



Office of the City Manager

CONSENT CALENDAR
September 10, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: David Abel, Acting Director of Human Resources

Subject: Memorandum Agreement: Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association

RECOMMENDATION

Adopt a Resolution approving a new three (3) year Memorandum Agreement (hereinafter referred to as “Agreement”) with the Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association (hereinafter referred to as the “Union”) with a term of June 24, 2012 through June 20, 2015 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new Agreement.

FISCAL IMPACTS OF RECOMMENDATION

There are several provisions in the new Agreement that result in cost savings to the City, both with respect to near term costs and a reduction of long term liabilities. First, there is no cost of living increase during the term of this contract. Additionally, the Agreement eliminates the annual payment of excess sick leave and eliminates the cash-out of accrued sick leave at termination for employees hired on or after July 1, 2013; eliminates the annual payment of excess sick leave for employees hired on or after July 1, 2013; and freezes the medical cash-in-lieu amount to the rate in effect on December 31, 2012. These efforts make progress toward reducing the City’s unfunded liabilities.

The Agreement also provides a modest increase to the Life and Accidental Death & Dismemberment insurance benefit, increasing the employee’s coverage to \$50,000.

The funding for this agreement comes from the General Fund and other special revenue funds. The cost of this labor contract is included in the Fiscal Years 2014 and 2015 Budgets.

CURRENT SITUATION AND ITS EFFECTS

The City's labor contract with the Union expired and was fully terminated as of June 23, 2012. In an effort to reach agreement on a successor Memorandum Agreement, representatives of the City and representatives of the Union held 29 negotiating sessions beginning April 17, 2012. The parties reached a settlement agreement on all outstanding economic and non-economic issues on June 27, 2013. While the labor contract expired and fully terminated on June 23, 2012, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired contract remain in full force and effect until modified through the collective bargaining process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues.

BACKGROUND

The Union represents approximately 270 employees in seven (7) separate representation units. The Union represents employees in career and non-career health, welfare and social service occupations; career and non-career professional nursing classifications; career supervisory library employees; career non-supervisory library employees including all Library Aides; and career and non-career miscellaneous and administrative employees.

The City's philosophy during negotiations with the Union was to follow City Council policies to protect the City's short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

1. Assure that labor organizations and their members are treated fairly and with respect.
2. Negotiate in good faith and within the process established by the parties including honoring the traditional confidentiality of the negotiation process.
3. Negotiate contracts based on a "Total Compensation Package" model (changes in current and future salary, and health and welfare benefits) within the City's overall financial conditions.
4. Any Equity Adjustments to base salary must be included in the overall Total Compensation Package. Council policy has been to establish salary ranges at the median of comparable jurisdictions.
5. Assure that the City's Total Compensation salary and benefit package is competitive in the marketplace, is fair to existing employees, and is competitive with public employees in the Bay Area so that the City is able to recruit and retain quality candidates, particularly in critical classifications.
6. Negotiation of employee benefits should include consideration of uniformity across bargaining units to the extent this is compatible with state law, enhances transparency and is efficient to administer, while at the same time, not resulting

in an overall increase in costs. Consideration of uniform benefits will not be utilized as a peremptory tool to negotiate compensation or benefits as such would be contrary to the spirit and intent of bargaining in good faith.

7. Include sustainability of benefits as part of negotiating considerations.

Major economic provisions of the new labor contract are as follows:

Term	June 24, 2012 through June 20, 2015
Cost of Living Adjustments (COLA)	No COLA for the term of the Agreement through June 20, 2015. The parties agree to reopen Section 10 (Salaries) of the Agreement in the last nine (9) months of Fiscal Year 2015. This reopener will be subject to the normal rules of collective bargaining including applicable impasse, lockout or strike procedures.
Section 20.4: Sick Leave – Accrual; Payment Upon Retirement/Termination; and Annual Payout	Eliminates provision that allows employees hired prior to January 1, 1970 to accrue two (2) days of sick leave. Eliminates provision for employees to receive payment of accumulated sick leave at termination or retirement for employees hired on or after July 1, 2013. And eliminates provision for employees to receive annual payment of excess sick leave for employees hired on or after July 1, 2013.
Section 25: Leave Without Pay	Leave without Pay allowed for benefitted employees who work a minimum of 1040 hours, when the employee or employee’s family member is suffering from serious medical condition.
Section 28.2: Health Insurance Meet and Confer.	Starting no sooner than January 1, 2014, meet and confer on methods to contain or reduce health benefit costs.
Section 28.9: Health Insurance In-Lieu	Effective upon the execution of the Agreement, the City’s health insurance cash-in-lieu payment is frozen at \$532.06 (prorated for part-time employees).
Section 29: Life Insurance	Effective upon the execution of the Agreement, increase life insurance to \$50,000.’
Section 43.16.1 (Rain Gear)	Authorize Rain Gear for Environmental Compliance Specialist; Field Representative assigned to the Solid Waste Division in Public Works; delete Housing Representative.
Section 43.16.2 (Shoe Allowance)	Authorize Shoe Allowance for the Code Enforcement Officer I; Code Enforcement Officer II; Environmental Compliance Specialist; Field Representative assigned to the Solid Waste Division in Public Works.

RATIONALE FOR RECOMMENDATION

Representatives of the City worked within policies set by the City Council for guiding contract negotiations and staff met with the City Council in closed session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City's ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. This settlement is in keeping with City Council's direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Margarita Zamora, Acting Employee Relations Manager, Human Resources, 981-6821

Attachments:

- 1: Resolution
Exhibit A: Memorandum Agreement Between the City of Berkeley and the Service Employees International Union Local 1021 Community Services & Part-Time Recreation Leaders Association

RESOLUTION NO. ##,###-N.S.

MEMORANDUM AGREEMENT: SEIU LOCAL 1021 COMMUNITY SERVICES &
PART-TIME RECREATION LEADERS ASSOCIATION

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association have met and conferred in good faith and have reached agreement on a new Memorandum Agreement (Exhibit A) that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period June 24, 2012 through June 20, 2015 with the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association, including changes in certain benefits retroactive to June 24, 2012 and other changes in other benefits on dates specified in the Memorandum Agreement which is attached hereto, made a part hereof and marked Exhibit A.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum Agreement including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

Exhibit A:

Memorandum Agreement Between the City of Berkeley and Service Employees International Union Local 1021 Community Services & Part-Time Recreation Leaders Association.



Memorandum Agreement

between

City of Berkeley

and

**Service Employees International Union
Local 1021**

**Community Services
&**

**Part-Time Recreation Leaders Association
June 24, 2012 to June 20, 2015**

TABLE OF CONTENTS

ARTICLE 1:	ADMINISTRATION.....	1
SECTION 1:	PREAMBLE.....	1
SECTION 2:	RECOGNIZED EMPLOYEE ORGANIZATION.....	2
	2.2 City Management.....	2
SECTION 3:	NO DISCRIMINATION.....	2
SECTION 4:	UNION SECURITY.....	2
	4.1 Membership in Good Standing.....	2
	4.2 Payment of Dues.....	2
	4.3 Maintenance of Membership for Unit A-1.....	2
	4.4 Agency Shop.....	3
	4.5 Indemnification.....	3
	4.6 Discrimination.....	3
	4.7 Reports.....	3
	4.8 New Hire Information.....	4
	4.9 Orientation Meetings.....	4
	4.10 Elected Official/Steward Leave Without Pay.....	4
	4.11 Union Member Leave.....	4
SECTION 5:	DEDUCTION OF UNION DUES.....	4
SECTION 6:	UNION REPRESENTATIVES.....	5
	6.1 Attendance at Meetings.....	5
	6.2 Negotiations.....	5
	6.3 Notification.....	5
	6.4 Bulletin Boards.....	6
	6.5 Field Representative.....	6
	6.6 Employee Release Time.....	6
	6.7 Employee Witness.....	6
	6.8 List of Representatives.....	6
	6.9 Use of City Facilities.....	6
	6.10 City Manager Monthly Meetings.....	6
	6.11 Agreement Orientation Sessions.....	7
	6.12 Possible Grievance Release Time.....	7
	6.13 Steward Council.....	7
	6.14 Investigatory Meetings.....	7
SECTION 7:	SEPARABILITY OF PROVISIONS.....	7
SECTION 8:	FINALITY OF RECOMMENDATION.....	7
SECTION 9	DURATION.....	8

ARTICLE 2: SALARIES, HOURS OF WORK AND COMPENSATION ISSUES 9

SECTION 10: SALARIES 9

10.2 Confidential Classifications 9
10.3 Hourly Rated Employees in Lieu of CalPERS..... 9
10.4 Salaries..... 9
10.5 Maximum Salary Rate 9
10.6 Step Increase for Unit R-2 Employees..... 10
10.7 Workers' Compensation for Unit R-2 Employees..... 10
10.8 Salary Reductions..... 10
10.9 Exemptions to Salary Reductions 10
10.10 Salary Reduction Held in Abeyance 10
10.11 Y-Rate 10
10.12 Pay Frequency..... 11
10.13 Step Increases..... 11
10.14 End of Year Pay Period 11
10.15 Effective Date of Salary and Benefit Adjustments..... 11
10.16 Equity Studies..... 11
10.17 ICC Differentials..... 11
10.18 Re-Opener 16

SECTION 11: HIGHER CLASSIFICATION AND TEMPORARY APPOINTMENTS ... 16

11.1 Temporary Appointment Duration..... 16
11.2 Back-filing Temporarily Vacated Position 16
11.3 Fringe Benefits for Employees in Temporary Positions 16
11.4 Temporary Vacancy..... 16
11.5 Maximum Consecutive Temporary Appointment 17
11.6 Filling of Positions through Competitive System..... 17
11.7 Working in Higher Classification 17
11.8 Training for Supervisory Position 17
11.9 Notification of Change in Classification Duties and Responsibilities..... 17
11.10 Notification of New Classification 17
11.11 Desk Audits..... 17
11.12 Temporary Appointments Notification..... 18
11.13 Continuous Eligibility..... 18

SECTION 12: CONTRACTING OUT 19

SECTION 13: HOURS AND DAYS OF WORK 19

13.1 Rules 19
13.2 Flexible Work Schedule 19
13.3 Work Week 19
13.4 Lunch and Rest Periods 19
13.5 Sunday and Graveyard Shift..... 19
13.6 Shift Assignments 20
13.7 Library Flex Time 20

SECTION 14: OVERTIME	20
14.1 Overtime	20
14.2 Department Head Discretion.....	20
14.3 Final Compensation.....	20
14.4 Workweek.....	20
14.5 Emergency Call Back	20
14.6 Standby Pay	21
14.7 Compensatory Time Off.....	21
14.8 Natural Disaster/Declared Emergency.....	21
 SECTION 15: SHIFT DIFFERENTIAL	
15.1 Shift Differential	22
15.2 Sunday Shift for Career Library Employees.....	22
15.3 Sunday Shift for R-1 and R-2 Employees	22
 SECTION 16: PREMIUM PAY.....	22
16.1 Library-Supervisory-in-Charge.....	22
16.2 Bilingual Premium Pay.....	22
16.3 Longevity Pay	23
16.4 Senior Information Systems Specialist Educational Incentive..	23
16.5 Recreation Activity Leaders Personal Care Services Differential.....	23
 SECTION 17: PAYROLL ERRORS.....	24
 ARTICLE 3: LEAVES	26
 SECTION 18: VACATION	26
18.1 Entitlement.....	26
18.2 Vacation Approval.....	26
18.3 Accrual.....	26
18.4 Accrual, Use, and Limitations for Employees.....	27
18.5 Effects of Holidays Upon Vacation Leave	27
18.6 Maximum Vacation Accumulation.....	27
18.7 Return from Leave	28
18.8 Computation of Vacation Leave Upon Termination, Extended Military Leave, or Other Extended Leave of Absence Without Pay	28
18.9 Public Health Classifications Vacation Accrual	29
18.10 Mental Health Classifications Vacation Accrual	30
18.11 Library Classifications Vacation Accrual	30
18.12 Vacation Without Pay	30

SECTION 19: HOLIDAYS.....	31
19.1 Recognized Holidays	31
19.2 Floating Holidays	31
19.3 Use of Floating Holidays	31
19.4 Holidays for Employees with Schedules other than Monday through Friday.....	31
19.5 Work on a Holiday	32
19.6 Holiday for Part-Time Employees	32
SECTION 20: SICK LEAVE.....	32
20.1 Eligibility.....	32
20.2 Accrual.....	33
20.3 Part-Time Accrual	33
20.4 Maximum Accumulation.....	33
20.5 Purpose of Sick Leave	34
20.6 Notification	34
20.7 Leave Without Pay.....	35
20.8 Control	35
20.9 Sick Leave Bonus	35
20.10 Voluntary Leave Exchange for Catastrophic Illness.....	35
20.11 401(a) Termination Savings Plan.....	36
SECTION 21: WORKERS' COMPENSATION LEAVE AND SALARY CONTINUATION.....	36
21.1 Workers' Compensation	36
21.2 Salary Continuation	36
21.3 Salary Continuation Calculation (Gross/Net) Pay	37
SECTION 22: BEREAVEMENT LEAVE.....	37
22.1 Benefit and Covered Individuals	37
22.2 Bereavement Leave for Part-Time Employees	37
SECTION 23: MILITARY AND MARITIME LEAVE.....	37
SECTION 24: FAMILY CARE LEAVE.....	38
SECTION 25: LEAVE OF ABSENCE WITHOUT PAY.....	38
25.1 Approval	38
25.2 Right to Return.....	38
25.3 Sabbatical Leave	38
SECTION 26: JURY DUTY LEAVE.....	39
SECTION 27: DOMESTIC VIOLENCE LEAVE.....	39
27.1 Medical Attention	39
27.2 Services	39
27.3 Counseling.....	39
27.4 Safety	40

27.5	Use of Leave.....	40
27.6	Confidentiality	40

ARTICLE 4: HEALTH AND WELFARE BENEFITS..... 41

SECTION 28: HOSPITAL-MEDICAL AND DENTAL COVERAGE.....	41
28.1	Medical Coverage..... 41
28.2	Meet & Confer..... 41
28.3	Health Premium Overpayment Recovery 41
28.4	Dental Coverage..... 41
28.5	Dental Insurance In Lieu Payments 42
28.6	Maintenance of Plans 42
28.7	Notice 42
28.8	Health Insurance In-Lieu Payments:..... 42
28.9	Health Insurance In-Lieu Payments Effective Upon Execution of 2012-2015 Agreement 42
28.10	Effective Date of Benefits 42
28.11	Flexible Spending Account 42
SECTION 29: GROUP LIFE INSURANCE.....	43
SECTION 30: DEPENDENT CARE.....	43
SECTION 31: RETIREE MEDICAL COVERAGE.....	43
31.1	Eligibility..... 43
31.2	Pre Age 65 Retiree Health Insurance 44
31.3	Retiree Benefits for Employees Age 65 and Over 44
31.4	Termination by City of Retiree Medical Benefits 45
31.5	Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55:..... 45
31.6	Employees Retiring with a CalPERS Approved Disability Retirement 45
31.7	City Funding of Retiree Health Benefits 45
SECTION 32: PROBATIONARY PERIOD	46
32.1	Duration 46
32.2	Nine (9) Month Probationary Period 47
32.3	Six (6) Month Probationary Period..... 47
32.4	Extension of Probationary Period for Classifications Covered by Section 32.1 47
32.5	Extension of Probationary Period for Classifications Covered by Section 32.2 48
32.6	Promotion or Provisional Appointment Prior to Completing Probationary Period 48
32.7	Probationary Performance Evaluations 48
32.8	Rejection During Probationary Period..... 48
32.9	Exception to Probationary Period 48

SECTION 33: TRANSFER.....	49
SECTION 34: PROMOTION	49
34.1 Filling of Vacancy.....	49
34.2 Open, Competitive Examination	49
34.3 Interview of City Employee	49
34.4 Promotional Considerations.....	49
34.6 Waiver of Minimum Qualifications.....	50
SECTION 35: FILLING OF VACANCIES	50
SECTION 36: DEMOTION.....	50
SECTION 37: SUSPENSION.....	51
SECTION 38: DISCHARGE.....	51
SECTION 39: RESIGNATION	51
SECTION 40: REINSTATEMENT.....	52
SECTION 41: NOTICE OF TERMINATION, DEMOTION OR SUSPENSION.....	52
ARTICLE 5: GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE	53
SECTION 42: GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE.....	53
42.1 Preamble	53
42.2 Definitions	53
42.3 Grievance Procedure.....	55
42.4 Disciplinary Appeals	60
42.5 General Conditions for Disciplinary Appeals.....	63
ARTICLE 6: MISCELLANEOUS TERMS AND CONDITIONS	64
SECTION 43: GENERAL PROVISIONS	64
43.1 Personal Conduct	64
43.2 Use of Automobiles and Parking.....	64
43.3 Part-Time Employees and Prorated Benefits.....	65
43.4 Annual Performance Evaluations.....	66
43.5 Employee Development and Training Opportunities.....	66
43.6 Educational Leave	66
43.7 Assignments for Temporarily Disabled Employees.....	67

43.8	State Disability Insurance Integration	68
43.9	Health and Safety	69
43.10	Video Display Equipment.....	70
43.11	YMCA Group Membership.....	70
43.12	Internships	71
43.13	License and Registration Renewal	71
43.14	Personnel Files.....	71
43.15	Transit Subsidies	72
43.16	Protective Clothing.....	72
43.17	Crimes Against Employees.....	73
43.18	Legal Representation.....	73

ARTICLE 7: RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS 74

SECTION 44: RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS

44.1	Conversion of Part-Time Recreation Activity Leaders and/or Sports Officials to Full Time Positions	74
44.2	Scheduling of Representation Unit R-1 and Representation Unit R-2 Employees.....	75
44.3	Changes in Work Schedule	76
44.4	Additional Hours	76
44.5	Reduction/Elimination of Representation Unit R-2 Hours	76
44.6	Representation Unit R-2 Additional Compensation.....	77

SECTION 45: R-1 AVAILABILITY TO WORK SCHEDULED HOURS 77

SECTION 46: ATTENDANCE AT MEETINGS 77

46.1	Staff Meetings.....	77
46.2	Center Budget Planning.....	77

SECTION 47: WEATHER CONDITIONS..... 77

47.1	Notification when Conditions Known.....	77
47.2	Notification when Conditions are Unknown	77
47.3	Management Discretion	77

SECTION 48: SUMMER WORK SCHEDULE 78

48.1	Offer of Jobs/Hours.....	78
------	--------------------------	----

SECTION 49: OVERNIGHT EXCURSIONS 78

SECTION 50: LABOR/MANAGEMENT COMMITTEE 78

ARTICLE 8:	RETIREMENT SYSTEM.....	79
SECTION 51:	PUBLIC EMPLOYEES' RETIREMENT SYSTEM.....	79
51.1	Participation	79
51.2	"Classic Employee Definition	79
51.3	"New Members" Definition	79
51.4	CalPERS Retirement Formula for Members as Defined Under the Public Employees' Pension Reform Act of 2013(PEPRA).....	79
51.5	CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e., current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).....	79
51.6	New Members Payment of Employer Paid Member Contribution.....	80
51.7	Optional Benefits	80
SECTION 52:	PUBLIC AGENCY RETIREMENT SYSTEM.....	81
52.1	PARS	81
52.2	Employee's PARS Contributions	81
52.3	Termination from Employment.....	81
SECTION 53:	SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN.....	81
SECTION 54:	INCREASED HOURS	82
SECTION 55:	LIBRARY AIDES.....	82
55.1	Minimum Positions.....	82
55.2	Applicable Provisions.....	82
55.3	Salary Advancement.....	82
55.4	Step Increases	82
ARTICLE 9:	LAYOFF PROCEDURE	83
SECTION 56:	LAYOFF	
56.1	Announcement of Layoff.....	83
56.2	Seniority Service Date	83
56.3	Establishment of Seniority Lists	84
56.4	Employee Retreat Rights/Out Placement	84
56.5	Employee/Union Notification.....	86
56.6	Flexible Placement Program/Out Placement.....	86
56.7	Reemployment List	89
56.8	Reinstatement List	90
56.9	Career-Exempt Employees.....	90
56.10	Appeal Procedures	90
56.11	Reclassification or Reallocation of Positions	91
56.12	Audit.....	91
SIGNATURE PAGE.....		92
EXHIBIT A:	Salary Ranges in Effect from June 24, 2012 through June 209, 2015	94
EXHIBIT B:	Non-Career Employee Provisions (Units G1; G3; and L).....	97

APPENDIX A: Sexual Harassment Policy (October 10, 1986)..... 99

APPENDIX B: EEO Complaint Investigation and Resolution Procedure 101

**APPENDIX C: Administrative Regulation 2.31- Family Care Leave
(Revised June 5, 1995)..... 107**

ARTICLE 1 - ADMINISTRATION

SECTION 1: PREAMBLE

This Memorandum Agreement 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, hereinafter referred to as "the City," in employer-employee relations as provided in Resolution No. 43,397-N.S. adopted by the City Council on October 14, 1969.

Service Employees International Union (SEIU) Local 1021, hereinafter referred to as "the Union", is the recognized employee organization for representation Units G-1 (career and non-career health, welfare and social service occupations), G-3 (career and non-career professional nursing classifications), I-A (career supervisory library employees), I-B (career non-supervisory library employees including all Library Aides), L (career and non-career, miscellaneous and administrative employees), R-1 (career benefited, part-time Recreational) and R-2 (non-benefited, part-time Recreational). The employee positions in the Representation Units referred to above are set forth in Section 6. The Union is recognized as the sole representative of employees in positions assigned to these units.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees whose positions are within Representation Units G-1, G-3, I-A, I-B, L, R-1 and R-2 and have freely exchanged information, opinions and proposals. The parties have endeavored to reach agreement on all matters relating to employment conditions and employer-employee relations. Those provisions of this Memorandum Agreement applicable to non-career employees in Units G-1, G-3, L, R-1 and R-2 are set forth in Exhibit A attached, and are incorporated as part of this Agreement.

Library and Rent Board employees working in classifications covered by this agreement shall have the same terms and conditions of employment as other City employees covered by this Memorandum Agreement except as specifically modified by this agreement.

This Memorandum Agreement shall be presented to the City Council, Rent Board, and Board of Library Trustees as the joint recommendation of the undersigned.

SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION

- 2.1 The Union is the exclusive representative of all employees within Representation Units G-1 (career and non-career health, welfare and social service occupations), G-3 (career and non-career professional nursing classifications), I-A (career supervisory library employees), I-B (career non-supervisory library employees including all Library Aides), L (career and non-career miscellaneous, administrative employees), R-1 (career benefited, part-time Recreational) and R-2 (non-benefited, part-time Recreational) and shall continue to be recognized as such unless the Union is no longer certified as the recognized employee organization for employees in Representation Units G-1, G-3, I-A, I-B, L, R-1 and R-2.
- 2.2 **City Management:** The City management retains all traditional rights and responsibilities for the operation of the City.

