

Office of the City Manager

CONSENT CALENDAR  
July 30, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: LaTanya Bellow, Director of Human Resources  
 Subject: Memorandum of Understanding: Berkeley Police Association

RECOMMENDATION

Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Police Association (hereafter referred to as the "Union") with a term of July 30, 2020 through June 30, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

FISCAL IMPACTS OF RECOMMENDATION

The purpose of this one year extension agreement is in response to the City's financial effects of the COVID-19 pandemic. The terms of the new MOU provide for no wage increase for the period of the extension.

Upon mutual agreement the Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year the Union shall have the option to reopen two non-economic issues.

The funding for this agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City's labor contract with the Union expired and was fully terminated as of June 30, 2020. In an effort to reach agreement on a successor MOU, representatives of the City and representatives of the Union held approximately seven negotiating sessions beginning in April of 2020. The parties reached an extension agreement with no substantive change on all outstanding economic (aside from COVID-19 related issues) and non-economic issues on June 30, 2020.

While the labor contract expired and fully terminated on June 30, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired contract remain in full force and effect until modified through the collective

bargaining process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues. On, July 09, 2020 the Union ratified the tentative agreement by a vote.

**BACKGROUND**

There are approximately 180 employees represented by the Union in two (2) representational units (Units E and F).

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

1. Assure that labor organizations and their members are treated fairly and with respect.
2. Negotiate in good faith and within the process established by the parties including honoring the traditional confidentiality of the negotiation process.
3. Negotiate contracts based on a “Total Compensation Package” model (changes in current and future salary, and health and welfare benefits) within the City’s overall financial conditions. The City’s current overall condition included the recent declaration of a fiscal emergency on June 16, 2020.

Major provisions of the new labor contract are as follows:

Section	Change
10 Duration	NEW LANGUAGE: Parties agree to a one-year term extension starting July 30, 2020 and ending on June 30, 2021 with no changes in compensation or terms. This agreement shall be subject to ratification by the BPA and the City Council. The purpose of this extension agreement is to permit additional time to assess the financial effects of the COVID-19 epidemic on the City prior to negotiating a successor MOU. Upon mutual agreement, the Parties can further extend the MOU for another year with no additional changes to the terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.
10.1 Meet and Confer	The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinance, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of

	<p>bargaining, to informally consult upon the request of the Union to receive input regarding impact of such changes.</p> <p>The Parties agree to meet at least quarterly to discuss the changes in the City’s financial conditions.</p>
37.4 120 Day Limit on Imposition of Discipline	<p>NEW LANGUAGE: If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows: The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City’s discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.</p>

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6806

Attachments:

- 1: Resolution: Memorandum of Understanding: Berkeley Police Association  
Exhibit A: Memorandum of Understanding between the City of Berkeley and Berkeley Police Association (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and  
Berkeley Police Association (Clean Version)

Exhibit C: Tentative Agreement

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

MEMORANDUM OF UNDERSTANDING: BERKELEY POLICE 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 Police Association 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.

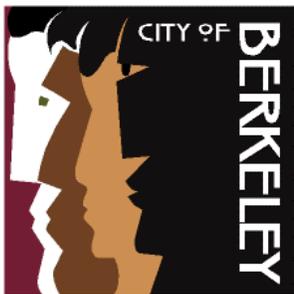
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period July 30, 2020 through June 30, 2021 with the Berkeley Police Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit B.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding 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 between the City of Berkeley and Berkeley Police Association (Edited Version)
- B: Memorandum of Understanding between the City of Berkeley and Berkeley Police Association (Clean Version)
- C: Tentative Agreement





**Memorandum of Understanding**

**between**

**City of Berkeley**

**and**

**Berkeley Police Association**

**July 1, 2017 to June 30, ~~2020~~2021**



RESOLUTION NO. 68,582-N.S.

MEMORANDUM OF UNDERSTANDING: BERKELEY POLICE 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 Police Association 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 by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period July 1, 2017 through June 30, 2020 with the Berkeley Police Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

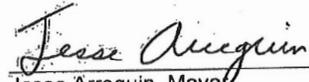
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

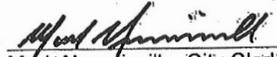
The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Harrison.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

RESOLUTION NO. 68,583-N.S.

APPROVE A NEW CLASSIFICATION AND SALARY RESOLUTION FOR THE BERKELEY POLICE ASSOCIATION AND RESCINDING RESOLUTION NO. 67-187-N.S.

WHEREAS, the City Council has approved a new three-year Memorandum of Understanding with the Berkeley Police Association which includes cost of living adjustments; and

WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum of Understanding.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Units E (sworn, managerial employees in the Police Department), and Representation Unit F (sworn, non-managerial employees in the Police Department) effective July 1, 2017 through June 30, 2020 to incorporate changes to the salary schedule as shown in Exhibit A, attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that Resolution No. 67-187-N.S is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Harrison.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

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## ARTICLE 1 – ADMINISTRATION

### SECTION 1: RECITALS

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

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

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

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

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

### SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION

2.1 The Association is the majority representative of all employees within Representation Units E and F and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or as said Resolution may be amended, the Association is no longer certified as the recognized employee organization for employees in Representation Units E and F.

2.2 Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments, set standards of service to be offered to the public and exercise control and discretion over the City's organization and operations. It is also the exclusive right of the City Manager to take disciplinary action for just cause, to implement a layoff pursuant to Section 57 of this Understanding, determine the methods, means and personnel by which the City's operations are to be conducted and to take all necessary actions to maintain uninterrupted service to the community and carry out the City's mission in emergencies; provided, however, the Association shall be notified of any proposed changes affecting wages, hours and other terms and conditions of employment of employees represented by the Association, and the City Manager shall, upon request, meet and confer with representatives of the Association and endeavor to reach

agreement on the practical consequences of any such changes in wages, hours and other terms and conditions of employees represented by the Association except as otherwise provided in this Understanding.

### SECTION 3: NO DISCRIMINATION

- 3.1 The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, age, gender, sexual orientation, marital or domestic partner status, gender identify or gender expression, parental status, pregnancy, national origin, political affiliation, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City, and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.
- 3.2 Neither the City nor the Association shall discriminate against any employee covered by this Understanding in a manner which would violate any applicable laws because of race, creed, color, religion, political affiliation, sexual orientation, sex, national origin, disability, or age (including AIDS.) The City and the Association agree that no employee shall be discriminated against on the basis of membership or non-membership in the Association or any lawful activity on behalf of the Association.

