




Office of the City Manager

CONSENT CALENDAR  
November 27, 2012

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: David W. Hodgkins, Director of Human Resources  
Subject: Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245

RECOMMENDATION

Adopt a Resolution approving a new three (3) year Memorandum Agreement (hereinafter referred to as “Agreement”) with the International Brotherhood of Electrical Workers Local 1245 (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 to reduction of long term liabilities, specifically for health insurance costs. First, there is no cost of living increase during the term of this contract. Additionally, the Agreement eliminates a provision requiring the City to pay up to the Health Net Point of Service (POS) insurance premium rate effective January 1, 2014. This will result in a savings of approximately 7.6% or \$158,858 over the term of the contract, and significantly more in projected future costs given the anticipated increases in health premium rates, particularly the Health Net POS insurance plan. The Agreement also includes a hard cap on vacation accrual; 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; and freezes the medical cash-in-lieu amount to the rate in effect on December 31, 2012. These efforts make a significant progress toward reducing the City’s unfunded liabilities.

The Agreement also provides a modest increase to the Retiree Medical benefit, increasing the City’s contribution by \$100 in year 1; \$50 in year 2; and \$25 in year 3 of the Agreement.

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 year 2013 Adopted Budget and will be 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 10 negotiating sessions beginning June 1, 2012. The parties reached a settlement agreement on all outstanding economic and non-economic issues on October 16, 2012. 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

There are 16 employees represented by the Union in one representational unit (Unit C). The Union represents employees in electrical occupations in the Public Works Department.

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 preemptory 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.

A significant change in the new labor agreement is the implementation of Assembly Bill 340, which created the California Public Employees’ Pension Reform Act of 2013 (PEPRA). The new law creates a new CalPERS pension benefit tier for “New Members” (new employees/members entering public agency employment and/or public retirement system membership for the first time on or after January 1, 2013). The new tier has a single Miscellaneous member benefit formula that must be implemented by all public agency employers unless the formula in existence on December 31, 2012 has both a lower normal cost and a lower benefit factor at normal retirement age. IBEW employees are in the Miscellaneous plan and have the 2.7% at age 55 benefit formula and the normal cost for this formula will exceed the expected normal cost of the new 2% at age 62 benefit formula. Therefore, New Members hired on or after January 1, 2013 will be enrolled in the 2% at age 62 benefit formula.

PEPRA also requires that all New Members hired on or after January 1, 2013, pay at least 50% of the normal cost contribution of pensionable compensation. The normal cost contribution is the contribution set by the CalPERS actuary to cover the cost of a current year of service for active employees. Based on a conversation with the CalPERS actuary, the City does not expect to receive the fiscal year 2014 actuarial valuation until late November. Since the Union Agreement extends through June 20, 2015, at the expiration of this contract, all New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA.

There are numerous other changes to operational issues and other terms and conditions of employment set forth in the new labor contract.

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

<b>Term</b>	June 24, 2012 through June 20, 2015
<b>Cost of Living Adjustments (COLA)</b>	No COLA for the term of the Agreement through June 20, 2015.  However, if the City gives any other bargaining unit or unrepresented employees a COLA during the period June 24, 2012 through June 20, 2015, the parties agree to meet and confer on a COLA increase.
<b>Maximum Accumulation</b> <b>Vacation</b>	Caps maximum accumulation to 320 hours. Once an employee reaches the maximum accumulation, the employee ceases to accrue vacation until vacation is reduced below the 320 hour maximum.

<b>Sick Leave – Payment Upon Retirement/Termination</b>	Eliminates provision for employees to receive payment of accumulated sick leave at termination or retirement for employees hired on or after July 1, 2013.
<b>Sick Leave – Annual Payment</b>	Eliminates provision for employees to receive annual payment of excess sick leave for employees hired on or after July 1, 2013.
<b>Health Insurance</b>	Eliminates the requirement for the City to pay up to the Health Net Point of Service (POS) insurance premium rate effective January 1, 2014.
<b>Health Insurance In-Lieu</b>	Effective January 1, 2013, the City’s health insurance cash-in-lieu payment is frozen at \$532.06 (prorated for part-time employees).
<b>Retiree Medical</b>	Increase amount the City contributes by \$100 per month effective June 24, 2012, by an additional \$50 per month effective June 23, 2013, and by an additional \$25 per month effective June 22, 2014.

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. I believe 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, Senior Human Resources Analyst, Human Resources, 981-6821

Attachments:

- 1: Resolution  
Exhibit A: Memorandum Agreement Between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245.

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

MEMORANDUM AGREEMENT: IBEW LOCAL 1245

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

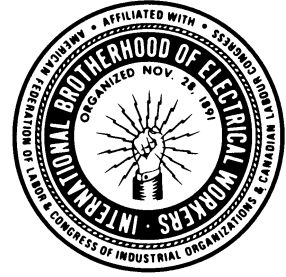
WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers Local 1245 have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties; and

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 International Brotherhood of Electrical Workers Local 1245, 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 the International Brotherhood of Electrical Workers Local 1245.



## **MEMORANDUM AGREEMENT**

**Between the**

**CITY OF BERKELEY**

**and the**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCAL 1245 - A.F.L. - C.I.O.**

**June 24, 2012 to June 20, 2015**

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2012-2015 Memorandum Agreement

City of Berkeley

IBEW Local 1245

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**MEMORANDUM AGREEMENT**  
**Between**  
**CITY OF BERKELEY**  
**and the**  
**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**  
**LOCAL 1245**

**ARTICLE 1 - ADMINISTRATION**

**SECTION 1: RECITALS**

- 1.1 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.
- 1.2 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.
- 1.3 International Brotherhood of Electrical Workers, Local 1245, is the recognized employee organization for Representation Unit C (Electrical Occupations), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Unit are hereinafter set forth in Exhibit A attached hereto and made a part hereof, and International Brotherhood of Electrical Workers, Local 1245 (hereinafter referred to as "the Union") is recognized as the sole representative of employees assigned to such positions.
- 1.4 The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit C, have exchanged freely information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.
- 1.5 This Memorandum Agreement shall be presented to the City Council as the joint recommendation of the undersigned.
- 1.6 Section titles in this Memorandum Agreement are for identification purposes only and are not to be used for the purpose of interpreting either the intent or the meaning of the language of any section.



**SECTION 2: PARTIES TO THE AGREEMENT**

- 2.1 **Exclusive Representation:** The Union is the exclusive representative of all employees within Representation Unit C (Electrical Occupations) and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or said Resolution may be amended, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Unit C.
- 2.2 **Management Rights:** The union recognizes that the management of the City and its business and the direction of its working forces are vested exclusively in the City, and this includes, but it not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

The City shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit City in making a change in a condition of employment if such change has been negotiated and agreed to by City and Union.

**SECTION 3: NO DISCRIMINATION**

The Union certifies that it has no restriction on membership based on race, color, creed, sex, sexual orientation, national origin, political affiliation, age, or handicap, that it has a positive program for making members of minority groups and women aware of employment opportunities within its jurisdiction, and that it will work with the City Manager to increase recruitment of such minorities and women in the City service. The Union accepts the City of Berkeley's Affirmative Action program and agrees to cooperate with the City in the implementation of that program.

The City agrees that it shall not discriminate in any way because of race, creed, religion, sex, sexual orientation, national origin, political affiliation, age, or handicap.

The City and the Union agree that no employee shall be discriminated against on the basis of membership or non-membership in the Union or any lawful activity on behalf of the Union.

## **SECTION 4:    UNION SECURITY**

### **4.1    Union Security**

4.1.1    An employee included in Unit C employed as of January 1, 1982 and thereafter during the term of this Agreement shall, as a condition of continued employment with the City and, in the case of a newly-hired employee, within thirty (30) calendar days of his or her employment, become and remain a member in good standing of the Union; or pay to the Union an initial fee equal to the regular initiation fee and, thereafter, a monthly service or agency fee equal to the regular monthly union dues and general assessments; or, in the case of an employee who is certified as a member of a bona fide religion, body or sect which has historically held conscientious objection to joining or financially supporting a public employee organization, pay sums equal to such initial fee, dues and general assessments to one of the following selected by such employee: (1) American Cancer Society; (2) Beebe Parent-Child Centers; (3) Over 60 Health Clinic; (4) Sickle Cell Anemia Research & Education.

4.1.2    **Contracting Out:** The City will not hire any contractors, firm or individual which will result in the layoff of any employees covered under this Agreement.

4.1.3    **Subcontracting:** If the City intends to subcontract any electrical or communication work, the City will notify the Union in advance of any bid solicitation whose value is estimated to be \$25,000 or more. The City will notify the Union in advance by mailing a copy of the City Council Bid Notifications Report to the Union Stewards. Information will be sent to the Union at the same time it is forwarded to the City Council and will include nature of project, the name of department requesting the work, and the budget code. Upon written request from the Union, the City will provide a copy of the actual bid specifications.

For electrical or communication work estimated to cost less than \$25,000, the City will provide the Union Stewards a copy of the Council Awarded Contracts Report on a monthly basis.

## 4.2 Enforcement Procedures

- 4.2.1 **Union Dues:** All new employees will be advised in writing of the obligations under this Section upon their employment by the City, and the City shall at that time provide authorization forms furnished by the Union for the deductions from wages of initiation fees, dues, general assessments or agency fee equivalents.
- 4.2.2 **Enforcement:** After thirty (30) days of employment and upon written notice from the Union of an individual's failure to comply with such Agency Shop requirements, such individual shall immediately be notified that his or her employment will be terminated within thirty (30) days of such notification if, by the end of such thirty (30) day period, or such extension as may be mutually determined between the City and the Union, the Union notifies the City that the requirement has not been met.
- 4.2.3 **Indemnification:** The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorneys fees, demands, actions, suits, judgments and other proceedings arising out of any discharge action resulting from this section.
- 4.2.4 **Union Reports:** The City shall furnish the Union, on a monthly basis, the name, date of hire, salary, classification and work location of all newly-hired employees subject to this Agreement, along with verification of monthly transmittals of any charitable contributions.

## **SECTION 5: DEDUCTION OF UNION DUES**

- 5.1 **Deductions:** The City shall deduct, once monthly, the amount of Union regular and periodic dues, service fees, or insurance premiums as may be specified by the Union under the authority of an authorization card furnished by the Union and signed by the employee.

Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

- 5.2 **Revocation:** Upon receipt of a notice from the Union of an increase in the amount of regular and periodic dues, service fees, or insurance premiums, an employee may, within thirty (30) days, revoke the deduction authorization by furnishing written notice of such revocation to the Human Resources Department. An employee may also revoke the deduction authorization by furnishing written notice of such revocation during the thirty (30) day period immediately preceding the expiration of this Agreement.
- 5.3 **Authorization Forms:** In the event an employee has not submitted the authorization for deduction of Union dues as provided in Section 5.1 (Deductions) above but has not withdrawn an authorization for deduction of Union dues previously on file with the auditor of the City, the old form of authorization shall remain in effect until it has been withdrawn or replaced by the form specified in Section 5.1 (Deductions); provided, however, that the auditor will accept new authorizations for deduction of Union dues only as provide in Section 5.1 (Deductions).
- 5.4 **Notice:** Union agrees to give reasonable notice of dues change.

## **SECTION 6: UNION REPRESENTATIVES**

- 6.1 **Number of Representatives:** The City shall allow two (2) 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 memoranda of understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Memorandum Agreement in the future, subject to the conditions set forth in Sections 6.2 (Maximum Representatives) and 6.3 (Notification).

All release time shall be recorded on time sheets and time cards with appropriate codes.

- 6.2 **Maximum Representatives:** Two (2) Union representatives shall be the maximum number who will be allowed concurrent time off.

- 6.3 **Notification:** The representatives shall notify the first non-bargaining supervisor a minimum of one workday in advance before leaving their work assignments except for emergency situations which require the immediate attention of said representatives (an emergency is defined as a safety problem or hazardous condition), but in no case shall an employee leave his or her job without notification of the first non-bargaining supervisor. Such request shall include the location, and area of activity, the approximate time needed and the general nature of the union business involved. Such request shall not be unreasonably denied. Failure to comply with notification and time recording rules may be grounds for denial of leave.
- 6.4 **Union/Management Meetings:** Quarterly meetings shall be held between the union and management. Release time shall be granted for up to two union representatives. Agendas for such meetings shall be set one week in advance between the Business Representative of the union and the City Manager or their designees. Meetings within departments may be held at the discretion of the department head.
- 6.5 **Union Training:** Conditional upon prior approval of the course content and upon receipt of certification of completion, if the employee is an elected official or steward of the Union, the City shall reimburse the employee for up to one-half of his or her regular work time spent in such training at the employee's permanent rate of pay, not to exceed twenty (20) hours of paid leave in a calendar year.

## **SECTION 7: SEPARABILITY OF PROVISIONS**

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

## **SECTION 8: EXISTING MEMORANDUM AGREEMENT**

Pursuant to Section A of the Memorandum of Understanding dated August 9, 1972 by and between the City and the Union, this Memorandum Agreement shall supersede all existing Memoranda of Understanding between the City and the Union. There is no guarantee that working conditions and practices will be continued if they are not included in this Memorandum Agreement or have not been or are not hereafter specifically authorized by ordinance or by resolution or the City Council.

**SECTION 9: 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 Memorandum Agreement from meeting and conferring and making modifications herein by mutual consent.

**SECTION 10: DURATION**

This Memorandum 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 up to and including June 20, 2015. This Memorandum 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 11: SALARIES**

- 11.1 **CalPERS Employer Paid Member Contribution for Legacy Employees, i.e., current employees and future employees who do not qualify as “New Members” under the California Public Employee’s Pension Reform Act of 2013 (PEPRA):** The City agrees to pay the employee's required contribution (7% of base pay) to the State of California Public Employees Retirement System (CalPERS). Effective January 5, 2003, the City agrees to provide the 2.7% at age 55-retirement formula benefit improvement, the City’s contribution to CalPERS on behalf of the employee will increase from 7% to 8%. Provided further that for the term of this contract, the City shall continue to provide Employer Paid Member Contributions of eight percent (8%) on behalf of Legacy Employees.
- 11.2 **CalPERS for “New Members” as Defined by PEPRA:** Provided further that “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. Provided further that until the expiration of this contract on June 20, 2015, the City shall provide Employer Paid Member Contributions of eight percent (8%) on behalf of New Members hired on or after January 1, 2013. At the expiration of this contract, all New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. New Members shall receive any other additional optional CalPERS benefits that the City provides to Legacy Employees as allowed by PEPRA.
- 11.3 **Salary Rates:** Salary rates for the period of June 24, 2012 through June 20, 2015, for all classes of positions in Representation Unit C 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.

Notwithstanding the above, the parties agree that if the City gives any other bargaining unit or unrepresented employees a Cost of Living Adjustment (COLA) during the period June 24, 2012 through June 20, 2015, the parties agree to meet and confer on a COLA increase.

- 11.4 **Step Placement:** 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". The minimum rate for the class shall apply to employees upon original appointment to the position except as may be determined by the City Manager within the negotiated wage ranges. Employees who have been laid-off and are rehired to the same classification shall be placed on the same wage step they were in when laid-off. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.
- 11.5 **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 and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.
- 11.6 **Effect of Leaves:** An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for more than one hundred sixty (160) consecutive hours, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.
- 11.7 **Salary Reductions:** Salary reductions may be made as a result of an employee's diminished service value or 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 reductions shall be made below the minimum rate established for the class to which the reduced employee's position is allocated. Notice of the reduction shall be given the employee not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall be entitled to receive a written statement of the reasons for such action.

Salary reductions that are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program shall not be subject to the provisions of Sections 11.7 (Salary Reduction), 11.8 (Y-Rate), or 35 (Grievances).

The parties agree that for the period from June 24, 2012 through June 21, 2014, the City will not exercise any of the rights granted under this Section 11.7 (Salary Reduction) to reduce employee salaries. Provided further that during the period from June 24, 2012 through June 20, 2015, the City agrees that it will not enforce the provision in this Section 11.7 (Salary Reduction) that allows the City to reduce an employee's salary as a result of an "employee's diminished service value."



- 11.8 **Y-Rate:** Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.3 (Salary Rates).
- 11.9 **Pay Frequency:** Payment of salaries shall be made bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the end of each payroll period and shall include payment for all earnings during the previous payroll period.
- 11.9.1 **Full-Time:** Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.
- 11.9.1.1 For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to three decimal places.
- 11.9.2 **Part-Time:** Bi-weekly payment to part-time employees in a class for which a monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such part-time employees shall be computed in the same manner as for full-time employees.
- 11.9.3 **Intermittent:** Bi-weekly payment to intermittent employees in a class for which a monthly salary rate has been established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be computed in the same manner as for full-time employees.
- 11.9.4 **Bi-Weekly Daily Rate:** Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the bi-weekly pay period multiplied by the daily rate.

- 11.9.5 **Bi-Weekly Hourly Rate:** Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.
- 11.10 **Higher Classification:** The department heads will work all employees within their career classifications. The departments may specifically assign an employee to work in a higher class. 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 or his or her designee. Blanket authorizations for departments will be issued on a yearly basis for applicable positions. To be eligible for higher-class pay, the employee must work a minimum of four (4) hours, meet the minimum qualifications, and perform the duties of the higher class. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a 5 percent differential. The journey-level employees will rotate the assignment on a monthly basis and perform the necessary duties. In the event the offer of higher class is declined by the journey-level employee assigned for that month, volunteers will be asked according to the rotation list. If there are no volunteers, the journey-level employee assigned for that month will be required to perform the necessary duties.
- 11.11 **Temporary Appointment:** 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.
- 11.12 **Step Increases for Provisional Employees:** An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.
- 11.13 **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 day of the pay period nearest March 31st.
- 11.14 **Overtime Underpayment:** The City will include any payment of overtime, which was inadvertently omitted or miscalculated, in the following pay period's check.

- 11.15 **Equity Studies:** A list of comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Contra Costa County, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Leandro, Santa Clara, and Vallejo. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.
- 11.16 **Step Increase:** Step increases shall be effective for payroll purposes only on the first day of the pay period nearest to the actual anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.
- 11.17 **Effective Date of Salary Adjustment:** Any general future salary adjustments will be set to become effective on the first day of the pay period.
- 11.18 **Reclassification:** In the event the City reclassifies a position based on an employee initiated review from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided he or she has performed the duties of the new classification for one (1) year and has not received an unsatisfactory evaluation during that period. All other employees shall be required to pass an examination for the higher classification and shall serve the normal probationary period. If a position is reclassified, the employee shall receive salary compensation retroactive to the date the position description questionnaire is submitted and verified as having been received by the department head. Position description questionnaires will be provided by the City. Employees may request one (1) job audit one (1) year after an initial job audit has been completed on their position. Thereafter one (1) job audit will be permitted every two (2) years.

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.

- 11.19 **Classification Specification Review:** The parties agree to meet and confer during the term of this Agreement to review and update, if appropriate, the Electrical Parts Technician, Communication Technician, Lead Communication Technician, Electrician, and Lead Electrician classification specification. Any decision regarding an equity adjustment will be included in the study of the classification.

- 11.20 Premium Pay Differential - Working at Heights of 60 Feet or More:** Assignments for working at heights of 60 feet or more will be on a voluntary basis. However, if all qualified employees decline the assignment, the City will be free to contract the work out to an outside service provider.

Employees who work at heights of 60 feet or more, including but not limited to performing maintenance of lights at San Pablo Park, shall receive Height Premium Pay Differential of one and one-half times (1½) times the normal hourly rate for all time performing such work. The Height Premium Pay Differential shall be reported to CalPERS as Height Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 11.21 Commercial Driver's License Premium:** Effective June 28, 2009, employees required to possess and maintain a valid California Class A or Class B Commercial Driver's License as a condition of employment shall receive a one percent (1%) differential to base pay. This differential shall be reported to CalPERS as Special Class Driver's License Pay. However, any hours worked on overtime are excluded from CalPERS reported "Compensation earnable" in California Government Code Section 20635.

This Special Class Commercial Driver's License Premium will increase by an additional one-half percent (1/2%) effective June 27, 2010, for a combined total of one and one-half percent (1.5%) as of June 27, 2010.

This Special Class Commercial Driver's License Premium will increase by an additional one and one-half percent (1.5%) effective June 26, 2011 if employees receiving this differential are able to achieve a 20% savings in lost time consisting of sick leave, worker's compensation leave and leave without pay. A joint labor/management committee will be established to agree on how the savings will be calculated, methodology and to develop a plan to achieve the savings.

