




Office of the City Manager

CONSENT CALENDAR  
July 13, 2010

To: Honorable Mayor and Members of the City Council  
From:  Phil Kamlarz, City Manager  
Submitted by: David W. Hodgkins, Director of Human Resources  
Subject: Memorandum of Understanding – Berkeley Fire Fighters Association/I.A.F.F. Local 1227

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement a new two-year Memorandum of Understanding with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 (hereinafter referred to as the “Association”) with a term of June 27, 2010 through June 23, 2012 that includes no adjustments to salaries during the term of the agreement but contains several changes in benefits and terms and conditions of employment.

FISCAL IMPACTS OF RECOMMENDATION

No increase in budgeted costs will result from this contract agreement. Based on the terms of the economic settlement, the City will pay an additional \$10,000 each fiscal year for the Wellness Fitness Initiative and contribute \$20,000 each fiscal year for the Association sponsored Education Program for an aggregate cost of \$60,000 during the term of the two-year agreement. These funds are already included in the Fire Department’s annual budget. There is no increased cost to wages and there are no improvements to health and welfare benefits. The funding for this agreement comes from the General Fund (010), the Paramedic Tax (160), Fire Protection & Emergency Response and Preparedness Tax – Measure GG (456), and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City’s labor contract with the Association expired and was fully terminated on June 26, 2010. Representatives of the City were approached by representatives of the Association in January about the possibility of extending the term of the contract. The parties had just concluded negotiations over the implementation of the First Responder Advanced Life Support Program (FRALS) based on funding from Measure GG that included changes to wages and terms and conditions of employment. Representatives of the City and the Association conducted a series of meetings and reached conceptual agreement on a new two-year Memorandum of Understanding on March 11, 2010. The significant terms of the new contract include no increase in wages and health and welfare benefits for the two-year term of the contract and an agreement to implement a

pilot project of a change in the fire suppression work schedule from the current 3/4 “Kelly” schedule to a 48/96 schedule beginning in March 2011.

### BACKGROUND

There are approximately 120 employees represented by the Association who provide fire suppression, advanced life support including ambulance transport, fire prevention and hazardous materials response services for the City. On October 23, 2007, the City Council adopted Resolution No. 63,857-N.S. that authorized the City Manager to execute and implement a four-year labor contract with the Association from July 2, 2006 through June 26, 2010. On January 26, 2010, the City Council adopted Resolution No. 64,753-N.S. that authorized the City Manager to execute and implement a Side Letter of Agreement with the Association to modify wages and terms and conditions of employment to implement the FRALS program. The cost for implementation of FRALS is projected to be approximately \$440,000 in Fiscal Year 2011 with funding coming from Fund 456 – Measure GG Fire Protection & Emergency Preparedness Tax Fund.

The meetings between representatives of the City and the Association included a candid discussion over several meetings concerning the City’s budget and the City’s region and State of California’s economy. Representatives of the Association did not desire to engage in prolonged negotiations in the current economic climate and stated that it was in both party’s interest to conclude negotiations by extending the term of the current contract. Discussion ensued and the parties agreed to extend the term of the contract for two years with no changes to wages or health and welfare benefits and to implement a pilot project on an alternate work schedule to be implemented in March 2011.

The current work schedule for the fire suppression staff is a tour of duty of nine consecutive days during which an employee works three 24-hour shifts on duty and six shifts off duty. In the industry, this shift schedule is referred to as a “3/4” or “Kelly” schedule. The Fire Department operates three shifts that rotate based on this schedule. The Association has proposed an alternative work schedule referred to in the industry as a “48/96” work schedule. Under this schedule, the Fire Department would maintain three shifts but employees would work two shifts (48 hours) on duty and have 4 shifts (96 hours) off duty in a six-day tour. The City has several concerns about this work schedule including, but not limited to, the Fair Labor Standards Act (FLSA) work cycle for calculating overtime. The FLSA, under the 29 U.S.C. Section 207(k) partial overtime exemption, permits the City to establish a regular recurring work schedule of between 7 and 28 consecutive days for sworn fire personnel. Under the current work schedule, the City uses a 28-day work cycle and overtime under FLSA does not occur until the employee has worked more than 212 hours. The City and the Association have discussed the matter of the FLSA work cycle and have agreed to convert to a 24-day work cycle under the pilot project and overtime under FLSA would not occur until the employee has worked more than 182 hours.

The parties have agreed to pilot the 48/96 work schedule for a period of not more than one year beginning in March 2011. The City and the Association have had discussions on the parameters of the pilot project to protect the employees and the City during this trial

period. Both parties have also been acutely aware of the effect this change in work schedule could have on the delivery of basic and advanced life support services to the citizens of the City. The parties have agreed to the following terms for implementing the pilot project:

- During the pilot period, the parties agree to evaluate and measure on a quarterly basis all accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrence reports, and health and safety impacts on sworn personnel including but not limited to the quality of care, performance of duty reprimands, and customer service complaints.
- If during the pilot period, either the Fire Chief or the Association determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, each party shall have the right to terminate the pilot project after giving the other party sixty (60) day's written notice of the termination.
- At least thirty (30) days before the expiration of the one year pilot 48/96 schedule, the Association and City shall meet and discuss whether to affirm continuance of the change in schedule, extend the pilot schedule, or revert back to the 3/4 schedule. The final decision on what type of work schedule to implement shall be solely within the Fire Chief's discretion.
- The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of fatigue secondary to consecutive work hours and thus the parties agree to work to establish appropriate policies and procedures prior to the pilot schedule's implementation.
- The City and the Association further agree that once the pilot schedule is implemented, the Duty Chief shall have the authority to temporarily reassign a transport paramedic to a suppression company for relief purposes whenever the Duty Chief, a Company Officer, or a Paramedic Supervisor I, in his or her sole discretion, deems it necessary.

The City has also agreed to contract with Bickmore Risk Services to conduct a study, patterned after a similar study for the City of Sacramento, to analyze the impact of work schedule changes. The list of criteria to be evaluated in the study includes, but is not limited to:

- Workers' Compensation Claim Frequency and Severity
- Auto Liability Claim Frequency and Severity
- General Liability Claim Frequency and Severity

- Utilization of Injury on Duty Time (Modified Duty)
- Increase or Decrease in Mandatory Overtime
- Increase or Decrease in Voluntary Overtime
- Increase or Decrease in Utilization of Sick Leave
- Fire Company Response Time Variations
- Fire Company Inspections
- Fire Company Training

The Fire Chief and her staff will provide the Council with quarterly updates on the shift change with particular emphasis on the quality of patient care.

Major provisions of the new labor contract are as follows:

<b>Term</b>	July 27, 2010 through June 23, 2012
<b>Cost of Living Adjustment</b>	None
<b>Association Administered Education Program</b>	Increase funding from current \$25,000 per fiscal year to \$35,000 per fiscal year
<b>Wellness/Fitness Program</b>	Fund \$20,000 to for Wellness Fitness Initiative

RATIONALE FOR RECOMMENDATION

The City and the Association have agreed to a two year contract with no increase in wages and benefits in recognition of prior compensation increase resulting from FRALS negotiations and the current economic environment. Members of the Association remain well compensated in the marketplace and the City does not have trouble in attracting and retaining sworn fire personnel. The change in shift schedule is a pilot project for one year and staff has put in safe guards to ensure the quality of services does not diminish.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

David W. Hodgkins, Director of Human Resources, 981-6805

Attachments:

1: Resolution

Exhibit A: Memorandum of Understanding for a term of June 27, 2010 through June 23, 2012 with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227

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

MEMORANDUM OF UNDERSTANDING – BERKELEY FIRE FIGHTERS  
ASSOCIATION

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

WHEREAS, representatives of the City and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 have met and conferred in good faith and have reached agreement on a new Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby authorizes the City Manager to execute and implement the new Memorandum of Understanding for the period of June 27, 2010 through June 23, 2012 with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 which is attached hereto, made a part hereof and marked Exhibit A, 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.

Exhibits

A: Memorandum of Understanding for a term of June 27, 2010 through June 23, 2012 with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227



# **MEMORANDUM OF UNDERSTANDING**

**Between**

**CITY OF BERKELEY**

**And**

**BERKELEY FIRE FIGHTERS  
ASSOCIATION LOCAL 1227 I.A.F.F.**

**June 27, 2010 – June 23, 2012**

**ARTICLE 1 - ADMINISTRATION**

**SECTION 1: RECITALS**

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

The City Manager is the representative of the City of Berkeley (herein - after referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S. and adopted by the City Council on October 14, 1969 and amended as of 1971, and retains management rights as provided therein unless otherwise specifically provided for in this agreement.

The Berkeley Fire Fighters Association, Local 1227, International Association of Fire Fighters (hereinafter referred to as "the Association"), is the recognized employee organization for Representation Unit B (non-managerial uniformed Fire Department employees), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Unit are set forth in Exhibit "A" attached hereto and made a part hereof. The Berkeley Firefighters Association, Local 1227, is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit B; 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. This Memorandum of Understanding shall be presented to the City Council as the joint recommendation of the undersigned.

**SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION**

2.1. The Association is the majority representative of all employees within Representation Unit B (non-managerial, uniformed Fire Department employees); and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or as said Resolution may be amended, the Association is no longer certified as the recognized employee organization for employees in Representation Unit B.

**2.2. Deduction of Dues**

The City shall deduct, once monthly, the amount of Association regular and periodic dues, service fees, assessments, or insurance premiums as may be

specified by the Association by-laws. Dues shall not be authorized for deduction without the written permission of a member.

- 2.3. The City and the Association recognize this Memorandum of Understanding (see Glossary) as a binding and legal contract between the two parties.
- 2.4. The City shall print the new Memorandum of Understanding in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with one hundred fifty (150) copies of the booklet to assure availability for each member of Unit B, plus twenty-five (25) extra copies for new employees.

**SECTION 3:            EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, religion, marital status, sex, age, sexual orientation, national origin or political affiliation, or disability; that it will support programs 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.

Neither the City nor the Association shall discriminate against any employee covered by this Memorandum of Understanding in a manner which would violate any applicable laws because of race, creed, religion, marital status, color, religion, political affiliation, sexual orientation, sex, national origin, disability or age.

**SECTION 4:            ASSOCIATION REPRESENTATIVES**

- 4.1. The City shall allow representatives of the Association, subject to the conditions set forth in Sections 4.2 and 4.3, reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memoranda of Understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Memorandum of Understanding in the future.
- 4.2. With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off, except that for negotiations over language in the Memorandum of Understanding, the City will allow three (3) additional employees (for a total of six

- [6]) to participate if the Association makes a good faith effort to minimize out-of-service time to the employees involved. For disputes as defined in Section 4.1, the maximum number allowed concurrent time off shall be two (2).
- 4.3. The representatives shall advise their chief officers through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his/her job without the approval of a chief officer and such approval of chief officer shall not be unreasonably denied.
- 4.4. An employee who requests such may have an Association representative present at any discussion with chief officers and/or the Fire Chief which could result in disciplinary action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.
- 4.5. When it is necessary to conduct an Executive Board meeting on shift, the on duty Assistant Chief shall give his/her full cooperation for company movement and short assignment of personnel to assure that Executive Board members on duty may attend the meeting. Executive Board meetings should not exceed two (2) per month in most circumstances.
- 4.6. The President and/or two officers of the Association will meet with the City Manager and Fire Chief every two months to foster communication.
- 4.7. The Association will be an equal partner with the City in the Public Services Committees Program (PSC). PSC shall not in any manner deal with matters that are within the scope of bargaining. The Association reserves the right to withdraw from PSC at any time.

**SECTION 5: UNION ACTIVITIES TIME OFF**

- 5.1. The Association will be entitled to up to three hundred sixty (360) hours paid leave of absence each year to be granted collectively to employees who are designated representatives of the Berkeley Fire Fighters Association, subject to the approval of the Fire Chief or the Chief's designee, to attend seminars, conferences, or conventions away from the job site, where employees are not available to respond to emergencies. The Chief may in his/her discretion approve additional Association requests. Time spent on such Association business will be recorded with the appropriate code on time sheets.
- 5.2. The City agrees to allow the Berkeley Fire Fighter Association's President or his/her authorized representative no more than four (4) hours off for the purpose

of attending funeral services of active and retired Berkeley Fire Fighters and/or their spouses' funeral. Such time off is effective when the President or authorized representative is on duty at the time of the funeral.

- 5.3.** At the request of the Association President or his/her designee, the Fire Chief will allow the use of an apparatus for line of duty funerals in the greater Bay Area (i.e., not to exceed 8 hours outside the City). The Fire Chief may also allow, upon request, the use of an apparatus for a retiree funeral. It is understood that the staffing of the apparatus for the line of duty funerals and/or retiree funeral will be by volunteers who will not be compensated.

**SECTION 6: PILOT PROJECTS**

During the term of this Understanding, the parties may mutually agree to discuss changes in working conditions and operational practices that may conflict with provisions of the Understanding and/or departmental operating procedures. Such discussions are not intended to conflict with Section 8 (Finality of Recommendations) of this Understanding. It is the intent of the parties to be able to mutually agree to try out these changes through "pilot projects" of up to one year's duration to determine how these changes work on a day-to-day basis. If such "pilot projects" are mutually agreed to by the parties, they will be implemented during the term of the Understanding. However, both parties to the Understanding reserve their respective rights under the terms and conditions of this Understanding. The parties also recognize that changes in working conditions which conflict with the Understanding and/or departmental operating procedures may trigger a duty to bargain. If such duty to bargain is triggered, the parties reserve their respective rights under Section 8.

**SECTION 7: SEPARABILITY OF PROVISIONS**

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

**SECTION 8: FINALITY OF RECOMMENDATIONS**

The recommendations set forth above are final. No change or modifications shall be offered, urged, or otherwise presented by the Berkeley Fire Fighters Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent.

No such amendments to this Memorandum of Understanding shall be effective until adopted by City Council and ratified by the Association.

This Memorandum of Understanding shall supersede all existing memoranda agreement between the City and the Association.

**SECTION 9:            DURATION**

The term of this Memorandum of Understanding shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this Memorandum of Understanding be effective prior to 0001 hours, June 27, 2010. This Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours, June 23, 2012.

**ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATIONS ISSUES**

**SECTION 10:            SALARIES**

10.1. Salaries for the period of June 27, 2010 through June 23, 2012 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 as provided below.

10.1.1. The salary ranges for those classifications covered by this Memorandum of Understanding which went into effect on December 27, 2009 shall remain in effect through June 23, 2012 and are listed in Exhibit "A".

