall be one and one-half (1½) times the straight-time rate based upon the hourly rate of the employee who works the overtime.

19.1.1.2. Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department director.

19.1.1.3. Flexing of shifts will only be used on a voluntary basis.

19.1.1.4. In the event an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime pursuant to the terms set forth in Section 19.4.

19.1.1.5. **Work Week:** For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.

19.2. Employees holding the rank of Captain shall be ineligible for overtime compensation. The practice of permitting Captains to receive overtime for special events such as U.C. Berkeley football games, the Fourth of July celebration, and for Federal Emergency Management Act (FEMA) disaster work is hereby discontinued.

19.3. **Emergency On-Call Status:** An employee shall be paid or given compensatory time off for being placed on emergency on-call status as follows:

19.3.1. An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid or be credited with compensatory time off at a one quarter ($\frac{1}{4}$) time rate (i.e., .25 multiplied by the number of hours placed on emergency on-call status).

19.3.2. If the emergency on-call status continues into a second day during the month, an employee placed on emergency on-call status shall be paid or be credited with compensatory time off at a one quarter ($\frac{1}{4}$) time rate (i.e., .25 multiplied by the number of hours placed on emergency on-call status).

19.4. **Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half ($1\frac{1}{2}$) hours for each overtime hour worked up to a maximum, effective July 1, 1984, of one hundred twenty (120) hours in such compensatory time. Consistent with FLSA regulations, upon termination of employment, employees will be paid for the full amount of compensation for accumulated but unused compensatory time. Utilization of compensatory time shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of service, consistent with FLSA regulations.

19.5. **Administrative Leave for Captains**

19.5.1. Effective January 1 of each year, Captains shall be credited with forty (40) hours of Administrative Leave. Such leave shall be in lieu of overtime earned by individuals in the ranks of Lieutenant and below. Administrative Leave which is not utilized during any

calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 22 shall apply to Administrative Leave.

19.5.2. Persons appointed to the rank of Captain during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.

19.6. Any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

19.7. Emergency Overtime - An employee is guaranteed at least three (3) hours overtime when called to emergency overtime duty from his or her residence.

SECTION 20: COURT TIME

20.1. Court Overtime

20.1.1. Court overtime is defined as that overtime worked in connection with an assigned appearance before any criminal or civil court, Police Review Commission meeting or Board of Inquiry, Department Board of Review, and any other specially approved appearance on behalf of another City department or commission.

20.1.2. Unless otherwise approved by a Commanding Officer, all court overtime shall be paid.

20.1.3. A sworn employee who makes an off-duty court appearance shall receive a minimum of four (4) hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount.

20.1.4. Overtime spent conferring with the prosecuting attorney will be considered as court overtime and part of the court session only if the employee's presence is required in court after the conference.

20.1.5. For off-duty, out-of-town court appearances, travel constitutes court overtime and is determined by the round trip time from the Hall of Justice.

- 20.1.6. To receive court overtime credit, an employee shall submit an Extraordinary Duty Report.
 - 20.1.6.1. Subpoena should be attached and case number indicated if either or both are available.
 - 20.1.6.2. Report is to be completed by the employee and should specify the amount of time required for "testifying/conferring," "time waiting," or if "not needed."
 - 20.1.6.3. The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the Activity Code and the proper project designation.

20.2. Court Overtime/Telephone Stand-By

- 20.2.1. Sworn employees who are placed on telephone stand-by for the court will be compensated by earned compensatory time as follows:
 - 20.2.1.1. **Duty Day:** One hour minimum compensatory time and hour for hour thereafter.
 - 20.2.1.2. **Day Off:** Two hour minimum compensatory time and hour for hour thereafter.
- 20.2.2. To receive compensatory overtime credit for telephone stand-by, an officer shall submit an Extraordinary Duty Report.
 - 20.2.2.1. Subpoena should be attached and case number indicated if either or both are available.
 - 20.2.2.2. Report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him or her on telephone stand-by.

SECTION 21: RECOVERY TRANSFER TIME

- 21.1. Recovery Time Transfer is that system whereby an employee grants time from earned compensatory time off, vacation leave or sick leave to another employee.

Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager or designee. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition.

- 21.2. An employee may donate compensatory time off or vacation leave.
- 21.3. An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:
 - 21.3.1. An employee may donate one hour of sick leave for each hour of compensatory time off and/or vacation leave time donated for Recovery Time Transfer. To donate sick leave hours beyond the number of hours of compensatory time off and/or vacation leave time, the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Time Transfer.
 - 21.3.2. The employee donating the sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time.

ARTICLE 3 - LEAVES

SECTION 22: VACATION

- 22.1. All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.
- 22.2. The times during the calendar year at which an employee shall take vacation shall be determined by the Chief of Police or his or her designee in accordance with department policies with regard for the wishes of the employee and particular regard for the needs of service. With advance supervisory approval, vacations may be in increments of one (1) hour.

22.3. Employees shall be entitled to annual vacation leave as follows:

Years of Service	Vacation Accrual
The first (1) through third (3) years of service (except as provided in Sections 22.4 and 22.5 below)	80 work hours
Fourth (4) through eleventh (11) years of service (except as provided in Section 22.5 below)	120 work hours
Twelfth (12) through seventeenth (17) years of service (except as provided in Section 22.5 below)	160 work hours
Eighteenth (18) through twentieth (20) years of service (except as provided in Section 22.5 below)	200 work hours
Twenty-first (21) and subsequent years of service (except as provided in Section 22.5 below)	240 work hours

22.3.1. Employees shall accrue vacation leave at the following rates:

Vacation Hours Earned Per Year	Hours of Vacation Earned per Hour of Regularly Scheduled Work
80	0.0385
120	0.0577
160	0.0769
200	0.0962
240	0.1154

22.3.2. **Use of Vacation Leave:** Each employee shall be entitled to take during the first two (2) years of employment only such annual vacation leave as the employee earns: provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

- 22.3.3. **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 22.1, an employee appointed through lateral entry shall accrue and take Vacation Leave commensurate with his or her experience as a sworn peace officer.
- 22.4. **Calculation of Vacation for Part-Time or Intermittent Employees:** For an employee who has worked on a part-time or intermittent basis, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation as specified in Section 22.3.
- 22.4.1. **Pro-Ration of Vacation for Part-Time or Intermittent Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.
- 22.4.2. For the purpose of computing length of service in determining eligibility for vacation, time spent on an extended military leave shall be counted as time spent in the service of the City.
- 22.5. **Maximum Vacation Leave Accrual Carryover:** Employees can carry over from one vacation year (see glossary) to the next no more than three hundred twenty (320) hours of earned vacation.
- 22.5.1. **Annual Vacation Leave Sell Back:** Once per year, an employee will have the option to sell to the City up to one hundred sixty (160) hours of accumulated vacation time. The employee shall notify the Department on a form provided by the Auditor that he or she is exercising this option no later than March 1 of any calendar year. The City will pay the employee for the purchased vacation hours by March 31 of the same calendar year.
- 22.5.2. **Excess Vacation:** Not later than October 1 of each vacation year, the City will notify each affected employee of the amount of the employee's earned vacation projected to exceed three hundred twenty (320) hours at the end of the vacation year. By October 31, those employees notified of projected excess vacation will submit to the Chief of Police a proposal for use of the projected excess vacation prior to the end of the vacation year. Such a proposal may include both vacation leave and "sell back" to the City.