## **SECTION 12: HOURS AND DAYS OF WORK**

- 12.1 Hours and Days of Work:** Hours and days of work shall be governed by rules established by the City Manager. (At the present time, the hours and days of work are as shown in Exhibit D-Hours and Days of Work)
- 12.2 Sunday and Graveyard Shifts:** Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14 (Shift Differential), shall be for eight (8) consecutive hours, including up to one-half (½) hour for lunch.
- 12.3 Shift Assignment:** 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.

- 12.4 **Classes During Shift Assignments:** If an employee assigned to the swing or graveyard shift wishes to attend classes during the day, the employee shall notify the Division Chief of his or her intention to enroll in classes during the day and the completion date of the classes. The City will review the work program and advise the employee within 14 days whether or not the day classes will interfere with the shift assignments. If no conflict exists, the City will not change the shift assignment until after the semester ends provided that the employee continues to be actively enrolled in the class.
- 12.5 **Rest Period:** Each employee shall be entitled to a rest period of fifteen (15) minutes during each one-half ( $\frac{1}{2}$ ) shift worked.

### **SECTION 13: OVERTIME**

Employees required to work in excess of their basic work week or in excess of 8 hours in one day (excepting voluntary regular schedules of 9 or 10 hours) during any one week shall be compensated for such overtime services as follows:

- 13.1 **Rate:** The overtime rate shall be one and one-half ( $1\frac{1}{2}$ ) times the straight time rate based upon regular monthly salary.
- 13.2 **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.
- 13.2.1 **Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half ( $1\frac{1}{2}$ ) hours for each overtime hour worked up to a maximum 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. Utilization of compensatory time shall be at the discretion of the employee's department head. As used herein, sixty (60) hours is equivalent to ninety (90) hours of time off work.
- 13.3 **Payoff of Overtime:** In the event that an employee resigns or is terminated, he or she shall be entitled to compensation for his or her accumulated overtime.
- 13.4 **FLSA Workweek:** For the purpose of computing overtime, the work week shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday. Any applied benefited leave shall be included in the calculation of overtime.

- 13.5 **Emergency Overtime:** Employees who are called from their living quarters for emergency work or duty on days other than normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked; provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be four (4) hours; and provided further that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.
- 13.6 **Meals:** The City will provide meals to employees during emergency assignments.
- 13.7 **Standby Pay:** An employee assigned to standby shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby.
- 13.7.1 **Standby Week:** For the purpose of this Section 13.7 (Standby Pay), a week shall mean the seven (7) consecutive calendar days following assignment to standby service. In the case of emergencies, the Senior Supervisor or Superintendent may assign another employee to complete the standby week for the originally assigned employee. In that case, the ten (10) hours standby compensation will be pro-rated between the employees.
- 13.7.2 **Missed Assignment while on Standby:** If an employee misses an overtime assignment while on standby duty, he or she will not receive the standby pay for that day. If he or she misses a second call during the same standby period, he or she will forfeit all the standby pay for that period.
- 13.7.3 **Consequences:** If an employee develops a pattern of failing to perform the service when called, they will be subject to disciplinary action and the union reserves the right to appeal any action.
- 13.7.4 **Standby Vehicle:** The City will provide the employee on standby duty with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle.

- 13.8 **Emergency Overtime Assignments:** All emergency overtime assignments including calling an employee other than the employee on scheduled standby status will be paid the minimum overtime compensation as defined in Section 13.5 (Emergency Overtime). In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation.
- 13.8.1 **Scheduled Overtime During Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks, that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 13.5 (Emergency Overtime). If other City electrical employees are concurrently performing scheduled overtime tasks, the Senior Electrical Supervisor may, at his or her discretion, assign the work to electrical employees present within the City performing the scheduled overtime tasks at the regular overtime rate of pay. The employee who is on scheduled standby status who chooses to perform scheduled overtime shall defer to other employees who choose schedule overtime assignments pursuant to Section 13.9 (Overtime Offers).
- 13.9 **Overtime Offers:** The Department will offer Scheduled Overtime on a voluntary basis to employees with the least amount of overtime worked in accordance with the following provisions:
- 13.9.1 **Posting of Overtime:** The Department will post a Scheduled Overtime Sign-up List on the Division's bulletin board once every two weeks. Employees who wish to be considered for scheduled overtime during that time period must sign the list.
- 13.9.2 **Scheduled Overtime Definition:** Scheduled Overtime shall be defined as an overtime assignment scheduled at least 24 hours in advance.
- 13.9.3 **Overtime Report:** The Department will prepare and post a Report of Overtime Worked for employees on a calendar year basis beginning with a zero balance on January 1. The report will be updated after each pay period.

- 13.9.4 **Overtime Assignments:** As scheduled overtime assignments occur, the Department will offer the assignment to individuals on the list for the applicable time period beginning with the person on the sign-up list with the least amount of overtime worked during the calendar year. Notification of scheduled overtime assignments shall be made during work hours at the work place, and employees must be present at the work place to receive the overtime work assignment.
- 13.9.5 **Overtime Assignment Tie Breaker:** If employees have equal amounts of overtime, the scheduled overtime assignment shall be offered to employees in the same order as their names appear on the sign-up list.

#### **SECTION 14: SHIFT DIFFERENTIAL**

Employees who regularly work a full shift of seven and a half (7½) hours or more, which includes more than four (4) hours between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and a half percent (7½%) of their regular monthly salary per month, and those who regularly work a full shift of seven and a half (7½) hours or more, which includes more than four (4) hours between the hours of 12:00 midnight and 7:00 a.m. (graveyard shift), shall be paid their regular salary plus ten percent (10%) of their regular monthly salary per month; provided, however, that in the case of any such employee who is regularly assigned to such 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.



**SECTION 15: NATURAL DISASTER/DECLARED EMERGENCY**

If an emergency is formally declared by the City, county, state or national authority:

- 15.1 **Call Outside Normal Working Hours:** If an employee is called outside of normal working hours, the employee gets time and one-half ( $1\frac{1}{2}$ ) 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).
- 15.2 **Shift Differential:** Thereafter, the first eight hours at regular rate and  $7\frac{1}{2}\%$  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 ( $1\frac{1}{2}$ ) the normal rate of pay but no shift differential on those hours above eight.
- 15.3 **Reduction in Hours:** There will be no reduction in the number of hours in the regular work week schedule.
- 15.4 **Change in Assignments:** If an employee is at work during the day when an emergency is declared and is assigned to work a night shift and is sent home, the employee will be compensated as follows:
  - 15.4.1 If an employee has been at work for up to but not more than two hours the employee will be paid for two hours at the straight time rate.
  - 15.4.2 If an employee has been at work for more than two hours but not more than four hours the employee will be paid for four hours at the straight time rate.
  - 15.4.3 If an employee has been at work for more than four hours the employee will be paid for eight hours at the straight time rate.
- 15.5 **Hours Worked in Excess of 12-hours:** An employee working more than twelve (12) hours in one continuous shift will be compensated at two times the normal hourly rate.

## ARTICLE 3 - LEAVES

### SECTION 16: VACATION

- 16.1 **Entitlement:** All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding calendar year shall be entitled to vacation leave.
- 16.2 **Vacation Approval:** The times during the calendar year at which an employee shall take his or her 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 working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a department head cannot permit an employee within his or her department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.
- 16.3 **Use of Incremental Vacation:** Employees may, with advance supervisory approval, use vacation leave in increments of one hour.
- 16.4 **Accrual Rate as of December 8, 1987:** Effective December 8, 1987, the vacation accrual rate shall be modified as follows:

Vacation Accrual Schedule	Authorized Annual Workweeks of Vacation	Vacation Leave Credits in Work Days per Month of Service	Vacation Leave Credits in Hours Earned per Month of Service
Through the first three (3) calendar years of service (except as provided in Section 16.4 (Accrual Rates as of December 8, 1987) and 16.5 (Accrual, Use, and Limitation for Employees with Less than 6-Months of Service) below)	2 work weeks	0.833	6.667
Fourth (4 <sup>th</sup> ) through eleventh (11 <sup>th</sup> ) calendar years of service (except as provided in Section 16.5 below)	3 work weeks	1.25	10.00
Twelfth (12 <sup>th</sup> ) through seventeenth (17 <sup>th</sup> ) calendar years (except as provided in Section 16.5 (Accrual, Use, and Limitation for Employees with Less than 6-Months of Service) below)	4 work weeks	1.667	13.33
Eighteenth (18 <sup>th</sup> ) through twenty-fourth (24 <sup>th</sup> ) calendar years (except as provided in Section 16.5 (Accrual, Use, and Limitation for Employees with Less than 6-Months of Service) below)	5 work weeks	2.083	16.667
Twenty-fifth (25 <sup>th</sup> ) and subsequent calendar years (except as provided in Section 16.5 (Accrual, Use, and Limitation for Employees with Less than 6-Months of Service) below)	6 work weeks	2.5	20.00

The authorized annual vacation leave for prior years is set forth in Exhibit C attached hereto and made a part hereof.

- 16.5 **Accrual, Use, and Limitation for Employees with Less than 6-Months of Service:** Each employee, during that portion of the calendar year in which he or she is originally appointed and during the next succeeding year, shall be entitled to vacation leave credits at the rate of 0.833 work days for each calendar month of service. Each such employee shall be entitled to take during these two (2) calendar years only such annual vacation leave as he or she earns; provided, however, that no employee with less than six (6) months of service shall be entitled to take his or her earned vacation leave.
- 16.6 **Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or Reemployed Employees:** For an employee who has worked on a part-time or intermittent basis or who has been on leave of absence without pay for a total of six (6) months or more or who has been terminated 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.
- 16.6.1 **Prorated Vacation for Intermittent or Part-Time Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.
- 16.6.2 **Effect of Military Leave on Vacation Eligibility:** 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.
- 16.7 **Maximum Vacation Accumulation:** Employees may accrue vacation earned up to a maximum cumulative total of 320 hours. Once an employee accrues 320 hours vacation, the employee shall not accrue any additional vacation leave hours until his or her vacation leave balance is below the maximum 320 hours. Under no circumstances will an employee be allowed to accrue more than 320 hours vacation leave. As provided below, the City will advise employees and their supervisors when the employee has attained an accumulation of 280 hours. Supervisors should be flexible in granting vacation requests from employees who reach 280 hours. Provided further that with regard to employees who have reached 280 hours, no vacation request by such employee shall be unreasonably denied. No employee shall be denied vacation leave such that it causes him or her to reach the 320 hour limit.