10.2. Effective January 4, 2004, employees in the rank of Fire Fighter will be placed in the salary schedule reflected in Exhibit "A" according to the chart shown below based on the employee's anniversary date. The time necessary to move from one salary step is expressed in months of service on the chart below:

<b>Classification</b>	<b>Length of Service</b>	<b>Salary Steps</b>
Fire Fighter	0 to 6 months	Step A
Fire Fighter	Beginning month 7 through completion of month 12	Step B
Fire Fighter	Beginning of month 13 through completion of month 18	Step C

Classification	Length of Service	Salary Steps
Fire Fighter	Beginning of month 19 through completion of month 24	Step D
Fire Fighter	Beginning of month 25 through completion of month 36	Step E
Fire Fighter	Beginning of month 37 through completion of month 48	Step F
Fire Fighter	Beginning of month 49 through completion of month 60	Step G
Fire Fighter	Beginning of month 61 through completion of month 72	Step H
Fire Fighter	Beginning of month 73 and subsequent months	Step I

10.2.1. An employee hired at Step A of the Fire Fighter salary range shall receive step increases on his/her anniversary date at the completion of six (6) months, twelve (12) months, eighteen (18) months, twenty four (24) months, provided the employee meets the Career Training Prerequisites specified in Fire Department General Order 14.2 for advancement to Step E of the salary range.

10.2.2. Effective January 4, 2004, employees in the rank of Fire Apparatus Operator, Fire Prevention Inspector, Fire Lieutenant, Fire Lieutenant Training, Deputy Fire Marshal, Fire Captain, Paramedic Supervisor I and Paramedic Supervisor II will be placed in the salary schedule reflected in Exhibit "A" according to the chart shown below based on the employee's anniversary date. The time necessary to move from one salary step is expressed in months of service on the chart below:

Classifications	Length of Service	Salary Steps
Fire Apparatus Operator, Fire Prevention Inspector, Fire Lieutenant, Fire Lieutenant Training, Deputy Fire Marshal, Fire Captain, Paramedic Supervisor I and Paramedic Supervisor II	0 through completion of month 48	Step B
Fire Apparatus Operator, Fire Prevention Inspector, Fire Lieutenant, Fire Lieutenant Training, Deputy Fire Marshal, Fire Captain, Paramedic Supervisor I and Paramedic Supervisor II	Beginning of month 49 through completion of month 60	Step C

<b>Classifications</b>	<b>Length of Service</b>	<b>Salary Steps</b>
Fire Apparatus Operator, Fire Prevention Inspector, Fire Lieutenant, Fire Lieutenant Training, Deputy Fire Marshal, Fire Captain, Paramedic Supervisor I and Paramedic Supervisor II	Beginning of month 61 through completion of month 72	Step D
Fire Apparatus Operator, Fire Prevention Inspector, Fire Lieutenant, Fire Lieutenant Training, Deputy Fire Marshal, Fire Captain, Paramedic Supervisor I and Paramedic Supervisor II	Beginning of month 73 and subsequent months	Step E

10.2.3. An employee who promotes to any higher classification covered by this Memorandum of Understanding will be placed at the appropriate salary step based on length of service with the Berkeley Fire Department.

**10.3. Salary Placement and Entry – Lateral Incentive**

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" for the appropriate date of appointment. The minimum rate for the class shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a "lateral entry appointment" shall be defined as a person who has either completed the initial probationary period as a Fire Fighter or similar equivalent classification in a paid organized Fire Department, or completed two (2) years of full time equivalent service in a paid organized Fire Department. Lateral entry appointment may be made for the classification of Fire Fighter, including Fire Fighter Paramedic, only. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral entry appointment be made at a salary step or pay schedule above the entry level that is commensurate with the appointee's years of service as a sworn firefighter with a paid organized Fire Department. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.

10.4. 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.

**2010 2012 Memorandum of Understanding**

**City of Berkeley**

**Berkeley Fire Fighters Association**

- 10.5. An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week. If the employee is off the payroll for one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.
  
- 10.6. 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 any employee occupying a position in a class for which the salary rate or range is reduced, shall continue to receive his/her present salary. Such salary shall be designated as "Y" rate. When an employee on a "Y" rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 10.2.
  
- 10.7. Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.
  - 10.7.1. The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.
    - 10.7.1.1. 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 four (4) decimal places.
    - 10.7.1.2. For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.
    - 10.7.1.3. For salary purposes, pursuant to paying equal amounts per pay period, the work period defined as twenty-eight (28) days shall be based on 224 hours.

**10.8. Emergency Medical Technicians**

Effective January 1, 1990, all Unit B classifications will be required to maintain current EMT certification as a condition of employment. The three and one half percent (3½%) EMT differential will be reflected in the basic compensation.

Effective February 1, 2006, any person hired into the classification of Deputy Fire Marshal who does not possess a current EMT certification shall be required to obtain the EMT certification within six months of beginning employment and maintain the EMT certification as a condition of continued employment. A Deputy Fire Marshal who does not possess a current EMT certification will not receive the three and one half percent (3½%) differential as part of base pay. When the Deputy Fire Marshal obtains the EMT certification, the employee will receive the three and one half percent (3½%) EMT differential.

**10.9. Paramedics**

Effective 0001 hours January 6, 2002, the pay differential for Transport Paramedics was increased to twelve and one-half percent (12½%) above the base pay for that employee's rank. If an employee is assigned as Transport Paramedic while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Paramedic Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

10.9.1. Any fire department employee who has worked for at least eighteen months as a Transport Paramedic will be given an allowance of \$1,500 after submission of a renewed paramedic license, completion of Alameda County EMS requirements, and submission of a Fire Department reaccreditation form.

10.9.2 FRALS Paramedics will be given an allowance of \$1,500 after submission of a renewed Paramedic license, completion of Alameda County EMS requirements, and submission of a Fire Department reaccreditation form.

10.9.3. The pay differential for FRALS paramedics shall be six and one-quarter percent (6.25%) above base pay for that employee's rank. If an employee is assigned as FRALS Paramedic while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Paramedic Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**10.10. Hazardous Materials Response Team**

- 10.10.1. The City will provide Hazardous Materials Specialist training as needed to maintain a Hazardous Materials Response Team. Upon successful completion of the required Hazardous Materials Specialist Course, a Hazardous Materials Team member, who is regularly assigned, shall receive an additional differential of five percent (5%) to base pay. This Hazardous Materials Response Team differential will be reported to CalPERS as Hazard Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 10.10.2. This five percent (5%) Hazardous Materials Response Team member differential shall become effective the closest pay period following completion of the course. To receive the above compensation, a three (3) year commitment to the team will be required.
- 10.10.3. A Hazardous Materials Response Team member who fails to complete the Hazardous Materials training will no longer receive the above mentioned compensation and shall be removed from the team.

**10.11. Shift Fire Inspector**

Effective with the first new pay period after the execution of the 2006-2010 Memorandum of Understanding, the classification of Fire Prevention Inspector I is abolished and the classification of Fire Prevention Inspector II is retitled Fire Prevention Inspector.

The Fire Chief may assign one person, regardless of rank, to function as a fire inspector on each fire suppression shift. The duration of the assignment may be for up to three years but the Fire Chief retains discretion to end the assignment at any time. The purpose and scope of the shift fire inspector is to provide assistance with fire investigations, overcrowding issues, for clearance and event inspections, public relations, fire inspections, fire prevention presentations and other duties as may be assigned. Employees assigned as a fire inspector on a fire suppression shift shall receive an additional differential of five percent (5%) to base pay. This Fire Inspector Premium will be reported to CalPERS as Fire Inspector Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 10.12. All changes in pay rate will go into effect at the beginning of a pay period (see Section 10.7) and stay in effect until the last day of a pay period if they are a result of the following:
- 10.12.1. Application of a cost of living adjustment;
  - 10.12.2. Step increases;
  - 10.12.3. Retroactive adjustments;
  - 10.12.4. Implementation of CalPERS options;
  - 10.12.5. Change of employee's status from career to hourly or vice versa;
  - 10.12.6. Promotion or demotion;

If the pay rate change is triggered by an event which occurs in the first half of the pay period, the change in pay rate will become effective on the first day of the following pay period. Similarly, the changed pay rate should cease to be in effect on the last day of the pay period during which the employee is no longer eligible if the triggering event occurs during the second half of the pay period; or if the triggering event occurs during the first half of the pay period, the changed pay rate would cease to be in effect on the last day of the preceding pay period.

- 10.13. For pay purposes of calculating annual pay, the City will utilize the IRS definition of "end of the year" which is the close of the last City pay period for which the payday falls within the calendar year. See Glossary for additional explanation.

**SECTION 11: PAYROLL ERRORS**

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

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

In the event of an overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an

adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee's normal salary, and other financial obligations of the employee. The City and the Association agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages. In the event that (1) the employee does not respond within 10 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

**SECTION 12: FIRE STAFF PREMIUM DIFFERENTIALS**

- 12.1. The employee assigned by the Fire Chief to perform the duties of the Training Lieutenant classification shall receive a ten percent (10%) salary increase over the Lieutenant classification. The employee appointed to the position of Deputy Fire Marshal classification shall receive a ten percent (10%) salary increase of the Lieutenant classification.
- 12.2. An employee assigned in writing by the Fire Chief or his/her designee and approved by the City Manager to a special assignment on a 40-hour week will receive a five percent (5%) Fire Staff Premium Differential above his/her base pay. If the special assignment exceeds one hundred twenty (120) calendar days, then the Fire Staff Premium Differential will be ten percent (10%) above his/her base salary retroactive to the first day of the special assignment. The Fire Staff Premium Differential is determined by the length of the special assignment and not to any specific employee.

**SECTION 13: BILINGUAL PREMIUM PAY**

Effective January 7, 2001, the Fire Chief may make a Bilingual Premium Pay Differential of five percent (5%) of an employee who is able to demonstrate verbal communication skills in a language other than English, including Braille and sign language, and who routinely and consistently utilizes these bilingual skills for the City of Berkeley. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

Effective January 7, 2001, the Fire Chief may make a Bilingual Premium Pay Differential of two percent (2%) of an employee assigned occasionally to provide

non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.

**SECTION 14:        ACTING IN HIGHER CLASSIFICATION**

14.1. Pay for work in a higher classification shall commence after two (2) hours of work at a higher classification; however, pay for working in a higher classification shall encompass the total time worked in the higher classification. An employee, to receive such pay, must be permanent in the rank immediately below the higher classification, with the only exception that Fire Fighters (in a permanent status) shall be allowed to "act" as a Lieutenant.

14.1.1. Employees shall only be allowed to act in a higher classification if they are on the current promotional list for the position in which they are to act. If no qualified personnel on the current promotional list are available to act, Minimum Qualification Actors shall be allowed to act in a higher classification. Minimum Qualification Actors must meet all the required qualifications, education, and experience to be eligible to participate in the promotional exam process for the classification in which they are to act. Minimum Qualification Actors must also successfully complete a certification process for the classification in which they are to act, administered by the Division of Training, before they are allowed to act in the specified classification.

14.1.2. In accordance with the Overtime Policy and only to avoid mandatory overtime hiring, if no actors from the current promotional list of Minimum Qualification Actors are available to work, the Assistant Fire Chief may utilize actors who were on the previous promotional list for the given position so long as he/she deems them to be trained, competent and qualified.

- 14.2. When, at the inception of an absence of a Captain, it is known that such absence will be in excess of three (3) consecutive 24-hour working shifts, a Lieutenant (on the Captain's promotional list) will be temporarily appointed to acting Captain status from the start of the absence.
- 14.3. The temporary assignment to a higher classification referred to herein shall be made at the same salary step in the acting classification as is held in the permanent classification, including the Longevity Pay Plan Range level held in the permanent classification.
  - 14.3.1. For purposes of this section, there will be a distinction between short term and long term acting in a higher classification assignments. Short term acting in a higher classification assignments are those assignments that are expected to be up to but not exceed six weeks duration. Long term acting in a higher classification assignments are those assignments that are expected to be more than six weeks duration.
  - 14.3.2. For short term acting assignments, employees who are on the promotional list will be given priority consideration for acting at their assigned fire station or on their assigned apparatus when the vacancy occurs on their assigned shift. In the absence of any available actors on the promotional list for a given shift, Minimum Qualification Actors from that shift will be given priority consideration for acting at their assigned fire station or on their assigned apparatus.
  - 14.3.3. For long term acting in a higher classification assignments, employees who are on a promotional list or, in the absence of available persons on a promotional list, Minimum Qualification Actors may be assigned from another shift or another station to cover the vacancy and to ensure equal distribution of command and company officers.
- 14.4. An employee assigned to work as a Battalion Chief in the fire suppression assignment shall be paid at the Battalion Chief 56 hour per week rate of pay.
- 14.5. In the absence of a Chief Officer assigned as the Fire Marshal for two (2) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the Deputy Fire Marshal (Lieutenant) shall be paid a differential of ten percent (10%) above the rate of Fire Captain at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.6. In the absence of a Chief Officer assigned to the Division of Training for five (5) or more consecutive calendar days, in recognition of responsibility for performing

additional duties, the staff officer shall be paid a differential of ten percent (10%) above the rate of Fire Captain at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.

- 14.7. An employee will only receive compensation for sick leave and vacation at the higher pay rate once he or she has continuously occupied the higher class for more than 30 calendar days.

**SECTION 15: HOURS & DAYS OF WORK**

Hours and days of work shall be governed by rules established by the City Manager and the Department Head. The present work schedule shall be maintained during the term of this Memorandum of Understanding. In the 10/14 hour (day/night) overtime schedule, employees shall be paid for hours worked.

**48/96 Work Schedule Pilot Project**

- 15.1 The City and the Association mutually agree to implement the 48/96 schedule as a pilot project for a maximum of a one year period to begin with the start of the 2011 vacation calendar.
- 15.2 During the pilot period, the parties agree to evaluate and measure on a quarterly basis all accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrence reports, and health and safety impacts on sworn personnel including but not limited to the quality of care, performance of duty reprimands, and customer service complaints.
- 15.3 If during the pilot period, either the Fire Chief or the Association determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, each party shall have the right to terminate the pilot project after giving the other party sixty (60) day's written notice of the termination.
- 15.4 At least thirty (30) days before the expiration of the one year pilot 48/96 schedule, the Association and City shall meet and discuss whether to affirm continuance of the change in schedule, extend the pilot schedule, or revert back to the 3/4 schedule. The final decision on what type of work schedule to implement shall be solely within the Fire Chief's discretion.
- 15.5 The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of fatigue secondary to consecutive work hours and thus the parties agree to work to establish appropriate policies and procedures prior to the pilot schedule's implementation.

The City and the Association further agree that once the pilot schedule is implemented, the Duty Chief shall have the authority to temporarily reassign a transport paramedic to a suppression company for relief purposes whenever the Duty Chief, a Company Officer, or a Paramedic Supervisor I, in his or her sole discretion, deems it necessary.

**SECTION 16: OVERTIME**

- 16.1. Overtime for employees in Unit B covered by this Memorandum of Understanding shall be defined as that time which the employee is required to do work during his/her day off, accrued leave, off-shift, or other scheduled time off during the tour of duty.
- 16.2. The overtime rate shall be one and one-half (1½) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this Memorandum of Understanding at the time he or she works the overtime.
- 16.3. An employee may request compensation for overtime by compensatory time off or by payment. The department head shall consider the employee's preference. The decision shall be at the sole discretion of the employee's department head.
- 16.4. For the purposes of this Memorandum of Understanding the term "Compensatory Time" shall mean the same as the term "Due Time".