22.5.3. An employee who has attained maximum accumulation, and does not submit a proposal for use of excess vacation, may be required to take all the projected excess earned vacation or receive pay in lieu thereof, at the option of the City. Such time off shall be scheduled in accordance with the provisions of Section 22.2.

22.6. **Return from Extended Unpaid Leave:** An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the calendar year. For succeeding calendar years, vacation shall be as provided in Section 22.

22.7. Any employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for the employee shall not earn vacation leave credit for each one hundred–sixty (160) consecutive hours that he or she is off the payroll. Vacation leave shall be accrued on hours worked or in a paid status exclusive of overtime.

22.8. **Payment upon Death, Termination or Extended Leave:** If, after six (6) months of continuous service, an employee dies, is terminated or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate shall be paid for vacation credits in excess of actual amount of vacation leave taken or such employee, or his or her estate, shall reimburse the City for the actual amount of vacation taken in excess of vacation leave credits, as the case may be.

22.8.1. The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's hourly salary at the date of termination, extended military leave, or other extended leave of absence without pay shall be multiplied by the employee's final negative or positive vacation balance, as provided in Section 22.6.

22.8.2. Upon termination, extended military leave or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee or his or her estate shall be paid for the excess on the basis hereinafter set forth. If the vacation balance is negative,

such employee, or his or her estate, shall, on the same basis, reimburse the City or the City may deduct the balance due from the employee's salary due, accrued floating holidays, holiday pay due, compensatory time due or sick leave, or SRIP, in the listed order of priority.

- 22.8.3. Payment for excess of vacation leave shall be made in lump sum at the time of termination, extended military leave, or other extended leave without pay as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave prior to such termination, extended military leave, or other extended lave of absence without pay to the extent permitted by this Section 22 and shall receive a lump sum payment for the balance of vacation leave credits, if any.

SECTION 23: HOLIDAYS

- 23.1. All employees in Representation Units E and F who are required to work on any of the hereinafter enumerated holidays, shall have the option of receiving compensation, in addition to their regular monthly salaries, either in the form of holiday pay or compensatory overtime. The holiday pay will be equivalent to the employee's regular hourly salary multiplied by the number of hours worked during such day, except that the sum of the hours compensated by holiday pay and hours taken as time off shall not exceed eight (8) for any single holiday; or the employee shall receive compensatory time off at the straight-time rate on the same basis. For purposes of overtime computation, holiday pay is not to be considered compensation for time worked.
- 23.2. In the event that any of the enumerated holidays fall on a day which is not a regularly scheduled workday, such employees shall, in addition to the regular salary which such employees receive, be paid for eight (8) hours for each such holiday at straight-time rate based upon their regular monthly salary or shall, at the discretion of the Chief of Police, be given eight (8) hours of compensatory time off at a straight-time rate.

23.3. Recognized holidays for employees in Representation Units E and F to which this section applies are as follows:

New Year's Day Martin Luther King, Jr.s' Birthday Washington's Birthday Lincoln's Birthday Malcolm X's Birthday Memorial Day Independence Day Labor Day	Indigenous People's Day Veteran's Day Thanksgiving Day Day after Thanksgiving Christmas Day <i>(Any other special holiday as declared by the City Manager)</i>
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23.4. **Floating Holidays:** Employees shall be granted three (3) floating holidays, equivalent to eight (8) hours each, during the calendar year. The days selected shall be by mutual agreement between the employee and the Chief of Police or his or her designee. In the event mutual agreement cannot be reached, the time sought shall be added to his or her accrued vacation time. Employees may take floating holidays in one hour increments.

23.5. **Pro-Rated Holidays:** A new employee or an employee returning from a long term leave of absence without pay will receive floating holidays on a pro-rated basis, according to the following schedule:

Date of Hire or Return	Floating Holiday Entitlement
January 1 - April 30	3
May 1 - August 30	2
September 1 - December 31	1

23.6. Employees shall receive specially declared holidays on the same basis as they now receive other holidays.

SECTION 24: SICK LEAVE

24.1. Employees shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness of the employee or of members of the employee's immediate family in accordance with the provisions of Sections 24.2. to 24.7, inclusive.

24.2. **Sick Leave Accrual:** Each employee shall be credited with one (1) eight-hour working day of sick leave with full pay for each month of service, provided that each employee shall be credited with two (2) eight-hour working days of sick leave with full pay for each month of service during the twenty-first (21st) year of employment and thereafter.

Actual accrual of sick leave will be based upon those days on which the employee was on the payroll and receiving pay.

24.3. An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half-time the employee shall be paid for time off on sick leave on a half-time basis.

24.4. **Intermittent Employees Use of Sick Leave:** An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

24.5. **Notice Requirements:** Except in the case of emergencies, in order to receive compensation while absent on sick leave the employee shall notify the Chief of Police or other personnel designated by the Chief of Police at least one hour prior to the start of the employee's daily duties.

24.6. **Maximum Sick Leave Accrual:** Such sick leave as provided in Section 24.2 when not used shall be cumulative; but the accumulated unused period of sick leave shall not exceed the following schedule:

Calendar Year	Maximum Sick Leave Accrual Hours
1988	1,200 hours
1989	1,300 hours
1990	1,400 hours
1991	1,500 hours
1992	1,600 hours
1993	1,700 hours
1994	1800 hours
1995	1,900 hours
1996	2,000 hours
1997	2,100 hours

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Calendar Year	Maximum Sick Leave Accrual Hours
1998	2,200 hours
1999	2,300 hours
2000	2,400 hours
2001	2500 hours
2002	2600 hours
2003	2700 hours
2004	2800 hours
2005	2900 hours
2006	3000 hours
2007	3100 hours
	(and so on, as described in next paragraph)

- 24.6.1. The previously established maximum accumulation level of 1,200 hours may, at the employee's option, be increased by up to 100 hours each year following the year when the employee reaches a 1,200 hr. level.

- 24.6.2. In each year following that 1,200 hr. base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave (1/3 paid no later than January 22 of the following year) or may elect to increase their sick leave accumulated base by up to 100 hours and take any additional excess sick leave in pay at the prescribed rate (payoff each January 22). Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by December 1 and shall be returned to the City by December 31.

- 24.6.3. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate provided in Section 24.2.

- 24.6.4. All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided here and in the paragraphs immediately following. Employees retiring or terminating with a vested pension shall be entitled to receive payment at retirement or termination with a vested pension with 15 years of service shall be entitled to receive payment at retirement

or termination of ½ of accumulated unused 8-hour sick leave days.

24.6.5. **Payment Upon Permanent Disability Retirement:** It is further provided that any employee retiring on permanent disability arising out of and incurred in the course and scope of his or her employment with the City shall be entitled to receive payment at retirement for one-third (1/3) of accumulated unused eight (8) hour sick leave days. If an employee retires on permanent disability arising out of and incurred in the course of his or her employment with the City on or after July 9, 2000 with 15 years of service, the employee shall be entitled to receive payment at retirement or termination with a vested pension of ½ of accumulated unused 8-hour sick leave days.

24.6.6. **Re-employment Within 2 Years:** Accumulated sick leave which has been canceled by reason of an employee's termination shall be credited back to such employee if the employee returns to City employment within two (2) years of such termination.

24.7. **Family Sick Leave:** Sick leave shall not be considered a privilege which an employee may use at the employee's discretion but shall be allowed only in case of sickness or disability or in the case of serious illness of the employee or within the immediate family of the employee. Not more than ten (10) working days in any calendar year may be taken as sick leave because of illness of a member of the employee's immediate family. The immediate family of an employee, for the purposes of this section, shall include: dependent residing in the employee's household, spouse, son, daughter, parent and other relationships as determined by the City, such as domestic partner (see glossary).