### SECTION 4: ASSOCIATION SECURITY

- 4.1 All employees who are, or hereafter voluntarily choose to become, members of the Association shall maintain such membership in good standing as a condition of continued employment for the duration of this Understanding; provided, however, that withdrawal from membership shall be allowed during the month which precedes the month in which this Understanding expires. Employees may withdraw by sending written notice of withdrawal to the Association (with a copy to the Director of Human Resources of the City) during the withdrawal period.
- 4.2 The Association shall indemnify and save the City harmless from any and all claims, demands, suits, or any other action arising from Section 4 or from complying with any request for termination of employment under Section 4. The Association will not undertake to compensate the City for any time which may be spent by the City Attorney or anyone on the staff of the City Attorney in preparing for or defending any legal action which may be filed. The Association will, however, pay directly any fine or reimburse the City for the payment of any fine which may be assessed against the City by virtue of its agreement to Sections 4.1 and 4.2, and the Association will pay any judgment or award, including the payment of any wages lost by an employee whose services are temporarily or permanently terminated because of his or her failure to comply with the provision of Section 4.
- 4.3 It is understood and agreed that the City Council retains the right, in its sole discretion, to determine that the Association is not discriminating against any employee or class of

employees. It is further understood and agreed that the City Council retains the right to withdraw the Association security privilege if at any time it determines that the Association is discriminating against any individual or classifications prohibited by Section 3 of this Understanding.

- 4.4 The City shall furnish the Association, on a monthly basis, the name, date of hire, salary, classification, and work location of all newly hired employees subject to the Understanding. The City shall furnish newly hired employees with information concerning the Association as supplied by the Association.

## SECTION 5: DEDUCTION OF ASSOCIATION DUES

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

## SECTION 6: ASSOCIATION REPRESENTATIVES

- 6.1 The City shall allow representatives of the Association, subject to the conditions set forth in Sections 6.2 and 6.3, reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memoranda of Understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Understanding in the future. The Parties agree to work cooperatively to negotiate the rules of procedure governing the conduct of the Police Accountability Board with the goal of completing negotiations no later than June 30, 2021.
- 6.2 Representatives**  
With respect to the meet-and-confer process, four (4) Association representatives shall be the maximum number who will be allowed concurrent time off. In all other cases, such as disputes defined in Section 6.1, the maximum number allowed concurrent time off shall be two (2).

### 6.3 Notice Requirements

Association representatives seeking time off to carry out functions described in Section 6.1 shall advise their supervisors at the earliest possible time and, except in emergency cases, no later than 24 hours in advance before leaving their work assignments. The Department will not unreasonably deny release time to the Association President (or Acting President) so that he or she may schedule the duties specified in Section 6.1; there may be times, however, when the City will, on short notice, need to modify or adjust such release time because of unpredictable service needs.

6.3.1 In emergency situations which require the immediate attention of said employee, the employee shall notify a supervisor upon his or her return to work. It is understood that employees will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

6.3.2 To the extent possible, the Association will attempt to schedule all release time to avoid impacting service levels. If necessary, however, Association representatives' workloads will be adjusted on the basis of approved release time. Employees shall record release time for activities described in Section 6.1 with the appropriate code on their time sheets and cards.

### 6.4 Meetings

Reasonable release time will be available so that members can attend periodic meetings of the Association which occur during their shift.

### 6.5 Bulletin Boards

The City shall provide bulletin board space for Association use at each of its work centers where covered employees are regularly employed.

### 6.6 Board of Review

All time spent in attendance at Board of Review meetings and Police Review Commission meetings, interviews, and hearings as an official representative of the Association by appointed Association officers shall be considered time worked, and shall be compensated in accordance with Section 19 of this MOU. The compensable time outside of an employee's regularly schedule shall be limited to one person.

6.7 Up to three (3) officers designated by the Board of Directors of the Association may meet with the City Manager and Chief of Police every second month to foster communication. These meetings will be scheduled so that Association representatives can attend during regular work hours. Association representatives will record time spent in such meetings as work (rather than release) time.

## SECTION 7: ASSOCIATION RELEASE TIME

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

requests solely on the need to post overtime. Time spent on such Association business will be recorded with the appropriate code on time sheets.

## SECTION 8: SEVERABILITY OF PROVISIONS

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

## SECTION 9: FINALITY OF RECOMMENDATIONS

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

## SECTION 10: DURATION

The term of this Understanding shall commence when the terms and conditions set forth herein have been adopted by resolution by the City Council but in no event shall this Understanding be effective prior to 0001 hours July 1, 2017. Those provisions which have been assigned effective dates herein will become effective on those dates. This Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2020.

Parties agree to extend the July 1, 2017 to June 30, 2020 Memorandum of Understanding (MOU or Agreement) for a period of one-year; until June 30, 2021, with no changes in compensation or terms.

Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.

The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinances, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of bargaining, to informally consult upon the request of the Union to receive input regarding the impact of such changes.

The parties agree to meet at least quarterly to discuss changes in the City's financial condition during the extended term of this agreement.

## ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### SECTION 11: SALARIES

- 11.1 Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto. Effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, represented employees still employed in that pay period shall receive a 4.0% wage increase. Also effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, employees still employed in that pay period shall receive a 1-time stipend of \$1,500, less applicable payroll taxes. Effective the first full pay period in July 2019, employees shall receive a further 4.0% wage increase. Effective the first full pay period in January 2020, employees shall receive a further 1.0% wage increase.

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

- 11.2 Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "A". The minimum rate for the class shall apply to employees upon original appointment to the position except in cases of lateral entry. Lateral entry shall be provided for Police Officer only, and the Chief of Police, with the approval of the Director of Human Resources and City Manager, may pay to lateral entrants a salary above the first step. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.
- 11.3 No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.
- 11.3.1 An employee's salary step increase as provided in Section 12 (Salary Advancement) shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such salary step increase.
- 11.4 Salary reductions may be made as a result of an employee's diminished service value or as part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program. No reduction shall be made below the minimum rate established for the class to which the reduced employee's position is allocated. Notice of the

reduction shall be given to the employee not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall be entitled to receive a written statement of the reasons for such action.

11.4.1 Salary reductions which are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program shall not be subject to the provisions of Sections 11.4, 11.5 or 56.

11.5 Y Rate

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a "Y" rate. When an employee on a "Y" rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

11.6 Pay Periods

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

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

11.8 **Effective Date of Salary and Benefit Adjustments**

The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of the pay period closest to the date otherwise specified or applicable.

11.9 **Effective Date of Step Increases**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).