SECTION 3: NO DISCRIMINATION

The City and Union agree that they will not discriminate against employees based on race, creed, color, religion, political affiliation, sex, sexual orientation, national origin, disability (including AIDS), age or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to non-discrimination and affirmative action.

SECTION 4: UNION SECURITY

- 4.1 **Membership in Good Standing:** All employees who are, or hereafter voluntarily choose to become, members of the Union shall maintain such membership in good standing as a condition of continued employment.
- 4.2 **Payment of Dues:** Employees in Units G-1, G-3, I-B, L, R-1 and R-2 shall, as a condition of continued employment, be members of the Union or shall pay to the Union an amount of money equal to that paid by the other employees in the appropriate units who are members of the Union. The amount of money paid by the represented unit employees who are not Union members shall be limited to an amount equal to the Union's usual and customary initiation fee and monthly dues. Such payments shall commence on the first of the month following the employee's completion of thirty-one (31) days of employment. Failure to complete the authorization form within thirty-one (31) days after initial date of employment shall result in automatic fee deductions.
- 4.3 **Maintenance of Membership for Unit I-A:** All employees who are in Representation Unit I-A who are now, or hereafter voluntarily choose to become members of the Union, shall maintain such membership in good standing as a condition of continued employment for the duration of this Agreement; provided, however, that withdrawal shall be allowed during a period of not more than sixty (60) days nor less than thirty (30) days prior to the expiration date of the Agreement by sending written notice of withdrawal to

the Union (with a copy to the Director of Human Resources of the City) during said period.

- 4.4 **Agency Shop:** The City recognizes the prerogative of the Union, including its membership and designated units, to determine whether and to whom agency shop shall be applicable. The City further understands that inclusion of Section 4.2. in this Memorandum Agreement as ratified may be subject to change as a result of election(s) provided by law. Within the context of those considerations and based upon ratification of the Memorandum Agreement, the City heretofore will implement Sections 4.2 and 4.3 above.
- 4.5 **Indemnification:** The Union shall indemnify and hold the City harmless from any and all claims, demands, suits, or any other action arising from Section 4 or from Section 5 herein or from compliance with any request for termination of employment under Section 4 or Section 5. The Union 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 Union 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 Section 4.1 and 4.2 and 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 provisions of this Section 4 or Section 5.
- 4.6 **Discrimination:** It is understood and agreed that the City Council retains the right, in its sole discretion, to determine that the Union 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 Union security privilege if, at any time, it determines that the Union is not abiding by the then current Affirmative Action Program, or is discriminating against any individual or classification.
- 4.7 **Reports:** The Human Resources Department shall furnish the Union, on a monthly basis, with the name, social security number, date of hire, salary, classification, work location and home address of all employees who enter the bargaining unit and are subject to this agreement. This shall apply to new hires, returnees from unpaid leaves of more than 30 days, and employees promoted, demoted, or transferred into the bargaining unit. The Human Resources Department shall furnish such employees with information concerning the Union as supplied by the Union.

The City shall furnish the Union, on a monthly basis, with the name, social security number, effective date and reason of employees who terminate their employment with the City or who leave the bargaining unit. In addition, the City shall furnish the Union with the name, social security number, effective date and duration of any employee granted a leave of absence more than 30 days from her/his employment with the City.

A list of all employees in represented classes shall be provided to the Union each month.

- 4.8 **New Hire Information:** The Director of Human Resources or her/his designee shall issue a copy of the Agreement to all probationary and provisional employees entering the City's work force on the date of hire, or promotion.

The City shall print the Agreement and have it ready for distribution within 90 days of final ratification. The City shall provide each permanent, probationary and provisional employee in the bargaining unit with a copy of the new Agreement within 100 days of final ratification.

- 4.9 **Orientation Meetings:** A representative of the Union will be given sixty (60) minutes of Union release time per quarter per calendar year to provide information on the Union to employees represented by the Union. The Union shall notify the City of the date, time and location of the quarterly orientation meetings at least one (1) month in advance of the meetings to ensure that departmental managers are able to release employees to attend quarterly orientation meetings. The City shall notify the Union of new employees when they are hired. The Union will provide the City with the names of those employees the Union expects to attend the quarterly meetings at least two (2) weeks in advance of the meeting. Employees attending orientation will also be given sixty (60) minutes of Union release time to attend the scheduled orientation.
- 4.10 **Elected Official/Steward Leave Without Pay:** A leave of absence without pay requested in writing at least 30 days in advance shall be granted at the request of an employee who is an elected official or steward of the Union for the purpose of employee's attending a training course sponsored by the Union. By mutual agreement the 30-day time period may be waived. The maximum duration of such leave shall not exceed two (2) consecutive full payroll periods in a calendar year. Conditional upon prior approval of the course content and upon receipt of certification of completion, the City shall reimburse the employee for up to one half of his/her time spent in such training at the employee's permanent rate of pay, not to exceed twenty hours of paid leave in a calendar year.
- 4.11 **Union Member Leave:** A leave of absence may be permitted to members of the unit to participate in union projects or internships. Such leave shall be at the discretion of management. The Union shall reimburse the City for salary and associated benefits. The typical duration of these leaves shall be for one to four weeks.

SECTION 5: DEDUCTION OF UNION DUES

The City shall deduct, once monthly, the regular and periodic Union dues, voluntary COPE contributions, service fees, or insurance premiums as may be specified by the Union under the authority of an authorization card signed by the employee. Employees may change union insurance deductions no more than twice in any one (1) year period for each policy. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

Employees shall receive and complete at the time of employment an authorization to deduct membership or agency fees as a condition of continued employment. Failure to complete the authorization form within 31 calendar days of employment shall result in automatic agency fee deductions.

The Union shall provide the City at least 2 months notice of any change in dues deduction and dues procedures.

SECTION 6: UNION REPRESENTATIVES

6.1 **Attendance at Meetings:** The City shall allow representatives of the Union 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 Memorandum Agreements 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 Agreement in the future, subject to the conditions set forth in Sections 6.2 and 6.3.

All release time shall be recorded on time sheets and time cards, with the appropriate code.

Union representatives' workload will be adjusted on the basis of approved release time. Where required, a department head may request budget replacement for this workload adjustment to provide for completion of the authorized work plan.

6.2 **Negotiations:** With respect to the negotiation --process to develop a subsequent Agreement or revision to this Agreement, ten (10) Union representatives shall be the maximum number of employees who will be allowed concurrent time off. In disputes as defined in Section 6.1, the maximum number allowed concurrent time off shall be two (2), in addition to the grievant. For all other matters, where the participation of the Union is agreed to, the Union may designate one representative from each Unit up to a maximum of six (6).

6.3 **Notification:** Union representatives 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. In emergency situations which require the immediate attention of said representative, the representative shall notify a supervisor, who is out of the bargaining unit, prior to leaving work. In all cases the Union representative shall notify the supervisor upon his/her return to work. It is understood that representatives will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

The representatives shall inform their supervisor of their location during release time.

- 6.4 **Bulletin Boards:** The City shall provide bulletin board space for Union use at each of its work centers where covered employees are regularly employed.
- 6.5 **Field Representative:** The Union's field representative shall be permitted to enter work areas where its members are employed during normal working hours for the purpose of ascertaining whether the terms of this Agreement are being observed, to observe job conditions under which its members are employed, and to assist in adjusting grievances. The Union field representative shall notify the department head or other designated supervisor at the earliest possible time, and at least upon entering such work areas, and shall not interfere with or interrupt the conduct of work in such areas. The Union field representative may confer with employees, including designated Union representatives or stewards.
- 6.6 **Employee Release Time:** Reasonable release time without loss of compensation will be provided to an employee for the purpose of appearing at a grievance proceeding when he or she is the principal in such grievance proceeding, provided that the notice requirements set forth in Section 6.3 are met.
- 6.7 **Employee Witness:** An employee called as a witness in a grievance proceeding shall be given reasonable release time without loss of compensation, provided that his/her release from duty will not adversely affect the operation of his/her department or unit. When such employees desire release time, they must comply with the notice requirements set forth in Section 6.3.
- 6.8 **List of Representatives:** The Union will provide the City with a list of all Union representatives, stewards, and field representatives, and such list shall be kept current.
- 6.9 **Use of City Facilities:** The Union shall be allowed to utilize City facilities for regular meetings on the same basis as every other non-City organization. In accordance with the policy, the Union will be allowed to utilize the Milvia employee's lounge for its monthly meetings subject to whatever conditions are imposed upon all other non-City organizations and so long as there is no conflict with City activities or use of that facility. Should the City, in its discretion, have to discontinue the Union's regular use of the Milvia facility, it will notify the Union. The Union will be allowed to utilize the Central Library Staff Room for meetings so long as the Director of Library Services or her/his designee determines there is no conflict with City/Library activities or use of that facility. The Union will be allowed to utilize a recreation facility room selected by the City for meetings so long as the Recreation Program Director or his or her designee determines there is no conflict with City / Recreation activities or use of that facility. The Union shall notify the City in advance of the dates and times of its meetings.
- 6.10 **City Manager Monthly Meetings:** Monthly meetings shall be held between the Union and the City Manager, the Executive Director of the Rent Board and the Director of Library Services. Release time shall be granted for up to eight (8) Union officials. Agendas for such meetings shall be set one week in advance between representatives of the Union and the City Manager the Executive Director of the Rent Board and the Director of Library Services or their designees. Meetings within departments may be held at the request of either the department head or the Union. The number of attendees and frequency of meeting may be adjusted by mutual agreement.

- 6.11 **Agreement Orientation Sessions:** The Union and the City will conduct orientation sessions on the Agreement at least once during the term of the contract. A special session for stewards and supervisors shall also be provided. The Union will designate two representatives to work with Human Resources to do the orientations.
- 6.12 **Possible Grievance Release Time:** The City will provide release time up to one (1) hour to Union members to meet with a Union representative for the purpose of discussing a possible grievance. Such time may be extended by mutual agreement between the City and the Union. The member shall contact the Chapter President or Chief Steward or other designees who will then contact the supervisor/department director to notify the City of the necessity for the meeting. The release time shall be granted within 24 hours of the request subject to operational necessity.
- 6.13 **Steward Council:** The City will provide release time for Union Stewards to attend monthly Steward Council meetings and training sessions. Each Steward shall receive a maximum of four (4) hours per month to attend the meeting. A maximum of twenty-five (25) Stewards shall be released to attend the meeting. The Chapter President or Chief Steward will notify Human Resources in writing at least two (2) weeks in advance with the names of the Stewards attending the monthly meeting. In event there are conflicts in a work schedules that may create problems with a designated Steward attending the meeting, the Chapter President or Chief Steward will work with the affected department supervisor to schedule Steward attendance in a manner which minimizes the disruption of the work.
- 6.14 **Investigatory Meetings:** Unless otherwise stated, only two (2) Union Representatives shall be allowed time off to attend investigatory meetings.

SECTION 7: SEPARABILITY OF PROVISIONS

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

Upon such nullification, at the written request of either party, the City and the Union will meet and confer in a good-faith effort to reach mutual agreement on substitute provisions for such parts or provisions rendered or declared illegal or unenforceable.

SECTION 8: FINALITY OF RECOMMENDATIONS

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the union or the City Manager prior to June 20, 2015; provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent.

SECTION 9: DURATION

This Agreement covers the period of June 24, 2012 through June 20, 2015. This Agreement shall be effective upon ratification by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect to and including June 20, 2015. New negotiations shall commence no later than sixty (60) days prior to the expiration date of this Agreement. This Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 20, 2015.

ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

SECTION 10: SALARIES

- 10.1. Salaries rates for the period of June 24, 2012 through June 20, 2015, for all classes of positions in Units G-1, G-3, I-A, I-B, L, R-1 and R-2 shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibit "A" and attached hereto and made part hereof -
- 10.2 **Confidential Classifications:** When any of the classifications named in Exhibit "A" of this Agreement are assigned to the following department/divisions, they are designated as confidential and are not represented by a recognized employee organization: City Manager - Administration, City Attorney, Human Resources, and Library - Administration.
- 10.3 **Hourly Rated Employees In Lieu of CalPERS:** The Salary Resolution shall provide that hourly-rated employees working in represented classes will receive an additional 7% in-lieu of CalPERS.
- 10.4 **Salaries:** 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 Exhibit "A" of this Agreement as provided in Section 10.1 et seq. and considering Section 10.3. The minimum rate for the class shall apply to employees upon original appointment to the position, unless the City Manager or his or her designee approves appointment at a higher step. The reasons for such decision shall be sent to the Union upon request. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" of this Agreement as provided in Section 10.1 et seq. and considering Section 10.3, and employed or working on a part-time basis, shall be paid in proportion to the time worked and described in their appointment.
- 10.5 **Maximum Salary Rate:** 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, provided that step increases within the salary range shall occur on the anniversary date of the appointment.

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 consecutive hours. If the employee is off the payroll, one hundred sixty consecutive hours or more the total amount of time off shall be made up before the employee shall be entitled to such pay.

10.6 Step Increase for Unit R-2 Employees: When an employee in Unit R-2 has worked one thousand forty (1040) satisfactory hours without terminating his or her service with the City or being terminated from his or her service with the City, such employee shall be moved to the next higher salary step within his or her present classification on the first day of the payroll period following completion of said one thousand forty (1040) hours.

Non-career Unit R-2 employees who become Career Unit R-1 employees will receive their step increase following their appointment to career status after completing the 1040 hours. Subsequently, they will receive step increases on an annual basis from the date of the above increase.

Employees shall receive no more than one (1) step increase in any year.

10.7 Workers' Compensation for Unit R-2 Employees: An R-2 employee who is entitled to Workers' Compensation by reason of a job-related injury shall receive up to twelve (12) hours per week credit for time lost by reason of such injury for purposes of the one thousand forty (1040) hours progression only. Lesser credit shall be given to employees who average fewer than twelve (12) hours of work per week based on such actual average.

10.8 Salary Reductions: Salary reductions may be made as a result of an employee's diminished service value, as a 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 position rate established for the class to which the reduced employee's position is allocated. Notice of the reduction shall be given by the employer not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall receive a written statement of the reasons for such action.

10.9 Exemptions to Salary Reductions: 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 10.6, 10.8 or 41.

10.10 Salary Reduction Held in Abeyance: The parties agree that during the contract period from June 24, 2012 through June 20, 2015, the City will not exercise the rights granted in sections 10.8 and 10.9. 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 20, 2015.

10.11 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/her present salary. Such salary shall be designated as a "Y" rate. When an employee on a Y rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 10.4.

- 10.12 **Pay Frequency:** Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday 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. The City will initiate a program for electronic deposit of payroll checks with banks and credit unions whenever possible.
- 10.13 **Step Increases:** Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).
- 10.14 **End of Year Pay Period:** For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last pay period nearest March 31.
- 10.15 **Effective Date of Salary and Benefit Adjustments:** The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of a pay period, unless otherwise mutually agreed.
- 10.16 **Equity Studies:** A list of 13 comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Concord, Contra Costa County, Daly City, Fremont, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Mateo, and Santa Clara County. If at least eight matches are not found for a classification after polling this entire list other jurisdictions may be added as required by agreement between the parties. For Health classifications only, Pasadena, Marin County, Sonoma County and Solano County will be surveyed.
- 10.17 **ICC Differentials**
- 10.17.1 **Payment of Differential for Obtaining and Maintaining ICC Certifications:** Effective November 20, 1994, an employee in one of the classifications named below shall receive a differential to base salary for obtaining and maintaining a valid certification(s) issued by the International Code Council (ICC) or equivalent as determined by the building official. In order to obtain and maintain the differential to base salary, the employee will submit the original certification to the appropriate departmental supervisor who will verify the certification and return it to the employee.
- The duration of the differential will correspond to the duration of the ICC certification or equivalent as determined by the building official. The employee is responsible for submitting documentation of renewal of the appropriate ICC certification or equivalent as determined by the building official in order to maintain the differential.
- Payment of the differential will be effective at the beginning of the first pay period after the employee submits the ICC certification or equivalent as determined by the building official for verification. The employee shall receive the certification based on the specific certification or equivalent as determined by the building official regardless of the order the certification is obtained.

- 10.17.2 **Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) and Building Inspector:** An employee in the classification of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) or Building Inspector shall receive a maximum differential to base salary of four percent (4%) under this section.
- 10.17.2.1 ICC Electrical Inspection Certificate or equivalent as determined by the building official - 3%
- 10.17.2.1.1 Employees currently receiving a four percent (4%) differential for possession of a valid ICC Electrical Inspection Certificate or equivalent as determined by the building official will continue to receive the four percent (4%) differential for as long as the remain in either the classification of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, or Building Inspector and continue to possess a valid ICC Electrical Inspection Certificate or equivalent as determined by the building official.
- 10.17.2.2 ICC Mechanical Inspection Certificate - 1%
- 10.17.2.2.1 Employees in the classification of Senior Building Plans Examiner or Building Plans Examiner currently receiving a one and one-half percent (1½%) differential for possession of a valid ICC Mechanical Inspection Certificate or equivalent as determined by the building official will continue to receive the one and one-half percent (1½%) differential for as long as the remain in the classification of Senior Building Plans Examiner or Building Plans Examiner and continue to possess a valid ICC Mechanical Inspection Certificate or equivalent as determined by the building official.
- 10.17.2.3 ICC Plumbing Inspection Certificate or equivalent as determined by the building official - 1%
- 10.17.2.4 ICC Accessibility Inspector/Plans Examiner Certificate or equivalent as determined by the building official - 1%
- 10.17.2.5 ICC Plans Examiner Certificate or equivalent as determined by the building official - 1%
- 10.17.3 The City will pay the cost of the ICC or equivalent examinations for each new certificate listed above that the employee obtains and for the cost of the successful recertification.

- 10.17.4 After December 1, 1998, once the employee has reached the maximum four percent (4%) or equivalent differential payment limit, the City will pay an employee a one-time bonus of \$600 for each new certificate or equivalent as determined by the building official listed above that the employee has attained through examination. This provision will only apply to ICC certificates or equivalent as determined by the building official obtained while in the employ of the City of Berkeley. If an employee moves to a classification other than those listed above, the differential to base salary discussed in this section shall terminate and the certification differential shall not be used as a part of base salary for the purpose of future salary adjustments. If the International Code Council or equivalent certifying agency as determined by the building official changes the requirements of any of the certifications listed above and this change affects an employee in one of the classifications listed above, the parties agree to meet and confer on the impact of the change but only to the extent of the change promulgated by ICC or the equivalent certifying agency.
- 10.17.5 **Housing Inspector and Permit Specialist:** An employee in the classification of Housing Inspector or Permit Specialist shall receive a maximum differential to base salary of eight percent (8%) under this section.
- 10.17.5.1 ICC or equivalent as determined by the building official Building Inspection Certificate - 4%
 - 10.17.5.2 ICC or equivalent as determined by the building official Building Plans Examiner Certificate - 4%
 - 10.17.5.3 ICC or equivalent as determined by the building official Electrical Inspection Certificate - 3%
 - 10.17.5.4 ICC or equivalent as determined by the building official Mechanical Inspection Certificate - 1%
 - 10.17.5.5 ICC or equivalent as determined by the building official Plumbing Inspection Certificate - 1%
 - 10.17.5.6 ICC or equivalent as determined by the building official Accessibility Inspector/Plans Examiner Certificate - 1%
 - 10.17.5.7 ICC or equivalent as determined by the building official Plans Examiner Certificate - 1%
 - 10.17.5.8 For the classification of Housing Inspector - ICC or equivalent as determined by the building official Rehabilitation and Conservation Inspection Certificate - 2%

- 10.17.5.9 Effective June 29, 2008, for the classification of Permit Specialist - ICC or equivalent as determined by the building official certificate as a Permit Technician Certificate – 4%.
- 10.17.6 **Housing Inspector (Certified):** An employee in the classification of Housing Inspector (Certified) shall receive a maximum differential to base salary of four percent (4%) under this section.
- 10.17.6.1 ICC or equivalent as determined by the building official Electrical Inspection Certificate - 3%
- 10.17.6.2 ICC or equivalent as determined by the building official Mechanical Inspection Certificate - 1%
- 10.17.6.3 ICC or equivalent as determined by the building official Plumbing Inspection Certificate - 1%
- 10.17.6.4 ICC or equivalent as determined by the building official Accessibility Inspector/Plans Examiner Certificate - 1%
- 10.17.6.5 ICC or equivalent as determined by the building official Light Commercial Combination Inspection Certificate - 1%
- 10.17.6.6 ICC or equivalent as determined by the building official Rehabilitation and Conservation Inspection Certificate - 2%
- 10.17.6.7 ICC or equivalent as determined by the building official Housing Inspection Certificate – 2%
- 10.17.7 **Payment of Examinations:** The City will pay the cost of the ICC or equivalent examinations for each new certificate listed above that the employee obtains and for the cost of the successful recertification.
- 10.17.8 **Bonus:** After December 1, 1998, once the employee has reached the maximum four percent (4%) ICC or equivalent differential payment limit, the City will pay an employee a one-time bonus of \$600 for each new ICC or equivalent certificate listed above that the employee has attained through examination. This provision will only apply to ICC or equivalent certificates obtained while in the employ of the City of Berkeley.

If an employee moves to a classification other than those listed above, the differential to base salary discussed in this section shall terminate and the certification differential shall not be used as a part of base salary for the purpose of future salary adjustments. If the International Code Council or equivalent certifying agency as determined by the building official changes the requirements of any of the certifications listed above and this change affects an employee in one of the classifications listed above, the parties agree to meet and confer on the impact of the change but only to the extent of the change promulgated by ICC or equivalent certifying agency.

10.17.9 Fire and Life Safety Plans Examiner and Senior Building Plans Examiner: Effective June 29, 2008, an employee in either the classification of Fire and Life Safety Plans Examiner or Senior Building Plans Examiner shall receive a differential of four percent (4%) to base salary who possess and maintain a valid ICC or equivalent as determined by the building official certificate as a Fire Plans Examiner Certificate.

10.17.10 Hazardous Materials Specialist II:

- 10.17.10.1 Employees who are hired or promoted into the classification of Hazardous Materials Specialist II on or after September 1, 2005 must first obtain and maintain all necessary certifications and any other International Code Council (ICC) certifications, or equivalent certifications, as required to perform their job responsibilities and as a condition of continued employment.
- 10.17.10.2 Incumbent Hazardous Materials Specialist II employees who do not possess valid ICC certifications for programs specified in Chapter 6.11 of Division 20 of the California Health and Safety Code are not required to comply with the terms and conditions in the preceding paragraph. Effective September 1, 2005, Hazardous Materials Specialist II's, who successfully obtain valid certification as a California Underground Storage Tank (UST) Inspector or future certifications, must maintain the certifications as a condition of continued employment.
- 10.17.10.3 A salary differential for Hazardous Materials Specialist II of two percent (2.0%) of the base rate will be paid to all employees who possess valid certificates necessary for conducting their job.
- 10.17.10.4 New state-mandated certifications may be added as necessary. Hazardous Materials Specialist II's who do not receive the new certification will no longer receive the above 2.0% differential.
- 10.17.10.5 The classification specification for Hazardous Materials Specialist II is modified to reflect the requirement that possession and maintenance of all certifications necessary for conducting inspections specified in Chapter 6.11 of Division 20 of the California Health and Safety Code and storm water inspections are a condition of continued employment.
- 10.17.10.6 The City will move to terminate an employee who fails to maintain the ICC certifications. Hazardous Materials Specialist II's who fail to maintain the certifications will be given reasonable time to recertify.