24.8. **Sick Leave Bonus:** Employees shall be entitled to receive an additional eight (8) hours of paid leave for every six (6) months of uninterrupted non-use of sick leave. Leave of absence pursuant to Workers' Compensation is not to be counted as sick leave. This additional leave accrual is prorated for part-time employees. Not more than sixteen (16) additional hours per year may be achieved; this paid leave may be used for any leave purpose covered by this Understanding.

24.9. **Affect of Extended Unpaid Absence:** An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours. shall receive earned sick leave credit. If an employee is off the payroll for one hundred sixty (160) consecutive hours or more., the

employee shall not earn sick leave credit for each one hundred sixty (160) consecutive hours that he or she is off the payroll.

24.10. Employees shall accrue sick leave credits for only those days on which the employee is on the payroll and receiving pay.

24.11. **Absenteeism Control System:** The City may implement an absenteeism control system, which will include the detailed and ongoing recording of absences and counseling of employees regarding abuse, with management and supervisory personnel having the discretion to require medical verification in instances where abuse appears evident and to take disciplinary action as appropriate to correct patterns of abuse.

SECTION 25: WORKERS' COMPENSATION

25.1. All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California (specifically Labor Code Sections 4850 et seq.).

25.2. No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of Section 24 shall be allowed only if such outside employment has been approved by the City.

25.3. Workers' Compensation salary in lieu of temporary disability payments as provided in California Labor Code Section 4850 are reportable to CalPERS as compensation earnable for a period not to exceed one year. Any temporary disability benefits, which are coordinated with the employee's available leave accruals, paid after one year is not reportable to CalPERS as compensation earnable.

SECTION 26: FUNERAL LEAVE

26.1. In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the

funeral or memorial service for a period not exceeding three (3) working days, or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. The immediate family of an employee, for the purpose of this section, shall be defined as: wife, husband, domestic partner, (see glossary), mother, father, sister, brother, child, grandmother, grandfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grand-children.

- 26.2. Leave of absence with pay because of death in an employee's immediate family is allowed solely for the purpose of attending funeral and memorial services, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

In special cases, with the approval of the Chief of Police, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family.

SECTION 27: MILITARY AND MARITIME LEAVE

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran's Code. Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation. If allowed by the USERRA and/or the State of California Military and Veteran's Code, where the employee is entitled to receive his/her regular pay during the period of the military leave, military pay is to be deducted from the employee's regular pay from the inception of the military leave.

SECTION 28: FAMILY CARE LEAVE

Administrative Regulation 2.4 (Family Care Leave) is intended to comply with the Family and Medical Leave Act of 1993 and the California Family Rights Act of 1991 as may be amended from time to time. A copy of Administrative Regulation 2.4 is attached to this Memorandum of Understanding for illustrative and convenience purposes. It is not the intent of the parties to incorporate Administrative Regulation 2.4 into this Memorandum of Understanding. The Association will be notified of any revisions to Administrative Regulation 2.4.

SECTION 29: LEAVE OF ABSENCE WITHOUT PAY

- 29.1. Upon request of the employee, the Chief of Police may grant a leave of absence to an employee within his or her department without pay not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days, except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.
- 29.2. In the event of illness, an employee must exhaust sick leave, and all available compensatory leave and vacation leave prior to receiving authorization for leave without pay.
- 29.3. In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available prior to receiving authorization for leave without pay.

SECTION 30: JURY DUTY LEAVE

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such service, as defined in the glossary (Exhibit B) or while being present in court as a result of such call. Any employee, working any shift, shall be eligible for this benefit. Jury duty that does not occur during the employee's work shift but does occur on a scheduled work day, shall cause that employee's next scheduled work shift to be shortened by the number of hours spent on jury duty.

ARTICLE 4 - HEALTH AND WELFARE BENEFITS

SECTION 31: HOSPITAL-MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE

- 31.1. **Medical Coverage:** Effective January 1, 1991, the City will pay 100% of the premium for the applicable (single, couple, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. For coverage under more expensive plans the employee shall pay the difference through payroll deduction. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state

income tax withholding.

Effective January 1, 2009, the City shall pay the Kaiser HMO premium amount plus an amount up to 20% of the premium amount increase from the January 1, 2008 premium amount. The employee and the City shall share the cost of any increase in premium amount greater than 20% equally. In the event that Association members make any cost-sharing contributions, the contributions will be limited to that one calendar year. At the end of the calendar year the premium sharing contributions will terminate and any further contributions will be calculated based on the rates proposed by Kaiser at the end of the calendar year. In summary, the contribution by each member will sunset and terminate at the end of each calendar year but in each subsequent calendar year the City shall pay the Kaiser HMO premium amount up to 20% of the premium amount increase from the prior calendar year premium amount.

The Understanding can be reopened on health plan topics by mutual consent.

- 31.2. **Dental Coverage:** The City shall provide a dental care program for employees. Dental benefits will remain at 90% coverage of the Bay Area Usual, Customary and Reasonable charges for the life of this Understanding. Effective January 1, 2002, the maximum annual coverage will increase to \$3,000 per calendar year and the lifetime limit on orthodontia will be increased to \$3,000. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.
- 31.3. Should the City deem it feasible to provide the same level of benefits through another provider or to provide such benefits on a non-insured basis, it will notify the Association and, upon written request, will meet and confer on the matter.
- 31.4 **Life Insurance:** The City shall provide term life insurance of \$50,000 for each employee that shall include a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.
- 31.5. **Pro-Ration for Less Than Full-Time Employees:** All career and grant-funded provisional employees working less than a full forty (40) hour week shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, the remainder of the health and dental insurance premiums.

- 31.6. **Cash In-Lieu:** For those employees who show proof of alternate medical coverage, the City will compensate the employee at the single Kaiser Plan rate.

SECTION 32: RETIREE MEDICAL COVERAGE

- 32.1. **Sick Leave Trust Fund:** A retiring employee may elect to use his or her sick leave payout to pay for health insurance coverage. The duration of coverage will be computed as follows: the payout amount (as determined by provisions of Section 24.6.4) shall be divided by the monthly cost in effect on the date of retirement (including both the cost to the City and the cost to the employee) of the medical plan in which the employee is enrolled on the date of retirement. That computation will produce the number of months for which the City will pay, and the payout of any residual amount. A trust fund account will be established by the City in its accounting records for each retiree who elects this option. The retiree's individual account will be reserved and available for premium payments until exhausted. A retiree may change level of coverage (family coverage, to two party or one party) but the number of months coverage will be re-computed by dividing the monthly cost (both to the City and to employees) that is in effect at the time the change is requested by the balance in the retiree's account.

To the extent permitted by the health plan provider, and with written notice to the City by November 1, a retiree may change health care providers and such change in coverage shall be effective January 1 of the next year. The City will re-compute the number of months of coverage by dividing the monthly cost (both to the City and to employees) that is in effect at the time the change is requested by the balance in the retiree's account.

A retiree, with a sixty (60) day notice, may at any time request a lump sum payment of the balance in his or her account. Upon the death of the retiree, any money in the account will be disbursed to the employee's estate.

- 32.2. **Retiree Health Coverage:** The City will establish an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefit provided in this Section.