**SECTION 12: SALARY ADVANCEMENT**

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

Length of Service – Police Officer	Salary Step
0 to completion of 12 months	Step A
Beginning of 13 <sup>th</sup> month to completion of 24 <sup>th</sup> month	Step B
Beginning of 25 <sup>th</sup> month to completion of 36 <sup>th</sup> month	Step C
Beginning of 37 <sup>th</sup> month to completion of 48 <sup>th</sup> month	Step D
Beginning of 49 <sup>th</sup> month to completion of 60 <sup>th</sup> month	Step E
Beginning of 61 <sup>st</sup> month to completion of 72 <sup>nd</sup> month	Step F

Beginning of 73 <sup>rd</sup> month and beyond	Step G
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12.2 Effective July 7, 2002, employees in the classifications of Police Sergeant, Police Lieutenant and Police Captain will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

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

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

12.4 Lateral Entry Step Placement

An employee appointed through lateral entry may be appointed at either a salary step or longevity range level commensurate with his or her experience as a sworn peace officer.

**SECTION 13: PREMIUM/SPECIAL ASSIGNMENT**

13.1 Explosives Ordinance Technician

An employee assigned as an Explosives Ordinance Technician shall receive double his or her regular straight-time rate for that time spent (from call to completion) in dealing with explosives. Said double time shall be the total compensation for such time spent, whether on regular duty time or when called in from off-duty. If an employee is assigned as an Explosive Ordinance Technician while on regular duty and not while on overtime, those hours worked as an Explosive Ordinance Technician on regular duty shall be reported to CalPERS as Hazard Premium Pay.

13.2 Special Response Team (S.R.T)

An employee assigned as a member of the Special Response Team (S.R.T.) shall receive a five percent (5%) salary differential when involved in an active S.R.T. incident. If an employee is assigned as a member of the Barricaded Subjects Hostage Negotiation Team while on regular duty and not while on overtime, those hours worked as a S.R.T. member on regular duty shall be reported to CalPERS as Hazard Premium Pay.

13.3 Supervisor Special Assignment

When a Police Sergeant is assigned to function as the Field Training Officer Supervisor, he or she shall receive a five percent (5%) salary differential while occupying that position. If an employee is assigned as the Field Training Officer Supervisor, while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.

#### 13.4 Field Training Officer Special Assignment:

Employees assigned as Field Training Officers shall receive a ten percent (10%) differential during any calendar year when actually working as a Field Training Officer. If an employee is assigned as a Field Training Officer while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.

#### 13.5 Hazard Premium Pay - Mental Health Crisis Intervention Pay

The City of Berkeley (City) and Berkeley Police Association (Association) agree that the parties may agree under this MOU provision that the City will provide Hazardous Premium Pay for particular hazardous duties and activities. At present, the City and Association have agreed that, effective the first full pay period after Council approval of this MOU, all sworn employees shall receive a Hazard Premium Pay called Mental Health Crisis Intervention Pay equal to 1.0% of base salary, which pay shall be provided on all hours the employee is in a paid status. This pay shall be in recognition of the fact that the City's sworn personnel are routinely and consistently exposed to uniquely hazardous conditions arising from law enforcement interactions with the mentally ill and are required to complete training intended to enhance sworn personnel's ability to perform the hazardous and specialized mental health related law enforcement duties which Berkeley's sworn personnel are consistently and routinely asked to perform, including arrests, potential arrests and addressing other mental health related disputes. Effective the first full pay period of January 2016, the amount of pay shall increase to 2.0% of base salary.

#### 13.6 Homicide Detail

A Police Sergeant assigned to the Homicide Detail shall receive a four percent (4%) salary differential. If a Police Sergeant is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay. A Police Officer assigned to the Homicide Detail shall receive a three percent (3%) salary differential. If a Police Officer is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay.

#### 13.7 Peace Officer Standards and Training (POST)

In addition to the salary set forth in the Exhibit "A" of this MOU, employees covered by this MOU who qualify under regulations promulgated by the California Commission on Peace Officer Standards and Training shall receive the following educational/training incentive compensation. To receive the Intermediate Certificate and/or Advanced Certificate differential pay below, employees must submit documents required by the Berkeley Police Department Professional Standards Division verifying POST eligibility, including but not limited to copies of college transcripts, proof of a college degree and other related forms. Failure of the employee to submit documents required by the Professional Standards Division shall delay the POST incentive pay eligibility until such time as the employee provides all required documentation.

**13.7.1 Intermediate Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Intermediate Certificate, the

employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay. Effective the first full pay period following Council approval of this MOU, this Intermediate POST Certificate differential shall increase to three percent (3%) of base salary. Effective January 1, 2016, this Intermediate POST Certificate differential shall increase to four percent (4%) of base salary. Effective July 1, 2016, this Intermediate POST Certificate differential shall increase to five percent (5%) of base salary.

13.7.2 **Advanced Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Advanced Certificate, the employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay.

13.7.3 An employee may simultaneously receive the Intermediate and Advanced Certificate differential for a total differential of four percent (4%), five percent (5%) following Council approval of this MOU, six percent (6%) effective January 1, 2016, and seven percent (7%) effective July 1, 2016.

#### **SECTION 14: BILINGUAL PREMIUM PAY**

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

#### **SECTION 15: LONGEVITY PAY**

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

#### **SECTION 16: SUPPLEMENTAL RETIREMENT INCOME PROGRAM**

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

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

### 17.1 Acting Assignment

When an employee occupying a position in any of the classifications covered by this Memorandum of Understanding is specifically assigned by the Chief of Police or his or her authorized representative to temporarily serve in a higher classification for a minimum of one (1) entire shift (either 8, 10 or 12.5 hours depending on the employee's shift schedule), said employee shall be paid at the lowest step of the higher classification which provides at least a five (5) percent differential or the lowest step of the higher classification to which the employee is assigned, whichever is greater. To be eligible for a higher class assignment the employee must meet the minimum qualifications, as outlined in the class description, and perform the duties of the higher classification. In no case, however, will an employee acting in a higher classification be paid in excess of the top step of the salary range of the higher class. In no instance shall an acting assignment last for more than thirty (30) consecutive days; any assignment over thirty (30) consecutive days shall be deemed a provisional assignment.

### 17.2 Temporary Vacancy

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary assignment from that list.

### 17.3 Provisional Appointment

An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.

### 17.4 Duration

Temporary and provisional assignments may be made up to six (6) months in any calendar year.

## SECTION 18: HOURS AND DAYS OF WORK

18.1 Subject to the terms of this MOU, hours and days of work shall be governed by rules established by the City Manager and the Chief of Police. The work schedule is attached as Exhibit "B" for illustrative purposes and is described as follows:

18.1.1 **4/10 Work Schedule:** Employees assigned to the 4/10 Work Schedule shall be assigned to begin work on Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall have a normal work week of four (4) consecutive ten (10) hour days. Scheduled days off shall be Friday, Saturday and Sunday.

18.1.2 **3/12.5 Work Schedule:** Employees assigned to the 3/12.5 Work Schedule shall be assigned to begin work on Friday, Saturday and Sunday. Employees assigned to this Work Schedule shall have a normal work week of three (3) consecutive twelve and one-half (12.5) hour days. Scheduled days off shall be Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall also work one additional ten (10) hour shift on either the first, second or third Thursday of each Fair

Labor Standards Act (FLSA) 28 consecutive day work period depending on the Team Assignment of the employee.