- 10.18 **Re-Opener:** The parties agree to reopen Section 10 of the Agreement in the last nine (9) months of Fiscal Year 2015. This reopener will be subject to the normal rules of collective bargaining including applicable impasse, lockout or strike procedures.

SECTION 11: HIGHER CLASSIFICATION AND TEMPORARY APPOINTMENTS

- 11.1 **Temporary Appointment Duration:** Except as provided in Section 11.2, any temporary appointment made shall be limited to six (6) months. However, temporary appointments may be made or extended to a limit of twenty-five (25) months with the mutual agreement of the parties. If the parties do not mutually agree to extend a temporary beyond six (6) months to a maximum of twenty-five months, such extension may be approved by the City Council after review by the Personnel Board for extension up to twenty-five (25) months. However, temporary appointments resulting from workers compensation, parental leave, or other authorized leaves of absence, shall be limited to the term of the leave but not in any case exceed twenty-five (25) months.
- 11.2 **Backfilling Temporarily Vacated Position:** If a career employee -is temporarily assigned to another career position, the position temporarily vacated by the career employee may be backfilled on a temporary provisional basis for the period the career employee works -temporarily assigned to another career position. -
- 11.3 **Fringe Benefits for Employees in Temporary Positions:** Non-career employees appointed to temporary positions may be eligible for fringe benefits if the duration of the temporary appointment is expected to be six (6) months or longer and funding is available. Career employees temporarily filling a vacant position at the same or higher salary level shall continue to receive fringe benefits. Employees on mandatory reemployment lists as a result of layoffs who are reemployed to fill temporary positions, who had career status at the time of their layoff, shall resume receiving the level of health, dental and life insurance benefits paid by the City at the time of their lay-off in addition to prorated leave benefits. Such employees who are reemployed for periods of 180 days or more shall additionally resume career status.
- 11.4 **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 appointment from that list. Provided there are City employee applicants meeting the minimum qualifications, temporary vacancies of greater than 90 days shall be filled by existing City of Berkeley employees from existing eligibility and/or transfer lists except as otherwise provided in Section 56 (Layoff Procedure). When the employee completes the temporary appointment, the employee would then return to his/her former classification at the appropriate pay level. The employee shall suffer no loss of seniority in his/her classification as a result of filling a temporary vacancy. The City does not guarantee a permanent promotion to the employee working in a temporary appointment. Employees shall indicate availability for temporary appointments on an employment application. Employees may update their existing application forms to indicate their availability for future temporary appointments.

- 11.5 **Maximum Consecutive Temporary Appointment:** An employee may hold more than one type of temporary appointment within a calendar year. Consecutive appointments of a non-career employee as provided in Sections 11.1 and 11.2 may not exceed thirty-six (36) months.
- 11.6 **Filling of Positions through Competitive System:** Any position, regardless of its funding source, shall be filled through the competitive system if the position is expected to last one year or more.
- 11.7 **Working in Higher Classification:** The Department Heads will work all employees within their career classification. The departments may assign an employee to work temporarily in a higher classification. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one week shall be approved in advance by the City Manager, Director of Library Services, or their designees. To be eligible for temporary assignment to a higher classification, the employee must work a minimum of one day, meet all of the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five per cent (5%) increase in salary. Excluded from this provision are all employees whose job classifications regularly include assuming administrative and/or supervisory responsibilities in the absence of another, e.g. Assistant Department Heads.
- 11.8 **Training for Supervisory Position:** For training purposes, employees not meeting all of the minimum qualifications for a supervisory position may be temporarily assigned for a minimum of one week (five consecutive working days), to perform the duties of supervisor and will receive a five percent (5%) increase in their current salary.
- 11.9 **Notification of Change in Classification Duties and Responsibilities:** Whenever a need for a change in the duties and responsibilities of any position occurs in which matters of classification may be involved, the Department Head in whose department the position is located shall notify the City Manager through the Human Resources Department of that fact and the Union will be so advised by the Director of Human Resources.
- 11.10 **Notification of New Classification:** The City shall notify the Union and upon written request discuss in advance the establishment of new career classifications if the work is related to work performed by classifications in Units G-1, G-3, I-A, I-B, L, R-1 and R-2. This procedure shall also be applicable to the reclassification of positions presently in such units.
- 11.11 **Desk Audits:** Upon request of the employee or his/her Department Head, the Human Resources Department shall, within ninety (90) days if possible, audit the position of the employee to determine if he/she is working out of classification. If the audit determines that the employee has been working in the higher class, the employee shall receive back pay to the date of the beginning of the closest pay period that the position description questionnaire was received by the employee's supervisor. In the event the City reclassifies a position from a lower level classification to a higher level

classification, an incumbent occupying such position shall be reclassified without competitive examination provided s/he has performed the duties of the new class for one year and has not received an unsatisfactory evaluation during that period. All other employees shall pass an examination for the higher class and shall serve the normal probationary period. There will be a maximum of one (1) audit in a twelve (12) month period unless the employee is assigned to a different job in which case there may be a second audit in a twelve (12) month period. This section is not applicable to salary equity reviews when the assignment fits within the existing classification.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion. Upon request, the City will provide the Union with a written yearly report of all audits requested and performed. The City shall provide, upon request, for information only, the status (expiration date) of all existing eligible lists for Local 1021 and Local 1 classifications.

11.12 Temporary Appointments Notification: It is agreed that temporary appointments, pending the establishment of an eligibility list, will be made expeditiously. Temporary appointees will be advised that they are hired on a temporary basis and will be provided with a handbook setting forth the terms of their employment.

11.13 Continuous Eligibility

11.13.1 For Career Employees: Any employee maintaining permanent or probationary status in any classification may qualify for continuous eligibility for classifications in which his/her name appears on the eligible list. Employees who qualify for continuous eligibility will remain on the eligible list in their relative standing without being required to compete in subsequent examinations. Employees will be required to submit to the Human Resources Department an updated application within the announced filing period for a specific position. Continuous eligibility is based on persons meeting the minimum requirements for the classification. Continuous eligibility does not preclude the employee from taking subsequent tests to attempt to improve his or her standing.

At such time as new eligibility standards are introduced, employees will be notified by the Human Resources Department that they must pass a new examination in order to remain on the eligible list. Continuous eligibility shall be administered by the Director of Human Resources according to procedures established by the Director of Human Resources.

11.13.2 For Temporary/Intermittent Employees: Any employee continuously appointed as a temporary/intermittent employee from an eligible list shall remain eligible for probationary appointment to career positions within that classification for the duration of the temporary/intermittent employment without renewing eligibility on subsequent eligible lists.

SECTION 12: CONTRACTING OUT

For the purpose of preserving work and job opportunities for employees covered by this agreement, the employer agrees that no work or service of the kind, nature, or type presently performed by members of this bargaining unit shall be subcontracted prior to meeting and conferring with the Union in an effort to find alternatives.

The Union shall be provided notice of any proposed contracts with outside vendors for services with the City. Additionally, the City shall provide the Union with notice of a Request for Proposals for outside services. Such notice shall be provided when the Contract Management System or Request for Proposal number is assigned. Notification shall be provided through an electronic notification system.

SECTION 13: HOURS AND DAYS OF WORK

13.1 **Rules:** Hours and days of work shall be governed by rules established by the City Manager. At the present time, for a full-time employee, the normal workday shall consist of eight (8) hours, and the normal workweek shall consist of forty (40) hours, unless otherwise provided.

13.2 **Flexible Work Schedule:** Employees may request variable working hours such as, but not limited to, 10 hours a day, four days a week, job sharing, and working under a flexible arrangement. Flexible scheduling may also include the option of a one-half hour lunch break. This option shall be available in all departments in the City and will be considered seriously if all City functions within units can be accomplished through flexible scheduling.

13.3 **Work Week:** The workweek will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday except in those programs with six or seven day operations.

13.4 **Lunch and Rest Periods:** As approved by the Department Head, lunch periods shall be a minimum of one-half hour to a maximum of one hour. Employees shall receive a rest break of fifteen (15) minutes during each four-hour shift. For each additional hour of work time, the employee shall receive an additional five (5) minutes of rest break.

Whereas, for R-1 and R-2 employees, lunch and/or rest breaks cannot be taken because of program constraints, the employee will be paid for the time worked during such lunch and rest periods. Time paid for rest breaks will not be counted as regular scheduled work hours, i.e., if an employee works from 9:00 a.m. to 4:00 p.m., the employee should be paid from 9:00 a.m. to 4:30 p.m.

13.5 **Sunday and Graveyard Shifts:** Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 15, shall be for eight (8) consecutive hours including up to one-half (½) hour for lunch.

- 13.6 **Shift Assignments:** Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority. Within a Library department or unit, shift assignments shall be made on a rotational basis so that the least desirable shifts can be shared as equally as possible.
- 13.7 **Library Flex Time:** Employees who are working during hours of the Board of Library Trustees (BOLT) meeting may request flex time consistent with Library policy as set forth in Library Administrative Regulation 2.11 to attend the meeting. The Library shall use its best efforts to grant such requests from at least one (1) branch library employee for each meeting.

SECTION 14: OVERTIME

Employees required to work in excess of their basic workweek shall be compensated for such overtime services as follows:

- 14.1 **Overtime:** The straight-time workweek shall consist of forty (40) hours, five (5) days per week, unless otherwise agreed between the employee and the City. If the employee is required to work in excess of forty (40) hours in any one work week or eight (8) hours in any one workday, the employee shall be paid at the rate of time and one-half the employee's regular rate for all hours over eight (8) in a day or forty (40) in a week, except that if the employee works over twelve (12) hours in a workday, the employee shall be paid at the rate of two times the employee's regular rate of pay. These provisions shall not result in pyramiding of overtime and shall not apply to employees who voluntarily work under a flex-schedule arrangement which requires more than eight (8) hours per day. Leave without pay shall not be considered hours worked for the purpose of computing overtime compensation.
- 14.2 **Department Head Discretion:** 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 Head.
- 14.3 **Final Compensation:** In the event that an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime.
- 14.4 **Workweek:** 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.
- 14.5 **Emergency Call Back:** Employees who are called into work outside their normal work schedule shall be paid overtime compensation for actual time worked. The minimum time for which such overtime compensation shall be paid shall be four (4) hours. If such overtime work is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

14.6 **Standby Pay:** Standby service shall mean being available for service outside of regular working hours at any time when called. Employees may be assigned to standby service and the City shall compensate employees thus assigned on an hourly rate as provided below. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided for herein. An employee will not be assigned to standby service if the employee is on vacation leave, sick leave, compensatory time off, off work on a floating holiday, on workers' compensation leave or other leave, or when on a modified duty assignment. Effective June 29, 2008, the hourly rate for standby service is as follows:

Days Of The Week	Hourly Rate Of Pay
Monday, Tuesday, Wednesday, Thursday, Friday	\$3.74 per hour
Saturday, Sunday, or any Holiday named in Sections 19.1.1 through 19.1.13 regardless of the day of the week	\$4.97 per hour

The Standby Service Hourly Rate of Pay will increase according to the following schedule:

Date	Percentage Increase
June 28, 2009	3%
June 27, 2010	3%
June 26, 2011	3%

14.7 **Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the Department Head. Compensatory Time Off cannot be used in the same pay period it is accrued. 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 the service. As used herein, sixty (60) hours of compensatory time is equal to ninety (90) hours of time off work. In the event of layoff, termination, or transfer the employee shall be compensated for all compensatory time accrued but still unused.

14.8 **Natural Disaster/Declared Emergency:** If an emergency is declared by the City, county, state or national authority:

14.8.1 If an employee is called outside of normal working hours, the employee gets time and one half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).

- 14.8.2 Thereafter: the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one half (1½) the normal rate of pay but no shift differential on those hours above eight.

SECTION 15: SHIFT DIFFERENTIAL

- 15.1 **Shift Differential:** Employees who regularly work on a full shift of eight (8) hours or more, which includes four (4) or more hours between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and one-half percent (7½%) of their monthly salary per month, and those who regularly work a full shift of eight (8) hours or more, which includes more than four (4) hours between the hours of 12:00 midnight and 7:00 a.m., shall be paid their regular salary plus ten per cent (10%) of their monthly salary per month, provided that in the case of any employee who is regularly assigned to night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.
- 15.2 **Sunday Shift for Career Library Employees:** For career library (including Library Aides) only, employees who work a shift entirely on Sunday of less than 8 hours shall receive a differential of ten per cent (10%) of their regular hourly rate for those hours actually worked.
- 15.3 **Sunday Shift for R-1 and R-2 Employees:** R-1 and R-2 employees (excepting Sports Officials) who are required to work a shift entirely on Sunday of less than eight (8) hours (or for special events such as civic festival on a Sunday) shall receive a differential of ten percent (10%) of their regular hourly rate for those hours actually worked.

SECTION 16: PREMIUM PAY

- 16.1 **Library-Supervisor-In-Charge:** When a non-supervisory library employee is required to be the "Library-Supervisor-In-Charge" at the Central Library, s/he shall receive a differential of 5% above the regular hourly wage for all time in which such work is performed.
- 16.2 **Bilingual Premium Pay**
- 16.2.1 **Routinely and Consistently:** An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 16.2.2 **Occasionally:** An employee assigned occasionally to provide non-English language services, including Braille and sign language, will receive a Bilingual Premium Pay Differential of 2%. The criteria for receiving the differential will be: a) when assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 16.2.3 **Competency:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 16.3 **Longevity Pay:** Effective June 28, 2009, employees completing twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25th) 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.
- 16.4 **Senior Information Systems Specialist Educational Incentive:** An employee in the Senior Information Systems Specialist classification who obtains and maintains a valid Cisco Certified Network Associate (CCNA) certificate shall receive a two percent (2%) differential to his or her base salary. An employee in the Senior Information Systems Specialist classification who obtains and maintains a valid Microsoft Certified Systems Engineer (MCSE) certificate shall receive a four percent (4%) differential to his or her base salary. The specific certifications referenced in this Section (CCNA and MCSE) are subject to change as modifications to the City's technical infrastructure change. This salary differential shall be reported to CalPERS as Educational Incentive Pay.
- 16.5 **Recreation Activity Leaders Personal Care Services Differential:** Recreation Activity Leaders assigned to work with disabled children in the Inclusion Program and who provide personal care services (i.e., toileting, etc.) to those children shall receive a six and one-half percent (6.5%) differential for those hours worked in the program. The differential shall be reported to CalPERS as Hazard Premium Special Assignment Pay.

The classification specification for Recreation Activity Leader will be modified to include personal care as a duty to which employees may be assigned. The Union shall be provided copies of the proposed change to the classification specification prior to implementation.

SECTION 17: 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 after they are brought to the attention of the Auditor's Department. If the employee is paid less than 80% of base salary as a result of an underpayment in the then-current pay period, the City shall process the underpayment within three business days after notification to the departmental payroll clerk and approval of the supervisor. All other underpayment adjustments will be processed on the next pay check.

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. Before a repayment schedule is implemented the affected employee shall be given an opportunity to discuss the schedule of repayment and to request an adjustment to the repayment schedule as a needed and reasonable modification. In the event that (1) the employee does not respond within 10 working days of receiving written notice of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 20 working days of the employee receiving written notice of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule consistent with the requirements of this section. Factors considered in determining whether a requested modification of a repayment schedule is reasonable 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.

Generally, overpayment shall be recaptured at least at the rate at which the overpayment occurred. Overpayment shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except (1) by permission of the affected employee, or (2) if the repayment amount per pay period would otherwise be less than five percent (5%) of gross base salary each pay period, or, (3) the overpayment was of \$99 or less, in which case it must be recouped in one lump sum. However, should an employee with a repayment schedule leave the employ of the City before repaying the City the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the City. Where an employee requests and the City concludes that s/he has justified a modified repayment schedule, the City may, in its sole discretion, permit exceptions to these standards.

The City and the Union agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages, except that the City shall not attempt to recover overpayments which would be barred by a four year statute of limitations in a court action for their recovery. However, once a repayment schedule is implemented, the City will

2013-2015 Memorandum Agreement

City of Berkeley

SEIU Local 1021 Community Services & PTRLA

retain the right to recover the full amount of the overpayments covered by the schedule, and the limitations period for those overpayments shall be tolled for the duration of the repayment schedule.

Nothing in this policy shall prevent the City from taking such other or additional action, such as a lawsuit, as is appropriate and necessary to recover overpayments to employees.

ARTICLE 3 - LEAVES

SECTION 18: VACATION

18.1 **Entitlement:** All employees who have worked with the City six (6) months or more and have worked half-time or more shall be entitled to use vacation leave (Library Aides: see Section 55).

18.2 **Vacation Approval:** The times during the calendar year at which an employee shall take vacation shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees in Units G-1, G-3, L, and R-1 working in the same classifications within a division shall be given preference of vacation time by seniority. If the City cannot allow the vacation that the employee requested, the employee, with the Department Head's approval (if the service permits), may take vacation at another mutually agreed upon time during the same calendar year. If the requirements of the service are such that a Department Head cannot permit an employee within the department to take an annual vacation leave, or any part of such leave within a particular calendar year, the City Manager/Director of Library Services may permit the employee to take the deferred vacation during the following year.

With advance supervisory approval, vacations may be taken in increments of one (1) hour.

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation; subject to review and comment by the Union.

18.3 **Accrual:** Employees shall be entitled to vacation leave as follows (except as provided in Sections 18.4, 18.5, 18.9, 18.10, 18.11, and 18.12 below).

Years of Service	Authorize Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of service)	Vacation Leave Credits (in hours earned per month of service)
First through third years of service	2 work weeks	0.833	6.667
Fourth through eleventh years of service	3 work weeks	1.25	10
Twelfth through seventeenth years of service	4 work weeks	1.667	13.333
Eighteenth through twenty-fourth years of service	5 work weeks	2.083	16.667
Twenty-fifth and subsequent years of service	6 work weeks	2.5	20

- 18.4 **Accrual, Use, and Limitations for Employees:** Each employee, during that portion of the calendar year in which the employee was originally appointed and during the next succeeding calendar year, shall be entitled to vacation leave credits at the rate of .833 work days for each calendar month of service.
- 18.4.1 Employees shall be entitled to pro-rata vacation leave credits for each hour the employee either works or is paid. An employee who is on unpaid status shall not accrue vacation benefits for the period the employee is not working and is not receiving pay.
- 18.4.2 During the first two calendar years of employment, employees shall be entitled to take 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. After two years of service, employees may request, and upon approval, take up to a maximum of two weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.
- 18.4.3 For an employee who has been on leave of absence without pay for a total of six (6) months or more or who has left employment and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), and six (6) weeks' rate.
- 18.4.4 For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.
- 18.5 **Effect of Holidays Upon Vacation Leave:** In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly. The provisions of this Section shall not apply to those positions in which holidays, due to the necessities of public health and safety, are normal working days.
- 18.6 **Maximum Vacation Accumulation:** Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof, at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 18.2. Accumulated vacation may not be used immediately prior to retirement in order to extend the date of retirement, but shall instead be paid out in full upon retirement.

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of

this Agreement, the City will provide the Union and Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the City has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours.

18.7 Return from 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 the City service, to a prorated vacation based upon the total years of service with the City and upon the total actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 18.

18.8 Computation of Vacation Leave Upon Termination, Extended Military Leave or Other Extended Leave of Absence Without Pay: If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his/her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his/her estate shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits as the case may be.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee or his/her estate shall be paid for the excess of the credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee or his/her estate shall reimburse the City on the same basis.

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

The employee's monthly salary at date of termination, extended military leave or other extended leave of absence without pay, divided by thirty (30) and multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

At the time of termination, extended military leave or other extended leave of absence without pay, or as soon thereafter as possible, payment for excess of vacation leave credits shall be made in a lump sum. An employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section, and receive a lump sum payment for the balance of vacation leave credits, if any. An employee or his/her estate shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.

18.9 **Public Health Classifications Vacation Accrual:** The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 18.9 shall be entitled to vacation leave as noted herein: -

Job Code	Title
95070	Community Health Worker
95370	Community Health Worker Specialist
34050	Licensed Vocational Nurse
24700	Mid-Level Practitioner
24020	Public Health Nurse
24030	Registered Nurse
95390	Senior Community Health Worker Specialist
24010	Senior Public Health Nurse

Years of Service	Authorize Annual Vacation (in work weeks)
1 st through 2 nd years of service	2 work weeks
3 rd through 5 th years of service	3 work weeks
6 th through 17 th years of service	4 work weeks
18 th through 24 th years of service	5 work weeks
25 th and subsequent years of service	6 work weeks

18.10 Mental Health Classifications Vacation Accrual: The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 18.10 shall be entitled to vacation leave as noted herein:

<u>Job Code</u>	<u>Title</u>
94040	Assistant Mental Health Clinician
24110	Clinical Psychologist
24450	Mental Health Clinician
24520	Mental Health Clinician II
24460	Psychiatric Social Worker I
24410	Psychiatric Social Worker II
24530	Senior Mental Health Clinician
24130	Senior Psychiatric Social Worker

Years of Service	Authorize Annual Vacation (in work weeks)
1 st through 4 th years of service	2 work weeks
5 th through 17 th years of service	4 work weeks
18 th through 24 th years of service	5 work weeks
25 th and subsequent years of service	6 work weeks

18.11 Library Classifications Vacation Accrual: The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 18.11 shall be entitled to vacation leave as noted herein:--

<u>Job Code</u>	<u>Title</u>
26070	Automation Librarian
26050	Librarian I
26040	Librarian II
26060	Senior Librarian
26030	Supervising Librarian

Years of Service	Authorize Annual Vacation (in work weeks)
1 st through 11 th years of service	3 work weeks
12 th through 17 th years of service	4 work weeks
18 th through 24 th years of service	5 work weeks
25 th and subsequent years of service	6 work weeks

18.12 Vacation Without Pay: Upon written request to the Department Head, employees will be granted up to seven (7) consecutive calendar days without pay to be used as additional vacation, provided that such request may be denied at the discretion of the Department Head by reason of adverse staffing impact (including workload considerations).