The City shall pay to the retiree or his or her surviving spouse an amount equivalent to the two party active Kaiser monthly medical insurance premium until the death of both. (See Exhibit Letter from Kaiser dated September 14, 2001 attached to this Memorandum of Understanding for illustrative and convenience purposes.) The maximum amount the City shall pay to the retiree

or his or her surviving spouse is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 years of Service	City to pay an amount equal to 25% of the 2-party Kaiser plan rate
15 years of Service	City to pay an amount equal to 50% of the 2-party Kaiser plan rate
20 years of Service	City to pay an amount equal to 75% of the 2-party Kaiser plan rate
25 years of Service	City to pay an amount equal to 100% of the 2-party Kaiser plan rate

32.2.1. **Payment:** The payment to be made on a monthly basis shall be made directly to the retiree, or if the retiree is deceased, to the surviving spouse. The retiree or surviving spouse assumes full responsibility for the tax consequences for this Section.

32.2.2. **Notification of Death:** The retiree or surviving spouse is exclusively responsible for notifying the City of a death of his or her spouse. Such notification must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department, 2180 Milvia Street, Berkeley, CA. When both the retiree and surviving spouse die all payments under this Section shall cease.

32.2.3. **Notification of Change of Address:** The retiree or surviving spouse is exclusively responsible for notification to the City of his or her current mailing address. A change in mailing address must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department, 2180 Milvia Street, Berkeley, CA. If the U.S. Postal Service returns payment checks for two consecutive months, the City will cease making payments under this Section. However, if the retiree and/or surviving spouse re-establishes contact with the City and notifies the City in writing of a new mailing address, the City shall resume making payments including arrears payments for the period when payment checks were undeliverable.

32.2.4. **Payments Commence 10 Years After Retirement Plan:** For employees retiring on or after January 1, 1989 through July 5, 1997, the City shall begin making payments to the retiree or his or her surviving spouse ten (10) years after the employee retires. No payments will be made under this Section until January 1, 1999. For the purposes of this Section, a “retiree” is anyone who separated from the City on or after January 1, 1989, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

32.2.5. **Payments Commence 5 Years After Retirement Plan:** For employees retiring on or after July 6, 1997, the City shall begin making payments to the retiree or his or her surviving spouse five (5) years after the employee retires. No payments will be made under this Section until July 6, 2002. For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 7, 1997, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

32.2.6. **Payments Commence 2 Years After Retirement Plan:** Effective July 1, 2008 for employees retiring after July 1, 2007, the City shall begin making payments to the retiree or his or her surviving spouse two (2) years after the employee retires. The maximum amount the City shall pay to the retiree or his or her surviving spouse is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 years of Service	City to pay an amount equal to 25% of the 2-party Kaiser plan rate
15 years of Service	City to pay an amount equal to 50% of the 2-party Kaiser plan rate
20 years of Service	City to pay an amount equal to 100% of the 2-party Kaiser plan rate

For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 1, 2007, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

32.2.7. **Overpayments:** In the event of an overpayment, the procedures set forth in Section 41 (Payroll Errors) of the Understanding shall apply to the recovery of overpayments under this Section.

32.2.8 **Retiree Medical Reopener:** The Association and the City agree to engage in immediate discussions to explore cost saving modifications to the current medical plan offered to future retirees. In that regard, the Association and the City will meet to discuss cost-sharing, cost containment as well as possible plan modifications in order to maintain the current level of services provided or offered to retirees while at the same time reducing costs for both the City and retirees. In the event that the parties do not reach an agreement on a plan modification or cost containment provisions, individual members of the BPA retiring after January 1, 2010 will be responsible for a 50-50 cost-sharing on any annual increase in Kaiser premiums which exceed 15%.

SECTION 33: SUPPLEMENTAL RETIREMENT PLAN

Effective July 1, 2001 the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible career benefited employees through the liquidation of termination pay.

ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT

SECTION 34: PROBATIONARY PERIOD

34.1. **Police Officer:** Original appointments from employment lists for the classification of Police Officer shall be tentative and subject to a probationary period of two (2) years of actual service.

Completion Of Probationary Period Upon Return From Military Leave:

Probationary employees who are granted military leaves of absences shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 33 shall be interpreted to preclude the City from establishing new classifications which may require probationary periods of varying lengths.

Field Training Officer Rating: Probationary Police Officers will be rated daily/weekly while in the Field Training Officer (FTO) program and every 2 months after completing FTO training (through their first 12 months), and then semi-annually thereafter.

- 34.2. **Other Probationary Periods:** Original and promotional appointments to classes above the rank of Police Officer shall be tentative and subject to a probationary period of six (6) months of actual service and shall be completed within a one (1) year period.
- 34.3. **Provisional Appointments During Probationary Period:** If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.
- 34.4. **Completion of Probationary Period:** If the service of the probationary employee has been satisfactory to the Chief of Police, the Chief of Police shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.
- 34.5. **Rejection During Probationary Period:** During the probationary period, an employee may be rejected at any time without right of appeal or hearing except as provided by the procedures mandated by Government Code 3303 and 3304, as well as provided in Section 41.8.5 of this Understanding. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 38.

SECTION 35: TRANSFER

A transfer (see glossary) may be made at any time by the City Manager. A Transfer shall not be used to effect a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided elsewhere in this Understanding. No employee shall be transferred to a position for which the employee does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

SECTION 36: PROMOTION/EXAMINATION

- 36.1. **Promotional Exams:** Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established.
- 36.2. **Tests and Applications:** Regular tests shall be given for all ranks including promotional ranks. Applications for Police Officer shall be accepted on a continuous testing basis. Tests for Sergeant, Lieutenant and Captain shall be given at least every two years.
- 36.3. From the time that a promotional list no longer contains any names, 1) the City will make a conscientious effort to hold a written examination within ninety (90) days, but in any event will hold the examination within one hundred twenty (120) days; and 2) the City will announce the written examination at least sixty (60) days before the examination takes place.
- 36.4. **Notice of Examinations:** Selection criteria shall be reflected on all examination announcements. All phases of each examination shall be listed in the examination announcement. A study list shall be included in each examination announcement. Each examination shall be announced no less than 60 calendar days in advance of the written test date.
- 36.5. **Open Competitive Examination:** If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of

an eligibility list.

- 36.6. **Criteria for Promotion:** Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit (proven ability or accomplishment), seniority, current and previous special/temporary duty assignments held.

SECTION 37: DEMOTION

- 37.1. **City Manager Authority:** The City Manager may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.
- 37.2. **Notice Requirements:** Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion, and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.
- 37.3. **Permanent Status:** An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.
- 37.4. **Demotion to Vacant Position:** Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 58.

SECTION 38: SUSPENSION AND DISCHARGE

- 38.1. **30 Calendar Day Maximum Suspension:** The City Manager may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any one-year period.
- 38.2. **Suspensions of 3 Days or Less:** For just cause, the Chief of Police may suspend an employee for not more than three (3) working days for any one

offense. Such suspension shall be reported immediately to the City Manager. At any step in the process of reviewing recommended disciplinary actions, the City Manager may elect to impose more severe discipline.

- 38.3. **Discharge:** An employee may be discharged at any time by the City Manager, but if the probationary period has been completed, then such discharge must be for a cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action.
- 38.4. **120 Day Limit on Imposition of Discipline:** The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

- 38.5. **Suspension of FLSA Exempt Employees:** Notwithstanding any of the above, FLSA exempt employees in the rank of Captain and above shall not be suspended except as permitted by the Fair Labor Standards Act.
- 38.6. All references in Sections 38.1 and 38.2 to “days” shall be calculated in terms of eight (8) hour equivalencies, unless otherwise provided.