**Notification:** To assist employees to remain below the 320 hours vacation leave maximum accumulation, the parties agree that no later than October 1 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying accumulated vacation hours of all employees. The City also agrees to notify all employees who have accrued 280 hours of vacation leave, as of this date, that they must take vacation leave to reduce their vacation leave to avoid reaching the 320 hour maximum accrual.

- 16.8 **Prorated Vacation due to Extended Absence, Reemployment or Reinstatement:** 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 he or she returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, his or her vacation leave shall be as provided elsewhere in this Section 16 (Vacation).

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours, his or her vacation shall be as provided in the preceding paragraph of this Section 16.8 (Prorated Vacation due to Extended Absence, Reemployment or Reinstatement) or Section 16.9 (Payment of Vacation upon Termination or Extended Leave after Six Months of Service).

- 16.9 **Payment of Vacation upon Termination or Extended Leave after Six Months of Service:** 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 or her estate, shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee, or his or 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.

- 16.10 **Calculation and Payment or Reimbursement of Vacation Credits upon Termination or Extended Leave:** 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 or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee, or his or 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 hourly pay rate at date of termination, extended military leave, or other extended leave of absence without pay, 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.

- 16.11 Lump Sum Payment of Vacation:** Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in one lump sum at time of termination, extended military leave, or other extended leave of absence without pay, or as soon thereafter as possible; provided, however, that 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 16 (Vacation), and receive a lump sum payment for the balance of leave credits, if any. An employee, or his or her estate, shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unearned vacation credit at the time of retirement shall be paid off in a lump sum.
- 16.12 Calculation of Vacation Based on Actual Paid Hours:** All vacation benefits shall be calculated upon actual paid hours of work. This provision shall go into effect immediately upon implementation of necessary data processing and programming changes.
- 16.13 Vacation Accounting Procedures:** 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 approval by the union.
- 16.14 Voluntary Time Off:** The City will implement a voluntary time off (VTO) program, which may include a year-end holiday closure. It is understood by the parties that employee participation is completely voluntary and that employees who wish to work during such periods will be permitted to do so.

## **SECTION 17: HOLIDAYS**

- 17.1 Holidays:** Recognized holidays for employees in Representation Unit C shall be:

- 17.1.1 New Year's Day
- 17.1.2 Martin Luther King's Birthday (3rd Monday of January)
- 17.1.3 Lincoln's Birthday
- 17.1.4 Washington's Birthday (observed on the third Monday in February)
- 17.1.5 Malcolm X's Birthday (observed on Monday or Friday nearest May 19th)
- 17.1.6 Memorial Day (observed on the last Monday in May)
- 17.1.7 Independence Day
- 17.1.8 Labor Day (observed on the first Monday in September)

- 17.1.9 Indigenous Peoples' Day (observed on the second Monday in October)
  - 17.1.10 Veteran's Day
  - 17.1.11 Thanksgiving Day
  - 17.1.12 Day After Thanksgiving Day
  - 17.1.13 Christmas Day
  - 17.1.14 Effective January 9, 2000, each employee shall be granted three (3) floating holidays each calendar year.
- 17.2 **Floating Holidays:** Any employee shall be granted three (3) floating holidays each calendar year. The days selected shall be by mutual agreement between the employee and the department head (or his or her designee). In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have the three (3) days added to his or her accrued vacation time. Employees may take Floating Holidays in one (1) hour increments.
- 17.3 **Floating Holiday Accrual Upon Employment:** In the first calendar year of employment, an employee hired before May 1 shall be entitled to three (3) floating holidays; and an employee hired on or after May 1, but before September 1, shall be entitled to two (2) floating holidays and an employee hired on or after September 1, shall be entitled to one (1) floating holiday in that first year.
- 17.4 **Limitations:** No monetary award shall be authorized for unused accumulated Floating Holidays for employees who terminate employment prior to the completion of six (6) months of continuous City service.
- 17.5 **Holidays for Employees whose Work Week is Other than Monday through Friday:** Employees whose work week 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. The procedure for allowing holidays for employees whose workweek is other than Monday through Friday shall be established by the City Manager. The provisions of this Section 17.5 (Holidays for Employees whose Work Week is Other than Monday Through Friday) are not applicable to intermittent employees.
- 17.6 **Work During a Holiday:** An employee required to work on any day which is a holiday for employees whose work week 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 his or her regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas day or Thanksgiving Day shall be paid double time for that day. The hours worked on such 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 is also overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 17 (Holidays), but will not be made under both sections.

- 17.7 **Holidays for Part-Time Employees:** Regularly scheduled part-time employees 1) who are assigned to a regular schedule of twenty (20) or more hours per week; 2) who have worked for the City as regular or part-time employees for one (1) or more years; and 3) who during such period of time have worked a minimum of 1,000 hours shall be entitled to the holiday pay for the number of hours which such employee would have worked had the holiday not occurred, provided such holiday occurs on a day which such employee is regularly scheduled to work.

## **SECTION 18: SICK LEAVE**

- 18.1 **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 Sections 18.2 (Sick Leave Accrual) to 18.12 (Cessation of Accrual), inclusive; provided, however:
- 18.1.1 **Health Examination:** That before an employee will be considered entitled to sick leave with pay as hereinafter provided, he must undergo a health examination. Such examination should be undergone within thirty (30) days of the date of original appointment and shall be at the expense of the City and performed by a physician selected by the City.
- 18.1.2 **Filing of Report and Physical Defect:** That the examining physician shall file reports with the Director of Human Resources on forms provided. Upon discovery of some physical defect which can be remedied, the employee concerned shall be expected to correct the defect within a reasonable time in order to prevent its further development and subsequent loss of time. It shall be the responsibility of department heads to see if these corrections are made.
- 18.1.3 **Religious Exemption:** That employees whose religious beliefs are opposed to the provisions of this Section 18.1 (Eligibility) requiring a health examination, may, upon application to the City Manager, be exempted from the provisions hereof; provided, however, that in such cases the City Manager may terminate sick leave and impose a leave of absence without pay if there is a continued absence from duty because of illness or impaired efficiency attributable to ill health.

- 18.2 **Sick Leave 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 this Section 18 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a full-time or part-time basis, and shall mean 163 hours of work in the case of employees working on an intermittent basis.

- 18.3 **Pro-rated Sick Leave for Part-Time Employees:** 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, he or she shall be paid for time off on sick leave on a half-time basis.

- 18.4 **Sick Leave for Intermittent Employees:** An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which he or she would have worked if he or she 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 he or she becomes sick after reporting to work in response to such call.

- 18.5 **Maximum Accumulation:** Such sick leave as provided in Section 18.2 (Sick Leave Accrual), when not used, shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and thereafter part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 18.2 (Sick Leave for Intermittent Employees).

- 18.6 **Payment Upon Retirement/Termination:** 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.

18.6.1 **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 between twenty (20) years and twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to thirty eight percent (38%) of their accrued sick leave days up to a maximum of the two hundred (200) day maximum accumulation. Provided further that any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38%) of accumulated unused sick leave days but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation.



- 18.6.2 **Payment After 28 Years of Service for Employees Hired on or Before June 30, 2013:** Employees who were hired on or before June 30, 2013, who terminate with at least twenty-eight (28) years of benefited City of Berkeley service or 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 (28) years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.
- 18.6.3 **Sick Leave Payout to 401(a) Plan for Employees Hired on or Before June 30, 2013:** The City and the Union have met and conferred on an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement. This plan and trust agreement was originally negotiated with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 and has been submitted to the Internal Revenue Service for a Determination Letter and a Private Letter Ruling which are pending. If the City receives a positive response from the Internal Revenue Service, the plan and trust agreement will be extended to the employees in the bargaining unit. This will provide the 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.
- 18.7 **Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013:** Employees 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 for which they become eligible but 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 for such sick leave for any calendar year 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 not for any fraction of a day.

- 18.8 **Restoration of Sick Leave if Reemployed within Two Years:** Accumulated sick leave, which has been canceled by reason of an employee's termination, shall be credited back to such employee if he returns to City employment within two (2) years of such termination.
- 18.9 **Sick Leave Use/Family Illness:** Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of his or her sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4 (Family Care Leave, federal Family and Medical Leave Act. The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, son, daughter, parent or dependent.
- 18.10 **Prohibition for Use with Outside Employment:** No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of injury is made by such 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.
- 18.11 **Notification Requirement:** In order to receive compensation while absent on sick leave, the employee shall notify his department head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the head of his or her department. The Union and the City recognize it is advantageous to both parties that calls should normally be made prior to the beginning of the work shift. Leave for non-emergency doctors' appointments shall be requested in advance. In specific instances the City may by written notice require an employee (s) to call in prior to the beginning of their shift in order to be eligible for sick leave.
- 18.12 **Cessation of Accrual:** An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty consecutive hours shall receive his or her earned sick leave credit. If the employee is off the payroll for one hundred-sixty (160) consecutive hours or more, he or she shall not earn sick leave credit for each two successive pay periods that he or she is off the payroll.

18.13 **Workers' Compensation:** All probationary and permanent employees of the City and provisional employees who have worked a total of four (4) months or more for the City, who have suffered any disability arising out of and in the course of their employment as defined by the Worker's Compensation Insurance and Safety Act of the State of California, and who are receiving or shall receive compensation from the insurance carrier for such disability, and during the first seven (7) days after such disability when compensation is not paid by the insurance carrier shall be entitled to remain absent from duty with pay until such time as they are able to return to duty or some other final disposition is made of their case; provided, however, that provisional employees who have worked a total of four (4) months or more for the City shall be entitled to remain absent from duty with pay for the period they would have been permitted to remain provisional employees under their employment at the time of injury.

All employees, other than probationary and permanent employees and provisional employees who have worked a total of four (4) months or more, shall be entitled to such compensation as may be allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

18.13.1 **Workers' Compensation Payments:** Payments from the insurance carrier for disability arising out of and in the course of employment shall be paid to the employee. The amount of such payment or payments shall be deducted from the monies, which the employee received from the City. Payments from the insurance carrier, plus the monies paid to the employee by the City, shall be equivalent to the employee's regular full pay.

18.13.2 **Workers' Compensation Leave and 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 net 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. No time worked shall be part of the 365 calendar days of salary supplement paid by the City. This change shall not affect employees who are currently off the job with a work-related injury which occurred prior to July 1, 1979.