SECTION 19: HOLIDAYS

19.1 Recognized Holidays: Recognized holidays for career employees in Representation Units G-1, G-3, I-A, I-B, L, and R-1 shall be:

- 19.1.1 New Year's Day
- 19.1.2 Martin Luther King Jr.'s Birthday - observed on the third Monday in January
- 19.1.3 Lincoln's Birthday - deferred to Christmas Eve Day for Units I-A and I-B only
- 19.1.4 Washington's Birthday - observed on the third Monday in February
- 19.1.5 Malcolm X's Birthday - observed on the Monday or Friday nearest May 19
- 19.1.6 Memorial Day - observed on the last Monday in May
- 19.1.7 Independence Day
- 19.1.8 Labor Day - observed on the first Monday in September
- 19.1.9 Indigenous Peoples Day - observed on the second Monday in October
- 19.1.10 Veterans Day
- 19.1.11 Thanksgiving Day
- 19.1.12 The day after Thanksgiving Day
- 19.1.13 Christmas Day

19.2 Floating Holidays: Employees in the competitive service who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. In the first calendar year of employment, employees shall be granted pro rata floating holidays as follows:

Hired January 1 - April 30	3 days
Hired May 1 - August 31	2 days
Hired September 1 - December 31	1 day

19.3 Use of Floating Holidays: The days selected shall be by mutual agreement between the employee and the Department Head (or his/her designee). Employees may take floating holidays in one hour increments. In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have one (1) or two (2) or three (3) days added to his/her accrued vacation time.

19.4 Holidays for Employees with Schedules other than Monday through Friday: Employees whose workweek is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday, and the procedure for allowing these holidays shall be established by the City Manager. The provisions of this Section 19.4 are not applicable to intermittent employees.

- 19.5 **Work on a Holiday:** An employee required to work on any day which is a holiday for employees whose work is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon the employee's regular monthly salary, or shall be granted compensatory time off in any amount equal to one and one-half (1½) times the number of hours worked on such holiday. The hours worked on such a holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday also includes overtime, as provided in Section 14 of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 14, or as holiday pay under this Section 19, but will not be made under both Sections.

- 19.6 **Holiday for Part-Time Employees:** Regularly scheduled part-time employees working 20 hours or more per week shall be entitled to holiday pay on a pro-rata basis (Library Aides see Section 55).

In the event that a holiday occurs on the employee's regular scheduled day off, the employee shall receive holiday pay on a pro-rata basis or the employee, at his/her option, shall be permitted to accrue the hours for use as paid time off. Such hours shall be reported as Holiday Compensatory Time Straight (Payroll Code HC). The amount of leave accrued under this section shall be limited to 20 hours. An employee shall notify his or her supervisor at least two weeks prior to the holiday regarding the selection of pay or the accrual of hours. Scheduling of accumulated time off shall be coordinated between the employee and his/her supervisor.

In the event that a holiday occurs on a day the employee is normally scheduled to work, the employee will receive holiday pay on a pro-rata basis and, if the employee's normal hours for that day exceed the holiday pay, the employee will be provided the option of working additional hours in the workweek or using accumulated paid time off to equal his/her normal schedule. The employees will notify his or her supervisor at least two (2) weeks prior to the holiday regarding his or her choice to work or use accumulated time off.

SECTION 20: SICK LEAVE

- 20.1 **Eligibility:** Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Section 20.2 and 20.7, inclusive.

20.2 **Accrual:** Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service. For the purposes of Section 20, a month of service shall mean thirty (30) consecutive calendar days during which the employee is working or receiving pay in the case of employees working on a full-time or part-time basis, and shall mean 173 hours of work in the case of employees working on an intermittent basis.

20.3 **Part-Time Accrual:** 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.

Intermittent: 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.

20.4 **Maximum Accumulation:** Such sick leave as provided in Section 20.2, when not used shall be cumulative. The accumulated unused period of sick leave shall not exceed two hundred (200) working days regardless of the length of service. When the maximum has been reached, and thereafter part of the maximum has been used, the number of accumulated sick days may be brought back up to maximum at the applicable rate provided in Section 20.2.

Payment Upon Retirement/Termination 20-28 Years of Benefitted Service: All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013. For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with at least twenty (20) and not more than twenty-eight (28) years of service shall be entitled to receive payment at retirement or termination with a vested pension of 38% of accumulated sick leave but not, in any event, more than their stated fractional amount of the two-hundred (200) day maximum accumulation. Employees who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days.

Permanent Disability: Any employee hired on or before June 30, 2013 and retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the City shall be entitled to receive payment at retirement for thirty-eight per cent (38%) of accumulated unused sick leave days, but not, in any event, more than thirty-eight per cent (38%) of the two hundred (200) day maximum accumulation. Employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight years of benefitted service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days.

Annual Sick Leave Payout: Employees hired on or before June 30, 2013 who regularly work one-half ($\frac{1}{2}$) time or more and who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third ($\frac{1}{3}$) of the first twelve (12) days of sick leave, or if earning sick leave at the rate of two (2) working days for each month of service, one-third ($\frac{1}{3}$) of the first twenty-four (24) days of sick leave, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar-year basis, and payment shall be made not later than January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days, and will not be made for any fraction of a day.

Sick Leave After Reemployment: 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.

20.5 **Purpose of Sick Leave:** Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of sickness or disability of the employee or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days (120 hours prorated for part-time benefited employees) in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse or domestic partner, son, daughter, parent, grandparent living in the employee's household. In addition, grandchildren in families where no parents are present who reside in the employee's household. A dependent who resides in the employee's household other than those listed in the preceding sentence are also considered to be immediate family members under this Section.

Effect of Outside Employment on Sick Leave: No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because such injury is made by the 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 the other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

20.6 **Notification:** Except in emergencies and where reliable reporting procedures are in place, in order to receive compensation while absent on sick leave, the employee shall notify his/her supervisor within one (1) hour after the time set for beginning his/her daily duties or as may be approved by the Department Head.

Leave for non-emergency doctor's appointments shall be requested in advance.

The City may require that employees give notice, where reliable reporting procedures are in place, prior to the beginning of their scheduled shift in order to be eligible for sick leave. This requirement shall be applied equitably.

The City, the Library and the Rent Board may require that employees give notice, where reliable reporting procedures are in place, prior to the beginning of their scheduled shift in order to be eligible for sick leave. This requirement shall be applied equitably.

- 20.7 **Leave Without Pay:** An employee who is granted a leave of absence without pay and is otherwise off the payroll shall not earn sick leave credit.
- 20.8 **Control:** The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.
- 20.9 **Sick Leave Bonus:** For every six (6) months of perfect sick leave attendance after July 1, 1987, the employee will receive eight (8) hours of bonus time. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payments.
- 20.10 **Voluntary Leave Exchange for Catastrophic Illness**
- 20.10.1 **Recovery Transfer Time:** Recovery Time Transfer is that system whereby an employee grants time from earned compensatory 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/Director of Library Services/Executive Director of the Rent Board. 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. The City may transfer an employee receiving Recovery Transfer Time into another position in the same classification.
- 20.10.2 **Vacation and Compensatory Time:** An employee may donate earned compensatory time off or vacation leave.

20.10.3 **Sick Leave:** An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:

20.10.3.1 The employee donating sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the City shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.

20.10.3.1.1 An employee may donate compensatory time off and/or vacation leave time; or

20.10.3.2.2 An employee may donate up to forty (40) hours of sick leave per calendar year and be charged hour per hour for each hour of sick leave donated; or,

20.10.3.2.3 After the first forty (40) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Transfer Time.

20.11 **401(a) Termination Savings Plan:** The City has established an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement and has received a Determination Letter and a Private Letter Ruling on the plan and trust agreement. This provides employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

SECTION 21: WORKERS' COMPENSATION LEAVE AND SALARY CONTINUATION

21.1 **Workers' Compensation:** Workers' compensation payments shall commence, in accordance with State law, on the fourth day following injury, unless the employee is hospitalized, ("Hospitalized" meaning confinement), in which case payment commences on the first day of injury. Employees whose disability requires absence of more than 21 days will receive retroactive compensation, both pay and leave, for the three-day waiting period. Employees shall be on administrative leave with pay for the initial three (3) days. Such leave shall not be deducted from the employee's leave balance.

21.2 **Salary Continuation:** Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation.

- 21.3 **Salary Continuation Calculation (Gross/Net) Pay:** The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employee's combination of disability payments and salary continuation payments below employee's pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

SECTION 22: BEREAVEMENT LEAVE

- 22.1 **Benefit and Covered Individuals:** In the case of death within the immediate family of an employee, the employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service, for a period not to exceed three (3) working days, or, in the case of a funeral outside 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, 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, grandchildren, aunt, uncle, or dependent.

Bereavement Leave shall not be charged against vacation or sick leave to which an employee may be entitled, but shall be in addition thereto. With approval of the Department Head, additional Bereavement Leave to adjust to the death may be granted. All accrued vacation (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

In special cases, with the approval of the Department Head, the City Manager or in the Library, the Director of Library Services 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. This leave shall not be unreasonably denied.

- 22.2 **Bereavement Leave for Part-Time Employees:** An employee working on a part-time basis shall be entitled to use bereavement leave only on a pro rata basis.

SECTION 23: 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.

SECTION 24: FAMILY CARE LEAVE

The City's Family Care Leave policy, as of June 1995, is contained in Administrative Regulation (A.R.) 2.4 (attached as Appendix C). The Union will be notified of any revisions to A.R. 2.4.

SECTION 25: LEAVE OF ABSENCE WITHOUT PAY

- 25.1 **Approval:** Upon request of the employee, a Department Head may grant to an employee within his/her department leave of absence without pay for a period not to exceed thirty (30) working days. No leave without pay shall be granted for more than thirty (30) working days except upon the written request of an employee and approval of the City Manager or his or her designated representative or Director of Library Services for Library employees. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discipline up to and including discharge.
- 25.1.1 In the event of illness, an employee must exhaust all available sick leave prior to receiving authorization for leave without pay.
- 25.1.2 The City shall not unreasonably deny a request for medical leave as Authorized Leave Without Pay for Part-Time benefitted employees who work or are compensated for a minimum of 1,040 hours, when the employee is suffering from a serious medical condition or must care for a family member with a serious medical condition.
- 25.1.3. 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.
- 25.1.4. Accrual of sick leave credits and/or vacation benefits for an employee on leave without pay shall be as provided in Sections 18 and 20.
- 25.2 **Right to Return:** An employee shall have the right to return to their classification upon return from an approved leave without pay.
- 25.3 **Sabbatical Leave:** After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay of up to six (6) months. Sabbatical leave is not intended to be used for the six-month period immediately prior to retirement. Such leave may be granted by the appropriate authority upon the recommendation of the employee's department head but such leave shall not be unreasonably denied. However, the department head will deny sabbatical leave requests for the period immediately prior to retirement. There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurance shall be paid by the City for the duration of an approved Sabbatical Leave.

SECTION 26: JURY DUTY LEAVE

An employee who is called or required to serve as a juror shall be entitled to be absent from duties or service with the City with pay during the period of such service or while necessarily being present in court as a result of such call, provided the employee provides proof of such call. The employee will keep any payment received for jury service including mileage reimbursement. Employees are required to submit a written proof of jury duty service issued by the Court Clerk.

On dates when required to be physically present at a court facility for jury service, an employee shall be entitled to be absent from work with pay, whether or not hours of jury service on that date correlate exactly with scheduled work hours. The employee shall be responsible for notifying his or her supervisor of impending jury service as soon as possible and for providing proof of attendance at the court to his or her supervisor.

SECTION 27: DOMESTIC VIOLENCE LEAVE

The City will comply with the provisions of California Labor Code Section 230(c), which provides that victims of domestic violence, as defined in Section 6211 of the Family Code, may take time off from work to obtain or attempt to obtain relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a domestic violence victim or his or her child. The City will comply with the provisions of California Labor Code Section 230.1, which provides that an employee who is a victim of domestic violence, as defined in Section 6211 of the Family Code, will not be discharged or discriminated or retaliated against for taking time off from work to attend to any of the following:

- 27.1 **Medical Attention:** To seek medical attention for injuries caused by domestic violence.
- 27.2 **Services:** To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence.
- 27.3 **Counseling:** To obtain psychological counseling related to an experience of domestic violence.

- 27.4 **Safety:** To participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.
- 27.5 **Use of Leave:** The employee may use vacation leave, floating holiday time or compensatory time off for the purposes described above. The employee will give his or her supervisor reasonable advance notice of his or her intention to take Domestic Violence Leave unless advance notice is not feasible. When an unscheduled absence occurs, the City will not take action against the employee if the employee, within a reasonable time after the absence, provides a certification to his or her supervisor. The certification will be sufficient in the form of any of the following:
- 27.5.1 A police report indicating the employee was a victim of domestic violence.
 - 27.5.2 A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee has appeared in court.
 - 27.5.3 Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.
- 27.6 **Confidentiality:** To the extent allowed by law, the City shall maintain the confidentiality of any employee requesting domestic violence release time.

ARTICLE 4 - HEALTH AND WELFARE BENEFITS

SECTION 28: HOSPITAL-MEDICAL AND DENTAL COVERAGE

28.1 **Medical Coverage:** The City shall pay for the cost of health insurance coverage for employees, spouse/domestic partner and dependents who have such coverage under any group health insurance plan authorized by the City Council, regardless of the funding source for their position. The maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two party, or family) regardless of the City sponsored health plan selected by the employee. The present level of the health plan benefits described above shall be maintained at City expense.

Domestic Partnership Taxation: If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

Part-Time Employees: Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

28.2 **Meet & Confer:** The Union agrees to meet and confer with the City, commencing no sooner than January 1, 2014, in good faith following a request from either party, on methods to contain or reduce the City health benefit costs, including but not limited to a new and/or replacement health plan. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lockout procedure.

28.3 **Health Premium Overpayment Recovery:** If the City under deducts an employee's medical co-payment, the amount owed by the employee shall be paid back in monthly increments by the same amount as the undercharge, over the same number of months, unless the employee agrees to an alternative arrangement.

Dependent Coverage: The City agrees to extend all medical, dental and orthodontia benefit coverages to dependents of City employees up to the date of their 26th birthday.

28.4 **Dental Coverage:** The City shall provide a dental care program for employees. The Dental Program shall be maintained at City expense, to provide 90% co-insurance for the employee and employee's dependents, for the duration of this Agreement. Effective January 1, 1995, the Dental Program shall be improved at City expense to increase the lifetime orthodontic coverage from \$1,000 to \$2,000 and to increase the Dental Program annual coverage from \$1,000 to \$2,000. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

- 28.5 **Dental Insurance In-Lieu Payments:** For those employees who show proof of alternate dental insurance coverage, the City will compensate the employee \$61.64 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount through the term of this Agreement.
- 28.6 **Maintenance of Plans:** In the absence of agreement between the City Manager and the Union to effect a new program, the City agrees to maintain the present hospital-medical and dental plans for the duration of this Agreement as specified above.
- Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for such change. The final determination of insurance carriers shall be in the sole discretion of the City.
- 28.7 **Notice:** The City shall give advance notice to any employee who resigns, is terminated or is on a leave of absence, as to what is necessary to keep the Health Plan in force without a break in coverage.
- 28.8 **Health Insurance In-Lieu Payments:** Employees who show proof of alternate medical coverage shall be compensated with an in-lieu payment at the single Kaiser rate. Any library employee entitled to the actual cost in-lieu benefit prior to December 31, 1987 will maintain that benefit as long as s/he continuously exercises it. Effective upon ratification of the 2008 Memorandum Agreement, Library employees who continue to receive the actual cash in lieu benefit shall have their benefit amount frozen at the amount in effect as of July 1, 2008. This amount shall remain in effect until such time as their in-lieu payment equals the amount of the Kaiser single rate or the employee resigns/retires or the employee elects to receive benefits, whichever occurs first.
- 28.9 **Health Insurance In-Lieu Payments Effective Upon Execution of 2012-2015 Agreement:** Effective with the execution of the 2012 through 2015 Agreement, for employees who show proof of alternate medical coverage, the City will compensate the employee \$532.06 per month, prorated for less than full-time benefitted employees. This benefit shall be frozen at this amount through the term of this Agreement.
- 28.10 **Effective Date of Benefits:** New medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.
- 28.11 **Flexible Spending Account:** The City shall establish an Internal Revenue Code Section 125 Flexible Spending Account that allows an employee to elect pre-tax deductions from salary for the purpose of paying allowable medical expenses. Such plan shall be established no later than November 1, 2008.

SECTION 29: GROUP LIFE INSURANCE

The City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$25,000.00, which shall include a standard accidental death and dismemberment provision of a like amount.

Effective with the execution of the 2012 through 2015 Agreement, the City shall increase the term life insurance to \$50,000 for each employee that shall include the standard accidental death and dismemberment provision of a like amount.

Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the last calendar month in a pay status.

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.

SECTION 30: DEPENDENT CARE

The City has established a Dependent Care Plan under Internal Revenue Code Sections 125 and 129 to allow employees to designate a specific amount of salary, consistent with applicable law, to be redirected to pay for dependent care costs prior to withholding of taxes.

SECTION 31: RETIREE MEDICAL COVERAGE

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this section on June 28, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in subsection 31.7.

31.1 Eligibility: An employee is eligible for the retiree health insurance coverage set forth in subsection 31.2 below if he/she meets all the following criteria:

31.1.1 retires on or after June 28, 1998,

31.1.2 is vested with CalPERS,

31.1.3 has at least eight (8) years of CalPERS qualifying service with the City,

31.1.4 is at least age 55.

- 31.2 **Pre Age 65 Retiree Health Insurance:** Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his/her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

Years of CalPERS Qualifying Service	Percent of City Contribution
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he/she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 31.3 **Retiree Benefits for Employees Age 65 and Over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his/her eligibility for the retiree medical benefits set forth in subsection 31.2 ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the

Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

- 31.4 **Termination by City of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this section.
- 31.5 **Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in subsection 31.2 when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.
- 31.6 **Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 31.2 when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.
- 31.7 **City Funding of Retiree Health Benefit:** City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

Effective with the 1998-2002 Memorandum Agreement, the retiree medical benefit was funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of that Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, except for employees in Representation Unit R-1, an additional charge of 0.25% of payroll was charged each year in the final four years of the 2002-2008 Agreement so that contributions are at 2% in the final year of that Agreement. The purpose of that 1% increase in payroll contribution was to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium

Assistance Plan is \$77 effective July 7, 2002 for all post 65 retirees formally represented by the union as well as future retirees.

Effective July 1, 2008, for eligible retirees between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 31.2. Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 31.2. Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 31.2.

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.

SECTION 32: PROBATIONARY PERIOD

32.1 **Duration:** Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of six (6) months (1040 hours) of actual service for full-time employees, and six (6) calendar months for part-time employees, exclusive of all leave and light duty, and shall be completed within a one (1) year period. The probationary period may be extended as provided in Section 32.4 and 32.5. Probationary employees who are granted military leaves of absence 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 32.1 shall be interpreted to preclude the City from establishing new classifications which may require a probationary period of more than six (6) months.

32.2 Nine (9) Month Probationary Period: The probationary period for employees hired in one of the following classifications shall be nine (9) months except as provided in Section 32.3 and may be extended as provided in Section 32.5.

- 32.2.1 Applications Programmer Analyst II (for employees hired on or after July 1, 2008)
- 32.2.2 Architect
- 32.2.3 Auditor II
- 32.2.4 Central Library Circulation Supervisor
- 32.2.5 Community Development Project Coordinator
- 32.2.6 Hazardous Materials Specialist II
- 32.2.7 Landscape Architect
- 32.2.8 Landscape Architect (Registered)
- 32.2.9 Library Literacy Program Coordinator
- 32.2.10 Library Materials Preparation Specialist
- 32.2.11 Library Special Services Coordinator
- 32.2.12 Senior Community Health Specialist
- 32.2.13 Senior Environmental Health Specialist
- 32.2.14 Senior Field Investigator
- 32.2.15 Senior Health Management Analyst
- 32.2.16 Senior Information Systems Specialist
- 32.2.17 Senior Librarian
- 32.2.18 Senior Mental Health Clinician
- 32.2.19 Senior Planner
- 32.2.20 Senior Psychiatric Social Worker
- 32.2.21 Senior Public Health Nurse
- 32.2.22 Supervising Librarian
- 32.2.23 Supervising Library Assistant

32.3 Six (6) Month Probationary Period: For the promotional appointment of a career employee to a non-supervisory position that is part of the normal promotional ladder for that position, the probationary period shall be six (6) months except as provided in Section 32.4. No position shall have a longer probationary period than the probationary period applicable to the position that supervises that position.

32.4 Extension of Probationary Period for Classifications Covered by Section 32.1: For employees hired into positions covered under Section 32.1 the Department head may extend the probationary period during the fifth or sixth month of a six (6) month probationary period from six (6) to nine (9) months provided that written probationary period evaluations have been given to the employee and filed with the Director of Human Resources no later than forty-five (45) days after the second and fourth months and these evaluations include statements of where the employee's performance needed improvement or which essential duties of the position the supervisor had not yet been able to evaluate.

- 32.5 Extension of Probationary Period for Classifications Covered by Section 32.2:** For employees hired into positions covered under Section 32.2, the Department head may extend the probationary period during the seventh or eighth month of a nine (9) month probationary period from nine (9) to twelve (12) months provided that written probationary period evaluations have been given to the employee and filed with the Director of Human Resources no later than forty-five (45) days after the third and sixth months and these evaluations include statements of where the employee's performance needed improvement or which essential duties of the position the supervisor had not yet been able to evaluate.
- 32.6 Promotion or Provisional Appointment Prior to Completing Probationary Period:** Unless applying for a closed examination, an employee does not have to complete the probationary period as a prerequisite for promotion. 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.
- 32.7 Probationary Performance Evaluations:** The City shall give probationary employees written, bi-monthly, probationary period evaluations in order to advise the employee of their performance. If the service of the probationary employee has been satisfactory to the Department Head, the Department Head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer 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/Board of Library Trustees that the employee be discharged. The provisions of this section shall in no way limit the rights of the City under Section 32.8.
- 32.8 Rejection During Probationary Period:** During the probationary period, an employee may be discharged at any time without right of appeal or hearing in any manner, except that appeal may be had in accordance with Section 42 (Grievance and Disciplinary Appeal Procedure), if it is alleged that the discharge was in violation of Section 3 (No Discrimination). 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.
- 32.9 Exception to Probationary Period:** Employees reclassified as a result of a desk audit shall not be subjected to a new probationary period provided the employee has performed those duties for one year or more and has not received an unsatisfactory evaluation during that period.

SECTION 33: TRANSFER

The Human Resources Department shall maintain a list of career employees who are interested in transfer. Prior to filling a vacancy with a new (probationary) employee, the Department Head shall consider qualified employees on the transfer list. 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.

Prior to outside recruiting, vacancies will be announced for two (2) weeks by notices in ***Berkeley Matters***, on bulletin boards and by notice to departments.