SECTION 39: RESIGNATION

An employee wishing to leave the competitive service in good standing shall file with the Chief of Police, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Chief of Police as to the resigned employee's service, performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice

shall be reported by the Chief of Police immediately. Resignations shall take effect on the last day of the pay period in which an employee works unless the City Manager determines that it is in the City's best interest to accept the resignation immediately.

SECTION 40: REINSTATEMENT

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.

ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE

SECTION 41: GRIEVANCE & DISCIPLINARY APPEAL PROCEDURE

- 41.1. A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Understanding between the City and the Association or with any City ordinance, rule, or regulation which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of City employees covered by the Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process. The grievance procedure discussed below shall be the dispute resolution mechanism applicable to employees covered by this Understanding.
- 41.2. A disciplinary appeal is the procedure established hereunder to afford an employee his or her due process rights. An employee may appeal the recommendation or imposition of discipline for demotion, pay reduction, suspension or discharge other than probationary discharge.

41.3. Grievance Procedure

Grievances shall be processed in the following manner:

- 41.3.1. **Step 1:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) may discuss

the employee's complaint with the Chief of Police or with such subordinate management official as the Chief of Police may designate. Nothing in this Section precludes an employee from utilizing the chain of command to solve grievances and/or complaints. If the issue is not resolved within five (5) days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified.

41.3.2. **Step 2:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the affected employee or by the Association. Any such referral shall be in writing, and the specific issues involved shall be detailed in such referral, together with a statement of the resolution which is desired. The City Manager shall designate a representative to investigate the merits of the complaint and to meet with the complaining employee (and/or the employee's Association representative).

41.3.3. **Step 3:** If the Association is not satisfied with the City Manager's decision at Step 2 of the Grievance Procedure, the Association may require that the grievance be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 2. Either the Association or the City may require that the grievance be referred to an impartial arbitrator if for any reason forty-five (45) days have elapsed from the date upon which the grievance was received by the City Manager. The impartial arbitrator shall be designated by mutual agreement between the Association and the City Manager. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

41.4. **Arbitrator Decisions:** Arbitrator decisions on matters properly before them which pertain to grievances as defined in Section 41.1 of this Understanding shall be in the forms of recommendations to the City Manager, who may, within five (5) days of receipt of said decision, reject said decision. In the event of said rejection, then, as to that particular grievance, the fees and expenses of the arbitrator and the court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

- 41.5. **Grievance of Affirmative Action Program:** Any grievance which in any way affects the implementation of the City's affirmative action program shall not be subject to arbitration. The decision as to whether or not implementation of the affirmative action program is in any way involved shall be made at the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the affirmative action program, the Equal Employment Opportunity and Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and in such notification refer to that section of the affirmative action program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.
- 41.6. No arbitrator shall entertain, hear, decide or make recommendations on any dispute unless the Association seeks a determination or if the dispute involves 1) the issue of unit determination; 2) a question of representation; 3) an aggrieved employee not in a classification of the units represented by the Association; or 4) non-punitive transfers, promotional decisions, and probationary employee terminations except as provided in Sections 34.5 and 41.8 5 et seq. of this Understanding.
- 41.7. **Compensation Grievances:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Chief of Police. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understandings contained in any memorandum agreement which has resulted from the meet-and-confer process shall be considered as grievances. Any other matters of compensation are to be resolved in the meet-and-confer process and, if not detailed in the Memorandum of Understanding which results from such meet-and-confer process, shall be deemed withdrawn until the meet-and-confer process is next opened for such discussion.
- 41.8. **Disciplinary Appeals**

Disciplinary Appeals shall be processed in the following manner:

- 41.8.1. **Step 1:** Except as provided for suspensions of not more than three (3) days as provided in Section 38.2, the imposition of a disciplinary demotion, pay reduction, suspension or discharge of an employee will be in the form of a written recommendation from the Chief of Police to the City Manager. For suspensions of not more than three (3) days, the Chief of Police may impose such discipline subject to the appeal procedures set forth hereunder. No disciplinary appeal involving the disciplinary demotion, pay reduction, suspension or discharge of an employee will be entertained unless it is filed in writing with the Chief of Police within five (5) days of the time at which the affected employee was notified of such action in writing.
- 41.8.2. **Step 2:** The affected employee may appeal the recommendation to impose discipline, or the imposition of discipline for suspensions of not more than three (3) days, to the Chief of Police or his or her designee. The affected employee shall be entitled to a personal conference with the Chief of Police or his or her designee or the affected employee may choose to make an appeal in written form. The Chief of Police or his or her designee shall communicate a decision in writing within ten (10) days after the completion of the personal conference with the affected employee or receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure.
- 41.8.3. **Step 3:** Any disciplinary appeal which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager within five (5) days after conclusion of Step 2 by the affected employee or the Association. The City Manager shall designate a personal representative to meet with the affected employee and/or the employee's Association representative and hear the disciplinary appeal or the affected employee may choose to make an appeal in written form.. The City Manager's designee shall communicate a decision within twenty (20) days after the completion of the personal conference with the affected employee or, if the employee chooses to make an appeal in written form, receipt of the written appeal. If the City Manager's designee, in pursuance of the procedures outlined above resolves a disciplinary appeal as defined in Section 41.2 above, the City Manager's designee may order payment for lost time or wages or

reinstatement with or without payment for lost time. This shall conclude Step 3 of the Disciplinary Appeal Procedure.

- 41.8.4. **Step 4:** If the Association is not satisfied with the City Manager's designee's decision at Step 3 of the disciplinary appeal procedure, the Association may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 3. The impartial arbitrator shall be designated by mutual agreement between the Association and the City Manager. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction or discharge of an employee shall be final and binding on both parties.
- 41.8.5. Notwithstanding their probationary status, probationary employees may use the grievance process for disciplinary actions other than termination.
- 41.8.5.1. **Probationary Employees' Appeal of Discipline:** Notwithstanding his or her probationary status, a probationary employee has appeal rights for disciplinary action where the employee alleges that the City's action was for an illegal or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally protected activities; provided, however, that any appeal by a probationary employee of rejection from probation alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment and Housing Act (California Labor Code Section 12900 et. seq.) may be pursued as provided in the City's Affirmative Action program, which shall be specifically amended to allow probationary employees a right of appeal under that program. Nothing in this Section 41.8.5.1 is intended to preclude a probationary employee from seeking enforcement of rights through state and/or federal regulatory agencies or in courts of competent jurisdiction.

41.5.2. **“Lubey” Hearing:** A probationary employee who is terminated on grounds of misconduct may establish a formal record of the circumstances surrounding his or her termination, but is not entitled to a determination that his or her dismissal was for "just cause." Such a grievance shall terminate upon the conclusion of Section 41.8.3. The City Manager's decision at Section 41.8.3 is final and is not subject to further review.

41.9. **Days Defined:** All references in this Section 41 to "days" shall mean calendar days unless otherwise provided.

41.10. **Waiver of Time Lines:** The time lines contained in this Grievance and Disciplinary Appeal Procedure may be waived for a specific time period at any step in the Procedure with the mutual agreement of the parties.

ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS

SECTION 42: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk. Under payments will be processed as soon as practicable.