Compensatory time shall not accumulate in excess of sixty (60) overtime hours worked which is the equivalent of ninety (90) hours of compensatory time for persons assigned to a forty (40) hour week work schedule. Compensatory time shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time for persons assigned to a fifty-six (56) hour week work schedule.

16.4.1. The conversion factor for employees accruing and using compensatory time is as shown below. The intent of the parties is to have the dollar value of the compensatory time accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

16.4.1.1. Compensatory time accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of compensatory time accrued by the conversion factor of 0.7143.

- 16.4.1.2. Compensatory time accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying number of hours of compensatory time accrued by the conversion factor of 1.4.
- 16.4.2. Overtime accumulation in excess of sixty (60) hours for an employee assigned to a forty (40) hour per week schedule or one hundred eight (108) hours for an employee assigned to a fifty six (56) hour per week schedule shall be paid as compensation
- 16.5. In the event an employee resigns or is terminated, the employee shall be entitled to compensation for the accumulated overtime.
- 16.6. For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.
- 16.7. Employees assigned to a position working a regular forty (40) hour week schedule shall receive overtime compensation for all time worked in excess of forty (40) hours per week as provided in Section 16.2.
- 16.8. **Call-Back**
  - 16.8.1. Employees who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.
  - 16.8.2. **Emergency Call-Back** - an employee who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.
  - 16.8.3. In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.
- 16.9. **Overtime Practices**

The Department will adhere to the overtime hiring procedures and policy as stated in General Order 18.
- 16.10. **Holding Over After Shift Change**
  - 16.10.1. At or before 8:00 a.m. on the day of shift termination, the Assistant Fire Chief or his/her representative shall notify any personnel who is to be held over to await arrival of replacement personnel. Any

personnel not so notified is deemed to have been released at 8:00 a.m.

- 16.10.2. Any personnel so notified who are held over shall be compensated at the overtime rate (see Section 16.2) for any time held over beyond 8:00 a.m.

**SECTION 17:      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/she may establish. Compensation shall be given in the form of a cash allowance in the amount established by the Internal Revenue Service.

**SECTION 18:      COURT PAY**

An off-duty employee, who is subpoenaed to appear in court in cases in which the City is a party, or as a witness for criminal acts or civil torts that were witnessed on duty, shall be compensated at one and one-half (1½) times his or her regular straight-time rate for all hours the employee is so ordered to appear.

**ARTICLE 3 - LEAVES**

**SECTION 19:      VACATION**

- 19.1. A vacation period for employees on a 56-hour week shall consist of three 24-hour shifts (See Glossary), effective July 1, 1970. All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.

- 19.1.1. During the 48/96 trial period a vacation period for employees on a 56-hour week shall consist of two 24-hour shifts (See Glossary).

- 19.1.2. The City agrees that the present practice of choosing vacation by seniority on each shift shall be continued. Annual vacation picks may be scheduled at any time between January 5 and the last day of February, at the discretion of the Chief. It is understood that the City has the necessity to evenly allocate vacation time throughout the calendar year in order to meet staffing obligations and maintain a manageable overtime liability. Therefore, the City may, after consultation with the Association, but at its sole discretion, schedule vacations on a flexible basis. If assignment of vacations

**2010 2012 Memorandum of Understanding  
Berkeley Fire Fighters Association**

is necessary, the principle of seniority shall prevail insofar as possible.

- 19.1.3. A maximum of five (5) vacation slots per shift, shall be allowed for fifteen (15) vacation weeks. The maximum of four (4) vacation slots per period, per shift shall be allowed for the remainder of the vacation year. Paramedic picks will be included in this number and shall be based on seniority. Two (2) paramedics maximum will be allowed off at one time.
- 19.1.4. Not more than three (3) Officers shall be allowed off during a vacation period.
- 19.1.5. Except in cases of emergency declared by the Fire Chief, employees shall not be allowed to work while on vacation.
- 19.1.6. If an employee is allowed to cancel any part of his/her vacation tour or incremental time off, and the vacation period has been fully selected, that vacation or incremental period will be reopened for selection by other members in order of seniority. Fifty-six (56) hour suppression personnel shall not be allowed to cancel less than three (3) shifts of a vacation tour unless another vacation spot exists. If the entire tour or shift is not selected, the tour or shift(s) shall be opened for incremental time selection. The Duty Chief must announce any cancellation by e-mail for a minimum period of one (1) tour, with the exception that if cancelled vacation notification is made less than twenty-one days in advance. In such case, the Duty Chief may allow selection of the cancelled vacation within one (1) shift.
  - 19.1.6.1. During the period of the 48/96 trial period fifty-six (56) hour suppression personnel shall not be allowed to cancel less than two (2) shifts of a vacation tour unless another vacation spot exists.
- 19.1.7. **Incremental Time Off** - Incremental Time off is considered time off using vacation, due time, or sick leave bonus. Incremental vacation taken in increments less than ten (10) and fourteen (14) hours must be taken in minimum four (4) hour increments commencing at 0800 or 1800 hours and must be concluded by 2300 hours. (See also General Order 10.4 (Trade Policy) for short time relief).
- 19.1.8. An employee placed on workers' compensation leave, modified duty, special assignment or sick leave to a forty (40) hour work week shall have his/her vacation tour or incremental time off opened up to the fifty six (56) hour suppression staff in order of

seniority. This will be done as soon as it is reasonably determined the member will not be returning to a fifty six (56) hour work week and no later than 1000 hours of the shift prior to the employee's scheduled vacation tour or shift.

**19.2. Incremental Vacation**

Vacation time in increments of less than ten (10) hours can be requested under special circumstances subject to the approval of the Fire Chief or his/her designated representative.

19.3. Effective March 1, 2009 the vacation accrual schedule is as follows:

<b>Years of Service</b>	<b>Vacation Accumulation</b>	
	<b>56 Hours</b>	<b>40 Hours</b>
Through the first five (5) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)	2 Vacation Periods	
	144 hours	80 hours
Six (6) through eleven (11) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)	3 Vacation Periods	
	216 hours	120 hours
Twelve (12) through eighteen (18) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)	4 Vacation Periods	
	288 hours	160 hours
Nineteen (19 through twenty-four (24) years of service (as provided in Sections 19.5, 19.5.1 and 19.6 below)	5 Vacation Periods	
	360 hours	200 hours
Twenty-five (25) and subsequent years of service as provided in Sections 19.5, 19.5.1 and 19.6 below).	6 Vacation Periods	
	432 hours	240 hours

**19.3.1. Lateral Entry Vacation Accrual Rate at Time of Appointment:**

Subject to the provisions of Section 19.1, an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 10.3 of the Agreement, shall accrue and be eligible to take Vacation Leave commensurate with his or her years of experience as a sworn Fire Fighter. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

19.4. Employees shall earn vacation leave according to the following schedule:

<b>Hours of Vacation Leave Earned For Each Hour of Service</b>		
<b>Vacation Periods Earned Per Year</b>	<b>For Employees Working</b>	
	<b>56 Hours/Week</b>	<b>40 Hours/Week</b>
2	.0495	.0385
3	.0742	.0577
4	.0989	.0769
5	.1236	.0962
6	.1484	.1154

19.4.1. Each employee shall be entitled to take, during his/her first two (2) full years of City employment, only such annual vacation leave as the employee earns; provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

19.5. For an employee who has worked on a part-time or intermittent basis or 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) vacation period rate.

19.5.1. Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination 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.

19.5.2. For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) vacation period rate, time spent on extended military leave or parental leave shall be counted as time spent in the service of the City.

19.6. Employees can carry over from one vacation year (see Glossary) to the next, no more than eight (8) vacation periods of earned vacation.

19.7. Not later than November 1st of each year, beginning in 2000, the City will notify each affected employee whose earned vacation is projected to exceed eight weeks by the end of the vacation year (see Glossary). By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year. An employee who has attained maximum accumulation may be required to

take all projected excess earned vacation or receive pay in lieu thereof, at the option of the City. Such time off shall be scheduled in accordance with the provisions of General Order 10.1 and this Memorandum of Understanding.

- 19.8. An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He/she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he/she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.
- 19.9. An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 19.
- 19.10. 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 for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week, the employee's vacation shall be as provided in Sections 19.12, 19.13, 19.14, 19.15 or 19.16.
- 19.11. If, after six (6) months of continuous service, an employee dies, is terminated, or is granted an extended military leave, or other extended leave of absence without pay, such employee, or his or her estate, shall be paid for earned vacation periods 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 taken in excess of vacation leave earned, as the case may be.
- 19.12. Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the vacation balance is negative, such employee, or his or her estate, shall, on the same basis, reimburse the City or the City may deduct the balance due from the employee's salary due, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

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

19.13.1. The employee's regular hourly salary, as defined in the Glossary at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of vacation leave hours earned or vacation leave hours taken, as the case may be.

19.14. Upon retirement, termination or extended military leave, employees shall be paid off one hundred percent (100%) of all vacation which he or she has earned, banked, or held over.

19.15 Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay.

**19.16 Vacation Buy Back**

Vacation buy back shall be done at the time of vacation picks, but prior to the vacation selection process. The buy back shall be done in order of seniority, by shift, similar to vacation selection. Employees have the option to sell some of their vacation back to the City at this time. Employees may sell in increments of one (1) week at a time during each round.

19.16.1. Employees may sell up to half ( $\frac{1}{2}$ ) of their earned vacation, including any vacation carry-over.

19.16.2. For purposes of computing earned vacation, time may be counted up to the end of the second paycheck in February of the current year. Employees will be paid only for vacation time actually earned up to the time of buy back payoff.

19.16.3. Only whole weeks shall be counted for vacation buy back. For example, seven (7) weeks, twenty - one (21) hours would count as seven (7) weeks of earned vacation.

19.16.4. The City will allow up to twenty (20) weeks of vacation buy back per shift for personnel assigned to fire suppression for a given vacation year. Once that number has been reached no further vacation buy back request shall be honored.

19.16.5. Employees will be paid in March for vacation sold back to the City at the beginning of the vacation year, but in no event sooner than the first pay period after the fiscal year's budget is approved.

- 19.16.6. The vacation buy back provision as provided for in this section applies only to Unit B Personnel assigned to fire suppression and medical response vehicles.
  - 19.16.6.1. Unit B Personnel not assigned to fire suppression and medical response vehicles will be able to sell back vacation leave as provided in Section 19.17.1 and this sell back of vacation will not apply to the twenty (20) week limit set forth in Section 19.17.4 for personnel assigned to fire suppression.
  - 19.16.6.2. The Fire Department, at its discretion, may allow incremental vacation to be taken on short notice, in excess of the maximum number of vacation spots selected, when in the opinion of the Fire Chief or his/her representative, there are extra personnel working who are able to provide relief, and, the employee's absence will have no adverse impact on any departmental, or employee training program or other activity which is scheduled.
- 19.17. The conversion factor for employees accruing and using vacation leave is as shown below. The intent of the parties is to have the dollar value of the vacation leave accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.
  - 19.17.1. Vacation leave accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 0.7143.
  - 19.17.2. Vacation leave accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 1.4.

**SECTION 20: HOLIDAYS**

All employees in Representation Unit B shall be paid additional compensation for the holidays hereinafter enumerated at the straight time salary rate based upon their regular monthly salaries. Employees who are regularly scheduled to work forty (40) hours per week will receive eight (8) hours of holiday pay and those regularly scheduled to work fifty-six (56) hours will receive twelve (12) hours of holiday pay. The holidays to which this provision applies are:

- 20.1. New Year's Day
- 20.2. Martin Luther King, Jr. Birthday (3rd Monday in January)
- 20.3. Lincoln's Birthday
- 20.4. Washington's Birthday
- 20.5. International Women's Day - March 8 of each year\* (no time off is given for this holiday; only additional compensation is provided.)
- 20.6. Malcolm X's Birthday
- 20.7. Memorial Day
- 20.8. Independence Day
- 20.9. Labor Day (observed on the first Monday in September)
- 20.10. Admission Day
- 20.11. Indigenous People's Day (observed on the second Monday in October)
- 20.12. Veterans' Day
- 20.13. Thanksgiving Day
- 20.14. The day after Thanksgiving Day
- 20.15. Christmas Day
- 20.16. Any other special holiday as declared by the City Manager

\* If, during the life of this contract, the City agrees to give International Women's Day as a holiday to other City Employees, in addition to the Holidays listed herein, one (1) additional floating holiday will be credited for the Fire Service.

20.17. If any other represented bargaining unit receives an additional holiday above 16 holidays, the City agrees to grant an additional holiday to the Berkeley Fire Fighters Association.

**SECTION 21:      SICK LEAVE**

- 21.1. An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 21.2. to 21.7 inclusive.
- 21.2. Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

For purposes of this Section 21, 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 one hundred seventy three (173) hours of work in the case of employees working in a forty (40) hour per week assignments or two hundred forty three (243) hours for a fifty six (56) hour per week employees on an intermittent basis. Provided that effective upon the implementation of necessary data processing and programming changes, actual accrual of sick

leave will be based upon those hours in which the employee was on the payroll and receiving pay.

- 21.3. An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half-time, the employee shall be paid for time off on sick leave on half-time basis.
- 21.4. An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.
- 21.5. Such sick leave as provided in Section 21.2 when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

<b>For 56-hour A Week Employees</b>	<b>For 40-hour A Week Employees</b>
base - 1800 hrs.	base - 1200 hrs.
1st year - 1944 hrs.	1st year - 1296 hrs.
2nd year - 2088 hrs.	2nd year - 1392 hrs.
3rd year - 2232 hrs.	3rd year - 1488 hrs.
4th year - 2376 hrs.	4th year - 1584 hrs.
(and so on, as described in the next paragraph)	

The previously established maximum accumulation level of 1800 hours (1200 hours for 40-hour a week employees) may at the employee's option, be increased by up to 144 hours (96 hours for 40-hour a week employees) each year following the year when the employee reaches 1800 hours (1200 hours for 40-hour a week employees) level.

In each year following that 1800 hour (1200 hour for 40 hour a week employees) base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) and take any additional excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 144 hours (96 hours for 40 hour a week employees) in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate provided in Section 21.2.

Determination of eligibility for such payment shall be made on an annual basis, and payment for such sick leave for any calendar year shall be made during the month of March each year. Such payment shall be made at the employee's regular monthly salary rate in effect on the last day of the first pay period to end in March. An employee shall be eligible for this provision whether or not the employee is on the payroll as of the last day of the first pay period to begin and end in March.

- 21.6. All accumulated sick leave shall be canceled when an employee terminates or is terminated, except that all employees retiring (non disability) or voluntarily terminating with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

<b>Number of Unused Sick Leave Days</b>	<b>Percentage Payout</b>
0 - 74 days	38%
75 - 99 days	41%
100 - 124 days	44%
125 - 149 days	47%
150 and over	50%

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the City.