- 18.13.3 **Calculation:** 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 employees' combination of disability payments and salary continuation payments below employees' 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.

- 18.13.4 **Workers' Compensation Related Absence of Less than Four (4) Hours:** An employee who is absent from work for a medical appointment or physical therapy for less than four (4) hours will have ½ day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.
- 18.13.5 **Workers' Compensation Related Absence of Four (4) Hours or More:** An employee who is absent from work for a medical appointment or physical therapy for 4 hours or more will have 1 day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.
- 18.13.6 **Calculation Based on Actual Paid Hours:** All sick leave benefits shall be calculated upon actual paid hours.

- 18.14 **Light Duty:** Assignments for temporarily disabled employees.

An employee who is absent by reason of industrial disability may be returned to work and given temporary light duties within his or her ability to perform. The duration of any such period of temporary work should be determined by the City. Employees should be compensated at the rate of pay of their regular classification while engaged in such temporary duties, and such work assignments are to incorporate the following provisions:

- 18.14.1 **Modified Duty Accommodation:** The City shall accommodate, when feasible, employees covered by this memorandum under the provisions of workers' compensation, and such work assignments are to incorporate the following provision:

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

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

- 18.14.2 **Modified Duty Accommodation for Non-Industrial Disabilities:** 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 or 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 Human Resources Director. 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.
- 18.14.3 **Modified Duty for Pregnancy-Related Disability:** 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.
- 18.14.4 **Light Duty Assignments:** Availability of light duty job assignments shall be discussed upon request at the monthly Labor-Management Meetings.
- 18.15 **Control Program for Sick Leave Use:** The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.
- 18.16 **Bonus Time for Unused Sick Leave:** For every six (6) months of perfect sick leave attendance the employee will receive eight (8) hours of bonus time. A leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Memorandum Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payment.
- 18.17 **State Disability Insurance**
- State Disability Insurance** - Except as provided in 18.17.1.3 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 Benefits.

- 18.17.1 **State Disability Integration:** After such employee has been absent from work due to personal illness for six (6) consecutive work days, if the employee applies and is eligible for State Disability Insurance, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:
- 18.17.1.1 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.
  - 18.17.1.2 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 integration 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.
  - 18.17.1.3 The employee must 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.
  - 18.17.1.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his or her payroll clerk to verify dates covered by SDI and the amount to be paid. The employee must inform their payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated leave as will meet, but not exceed, the standard earnings of the employee for his or her normal workweek, up to a maximum of five (5) days.

**SECTION 19: FUNERAL LEAVE**

In the case of death within the immediate family of an employee (who is not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit B (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) working days or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. For the purpose of this Section, the immediate family of an employee shall be defined as: husband, wife, domestic partner, mother, father, sister, brother, child, grandmother, grandfather, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law, step-parent, step-sibling, step-child, aunts and uncles, nieces and nephews.

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

**Funeral Leave for Persons Other than Immediate Family:** In special cases, with the approval of the department head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of a death of a person not included within the definition of the immediate family.

**SECTION 20: 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.

If an employee voluntarily extends his or her military leave in excess of two (2) weeks, the amount of pay received by the employee for his or her military duty shall be deducted from his or her regular pay for such period.

**SECTION 21: PARENTAL LEAVE**

21.1 **Eligibility:** Employees with one (1) or more years of employment with the City (or equivalent in the case of part-time employees) shall be entitled to parental leave as follows:

A continuous parental leave of up to one year will be granted to any employee with one year (full-time) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the legal adoption of a child who is five years or younger, provided that:

- 21.1.1 **Commencement of Parental Leave:** The one year parental leave must commence no later than 13 months from the date of birth or adoption and must expire no later than 25 months from the date of birth or adoption, and.
- 21.1.2 **Notice Requirement:** Employees exercising their rights under this provision must provide the City at least 45 calendar days notice prior to the anticipated commencement date of the parental leave, unless a shorter notice is approved for good cause.
- 21.1.3 **Use of Sick Leave:** The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.
- 21.1.4 **Verification Requirement:** The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.
- 21.1.5 **Life and Health Insurance Coverage Upon Exhaustion of Leave:** During approved parental leave, after all earned leaves are exhausted, (except sick leave) the City agrees to maintain life and health insurance coverage for duration of the approved leave subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

## **SECTION 22: LEAVE OF ABSENCE WITHOUT PAY**

- 22.1 **Department Head Authority:** Upon the request of the employee, a department head may grant a leave of absence to an employee within his or her department without pay for a period not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.



- 22.2 **Union Sponsored Training:** A leave of absence without pay shall be granted at the request of an employee and the Union for the purpose of the employee's attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year.
- 22.3 **Exhaustion of Accrued Time:** Leaves of absence without pay shall be granted only after the employee has utilized all accrued vacation and any other time owed to the employee, except sick leave.

### **SECTION 23: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury service or while required to be present in court as a result of a call to jury duty. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations; and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. An employee who serves jury duty on his or her day off shall be granted an equivalent number of days off during his or her normal workweek. Employees are required to submit a written proof of jury duty service issued by the court in order to receive payment for Jury Duty Leave. The employee will keep any payment received for jury service including mileage reimbursement.

- 23.1 **Court Time:** The City will guarantee a minimum of three (3) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and three (3) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning compensatory time as follows: Duty day, outside of scheduled working hours, one hour minimum compensatory time and hour for hour thereafter. Day off, two-hour minimum compensatory time and hour for hour thereafter.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE**

24.1 **Medical Coverage:** The City shall pay the cost of health insurance coverage for employees who are not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit B (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, and who have such coverage under any group health insurance plan authorized by the City Council. The present level of benefits under the Kaiser Plan shall be maintained at City expense for the duration of this Memorandum Agreement. Medical benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependent up to age 26.

The City is committed to providing at least one fully paid employer provided health insurance option for employees and eligible dependents. The Union acknowledges the City's policies as stated above.

#### **24.2 Maximum Medical Premium Payments:**

24.2.1 Effective January 1, 2003, the City will transfer employees who chose to maintain Kaiser medical plan coverage from the Kaiser V-5 Plan into the Kaiser S-1 Plan. Effective January 1, 2003, the City will transfer employees who chose to maintain Health Net HMO coverage from the Health Net W-2 Plan to the Health net C9A Plan.

24.2.2 For employees hired on or after January 1, 2003, 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.

24.2.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single-party, two-party, family) and the plan chosen by the employee from that date forward.

- 24.2.4 Effective January 1, 2009, the amount the City contributes each calendar year toward the payment of health insurance premiums, in accordance with Section 24.2 (Maximum Medical Premium Payment), will increase by the lesser of twenty percent (20%) (single, two-party, family) or the amount of the Kaiser HMO premium amount (single, two-party, family) in effect on that date.
- 24.2.5 Effective January 1, 2014, for those employees who are enrolled on October 31, 2012 in the Health Net Point of Service (POS) health plan (Payroll Benefit Code Description HJ, HK, and HL) the City shall pay medical insurance premiums at the applicable rate for the Health Net HMO plan (i.e., single; 2-party, or family). If the employee chooses to remain enrolled in the Health Net POS Plan on or after January 1, 2014, the employee will assume responsibility for paying the difference between the Health Net POS and the Health Net HMO monthly premium rate (single; 2-party, or family). Provided further that if at any time after January 1, 2014 the employee transfers health coverage from Health Net POS to the Kaiser health plan, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single 2-party; or family) even if the employee subsequently enrolls in a different City sponsored health plan.
- 24.2.6 The parties agree that during the term from June 24, 2012 through June 20, 2015, if at any time the City and any other bargaining unit or unrepresented employees agree to cost share medical insurance premiums, the parties will agree to meet and discuss new employee cost sharing of medical insurance premiums.

Any changes resulting from a review of employee health insurance or other health related benefits will be subject to meet and confer between the Union and the City, except as otherwise provided in Section 24.5 (Change in Insurance Carrier).

24.3 **Dental Coverage:** The City shall provide a dental care program for employees who are not excluded from such benefit by Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit B (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof. The present level of benefits under the Dental Program shall be maintained at City expense for the duration of this Memorandum. Dental benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependents up to age 24.

- 24.3.1 Effective January 1, 1995, the annual maximum dental benefit will be increased to \$2000 per year, and the lifetime maximum orthodontia benefit shall be increased to \$2000.

- 24.3.2 Effective January 1, 2000, the dental plan is improved from 90% coverage to 100% coverage.
- 24.3.3 Effective January 1, 2003, the annual maximum dental benefit will be increased to \$4000 per year, the lifetime maximum orthodontia benefit will be increased to \$4000, and the annual cleanings will be increased from two (2) to four (4).
- 24.4 **Vision Coverage:** Effective January 1, 2003, the City shall provide a Vision Care Program for employees covered by this Agreement. The annual maximums for this benefit are as follows:

<b>Benefit</b>	<b>Benefit Frequency</b>
Exam	12-Months
Lenses	12-Months
Frames	24-Months
Contact Lenses**	12-Months
**Note: Benefits for Contact Lenses are in lieu of benefits for lenses and frames.	

The maximum amount the City shall be required to pay for the Vision Care Program shall be the applicable Vision Services Plan (\$25 Plan B) rate (i.e., employee only, employee plus spouse, employee plus one (1) child; employee plus family).

If during the term of this Agreement the premiums for such Vision Care Program are increased, the amount the City contributes shall increase no more than five percent (5%) above the previous calendar year's contribution amount towards the payment of the monthly premium.

Recognizing that the "vision exam" portion of the Vision Care Program duplicates existing benefit provided under Medical Coverage section 24.1 (Medical Coverage) and 24.2 (Maximum Medical Premium Payment), the Union and the City agree to revisit the Vision Care Program during the term of this Agreement with the expectation that it may be possible to identify a plan that provides a "Hardware Only" benefit (Lenses every 12-months; Frames every 24-months). Such "Hardware Only" plan shall be at a lower City and employee cost than the present Vision Services Plan (\$25 Plan B).