In the event of an overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee's normal salary, and other financial obligations of the employee. The

City and the Association agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages. In the event that (1) the employee does not respond within 5 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

SECTION 43: PERSONAL CONDUCT

- 43.1. Employees shall follow the General Orders and Regulations of the Berkeley Police Department, as written and as they may be amended.
- 43.2. **Off the Job Activities:** No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.
- 43.3. **Official Badge/Insignia:** No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge insignia to be used or worn by any other person of the same or another department, or otherwise to leave his or her possession, without approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

SECTION 44: UNIFORMS

- 44.1. Effective July 7, 2002, the annual uniform allowance shall be \$1,000. Effective July 1, 2007, the annual uniform allowance shall be \$1,100. Effective June 29, 2008, the annual uniform allowance shall be \$1,200. Effective June 28, 2009, the annual uniform allowance shall be \$1,300. Effective June 27, 2010, the annual uniform allowance shall be \$1,400. The uniform allowance is intended to cover uniform expenses incurred by the employee during the six months prior to the payment and shall be paid semi-annually in installments of equal amounts. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding. The Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).
- 44.2. Effective June 29, 2008, in addition to the annual uniform allowance set forth in Section 44.1, employees assigned to the Barricaded Subjects Hostage Negotiation Team (B.S.H.N.T.) shall be paid an annual uniform allowance of

\$1,500. The B.S.H.N.T. uniform allowance is intended to cover uniform expenses incurred by the employee in the performance of training and duties related to this assignment and shall be paid annually in December for those members of the B.S.H.N.T. team who are members of the team on November 1st of any year. However, the amount the City contributes toward the B.S.H.N.T. uniform allowance is subject to federal and state income tax withholding. The B.S.H.N.T. Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).

- 44.3. **Pro-Rated Uniform Allowance:** Employees who are hired during the year or are absent from work by reason of leave without pay shall receive a reduced uniform allowance in accordance with the following schedule:

Absence of:	Percentage Reduction
3 months	25%
6 months	50%
9 months	75%
12 months	100%

- 44.4. **Uniform and Equipment Committee:** The Uniform and Equipment Committee will be charged with adopting specifications and regulations governing the wearing of uniforms and plain clothes. All components of the uniform are subject to the approval of the Chief of Police.
- 44.5. **Rain Gear:** Rain Gear specifications as currently listed in the Uniform/Equipment Specifications Manual under subsection XIX (e) will be updated to reflect optional rain gear (Jacket and Pants) that may be purchased at the employee’s expense for use during inclement weather.

SECTION 45: SAFETY GLASSES

The City's present safety glass program provides that the City will guarantee replacement of prescriptions broken in the line of duty, but it is understood that the City will be under no obligation to routinely provide safety glasses to every police officer simply desiring a pair.

SECTION 46: SAFETY AND TRAINING

- 46.1. Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties.
- 46.2. Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Chief of Police.
- 46.3. **Ammunition and Firing Range Program:** The City shall provide the necessary amount of ammunition per month for employees for use in City-sponsored range programs. The Department will enforce requirements of regular employees participating in range programs. Employees who do not perform at a passing standard will receive instruction and retake the test during the regularly scheduled range program. Employees who are not able to achieve the minimum standard within a reasonable period of time will be immediately assigned to work on an intensive basis with the range master who will evaluate the severity of the problem. Consistent inability to meet the standard may be cause for termination.
- 46.4. **Safety Programs:** The City and the Association will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his or her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Association and appropriate supervisory personnel.
- 46.5. No employee shall be required to drive a vehicle, the mechanical condition of which is in violation of the Vehicle Code of the State of California. All patrol vehicles will be equipped with tensor lamps as soon as is practical and feasible.
- 46.6. The City shall educate Association members regarding AIDS/ARC and its transmission. Association members shall receive training with, and be supplied with, proper safety equipment to protect employees from contamination by blood and body fluids. The Police Department and Association will participate in a committee to monitor employee needs in this area on a continuous basis.

SECTION 47: USE OF AUTOMOBILES

The City Manager shall govern the use of City-owned automotive equipment and privately owned automobile equipment by such rules and regulations as he or she may establish. The mileage reimbursement will be equal to the amount established by the Internal Revenue Service, which is \$0.505 per mile as of January 1, 2008 but the rate will fluctuate from time to time.

SECTION 48: ANNUAL PHYSICAL EXAMINATION

The City will provide one (1) physical examination (based on the City's specification as to scope of examination and examiner) each year to each employee in a classification categorized as a "high risk" classification (see glossary). Participation in the physical examination program shall be mandatory.

SECTION 49: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

49.1. **Employees on Workers' Compensation Leave:** The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay.

49.2. Non-industrial Disabilities

49.2.1. The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment. The City will periodically review such modified assignments in order to determine whether such assignments continue to meet the needs of the City.

49.2.2. The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City,

other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

SECTION 50: ANNUAL PERFORMANCE EVALUATION

The City may implement a program of annual performance evaluation. Such evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation which shall be made a part of the employee's personnel record.

In Line of Duty Death Notification Package: At this time, each employee shall be given an opportunity to update or fill out his or her "In Line of Duty Death Notification Package". This Package is to be maintained by the Administrative Captain but be accessible by the Watch Commander at all times.

SECTION 51: RESERVE OFFICER FUNCTIONS

51.1. Reserve officers shall not be regularly assigned to perform, police functions normally performed by a sworn officer working in a pay status (i.e., normal beat patrol, walking beats, normal detective functions, etc.). Reserve officers may be used by the Department to supplement police services, such as for additional staffing for special projects, in emergencies, for traffic or crowd control, in positions where they have been utilized previously, or in other short-term circumstances.

51.2. Special Events

Any outside requests for police services for special events shall be offered first to employees represented by the Association. Reserves can only be used for such events when the overtime, after being offered to regulars, does not sell within 48 hours of the event. In any event, minimal patrol division staffing levels will take priority over special events. Sponsored events traditionally staffed by reserved officers are not affected by this section. These sponsored events include the following which is provided for illustrative purposes:

Earth Day Celebration
People's Park Celebration

Berkeley Unified School District Youth Celebration
Berkeley Unified School District Football Games
Live Oak Park Faire
Triple Rock Beer Festival
Berkeley Cycle Club
4th Street Bicycle Race
Asian Pacific Heritage Fair
Cinco de Mayo
Juneteenth
July 4th Fireworks
Berkeley Kite Festival
Civic Center Criterium
Cajun Music Festival
How Berkeley Can You Be?
Jupiter Jam Concerts
Solano Stroll
Telegraph Avenue Street Fair
Berkeley Beer Festival
Elmwood Street Fair
Indigenous Peoples Day
Korean Day
Berkeley Jazz Festival
Telegraph Avenue Holiday Fair

University of California Events (samples listed below)

University of California Football events
University of California Basketball Team Parade
University of California dignitary visits

- 51.3. If the Association believes that reserve officers are being utilized inappropriately, it may meet with the Chief of Police or his or her designee to discuss such disputes or disagreements and to attempt to resolve any disputes or disagreements. Disputes regarding utilization of reserve officers shall not be subject to the grievance procedure.

SECTION 52: CLEAN WORK SITE

The City shall make every effort to maintain a clean work site with properly equipped lavatory and shower rooms.

SECTION 53: WEIGHT ROOM

The Association will enter into a lease with the City which provides for the Association to lease exercise equipment to the City for use by Police Department employees for the nominal charge of \$1 per year. The lease agreement will hold the Association harmless against any claims related to that equipment or its use. The City agrees to keep the weight room clean and maintain the equipment.

SECTION 54: PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS

- 54.1. The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties.
- 54.2. Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within 48 hours of such an examination.
- 54.3. Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he or she may also supply a brief non-intrusive analysis as it relates to the employee's ability to perform his or her duties. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.
- 54.4. Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline under Section 41.