SECTION 34: PROMOTION

- 34.1 **Filling of Vacancy:** 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 promotion list established. Consistent with City of Berkeley Personnel Rules, each candidate for promotion must be either a permanent employee in the competitive service or a former permanent employee on an active mandatory layoff Reemployment List and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit.
- 34.2 **Open, Competitive Examination:** If, in the opinion of the City Manager, or for Library positions the Director of Library Services, or for Rent Board positions the Executive Director of the Rent Board, 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 valid promotional list for the higher position, from which the vacancy could be filled, then the City Manager, or for Library positions the Director of Library Services, or for Rent Board positions the Executive Director of the Rent Board, 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.
- 34.3 **Interview of City Employee:** A City employee who is on a closed promotional or an open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps s/he may take to increase her/his competitive standing for future promotional opportunities.
- 34.4 **Promotional Considerations:** 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, ability, and seniority.

- 34.5 Employees concerned with promotion should also refer to Sections 11.4, 11.5, 11.7, 11.9, 11.11, 43.4, 43.5, 43.6 and 43.12.
- 34.6 **Waiver of Minimum Qualifications:** If in the opinion of the City Manager, the City is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or the substitution of related experience and education may be made in promotional examinations, 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 one year, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates her/his on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one year to allow the employee time to demonstrate development of the necessary job knowledge and skills.

SECTION 35: FILLING OF VACANCIES

All career and temporary vacancies of 90 days or more shall be announced in ***Berkeley Matters***, on bulletin boards and by notice to departments, and a copy of ***Berkeley Matters*** shall be made available to all employees.

SECTION 36: DEMOTION

The City Manager (or Board of Library Trustees) may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for just cause. 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.

Notice of the demotion shall be given the employee no later than thirty (30) days prior to the effective date of demotion and a copy of said notice shall be simultaneously filed with the Director of Human Resources and the Union. Said notice shall include the reasons for the action.

An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

Upon the 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/her other former position without further examination whenever such position is again to be filled.

SECTION 37: SUSPENSION

The City Manager may suspend an employee from his/her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days. No employee shall be penalized by suspension for more than thirty (30) calendar days in any one year period.

A Department Head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately in writing to the City Manager and the Union.

Any suspension will be postponed until the City Manager level is concluded in the grievance/disciplinary appeal procedure.

An employee who the Department Head determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.

SECTION 38: DISCHARGE

An employee may be discharged at any time by the City Manager or the Director of Library Services for employees of the Library. If the probationary period has been completed, then such discharge must be for just cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action. Said written statement shall be provided simultaneously to the Union.

SECTION 39: RESIGNATION

An employee wishing to leave the competitive service in good standing shall file with the Department Head, 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 Department Head 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 Department Head immediately.

The City will discontinue use of the "would not recommend rehire" box on transaction forms.

SECTION 40: REINSTATEMENT

A permanent or probationary employee who has resigned with a good record may be reinstated within three (3) 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 three (3) years.

An employee who is reinstated under this Section who has completed probation in the classification to which the employee is being reinstated shall not serve a probationary period on reinstatement. An employee who is reinstated under this Section who has not completed probation in the classification to which the employee is being reinstated shall be required to serve a new probationary period on reinstatement. The duration of the probationary period determined by the classification and the provisions of Section 32 of this Agreement.

SECTION 41: NOTICE OF TERMINATION, DEMOTION OR SUSPENSION

Employees who are to be demoted, suspended or discharged for just cause shall be given written notice of such intended action, including the reasons therefore, and shall be afforded the opportunity for an informal hearing in accordance with procedures established by the City. A copy of such written notices shall be sent simultaneously to the Union.

ARTICLE 5 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

SECTION 42: GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

42.1 Preamble

- 42.1.1 The City and the Union will make every effort to create a working environment free from hostility, intimidation, and disrespect.
- 42.1.2 The City commits itself to the application and enforcement of a uniform policy of progressive discipline.
- 42.1.3 An employee may request the presence of a steward during an interview with her/his supervisor which the employee reasonably believes may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could occur, either party may adjourn the interview until a steward can be present.
- 42.1.4 The supervisor may have a management representative present during a discussion with an employee and his or her Union representative.
- 42.1.5 No employee shall represent in a grievance any employee he or she regularly supervises.

42.2 Definitions: For purposes of this section of this Agreement, the following definitions shall apply:

- 42.2.1 **Grievance:** Any dispute which involves the interpretation or application of the terms of this Agreement and those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council, Board of Library Trustees, and Rent Board to govern personnel practices and working conditions, including such rules, regulations and resolutions as may be adopted by the City Council, Board of Library Trustees and Rent Board to effect Memorandum Agreements which result from the meeting and conferring process. The grievance procedure outlined herein shall be the sole formal mechanism for resolving disputes or complaints of unit members.

- 42.2.2 **Administrative Complaint:** An Administrative Complaint is a grievance filed by a grievant or the Union specifically regarding payment of compensation or the interpretation and application of contract provisions and past practices, or allegations of past practice.
- 42.2.3 **Discrimination Complaint:** A Discrimination Complaint is a grievance filed by a grievant or the Union regarding a violation of Section 3 of this Agreement.
- 42.2.4 **Grievant:** A Grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf or the Union itself may file a grievance on behalf of a member or group of members.
- 42.2.5 **Disciplinary Action:** The recommendation of or implementation by an employee's supervisor or Department Director related to the suspension, demotion, salary reduction or discharge of an employee covered by this Agreement.
- 42.2.6 **Disciplinary Appeal:** A Disciplinary Appeal is the procedure established hereunder to afford an employee his or her due process rights related to a pending disciplinary action. An employee may appeal the recommendation or imposition of suspension, demotion, salary reduction or discharge other than when such action is taken during the formal probationary period for that employee.
- 42.2.7 **Salary Reduction:** Salary Reduction is the reduction of an employee's base compensation to a lower salary step within the employee's current salary range for a specified period of time.
- 42.2.8 **Suspension:** Suspension is the temporary removal of an employee from his or her duties without pay.
- 42.2.9 **Grievance Appeal Officer:** Appeals of grievances will be heard by the City Manager for general City operations, the Library Board of Trustees for Library employees may designate the Director of Library Services as the Appeals Officer and the Executive Director of the Rent Board for Rent Board employees. The City Manager may designate a Grievance Appeal Officer in his/her stead.
- 42.2.10 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.
- 42.2.11 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.

42.2.12 Written Reprimand: In the event that an employee receives a written reprimand, the Union or the employee may request a meeting with the supervisor to discuss the reprimand. Such meeting shall occur within fifteen (15) days of the request. The employee may write a rebuttal to any written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand.

42.3 GRIEVANCE PROCEDURE

Initial Filing Period: Formal written grievances must be filed at Step 1 of the grievance procedure within thirty (30) days of the date the incident occurred or within thirty (30) days of the date the grievant or the Union reasonably should have had knowledge of the matter.

42.3.1 Informal Process:

42.3.1.1 Complaints Filed With: An employee or Union who believes that s/he/it has a grievance shall discuss the grievance informally with the applicable immediate non-bargaining unit supervisor. If this is not possible due to the absence of this supervisor, the employee or his/her Union may discuss the grievance informally with the applicable Division Manager.

42.3.1.2 Filing Period: Such informal grievances shall be verbally brought to the attention of either the immediate non-bargaining unit supervisor or, if unavailable, with the Division Manager within a reasonable period of time of the incident generating the grievance. (NOTE: In order to comply with formal grievance procedures, refer to Section 42.3, "Initial Filing Period", for absolute filing deadlines and time frames for formal grievances.)

42.3.1.3 Process: The grievant shall be entitled to a personal conference with, and an informal decision by, either the relevant supervisor or Division Manager within ten (10) days of making the request for an informal meeting. This informal decision terminates the informal process unless mutually agreed upon by employee, supervisor/manager and Union to extend informal discussions.

42.3.2 Formal Process: STEP 1 – First-Level Manager

42.3.2.1 Complaints Filed With: If the grievant is not satisfied with the results of the informal process, the grievant may file a formal written grievance following the conclusion of the informal conference process. Such written grievance shall be presented to the applicable Division Manager with a copy to the Department Director and the union.

42.3.2.1.1 Interpretation of Agreement and Past Practice: Questions regarding the interpretation of the Agreement or allegations of violations of Past Practice shall initially be filed in writing with the Director of Human Resources of the City.

- 42.3.2.1.2 **Compensation:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources of the City.
- 42.3.2.1.3 **EEO:** All complaints concerning discrimination or other Section 3 matters shall be initially filed in writing with the Equal Employment Opportunity and Diversity Officer of the City. However, complaints alleging violation of any applicable laws pertaining to protected union activity will be filed with the Director of Human Resources of the City.
- 42.3.2.2 **Filing Period:** This written grievance must be filed within ten (10) days following the conclusion of the informal conference process, except as follows:
- 42.3.2.2.1 **Compensation:** Administrative Complaints regarding issues concerning payment of compensation may be filed within 90 days of the last day of the alleged under or over compensation.
- 42.3.2.2.2 **EEO:** The allowed time for filing of a complaint under this section shall be governed by the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley's EEO/Affirmative Action Program (attached herein as Appendix B).
- 42.3.2.3 **Process:** The grievance must be presented in writing on a form provided by the City, and approved by the Union. The written statement shall be a clear, concise statement of the grievance including specific provisions of this Agreement alleged to have been violated, the circumstances involved, the decision rendered at the informal conference, and the specific remedy sought. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Division Manager if requested. Other than issues of Contract Interpretation and Past Practices, Compensation or EEO, within ten (10) days, the Division Manager shall communicate a written decision to the grievant and the Union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 1.
- 42.3.2.3.1 **Compensation:** In the case of issues of compensation, the Director of Human Resources or his/her designee shall respond in writing within thirty (30) days of receiving the written complaint. In such cases, no adjustment shall be retroactive for more than thirty (30) calendar days from the date upon which the complaint was filed or thirty (30) calendar days from the date when an employee and/or the Union 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 understanding contained in any Agreement which has resulted from the meeting and conferring process shall be considered.

Any other matters of compensation are to be resolved in the meeting and conferring process, and, if not detailed in the operative Agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring is next opened for such discussion.

42.3.2.3.2 **EEO:** Discrimination complaints shall be processed in accordance with the EEO Complaint Investigation and Resolution procedure of the City of Berkeley EEO/Affirmative Action Program (attached herein as Appendix B) except that:

42.3.2.3.2.1 The employee has the right to be represented by a Union representative at all stages of the informal and formal complaint investigation and resolution procedure;

42.3.2.3.2.2 The Equal Employment Opportunity and Diversity Officer shall meet with and report to only the City Manager during the formal resolution process; and

42.3.2.3.2.3 The City Manager shall make the final decision on the complaint which may be appealed by the Union to an impartial arbitrator within ten (10) days of receipt by the Union of the City Manager's decision. Such an appeal shall be processed in accordance with the above defined grievance procedure of this Agreement. The City shall promptly notify the Union of the filing of all formal complaints, as well as their acceptance or rejection.

The City Manager or his or her designee will notify the Union of a proposed decision on a formal complaint, and the reasons therefore, and upon a request within ten (10) days, shall meet with the Union prior to issuing a final decision.

If a grievance also alleges a violation of another section of the contract in addition to Section 3, Section 42.3.2.3.2. shall apply only to that part of the grievance which alleges a violation of Section 3 unless otherwise mutually agreed.

Complaints challenging, disputing, or seeking to modify or change any policy component of the City's EEO/Affirmative Action Program, including but not limited to the assignment of responsibilities, workforce utilization analysis, and affirmative action goals and timetables, shall not be subject to the grievance/arbitration procedures of this Agreement. This in no way limits the right of the Union to grieve violations of the City's EEO/Affirmative Action Plan.

42.3.2.3.3 **Interpretation and Past Practice:** In the case of issues of interpretation of the Agreement, past practices, payment of compensation or violations of Section 3 of the Agreement (Discrimination, etc.), if the grievant is not satisfied, s/he may move the complaint directly to Step 3 of this grievance procedure.

42.3.3 **Formal Process: STEP 2 – Department Director**

42.3.3.1 **Complaints Filed With:** If the grievant is not satisfied with the results rendered in Step 1, the grievant may appeal the decision in writing to the applicable Department Director or his/her designee with a copy to the union.

Contract Interpretation and Past Practice, Compensation and EEO complaints would go directly to Step 3 of this process. (NOTE: See Section 42.3.2.)

42.3.3.2 **Filing Period:** Such written appeal must be submitted to the Department Director or his/her designee within ten (10) days from the date the grievant received the decision of the Division Manager.

42.3.3.3 **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Department Director or his/her designee if requested. Within ten (10) days of the personal conference, the Department Director or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources. Such action will terminate Step 2.

42.3.4 **Formal Process: STEP 3 – Grievance Appeal Officer:**

42.3.4.1 **Complaints Filed With:** If the grievant is not satisfied with the results rendered in Step 2 for general grievances and Step 1 for issues of Contract Interpretation and Past Practice, Compensation or EEO, the grievant may appeal the decision in writing to the applicable Grievance Appeal Officer with a copy to the Department Director, the Director of Human Resources and the union.

42.3.4.2 **Filing Period:** Such written appeal must be submitted to the appropriate Grievance Appeal Officer within ten (10) days from the date the grievant received the decision rendered in Step 2.

42.3.4.3 **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and 2 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Grievance Appeal Officer or his/her designee if requested. Within ten (10) days of the personal conference, the

Grievance Appeal Officer or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 3.

42.3.5 **Formal Process: STEP 4 – Arbitration**

42.3.5.1 **Complaints Filed With:** If the Union is not satisfied with the results rendered in Step 3, the Union may require that the grievance be referred to an impartial arbitrator by notifying the applicable Grievance Appeal Officer.

42.3.5.2 **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

42.3.5.3 **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The cost of the arbitrator's decision shall be borne equally by the parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

42.3.6 **General Conditions of a Formal Grievance**

42.3.6.1 **Union Representation:** The grievant shall be entitled upon request to representation by the Union at all levels of the grievance procedure. In situations where the Union has not been requested to represent the grievant, the City will not agree to a final resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to respond and state its view on the matter. The Union will be given ten (10) days in which to respond.

42.3.6.2 **Time Limits:** Failure by the Union to file or appeal a grievance within the time limits specified constitutes a dropping of the grievance. Failure by the City to respond by the specified times shall entitle the Union to move the matter to the next higher step of the grievance procedure. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

42.3.6.3 **Witnesses:** The City and / or the grievant may call witnesses.

42.3.6.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the grievance procedure during working hours, the employee shall suffer no loss of pay. If the grievant's hearing is scheduled during working hours, the grievant shall suffer no loss of pay in order to present his or her grievance.

42.4 **DISCIPLINARY APPEALS**

42.4.1 **Union Representation:** An employee may request the presence of a Union steward during an interview with his or her supervisor when the employee reasonably believes the interview may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could result, either party may adjourn the interview until a steward can be present. The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

42.4.2 **Sole Mechanism:** The provisions of this section shall be the sole mechanism for resolving Disciplinary Appeals pertaining to suspensions, demotions, salary reductions and terminations and shall be processed in the following manner:

42.4.3 **Disciplinary Process: STEP 1 – Department Director**

42.4.3.1 **Review of Recommendation:** The Department Director must receive and review all departmental recommendations for suspension, reduction in salary or a termination. However, for employees of the Library, the Deputy Director of Library Services will have this responsibility.

42.4.3.2 **Period of Review and Process:** The Department Director or his or her designee, or for Library employees the Deputy Director of Library Services, receiving a recommendation proposing a suspension, reduction in salary, or a termination shall hold a meeting with the employee and his or her Union representative to hear an appeal of the recommendation, or the affected employee may choose to make an appeal in written form. If the employee chooses to respond in written form, the Department Director may use his or her discretion on whether a personal conference is necessary.

If a personal conference must be held with the employee and his or her Union, the personal conference must be held within ten (10) days of receiving the recommendation from departmental staff or within ten days of receiving the written appeal from the employee whichever occurred later. The proposed action and the reasons therefore shall be discussed with the employee. The Department Director or his or her designee shall issue a decision sustaining, modifying or rejecting the discipline within ten (10) days after the completion of the personal conference with the affected employee, or if the employee chose to make an appeal in written form, receipt of the written appeal. This shall conclude Step 1 of the Disciplinary Appeal Procedure.

42.4.4 **Disciplinary Process: STEP 2 – Appeal of the Decision**

42.4.4.1 **Appeals Filed With:** If the employee or his or her Union is not satisfied with the decision in the case of suspensions of three days or less, or recommendation in the case of suspension of more than three (3) days, of the Department Director or his or her designee resulting from Step 1, the employee or the Union may require that the disciplinary appeal be referred to the City Manager who shall designate a Grievance Appeal Officer to hear the appeal and in the Library to the Board of Library Trustees who may designate the Director of Library Services as the Grievance Appeal Officer.

For Suspensions of Three Days or Less: If the employee or his or her Union do not appeal the decision of the Department Director or his or her designee resulting from Step 1, the disciplinary action shall be implemented in accordance with the provisions of Section 37 (Suspension) and the Disciplinary Appeal Procedure will end here.

For Disciplinary Action of Suspensions of Greater than three days or Discharge: If the employee or his or her Union do not appeal the recommendation of the Department Director or his or her designee resulting

from Step 1, the disciplinary actions involving suspension greater than three days, salary reduction or discharge will be referred to the City Manager/Director of Library Services for review. The City Manager/Director of Library Services may review or modify the recommendation of the Department Director. If the City Manager/Director of Library Services does not modify the recommendation of the Department Director, the disciplinary action shall be implemented in accordance with the provisions of the Agreement and the Disciplinary Appeal Procedure will end here.

If the City Manager/Director of Library Services contemplates modification of the recommendation of the Department Director, the employee and the union will be notified in writing of their right to a disciplinary appeal meeting with the Grievance Appeal Officer. Such notice shall be issued within ten days of receipt of the Department Director recommendation. The Grievance Appeal Officer will hold a meeting and issue a decision issue as provided in Section 42.4.4.3 below.

42.4.4.2 Filing Period: Said appeal must be filed in writing within ten (10) days of the conclusion of Step 1 above; and must contain the originally recommended action, the written decision of the Department Director or designee and all other correspondence exchanged from the start of the original recommended action and Step 1 activities.

42.4.4.3 Process: The Grievance Appeal Officer or his or her designee receiving an appeal of a proposed disciplinary action shall hold a meeting with the employee and his or her Union representative. The personal conference must be held with the employee and his/her Union within ten (10) days of receiving the written appeal. The Grievance Appeal Officer shall issue a written decision sustaining, modifying or rejecting the discipline within ten (10) days after the completion of the personal conference with the affected employee and/or the receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure. Any decision to suspend, implement a reduction in salary or terminate an employee will become effective at the conclusion of Step 2 of the Disciplinary Appeal Procedure.

42.4.5 Disciplinary Process: STEP 3 – Arbitration

42.4.5.1 Appeals Filed With: If the Union is not satisfied with the decision of the Grievance Appeal Officer or his or her designee resulting from Step 2, the Union may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager.

42.4.5.2 Filing Period: Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the

Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

- 42.4.5.3 **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the grievant will alternately strike a name until one remains. The remaining name will be the arbitrator.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal disciplinary appeal process.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the employee (or his or her Union) and the City. Each party, however, shall bear the cost of its own presentations 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.

42.5 General Conditions for Disciplinary Appeals

- 42.5.1 **Union Representation:** The employee who is the recipient of the recommended discipline shall be entitled upon request to representation by the Union at all levels of the disciplinary appeal process.
- 42.5.2 **Time Limits:** Failure by the employee or the Union to file an appeal of the proposed discipline within the time limits specified constitutes a dropping of the disciplinary appeal. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 42.5.3 **Witnesses:** The City and/or the appellant may call witnesses.
- 42.5.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the disciplinary appeal procedure during working hours, the employee shall suffer no loss of pay. If the employee's appeal is scheduled during working hours, the employee shall suffer no loss of pay in order to present his or her appeal.

ARTICLE 6 - MISCELLANEOUS TERMS AND CONDITIONS

SECTION 43: GENERAL PROVISIONS

43.1 Personal Conduct

- 43.1.1 **Civil Public Service Limitation:** No employee shall accept appointment to the deputyship or assistantship of any County or State Office or position, or otherwise incur an obligation of civil public service outside his/her regular municipal employment without first obtaining the recommendation of the head of his/her department, and of the City Manager for units G-1, G-3, L, R-1 and R-2.
- 43.1.2 **Off-the-Job Conduct:** No employee shall be disciplined for off-the-job activities which do not affect the employee's job performance.
- 43.1.3 **Personal Creditors:** Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the officers of the City Manager, the Department Heads, or the Director of Human Resources for the purpose of making collections.
- 43.1.4 **Private Business/Undertaking:** Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.
- 43.1.5 **Current Address:** Employees have a responsibility to provide the City with their current address and telephone number.
- 43.1.6 **Absence Reporting:** All employees who are absent from work for any reason must report their absence and the reason for their absence or obtain prior permission to be on leave as required by this agreement.

43.2 Use of Automobiles and Parking

- 43.2.1 **Vehicle Use and Mileage Reimbursement:** The City Manager (or Director of Library Services) shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation will be given in the form of a cash allowance that will be equal to the amount established by the Internal Revenue Service, which is currently \$0.585 per mile as of July 1, 2008 but the rate will fluctuate from time to time. This allowance shall apply only to the use of privately-owned vehicles used on City business which has been authorized in advance by the City Manager.

- 43.2.2 **Liability Coverage:** Employees who are required to utilize their automobiles for City business and who, pursuant to prior written authorization of their Department Head, are using their automobiles for transporting clients, shall be covered by insurance provided by the City in case of injury or liability to the client by virtue of the authorized employees' non-negligent operation of the vehicle.
- 43.2.3 **Parking Violations:** A field employee who, in the regular and authorized performance of his/her duties and because of unavoidable circumstances, receives a City of Berkeley parking violation citation shall be relieved of any and all fines connected therewith if such citation is submitted to the Department Head within three days of the issuance of such citation and the employee submits on a form provided by the City a written explanation of the circumstances under which the parking citation was issued. It is expected that employees shall use their best efforts to avoid parking violations. The City shall not be responsible for payment of parking citations and/or any fines or penalties associated with the failure of an employee to pay a parking citation if the employee did not submit the parking citation to the Department Head within the time limit specified in this paragraph and/or the Department Head determines that the citation was avoidable.
- 43.2.4 **Parking Permits:** The City Manager shall issue parking permits under rules he or she may establish, for allocation by the Department Head, to be used solely in the course of employment and the performance of the employees required field duties. The parking permits will allow employees to park in the field or in authorized off-street parking areas enabling the employee to perform his or her work related duties using his or her personal vehicle. These parking permits are intended to prevent the issuance of parking citations to employees while working in the field.
- 43.2.5 **City Vehicle for Emergency Use:** Employees who are regular members of a City recognized car pool, who are qualified to operate a City vehicle, who are insured, and who have no other alternative in an emergency situation, may request a City vehicle where the health or safety of a family member is at stake, subject to the approval of their department head.
- 43.2.6 **Bicycle Rack:** The City will install one (1) bicycle rack (Class 2) for 10 bicycles at 2180 Milvia, and a second Class 2 rack if demand warrants it.
- 43.3 **Part-Time Employees and Prorated Benefits:** All current career and grant-funded benefited employees who in the future request to become part-time career or part-time grant-funded employees working a minimum of 20 hours, but less than 40 hours per week, shall receive prorated, rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums. Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

Current career and grant-funded benefited employees who are given the option of accepting part-time employment in lieu of layoff from City services shall continue to receive full health, dental and life insurance benefits paid by the City in addition to other prorated benefits.