- 21.7. Sick leave shall not be considered as a privilege which an employee may use at his/her discretion but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than twelve (12) sick leave days in any calendar year may be taken because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.
- 21.8. 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, and no other provision for payment for time off because of injury is made by such other employer. In the event such

injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

- 21.9. In order to receive compensation while absent on sick leave, the employee shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift. The reasons why an employee is off on sick leave is considered to be a matter of some privacy. Therefore, only the type of leave (sick leave or family sick leave,) shall be noted to the Station Officer, Communications Center Dispatcher and/or recorded in station and dispatch logs.
- 21.10. The employee must inform the on-duty Assistant Chief as to the nature of the illness. This is to be done via e-mail in a short format no later than two (2) hours after the employee reports for work. Records of such information will be kept confidential within the Fire Department office. The Assistant Chief may use such information to initiate further action as circumstances or details warrant.
- 21.11. If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts, it shall be reported immediately to the on-duty Assistant Chief via telephone.
- 21.12. An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.
- 21.13. The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.
- 21.14. Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.
- 21.15. The City and Association agree that for every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave 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. Such bonus time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave. The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours

plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

21.16. The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Company Officer to the Assistant Chief. Such leave time may be taken in one (1) hour increments; however, the Assistant Chief shall be advised of the expected time of return to work as soon as possible and in no case later than four (4) hours from the time reported off. Upon the return of the employee, the Assistant Chief may require a written explanation of the circumstances.

21.17. The conversion factor for employees accruing and using sick leave or sick leave bonus time is as shown below. The intent of the parties is to have the dollar value of the sick leave or sick leave bonus time accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

21.17.1. Sick leave or sick leave bonus time accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time by the conversion factor of 0.7143.

21.17.2. Sick leave or sick leave bonus time accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time accrued by the conversion factor of 1.4.

**SECTION 22            WORKERS' COMPENSATION**

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

**SECTION 23:            FUNERAL LEAVE**

23.1. In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding 72 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per week work schedule. The immediate family of an employee, for the purpose of this Section, shall be defined as wife, husband, domestic partner (see Glossary), mother, father, sister, brother, child, grandmother, grand-father, mother-in-law,

father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

- 23.2. Leave of absence with pay, because of death in an employee's immediate family, is allowed solely for the purpose of attending funeral and memorial services, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.
- 23.3. In special cases, with the approval of the department head, the City Manager may grant funeral leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of immediate family.

**SECTION 24:        MILITARY & MARITIME LEAVE**

Military and Maritime Leave shall be governed by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), regulations implementing USERRA and the California Military & Veteran's Code.

**SECTION 25:        PARENTAL LEAVE**

- 25.1. A continuous leave of up to one (1) year will be granted to any employee with one (1) [2080 hours] 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 (5) years or younger, providing that:
- 25.1.1.        An employee wishing to exercise his/her rights under this provision must provide the City with at least thirty (30) days notice prior to the anticipated commencement date of the parental leave, and that one (1) year parental leave must commence no later than thirteen (13) months from the date of birth or adoption and must expire no later than twenty-five (25) months from the date of the birth or adoption.
- 25.1.2.        The employee, at his or her option, may request that all or any portion of sick leave days (see Glossary) or vacation leave days (see Glossary) or other accumulated compensatory time 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 vacation during the leave. In the event both parents are employed by the City, nothing in Administrative Regulation 2.4 shall prohibit both employees from taking simultaneous parental leave.
- 25.1.3.        During approved parental leave, after all earned leaves are exhausted, the City agrees to maintain life and health insurance

coverage for twelve (12) months subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

- 25.1.4. The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.
- 25.1.5. Approved Parental Leaves shall not be deducted from the employee's seniority service date.

**SECTION 26: LEAVE OF ABSENCE WITHOUT PAY**

- 26.1. Upon the request of the employee, a department head may grant a leave of absence to an employee within his/her department without pay for a period not to exceed fifteen (15) leave days (see Glossary). No leave without pay shall be granted for more than fifteen (15) leave 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.
- 26.2. An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay. In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay. However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

**SECTION 27: JURY DUTY LEAVE**

- 27.1. An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.
- 27.2. Employees who receive compensation for jury service during off-shift hours shall not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.

**ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

**SECTION 28: MEDICAL, DENTAL & LIFE INSURANCE**

**28.1. Medical Insurance**

Effective January 1, 1991, the City will only pay 100% of the premium for the applicable (single, two party, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. The cost difference between the Kaiser Plan and more expensive plans will be borne by the employee. Dependent status will be available until the dependent reaches the age of twenty-four (24) providing the dependent(s) meet the definition of "dependency" in the Internal Revenue Code. Effective January 1, 2009, the amount the City contributes each calendar year toward the payment of health insurance premiums 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. The amount the City contributes each calendar year uses the premium rate the previous calendar year as the basis for the calculation and there shall be no year-to-year carryover. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

28.2. The City will maintain life and health insurance during parental leave, as provided in Section 25.1.3.

28.3. Effective January 1, 1988, for those employees who show proof of alternate medical coverage, the City will compensate the employee at the single Kaiser Plan rate in lieu of providing that employee with medical coverage.

**28.4. Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will increase from \$2,500 to \$3,000 and the lifetime orthodontia limit will increase from \$2,500 to \$3,000.

28.5. All career and grant-funded provisional employees working less than a full forty (40) hour week shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a prorated portion of the health and dental insurance premiums.

**28.7. Life Insurance**

The City shall provide term life insurance of \$25,000 for each employee in Unit B, which shall include a standard accidental death and dismemberment provision of a like amount. Effective with the beginning of the first month after the execution of the 2006-2010 Memorandum of Understanding, the City shall increase the term life insurance to \$50,000 that shall include a standard accidental death and dismemberment provision of a like amount.

**SECTION 29: RETIREE MEDICAL COVERAGE**

29.1. Effective January 1, 2001, for employees who retire on or after July 1, 1997, the City will assist in the payment of medical insurance payments for the retiree and/or surviving spouse/domestic partner until the death of both. The maximum amount the City contributes toward the payment of medical premiums is described below and is based on the combination of the following factors:

- 29.1.1. the years of service of the employee at time of retirement
- 29.1.2. whether the employee is eligible to participate in Medicare
- 29.1.3. the annual increase of 4.5% on the amount the City will contribute toward the payment of the medical premium

The maximum amount the City will contribute toward the medical premium is based on the following schedule:

<b>Years of City Service to Be Completed</b>	<b>Percentage Paid by City</b>
10 years of service	City to pay 25% of either the Health Net Senior Advantage or Health Net Standard rate as applicable
15 years of service	City to pay 50% of either the Health Net Senior Advantage or Health Net Standard rate as applicable
20 years of service	City to pay 75% of either the Health Net Senior Advantage or Health Net Standard rate as applicable
25 years of service	City to pay 100% of either the Health Net Senior Advantage or Health Net Standard rate as applicable

29.2. For employees who are not eligible for Medicare, the City will assist the retiree and/or surviving spouse or domestic partner in the payment of the medical insurance premium as follows:

29.2.1. Effective January 1, 2001, each month after the employee retires, the City will pay the health care service provider an amount equal to the Health Net Standard premium rate which is \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage. If there is no spouse at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse or domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

29.2.2. Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

29.3. For employees or retirees who reach age 65 and are eligible for Medicare, the City will assist the retiree and/or surviving spouse/or domestic partner in the payment of the medical insurance premium as follows:

29.3.1. Effective January 1, 2001, each month after the employee retires and reaches age 65, the City will pay the health care service provider an amount equal to the Health Net Seniority Plus premium rate which is \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage. If there is no spouse at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse or domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

29.3.2. Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

29.4. For the purposes of this section a "Retiree" is anyone who is vested in CalPERS and has reached the age of 50 and has chosen to separate from the City. A

retiree is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.

- 29.5. Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.
- 29.6. Retiring employees may obtain other health care coverage at his or her own initiative. The retiring employee who selects other health care coverage must provide proof of alternate coverage at the time and in the form and manner required by the third party administrator. The third party administrator will pay up to the applicable amount set forth in this Section to the health care service provider.
- 29.7. For employees who retire on or after July 1, 2006 and have not reached the age of 65 and become eligible for Medicare, the City will assist in the payment of medical insurance payments for the retiree and/or surviving spouse/domestic partner until the death of both. On July 1, 2006, the City will increase the amount the City contributes from \$242.26 per month (single party) and \$482.86 per month (two party) to \$327.76 per month (single party) and \$653.86 per month (two party). Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

The maximum amount the City will contribute toward the medical premium is based on the following schedule:

<b>Years of City Service to Be Completed</b>	<b>Percentage Paid by City</b>
10 years of service	City to pay 25% of the Kaiser single or two-party rate as applicable
15 years of service	City to pay 50% of the Kaiser single or two-party rate as applicable
20 years of service	City to pay 75% of the Kaiser single or two-party rate as applicable
25 years of service	City to pay 100% of the Kaiser single or two-party rate as applicable

Minimum eligibility is 10 years of service with the City of Berkeley Fire Department

**SECTION 30: SUPPLEMENTAL RETIREMENT PLAN**

Effective July 1, 2001 the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible career benefited employees through the liquidation of termination pay. Termination pay means pay due to an eligible career benefited employee from the City on account of termination of his/her employment, but only including the commuted value of the following such accumulated pay: vacation, sick leave, sick leave bonus, compensatory time and floating holidays. The Supplemental Retirement Plan includes both mandatory contributions of termination pay and voluntary contributions for employees who provide the City with an irrevocable payroll deduction authorization at least 90 days in advance of the date of termination.

**ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT**

**SECTION 31: PROBATIONARY PERIOD**

31.1. Original appointments from employment lists for the classification of Fire Fighter/Fire Fighter Paramedic shall be tentative and subject to a probationary period within a period of two (2) years of actual service. Probationary employees who are granted parental leave or 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. Probationary employees who are granted military leaves of absence shall complete the balance upon their return to City service. No provision of this Section 31 shall be interpreted to preclude the City from establishing new classifications that may require probationary periods of varying lengths.

For probationary employees originally appointed to the class of Fire Fighter/Fire Fighter Paramedic, a report on their qualifications shall be made at the end of the 6th, 12th and 18th month and within ten (10) days of the end of the probationary period.

Original and promotional appointments to classes of Fire Captain, Fire Prevention Inspector, Deputy Fire Marshal, Paramedic Supervisor II, Paramedic Supervisor I, Fire Lieutenant and Fire Apparatus Operator, shall be tentative and subject to a probationary period of one (1) year of actual service.

31.2. 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.

- 31.3. 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 probationary employee in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

**SECTION 32:        PROMOTIONS/EXAMINATIONS & FILLING OF VACANCIES**

**32.1. Eligibility for Promotion**

32.1.1. Insofar as is practical 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.

32.1.2. To be eligible for promotion, an employee must have completed his/her probationary period at each level before they are allowed to participate in an examination for the next highest classification, with the sole exception that a Fire Fighter wishing to take the examination for the classification of Lieutenant shall not be required to hold the classification of Fire Apparatus Operator. The Fire Lieutenant classification specification will be modified to reflect this provision.

32.1.3. The experience related qualification requirements for Lieutenant must be attained with the Berkeley Fire Department.

**32.2. Development of Examination**

Examinations will be developed with the assistance of qualified persons in the subject matter being tested. The job announcement for promotional examinations will be reviewed by Human Resources, the Fire Chief or his or her designee, and Association representatives.

**32.3. Scheduling & Announcing Examinations**

32.3.1. Regular tests shall be given for all ranks including entry level personnel. Testing for entry level personnel shall take place at least every three (3) years and will, to the extent feasible, be administered within the provisions of a contract that may be

negotiated between the City of Berkeley and the Joint Apprenticeship Committee (JAC).

32.3.2. The Apparatus Operator's examination will be scheduled between May 1st and October 30th.

32.3.3. The City will make a good faith effort to meet the following test schedule and if deviation from the goals becomes necessary, the City will provide the Association with written reason or reasons for the deviation.

32.3.3.1. With the exception of the test for Apparatus Operator, which is discussed in Section 32.3.2, the City will administer the written examinations according to the following schedule:

<b>TEST</b>	<b>CYCLE BEGINS</b>	<b>QUARTER FOR TEST</b>	<b>INTERVAL BETWEEN TEST</b>
Apparatus Operator	2011	Second Quarter	2 years
Lieutenant	2010	Third Quarter	2 years
Captain	2011	Second Quarter	2 years
Paramedic Supervisor I	2011	First Quarter	2 years

32.3.3.3. Each promotional examination shall be announced no less than 60 calendar days in advance of the written test date.

32.3.3.4. Promotional examination announcements shall include the following information: identification of all component parts to the exam; type of exam; (e.g., multiple choice, true/false); and on scoring methodology (See Glossary). A study list shall be included in each promotional examination announcement.

32.3.3.5. The Association and the City of Berkeley agree to form a Joint Apprenticeship Committee for the Fire Department. The Committee shall include at least two (2) members of the Association, and two (2) representatives from Fire Administration plus alternates as may be designated by each party.

**32.4. Accommodating Employees Taking Examinations**

The Fire Department will provide relief for employees taking examinations for promotion if they are scheduled for duty during the examination.

**32.5. Questions & Protests About Examinations**

All questions regarding the examination will be directed to the Human Resources Analyst in charge of recruitment.

32.5.1 After the conclusion of the written examination for promotional positions represented by the Association, a protest period will take place. During the protest period, a written test participant will be allowed an amount of time equal to the time allowed for the test to review the written examination and the test participant's individual answer sheet with incorrect responses marked.

32.5.2. A Written Question Protest Review Committee shall be convened at the conclusion of the protest period. The Written Question Protest Review Committee shall have access to the written test and the answer key. The purpose of the Written Question Protest Review Committee is to review the written protests and determine whether a test question should be discarded or the answer re-keyed.

32.5.3. There will, if the Association so desires, be a member of the Association assigned by the Association Executive Committee on the Question Protest Review Committee as established by the Chief.

32.5.4 The Human Resources Department will provide the Fire Department with a list of the protested questions. The Fire Department will post a list of the numbers of the protests that are upheld and denied. Upon request, a representative of the Protest Committee will discuss the reasons for denial with the protesting employee.

32.5.5. The Human Resources Department, upon request of the employee, will check the accuracy of the scoring of a written examination in the presence of the employee.

**32.6. Examination Results**

Each candidate in a formal written examination where scores are provided shall be given notice of his or her score. Each candidate shall be given notice of his or her score on each phase of the exam process. The final score used to establish the eligible list with category ranking shall be a standard test score that is calculated using only the test scores of those candidates who successfully complete all phases of the examination.

The Human Resources Department will provide the Fire Chief with a list of applicants, in alphabetical order, who successfully completed the examination process and are eligible for appointment. The Fire Chief will make this list available to supervisors who need this information in order to assign employees to work in a higher class and to Association Officers so that they can monitor the consistency of such appointments with the terms of this Memorandum of Understanding.