18.1.3 Either party may request to modify the work schedule after initial implementation and any modification shall be subject to the meet and confer process.

18.1.4 There may be some special assignments including, but not limited to Sergeants assigned to the Internal Affairs Bureau or the Sergeant assigned to the Professional Standards Division who work a 4/10 schedule from Tuesday through Friday with scheduled days off on Saturday, Sunday and Monday.

18.1.5 When an employee's schedule is changed from the 3/12.5 to the 4/10 schedule, the employee shall be given the option of working the additional four (4) hours or taking earned vacation or compensatory time to cover the pay period shortage.

#### 18.1.6 Daylight Savings Time

18.1.6.1 **Spring:** In the Spring when transitioning to Daylight Savings Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Chief to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

18.1.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime and one-and-one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the Fair Labor Standards Act (FLSA).

#### 18.2 Shift Trades

The practice of trading of work shifts (where one Unit F employee trades a shift with another of the same rank) shall be limited as set forth in Police Department General Orders which include the following provisions:

18.2.1 Each Unit F employee shall be allowed no more than four (4) trades of shifts in any calendar month. Employees desiring in excess of four (4) trades of shifts must first seek and receive permission for additional trades of shifts from the Commanding Officer of the division involved.

18.2.2 Notwithstanding the foregoing, under no circumstances will employees be allowed to regularly or systematically trade shifts with one another in a manner that negates or converts the hours or days any employee is regularly scheduled to work (e.g., to work a four [4] day work week on a regular basis).

18.2.3 Permission for additional trades of shifts shall generally be granted if the request is supported by a bona fide reason and the request will not circumvent the requirements of Section 18.2.2 above.

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

### 18.3 Lunch Period

Employees may, upon clearance by the on-duty supervisor, extend their lunch period by no more than thirty (30) minutes in order to work out. Employees availing themselves of this opportunity will limit their workout within the Berkeley City limits and remain available and reachable by telephone during the entire period in the event of a specific need. As is the case with any lunch period, the needs of the City and Department take precedence.

## SECTION 19: OVERTIME/SHIFT EXTENSION

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

As set forth in Section 18.1 of this Understanding, employees at the rank of Police Lieutenant or below shall be assigned to work either a 4/10 Work Schedule or a 3/12.5 Work Schedule. Overtime is defined as all hours an employee is required to work in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the FLSA.

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

- 19.1.1.1 The overtime rate applicable under this section shall be one and one-half (1½) times the straight-time rate based upon the hourly rate of the employee who works the overtime.
- 19.1.1.2 Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department director.
- 19.1.1.3 Flexing of shifts will only be used on a voluntary basis. Members shall notify the BPA before they flex their schedule.

- 19.1.1.4 **Work Week:** For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.
- 19.2 Employees holding the rank of Captain shall be ineligible for overtime compensation. The practice of permitting Captains to receive overtime for special events such as U.C. Berkeley football games, the Fourth of July celebration, and for Federal Emergency Management Act (FEMA) disaster work is hereby discontinued.
- 19.3 Emergency On-Call Status  
An employee shall be paid or given compensatory time off for being placed on emergency on-call status as follows:
- 19.3.1 An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.3.2 An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.4 Compensatory Time Off  
Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum, effective July 1, 1984, of one hundred twenty (120) hours in such compensatory time. Consistent with FLSA regulations, upon termination of employment, employees will be paid for the full amount of compensation for accumulated but unused compensatory time. Utilization of compensatory time shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of service, consistent with FLSA regulations.
- 19.5 Administrative Leave for Captains
- 19.5.1 Effective January 1 of each year, Captains shall be credited with forty (40) hours of Administrative Leave. Such leave shall be in lieu of overtime earned by individuals in the ranks of Lieutenant and below. After successful completion of six (6) months of initial employment, employees are able to use Administrative Leave. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 22 shall apply to Administrative Leave.
- 19.5.2 Persons appointed to the rank of Captain during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.
- 19.6 Any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### 19.7 Emergency Overtime

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

## SECTION 20: COURT TIME

### 20.1 Court Overtime

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

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

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

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

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

20.1.6 To receive court overtime credit, an employee shall submit an Extraordinary Duty Report.

20.1.6.1 Subpoena should be attached and case number indicated if either or both are available.

20.1.6.2 Report is to be completed by the employee and should specify the amount of time required for "testifying/conferring," "time waiting," or if "not needed."

20.1.6.3 The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the Activity Code and the proper project designation.

### 20.2 Court Overtime/Telephone Stand-By

20.2.1 Sworn employees who are placed on telephone stand-by for the court will be compensated by earned compensatory time as follows:

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

## SECTION 21: RECOVERY TRANSFER TIME

- 21.1 Recovery Time Transfer is that system whereby an employee grants time from earned compensatory time off, vacation leave or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager or designee. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition.
- 21.2 An employee may donate compensatory time off or vacation leave.
- 21.3 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:
  - 21.3.1 An employee may donate one hour of sick leave for each hour of compensatory time off and/or vacation leave time donated for Recovery Time Transfer. To donate sick leave hours beyond the number of hours of compensatory time off and/or vacation leave time, the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Time Transfer.
  - 21.3.2 The employee donating the sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time.

## ARTICLE 3 - LEAVES

### SECTION 22: VACATION

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

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

22.3.1 Employees shall accrue vacation leave at the following rates:

Vacation Hours Earned Per Year	Hours of Vacation Earned per Hour of Regularly Scheduled Work
90	0.0385
120	0.0577
160	0.0769
200	0.0962
240	0.1154

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

22.3.3 **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 22.1, an employee appointed through lateral entry shall accrue and take Vacation Leave commensurate with his or her experience as a sworn peace officer.

## 22.4 Calculation of Vacation for Part-Time or Intermittent Employees

For an employee who has worked on a part-time or intermittent basis, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation as specified in Section 22.3.

**22.4.1 Pro-Ration of Vacation for Part-Time or Intermittent Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

**22.4.2** For the purpose of computing length of service in determining eligibility for vacation, time spent on an extended military leave shall be counted as time spent in the service of the City.

## 22.5 Maximum Vacation Leave Accrual Carryover

Employees can carry over from one vacation year (see glossary) to the next no more than three hundred twenty (320) hours of earned vacation.

**22.5.1 Annual Vacation Leave Sell Back:** Once per year, an employee will have the option to sell to the City up to one hundred sixty (160) hours of accumulated vacation time. The employee shall notify the Department on a form provided by the Auditor that he or she is exercising this option no later than March 1 of any calendar year. The City will pay the employee for the purchased vacation hours by March 31 of the same calendar year.