- 24.5 **Change in Insurance Carrier:** 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 at the sole discretion of the City.
- 24.6 **Domestic Partner Coverage:** If an employee chooses to complete and submit an Affidavit of Domestic partnership and sign up for medical and/or dental

benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

- 24.7 **Part-Time Employees and Prorated Benefits:** All career and grant-funded, benefited employees working less than full time 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.
- 24.8 **Commencement of Medical, Dental, and Vision Benefits:** Medical, dental, and vision 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.
- 24.9 **Health Insurance In-Lieu Payments:** Effective January 1, 2013, 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 employees, as provided in Section 24.7 (Part-Time Employees and Prorated Benefits). This benefit shall be frozen at this amount for the term of this agreement.
- 24.10 **Group Life Insurance:** The City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$50,000.00 which shall include a 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 calendar month in a pay status.
- 24.11 **Pre-Tax Status:** When employees are required to contribute to the cost for medical, dental, or vision insurance, those contributions will continue to qualify as pre-tax expenses under the provisions of IRS Section 125.

## **SECTION 25: 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 July 1, 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 25.7 (City funding of Retiree Health Benefit).

25.1 **Eligibility:** An employee is eligible for the retiree health insurance coverage set forth in subsection 26.2 (Provisional Appointments to a Higher Classification) below if he or she meets all the following criteria:

- 25.1.1 retires on or after July 1, 1998,
- 25.1.2 is vested with CalPERS,
- 25.1.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 25.1.4 is at least age 55.

25.2 **Pre Age 65 Retiree Health Insurance:**

25.2.1 **Beginning July 1, 1998:** The City shall make available health insurance coverage to the employee and his or 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%
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 or 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.

- 25.2.2 **Effective June 28, 2009:** For employees who retire on or after June 28, 2009, the City will pay on the employee's behalf no more than \$358.19 per month for an employee electing single party health coverage and no more than \$716.38 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 above-referenced chart.
- 25.2.3 **Effective June 27, 2010:** For employees who retire on or after June 27, 2010, the City will pay on the employee's behalf no more than \$424.31 per month for an employee electing single party health coverage and no more than \$848.61 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 above-referenced chart.
- 25.2.4 **Effective June 26, 2011:** For employees who retire on or after June 26, 2011, the City will pay on the employee's behalf no more than \$468.40 per month for an employee electing single party health coverage and no more than \$936.80 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 above-referenced chart.
- 25.2.5 **Effective June 24, 2012:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$589.48 per month for an employee electing single party health coverage and no more than \$1,178.96 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 above-referenced chart.
- 25.2.6 **Effective June 23, 2013:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$666.00 per month for an employee electing single party health coverage and no more than \$1,332.01 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 above-referenced chart.

- 25.2.7 **Effective June 22, 2014:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$720.97 per month for an employee electing single party health coverage and no more than \$1582.01 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 above-referenced chart.
- 25.3 **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 or her eligibility for the retiree medical benefits set forth in subsection 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.
- 25.4 **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.
- 25.5 **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 25.2 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or 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 or 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.



- 25.6 **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 26.2 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or 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 or 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.
- 25.7 **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.

The retiree medical benefit will be 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 the 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 June 28, 2009, a total charge of twenty six thousand, six hundred and forty (\$26,640) of employee payroll will be charged in the final three years of the Agreement so that contributions are at 1.764% in the final year of the Agreement. The purpose of the 0.764% increase in payroll contributions is to fund Pre Age 65 Retiree Health Insurance.

- 25.8 **Actuarial Study:** 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.

## **ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 26: PROBATIONARY PERIOD**

- 26.1 **Duration and Effect of Military Leave on Probationary Period:** Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of: one year (full time equivalent exclusive of all leave and light duty completed within 18 months) upon original appointment to the unit; employees promoted within the unit are subject to a probationary period of six (6) months (half time equivalent exclusive of all leave and light duty completed within one year); in addition, employees in trainee programs with specified training, evaluation or probation periods shall be governed by the applicable provisions of such program. 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 shall be interpreted to preclude the City from establishing new classifications, which may require a probationary period of more than six (6) months.
- 26.2 **Provisional Appointments to a Higher Classification:** 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.
- 26.3 **Report Requirement:** 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 that the employee be rejected.
- 26.4 **Rejection During Probationary Period:** During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which he has been promoted shall be reinstated to the position from which he was promoted unless charges are filed and he is discharged as provided in Section 31 (Discharge). Career City employees who fail probation in a promotional position or fail to complete the training requirements of a training program (academics or OJT) shall revert to their prior classification.

- 26.5 **Rejections Subject to Disciplinary Appeal:** A promoted employee may not grieve his or her rejection from probation/training. However, an employee disciplined for cause while on promotional probation shall have access to the disciplinary appeal procedure.
- 26.6 **Probationary or Temporary Employee Assignments:** No probationary or temporary employee will be assigned as the only ground worker with an Electrician until such employee has completed one (1) month of familiarization with aerial truck equipment.

## **SECTION 27: TRANSFER**

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

## **SECTION 28: PROMOTION**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established.

If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

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.

A career employee encumbering the classification of Electrical Parts Technician with at least two years of full time equivalent experience will be eligible to compete in an examination of Electrician provided the employee meets the minimum requirements of the Electrician.

**SECTION 29: DEMOTION**

The City Manager may demote an employee who so requests it, or whose ability to perform his or her required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which he does not possess the minimum qualifications as determined by the Director of Human Resources.

Notice of the demotion shall be given the employee not later than four (4) weeks prior to the effective date of demotion and a copy of said notice filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

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

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled.

**SECTION 30: SUSPENSION**

The City Manager may suspend an employee from his position at any time for the good of the service, for a disciplinary purpose, or for other just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any fiscal year. Any employee who has been suspended shall be entitled to receive a written statement of the reasons for such action.

For the good of the service, 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 to the City Manager.

**SECTION 31: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed then such discharge must be for just cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action.

**SECTION 32: 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.

**SECTION 33: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to his 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 requests reinstatement within two (2) years.

**SECTION 34: NOTICE OF TERMINATION**

Department heads shall notify the Director of Human Resources of all terminations of employment before or within two (2) days after the termination has taken place. Such notice shall be on forms provided by the Director of Human Resources and shall indicate the time and reasons for termination and a statement certifying whether or not the employee's services have been satisfactory.

## **ARTICLE 6 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE**

### **SECTION 35: GRIEVANCES**

35.1 **Definition:** A grievance is any dispute which involves 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 result from the meeting and conferring process.

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. Grievances must be filed in a timely manner. Grievances that are filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, are subject to settlement at any step of the grievance procedure at the Union's sole discretion.

A member of the bargaining unit that files a grievance where the Union is not representing or acting on the grievant's behalf, may only utilize this grievance procedure through step 3. The Union retains the sole discretion to refer which, if any, grievances to move to arbitration.

The parties agree that disclosure to the other party of all relevant information available to them is critical to the successful resolution of grievances at the lowest possible step of the grievance procedure. The parties therefore agree to disclose to each other the relevant information in their possession related to the grievance. Further, the parties agree to comply with reasonable grievance related information requests from the other party in a timely manner.

35.2 **Procedure:** Grievances shall be processed in the following manner:

35.2.1 **Informal Step:** An employee who believes that he or she has a grievance (and / or the employee's steward or Union representative) may discuss the complaint with the Deputy Director of Public Works, or with such subordinate management official as the Deputy Director may designate. If the issue is not resolved informally, the formal procedures hereinafter specified may be invoked.

- 35.2.2 **First Formal Step:** Any informal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, must be filed in writing to the Deputy Director of Public Works within thirty (30) days from the date the informal discussion was initiated. The written grievance must state specific issues involved, the decision rendered at the informal step, and the remedy sought. The Deputy Director or his or her designee shall have five (5) days to respond in writing to the formal, written grievance.
- 35.2.3 **Second Formal Step:** Any formal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, may be referred to the Director of Public Works or his or her designee within thirty (30) days from the date of the Deputy Director's formal written response, or if more than five (5) days have elapsed since the grievance was presented at the Deputy Director's level.
- 35.2.3.1 **Referral to Department Director:** The grievance may be referred to the Director's level and shall include a copy of the original grievance, the decision rendered at the Deputy Director's level, and a clear, concise statement of the reasons for the referral.

The Director of Public Works may designate a personnel representative to investigate the merits of the complaint, to meet with the complaining employee (and/or the employee's steward or Union representative); if the grievant is not the Union itself, to meet with the officials of the Union; and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer. The Director of Public Works shall issue a formal written decision within five (5) days of receipt of the grievance or if a meeting is held with the employee and his or her Union, the meeting must be held within ten (10) days of receiving the referral. The Director of Public Works or his or her designee shall issue a written decision within five (5) days from his or her meeting with the complaining employee and/or Union representative. If the issue is not resolved the grievance may be referred to the Third Formal Step within thirty (30) days of receipt of the response from the Director of Public Works.

35.2.4 **Third Formal Step:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the grievant, the Union, or the Director of Public Works. Any such referral shall be in writing including a copy of the original grievance, the decision rendered at the Director's level, and a clear, concise statement of the reasons for the referral. The City Manager shall designate a Human Resources representative to investigate the merits of the complaint, and upon request from the employee or the union, that representative to meet with the complaining employee (and/or the employee's steward or Union representative), if the grievant is not the Union itself, to meet also with the officials of the Union, and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer.

The City Manager shall issue a decision within 10-days of receipt of the grievance referral or within ten (10) days of the meeting, or if a meeting is held with the employee and/or the Union, the meeting must be held within ten (10) days of the referral. Grievances filed by a bargaining member where the Union is not representing or acting on the grievant's behalf, shall end at this step and no further right of appeal exists. The City Manager's decision shall be final.

**Union controlled grievances:** If the issue is not resolved, the grievance may be referred to Arbitration by the Union pursuant to Section 35.2.5 (Arbitration: The Union retains the sole discretion to move a grievance to arbitration) below within thirty (30) days of receipt of the City Manager's response. Provided further that the Union shall forward to the City the Union's portion of the State Mediation and Conciliation Services (SMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet this sixty (60) days deadline for both referral to Arbitration and payment of the SMCS 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.

35.2.5 **Arbitration: The Union retains the sole discretion to move a grievance to arbitration.** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred by the Union, or the City to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City. The fees and expenses of the arbitrator, the State Mediation and Conciliation Services (SMCS) and of the court reporter shall be shared equally by the Union, and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters before them which do not pertain to the suspension or discharge of an employee shall be in the form of a



recommendation to the City Manager who may accept or reject said decision. In the event of said rejection then, as to that particular grievance, and the fees and expenses of the arbitrator, SMCS, and of the court reporter shall not be shared by the Union, and full payment thereof shall be the sole responsibility of the City.