**32.7. Selection**

- 32.7.1. Following the determination to fill vacancies and the certification of an eligibility list to the Fire Department, the selection by the Department will be made as soon as possible.
- 32.7.2. Promotional vacancies shall be filled within thirty (30) days when practicable after the vacancy is final, subject to the approval of the City Manager.
- 32.7.3. Employees shall be considered for promotion based on examination results, previous work performance, previous training and experience, merit, ability, seniority and other job-related criteria.
- 32.7.4. Where an eligible list exists, and the Fire Department desires to interview persons on the eligible list for a vacancy, the interview shall be conducted by the Fire Chief and Deputy Fire Chief for Captain and Lieutenant vacancies. At the discretion of the Fire Chief, in interviews for vacancies in the position of Fire Inspector, the Fire Chief and/or Deputy Fire Chief will be assisted by the Assistant Fire Chief assigned as the Fire Marshal. In interviews for vacancies in the position of Fire Apparatus Operator, the Fire Chief and/or Deputy Fire Chief will be assisted by the Assistant Fire Chief assigned as the Director of Training. The City will arrange for consistent Departmental interview panels; i.e., the same individuals as interviewers for all applicants for the particular vacancies. The Association recognizes that the requirement for consistent panels may lead to unavoidable delays in filling positions.
- 32.7.5. When the City Manager makes an appointment on the recommendation of the Fire Chief after a department level interview, all members interviewed who are not successful at the Department level in being selected, shall be notified by the City Human Resources Department in writing that they were not selected. At the request of the employee, the Fire Chief or a

Deputy Fire Chief will meet with the employee to discuss non-selection.

**32.8. The Life Span of a List**

If a list includes two (2) or more eligible candidates on that list, the City will not cause that list to expire more than thirty (30) days before giving a new examination.

**32.9. Retreat Rights**

Employees of a promotional rank who are assigned from the Division of Fire Prevention or paramedic status to the Fire Suppression Division shall have the right to retain that promotional rank, subject to his/her relative standing in seniority with other personnel of that promotional rank and the total authorized promotional positions within the Fire Department.

**SECTION 33: TRANSFER BETWEEN SHIFTS**

33.1. The present administrative practices shall continue for assuring that the employees on each shift will, as a group, represent a broad range of seniority (i.e., that each shift will include some employees with high and some with low seniority ranking).

A shift balancing meeting will take place each year. The actual shift changes will take place after January 1st of each year. Employees will be notified of transfer of shift by February 1. Actual transfer dates will be completed prior to the implementation of the vacation year. Employees may submit requests for possible shift changes through the chain of command.

When a vacancy is created by a retirement or promotion, the Department shall announce the vacancy through an e-mail to all personnel covered by this MOU.

Fire Personnel may submit letters of interest through channels to the Deputy Chief.

The Department may award the position based on seniority at the discretion of the Fire Chief. The Association recognizes that the Fire Chief retains full discretion to place personnel in positions based on the needs of the Department.

The Fire Chief or his or her designee still have the ability to transfer, at other times of the year, personnel based on the needs of the department.

33.2. Seniority

- 33.2.1. The Fire Department shall establish and maintain two (2) seniority lists, one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be immediately posted in all Fire stations, and the Fire Prevention Office. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.
  
- 33.2.2. Rank seniority shall be seriously considered in the selection of personnel in assigned fire stations (positions) providing that seniority assignments do not conflict with Department personnel needs, i.e. special qualities or skills assigned to a position.

**SECTION 34: PERFORMANCE EVALUATION**

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

**ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE**

**SECTION 35: GRIEVANCE PROCEDURE**

- 35.1. A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, or regulation which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process. The grievance procedure discussed below shall be the sole grievance mechanism applicable to employees covered by this Memorandum of Understanding. No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture, by the City, the City will comply with the request for resolution. However, the provisions of Section 35.8 of this

Memorandum of Understanding will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

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

35.2.1. **Step I      Informal Step:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with his/her Assistant Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified by filing a formal grievance.

35.2.2. **Step II      Fire Chief:** Any grievance that has not been resolved at Step I (Informal Step) may be referred to the Fire Chief (or his or her designee) by the grievant (and/or the employee's Association representative). Any such referral shall be in writing to the Fire Chief with a copy to the Human Resources Department, on a grievance form provided by the City (see Exhibit I), and approved by the Association. The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

35.2.4. **Step III      City Manager:** In the event that the employee (or the employee's Association representative) is not satisfied with the decision at Step II, the employee (or the employee's Association representative) may appeal the decision in writing to the City Manager or his/her designee within ten (10) working days after the termination of Step II.

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or

his / her designee shall be entitled to a personal conference upon request within the time limits specified.

The City Manager or his/her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

- 35.2.5. **Step IV Arbitration:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

The fees and expenses of the arbitrator and the court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post-hearing briefs, if any.

- 35.3. **Suspensions or Discharge Arbitration Decisions:** Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding upon both parties hereto to the extent permitted by the Charter of the City.

- 35.4. **Non-Disciplinary Arbitration Matters:** Those arbitration decisions on matters properly before them which do not pertain to suspension or discharge shall be in the form of recommendations to the City Manager, who may, within five (5) working days of receipt of said decision, reject said decision.

In the event of said rejection, then as to that particular grievance the fees and expenses of the arbitrator and court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

- 35.5. **Affirmative Action Program:** Any grievance which in any way affects 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 in the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the affirmative action program, the affirmative action officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received by the City Manager and, in such notification shall 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 affirmative action officer on the basis of which he/she considers it appropriate to change his /her original determination.

- 35.6. No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.
- 35.7. **Suspension or Discharge:** No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 35.2 above, resolves a grievance which involves suspension or discharge, he/she may order payment for lost time or reinstatement with or without payment for lost time.
- 35.8. **Compensation Grievances:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief or employee will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. 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 whichever is later. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Memorandum of Understanding which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 35.2.4.

35.9. No changes in the Memorandum of Understanding or interpretation thereof (except interpretation resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association.

**35.10. Probationary Employees**

35.10.1. Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is that the City's action was for an illegal or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally-protected activities; provided, however, that any appeal by a probationary employee alleging a violation of his/her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Affirmative Action program, which shall be specifically amended to allow probationary employee rights of appeal under that program.

35.10.2. The grievance procedure is also available to probationary employees for matters other than those related to discharge, discipline, or other performance issues, where the claim is a City breach of agreed-upon wages, hours, working conditions, or discrimination based on Association activity.

**35.11. Calendar Days**

All references in this Section 35 to days shall mean calendar day unless otherwise provided.

**35.12. Association Right to File**

No provisions shall prevent the Association from filing and/or appealing grievances on behalf of the employees represented by the Association.

**ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

**SECTION 36: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

**36.I. Uniform Allowance**

36.1.1. Effective December 1, 2000, the uniform allowance will be increased to \$800 and is to be paid annually by the first pay period

in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

- 36.1.2. The City agrees to advance the sum of \$400.00 to new hires, which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.
- 36.1.3. The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 58. The check title shall be "Uniform Allowance". If the purpose of payment is other than uniform allowance then a letter of explanation shall accompany each annual payment.
- 36.1.4. The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the duration of this contract. The City shall continue to purchase turn out gear.

**SECTION 37: SAFETY COMMITTEE**

- 37.1. Each shift shall have a minimum of one (1) safety officer selected annually from volunteers requested by the Assistant Chief.
- 37.2. The safety officer shall appoint a safety committee consisting of six (6) individuals on that shift (preferably two (2) complete companies). When there is more than one safety officer per shift, a primary safety officer can be selected from among the volunteers for purposes of shift continuity.
- 37.3. The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.
- 37.4. The purpose of the committee shall be to recommend changes based on the reviews or investigations to help avoid future accidents or injuries in the areas looked at.
- 37.5. The committee shall investigate possible short comings in equipment, methods, tactics, and procedures and report their findings to the safety officer who shall forward the committee findings to the Deputy Fire Chief through channels in writing.

37.6. The Deputy Chief shall determine the appropriate action needed to reduce the possibility of similar accidents happening in the future and shall inform the appropriate committee and employee(s) in writing of the actions taken. A copy of the committee findings will be included with the Deputy Chief's recommendations.

**SECTION 38:        EDUCATION/ESTABLISHMENT OF AN ASSOCIATION  
                                 SPONSORED EDUCATION FUND**

38.1. Funding for not less than five (5) Unit B employees to attend the National Fire Academy shall be provided each year. Personnel must be qualified by being in a position to make good use of the information learned for the benefit of the Fire Department, at the discretion of the Fire Chief.

38.2. Personnel desiring to attend the National Fire Academy shall submit requests to the Fire Chief no less than three (3) months prior to the beginning of the course. If less than three (3) months are available before the course notifications have been distributed, requests shall be submitted no more than one (1) week after distribution of course notification.

38.3. The Fire Chief will not restrict the number of departmental personnel attempting to attend National Fire Academy, Asilomar or other pertinent classes if such attendance involves no cost to the City. Attendance will be subject to the conditions imposed by the National Fire Academy, Asilomar, or other teaching institutions sponsoring the course of instruction. If in the event more personnel attempt to attend National Fire Academy, Asilomar, or other pertinent classes than there are classes available and the teaching institution sponsoring the course request the Fire Chief to limit the number of attendees, the Fire Chief will determine the personnel to attend, based on the needs of the fire service.

38.4. Educational funds shall be equally shared except in special circumstances to be determined at the discretion of the Fire Chief.

**38.5. Establishment of an Association Sponsored Education Fund**

Effective with the execution of the 2010-2012 Understanding, the City shall pay the Association an amount sufficient to fund the Education Fund to \$35,000 and the fund will be replenished to a maximum of \$35,000 at the end of every fiscal year. The Education Fund is to be used for educational purposes at the sole and exclusive discretion of the Association.

**SECTION 39: ANNUAL PHYSICAL EXAMINATIONS**

- 39.1. The City will provide one (1) physical examination (based on the City's specification as to scope of examination and examiner) each year to each employee in a classification categorized as "high risk" (as defined in Glossary). Employee participation is required.
- 39.2. Medical examinations for employees on a fifty-six (56) hour workweek, other than examinations required by the City, shall be scheduled by employees on their off-duty days.
- 39.3. At the employee's request, a Hepatitis C test will be performed at the annual physical examination. Any male employee over the age of 45 may request a prostate specific antigen test at the annual physical examination.

**SECTION 40: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

- 40.1. The City may accommodate, when feasible, employees covered by this Memorandum of Understanding who are on Workers' Compensation leave, and such work assignments are to incorporate the following provisions:
  - 40.1.1. The modified assignment shall be consistent with medical limitations as determined by the attending physician.
  - 40.1.2. The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.
- 40.2. The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment. However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the employee is qualified, and the

position must better accommodate recurring periods of leave than the employee's regular job.

- 40.3. Nothing herein shall require the City Manager to approve modified work assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such refusal may subject an employee to loss of benefits and/or disciplinary action.

**SECTION 41: RESIDENCY REQUIREMENT**

Employees who are hired subsequent to January 1, 1995, may not reside greater than forty (40) air miles from Berkeley City limits.

**SECTION 42: MEAL PERIODS**

- 42.1. Meal periods will be interrupted as little as possible, and, with the exception of emergencies, any interruption will be limited to situations involving a substantial Department need.
- 42.2 Because each employee may be called upon to perform emergency services during the meal period, employees rarely leave the station during their scheduled meal periods. Meals are often organized at each station because employees are required to be available for emergency calls during meal periods. Because of this, employees are required to contribute financially to an organized meal, supervised at each individual station, at a charge equal to the value of each employee's portion of the meal, regardless of whether the employee chooses to eat the meal. The portion of each organized meal attributable to each employee is required to be contributed to an organized "kitty" fund, which will be deducted monthly by the Association. Employees shall be solely responsible for any financial or tax liability regarding this provision.

**SECTION 43: STATION WORK ACTIVITIES**

- 43.1. Employees shall not be required to move office furniture and equipment from one station or headquarters to another.
- 43.2. Prior to any major work being done within the fire stations, the station commanders will be informed as to the plans.

**SECTION 44: MUTUAL RESPONSE AGREEMENTS**

Prior to entering into any new mutual response agreements, the City and the Association shall form a committee of two (2) representatives from the Association

and two (2) from the City who shall meet and confer to discuss mutual aid response agreements which will provide for automatic, prearranged (as distinguished from existing emergency mutual aid agreement) mutual aid response from other jurisdictions.

**SECTION 45: STAFFING AND UNITS IN OPERATION**

- 45.1. Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be on duty at least the staffing set forth in Section A.1 of Exhibit D to the MOU.
- 45.2. The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a “fiscal emergency” via a 2/3 vote of the City Council.
  - 45.2.1. If the City Manager determines during the Fiscal Year that fund revenues have or will decline substantially below the estimate of fund revenues in the adopted Budget and/or expenditures have or will increase substantially above the projected expenditures in the adopted Budget, the City Council may declare a “fiscal emergency” that shall thereupon cause the City of Berkeley and the Berkeley Fire Fighters Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.
- 45.3. Prior to a policy change which will result in a temporary reduction in the number of employees assigned to the Division of Operations (see 45.1 through 45.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 45.4. As soon as possible following the end of the “fiscal emergency”, it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 45.5. The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 45.6. All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.

See General Order No. 15.8 - Emergency Call Procedures/Apparatus Staffing Levels Exhibit H.

- 45.7. In the event of sending an engine, truck or ambulance company outside the City for training or drills, for four (4) or more hours, during a twenty-four (24) hour shift, causes the on duty assignment to fall below normal staffing (see Exhibit D); additional personnel will be hired or held over to maintain this minimum level of safety. Staffing can be accomplished by using extra on duty staffing and/or overtime. Overtime staffing can include the use of mandatory hiring but would not include emergency recall procedures.
- 45.8. Training or drill events held in the areas of East Bay Regional Parks District Tilden Park or Claremont Canyon Regional Preserve, Lawrence Berkeley National Laboratory or University of California Berkeley properties shall not be considered outside the city. The Duty Chief has the option of replacing companies based on the four (4) hour requirement for planned events in these areas.
- 45.9. When unplanned events such as mutual aid responses or other emergencies, but not limited to, will cause an engine, truck or ambulance companies to be unavailable, out of service to the City of Berkeley and outside the city limits for more than four (4) hours the Duty Chief shall have the option to replace the companies. The decision to replace the companies will be based on various factors in no defined order.
- 45.9.1. Nature of the unplanned event?
  - 45.9.2. Coverage available within the City of Berkeley and call activity?
  - 45.9.3. When did the determination of exceeding the four (4) hour requirement become apparent?
  - 45.9.4. What is the estimated time before the company or companies will become available?
  - 45.9.5. Time of day and length of shift remaining?
  - 45.9.6. Availability of apparatus for staffing?
  - 45.9.7. Availability of personnel for staffing?
- 45.10. Emergency recall can be used for staffing for unplanned events once other staffing options have been utilized and shall be done in consultation with management.
- 45.11. Nothing prevents the immediate use of emergency recall based on a local or regional emergency that requires extra staffing as quickly as possible.