SECTION 55: YMCA MEMBERSHIP

The City shall offer employees a low cost group membership in the Berkeley YMCA. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding. The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

SECTION 56: PARKING

The City agrees to continue to provide 33 parking spaces for sworn employees. The parties recognize that construction in the downtown area will result in the relocation of the spaces from time to time. If relocation becomes necessary, the City agrees that all 33 spaces will remain within their current proximity. The parties recognize their mutual obligation to meet and confer and reach an agreement which meet the interests of each party.

ARTICLE 8 - CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**SECTION 57: PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

57.1. The City shall continue participating under the Safety Members Plan of the California Public Employees' Retirement System (CalPERS), such Plan to include the single highest year earnings formula and will include all other benefits as were in effect as of November 28, 1996. The City's contract with CalPERS includes the following optional benefits:

- 57.1.1. One-Year Final Compensation as provided in Section 20042 (July 22, 1976).
- 57.1.2. Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- 57.1.3. Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 57.1.4. Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- 57.1.5. 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).
- 57.1.6. Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
- 57.1.7. Fourth Level of 1959 Survivor Benefits as provided in Section 21574 (October 15, 1998).

- 57.1.8. Pre-Retirement Optional Settlement 2 Death Benefit as provided in Section 21548 (November 6, 1998).
 - 57.1.9. Military Service Credit as Public Service as provided in Section 21024 (November 6, 1998).
 - 57.1.10 3% at age 50 Retirement Benefit as provided in Section 21362.2 for police only (July 7, 2002).
- 57.2. Effective July 1, 1994, the City will increase the base salary of employees in the amount of nine percent (9%). Employees will then assume responsibility for payment of the normal employee retirement contribution to CalPERS and the City shall designate such payment as an Employer Pickup as defined under the provisions of Section 414(H)(2) of the Internal Revenue Code. The employee contribution shall be made through automatic payroll deductions.
- 57.3. Deferred Retirement Option Program: The parties agree to re-open this Understanding on the issue of the CalPERS Deferred Retirement Option Program. This is contingent on CalPERS offering such a program to public agencies and the local safety members. The re-opener will become effective upon the written request of the Association or the City.

ARTICLE 9 - LAYOFF PROCEDURE

SECTION 58: LAYOFF POLICY

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

58.1. Announcement of Layoff

58.1.1 The City Council, City Manager, and the Chief of Police shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to layoff career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not

limited to, a material change in duties and organization, adverse working conditions, return of employees from leaves of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

- 58.1.2. Immediately following a decision which may involve the potential layoff of career employees, the City Manager shall freeze all current vacancies in the Police Department service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, or temporary (see glossary) positions which are expected to last six (6) months or more, and notify the department head that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 58.6.

58.2. Seniority Service Date

- 58.2.1. All service of persons in the employ of the City shall be counted toward the establishment of an employee's City seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee with the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the City seniority service date. Time off, or vacation or compensatory time forfeited in lieu of time off, as a result of formal disciplinary action will be subtracted from the rank seniority service date, however, such date(s) shall not affect any employee's date(s) relative to bidding for shifts or vacation.
- 58.2.2. All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.
- 58.2.3. All time spent in an appointed rank shall be credited to the

employee's service in the employee's permanent rank. In computing both City and rank seniority, all time spent on paid leaves of absences shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded.

- 58.2.4. The Human Resources Department will maintain up-to-date and current City and rank seniority service dates for all City employees holding probationary and permanent appointments.

58.3. Establishment of Seniority Lists

- 58.3.1. Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.
- 58.3.2. The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in Section 58.4 below, employees on all lists shall be laid off on the basis of their seniority service dates (i.e., employees with the least amount of total service shall be laid off first). All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that class.
- 58.3.3. Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.

- 58.3.4. If two (2) or more employees on a seniority list have identical seniority service dates, the tie shall be broken based on established departmental procedures for awarding commission numbers in such instances.

58.4 Employee Retreat Rights

- 58.4.1. Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classifications through which he or she was originally promoted or any subsequently created intermediate-level career classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 58.4.2. In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from a combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent Identification Expert will be available only to employees who have previously held such ranks on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions.
- 58.4.3. If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 58.4.4. The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher

salary range, i.e., promotion.

58.5. Employee Notification

- 58.5.1. Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable, if possible.
- 58.5.2. Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 58.5.3. Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release, reassignment, or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after receipt of the offer, the employee forfeits further right to employment retention. Acceptance of a reassignment or retreat does not remove the right of appeal under Section 58.9.

58.6. Flexible Placement Program

- 58.6.1. In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 58.1, impose a city-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.
- 58.6.2. Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff or retreat have been identified and the provisions under Section 58.3 and 58.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total

experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.

- 58.6.3. Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.
- 58.6.4. Offers to positions under the Flexible Placement Program shall be made according to City seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 58.3. All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.
- 58.6.5. If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after receipt of the offer, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 58.7.

58.7. Reemployment Lists

- 58.7.1. The names of all probationary and permanent employees released or retreated from positions in the competitive service as a result of layoff or retreat must be placed on reemployment priority lists for those classifications from which the employee was removed, as well as all other classifications to which they have retreat rights in accordance with Section 58.4.
- 58.7.1. The reemployment priority list for employees who were laid off shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.

- 58.7.3. Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.
- 57.8.4. When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.
- 58.7.5. If a former employee fails to accept a bona fide written offer of reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer to reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was original terminated.
- 58.7.6. Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

58.8. Career-Exempt Employees

Only those employees holding full-time, benefited, exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt."

58.9. Appeal Procedures

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under the grievance procedure, including that pro-*vision* relating to non-disciplinary arbitration. In addition, employees may at all times before, during, and subsequent to layoff review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

58.10. Audit


- 58.10.1. On an annual basis, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 58.7. In the event vacancies for which reemployment priority lists are in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.
- 58.10.2. If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally to fill the vacancy shall continue to be retained in City employment.

SIGNATURE PAGE


This Memorandum of Understanding is executed this 29th day of January, 2008, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

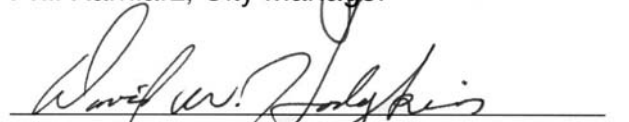
FOR THE BERKELEY POLICE

FOR THE CITY OF BERKELEY


Henry Wellington, President, Berkeley Police Association


Phil Kamlarz, City Manager



Rockne A. Lucia, Jr., Rains, Lucia & Wilkinson LLP.