**22.5.2 Excess Vacation:** Not later than October 1 of each vacation year, the City will notify each affected employee of the amount of the employee's earned vacation projected to exceed three hundred twenty (320) hours at the end of the vacation year. By October 31, those employees notified of projected excess vacation will submit to the Chief of Police a proposal for use of the projected excess vacation prior to the end of the vacation year. Such a proposal may include both vacation leave and "sell back" to the City.

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

## 22.6 Return from Extended Unpaid Leave

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

**22.7** Any employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty (160) consecutive hours shall be entitled to a full vacation. If

such an employee is off the payroll for the employee shall not earn vacation leave credit for each one hundred–sixty (160) consecutive hours that he or she is off the payroll. Vacation leave shall be accrued on hours worked or in a paid status exclusive of overtime.

## 22.8 Payment upon Death, Termination or Extended Leave

If, after six (6) months of continuous service, an employee dies, is terminated or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate shall be paid for accrued but unused vacation leave.

22.8.1 Upon death or termination, if the vacation balance is negative, for employees who received advanced vacation, such employee, or his or her estate, shall, on the same basis, reimburse the City or the City may deduct the balance due from the employee's salary due, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

22.8.2 Payment for excess of vacation leave shall be made in lump sum at the time of termination or death, as soon as possible.

## SECTION 23: HOLIDAYS

23.1 All employees in Representation Units E and F who are required to work on any of the hereinafter enumerated holidays, shall have the option of receiving compensation, in addition to their regular monthly salaries, either in the form of holiday pay or compensatory overtime. The holiday pay will be equivalent to the employee's regular hourly salary multiplied by the number of hours worked during such day, except that the sum of the hours compensated by holiday pay and hours taken as time off shall not exceed eight (8) for any single holiday; or the employee shall receive compensatory time off at the straight-time rate on the same basis. For purposes of overtime computation, holiday pay is not to be considered compensation for time worked. Employees may utilize accrued compensatory time off, vacation, floating holidays and/or administrative leave (if applicable) for the difference between 8 hours and the number of hours in their regularly scheduled shift.

23.2 In the event that any of the enumerated holidays fall on a day which is not a regularly scheduled workday, such employees shall, in addition to the regular salary which such employees receive, be paid for eight (8) hours for each such holiday at straight-time rate based upon their regular monthly salary or shall, at the discretion of the Chief of Police, be given eight (8) hours of compensatory time off at a straight-time rate.

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

<ul style="list-style-type: none"> <li>• New Year's Day</li> <li>• Martin Luther King, Jr.s' Birthday</li> <li>• Washington's Birthday</li> <li>• Lincoln's Birthday</li> <li>• Malcolm X's Birthday</li> <li>• Memorial Day</li> <li>• Independence Day</li> <li>• Labor Day</li> </ul>	<ul style="list-style-type: none"> <li>• Indigenous People's Day</li> <li>• Veteran's Day</li> <li>• Thanksgiving Day</li> <li>• Day after Thanksgiving</li> <li>• Christmas Day</li> </ul> <p><i>(Any other special holiday as declared by the City Manager)</i></p>
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23.4 Floating Holidays

After successful completion of six (6) months of initial employment, employees shall be granted three (3) floating holidays, equivalent to eight (8) hours each, during the calendar year. The days selected shall be by mutual agreement between the employee and the Chief of Police or his or her designee. In the event mutual agreement cannot be reached, the time sought shall be added to his or her accrued vacation time. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holidays.

23.5 Pro-Rated Holidays

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

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

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

23.7 **Eligibility**

To be eligible for holiday pay, an employee must be on paid leave status on the employee's last regularly scheduled workday before the holiday.

**SECTION 24: SICK LEAVE**

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

#### 24.2 Sick Leave Accrual

Each employee shall be credited with one (1) eight-hour work day of sick leave with full pay for each month of service. Provided further that employees hired on or after September 11, 2012 shall accrue eight (8) hours of paid sick leave for each month of service. Employees hired before September 11, 2012 shall accrue sixteen (16) hours of paid sick leave for each month of service after the completion of twenty (20) years of service.

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

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

#### 24.4 Intermittent Employees Use of Sick Leave

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

#### 24.5 Notice Requirements

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

#### 24.6 Sick Leave Program

Effective December 23, 2012, the following Sick Leave Program went into effect.

**24.6.1 Five (5) Year Payout to PORAC Trust:** If a sworn member of the Berkeley Police Department ("Employee") has an accrued sick leave balance on December 23, 2012 that exceeds 200 hours, one half of all those hours in excess of 200 shall be maintained in a separate account. The financial value of those hours shall be converted and deposited into the employee's retiree Peace Officers Research Association of California (PORAC) medical trust account over five successive years in equal installments commencing on January 1, 2013 to January 1, 2017. The conversion shall be at the Employee's rate of pay on December 23, 2012. The City may accelerate the payment of hours to be converted.

The remaining fifty percent (50%) of the sick leave balance in excess of 200 hours shall be credited into the employee's separate "catastrophic/service time" bank no later than February 1, 2013 up to a maximum of 500 hours.

**24.6.2 Annual Conversion to Cash:** At the end of each calendar year, if an employee has an accrued sick leave balance of 200 hours or more of sick leave, fifty percent (50%) of all hours accrued in excess of 200 hours shall be converted to a cash equivalent at the end of each calendar year. The annual cash conversion shall be calculated at the employee's hourly rate including additional pay such as POST Pay, Bilingual Pay and Longevity Pay then in effect at the end of the calendar year. The

annual cash conversion shall be limited to 50% of the hours an employee has accrued in excess of 200 hours as of December 31<sup>st</sup> of each year. The City shall pay the annual cash equivalent into an employee's retiree PORAC medical trust account on behalf of the employee member. Upon retirement, any sick leave hours that have not been converted onto an employee's PORAC medical trust account, used for the purpose of additional retirement service credit as provided in PERL Section 20965, or "catastrophic/service time" bank shall be forfeited.

The remaining fifty percent (50%) of accrued hours in excess of 200 hours, up to a maximum of 500 hours, shall be maintained in the employee's separate "catastrophic/service time" bank. These hours are available for the employee's use in the event that the employee has a catastrophic illness or injury and has exhausted all accrued sick leave hours and compensatory time off hours. At the time of the employee's retirement or termination, any sick leave balance in the catastrophic/service time bank may only be used for additional retirement service credit as provided in PERL Section 20965 and the employee cannot cash it out at retirement or separation.

**24.6.3 Catastrophic/Service Time Bank of Hours:** The catastrophic/service time bank of hours is available for use subject to the following conditions.