**SECTION 46:      DETAIL SCHEDULE**

The Association and City agree to modify General Order 3.2 to change item C(1) to read "Companies shall report to the drill tower not later than 0845 hours on the date scheduled, and may be required to remain there until 1145 hours.

Companies at the drill tower will be given a break approximately midway through the drill period". There shall be no "routine" hose drills in the rain. During winter months, the Division of Training shall schedule an alternative drill with each scheduled "routine or standard" hose drill. If rain occurs when a standard hose drill is scheduled, the alternative drill may be used instead. An effort will be made by the Division of Training to keep personnel and equipment dry during rainy weather.

**SECTION 47: FIRE APPARATUS**

- 47.1. All fire apparatus and equipment used in emergency operations, in need of repairs, will be repaired in a timely manner.
- 47.2. The City agrees, when purchasing fire apparatus in the future, the recommendations of the Apparatus Specification Committee will be given the utmost consideration.

**SECTION 48: EQUIPMENT MAINTENANCE**

- 48.1. Electrical and natural gas appliances will be repaired immediately by qualified outside repair persons.
- 48.2. Fire extinguishers of all types will be tested, refilled, and maintained by licensed contractors in the manner prescribed by state and federal law.
- 48.3. Hose repair will be done only by qualified personnel who have been properly instructed in the various types of couplings and types of hoses and in the proper operation of the mechanical hose repair equipment.
- 48.4. There will be a qualified mechanic from Equipment Maintenance or the Fire Department assigned to the testing, repair, and maintenance of all Fire Department vehicles. This assignment will be his/her first priority.
- 48.5. The washing, waxing, and cleaning of Assistant Chief - Fire Suppression vehicles shall not be assigned to personnel covered by this Memorandum of Understanding. Daily cleaning of windows and car interiors and the checking of the battery, oil, gas, water, and other safety and emergency equipment may be assigned.
- 48.6. Painting in the interior of the fire stations shall be considered a special project.

**SECTION 49: TRADES**

Procedures for trades are covered in the Fire Department Manual of Procedure 10.4.

**SECTION 50:        EQUAL TREATMENT OF COMMITTEE MEMBERS**

Unit B members on any committee that is formed at the direction of the Fire Chief are entitled to equal treatment. A single standard will be used to determine the number of hours for which off-duty participants will receive time off, (due time) etc. for all committee members who participate equally. Payment of hours will be hour-for-hour pay or hour-for-hour due time in accordance with FLSA. All members shall have an opportunity if desired, to apply for committee membership.

**SECTION 51:        TIME OF RECEIPT OF PAYCHECKS**

If the City utilizes a new computer and/or payroll system, it will extend "best efforts" to achieving, and treat as a very high priority the end that Fire Department employees have checks ready for pickup by 8 a.m. on the relevant Friday. Further, if the situation changes such that any City employees routinely receive their paychecks at or before 8 a.m. on paydays, all Fire Department employees shall receive their checks at or before that same time.

**SECTION 52:        COURTESY**

The Fire Chief will add the following policy statement to the General Orders: When making routine visits to stations, chief officers and division captains shall make a reasonable effort to announce themselves and/or knock before entering the private areas (bathrooms, private areas within dormitories, private office areas) of fire stations.

**SECTION 53:        PHYSICAL & PSYCHOLOGICAL EXAMINATIONS/MOP**

The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his/her duties. Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within forty-eight (48) hours of such an examination.

Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he/she shall advise the City of any functional limitations which relate to the employee's ability to perform his/her duties, if such information may be provided without revealing the cause of those limitations. The psychiatrist shall respect the physician-patient

privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.

Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline.

**SECTION 54:      HAIR SAFETY STANDARDS**

54.1. There are many hair styles that are acceptable. So long as the person's hair is kept in a neat, clean manner, the acceptability of the style will be judged by the following criteria:

54.1.1.      Hair styles that preclude the proper wearing of SCBA are not permitted.

54.1.2.      Hair may be pinned or worn so as to minimize the potential of being caught in machinery or in any way become a safety hazard.

54.2. These standards have been developed to accommodate contemporary hair styles without jeopardizing the safety of Fire Fighters involved in the hazardous activities associated with the varied operational requirements of the modern fire service.

**SECTION 55:      NON-UNIFORMED FIRE PREVENTION INSPECTORS**

In the event any remaining uniform Inspectors vacate their Fire Prevention Inspector's position, the City may fill their position with non-uniformed personnel.

**SECTION 56:      HYDRANT TESTING, HOSE AND LADDER INSPECTIONS**

56.1. Hydrant inspections will be performed on an annual basis starting by April 15<sup>th</sup> and ending by June 30<sup>th</sup> of each year. Hydrant servicing and testing will occur on even numbered years during the annual inspection period.

56.2. The City will contract with an outside vendor to perform testing of fire hoses and ground ladders each year. Scheduling of this testing will be factored into the department training schedule.

**SECTION 57:      YMCA**

The cost of YMCA membership will be divided between the City and the employees, with the City contribution to be 75% of the monthly membership fee. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

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

**SECTION 58: LETTERS OF REPRIMAND**

Formal letters of reprimand concerning work rules or time and attendance shall be removed from an employee's official files upon request after 18 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employees' official personnel file upon request after 36 months provided the employee has maintained satisfactory performance.

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

**SECTION 59: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

59.1. The City shall continue participating under the Safety Members Plan of the Public Employees' Retirement System, such Plan to include the single highest year earnings formula and will include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law. The City's contract with CalPERS includes the following optional benefits:

- 59.1.1. One-Year Final Compensation as provided in Section 20042 (July 22, 1976).
- 59.1.2. Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- 59.1.3. Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 59.1.4. Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).

**2010 2012 Memorandum of Understanding**  
**City of Berkeley** **Berkeley Fire Fighters Association**

- 59.1.5. 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).
  - 59.1.6. Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000)
  - 59.1.7. 3% at age 50 Retirement Benefit as provided in Section 21362.2 for fire only (December 22, 2000).
  - 59.1.8. Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).
- 59.2. Effective July 1, 1994, the City will increase the base salary of employees in the amount of nine percent (9%). Employees will then assume responsibility for payment of the normal employee retirement contribution to CalPERS and the City shall designate such payment as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contribution shall be made through automatic payroll deductions.

**ARTICLE 9 - LAYOFF PROCEDURE**

**SECTION 60: LAYOFF PROCEDURE**

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

**60.1. Announcement of Layoff**

- 60.1.1. 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 layoff.
- 60.1.2. Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all

current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section. 60.7.

**60.2. Seniority Service Date**

- 60.2.1. All service in the employ of the City shall be counted toward the establishment of the 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 parental leave or 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 result of formal disciplinary action will be subtracted from the seniority service date.
- 60.2.2. All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.
- 60.2.3. All time spent in an appointed rank shall be credited to the employee's service in the employee's permanent rank. In computing both City and rank seniority, all time spent on paid leaves of absence shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded with the exception of parental leave.
- 60.2.4. The Human Resources Department will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

**60.3. Establishment of Seniority Lists**

- 60.3.1. 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.
- 60.3.2. The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in 60.4 below, employees on all lists shall be laid off on the basis of their seniority service dates, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that class.
- 60.3.3. Probationary or permanent employees holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.
- 60.3.4. 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: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.

**60.4. Employee Retreat Rights**

- 60.4.1. 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 classification 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.

- 60.4.2. In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent basis. Retreat rights to the rank of permanent Fire Apparatus Operator will be available only to employees who have previously held this rank on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions, i.e., Assistant Fire Marshal, Assistant Director of Training.
- 60.4.3. 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.
- 60.4.4. 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.
- 60.4.5. Retreat rights associated with other activities (such as reassignments) are discussed in Section 32.9.

**60.5. Employee Notification**

- 60.5.1. 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.

- 60.5.2. 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.
- 60.5.3. 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 or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after 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 60.9.

**60.6. Flexible Placement Program**

- 60.6.1. In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 60.1, impose a City-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.
- 60.6.2. Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff have been identified and the provisions under Section 60.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standard 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.
- 60.6.3. Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.

- 60.6.4. Offers of 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 60.3. All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times, including written acceptance of the offer.
- 60.6.5. If an employee fails to accept a bona fide written offer of an alternative job within five (5) 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 60.7.

**60.7. Reemployment Lists**

- 60.7.1. 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 60.4.
- 60.7.2. A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 60.7.3. 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.
- 60.7.4. 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.
- 60.7.5. If a former employee fails to accept a bona fide written offer or reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of

reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) 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.

- 60.7.6. 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.

**60.8. 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".

**60.9. Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under Section 35. 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.

**60.10 Audit**

- 60.10.1. On an annual basis, the City Manager's office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 60.7. In the event vacancies for which reemployment priority lists were in

existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

- 60.10.2. If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed 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.

**SIGNATURE PAGE**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the Employer - Employee representatives whose signatures appear below for their respective organizations.

**Employee Representatives:**

**Employer Representatives:**

**Berkeley Fire Fighters Association,  
International Association of Fire  
Fighters Local 1227**

**City of Berkeley**

\_\_\_\_\_  
Scott Hall, Chief Negotiator, I.A.F.F Local  
1227

\_\_\_\_\_  
Phil Kamlarz, City Manager

\_\_\_\_\_  
Adam Cooke , Negotiating Team Member,  
I.A.F.F. Local 1227

\_\_\_\_\_  
David W. Hodgkins, Director of Human  
Resources

\_\_\_\_\_  
Bryan Ward, Negotiating Team Member,  
I.A.F.F. Local 1227

\_\_\_\_\_  
Debra Pryor, Fire Chief

\_\_\_\_\_  
Scott McKinney, Negotiating Team  
Member, I.A.F.F. Local 1227

\_\_\_\_\_  
Gil Dong, Deputy Fire Chief

\_\_\_\_\_  
Peter Cianculli, Negotiating Team  
Member, I.A.F.F. Local 1227

\_\_\_\_\_  
David Sprague, Negotiating Team  
Member, I.A.F.F. Local 1227

EXHIBIT A

LOCAL 1227 MONTHLY CLASSIFICATION/SALARY RESOLUTION  
PERIOD: DECEMBER 27, 2009 THROUGH JUNE 23, 2012  
1.33% Cost of Living Adjustment December 27, 2009

CLASSIFICATION TITLE	STEP A	STEP B	STEP C	STEP D	STEP E
Fire Fighter	\$6,746	\$6,857	\$7,014	\$7,175	\$7,411
	STEP F	STEP G	STEP H	STEP I	
	\$7,707	\$7,908	\$8,169	\$8,443	

CLASSIFICATION TITLE	STEP A	STEP B	STEP C	STEP D	STEP E
Fire Apparatus Operator		\$8,232	\$8,505	\$8,785	\$9,075
Fire Prevention Inspector		\$8,646	\$8,932	\$9,228	\$9,531
Fire Lieutenant		\$8,860	\$9,152	\$9,455	\$9,766
Fire Lieutenant Training		\$9,774	\$10,095	\$10,431	\$10,774
Deputy Fire Marshal		\$9,774	\$10,095	\$10,431	\$10,774
Fire Captain		\$9,866	\$10,194	\$10,530	\$10,877
Paramedic Supervisor I		\$9,783	\$10,105	\$10,441	\$10,783
Paramedic Supervisor II		\$10,517	\$10,865	\$11,221	\$11,594

Transport Paramedics shall receive twelve and one-half percent (12½%) above the base salaries listed here.

FRALS Paramedics shall receive six and one-quarter percent (6¼%) above the base salaries listed here.

EXHIBIT B

GLOSSARY OF TERMS

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

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

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

**COMPENSATORY TIME:** shall mean paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime is required by this Memorandum of Understanding or the Fair Labor Standards Act. For the purpose of this Memorandum of Understanding, the term "Due Time" shall mean the same as Compensatory Time.

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

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

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

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

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day

in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of the calendar year were December 28, the last day of the payroll year would be December 22.

**EXEMPT:** Appointment which is exempt from the competitive service, in accordance with Section 4.04.120 of City of Berkeley Personnel Ordinance, No. 6280- N.S.

**FRALS PARAMEDIC:** A paramedic with current certification who is assigned to an engine or truck company and is entitled to receive the full FRALS paramedic differential pay.

**FULL-TIME:** An assignment or combination of assignments which total forty (40) or fifty-six (56) hours per week.

**HIGH RISK CLASSIFICATIONS:** A group of positions whose duties and responsibilities present a) significant probability or chance of injury, damage or loss of life; b) exposure to risk; and c) ability to incur the risk.

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

**LEAVE DAY:** A leave day is used for computing earned leave and is equivalent to a 12-hour working day for a 56-hour per week employee, or is equivalent to an 8-hour working day for a 40-hour per week employee. Leave taken is computed as the actual hours used.

**MEMORANDUM OF UNDERSTANDING:** A binding contract, as provided for by the Meyers- Milius-Brown Act, between the City of Berkeley and the Berkeley Fire Fighters Association specifying wages, hours and other terms and conditions of employment.

**MINIMUM QUALIFICATION ACTOR:** An employee allowed to act in a higher classification, when there are no qualified personnel on the current promotional list available, shall be known as a Minimum Qualification Actor. They must meet all the required qualifications, education, and experience to be eligible to participate in the promotional exam process for the classification in which they are to act. Minimum Qualification Actors must also successfully complete a certification process for the classification in which they are to act, administered by the Division of Training, before they are allowed to act in the specified classification.

**2010 2012 Memorandum of Understanding**

**City of Berkeley**

**Berkeley Fire Fighters Association**

**OFF THE UNIT:** An active paramedic who, on a given day, is assigned to suppression and is not working on an ambulance.

**ON THE UNIT:** An active paramedic who is actually assigned and is working on an ambulance.

**OPEN COMPETITIVE EXAMINATION:** An examination for a class (entry level or higher) in the competitive service in which participation is open to all qualified applicants.

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

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

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

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

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

**REEMPLOYMENT:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 59.7 in this Memorandum of Understanding.

**REGULAR HOURLY SALARY:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours for forty (40) hour per week employees. For fifty six (56) hour per week assignments, the Regular Monthly Salary is multiplied by twelve (12) and divided by 2912 annual work hours, except that time worked on the day shift is multiplied by a factor of 1.2 and time worked on the night shift is multiplied by a factor of 0.85714.

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" through "E" of this Memorandum of Understanding) and for paramedic assignments.

## 2010 2012 Memorandum of Understanding

City of Berkeley

Berkeley Fire Fighters Association

**REINSTATEMENT:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 31.

**REJECTION (PROBATION):** The separation of an employee from the service during or at the completion of the probationary period.

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

**SCORING METHODOLOGY:** The relative weights of components of a specific examination. This information is to be included in the announcement of the opening of the application process. For example, the announcement would specify that in the scoring of applicants that the written examination shall contribute a maximum of x per cent of the total score and that an assessment center shall contribute a maximum of y per cent, with  $x + y = 100\%$ .