Employees who voluntarily job-share to prevent layoffs of coworkers shall continue to receive full health, dental and life insurance benefits paid by the City in addition to other prorated benefits. Laid off employees who had career status at the time of their layoff, who are reemployed to part-time career status or temporary employment, shall resume receiving the level of health, dental and life insurance benefits paid by the City at the time of their layoff in addition to prorated leave benefits.

- 43.4 **Annual Performance Evaluation:** The City may implement a program of annual performance evaluation subject to Union review and comment. The program of annual performance evaluations shall be conducted as provided in the guidelines set forth in Administrative Regulation 2.3. Such evaluations shall be conducted by the employee's immediate supervisor and shall be reviewed by additional levels of supervision. The performance evaluation shall include a specific work plan for employee development. Each employee may make written comments on the evaluation which shall be made a part of the employee's personnel records.

After the initial evaluation conference between the employee and his/her supervisor the employee may make a written request for a subsequent conference with the supervisor (and such other representatives as may be determined by the City), and a Union representative to discuss the basis for the evaluation. It is specifically agreed that performance evaluations are not subject to the Grievance Procedure provided by this Agreement.

- 43.5 **Employee Development and Training Opportunities:** To facilitate employee development, employees may be assigned training opportunities which include duties normally performed by other classes at their regular rate of pay. Such assignments shall be voluntary, assigned and described in writing as a training and development opportunity and limited to 90 days. Such opportunities shall not be used to fill vacancies or in lieu of higher class assignments.

- 43.6 **Educational Leave:** The City shall allow up to forty (40) hours off with pay per year to employees:

- 43.6.1 Who are required by law or as a condition of employment to obtain a license, a registration or ICC certification and, in order to do so, must take courses which were not offered as a part of their basic curriculum or;
- 43.6.2 Who are required by law or as a condition of employment to obtain continuing education units;

- 43.6.3 To obtain education and training related to job skills, to enhance performance of assigned duties or to promote employee development.

No more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum. All coursework will require pre-approval by a departmental manager prior to undertaking the coursework.

- 43.6.4 The City and the Union recognize that some of the training applicable under this Section may be available over the Internet, through home study or correspondence courses and may be done from non-work locations.

If the coursework is taken during hours outside the normal work schedule the employee will be compensated for this time in accordance with the provisions of the Understanding and the Fair Labor Standards Act. However, the employee may request time off equal to the hours of training during the pay period in which the training occurred and such request shall not be unreasonably denied.

43.7 **Assignments for Temporarily Disabled Employees**

- 43.7.1 **Industrial Modified Duty:** The City may accommodate, when feasible, employees covered by this Agreement under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:

43.7.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

43.7.1.2 The assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

43.7.1.3 Nothing herein shall require the City Manager to approve light duty assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such assignment shall be at the employee's normal rate of pay.

- 43.7.2 **Non-Industrial Modified Duty:** The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position 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.

43.7.3 Pregnancy Related Modified Duty: In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City, with no loss of pay, but in no event will such placement exceed 5 months in duration.

43.8 State Disability Insurance Integration: Except as provided in Section 43.8.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance (SDI) benefits.

After such employee has been absent from work due to personal illness for six workdays, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

- 43.8.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.
- 43.8.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integrating with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee as discussed below.
- 43.8.3 Any employee may choose not to apply for State Disability Insurance but it is his/her responsibility to notify the departmental payroll clerk of this fact, in writing, to stop sick leave integration. The employee must also notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.
- 43.8.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his/her payroll clerk to verify dates covered by SDI and the amount to be paid. The employee must inform his/her payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his/her accumulated leave as will meet but not exceed, the standard earnings of the employee for his/her normal workweek, up to a maximum of five (5) days.

43.9 Health and Safety

- 43.9.1 **Requirement:** The City and the Union 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/her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include a committee comprised of four Union representatives and appropriate supervisory personnel. There shall be a coordinator designated by the City. The committee may meet monthly.
- 43.9.2 **Safety Inspection Team:** A safety inspection team may inspect work locations and equipment in regard to safety and health considerations. The safety inspection team shall consist of the Occupational Health and Safety Coordinator and two members of the safety committee to be chosen by the Occupational Health and Safety Coordinator. The inspection team may make written recommendations for safety and health improvements, and the City shall give a written response within fifteen (15) days or sooner, if possible, because of emergency conditions.
- 43.9.3 **Inspection Team Reporting:** The inspection team may also investigate and report on all substances currently used by the City employees and all proposed for future use.
- 43.9.4 **Tuberculosis and Asbestos Screening Tests:** The City shall provide annually, on City time, free tuberculosis and asbestos screening tests, at no cost to the employee, for all employees who, in the course of their work, are subject to health hazards which may cause tuberculosis or asbestos poisoning.
- 43.9.5 **Blood or Bodily Fluids Equipment:** The City shall take appropriate steps to ensure that the proper equipment for handling blood or bodily fluids is available at all sites where clients are provided care which may expose staff to blood or bodily fluids.
- 43.9.6 **Blood or Bodily Fluids Training:** City staff who handle blood or bodily fluids shall receive proper training and equipment.
- 43.9.7 **AIDS/ARC Training:** The City shall take appropriate steps to educate employees regarding AIDS/ARC and its transmission.

43.10 Video Display Equipment

43.10.1 **Working Conditions:** The City and the Union agree that employees working on video display equipment shall have safe and healthy work environments. These environments shall avoid excessive noise, crowding, contact with fumes, and other unhealthy conditions.

The City agrees wherever practical, to design the flow of work to avoid long, uninterrupted use of video display equipment by City employees.

43.10.2 **Pregnancies:** The City will accommodate requests for transfer from pregnant employees whose job duties require frequent exposures to video display equipment subject to the following:

43.10.2.1 such transfer will be limited to other positions which are vacant which the transferee is qualified to perform:

43.10.2.2 to voluntary trading of positions where both parties are competent to perform the new assignments:

43.10.2.3 to any position held by a temporary employee if the pregnant employee is qualified.

43.10.3 **Visual Screening and Education:** The City will develop a visual screening and education program effective July 1, 1988 for employees who in the course of their employment operate VDT terminals more than half the time. This program will include visual screening at or near employment, a referral system for employees with possible VDT related vision problems, and a regular follow-up screening at approximately two years.

43.10.4 **Corrective Glasses and VDT Equipment:** The City shall provide corrective glasses medically certified as required for the job to VDT operators. Within twelve (12) months of the implementation of this agreement the City will complete a survey of all departments to determine the need for ergonomic VDT equipment. Upon completion of the survey the Union and City will establish a schedule to meet the identified needs over three (3) fiscal years. The City will deal with purchases related to VDT equipment according to NIOSH or other standards as agreed if funds are available.

43.11 **YMCA Group Membership:** The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999 the City will pay 75% of the membership fee. If the monthly fee is increased to more than \$60 the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is

not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

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.

43.12 Internships: A career advancement internship program shall be established by the City. Two (2) internships of six (6) months each shall be implemented for each year of this agreement. Career advancement internship guidelines shall be developed by the City in consultation with the Union.

43.13 License and Registration Renewal: The City shall pay the full cost of professional license, registration or ICC certification renewals for all employees whose classification requires a professional license, registration or ICC certification.

43.14 Personnel Files

43.14.1 Maintenance: All official records of the employee's personnel history are maintained in the Human Resources Department (in the Library the files are maintained in Library Administration), including applications for appointment, performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history.

43.14.2 Inspection: Employees have the right to inspect their personnel file which is maintained in the Human Resources Department during normal business hours, by appointment, as provided by law. No material of any kind, except documents submitted by the employee shall be placed in an employee's official personnel file after the date of employment without a copy being given to the employee. The employee may provide a concise written response to any material which is maintained in the personnel file.

43.14.3 Records of Grievances: Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's personnel file.

43.14.4 Disciplinary Actions: Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's personnel file.

43.14.5 Reprimands and Counseling Letters: Formal letters of reprimand or formal counseling shall be removed from an employee's personnel file upon request after 24 months provided the employee has maintained satisfactory performance. Counseling memos shall not be placed in employee's personnel files.

2013-2015 Memorandum Agreement

43.15 **Transit Subsidies:** Upon request, the City shall provide \$20 per month in Commuter Check transit vouchers redeemable for transit tickets, tokens, or passes for any Bay Area transit service or to pay for a qualified monthly vanpool fare. The City shall also provide employees the opportunity to purchase additional employee-paid transit vouchers on a pre-tax basis through payroll deduction up to the maximum allowed (\$100 per month in total) by the Federal tax code.

43.16 **Protective Clothing and Shoes**

43.16.1 **Rain Gear** - The City will provide rain gear upon request of the employee in the classifications named below who may be assigned to work in inclement weather.

Job Code	Classification Title
24060	Assistant Environmental Health Specialist
37060	Building Inspector I (Certified)
37050	Building Inspector II
33090	Code Enforcement Officer I
33100	Code Enforcement Officer II
28830	Environmental Compliance Specialist
91050	Field Representative assigned to the Solid Waste Division in Public Works
35070	Fire Prevention Inspector
24590	Hazardous Materials Specialist I
24560	Hazardous Materials Specialist II
33080	Housing Inspector
63200	Mini Bus Driver
24050	Registered Environmental Health Specialist
32030	Senior Building Inspector
24690	Senior Environmental Health Specialist
34030	Senior Vector Control Technician
34040	Vector Control Technician

43.16.2 **Shoes** - An annual allowance of two hundred dollars (\$200) shall be paid to employees in the classifications named below toward the purchase of safety shoes. The annual shoe allowance is subject to federal and state income tax withholding.

Job Code	Classification Title
24060	Assistant Environmental Health Specialist
37060	Building Inspector I (Certified)
37050	Building Inspector II
33090	Code Enforcement Officer I
33100	Code Enforcement Officer II
28830	Environmental Compliance Specialist
91050	Field Representative assigned to the Solid Waste Division in Public Works
35070	Fire Prevention Inspector
24590	Hazardous Materials Specialist I
24560	Hazardous Materials Specialist II
33080	Housing Inspector
24050	Registered Environmental Health Specialist
32030	Senior Building Inspector
24690	Senior Environmental Health Specialist
34030	Senior Vector Control Technician
34040	Vector Control Technician

- 43.16.3 **Uniforms** – Effective June 29, 2008, employees in the classifications of Fire Prevention Inspector and Fire and Life Safety Plans Examiner shall receive a uniform allowance of \$1,000 per year. Payment of such annual uniform allowances noted above shall continue to be paid in two (2) equal installments, in December and June, of each year. The amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.
- 43.17 **Crimes Against Employees:** The Police Department will promptly respond to any calls regarding criminal acts committed against a City employee while engaged in his or her employment. Reports of assault or other acts of criminal misconduct committed against a City employee will be promptly investigated. The results of the investigation will be submitted to the District Attorney for disposition.
- 43.18 **Legal Representation:** The City will provide legal representation to the extent required by law.

ARTICLE 7 – RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS

SECTION 44: RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS

The parties recognize and acknowledge that Representation Unit R-2 employees are temporary, non-benefited, non-career employees without properties rights or an expectation of continued employment.

44.1 Conversion of Part-Time Recreation Activity Leaders and/or Sports Officials to Full Time Positions

- 44.1.1 **Minimum Staffing:** The City shall establish a minimum level of 5 (3.75 FTEs) Recreation Activity Leaders or Sports Officials working 30 hours or more and 11 (5.5 FTEs) working 20 hours or more.
- 44.1.2 **Conversion of Section 44.1.1 Part-Time Positions to Full-Time:** Effective with the execution of the 2008–2012 Agreement, the City shall begin the process of converting the aforementioned sixteen (16) part-time career (Representation Unit R-1) Recreation Activity Leaders or Sports Officials into nine (9) full time benefited R-1 positions by reallocating the hours of part-time R-1 positions as the positions are vacated.
- 44.1.3 **Ongoing Conversion of Section 44.1.1 Part-Time Positions to Full Time:** As additional vacant part-time career R-1 positions become available, the City will eliminate the part-time position and reallocate those hours to create an additional full-time benefited position until such time as nine (9) full-time benefited positions are created. Positions shall be offered to R-1 employees based on seniority determined by Seniority Service Date as defined in Section 56.2.1 of the Agreement. No part time R-1 position that is filled as of the date of the Execution of the Agreement will be eliminated until vacated. If no part-time R-1 employee accepts one of the 9 full-time positions, non-career, non-benefited Representation Unit R-2 employees will be considered before recruitment for the position outside of the City.
- 44.1.4 **Elimination of 30-Hour per Week R-1 Position Effective 6-29-08:** Effective with the execution of the Agreement there is one (1) vacant 30 hour per week R-1 position. This part-time 30-hour per week position shall be eliminated and the hours associated with that position shall be reallocated to immediately create 3 full time R-1 positions. The three (3) full time R-1 positions shall first be offered to R-1 employees based on seniority determined by Seniority Service Date as defined in Section 56.2.1 of the Agreement. If an R-1 employee chooses not to accept a full time position that has been offered, the position will then be offered to the next R-1 on the seniority list. Positions will be offered on the basis of seniority until three (3) full time R-1 positions are filled.

44.2 Scheduling for Representation Unit R-1 and Representation Unit R-2 Employees

- 44.2.1 **Rolling Quarterly Schedule:** A Rolling Quarterly Schedule will be implemented. The City shall post a schedule of recreation services and programs for the months of September through November. Effective no later than October 1, 2008 the core schedule for December will be added to the posted quarterly schedule. Subsequently, an additional month will be added to the schedule as the first month on the schedule is completed. The schedule shall include work hours and job assignments for R-1 employees as well as the hours for the pool of R-2 employees. Copies of all schedules shall be provided to the Union President when they are posted. The purpose of the Rolling Quarterly Schedule is to inform employees of core schedules at least 2 months in advance.
- 44.2.2 **Representation Unit R-1 Work Schedule:** Until such time as the conversion of all career part-time benefited Representation Unit R-1 employees to nine (9) full time positions is complete, the provisions set forth on the R-1 Work Schedule below shall apply to career part-time benefited employees. When the conversion of all career part-time benefited Representation Unit R-1 employees to nine (9) full time positions is complete the provisions set forth below in Section 44.2.2 et seq. shall no longer be in force and scheduling of R-1 employees shall be governed by Section 13 of this Agreement and be scheduled to work in a manner consistent with like full time Recreation Coordinators.
- 44.2.2.1 Each seven (7) day workweek shall have 2 consecutive days off.
- 44.2.2.2 Hours in a work day will not be split into two or more segments that are separated by more than an unpaid lunch hour unless such split is the result of Union release time or department mandated training that cannot be scheduled without resulting in a split shift. The City will make reasonable effort to limit split shifts for training purposes to no more than one (1) time per month.
- 44.2.2.3 The aforementioned limitations on R-1 Work Scheduling may be waived by mutual agreement between the employee and the supervisor.
- 44.2.2.4 The City will adjust the benefit pro-ration for employees in Representation Unit R-1 based on the Rolling Quarterly Work Schedule of assigned hours and on the known and anticipated adjustment of hours during the quarter.
- 44.2.3 **Representation Unit R-2 Work Schedule**
- 44.2.3.1 The work schedule for Representation Unit R-2 employee will not be split into two or more segments that are separated by more than an unpaid lunch hour unless such split is the result of Union release time or department mandated training that cannot be scheduled without resulting in a split shift. This limitation may be waived by mutual agreement between the employee and the supervisor.

44.2.3.2. Representation Unit R-2 employees are hourly, intermittent employees who can accept or reject hours.

44.3 Changes in the Work Schedule

44.3.1 When the City compiles and establishes the Rolling Quarterly Work Schedule, the City will assign Representation Unit R-2 employees so that a Representation Unit R-1 employee's core work schedule does not change during the succeeding three months. Any changes in the posted schedule for an R-1 employee must be made at least 15 days in advance. Changes in an employee's posted schedule must meet one of the following criteria:

44.3.1.1 A program is cancelled.

44.3.1.2 The number of attendees at the program/event is less than originally planned and requires less staff than originally scheduled.

44.3.1.3 A special event is scheduled after the Rolling Quarterly Work Schedule is posted and the City changes the schedule of an employee to cover the event. However, the change in the work schedule will not be made: 1) if the hours that the Representation Unit R-1 was originally scheduled to work are assigned to another employee, or 2) a less senior Representation Unit R-1 employee, a Representation Unit R-2 employee or a Sports Official is scheduled to cover the same hours in the same work site where the employee was originally scheduled to work.

44.4 **Additional Hours:** Additional hours are work hours which the City determines are needed due to added programs/events after the quarterly schedule has been posted or the absence of an employee which is known at least five (5) working days in advance of the employee absence. Additional hours will first be offered to R-1 employees based on seniority provided that the employee is qualified to perform the work. In the event the work which is available involves a single program which occurs over a number of days, the employee who receives the additional hours must be available to work all the hours. If no R-1 employee is scheduled for the additional hours, the hours will be offered to R-2 employees. A qualified R-1 employee will be offered additional hours based on seniority; this does not imply that seniority gives an employee the right to choose between two different programs offered as additional hours at the same time. An R-1 cannot be scheduled for additional hours that would require a modification to the employee's core schedule.

44.5 **Reduction/Elimination of Representation Unit R-2 Hours:** When a Representation Unit R-2 employee's hours are reduced or eliminated for any reason, the employee shall have the right to a meeting, upon his or her request, as soon as practical, with the Division Chief responsible for approving the actions of the supervisor who reduced/eliminated the hours.

- 44.6 **Representation Unit R-2 Additional Compensation:** Effective June 29, 2008, Representation Unit R-2 employees shall be paid the equivalent of twenty (20) hours pay at the employee's regular hourly rate for each five hundred twenty (520) hours worked.

SECTION 45: R-1 AVAILABILITY TO WORK SCHEDULED HOURS

If a designated career part-time employee in Unit R-1 is consistently not available for regularly scheduled assigned hours, said employee may agree to a demotion into R-2, may resign and/or may be disciplined and thereby may be replaced with the most senior qualified employee who can accept those hours. This provision shall not apply if an employee is on an authorized leave (i.e., sick leave, workers' compensation, vacation, etc).

SECTION 46: ATTENDANCE AT MEETINGS

- 46.1 **Staff Meetings:** The Union may appoint one (1) employee in each Center who shall be allowed to attend, with pay, quarterly full-time staff meetings held with the Recreation and Youth Services Manager, and such other staff meetings to which the appointed employees may be invited by the Recreation and Youth Services Manager. Quarterly meetings will be announced in writing. The Recreation and Youth Services Manager will be notified in writing by the Union of the names of employees who are appointed pursuant to this provision.
- 46.2 **Center Budget Planning:** The Union may appoint one (1) employee from each Center who shall be allowed to participate in Center budget planning recommendations to be transmitted to the City Manager's Office.

SECTION 47: WEATHER CONDITIONS

- 47.1 **Notification when Conditions Known:** When weather conditions are such that prior to the start of scheduled outdoor activities it is known that these activities will be canceled, the employee shall telephone the Center Supervisor to ascertain the need for the employees services in productive alternative work.
- 47.2 **Notification when Conditions are Unknown:** When weather conditions develop after the start of scheduled outdoor activities which necessitate their discontinuation, the employee shall make an immediate assessment of the availability of alternate indoor space at the location involved and consider the productive uses to which such space can be devoted. In the event both space availability and program warrant, the employee shall then contact the Center Supervisor by telephone, specifying the proposal for the continuation of work.
- 47.3 **Management Discretion:** Under either situation set forth above, the decision to proceed with the work of the employee shall be at the discretion of the Center Supervisor, which shall be reasonably exercised.

SECTION 48: SUMMER WORK SCHEDULE

During the summer season (June 15 - August 15) the following shall apply in the operation of the City's summer recreation programs:

48.1 **Offer of Jobs/Hours:** New, additional or vacant recreation jobs or hours shall be offered to career, benefited Recreation Activity Leaders (RALs) and Sports Officials (SOs) who meet specific written qualifications and who may accept such work, so as to allow each career RAL and SO that so chooses to work up to 40 hours per week.

SECTION 49: OVERNIGHT EXCURSIONS

Recreation workers who participate in overnight excursion will flex their schedule, if possible, to maintain a 40-hour workweek. If they are unable to flex, they will be paid overtime or compensatory time consistent with state law.

SECTION 50: LABOR/MANAGEMENT COMMITTEE

The City and the Union agree to create a joint Labor/Management Committee consisting of four (4) union and four (4) City representatives to discuss PTRLA to keep lines of communication open and to discuss the issues set forth in Section 44. The joint labor management committee will meet on a monthly basis or less frequently if mutually agreed by the parties.

ARTICLE 8 - RETIREMENT SYSTEMS

SECTION 51: PUBLIC EMPLOYEES' RETIREMENT SYSTEM

- 51.1 **Participation:** The City shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System.
- 51.2 **"Classic Employees" Definition:** Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).
- 51.3 **"New Members" Definition:** New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).
- 51.4 **CalPERS Retirement Formula for Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA):** "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.
- 51.5 **CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e., current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA):** Effective January 5, 2003, the City agrees to provide the 2.7% at age 55-retirement formula benefit improvement, and the City's contribution to CalPERS on behalf of the employee will increase from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this section shall be reported to PERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The aforesaid contribution shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employees.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

- 51.6 **New Members Payment of Employer Paid Member Contribution:** New Members as defined by PEPRA who are hired by the City on or after January 1, 2013 will be required to pay 50% of the normal cost, as provided by CalPERS. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.
- 51.7 **Optional Benefits:** The City's contract with CalPERS includes the following optional benefits:
- 51.7.1 **Classic Employees - One-Year Final Compensation:** Classic Employees, as defined in Section 59.2, shall be eligible to receive retirement allowance based on One-Year Final Compensation as provided in Section 20042 (July 9, 1978).
 - 51.7.2 **New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided in the California Public Employee Pension Reform Act of 2013, or as subsequently amended
 - 51.7.3 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973).
 - 51.7.4 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
 - 51.7.5 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
 - 51.7.6 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973).
 - 51.7.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
 - 51.7.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).
 - 51.7.9 Military Service as Public Service as provided in Section 21024 (April 9, 1999)
 - 51.7.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Section 21023.5 (April 14, 2000).

SECTION 52: PUBLIC AGENCY RETIREMENT SYSTEM

52.1 **PARS:** Employees who are otherwise not covered by the provisions of Section 51, shall be enrolled in the Public Agency Retirement System (PARS).