David W. Hodgkins, Director of Human Resources


Randolph Files, Negotiator, Berkeley Police Association


Douglas Hambleton, Police Chief


Luis Mesones, Negotiator, Berkeley Police Association


Margarita Zamora, Senior Human Resources Analyst



Robert Rittenhouse, Negotiator, Berkeley Police Association

EXHIBIT A

Regular Monthly Salaries In Effect December 31, 2006 through December 29, 2007

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	11,666	12,056	12,455	12,873	13,301
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	10,183	10,519	10,869	11,226	11,603
Police Sergeant	8,491	8,770	9,057	9,357	9,667

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	6,735	7,048	7,376	7,615	7,861	8,119	8,382

EXHIBIT B**Regular Monthly Salaries In Effect December 30, 2007 through October 4, 2008
2% Cost of Living Adjustment**

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$11,899	\$12,297	\$12,704	\$13,130	\$13,567
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	\$10,387	\$10,729	\$11,086	\$11,451	\$11,835
Police Sergeant	\$8,661	\$8,945	\$9,238	\$9,544	\$9,860

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$6,870	\$7,189	\$7,524	\$7,767	\$8,018	\$8,281	\$8,550

EXHIBIT C

**Regular Monthly Salaries In Effect October 5, 2008 through April 4, 2009
2% Cost of Living Adjustment**

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$12,137	\$12,543	\$12,958	\$13,393	\$13,838
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	\$10,594	\$10,944	\$11,308	\$11,680	\$12,072
Police Sergeant	\$8,834	\$9,124	\$9,423	\$9,735	\$10,058

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$7,007	\$7,333	\$7,674	\$7,923	\$8,179	\$8,447	\$8,721

EXHIBIT D

**Regular Monthly Salaries In Effect April 5, 2009 through October 3, 2009
2% Cost of Living Adjustment**

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$12,380	\$12,794	\$13,217	\$13,661	\$14,115
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	\$10,806	\$11,163	\$11,534	\$11,913	\$12,313
Police Sergeant	\$9,011	\$9,307	\$9,611	\$9,930	\$10,259

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$7,147	\$7,479	\$7,827	\$8,081	\$8,342	\$8,616	\$8,895

EXHIBIT E

**Regular Monthly Salaries In Effect October 4, 2009 through April 3, 2010
2% Cost of Living Adjustment**

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$12,628	\$13,050	\$13,482	\$13,934	\$14,397
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	\$11,022	\$11,386	\$11,765	\$12,151	\$12,559
Police Sergeant	\$9,191	\$9,493	\$9,804	\$10,128	\$10,464

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$7,290	\$7,629	\$7,984	\$8,243	\$8,509	\$8,788	\$9,073

EXHIBIT F

**Regular Monthly Salaries In Effect April 4, 2010 through October 2, 2010
2% Cost of Living Adjustment**

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$12,880	\$13,311	\$13,751	\$14,213	\$14,685
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	\$11,243	\$11,614	\$12,000	\$12,394	\$12,811
Police Sergeant	\$9,375	\$9,683	\$10,000	\$10,331	\$10,673

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$7,436	\$7,782	\$8,144	\$8,408	\$8,679	\$8,964	\$9,254

EXHIBIT G

**Regular Monthly Salaries In Effect October 3, 2010 through April 2, 2011
2% Cost of Living Adjustment but See Section 11.1.8 for Salary Re-opener**

UNIT E CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$13,138	\$13,577	\$14,026	\$14,497	\$14,979
UNIT F CLASSIFICATIONS					
Police Lieutenant	\$11,468	\$11,846	\$12,240	\$12,642	\$13,067
Police Sergeant	\$9,562	\$9,876	\$10,200	\$10,538	\$10,887

UNIT F CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$7,585	\$7,937	\$8,307	\$8,576	\$8,853	\$9,143	\$9,439

EXHIBIT H

**Regular Monthly Salaries In Effect April 3, 2011 through June 25, 2011
2% Cost of Living Adjustment**

<i>UNIT E</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E
Police Captain	\$13,401	\$13,849	\$14,307	\$14,787	\$15,279
<i>UNIT F</i> CLASSIFICATIONS					
Police Lieutenant	\$11,697	\$12,083	\$12,485	\$12,895	\$13,328
Police Sergeant	\$9,753	\$10,074	\$10,404	\$10,748	\$11,104

<i>UNIT F</i> CLASSIFICATION	Step A	Step B	Step C	Step D	Step E	Step F	Step G
Police Officer	\$7,736	\$8,096	\$8,473	\$8,747	\$9,030	\$9,326	\$9,628

EXHIBIT I**GLOSSARY**

Allocation: The assignment of a single position to the proper class in accordance with the duties performed, and the authority and responsibilities exercised.

Classification (class): A group of positions sufficiently similar in respect to their duties and responsibilities that: (a) the same descriptive title may be used with clarity to designate each position allocated to the class; (b) the same minimum requirements as to education, experience, knowledge, ability and other qualifications may be required of all incumbents; (c) the same tests of fitness may be used to choose qualified employees and, (d) the same schedule of compensation can be made to apply with equity under the same employment conditions.

Career Employee: An employee who is appointed to a position in the competitive service and who has a probationary or permanent appointment with the City of Berkeley.

Continuous Testing: An examination process in which applications are accepted on a continuous basis, not subject to a closing date with a viable list maintained at all times.

Demotion: The movement of an employee from one class to another class having a lower maximum rate of pay.

Domestic Partner: A person residing with and sharing the common necessities of life with a City of Berkeley employee, where both intend to continue this arrangement indefinitely. They are unmarried; at least eighteen (18) years of age; not related by blood closer than would bar marriage in the State of California, and mentally competent to consent to contracts.

Employee: A person who has been legally appointed under the City of Berkeley Personnel Ordinance and the Personnel Rules and Regulations, who is on the City payroll and whose employment has not been terminated and whose position is included in this representation unit.

Flexing of Shifts (aka Offsetting of Overtime): Changing of hours of work to avoid the payment of overtime.

Full-Time: An assignment of forty hours per week; a full-time employee works an assignment of forty hours per week or a combination of assignments totaling forty hours per week.

High Risk Classifications: A group of positions whose duties and responsibilities present: (a) significant probability or chance of injury, damage or loss of life; (b) exposure to risk and; (c) ability to incur the risk.

Impasse: "Impasse" means that the City and the Association have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are so substantial or prolonged that future meetings would be futile.

Jury Duty Period: The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

Lateral Entry: Recruitment and selection status of candidates who have successfully completed P.O.S.T. academy training and meet the minimum requirement for Police Officer-Lateral classification.

Position: A grouping of duties and responsibilities which constitute a single assignment which is in a classification covered by this Memorandum of Understanding.

Promotion: The movement of an employee from one class to another class having a higher maximum rate of pay.

Promotional Examination: An examination for promotion to a class in the competitive service in which participation is limited to current employees with permanent status and/or to former permanent or probationary employees who are on current mandatory reemployment lists of layoff.

Provisional: A career employee who is temporarily serving in a higher level or unclassified position as a temporary assignment, pending examination, classification, or in the absence of the permanent incumbent.

Reclassification: Reallocation of a position from one classification to another classification based upon consideration of the kind and level of assigned duties and responsibilities.

Reemployment: Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 56.7 of the Layoff section in this Understanding.

Regular Hourly Salary: The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours.

Regular Monthly Salary: The base pay for a classification (as included in Exhibit A of this Understanding).

Reinstatement: Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 32.

Rejection (Probation): The separation of any employee from the service before the completion of the probationary period.

Release Time: Paid time off permitted employees, during their scheduled hours of work, to perform Association activities as provided by this Memorandum of Understanding. This paid time off is in addition to the employee paid leave and is subject to the conditions of the applicable sections of this Understanding.

Termination: The separation of an employee from the service of the City. Termination may include death, discharge, layoff, resignation, retirement, and work completion.

Transfer: The movement of any employee from one position to another within the same class in another department or the movement of an employee from one class to another class having a comparable level of duties and responsibilities and the same maximum rate of pay.

Vacation Year: A period that annually commences at the close of the last City pay period for which the payday falls in March. For example, if paychecks were issued on March 27 to pay employees for the pay period running from March 8 until March 21, the next vacation year would commence on March 22.

Y-Rate: An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his or her

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present salary. Such salary shall be designated as a Y-rate and when that employee vacates this position, it shall be filled in accordance with new salary range established. Y-rating shall not apply to employees who are demoted for just cause, including unacceptable level of performance, or as a result of demotion under the provisions of the Layoff policy.