**SHIFT:** A set of continuous work hours. For 40-hour per week employees, a shift comprises eight (8) hours. For 56-hour per week employees, a shift comprises twenty-four (24) hours, except that the term "day shift" means ten (10) consecutive hours and "night shift" means fourteen (14) consecutive hours and "12-hour shift" is used for purposes of computing leave time and compensatory overtime (for purposes of this Memorandum of Understanding). The term "working shift" refers to a day or night shift for 56-hour employees or a regular shift for 40-hour employees. The term "assigned shift" refers to separate schedules in effect for 56 hour employees, such as A-shift", "B-Shift" and "C-Shift". For purposes of computing leave time and compensatory overtime (for purposes of this Memorandum of Understanding), an average twelve (12) hour shift is used.

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

**TOUR:** The basic work cycle; for example, the 56-hour employee's tour consists of nine consecutive days, during which time the employee is scheduled for 3 shifts on duty and 6 off duty

**TOUR (48/96 Trial):** The basic work cycle; for example, the 56-hour employee's tour consists of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

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

**TRANSPORT PARAMEDIC:** A paramedic with current certification who is assigned to ambulance duty and is entitled to receive the full paramedic transport differential pay.

**VACATION YEAR:** A vacation year runs twelve months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

**Y-RATE:** An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his/her present salary. Such salary shall be designated as a Y rate and when that employee vacates this position, it shall be filled in accordance with new salary range established. Y-rating shall not apply to employees who are demoted for just cause, including unacceptable level of performance, or as a result of demotion under the provisions of the Layoff policy.

**EXHIBIT C**

**EMERGENCY MEDICAL SERVICES PROGRAMS**

**I. PROGRAM ADMINISTRATION**

- A. The Fire Chief will be responsible for program administration.

**II. GUIDING PRINCIPALS OF THE TRANSPORT AND FRALS PROGRAMS**

- A. Create and sustain Emergency Medical Service (EMS) programs that deliver the highest quality medicine to the Berkeley community.
- B. Minimize personnel movement and support program adjustments that maintain a high level of morale.

**III. TRANSPORT PARAMEDIC PROGRAM**

**A. WORKING CONDITIONS:**

1. A Transport paramedic shall not be assigned Fire Prevention inspection details while assigned to an ambulance.
2. A Transport paramedic shall be responsible for the maintenance of their equipment and vehicle (i.e. cleanliness, minor servicing, and operational readiness).
3. A Transport paramedic shall be responsible to the Station Commander and Shift Officer for maintenance of their own quarters and normal shift assignments. Station maintenance duties for assigned Transport paramedics will include the ambulances, EMS quarters, offices and facilities, as well as EMS supplies and equipment and other duties as assigned.
4. All paramedics will assist in EMS training.
5. A Transport paramedic shall complete all EMS related paperwork in accordance with established Alameda County EMS and Berkeley Fire Department policies and procedures.

**B. LICENSURE/ACCREDITATION:**

1. A Transport paramedic as a condition of employment will maintain a State of California Paramedic License and Alameda County accreditation.
2. A Transport paramedic is required to possess a current California Class A/B Commercial or Firefighter Exempt Class A/B driver's license with air brake endorsement.
3. Effective January 1, 2010, all firefighters hired after this date shall be required to maintain their State of California paramedic license and Alameda County accreditation as a condition of employment unless promoted to any other rank in the Department other than Paramedic

Supervisor I.

4. Any fire department employee who has worked for at least eighteen months as a Transport paramedic will be given an allowance of \$1,500 after submission of a renewed paramedic license, completion of Alameda County EMS requirements, and submission of a Fire Department reaccreditation form.
  - a. The City will offer twice a year, at no cost to all Transport paramedics, a continuing education program that meets the Alameda County accreditation requirements or an ALCO EMS approved alternate course. As of March 2010 ALCO EMS requirements include: (Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) or Pediatric Education for Pre-hospital Professionals (PEPP), and International Trauma Life Support (ITLS) or Pre-hospital Trauma Life Support (PHTLS).
  - b. Classes will be held in the Berkeley vicinity.
  - c. The Department retains the discretion to select the organization that provides the education or utilize internal instructors.
  - d. Classes may be attended by off duty personnel only. Personnel attending these classes are not eligible for overtime compensation.
  - e. However, if an employee misses the Department offered courses, he/she will be responsible to obtain the training on his/her own time and at his/her own expense.

**C. OPERATIONS:**

1. The Department will seek to maintain sufficient paramedics for each shift. To maintain three (3) paramedic Transport units, a staff of **36** Transport paramedics or 12 per shift is considered **desirable** (*emphasis added*).
2. Transport paramedics on their tour off will be required to serve as a First Responder ALS Paramedic. A Transport paramedic will work a rotational schedule of a maximum of two tours (six twenty-four hour shifts) on the ambulance and a minimum of one tour (three twenty-four hour shifts) on fire apparatus.
  - a. By mutual agreement between the Transport paramedic and the shift's Duty Chief, the Transport paramedic may remain on the ambulance longer than the rotational schedule described above for special needs such as to precept paramedic interns. However, such additional volunteer time on the ambulance will not be counted toward time off the ambulance as described in the rotational schedule above. The Transport paramedic

rotational schedule will always determine time off and on the ambulance.

**D. TRANSFER TO SUPPRESSION:**

1. Transfer to Fire Suppression will occur on the basis of Berkeley Fire Department seniority and only as vacancies occur in Suppression. It is **recognized** that a minimum of **36** Transport paramedics are necessary to operate the emergency services program (*emphasis added*).
2. Effective January 1, 2010, any Transport paramedic transferring to suppression shall maintain his/her paramedic license and Alameda County accreditation and serve as a FRALS paramedic.

**E. PROMOTION IN RANK:**

1. Paramedic personnel are encouraged to take promotional examinations while assigned to an ambulance unit. Paramedics on a promotional list may work in higher class.
  - a. **EMS Supervisors:** There shall be no more than three EMS Supervisor positions, ideally three (3) Paramedic Supervisor I positions, permanently assigned to the ambulance at any given time. In lieu of an available Paramedic Supervisor, a Supervisor shall be appointed and paid a Paramedic Supervisor's I rate.

**F. TRADES:**

1. A Transport paramedic shall be limited to trading with a Transport or FRALS paramedic regardless of rank. Except as follows, non-Paramedic employees may trade with Transport paramedics only if the Transport paramedic is scheduled to be working in Suppression on the date of the trade.

**G. TRANSPORT PARAMEDIC COMPENSATION:**

1. The pay differential for a Transport paramedic is twelve and one-half percent (12½%) above base pay for that employee's rank as provided in Section 10.9.1
2. A Transport paramedic shall not receive the FRALS differential in Section IV.G1, when serving as a First Responder Advanced Life Support paramedic.

**IV. FRALS PARAMEDIC PROGRAM**

A FRALS paramedic is a paramedic designated by the Fire Chief to be the First Responder paramedic assigned to an Engine or Truck Company, which include Firefighters or Fire Apparatus Operators, and at the Chief's discretion may include Officers.

- A. **WORKING CONDITIONS:** The FRALS paramedic duties include but are

not limited to the following:

1. The primary responsibility of a FRALS paramedic is to provide BLS/ALS care as a First Responder assigned to a Suppression company and to assist and/or transfer patient care to a Transport paramedic.
2. A FRALS paramedic shall be responsible for the maintenance and operation of all EMS equipment assigned to their apparatus (i.e. cleanliness and operational readiness.)
3. All paramedics will assist in EMS training.
4. A FRALS paramedic shall complete all EMS related paperwork in accordance with established Alameda County EMS and Berkeley Fire Department policies and procedures.

**B. LICENSURE/ACCREDITATION:**

1. In order to receive FRALS differential pay Section 10.9.5, employees must make a two (2) year commitment to the program and maintain all of the following: a Class A or B Firefighter Exempt or Class A or B Commercial Driver's License with air brake endorsement, a California State Paramedic License and Alameda County Accreditation.
  - a. Any FRALS paramedic hired in the department before January 1, 2010, who loses his/her paramedic or driver's license and/or certifications required to function as an Alameda County Paramedic, will be automatically removed from the list of designated FRALS paramedics and will have to reapply to participate in the program.
  - b. Any paramedic hired in the Department after January 1, 2010 shall maintain his/her paramedic license, driver's license and certifications required to function as an Alameda County Paramedic.
2. FRALS paramedics will be given an allowance of \$1,500 after submission of a renewed paramedic license, completion of Alameda County EMS requirements, proof of successful completion of an Alameda County EMS approved 12-Lead EKG class and submission of a Fire Department reaccreditation form.
  - a. The city will offer twice a year, at no cost to all FRALS paramedics, a continuing education program that meets the Alameda County accreditation requirements or an ALCO EMS approved alternate course. As of March 2010 ALCO EMS requirements include: (Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) or Pediatric Education for Pre-hospital Professionals (PEPP), and International Trauma Life Support (ITLS) or Pre-hospital Trauma Life Support

**2010 2012 Memorandum of Understanding  
Berkeley Fire Fighters Association**

(PHTLS). Classes will be held in the Berkeley vicinity.

- b. The department may select the organization that provides the education or utilize internal instructors.
- c. Classes may be attended by off duty personnel only. Personnel attending these classes are not eligible for overtime compensation.
- d. If an employee misses the available classes he/she will be responsible to obtain the training on his/her own time and at his/her own expense.

**C. OPERATIONS:**

- 1. The Department will seek to maintain sufficient FRALS paramedics on each shift. To maintain seven (7) engine companies and two (2) truck companies with FRALS capabilities, a staff of **36** FRALS paramedics or **12** per shift is considered **desirable** (*emphasis added*).
- 2. The Duty Chief will use the following guidelines when managing roll calls and daily operations.
  - a. All efforts will be made by the City to minimize daily movement of personnel, however the Association recognizes that movement of personnel may be necessary to maintain FRALS capabilities on all suppression companies.
  - b. A FRALS paramedic may be placed on the ambulance for no more than a total of fourteen (14) hours per calendar quarter for the purpose of avoiding a mandatory or emergency hire, or to facilitate training classes or assignments, and scheduled meetings.
    - i. The orientation or evaluation period to complete the FRALS entry program and FRALS task book will not count towards the fourteen (14) hour per calendar quarter maximum.
  - c. When scheduling a FRALS paramedic on the ambulance, the department will take all reasonable steps to rotate the assignments for coverage between all FRALS paramedics on a shift and will be tracked on Telestaff.
  - d. FRALS paramedics may volunteer for additional duty on the ambulance following mutual agreement between the FRALS paramedic and his/her Duty Chief, and such time shall not count towards the fourteen (14) hour limitation in Section IV C2(b).

**D. FRALS PROGRAM START-UP ASSIGNMENTS:**

- 1. The Department will select FRALS paramedics according to the criteria set forth in Attachment B (Start Up Selection Process) for the initial

start-up of the FRALS program.

2. Any Firefighter, Fire Apparatus Operator, Fire Lieutenant or Fire Captain who maintains a current California Class A/B Commercial or Firefighter Exempt Class A/B driver's permit or license with air brakes endorsement, a California State Paramedic License and is accredited through Alameda County is eligible to apply to the department. If accepted, the department and the individual agree to a two-year start-up commitment to the FRALS program except for those individuals who fall within the definitions as listed in D.2(b) and D.2(c).
  - a. FRALS program applicants will obtain their California Class A/B Commercial or Firefighter Exempt Class A/B driver's license by June 1, 2010, except as allowed by the Fire Chief.
  - b. Officers shall not be reappointed or be considered as FRALS paramedics two (2) years after the date of his/her acceptance into the FRALS program. The exception would be officers may continue in the FRALS program at the discretion of the Fire Chief in order to achieve a maximum of 36 FRALS paramedics.
  - c. A Firefighter, Fire Apparatus Operator, Fire Lieutenant, or Fire Captain assigned as a FRALS paramedic who promotes or demotes to a different classification or is assigned to a 40-hour work schedule will be no longer be considered a FRALS paramedic as of March 31, 2010.

Exception: A FRALS paramedic who is assigned by the Fire Chief to a special assignment on a 40-hour work schedule for six (6) months or less will maintain their FRALS program status. The City will not be required to backfill FRALS paramedics on special assignments.

3. Upon Council approval, three engines will be designated full-time FRALS engines. Any Transport paramedic personnel serving on the designated ALS equipped fire company will function as a FRALS paramedic.
  - a. The department will make FRALS program selection offers to personnel based on the criteria in Exhibit B (Start Up Selection Process). Once a tentative list of eligible personnel has been established, all companies that have a licensed and Alameda County Accredited Paramedic permanently assigned on all shifts (A, B and C) will be brought online as a FRALS company.
  - b. The Department will make selections to the FRALS program by filling positions with priority ranks as set forth in Exhibit B (Start-Up Selection Process).

**2010 2012 Memorandum of Understanding  
Berkeley Fire Fighters Association**

- c. Personnel selected using Exhibit B, who are not Alameda County Accredited Paramedics, will be provided an opportunity for ACLS, PALS, seldom used skills, training in airway and trauma skills and 12-Lead EKG training prior to March 31<sup>st</sup> 2010.
- d. If personnel do not have 12-Lead training, the department will temporarily utilize them as a FRALS paramedic until March 31, 2010. FRALS paramedics may not be placed on the ambulance without the County required 12-Lead training except to perform any Alameda County EMS system re-orientation time (as a 3<sup>rd</sup> paramedic on the ambulance) as required by the department.
- e. A FRALS paramedic who does not have documentation of successful course completion in an Alameda County EMS Agency approved 12-Lead EKG training will be required to take a 12-Lead EKG class prior to March 31<sup>st</sup>, 2010. Any FRALS paramedic that does not complete a 12-Lead EKG by March 31, 2010, will be removed from the FRALS program.
- f. All FRALS paramedic applicants must successfully complete a Task Book and orientation or evaluation prior to acceptance into the program.
  - i. Exception: FRALS paramedics who have served as a Reserve or Acting Transport paramedic after July 1, 2009.

**E. POST START-UP FRALS ASSIGNMENTS**

FRALS assignments made after March 31, 2010 will use the criteria listed in Section IV E1 through E4.

- 1. Selection of FRALS paramedics will be determined as listed
  - a. Firefighters – Priority 1
  - b. Fire Apparatus Operators - Priority 2
  - c. Officers – Priority 3
- 2. In the event there are multiple employees who hold the same rank and desire to be a FRALS paramedic, the following tie-breaking criteria in order will be utilized to determine selection.
  - a. The employee is permanently assigned to a company and shift that has an open FRALS vacancy.
  - b. Highest departmental seniority
- 3. Officers shall not be considered as FRALS paramedics unless appointed by the Fire Chief.
- 4. A Firefighter, Fire Apparatus Operator, Fire Lieutenant, or Fire Captain

assigned as a FRALS paramedic who promotes or demotes to a different classification or is assigned to a 40-hour work schedule will be no longer be considered a FRALS paramedic as of March 31, 2010.