52.2 Employee's PARS Contributions

52.2.1 **Employee Contribution:** Each pay period, each employee shall contribute three and three-quarters percent (3.75%) of his or her salary and deposited into his or her PARS account.

52.2.2 **Excluded from Salary:** The aforesaid contribution shall not be considered as part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employers.

52.2.3 **City Contribution:** Each pay period, the City shall contribute three and three-quarters percent (3.75%) of the employee's salary and deposited into their individual PARS account.

52.3 **Termination from Employment:** Upon termination from employment, the employee or his or her beneficiary shall receive payment in full of all monies deposited in the employee's individual PARS account.

SECTION 53: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees' Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated CalPERS/Social Security Plan. Provisions of this plan are described in City of Berkeley Municipal Code Section 04.36.101 et seq. (Supplementary Retirement and Income Plan I and 04.38.101 et. seq. (Supplementary Retirement and Income Plan II) as amended.

As of November 27, 1994 the City will assume the premium payment of the optional SRIP II Long-Term Disability Plan for those members who are then enrolled in the program. Upon completion of re-negotiations of the optional disability plan with the insurance carrier, the City will assume the premium payment for all members.

SECTION 54: INCREASED HOURS

Part-time career employees in the same classification shall be notified and have the opportunity to apply for increased hours in a classification before hiring from the outside. Decisions to offer the increased hours shall be based on program necessities. This provision shall not apply when the increased hours are offered to the occupant of the position and he/she has accepted same.

SECTION 55: LIBRARY AIDES

55.1 Minimum Positions: The City shall establish an ongoing level of 9.63 additional FTE Library Aide positions (10.63 at start, leveling to 9.63 through attrition), 8 positions to be 20 hours per week with full pro rata fringe benefits. This will be in addition to the existing 2.925 FTE career Library Aide positions which will remain career positions of at least 20 hours per week.

55.2 Applicable Provisions: Part-Time Library Aides who work less than 20 hours per week do not receive health and welfare benefits including, but not limited to, medical coverage, pension benefits under CalPERS, retiree medical coverage, Supplementary Retirement and Income Plan, Long-Term Disability Plan, group life insurance, cash-in-lieu benefits and education leave. Part-Time Library Aides who work less than 20 hours per week do receive pro-rated vacation leave accrual, sick leave accrual, compensatory time accrual and floating holiday accrual. All other provisions of this Agreement are applicable to these Part-Time Library Aides who work less than 20 hours per week.

55.3 Salary Advancement: When a permanent part-time Library Aide who works less than 20 hours per week has worked 1040 hours without terminating his/her service with the City or being terminated from his/her service with the City, such employee shall be moved to the second salary step within his/her classification on the first day of the payroll period following completion of said 1040 hours, provided that at least twelve (12) calendar months shall pass from step increase to step increase. Such employees shall be eligible for subsequent step increases on a 1040 hour formula.

An employee classified in a single classification who is specifically assigned to work in a different classification shall receive credit for such temporary hours worked in the employee's basic classification.

55.4 Step Increases: Hourly Library Aides who are appointed to 20 hour fully benefited positions receive the first step increase after that appointment based on the 1040 rule provided that 12 months have passed since the date of the last step increase. The anniversary date for further successive annual step increases shall be established based on the date of the first step increase after the 20 hour appointment is effective.

ARTICLE 9 - LAYOFF PROCEDURE

SECTION 56: LAYOFF

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.

56.1 Announcement of Layoff

- 56.1.1 The City Council, City Manager, and Department Head 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 lay off career City employees. If a reduction in the work force is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave 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.
- 56.1.2 Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and shall notify the Department Heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Sections 56.4 and 56.5. In notifying Department Heads of a freeze required by this section, the City Manager shall require that requisitions continue to be submitted for any budgeted positions which the Department intends to fill and for which funding is available.
- 56.1.3 After the City has announced the need for a reduction in force, including the magnitude of such reduction, and has informed employees of their prospective layoff or retreat, but before any actual layoff, the City will consider employee requests for the alternative action, including job sharing.

56.2 Seniority Service Date

- 56.2.1 All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well as leaves of absence for obligatory military service and approved family care leave while an employee of the City. Less than full-time service will be consolidated into equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

- 56.2.2 The Human Resources Department shall maintain up-to-date and current Seniority Dates for all City employees holding probationary and permanent appointments.

56.3 Establishment of Seniority Lists

- 56.3.1 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.
- 56.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, 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.
- 56.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will be listed only on a Seniority List for the class in which they hold permanent or probationary status and which is targeted for layoff.
- 56.3.4 If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:

56.3.4.1 Time in classification - the employees having least time in the class shall be released first;

56.3.4.2 By lot.

56.4 Employee Retreat Rights/Out Placement

- 56.4.1 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 which provides normal progression through the 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.

In addition to providing the employee with the appropriate retreat offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the retreat offer (offer to bump another employee) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights under the layoff policy and will be laid off without rights to re-employment.

- 56.4.2 In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.
- 56.4.3 **Waiver of Minimum Qualifications:** The City Manager may consider a temporary waiver of minimum qualification standards where the employee, because of (a) changes to the minimum requirements of a previously held classification, or (b) changes to the minimum requirements of a subsequently created intermediate level career classification in the same classification series, no longer meets the minimum qualifications of the previously held or intermediate level classification. The temporary waiver of minimum qualification standards shall be subject to a twelve (12) month probationary period during which time the employee must meet the new minimum qualifications of the classification. The employee shall be subject to the provisions of Sections 32.7 and 32.8 of this Agreement. Employees shall be advised of her or his progress in writing after three (3), six (6) and eleven (11) months in the classification. If at the conclusion of the probationary period, management determines that the employee is not meeting the minimum qualifications of the position, then the employee shall again be subject to the layoff process. Management will ensure that the retreating employee will receive orientation and feedback during the probationary period.
- 56.4.4 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 Director of Human Resources shall discuss the options with the employee and due consideration shall be given to the employee's preferences. The Director of Human Resources shall then make a recommendation to the City Manager. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 56.4.5 **Salary Placement:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his/her present salary range. An employee involved in layoff does not have a right of mandatory placement in positions with a higher salary range, i.e., promotion.

- 56.4.6 **Reduction in Hours:** If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 56.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

56.5 Employee/Union Notification

- 56.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible. However, at least two (2) weeks notification is desirable if possible.
- 56.5.2 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.
- 56.5.3 Permanent, probationary, and career-exempt employees shall 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 or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he/she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 56.10.

All notices of layoff under Section 56.5 shall be issued to the Union simultaneously with notice to the affected employee(s). Together with any layoff notices sent to the Union, a list shall be included of all vacancies which are authorized for filling.

56.6 Flexible Placement Program/Out Placement

- 56.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 56.1.2 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.
- 56.6.2 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 have been identified and the provisions under Section 56.4 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 supervised 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.

A training program shall be developed with the employee, the supervisor, and the Training Officer. The employee shall be advised of her/his progress in writing after two months, four months and six months in the new classification. If at the end of this time the employee is unable to adequately perform the assignment, then the employee shall be again subject to the layoff process.

- 56.6.3 In addition to providing the employee with the flexible placement offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the flexible placement offer (offer to be flexibly placed in a vacant position) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including, but not limited to, retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected employee will be required to sign a waiver and release of all claims in consideration for receiving this benefit.

The City Manager, at his sole discretion, may approve outplacement payments in accordance with the Layoff Procedure at the rate of \$1,000 or 2% of annual salary; whichever is greater, for each full time equivalent year of City Service, up to a maximum of \$30,000.

- 56.6.4 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, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.
- 56.6.5 All employees in classifications from which layoffs would otherwise be made shall be eligible to apply for flexible placement positions on a voluntary basis. Where more qualified employees apply under flex placement than are needed to prevent layoffs, each employee must be evaluated for his or her background (as opposed to classification) to determine whether the employee can assume full duties of flex placement within six months. The City will choose the applicants it considers best qualified to be offered the flex placement position. Where there are not enough volunteers for flexible placement, all employees slated for Layoff shall constitute the flexible placement pool of employees and offers to positions under the Flexible Placement Program shall be made as follows:

- 56.6.5.1 The total experience and education for each employee slated for layoff is compiled.
 - 56.6.5.2 The employees slated for layoff are listed by order of seniority and placed in positions in order of seniority.
 - 56.6.5.3 The right to Flexible Placement shall remain in force for the duration of the re-employment list.
 - 56.6.5.4 All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review. Upon request, a written statement of the reasons for not offering an employee a particular position shall be made to the employee and/or the Union.
- 56.6.6 Offers to positions under the Flexible Placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 56.3 and in accordance with the following procedures:
- 56.6.6.1 Full-time vacancies authorized to be filled shall be listed in order from highest to lowest based on the actual maximum salary.
 - 56.6.6.2 Part-time vacancies authorized to be filled shall be included in the above list in order based on the actual monthly maximum salary for the hours involved.
 - 56.6.6.3 The individual with the earliest Seniority Service Date (SSD) targeted for layoff will be considered for flexible placement in the top position on the above list.
 - 56.6.6.4 If it is determined that the person with the earliest SSD is eligible and qualified for flexible placement in the top position on the list, the Director of Human Resources shall recommend to the City Manager that the employee be offered the position. If the City Manager approves the recommendation, the employee shall be offered the position.
 - 56.6.6.5 If the City Manager and/or Director of Human Resources determines that the employee is not eligible or not qualified for the top position, the Director of Human Resources shall proceed down the list of vacancies in an effort to identify the next highest position for which the employee is eligible and qualified for flexible placement. Upon identification of such a match, the Director of Human Resources shall recommend to the City Manager that the employee be offered the position.
 - 56.6.6.6 This above process shall be repeated until either a match is identified or the list of vacancies has been exhausted.

56.6.6.7 The above process shall be repeated next for the employee with the second highest SSD, and, subsequently in order from earliest to most recent SSD for each other employee targeted for layoff.

56.6.7 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance or rejection of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standings on the Reemployment Priority Lists on which his or her name has been placed in accordance with Section 56.7.

56.7 Reemployment Lists

56.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 56.4.

56.7.2 A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated or flexibly placed and remain employed with the City. Except that eligibility for reemployment in seasonal positions shall not be in effect for more than one year.

56.7.3 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.

56.7.4 When a vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the Department Head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.

56.7.5 If a former employee fails to accept a bona fide written offer of reemployment to the class from which s/he was laid off within fifteen (15) calendar days, his/her name will be removed permanently from the Reemployment Priority List from which the offer was made unless the offer of reemployment is for fewer hours than his/her previous position. Failure to accept an offer of 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) temporary reemployment or reemployment to lower salary range classifications without jeopardizing his/her standing on the Reemployment Priority List for the classification from which s/he was originally terminated.

- 56.7.6 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.

56.8 Reinstatement List

- 56.8.1 Provisions of this Section 56.8 shall be applicable only to unrepresented positions and positions represented by Unions and/or Associations which have incorporated identical language in their Memorandum Agreement and/or in formally executed Letters of Agreement.

- 56.8.2 Any former employee on a reemployment list shall be included on the reinstatement list for a specific class at or below the class from which s/he was laid off whenever s/he both:

56.8.2.1 meets minimum qualifications of the specific class and

56.8.2.2 has requested reinstatement in that class.

- 56.8.3 In order to permit reinstatement in another specific class of an individual who is on a mandatory reemployment list, minimum qualifications may be waived and On-the-Job Training (OJT) may be provided as specified under the Flexible Placement Program.

Such individuals shall be included on the eligibility list certified for a specific position and identified as eligible based on this provision.

- 56.8.4 Consideration for 56.8.2 and/or 56.8.3 would be based on a written request from an employee for reinstatement in that specific class; such request must include an updated City of Berkeley job application form.

- 56.8.5 ***Berkeley Matters*** shall be sent to all former employees on Reemployment Lists.

- 56.9 **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".

- 56.10 **Appeal Procedures:** Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff, who believes that the layoff procedure has been administered in violation of the terms of this Agreement, and those rules, regulations and resolutions which have been or may hereafter be adopted by the City Council, as it pertains to the employee's case, may appeal the action under Section 42. 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.

56.11 Reclassification or Reallocation of Positions: Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

56.12 Audit

56.12.1 If it is determined that a vacancy has been filled by an employee not on the appropriate Reemployment Priority List in a classification for which a Reemployment Priority List existed and 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 hired to fill the vacancy shall continue to be retained in City employment provided s/he has completed her/his probationary period.

56.12.2 In the event of a dispute between the Union and the City over the application of the Reemployment Priority Lists and if either party so requests, 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 56.7. In the event vacancies for which Reemployment Priority Lists were in existence remained 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, the City Council and the Union.

SIGNATURE PAGE

This Memorandum Agreement is executed this ____ day of _____, 2013, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

SEIU Local 1021:

City of Berkeley:

Ron Rhone, Chief Negotiator, SEIU Local 1021

Christine Daniel, City Manager

Diane Hayes, President SEIU Local 1021 Community Services

Margarita Zamora, Acting Employee Relations Manager

Valerie Robinson, President, SEIU Local 1021 Part-Time Recreation Leaders Association

William Rogers, Deputy City Manager

Meridith Lear, Negotiator, SEIU Local 1021 Community Services

Jane Micallef, Director of Health, Housing & Community Services

Debra Shorter-Jones, Negotiator, SEIU Local 1021 Community Services

Jay Kelekian, Executive Director Rent Stabilization Board for the Rent Stabilization Board

James Wells, Negotiator, SEIU Local 1021 Part-Time Recreation Leaders Association

Donna Corbeil, Director of Library Services for the Board of Library Trustees

Sam Clemmons, Negotiator, SEIU Local 1021 Community Services

Michael Marchant, Chief Steward, SEIU Local 1021 Community Services Chapter

2013-2015 Memorandum Agreement

City of Berkeley

SEIU Local 1021 Community Services & PTRLA

SEIU Local 1021:

City of Berkeley:

Jacquelyn Morgan, Negotiator, SEIU Local
1021 Community Services

Andrea Mullarkey, Negotiator, SEIU Local
1021 Community Services

EXHIBIT A**Salary Ranges In Effect from June 24, 2012 through June 20, 2015**

JOB CODE	REP UNIT	CLASSIFICATION TITLE	FLSA	STEP A	STEP B	STEP C	STEP D	STEP E
21070	L	Accountant I	N	5416	5649	5877	6124	6393
21170	L	Accountant II	N	6332	6605	6898	7186	7504
28230	L	Applications Programmer/Analyst I	N	6566	6848	7155	7469	7791
28220	L	Applications Programmer/Analyst II	N	7166	7482	7818	8172	8541
22280	L	Architect	E	8148	8535	8948	9378	9823
22270	L	Assistant Architect	E	6982	7300	7650	8022	8418
24060	G1	Assistant Environmental Health Specialist	N	0	0	5739	6045	6286
28090	L	Assistant Management Analyst	N	5413	5647	5876	6119	6388
94040	G1	Assistant Mental Health Clinician	N	4555	4716	4866	5039	5291
29200	L	Assistant Planner	N	5446	5687	5916	6166	6433
28100	L	Associate Management Analyst	N	6752	7049	7365	7682	8018
29030	L	Associate Planner	N	6577	6867	7146	7465	7808
21340	L	Auditor I	N	5416	5649	5877	6124	6393
21160	L	Auditor II	N	6752	7073	7375	7690	8018
26070	IA	Automation Librarian	N	6544	6851	7173	7515	7886
37060	L	Building Inspector I (Certified)	N	6429	6708	7011	7306	7628
37050	L	Building Inspector II	N	6624	6911	7224	7528	7857
37070	L	Building Inspector II (Certified)	N	6891	7186	7511	7833	8174
35160	L	Building Plans Examiner	N	6891	7186	7511	7833	8174
28020	L	Buyer	N	5791	6049	6288	6551	6832
96080	IA	Central Library Circulation Supervisor	N	5127	5343	5575	5816	6117
24110	G1	Clinical Psychologist	E	7060	7335	7627	7923	8243
33090	L	Code Enforcement Officer I	N	5092	5327	5576	5834	6108
33100	L	Code Enforcement Officer II	N	6181	6448	6741	7026	7334
28330	L	Community Development Project Coordinator	E	7031	7368	7733	8110	8500
95070	G1	Community Health Worker	N	0	4195	4290	4396	4616
95370	G1	Community Health Worker Specialist	N	4555	4716	4866	5039	5291
28080	L	Community Services Specialist I	N	5416	5649	5877	6124	6393
28120	L	Community Services Specialist II	N	6752	7049	7365	7682	8018
24070	G1	Dietitian	E	5667	5894	6114	6345	6606
28320	L	Disability Services Specialist	N	6752	7049	7365	7682	8018
28840	L	Emergency Services Coordinator	N	6753	7049	7365	7682	8019
28180	L	Employment Specialist	N	6752	7049	7365	7682	8018
28830	L	Environmental Compliance Specialist	E	7312	7574	7856	8171	8475
91050	L	Field Representative	N	0	0	5050	5255	5492
35090	L	Fire and Life Safety Plans Examiner	N	7596	7922	8281	8631	9014
35070	L	Fire Prevention Inspector	N	6181	6448	6741	7026	7334
24590	G1	Hazardous Materials Specialist I	N	6439	6666	6917	7191	7463
24560	G1	Hazardous Materials Specialist II	N	7312	7574	7856	8171	8475
24190	G1	Health Educator	E	6370	6618	6874	7142	7427

JOB CODE	REP UNIT	CLASSIFICATION TITLE	FLSA	STEP A	STEP B	STEP C	STEP D	STEP E
33080	L	Housing Inspector	N	6181	6448	6741	7026	7334
33060	L	Housing Inspector (Certified)	N	6429	6708	7011	7306	7628
28300	L	Information Systems Specialist	N	6142	6409	6694	6985	7290
36050	L	Information Systems Support Technician	N	5099	5290	5487	5692	5906
22290	L	Landscape Architect	E	7856	8215	8607	9030	9473
22090	L	Landscape Designer	E	6647	6966	7289	7642	8019
26050	IB	Librarian I	N	5293	5545	5825	6084	6346
26040	IB	Librarian II	N	5825	6084	6346	6642	6926
42450	IB	Library Aide	N	3180	3330	3473	3624	3721
42130	IB	Library Assistant	N	3862	4028	4205	4384	4589
26150	IA	Library Literacy Program Coordinator	N	5578	5827	6081	6358	6637
42462	ID	Library Page	N	0	0	0	0	14
42500	IB	Library Specialist I	N	4358	4545	4740	4941	5202
96100	IB	Library Specialist II	N	4589	4835	5041	5249	5511
34050	G1	Licensed Vocational Nurse	N	0	4787	4955	5118	5296
64200	G1	Mealsite Coordinator	N	0	0	4044	4139	4238
24450	G1	Mental Health Clinician I	E	5795	6037	6285	6537	6797
24520	G1	Mental Health Clinician II	E	6382	6637	6899	7174	7454
24700	G3	Mid-level Practitioner	E	0	8096	8363	8669	8975
63200	G1	Mini Bus Driver	N	0	0	4088	4248	4422
24040	G1	Nutritionist	E	5667	5891	6114	6346	6607
35150	L	Permit Specialist	N	4832	5062	5287	5536	5795
24460	G1	Psychiatric Social Worker I	E	5795	6037	6285	6537	6797
24410	G1	Psychiatric Social Worker II	E	6382	6637	6899	7174	7454
24510	G1	Psychiatrist I	N	0	0	0	0	95
24740	G1	Psychiatrist I	E	12393	13011	13668	14343	15058
24500	G1	Psychiatrist II	E	0	0	0	0	99
24750	G1	Psychiatrist II	E	12850	13498	14165	14874	15613
24490	G1	Psychiatrist III	E	0	0	0	0	104
24760	G1	Psychiatrist III	E	13565	14236	14946	15690	16476
24020	G3	Public Health Nurse	E	7441	7708	8018	8354	8681
65740	R1	Recreation Activity Leader	N	2919	3232	3598	3967	4421
65742	R2	Recreation Activity Leader	N	17	19	21	24	26
24050	G1	Registered Environmental Health Specialist	N	6561	6789	7050	7328	7603
24030	G3	Registered Nurse	E	0	7209	7456	7712	7990
21150	L	Revenue Development Specialist	N	6753	7049	7365	7682	8019
32030	L	Senior Building Inspector	N	7596	7922	8281	8631	9014
35170	L	Senior Building Plans Examiner	N	7596	7922	8281	8631	9014
95390	G1	Senior Community Health Specialist	N	4784	4953	5111	5284	5553
24690	G1	Senior Environmental Health Specialist	N	6890	7131	7398	7694	7984
91040	L	Senior Field Representative	N	0	0	5463	5707	5937
28260	L	Senior Health Management Analyst	N	6964	7299	7655	8034	8421
28960	L	Senior Information Systems Specialist	N	6774	7075	7392	7727	8070
26060	IB	Senior Librarian	N	6090	6353	6634	6937	7238

JOB CODE	REP UNIT	CLASSIFICATION TITLE	FLSA	STEP A	STEP B	STEP C	STEP D	STEP E
24530	G1	Senior Mental Health Clinician	E	6966	7247	7515	7814	8132
35140	L	Senior Permit Specialist	N	5223	5489	5761	6050	6310
29020	L	Senior Planner	E	7561	7901	8262	8626	9010
24130	G1	Senior Psychiatric Social Worker	E	6966	7247	7515	7814	8132
24010	G3	Senior Public Health Nurse	E	8150	8462	8784	9158	9509
65560	G1	Senior Service Aide	N	0	0	3666	3800	3951
65570	G1	Senior Service Assistant	N	0	0	4683	4804	4919
34030	G1	Senior Vector Control Technician	N	0	0	4948	5118	5283
65530	R2	Sports Field Monitor	N	11	12	12	13	14
65750	R1	Sports Official	N	3075	3591	4103	4619	5135
65752	R2	Sports Official	N	18	21	24	27	30
26030	IA	Supervising Librarian	N	6940	7261	7603	7969	8360
96090	IA	Supervising Library Assistant	N	4705	4902	5114	5336	5612
34040	G1	Vector Control Technician	N	0	0	4808	4976	5129
25760	G1	Youth Services Advisor	N	4775	5007	5203	5419	5657

EXHIBIT B**NON-CAREER EMPLOYEE PROVISIONS (UNITS G1, G3, AND L)**

Section 1	Preamble
Section 2	Recognized Employee Organization
Section 3	No Discrimination
Section 4	Union Security
Section 5	Deduction of Union Dues
Section 6	Union Representatives
Section 7	Separability of Provisions
Section 8	Finality of Recommendations
Section 9	Duration
Section 10	Salaries
Section 11	Higher Classification and Temporary Appointments
Section 13	Hours and Days of Work
Section 14	Overtime
Section 15	Shift Differential
Section 17	Payroll Errors
Section 16.2	Bilingual Pay Program
Section 42.1	Personal Conduct
Section 42.2	Use of Automobiles and Parking
Section 48	Layoff

Non-Career Employees - Paid Time Off

A non-career employee who works one thousand forty (1040) hours or more in a calendar year in a classification covered by this Agreement, and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of paid time off:

1. To qualify for paid time off as vacation, the employee must apply in writing, to the employee's Supervisor at least thirty (30) calendar days in advance of the desired time off. The grant or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
2. To qualify for paid time off as sick leave, the employee must notify the employee's Supervisor of an inability to report for work by reason of illness or injury in advance of the scheduled work.