- 24.6.3.1 Employee or employee's dependent family member must be suffering from a catastrophic illness or injury. Catastrophic illness or injury means an unanticipated life threatening illness or injury, either for a permanent or temporary period anticipated to exceed thirty (30) working days, that results in the incapacity of an employee or the employee's dependent family member and by virtue of the illness or injury to the employee or the employee's dependent family member, the employee's ability to perform the essential functions of his or her usual and customary occupation is limited.
- 24.6.3.2 Employees may also utilize "catastrophic/service time" bank hours for the birth or adoption of a child.
- 24.6.3.3 Employee shall provide the City proof of catastrophic injury or illness from an authorized health care provider on a form to be provided by the City
- 24.6.3.4 The employee must have exhausted all of his or her available paid leave balances (except accrued vacation) and, as a result, will be placed on unpaid leave status unless the catastrophic/service time bank is utilized.

**24.6.4** Employee is prohibited from using the catastrophic/service time bank under the following circumstances:

- 24.6.4.1 Employee is prohibited from using the catastrophic/service time bank for any industrial injuries or illnesses that are covered by the California workers' compensation laws and regulations, except and

until the employee has exhausted all benefits under Labor Code Section 4850 and all the employee's available paid leave balances.

24.6.4.2 Employee is prohibited from simultaneously using the catastrophic/service time bank and receiving benefits under any Berkeley Police Association sponsored Long Term Disability benefit.

24.6.4.3 The employee is not permitted to extend employment into retirement through the use of catastrophic/service time.

24.6.4.4 Any balance in the catastrophic/service time bank at time of employee's retirement will not be cashed out. However, an employee may use any balance to purchase CalPERS additional service credit.

#### 24.7 Family Sick Leave

Sick leave shall not be considered a privilege which an employee may use at the employee's discretion but shall be allowed only in case of sickness or disability or in the case of serious illness of the employee or within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4-Family Care Leave, federal Family and Medical Leave Act. The immediate family of an employee, for the purposes of this section, shall include: dependent residing in the employee's household, spouse, son, daughter, parent and other relationships as determined by the City, such as domestic partner (see glossary).

#### 24.8 Sick Leave Bonus

Employees shall be entitled to receive an additional eight (8) hours of paid leave for every six (6) months of uninterrupted non-use of sick leave. Leave of absence for any reason other than Vacation Leave, Administrative Leave, use of Compensatory Time Off or Bereavement Leave, or partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim, disqualifies an employee for this bonus. This additional leave accrual is prorated for part-time employees. Not more than sixteen (16) additional hours per year may be achieved; this paid leave may be used for any leave purpose covered by this Understanding.

#### 24.11 Absenteeism Control System

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

## SECTION 25: WORKERS' COMPENSATION

- 25.1 All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California (specifically Labor Code Sections 4850 et seq.).
- 25.2 No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of Section 24 shall be allowed only if such outside employment has been approved by the City.
- 25.3 Workers' Compensation salary in lieu of temporary disability payments as provided in California Labor Code Section 4850 are reportable to CalPERS as compensation earnable for a period not to exceed one year. Any temporary disability benefits, which are coordinated with the employee's available leave accruals, paid after one year is not reportable to CalPERS as compensation earnable.

## SECTION 26: FUNERAL LEAVE

- 26.1 In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) consecutive working days, or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) consecutive working days. The immediate family of an employee, for the purpose of this section, shall be defined as: wife, husband, domestic partner, (see glossary), mother, father, sister, brother, child, grandmother, grandfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grand-children. A working day for the purpose of this section is based on the actual number of hours an employee is normally scheduled to work (i.e., eight (8) hours; ten (10) hours; or twelve and a half (12.5) hours).
- 26.2 Leave of absence with pay because of death in an employee's immediate family is allowed provided the employee attends a funeral or memorial service during the time off, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

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

In addition, employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement funeral leave by using accrued vacation, compensatory time, or floating holidays.

**26.3 Bereavement Leave Statement:**

Any employee requesting funeral leave must submit a statement and provide documentation if possible, i.e., obituary or funeral home or church program or notice, that the family member meets the definition of “immediate family members” as provided in Section 26.1. In recognition that there may be situations where an employee is unable to provide funeral or memorial service documentation because there was no formal service, the employee must so note that on the statement confirming that the service occurred during the time period the employee was off work on funeral leave.

**SECTION 27: MILITARY AND MARITIME LEAVE**

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

**SECTION 28: FAMILY CARE LEAVE**

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

**SECTION 29: LEAVE OF ABSENCE WITHOUT PAY**

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

29.2 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.

29.3 In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available prior to receiving authorization for leave without pay.

**SECTION 30: JURY DUTY LEAVE**

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

## ARTICLE 4 - HEALTH AND WELFARE BENEFITS

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

#### 31.1 Medical Coverage

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

The Understanding can be reopened on health plan topics by mutual consent. In addition, the Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2018 ACA excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the current cost of health benefits.

#### 31.2 Dental Coverage

The City shall provide a dental care program for employees. Dental benefits will remain at 90% coverage of the Bay Area Usual, Customary and Reasonable charges for the life of this Understanding. Effective January 1, 2002, the maximum annual coverage will increase to \$3,000 per calendar year and the lifetime limit on orthodontia will be increased to \$3,000. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

31.3 Should the City deem it feasible to provide the same level of benefits through another provider or to provide such benefits on a non-insured basis, it will notify the Association and, upon written request, will meet and confer on the matter.

#### 31.4 Life Insurance

The City shall provide term life insurance of \$100,000 for each employee that shall include a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

#### 31.5 Pro-Ration for Less Than Full-Time Employees

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

#### 31.6 Cash In-Lieu

Effective the first full pay period following Council approval of this MOU, and for those employees who show proof of alternate medical coverage, the City will compensate the employee \$560.72 per month.

**SECTION 32: RETIREE MEDICAL COVERAGE**

32.1 Sick Leave Trust Fund

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

32.2 Retiree Health Coverage

The City will establish an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefit provided in this Section.

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

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

**32.2.1 Payment:** If payment is made under the Code section 401(a) plan, the payment to be made on a monthly basis shall be made directly to the retiree, or if the retiree is deceased, to the surviving spouse. If payment is made under the retiree health premium assistance plan per Section 32.3, the payment to be made on a monthly basis shall be made directly to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible, per Section 32.5.2). The retiree or surviving spouse assumes full responsibility for the tax consequences for this benefit.

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

**32.2.3 Notification of Change of Address:** The retiree or surviving spouse is exclusively responsible for notification to the City of his or her current mailing address. A change in mailing address must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department,

2180 Milvia Street, Berkeley, CA. If the U.S. Postal Service returns payment checks for two consecutive months, the City will cease making payments under this Section. However, if the retiree and/or surviving spouse re-establishes contact with the City and notifies the City in writing of a new mailing address, the City shall resume making payments including arrears payments for the period when payment checks were undeliverable.