35.2.5.1 **Arbitrator Jurisdiction:** No arbitrator shall entertain, hear, decide, or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in Section 35 (Grievances).

35.2.5.2 **No Modifications:** Proposals to add to or change this Memorandum Agreement or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum Agreement, nor any matter arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum Agreement or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

35.2.5.3 **Timeliness of Award:** No arbitrator will be selected hereunder who does not agree to render an award not later than thirty (30) calendar days after the close of the hearing. By mutual agreement between the City and the Union, the arbitrator may render an award immediately upon the conclusion of the presentation of evidence.

35.3 **Affirmative Action/EEO Complaints:** Any grievance which in any way affects the implementation of the City's Affirmative Action Program shall not be subject to arbitration. The decision as to whether or not implementation of the Affirmative Action Program is in any way involved shall be made by the City Manager in his or her sole discretion. If, in his or her judgment, any grievance involves the Affirmative Action Program, the Equal Employment Opportunity and Diversity Officer shall notify the Union to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and, in such notification, refer to that section of the Affirmative Action Program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.

- 35.4 **Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases, no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievants 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 Memorandum Agreement which has resulted from the meeting and conferring process shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the memorandum agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring process is next open for such discussion.
- 35.4.1 **Response Time Limits:** The Director of Human Resources or his or her designee shall issue a decision in writing within twenty (20) days from the time he or she received the compensation grievance in writing. The grievant or the Union may refer the decision to the Third Formal Step (Section 35.2.4 (Third Formal Step) of this Memorandum Agreement) within twenty (20) days of receipt of the answer.
- 35.5 **Changes or Interpretations:** No changes in this Memorandum Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.
- 35.6 **Extension of Timelines:** Timelines noted in this section may be extended for cause upon mutual agreement between the City and the Union.
- 35.7 **Days:** All references in this Section 35 (Grievances) to "days" shall mean normal working days except as otherwise noted.
- 35.8 **Grievances Challenging Disciplinary Action**
- 35.8.1 Any grievance involving any disciplinary action up to as three (3) day suspension will be filed at the Director level.
- 35.8.2 All grievances involving demotion, discharge, or suspension of greater than three (3) days will be filed at the City Manager's level of the grievance procedure. If the issue is not resolved within fifteen (15) days of referral to this step, the procedures hereinafter specified may be invoked.

- 35.8.3 No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days of the time at which the affected employee was notified of such action in writing. If the City Manager, in pursuance of the procedures outlined in Section 35.2.4 (Third Formal Step) above, resolves a grievance which involves suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.
- 35.8.4 Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding on both parties, to the extent permitted by the Charter of the City.

## **ARTICLE 7 – GENERAL PROVISIONS**

### **SECTION 36: GENERAL PROVISIONS**

#### **36.1 Personal Conduct**

- 36.1.1 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 or her regular municipal employment without first obtaining the recommendation of the head of his or her department and of the City Manager.
- 36.1.2 No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.
- 36.1.3 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 offices of the City Manager, the department heads, or the Director of Human Resources for the purpose of making collections.
- 36.1.4 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.
- 36.1.5 No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department or otherwise to leave his possession without approval by the head of this department. The department head shall not grant such approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.
- 36.2 **Rain Gear:** The City will provide rain gear for employees in Representation Unit C assigned to work in inclement weather.
- 36.3 **Tools:** Each employee shall continue to be responsible for providing tools of the trade or other equipment, but shall receive a flat annual tool replacement allowance each July 1. New employees hired before or after July 1 will be entitled to a prorated tool replacement allowance payable the following July 1 after employment.

- 36.3.1 **Allowance:** The tool replacement is three hundred dollars (\$300). Tool allowances shall be paid at the end of the fiscal year in which they are earned.

#### 36.4 Training

- 36.4.1 **Responsibility:** Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. The City shall endeavor to provide training for all new technology purchased by the City and maintained by members of this agreement.
- 36.4.2 **Advancement/Promotional Consideration for Special Training Courses:** Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Director of Human Resources by the department head.
- 36.4.3 **Mileage and Tuition Reimbursement:** The City shall reimburse all employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his or her department head and the course has been approved by the City.
- 36.4.4 **Education Leave:** The City shall allow up to forty (40) hours off with pay per year to employees:
- 36.4.4.1 Who are required to obtain a license (excluding Class C driver's licenses) issued by the State of California and, in order to do so, must take courses which were not offered as a part of their basic curriculum or,
- 36.4.4.2 Who are required to obtain continuing education as a condition of license renewal; provided the license is required by the City for the employment or continued employment of the employee and that 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.

Employees who take classes during non-scheduled work hours in order to retain a job required license or to meet

continuing education requirements shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

36.4.4.3 To obtain education and training related to job skills to enhance performance, or to qualify for promotion, at the discretion of the department head.

36.4.5 **Management/Union Meetings:** The City and Union agree that it is beneficial to both parties to discuss and develop training for all classifications. The Director of Public Works and the Union shall meet on a quarterly basis to discuss and review progress made in addressing initial employee orientation, new equipment training, and vendor training.

36.4.6 **Commercial Driver's License:** The City shall provide the necessary training for employees to obtain a California Class B driver's license when such license is a requirement of their job classification and a condition of employment. Employees who fail to obtain the required California Class B driver's license after training will be subject to rejection from the probationary period pursuant to Section 26.4 (Rejection During Probationary Period) of this Memorandum Agreement.

36.5 **Use of Automobiles:** The City Manager 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 shall be given in the form of a cash allowance for the use of private-owned automobiles on City business if such use has been authorized in advance by the City Manager. The cash allowance will be equal to the amount established by the Internal Revenue Service, which is currently \$0.505 per mile as of January 1, 2008, but the rate will fluctuate from time to time.

## 36.6 **Safety**

36.6.1 **Safety Committee:** 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 or her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Union and appropriate supervisory personnel.

36.6.2 **Rainy Weather Assignments:** The City shall endeavor to avoid assigning non-emergency, routine work in rainy weather, which would constitute a safety hazard.

- 36.7 **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 the 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 remain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury that arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

- 36.8 **Annual Performance Evaluation:** The City may implement a program of annual performance evaluation. Such evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation, which shall be made a part of the employee's personnel records.

## **ARTICLE 8 - PUBLIC EMPLOYEES RETIREMENT SYSTEM**

### **SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS**

- 37.1 **Miscellaneous Designation:** The City shall continue participation under the Miscellaneous Employees Plan of the California Public Employees' Retirement System, (CalPERS).
- 37.2 **CalPERS Retirement Formula for "New 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.
- 37.3 **CalPERS Retirement Formula and Employer Paid Member Contribution for Legacy Employees (i.e., current employees and employees who do not qualify as "New Members" under PEPRA):** The City agrees to pay the employees' required contribution (7% of base pay) to the CalPERS. 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%. Provided further that for the term of this contract, the City shall continue to provide Employer Paid Member Contributions of eight percent (8%) on behalf of Legacy Employees.
- 37.4 **CalPERS Employer Paid Member Contribution for New Members as Defined by PEPRA:** Provided further that for "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 through the expiration of this contract on June 20, 2015, the City shall provide Employer Paid Member Contributions of eight percent (8%) on behalf of these New Members. At the expiration of the contract, all New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. New Members shall receive any other additional optional CalPERS benefits that the City provides to Legacy Employees as allowed by PEPRA.
- 37.5 **Reporting of Contributions:** Effective July 3, 1994, contributions made pursuant to Sections 37.3 and 37.4 above shall be reported to CalPERS 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 member contributions made by the City 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. Pursuant to California Government Code Section 20691, the City shall not increase, reduce or eliminate payments of the normal contributions on behalf of the employee without engaging in the meet and confer process with the Union.

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.

**37.6 The City's contract with CalPERS includes the following optional benefits:**

- 37.6.1 One-Year Final Compensation for Legacy Employees as defined in Section 37.3 above and as provided in Government Code Section 20042 (July 9, 1978).
- 37.6.2 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973).
- 37.6.3 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 37.6.4 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- 37.6.5 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973).
- 37.6.6 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
- 37.6.7 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).
- 37.6.8 Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999).
- 37.6.9 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as Provided in Section 21023.5 (April 14, 2000).

- 37.7 **Index Level 1959 Survivor Benefit:** The City intends to amend its contract with CalPERS to provide the Indexed Level of the 1959 Survivor Benefit as provided in Section 21574.5 when administratively feasible.

**SECTION 38: 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 PERS/Social Security Plan. Provisions of this plan are described in Berkeley Municipal Code Chapter 04.36.101 (Supplemental Retirement and Income Plan I) as amended and Berkeley Municipal Code Chapter 04.38.101 (Supplemental Retirement and Income Plan II) as amended. All employees hired after July 22, 1988 are in SRIP II. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 39: LAYOFF**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection of 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.

#### **39.1 Announcement of Layoff**

39.1.1 **Notification:** The City Council, City Manager, and department heads 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 of laying off career City employees. If a reduction in the work force for more than thirty (30) calendar days 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.

39.1.2 **Freezing of Vacancies:** 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, S/A positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 39.6 (Flexible Placement Program).

#### **39.2 Seniority Service Date**

39.2.1 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, and exempt employment, as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as a result of formal disciplinary action will be subtracted from the seniority service date.

- 39.2.2 The auditor's office will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### 39.3 Establishment of Seniority Lists

- 39.3.1 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.
- 39.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by 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 classification.
- 39.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the classification in which they hold permanent or probationary status targeted for layoff.
- 39.3.4 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:
- 39.3.4.1 Time in classification - the employee having least time in the classification shall be released first;
  - 39.3.4.2 By lot.

### 39.4 Employee Retreat Rights

- 39.4.1 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.
- 39.4.2 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 classification.
- 39.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 39.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### 39.5 Employee Notification

- 39.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.

- 39.5.2 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.
- 39.5.3 Permanent, probationary, and career-exempt employees should be notified individually in writing of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release 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 or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 39.9 (Appeal Procedure).

- 35.5.4 An employee who is transferred in lieu of layoff when his or her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. 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 39.6 (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.

### **39.6 Flexible Placement Program**

- 39.6.1 In order to minimize the negative impact of layoff, the City Manager will, as previously stated in Section 39.1.2 (Freezing of Vacancies), impose a citywide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.
- 39.6.2 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 Sections 39.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to

facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

This shall be called the qualification period. The employee shall be advised of their progress after two months and four and six months in the new classification. If at the end of the qualification period the department head notifies the Human Resources Department that the employee is unable to adequately perform the assignment or fails a test for the position administered by Human Resources then the employee shall be subject to the layoff process.