3. An employee who has credited and unused paid time off shall receive payment for such time upon termination of employment. All credited paid time off not utilized by employees at the end of the calendar year in which the employees are eligible to take such time will be paid off at the end of the year as wages and shall not be accumulated from year to year.

Salary Advancement - Non-Career Employees

When a non-career employee has worked two thousand eighty (2080) hours subsequent to July 1, 1983 without terminating his/her service with the City or being terminated from his/her service with the City, such employee shall be moved to the next higher salary step within her/his present classification on the first day of the payroll period following completion of said 2080 hours. Non-career employees shall be eligible for subsequent step increases based on the above 2080 hour formula.

No provision herein shall be interpreted as preventing Department Heads from placing an employee at a higher salary step within a classification at her/his discretion provided the placement is made in accordance with City rules and regulations and standard pay practices.

APPENDIX A

SEXUAL HARASSMENT POLICY (OCTOBER 10, 1986)

WHY SHOULD EMPLOYEES BE CONCERNED ABOUT SEXUAL HARASSMENT

The City has adopted an Affirmative Action and Equal Employment Opportunity policy that prohibits, not only obvious forms of discrimination based on race, sex, age, religion, color, sexual preference, national origin, ethnicity, handicap/disability, but also the more hidden or subtle forms commonly called Sexual Harassment. Specifically this policy states:

"The City of Berkeley affirms its commitment to enshrine an environment for all employees which is fair, humane and respectful; an environment which supports and rewards employee performance on the basis of relevant considerations such as ability and effort. Behaviors which inappropriately assert sexuality as relevant to employee performance are damaging to this environment.

The City of Berkeley deplores such conduct as an abuse of authority and thus it is an official City policy that sexual harassment of employees will not be tolerated."

SEXUAL HARASSMENT is detrimental to employee morale and productivity. This type of harassment is not to be tolerated, trivialized, or condoned in any City department or agency.

WHAT TYPE OF BEHAVIOR CONSTITUTES HARASSMENT

Harassment is defined as "to annoy continually or chronically; or to badger." Harassment includes ethnicity or sex based jokes, racial slurs and unwelcome teasing, posters or pictures hostile to or making fun of a specific class of people, unwanted physical or sexual contact and request for intimate relations. Behavior such as hazing or 'initiation,' which intentionally or unintentionally humiliates or intimidates can also be harassment. Action on the part of the supervisor or co-worker that conditions any employment decision upon an employee's tolerating any harassment or giving sexual favors is a violation of this policy as well as federal and state law.

CAN FRIENDLY INTERACTION AND/OR SEXUAL REFERENCES BE HARASSMENT?

There is a clear line in most cases between attractiveness to a particular person and unwelcome behavior or pressure for an intimate relationship. The positive exchange of the former situation is not going to be considered harassment; employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intent, the behavior will be considered harassment and should be stopped.

IF I'M BEING HARASSED -- OR THINK I AM -- WHAT SHOULD I DO?

First, be "up front," tell the person(s) harassing you that you do not like what they are doing and want them to stop. If you cannot do this by yourself, ask your supervisor or co-worker to be with you when you tell the harasser. You may also contact the Affirmative Action Officer for assistance or advice at any time.

WHY SHOULD I STOP BEING FRIENDLY TO SOMEONE JUST BECAUSE HE OR SHE THINKS I'M HARASSING THEM?

If someone tells you that they do not like something you are saying, stop the harassment immediately. Otherwise, you may face a lawsuit that can run several thousands of dollars in punitive damages (out of your pocket). You may also be subject to City discipline which could include dismissal. Additionally, harassing someone for "turning you in" is called retaliation and is against City policy, state and federal law.

ARE THERE PROTECTIONS AGAINST FALSE CHARGES?

Yes. This kind of situation is serious for everyone involved. The whole situation will be carefully reviewed before any action is taken. The best protection is keep all conduct free from behaviors that are inappropriate in a work environment.

WHAT RESPONSIBILITIES DO DEPARTMENT HEADS OR SUPERVISORS HAVE?

Department heads and supervisors have the responsibility to keep harassment out of their units and to maintain a "bias free" work environment. This means being aware of how people are treating each other and being responsive when issues of harassment are brought to their attention. The Equal Employment Opportunity and Diversity Officer is available to provide guidance, training and assistance as may be required.

IF THE HARASSER DOESN'T TAKE "NO" FOR AN ANSWER OR MY DEPARTMENT HEAD/SUPERVISOR DOES NOT HELP, WHAT THEN?

If the harasser will not stop the harassing actions and the Department Head/Supervisor is unresponsive, a complaint can be filed with the City Equal Employment Opportunity and Diversity Officer. This will be handled with as much confidentiality for all parties as is possible. If attempts to resolve the matter informally are not successful, a formal complaint will be required and confidentiality cannot be maintained. After a thorough review of the situation, recommendations will be made to correct or remedy the matter. You are encouraged to seek the assistance of the Personnel Office as soon as you feel a problem exists. You may call Personnel at 981-6811 for assistance. Complaints may also be filed with the California Department of Fair Employment Opportunity Commission.

APPENDIX B

EEO COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURE

Policy In accordance with EEO principles and the policies of the EEO/Affirmative Action Program, all employment practices, procedures, conditions and decisions shall be based on valid job-related criteria and shall be maintained without discrimination or harassment on the basis of race, color, religion, ancestry, national origin, age, sex, sexual orientation, marital status, political affiliation, physical disability, or medical condition (including cancer and HIV status).

Objectives The EEO Complaint Investigation and Resolution Procedure shall apply to all City employees who seek redress from any employment practice, procedure, condition or decision which is believed to have been applied to them in a manner inconsistent with EEO principles or in violation of any policy of the EEO/Affirmative Action Program. The objectives of this procedure are as follows:

1. To provide the structure of due process for City employees to use in order to report and seek correction of employment practices, procedures, conditions or decisions which are believed to have been applied to them in violation of EEO principles or any policy of the EEO/Affirmative Action Program;
2. To define appropriate roles, responsibilities and accountability for impartial evaluation, investigation, and revision of practices, procedures or decisions to ensure compliance with EEO principles and EEO/Affirmative Action Program policies;
3. To make City departments more conscious of the EEO concerns and issues, and to improve the capability of departments to appropriately respond to and resolve EEO concerns and issues;
4. To provide the City with the opportunity to identify, evaluate and appropriately respond to EEO concerns and issues in a timely manner at lowest administrative level possible, and to prevent the necessity for outside intervention by courts or EEO regulatory agencies.

Conditions The following conditions shall apply with regard to the application and administration of the EEO Complaint Investigation and Resolution Procedure:

1. No employee, as a result of his/her participation in the EEO Complaint Investigation and Resolution Procedure, shall be subject to retaliation or reprisal by any other employee which:
 - a) deprives or tends to deprive him/her of employment opportunities,

- b) has the effect of creating an intimidating, hostile or offensive working environment,
- c) has the purpose or effect of unreasonably interfering with his/her work performance,
- d) otherwise adversely affects his/her status as an employee.

The City will take severe disciplinary action, up to and including termination, against any employee who violates this condition.

2. All internal complaints that allege violation of EEO principles or EEO/Affirmative Action Program policies, and all responses to such complaints may be handled under the provisions of the EEO Complaint Investigation and Resolution Procedure.
3. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file complaints with the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the courts.
4. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file grievances under the provisions of collective bargaining agreements.
5. The EEO Complaint Investigation and Resolution Procedure shall not apply to formal complaints on matters outside the purview of the EEO/Affirmative Action Program.
6. Any corrective or preventative measures undertaken to resolve EEO problems and concerns identified in accordance with this procedure shall be entered into voluntarily by the City of Berkeley as part of its ongoing commitment to the provision of equal employment opportunity. Such action shall not be construed as an admission, nor shall such action imply, that the City of Berkeley engages in or ever has engaged in unlawful discrimination.
7. All investigation reports prepared in accordance with the provisions of the EEO Complaint Investigation and Resolution Procedure shall remain the sole property of the City of Berkeley, and as such shall be established and maintained as confidential material. No persons other than authorized complaint investigators and evaluators shall have any entitlement to access such material. The City of Berkeley will take such steps as necessary to secure appropriate legal remedies in response to any unauthorized duplication, distribution or possession of such material.

8. Any party who files a complaint under the provisions of the EEO Complaint Investigation and Resolution Procedure shall be entitled upon request to advice, counsel and representation by an authorized agent of his/her bargaining unit throughout the investigation and resolution process.

Informal Resolution Process

The Equal Employment Opportunity and Diversity Officer will be responsible for accepting informal complaints of EEO policy violations, either orally or in writing. Upon this notification, the Equal Employment Opportunity and Diversity Officer will advise the complainant of the steps of the process and his/her right to file civil action, and will perform whatever inquiry is deemed necessary to provide the complainant with an informal analysis of the matter.

If the complainant determines that it is appropriate to pursue the matter, then the Equal Employment Opportunity and Diversity Officer will establish a date to meet with the complainant and the Department Head or the appropriate City official as determined by the City Manager to review the allegations of the complaint. Subsequent to the interview, the Department Head or other appropriate City official will take the following steps.

- a) Investigate the complaint allegations with the advice and assistance from the Equal Employment Opportunity and Diversity Officer as necessary.
- b) Prepare a written investigative report.
- c) Provide copies of the investigation report to the Equal Employment Opportunity and Diversity Officer.
- d) Meet with the complainant and the Equal Employment Opportunity and Diversity Officer to discuss the complaint, investigation results, and resolution of the complaint.

The Equal Employment Opportunity and Diversity Officer will engage in any additional inquiry deemed appropriate to bring the complaint to resolution, and will prepare a written statement of agreement that identifies the complaint allegations, summarizes the department's investigation results, identifies the independent assessments of the Equal Employment Opportunity and Diversity Officer, documents any corrective actions to be taken, and documents each area of satisfactory resolution of the complaint that has been agreed to by the complainant.

- a) Regardless as to whether the complainant elects to proceed to the next step of the procedure, or elects to engage in civil action or any other legal alternative, all corrective actions identified in the statement of agreement that are to be carried out by any City official shall be implemented.

- b) The Equal Employment Opportunity and Diversity Officer will provide copies of the statement of agreement to the Department Head or the appropriate City Official, and to the complainant.
- c) The informal resolution process must be performed in an expeditious manner, not to exceed twenty (20) working days from the date the complaint was submitted.

Formal Resolution Process

1. *Complaint Submission.* Formal complaints may be initiated upon the failure of the informal process to resolve the complaint. The complaint must be submitted in writing to the Equal Employment Opportunity and Diversity Officer within twenty (20) working days of the date of the termination of the unsatisfactory informal resolution process. The formal complaint should include the following information:
 - a) description of the activities and circumstances believed to be EEO violations;
 - b) identification of the complaint allegations that have not been addressed in satisfactory manner by the Department;
 - c) identification of any policies, practices or procedures believed to have been violated;
 - d) description of the participants' roles, responsibilities and activities in relationship to the alleged violations;
 - e) description of desired outcomes, relief, or other corrective measures.
2. *Complaint Rejection.* When presented with a formal complaint, if it is determined that: (a) the complaint does not fall within the scope of this procedure; (b) the complaint was not filed within the specified time limits; (c) the complaint is currently or has been the subject of a lawsuit against the City, or the complaint is currently or has been otherwise under legal review and/or subject to formal resolution by the authority of a court or an EEO regulatory agency including the California Department of Fair Employment and Housing (DFEH), the U.S. Office of Civil Rights (OCR), the U.S. Equal Employment Opportunity Commission (EEOC); (d) a decision has already been made and appropriate steps have been taken by proper authorities; then the Equal Employment Opportunity and Diversity Officer shall take the following steps:
 - a) Within five (5) working days of the receipt of the formal complaint, the Equal Employment Opportunity and Diversity Officer will submit a written

notification of its receipt to the City Manager that recommends rejection of the complaint and provides the reasons.

- b) If the City Manager authorizes rejection of the complaint, then within ten (10) working days from the receipt of the complaint, the Equal Employment Opportunity and Diversity Officer will provide written acknowledgment of its receipt to the complainant, and advise the complainant of its rejection, the reasons and his/her right to file civil action.
 - c) If the City Manager does not authorize rejection of the complaint then the Equal Employment Opportunity and Diversity Officer will proceed in accordance with the complaint investigation in accordance with the Complaint Acceptance provisions of this procedure.
3. *Complaint Acceptance.* When presented with a formal complaint, and after determining that (a) the complaint falls within the scope of this procedure, and (b) the complainant has satisfied the requirements of pre-complaint processing, the Equal Employment Opportunity and Diversity Officer shall take the following steps:
- a) Within ten (10) working days of the receipt of the formal complaint, provide written acknowledgment of its receipt to the complainant, and advise the complainant of the steps of the process and his/her right to file civil action.
 - b) Within ten (10) working days of the receipt of the formal complaint, provide written notification of the acceptance of the complaint to the City Manager, the Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee.
 - c) Within twenty (20) working days of the receipt of the formal complaint, (a) conduct a formal investigation of the allegations of the complaint, (b) submit a comprehensive investigation report with results, conclusions and recommendations to the City Manager, the Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee.
 - d) Within twenty-five (25) working days of the receipt of the formal complaint, meet with the City Manager, Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee to: (1) review the results of the investigation; and (2) discuss and document any corrective actions and/or preventative measures to be taken, including roles, responsibilities, implementation time lines, and evaluation criteria.
 - e) Within thirty (30) working days of the receipt of the formal complaint, provide a formal written response to the complainant that (1) identifies the

allegations of the complaint; and (2) summarizes the overall results of the investigation, and any corrective or preventative measures to be taken as appropriate.

4. *Complaint Investigation.* The formal investigation and written investigation report shall include the following elements:
 - a) Review and evaluation of the activities and circumstances alleged to be EEO violations;
 - b) Review and evaluation of the applicable policies, practices, and procedures;
 - c) Review and evaluation of the participants' roles, responsibilities and activities in relationship to the alleged violations;
 - d) Review and evaluation of other relevant documentation that may include personnel files, disciplinary, performance, payroll or related records;
 - e) Assessment of the extent to which allegations are supported by the evidence;
 - f) Identification of corrective, preventative and other appropriate measures recommended to resolve the problem (including roles, responsibilities, timetables and other relevant considerations).

APPENDIX C**CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS**

A.R. NUMBER: 2.31
EFFECTIVE DATE: August 17, 1994
REVISED DATE: June 5, 1995

PURPOSE:

To set forth policy and procedure for the implementation and administration of Family Care Leave as required by the Federal Family and Medical Leave Act, and the California Family Rights Act, and to incorporate the separate City of Berkeley Parental Leave Policy under a comprehensive Family Care Leave program.

POLICY:

It is the policy of the City to extend the full benefits of family care leave to any permanent career employee who has a minimum of one (1) year career service with the City of Berkeley, and limited benefits to qualified temporary employees as defined herein. Employees eligible for parental leave shall be entitled to a maximum of one (1) year of leave for the birth or adoption of a child who is five (5) years of age or younger. Employees eligible for family care leave under state and federal law are eligible for twelve (12) weeks of leave for the birth or adoption of a child or for the placement of a child with the employee for foster care, to care for a family member with a serious health condition, or to care for the employee's own serious health condition. Leaves under this provision may not be combined to yield a larger amount of leave than the stated maximums. Time away from work on parental leave shall be deducted from the amount permitted for medical leave, and time away from work on medical leave shall be deducted from the amount permitted for parental leave.

PROCEDURE:Parental Leave

There are two types of parental leave described in this regulation. The first kind of parental leave is a one-year parental leave policy provided by the City of Berkeley's personnel rules and regulations. Not all City employees will qualify for this benefit. The second kind of parental leave is a twelve-week parental leave required by state and federal law which respectively are called the California Family Rights Act and the Family and Medical Leave Act of 1993. Some employees who do not qualify for the City's one-year parental leave policy may qualify under state and federal law for the twelve-week parental leave.

A. City of Berkeley Personnel Rules

1. Any employee with one (1) or more years of benefited employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave as provided in the City's personnel rules as follows:
 - a. The birth of a child of the employee, or the adoption of a child who is five (5) years of age or younger by the employee.
 - b. Leave for the birth or adoption of a child must commence no later than thirteen (13) months from the date of birth or adoption and must conclude no later than twenty-five (25) months from the date of birth or adoption. Leave may begin before the date of birth or adoption upon presentation of medical certification of pregnancy, or the presentation of legal evidence of adoption. Leave may be taken intermittently upon mutual agreement between the employee and the department director.
 - c. Employees exercising their rights under this provision must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of parental leave.
 - d. At the employee's option, the employee may be placed on authorized leave without pay or may be compensated during parental leave with his / her accumulated sick leave (up to a maximum of two hundred (200) days), and all other accrued leaves. Such accrued leave balances will be paid in the same manner as if the employee were absent due to illness or on vacation during the leave. Upon exhausting all employee designated leave balances, the employee will be on unpaid status for the remainder of the leave.
 - e. During approved parental leave, after all accrued leaves are exhausted, the City will maintain life and health insurance coverage for the duration of the parental leave subject to any regular participation requirement of the employee.
 - f. In the event both parents are employed by the City of Berkeley, both employees may take parental leave simultaneously if eligible.
 - g. Approved parental leave shall not be deducted from the employee's seniority service date.

B. State and Federal Law

1. Employees who are not eligible for the one-year parental leave benefit under the City of Berkeley's personnel rules may still qualify for up to twelve (12) weeks of parental leave in a twelve-month period under state and federal law. In addition,

while the City of Berkeley's one-year parental leave policy does not cover placement of a child with the employee for foster care, the state and federal law does provide leave for foster care. In order to qualify for parental leave under federal and state law, employees must have at least one (1) year of continuous service with the City and also have worked at least 1,250 hours in the twelve (12) months preceding the leave. This includes non-career hourly employees. Eligible employees may be entitled to a leave of absence of up to a maximum of twelve (12) weeks in a twelve-month period as follows:

- a. Upon the birth of the employee's child, the adoption of a child by the employee or placement of a child with the employee for foster care;
- b. Leave may begin before the date of birth, adoption or foster care upon presentation of medical certification of pregnancy, the presentation of legal evidence of adoption, or presentation of documentation requiring state action for foster care. Leave may be taken intermittently upon mutual agreement between the employee and the department director, but under no condition may intermittent leave extend the period of parental leave beyond the one (1) year period in which the maximum twelve (12) weeks of leave is permitted to be taken under state and federal law.
- c. Employees exercising their rights to parental leave under state and federal law must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of parental leave. If the need is such that 30 days' notice cannot be provided, the request must be made as soon as possible.
- d. All parental leaves of absence under federal and state law are unpaid unless an employee has accrued leave. All accrued sick leave, vacation leave, compensatory leave, and/or administrative leave must be used before being placed on leave without pay.
- e. During an approved parental leave under federal and state law, the City will maintain life and health insurance coverage for the duration of the twelve-week parental leave subject to any regular participation requirement of the employee.
- f. In the event both parents are employed by the City of Berkeley, both employees may take parental leave simultaneously if eligible.
- g. Approved parental leave shall not be deducted from the employee's seniority service date.

Medical Leave

1. Eligible employees shall be granted medical leave as follows:

- a. Up to twelve (12) weeks of leave in a twelve-month period to care for a family member with a serious health condition, or to care for the employee's own serious health condition that prevents the employee from performing his / her job.
- b. For the purposes of this provision, a family member is defined as a biological child, adopted or foster child, stepchild, legal ward of an employee, biological parent, step-parent, adoptive parent, legal guardian, grandchild or grandparent in families where no parents are present, spouse or domestic partner. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition requiring either inpatient treatment at a hospital, hospice, or residential care facility or continuing treatment by a health care provider that prevents the employee from performing his / her job.
- c. Employees exercising their rights under this provision must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of medical leave. If the leave is unforeseen, the employee shall provide the department director written notice of leave as soon as is practicable. When medically necessary, leave may be taken intermittently or on a reduced work week schedule, however the employee must schedule the leave so as not to unduly disrupt the department director operations. The City may transfer an employee to another position which would better accommodate the requirements of the City's operations.
- d. At the commencement of medical leave, the employee must first use accrued sick leave, and then must use all other accrued leaves. Employees may not use greater than twelve (12) days of their sick leave to care for a family member. Such accrued leave balances will be paid in the same manner as if the employee were absent due to illness or on vacation during the leave. Upon exhausting all leave balances, the employee will be on unpaid status for the remainder of the leave.
- e. During approved medical leave, after all applicable leaves are exhausted, the City will maintain life and health insurance coverage for the duration of the leave subject to any regular participation requirement of the employee.
- f. The foregoing leave shall be granted upon medical certification that the employee has a serious health condition, or the employee is needed to care for a family member suffering from a serious health condition. Additional medical opinions may be required (at the City's expense) and a fitness for duty report to return to work.

- g. Approved medical leave shall not be deducted from the employee's seniority service date.
2. Non-career hourly employees shall be eligible for up to twelve (12) weeks of medical leave if they have a minimum of one (1) year of service and have worked at least 1,250 hours during the previous twelve (12) months.

Implementation of Family Care Leave

1. Employees requesting family care leave must submit completed Request For Family Care Leave form (designating either parental or medical leave), or if leave is unforeseen, call their supervisor to obtain the form.
 - a. If parental leave is requested, employee must provide medical certification of pregnancy, legal evidence of adoption, or evidence of State authorized foster care.
 - b. If medical leave is requested to care for the employee's own serious health condition, the department shall require the employee to submit the City of Berkeley Medical Certification form completed by the employee's personal physician.
 - c. If medical leave is requested to care for a family member, the employee must submit City of Berkeley Medical Certification form indicating that the employee is needed to provide care for family member.
3. Employees may only be granted intermittent parental leave upon mutual agreement between the employee and the Department / City.
4. Intermittent leave must be granted for medical leave to care for the employee's own serious health condition provided the employee schedules leave so as not to unduly disrupt the department's operational needs.
5. Upon receiving documented leave requests, the departmental payroll clerk will conduct an audit of the employee's file and time cards for previous 12 months to confirm that the employee is eligible for family care leave, and to determine amount of leave employee can use.
6. Upon verification of employee eligibility, ACM / Department Director will approve family care leave for a specific time period and forward the leave application to Human Resources Director and City Manager for authorization.
7. The department will prepare the necessary payroll forms and employee transaction form to document the family care leave, and to ensure that the employee receives compensation, if applicable, and that all paid leaves are exhausted, as appropriate, prior to placing the employee on leave without pay.