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

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

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

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

For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 1, 2007, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50.

However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.7 Overpayments:** In the event of an overpayment, the procedures set forth in Section 41 (Payroll Errors) of the Understanding shall apply to the recovery of overpayments under this Section, with adjustments as appropriate to reflect that retirees are no longer on the active payroll, so offsets or reductions must be made to future payments that would become due under the applicable plan providing benefits to the retiree or his or her surviving spouse.

### 32.3 Retiree Health Premium Assistance Coverage

Effective September 19, 2012, the City will cease making contributions to an Internal Revenue Code Section 401(a) plan for the purpose of paying the retiree health care benefit provided under this Section for any employees hired on or after that date who would otherwise have qualified for benefits under the terms described in this Section 32. Any employees hired on or after September 19, 2012, as well as any current employees who retire on or after such date, shall receive the benefits described in this Section 32.3 as a benefit provided by the City under a newly established retiree health premium assistance plan and related trust agreement. Any benefits payable to employees who have retired prior to such date or to their surviving spouses may continue to be made under the Internal Revenue Code Section 401(a) plan that was established for such purpose to the extent benefits are not provided for such retirees under the new retiree health premium assistance plan. Under the newly established retiree health premium assistance plan, benefits will be the same as previously provided under the 401(a) plan, except for different eligibility criteria and that payment under the 401(a) plan was made directly to the retiree or his or her surviving spouse, and under the new plan the City will pay the retiree health premium assistance amount to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible per Section 32.5.2. Upon the death of the retiree, the amount provided to an eligible surviving spouse will be an amount equivalent to the appropriate percentage of the single party active Kaiser monthly medical insurance premium amount, which will continue until the death of the eligible surviving spouse. The maximum amount the City shall pay towards coverage for the retiree or his or her surviving spouse, either directly or to a health care provider on his or her behalf, is based on the following schedule set forth in Section 32.5 et seq.

### 32.4 Amendment or Termination of 401(a) Plan

As provided under Section 32.2 (Retiree Health Coverage), the City established an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefits for retirees and their surviving spouses provided under this Section 32 (Retiree Medical Coverage). Section 12 of that plan (Berkeley Police Supplemental Retirement Plan) provides that such plan may be amended or terminated in accordance with a Memorandum of Understanding between the City and the Association. The City and the Association have determined that it is desirable, to the extent legally permissible and administratively practicable, to offer benefits previously provided under that Berkeley Police Supplemental Retirement Plan through a retiree health premium assistance plan and related trust under Section 115 of the Internal Revenue Code. Additionally, the parties have agreed that the City may take reasonable steps to amend or terminate the Berkeley Police Supplemental Retirement Plan, or spin-off assets and liabilities under such Plan for certain covered participants into

a new section 401(a) plan that also may be amended or terminated, to the extent such actions are necessary or desirable to accomplish, in providing future retiree medical premium assistance benefits as described in this Section 32 (Retiree Medical Coverage) for some or all of the covered retirees and their surviving spouses through a newly established retiree health premium assistance plan and related trust.

### 32.5 Retiree Medical Coverage

For those employees who retire on or after September 19, 2012 and effective immediately upon the date of retirement, the City will assist in the payment of medical insurance premium payments for the retiree and/or surviving spouse/domestic partner by making payments directly to the medical insurance provider. Retirees shall be permitted at their discretion to enroll in non-City sponsored health plans. In that event, the City shall make medical insurance premium payments directly to the health insurance provider equal in value to the City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner will pay the administrative set up fee and the monthly administrative fee established by the third party administrator. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner.

There shall be no cash in lieu payments made under this benefit.

32.5.1 For employees that retire on or after September 19, 2012 the City will discontinue the current practice of paying directly to the retiree the cash equivalent of the active two-party Kaiser rate. However, for those employees who retired before September 19, 2012, the City shall continue to make cash payments to these retirees under the MOU provisions in effect at the time of their retirement.

32.5.2 **Qualifying Spouse or Domestic Partner.** A retiree will receive the appropriate percentage of two-party coverage for a spouse or domestic partner that meets any of the following criteria ("Qualifying Spouse"): (1) the spouse or domestic partner of the retiree at the time of retirement; (2) for a retiree that did not have a spouse or domestic partner at the time of retirement, the initial spouse or domestic partner a retiree adds to his or her health plan after retirement; or, (3) for any retiree, a subsequent spouse or domestic partner if the previous spouse or domestic partner died. For all times that a retiree does not have a Qualifying Spouse, the City will only pay the appropriate percentage of single party premium for that retiree. If a retiree predeceases a Qualifying Spouse, the City will continue to pay the appropriate percentage of single party premium for that individual.

32.5.3 In the event that an employee retires and initially elects not to utilize the Berkeley retiree medical plan as described above, the employee may opt back into the Berkeley retiree medical plan during any open enrollment period with either single only coverage or two-party coverage, if applicable.

32.5.4 The City will comply with any lawfully executed Qualified Domestic Relations Order (QDRO) but under no circumstances will it provide retiree medical benefits to more than two persons.

32.5.5 In order to be eligible for the Retiree Health Premium Assistance Coverage a "Retiree" must meet all of the following criteria (note, this is different criteria than used for previous plans):

32.5.5.1 A person who is vested in CalPERS, and

32.5.5.2 Has reached the age of 50, and,

32.5.5.3 Has retired from the City at age 50 or thereafter, and

32.5.5.4 Has applied for and is receiving a pension from CalPERS at the time of retirement.

However, a "retiree" is also anyone, regardless of age, who receives a disability retirement benefit, either industrial disability or non-industrial disability, from CalPERS.

32.5.6 The maximum amount the City will contribute toward the payment of medical insurance premiums is based on the employee's years of service as a sworn member of the Berkeley Police Department at time of retirement. The retiree must have at least 10 years of service as a sworn member of the Berkeley Police Department to qualify for this benefit.

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

Years of Service	Percentage to be Paid by the City
10 Years of Service	City to provide medical premium assistance equal to 25% of either the single party or two party amount as determined below
15 Years of Service	City to provide medical premium assistance equal to 50% of either the single party or two party amount as determined below
20 Years of Service	City to provide medical premium assistance equal to 100% of either the single party or two party amount as determined below

There will be no pro-rating of years of service.