- a. Exception: A FRALS paramedic who is assigned by the Fire Chief to a special assignment on a 40-hour work schedule for six (6) months or less will maintain their FRALS program status. The City will not be required to backfill FRALS paramedics on special assignments.

**F. TRADES:**

1. A FRALS paramedic may trade with any member of the same rank or any member that is qualified through their standing on a current promotional list or successful completion of the MQ process.
  - a. If a trade involves a non-FRALS employee and movement of personnel is required to keep a company in service as a FRALS unit, the department will make every effort to move the non-FRALS trade first.

**G. FRALS PARAMEDIC COMPENSATION:**

1. The differential for FRALS paramedics is six and one-quarter percent (6.25%) above base pay for that employee's rank as provided in Section 10.9.5.
2. A FRALS paramedic shall be paid at the Transport paramedic rate (Higher class paramedic - HCPM) only when a FRALS paramedic is assigned to work as a Transport paramedic on an ambulance. A FRALS paramedic shall not receive both the FRALS and Transport paramedic differentials.

**V. EMS PROGRAM MAINTENANCE AND CHANGES:**

- A. An EMS oversight committee will be established for the purpose of evaluating and providing **recommendations** to improve the Transport and FRALS programs. This could include enhancements to program budget, management, equipment, and any other conditions that may affect a FRALS or Transport paramedic's working conditions.
  1. There will be a maximum of three (3) representatives from each shift. Each shift sub-committee shall be representative of the two (2) programs with one FRALS paramedic, one Transport paramedic and the shift Paramedic Supervisor I. Representatives from each shift are encouraged to participate, but it is not mandatory.
  2. Each shift sub-committee will meet no less than once per calendar quarter on duty, off duty compensation will not be provided for this committee.
  3. Each shift will draft a report from their meeting that will be presented by

the Paramedic Supervisor I to the EMS Division during its regularly scheduled meetings.

**VI. EMERGENCY MEDICAL TECHNICIANS**

- A. EMT certification is a condition of continued employment.
- B. The Department will offer on-duty EMT recertification classes and online continuing education for the benefit of employees to meet the twenty-four hour requirement. The City of Berkeley will give sufficient notice of the scheduling of recertification classes or online continuing education. A limited number of make-up classes will be offered. The City of Berkeley will provide up to twelve (12) hours of make-up classes or online continuing education per shift for a total of 36 hours in each certification cycle. However, if an employee misses the available classes he/she will be responsible to obtain the training on his/her own time at his or her own cost. It is not the department's policy to pay for recertification classes taken while off-duty.
- C. In the event that EMT recertification requirements from the State and/or County are modified, the City of Berkeley and the Association agree to meet and confer on this issue.
- D. The City agrees to provide the required testing for EMT employees in each four-year cycle.

**VII. EMT-D (DEFIBRILLATOR)**

- A. Continued certification in EMT-D is a condition of employment for all Unit B EMT's.
- B. The department will provide periodic skills demonstration classes, in accordance with ALCO EMS policies.

**VIII. CONDITIONS FOR WHICH PARTIES AGREE TO REOPEN AND MEET AND CONFER**

- A. The parties agree to meet and confer on future First Responder ALS issues as required by law.
- B. The parties agree to meet and confer if 1) a FRALS reimbursement is provided by the Alameda County EMS district, or 2) there is an increase or decrease in either Measure GG or the Paramedic Tax revenues (with the exception of Consumer Priced Index or Personal Income Growth increases).
- C. The City and Association hereby agree to reopen labor negotiations and to immediately begin to meet and confer specifically to address Exhibit G Section IV and V of this MOU if either of the following occur:

1. The Berkeley voters fail to approve reenactment of the Measure GG funding in the November 2012 election; or
2. At the conclusion of any fiscal year, and following the second closing of the City's financial records for that year, the City's Measure GG actual expenditures for the FRALS program, (which for year one of the agreement is \$480,000) exceeds 97% of actual revenues for the FRALS program from Measure GG revenues.

EXHIBIT D

**GENERAL ORDER NO. 15 - EMERGENCY CALL PROCEDURES**  
**15.8 APPARATUS STAFFING LEVELS**

A. **NORMAL STAFFING**

1. Normal in-service staffing for fire apparatus shall be as follows:

- a. Seven (7) Engine Companies: three personnel each.
- b. Two (2) Truck Companies: three personnel each.
- c. Three (3) Ambulance Units: two personnel each.

FULL ASSIGNMENT DISPATCH for normal staffing is three (3) Engines, one (1) Truck Company and one (1) Ambulance Unit.

2. Truck Company Out of Service:

When a truck company apparatus is placed out of service, and no reserve truck is available, truck personnel (3 or more persons) will be assigned to Squad #5 depending on which truck it is replacing. The Squad will cover the assignment district of the truck being replaced (i.e., box alarms, freeway responses, etc.).

- a. The remaining truck will respond to all full assignments in the City.
- b. When a Squad company is placed in service in lieu of a truck, the minimum following equipment shall be carried in addition to the equipment carried on the reserve engine.

- 1. The 5" hose shall remain on the apparatus.
- 2. The jaws and related equipment.
- 3. Power saws.
- 4. Cribbing.
- 5. SCBA's and spare air bottles.
- 6. At least one gasoline blower.
- 7. Salvage covers, carryalls, shovels.
- 8. Portable generator, lights, cords.

- c. When Squad #2 is in service, full assignments in the north part of town (#2 Truck's district) shall consist of three engines, a truck, and the Squad. The incident commander shall evaluate the situation and return any companies that are not needed at the incident. In the event of the truck being unavailable, then no additional units will be assigned (i.e., three engines and the Squad).

- d. When Squad #2 is in service, full assignments in the south part of town (#5 Truck's district) shall receive three (3) engines and the truck. In the event that the truck is unavailable, then the Squad will be sent in place of the truck.
- e. When Squad #5 is in service, full assignments in the north part of town will get the normal assignment of three engines and the truck. In the event that the truck is unavailable, then the Squad will be sent in its place (i.e., three [3] engines and the Squad).
- f. When Squad #5 is in service, full assignments in the south part of town (#5 Truck's district) shall receive three (3) engines, the truck, and the Squad. In the event that the truck is unavailable, then no additional units will be sent (i.e., three [3] engines and the Squad).
- g. When a Squad company is in service, it shall take medical calls in its first due district ahead of the engine company assigned to that station.

**B BELOW NORMAL STAFFING**

When fire companies are below strength in personnel, the following guidelines shall apply:

- 1. Two (2) Personnel:
  - a. Fire units, Engine and Truck companies, with a minimum of two (2) persons on board shall be called a "Medical Unit".
    - 1. They shall take medical calls within district.
    - 2. They shall normally be Out-of-Service for fires.
      - i. Shall monitor radio and respond to fires if needed.
      - ii. Dispatch shall notify Asst. Chief when a unit is short of personnel.
      - iii. Dispatch shall indicate medical units when dispatching full assignments.
- 2. Less Than Two (2) Personnel:
  - a. When fire units have less than two personnel, companies are placed out-of-service.

**C. ABOVE NORMAL STAFFING**

When there are **extra** suppression personnel on duty, the extra person will be assigned to fire apparatus as follows:

Truck #2	
Truck #5	Engine #3
Engine #2	Engine #6
Engine #5	Engine #4
Engine #1	Engine #7

**D IMPLEMENTATION OF POLICY**

Assistant Chiefs may use a limited amount of discretion in exercising this policy, based upon realistic department needs.

## **Exhibit E**

We will insert a new version of the Grievance Form when we assemble the new contract

## 2010 – 2012 Memorandum of Understanding

City of Berkeley

### EXHIBIT F

#### WELLNESS/FITNESS PROGRAM

##### A. Participation

1. The City and the Association realize the importance of establishing and maintaining an effective Wellness Fitness program. It is the intent of this program to effectively increase the overall health of the workforce, thereby reducing workers compensation claims and chronic illnesses caused by improper nutrition and poor exercise habits.
2. All uniformed members of the Berkeley Fire Department are encouraged to participate in the B.F.D. Wellness/Fitness Program.
3. The annual physical examinations, provided by the City's Medical Provider, shall be utilized to determine each member's state of fitness to perform the duties of a Berkeley Firefighter and participate in a physical conditioning program.
4. All approved on-duty activities will be covered by Workers' Compensation. However, due to the potential for injury, competitive sports activities (tennis, volleyball, etc.) are strictly prohibited while on duty.
5. It shall be the responsibility of each member to participate daily (while on duty) in the program and to make every effort to maintain his/her physical fitness so as to be able to perform the duties of a Firefighter.
6. Daily scheduling of the program shall be the responsibility of each company officer.

##### B. Off-Duty Activities

No off-duty conditioning activities can be covered by Workers' Compensation. All reference to off-duty activities are merely suggestions to be considered for physical fitness.

##### C. Funding

1. Funding will be budgeted for the following components of the physical fitness program:
  - a. Maintenance of equipment; and
  - b. Equipment replacement costs.

## 2010 – 2012 Memorandum of Understanding

### City of Berkeley

2. Effective with the execution of the 2006 – 2010 Understanding, the City shall pay the Association an amount sufficient to fund the Physical Fitness Fund to \$80,000. The Physical Fitness Fund shall be used for the sole purpose of executing repairs to existing equipment and for the purchase or replacement of equipment necessary to maintain a safe and effective exercising environment.
3. Effective with the execution of the 2010-2012 Understanding, the City shall pay the Association an amount sufficient to fund the Wellness Fitness Initiative (WFI) fund to \$20,000 and the fund will be replenished to a maximum of \$20,000 at the end of every fiscal year. The WFI Fund shall be used to maintain the WFI program through education and training of peer fitness trainers, for executing repairs to existing equipment and for the purchase or replacement of equipment necessary to maintain a safe and effective exercising environment.
4. The Association will contract with a third party vendor who will provide repair services and scheduled maintenance for all exercise equipment. All claims for service will be made from the Association to the Department and will be acted upon in an expedient manner.
5. The Association may transmit equipment purchase order requests to the Department in order to take advantage of GSA pricing. The Department will act on said requests within fifteen (15) calendar days of receipt. The Association and the Department recognize there is a blackout period for all purchasing at the end of each fiscal year. The Association will be specific with make, model and suggested vendor.

### D. Fitness Advisory Committee

1. For the purpose of monitoring the program and recommending disciplinary action for noncompliance with the program by Unit B members, a Fitness Advisory Committee of four members shall be formed. The Fire Department Administration shall appoint one member and the Association shall appoint three members.
2. Action by the Committee may only be taken during an official meeting and by a majority of those members in attendance. A quorum of four members, one member of which must be the appointed administrative representative, shall constitute an official meeting.
3. Employee Association Committee members attending official meetings during off-duty time shall be compensated by the Department at time and one-half including travel time.
4. Union representatives for employees subject to disciplinary action under this program may attend official meetings during which such employee discipline is

## 2010 – 2012 Memorandum of Understanding

### City of Berkeley

being considered and when requested to so attend by the employee. Union representatives so attending during off-shift time shall be compensated at time-and-one-half including travel time.

5. In cases involving possible disciplinary action, the committee shall consider all facts and extenuating circumstances presented to it. Medical opinion and / or evidence given by an employee's or (City) physician must be accepted as fact unless refuted by a City (or employee's) physician.
6. The Fire Chief may institute no discipline which is more severe than that recommended by a majority of the Committee but may institute discipline which is less severe. Any discipline is subject to the City of Berkeley Rules and Regulations, the Berkeley Fire Department Rules and Regulations, Memoranda of Understanding between the City and/or Department and the Berkeley Fire Fighters, and the Grievance Procedures.
7. Program modifications may be suggested by committee action to the Fire Chief and/or the Association. No modifications may be implemented without the mutual agreement of the Fire Chief and the Association.

## 2010 – 2012 Memorandum of Understanding

City of Berkeley

### EXHIBIT G

#### HAZARDOUS MATERIALS RESPONSE TEAM

##### 1. STAFFING

- A. It is recognized that to be operational, the Hazardous Materials Response Team need not be staffed at the current level. It is understood that operational effectiveness may be reduced when current certified staffing levels are reduced. The Department shall make every effort to keep nine (9) personnel (3 on each shift) assigned to the team.
- B. Though the Berkeley Fire Fighters Association's position is that the Hazardous Materials Team staffing should remain at its current level of eighteen (18) with adequate funding for equipment and training, we recognize the City's managerial right to reduce staffing due to budget consideration.
- C. We propose that the Department pursue and develop a multi-agency response capability with adjacent municipalities. In addition all remaining team members should be trained to a specialist level.
- D. To reduce the team down to nine (9), the Fire Chief will consider recommendations by the Hazardous Materials Leader and the appropriate staff officers.

##### 2. TEAM OPERATIONAL LEVELS

- A. Guidelines for team operational levels shall be dictated by State regulations.
- B. To keep team staffed a maximum operational levels, the on-duty Assistant Chief shall have the discretion to change personnel assignments as needed. This includes personnel working overtime, trades, etc.
- C. Team members may be drawn from other stations if needed to respond to an incident. The on-duty Assistant Chief shall have this discretion should the need arise.

##### 3. TRAINING

- A. All Hazardous Materials Response training required for certification as Hazardous Materials Specialist must be completed by selected personnel in order to remain on the team. However, the specialist requirement will apply only to those members joining the team after the ratification of this

## 2010 – 2012 Memorandum of Understanding

### City of Berkeley

agreement. Every effort will be made by the fire administration to upgrade the remaining team members to the specialist level by January 1, 1996.

- B. Team members may be required by City Fire Administration to assist in providing appropriate Hazardous Materials training to other Fire Department personnel. Team members providing training will possess the necessary credentials as required by current State and/or Federal standards for hazardous materials instructors.
- C. Staffing during training shall be in accordance with Section 44 of the Memorandum of Understanding.

#### 4. **CONDITIONS**

- A. Participation on the Hazardous Materials Response Team will not limit members ability to be eligible for higher class assignments, trades, overtime or vacation scheduling.
- B. The "HAZ-MAT" Team may be required to enforce those sections of the fire code relating to Hazardous Materials and Fire Prevention.

#### 5. **COMPENSATION**

- A. After appointment to the HMRT employees will be compensated for attending hazardous materials training while off duty.
- B. Employees shall receive one and one-half hours (1½) of compensation time for each hour of scheduled training while off duty.

The City will provide Hazardous Materials Specialist Training as needed to maintain a Hazardous Materials Response Team. Upon successful completion of the required Hazardous Materials Specialist Course, a Hazardous Materials team member, who is regularly assigned, shall receive an additional five percent (5%) to base pay. This Hazardous Materials Response Team differential will be reported to CalPERS as Hazard Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 6. This 5% Hazardous Materials Response Team member differential shall become effective the closest pay period following completion of the course. To receive the above compensation, a three (3) year commitment to the team will be required.

## 2010 – 2012 Memorandum of Understanding

### City of Berkeley

7. A Hazardous Materials Response Team member who fails to complete the Hazardous Materials training will no longer receive the above mentioned compensation and shall be removed from the team.