- 39.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, 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.
- 39.6.4 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 39.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.
- 39.6.5 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 of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 39.7 (Reemployment Lists).

### 39.7 Reemployment Lists

- 39.7.1 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 39.4 (Employee Retreat Rights).
- 39.7.2 A reemployment priority list shall remain in effect for three (3) years.
- 39.7.3 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.
- 39.7.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.
- 39.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the classification with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.
- 39.7.6 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.



- 39.8 **Career Exempt Employees:** Only those employees holding full-time, benefited, exempt positions, who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt."
- 39.9 **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 improperly administered as it pertains to the employee's case may appeal the action under Section 35 (Grievances). 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.
- 39.10 **Reemployment Priority Rights:** If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed 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 he or she has completed the probationary period.

**SIGNATURE PAGE**

Executed this \_\_\_\_ day of \_\_\_\_\_, 2012 by the Employer and Employee representatives whose signatures appear below for their respective organizations.

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1245**

**CITY OF BERKELEY**

\_\_\_\_\_  
Tom Dalzell, Business Manager  
IBEW Local 1245

\_\_\_\_\_  
Christine Daniel, City Manager

\_\_\_\_\_  
Al Fortier  
Business Representative  
IBEW Local 1245

\_\_\_\_\_  
Margarita Zamora  
Senior Human Resources Analyst

\_\_\_\_\_  
Ray Thomas  
Assistant Business Manager  
IBEW Local 1245

\_\_\_\_\_  
Phil Harrington, Deputy Director of  
Public Works

\_\_\_\_\_  
Greg Marwick, Steward  
IBEW Local 1245

\_\_\_\_\_  
Peggy Gibbons  
Deputy Director of Parks, Recreation  
and Waterfront

\_\_\_\_\_  
Jim Milstead, Steward  
IBEW Local 1245

**EXHIBIT A**LOCAL 1245 CLASSIFICATION / HOURLY SALARY SCHEDULE**PERIOD: June 24, 2012 through June 20, 2015**

<b>JOB CODE</b>	<b>REP UNIT</b>	<b>CLASSIFICATION TITLE</b>	<b>FLSA</b>	<b>STEP A</b>	<b>STEP B</b>	<b>STEP C</b>	<b>STEP D</b>	<b>STEP E</b>
32020	C	Communications Technician	N	0.00	0.0000	40.4299	42.3748	44.3080
52180	C	Electrical Parts Technician	N	0.00	29.5622	31.4716	33.1219	33.9590
51030	C	Electrician	N	0.00	0.0000	40.4299	42.3748	44.3080
51100	C	Lead Communications Technician	N	0.00	0.0000	43.2237	45.1802	47.3494
51080	C	Lead Electrician	N	0.00	0.0000	43.2237	45.1802	47.3494

Note: Employee's monthly salary will depend upon the number of hours worked. Employees hired before January 9, 2000, have an option (discussed in detail in Exhibit D-Hours and Days of Work) to work either a 37.5-hour work week or a 40-hour work week. Employees hired after January 9, 2000 work a 40-hour per week schedule.

**EXHIBIT B****CITY OF BERKELEY  
MUNICIPAL CODE CHAPTER 4.04.120****4.04.120 Exemption From Career Service (At-Will Employees).**

The provisions of this chapter shall apply to all positions in the service of the city except:

- A. The city manager, assistant city manager, deputy city manager, assistant to the city manager, police review commission officer, police review commission investigator, and assistant to the mayor;
- B. Assistant, associate and senior management analyst when appointed to the city manager's department or to the Budget Unit of the Management and Administrative Services Agency; and secretary to the mayor, administrative secretary and secretary when appointed to the mayor's office;
- C. All department heads, health officer, and supervising psychiatrist;
- D. Persons employed seasonally in the summer camps;
- E. Persons employed as reserve or emergency employees during the period of national emergency as provided in the ordinance creating such employment;
- F. All persons who are paid at an hourly rate with the exception of library aides. Persons appointed as hourly Library Aides shall be part of the career service with the exception of those hired to fill temporary positions of six months or less.

Persons appointed to these positions which are exempt from the career service shall serve at the pleasure of the appointing authority and may be demoted, suspended, or otherwise rejected at any time without cause and without right of appeal or hearing in any manner. Except that, any employee in the career service promoted or transferred to a position not included in the career service and made exempt from the career service shall be reinstated to his or her career appointment from which he or she was promoted or transferred if within six months of appointment to a position not included in the career service, action is taken to dismiss him or her, unless charges are filed and the employee is discharged in accordance with this chapter and the rules established hereunder for positions in the career service. All employments designated in this section shall be entitled to only those benefits provided for at-will employees in the personnel rules and regulations or in applicable memoranda agreements.

**EXHIBIT C****SERVICE VACATION LEAVE**

<b>Years During Which Service Rendered</b>	<b>Number of Years of Service</b>	<b>Authorized Annual Vacation Leave (in calendar weeks)</b>
All years prior to 01/01/1950		2
01/01/1950 through 12/31/1956	First 10 years of service	2
	Years of service in excess of 10	3
01/01/1957 through 12/31/1961	First 5 years of service	2
	6 through 25 years of service	3
	Years in excess of 25	4
01/01/1962 through 12/31/1965	First 5 years of service	2
	6 through 20 years of service	3
	Years of service in excess of 20	4
01/01/1966 through 06/30/1970	First 5 years of service	2
	6 through 20 years of service	3
	21 through 25 years of service	4
	Years of service in excess of 25	5
Subsequent to 06/30/1970	First 5 years of service	2
	6 through 15 years of service	3
	16 through 25 years of service	4
	Years of service in excess of 25	5
Effective 01/01/1981	First 4 years of service	2
	5 through 12 years of service	3
	13 through 20 years of service	4
Effective 07/01/1984	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 and subsequent years of service	5
Effective 12/08/1987	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 through 24 years of service	5
	25 and subsequent years of service	6

**EXHIBIT D****HOURS AND DAYS OF WORK**

The hours and days of work applicable to employees in Representation Unit C, as set by the City Manager, are presently as follows:

**1. Hours Per Day**

Field Operations: Working arrangements may vary as to daily schedules under the reduced workweek.

Flexible Hours: On a job-by-job basis, with prior approval of the Senior Electrical Supervisor, a crew may schedule a workday, or workdays, other than the normal workday schedule of 7:00 a.m. to 3:30 p.m.

**2. Hours Per Week (Basic)**

Field Operations: 40 hours. However, employees in Representation Unit C as of January 9, 2000 have the option of retaining a 37.5-hour per week work schedule. An employee will have an option to change his work schedule to 40 hour per week at the beginning of a payroll period. An employee will have a one-time option to revert to a 37.5 hour per week work schedule at the beginning of a payroll period. After exercising this one time option, if the employee chooses to change his work schedule to 40 hours per week, the employee must maintain this work schedule for the balance of his career in this Representation Unit. All persons hired on or after January 9, 2000 will work a 40-hour per week schedule and will not be permitted to change his or her work schedule to 37.5 hours per week.

The parties may agree in writing to alternative work schedules other than those set forth in this Agreement, such as a 9-80 work schedule which produces an 80-hour pay period with the hours worked in nine work days. The City will take into consideration its operational needs, including the impact of potential overtime, in deciding whether to approve an alternate work schedule. However, such alternate work schedule will not be unreasonably denied.

**3. Work Week**

The work week will begin at 12:01 a.m., Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.

**EXHIBIT E****IMPLEMENTING THE REDUCED WORK SCHEDULE**

**NOTE:** This Exhibit E applies only to employees hired before January 9, 2000 who are permitted to work a 37.5 hour per week work schedule subject to the conditions set forth in Exhibit D (Hours and Days of Work).

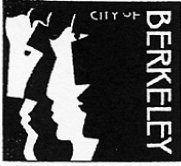
The City and the Union agree that the implementation of the reduced work schedule which is to be effective June 29, 1986 will be as follows:

That one-fourth of the Electrical Division employees will be off every fourth Monday on a staggered basis. This time would be treated as a scheduled day off and could not be adjusted or moved. A yearly schedule would be set up at the beginning of the year so that each employee would know what days he would have off. Since the agreed upon reduced work schedule does not calculate evenly into one day off every four weeks, it is proposed that an additional day off (Friday) be given once every 16 weeks. This agreement very closely approximates the reduced work schedule. Any discrepancies would be credited to the employee's vacation at the end of the contract year.

For Fair Labor Standards Act purposes, the workweek is defined as 40 hours.

Sick leave, vacation, and other compensable leaves of absences shall be based on the 40 hour work week.

When a scheduled day off falls on a holiday, the next regularly scheduled work day shall be observed as the scheduled day off.


EXHIBIT F

Office of the City Manager

**DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION**

July 31, 2001

To: Department Directors

From: Weldon Rucker  City Manager

Subject: **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION  
OR FACILITY MAINTENANCE WORK IN CITY FACILITIES**

It has come to my attention that some construction, building maintenance and electrical work is being improperly performed at various facilities that are either owned or leased by the City. Because this work can affect the health and safety of all City employees and can result in a significant potential liability for the City, it is absolutely essential that any such work be done by competent and experienced individuals. Even if licensed contractors are brought in to do the work, they may not be fully aware of how their work will impact other City projects or facilities. Furthermore, already scarce City funds are wasted when Public Works has to correct improper or hazardous work performed by unauthorized individuals or contractors. Accordingly, such construction and maintenance work must only be performed by properly trained and supervised Public Works maintenance staff or contractors selected by, and under the direction of, the Public Works Department.

Therefore, I am reminding and directing all department directors to ensure that absolutely no construction, building maintenance or electrical work be performed in any City owned or leased facilities by contractors or anyone else not under the direction of Public Works. All construction and facility maintenance work is to be referred to the Public Works Department.

For routine maintenance, minor repairs, or minor physical modifications, contact the Public Works Customer Service representative at 644-6620. For larger construction projects, contact Public Works Capital Improvement Projects at 981-6330. Public Works can then make appropriate decisions as to whether construction or maintenance work should be performed by City employees or by outside contractors, utilities, or agencies.

Thank you, in advance, for your full compliance with this direction.

cc: City Manager's Office