32.5.8 The City will assist the retiree and/or surviving spouse/domestic partner in the payment of the medical insurance premium as follows:

32.5.9 **Early Retirees who are not Medicare Eligible:** Beginning September 19, 2012, each month after the employee retires, the City will pay the health care service provider an appropriate percentage based on the chart in Section 32.5.7 of an

amount equal to \$1,200.00 per month for two party coverage for the retiree and a qualifying spouse/domestic partner or \$600.00 per month for single party coverage. Upon the death of either the retiree or the retiree's spouse, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse/domestic partner at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/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. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and effective each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the early retiree plan medical premium for that year, or 6%, whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

- 32.5.10 **Retirees who reach Medicare eligibility age:** Beginning September 19, 2012, for retirees who reach Medicare eligibility age, the City will pay the health care service provider the appropriate percentage based on the chart in Section 32.5.7 of an amount equal to \$765.80 per month for two-party coverage for the retiree and spouse/domestic partner or \$382.90 month for single party coverage. Upon the death of either the retiree or spouse/domestic partner, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the health care service provider on behalf of the surviving retiree or spouse/domestic partner. 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/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. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the retiree medical premium for that year, or 6% whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

Former employees who leave employment prior to age 50 and do not qualify as a "Retiree" under the definition above ("non-qualifying retiree") will not receive any funds from the City, either directly or indirectly, for payment of medical insurance premiums. However, a non-qualifying retiree shall be permitted to purchase health insurance from the retiree medical pool if **all** of the following criteria are met:

- 32.5.10.1 The former employees is vested in CalPERS, and

- 32.5.10.2 Has reached the age of 50, and,
- 32.5.10.3 Has applied for and is receiving a pension from CalPERS, and
- 32.5.10.4 The City sponsored group health plan permits the retiree to enroll in the retiree medical pool, and
- 32.5.10.5 The retiree pays all cost associated with enrolling and maintaining eligibility in the group health plan, including, but not limited to, the administrative set up fee and the monthly administrative fee established by the third party administrator.

**SECTION 33: SUPPLEMENTAL RETIREMENT PLAN**

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

## ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT

### SECTION 34: PROBATIONARY PERIOD

#### 34.1 Police Officer

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

**Completion of Probationary Period upon Return from Military Leave:** Probationary employees who are granted military leaves of absences shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 34 shall be interpreted to preclude the City from establishing new classifications which may require probationary periods of varying lengths.

**Field Training Officer Rating:** Probationary Police Officers will be rated daily/weekly while in the Field Training Officer (FTO) program, and then semi-annually thereafter.

#### 34.2 Other Probationary Periods

Original and promotional appointments to classes above the rank of Police Officer shall be tentative and subject to a probationary period of six (6) months of actual service and shall be completed within a one (1) year period.

#### 34.3 Provisional Appointments during Probationary Period

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

#### 34.4 Completion of Probationary Period

If the service of the probationary employee has been satisfactory to the Chief of Police, the Chief of Police shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

#### 34.5 Rejection during Probationary Period

During the probationary period, an employee may be rejected at any time without right of appeal or hearing except as provided by the procedures mandated by Government Code 3303 and 3304, as well as provided in Section 40.8.5 of this Understanding. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 37.

**SECTION 35: PROMOTION/EXAMINATION****35.1 Promotional Exams**

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

**35.2 Tests and Applications**

Regular tests shall be given for all ranks including promotional ranks. Applications for Police Officer shall be accepted on a continuous testing basis. Tests for Sergeant, Lieutenant and Captain shall be given at least every two years.

35.3 From the time that a promotional list no longer contains any names, 1) the City will make a conscientious effort to hold a written examination within ninety (90) days, but in any event will hold the examination within one hundred twenty (120) days; and 2) the City will announce the written examination at least sixty (60) days before the examination takes place.

**35.4 Notice of Examinations**

Selection criteria shall be reflected on all examination announcements. All phases of each examination shall be listed in the examination announcement. A study list shall be included in each examination announcement. Each examination shall be announced no less than 60 calendar days in advance of the written test date.

**35.5 Open Competitive Examination**

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

**35.6 Criteria for Promotion**

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

**SECTION 36: DEMOTION****36.1 City Manager Authority**

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

### 36.2 Notice Requirements

Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion, and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

### 36.3 Permanent Status

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

### 36.4 Demotion to Vacant Position

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 57.

## **SECTION 37: SUSPENSION AND DISCHARGE**

### 37.1 30 Calendar Day Maximum Suspension

The City Manager may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any one-year period.

### 37.2 Suspensions of 3 Days or Less

For just cause, the Chief of Police may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager. At any step in the process of reviewing recommended disciplinary actions, the City Manager may elect to impose more severe discipline.

### 37.3 Discharge

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

### 37.4 120 Day Limit on Imposition of Discipline

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline

that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows:

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City's discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.

- 37.5 Suspension of FLSA Exempt Employees  
Notwithstanding any of the above, FLSA exempt employees in the rank of Captain and above shall not be suspended except as permitted by the Fair Labor Standards Act.
- 37.6 All references in Sections 37.1 and 37.2 to "days" shall be calculated in terms of eight (8) hour equivalencies, unless otherwise provided.

## **SECTION 38: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Chief of Police, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Chief of Police as to the resigned employee's service, performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Chief of Police immediately. Resignations shall take effect on the last day of the pay period in which an employee works unless the City Manager determines that it is in the City's best interest to accept the resignation immediately.

## **SECTION 39: REINSTATEMENT**

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

## ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE

### SECTION 40: GRIEVANCE & DISCIPLINARY APPEAL PROCEDURE

- 40.1 A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Understanding between the City and the Association or with any City ordinance, rule, or regulation which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of City employees covered by the Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process. The grievance procedure discussed below shall be the dispute resolution mechanism applicable to employees covered by this Understanding.
- 40.2 A disciplinary appeal is the procedure established hereunder to afford an employee his or her due process rights. An employee may appeal the recommendation or imposition of discipline for demotion, pay reduction, suspension or discharge other than probationary discharge.
- 40.3 Grievance Procedure  
Grievances shall be processed in the following manner:
- 40.3.1 **Step 1:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) may discuss the employee's complaint with the Chief of Police or with such subordinate management official as the Chief of Police may designate. Nothing in this Section precludes an employee from utilizing the chain of command to solve grievances and/or complaints. If the issue is not resolved within five (5) days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified.
- 40.3.2 **Step 2:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the affected employee or by the Association within ten (10) working days of receipt of the decision at Step 1. Any such referral shall be in writing, and the specific issues involved shall be detailed in such referral, together with a statement of the resolution which is desired. The City Manager shall designate a representative to investigate the merits of the complaint and to meet with the complaining employee (and/or the employee's Association representative). The City Manager shall issue a written decision to the grievant and the Union within ten (10) working days of the meeting. This shall conclude Step 2 of the Grievance Procedure.
- 40.3.3 **Step 3:** If the Association is not satisfied with the City Manager's decision at Step 2 of the Grievance Procedure, the Association may require that the grievance be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 2. Either the Association or the City may require that the grievance be referred to an impartial arbitrator if for any reason forty-five (45) days have elapsed from the date upon which the grievance was received by the City Manager.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by either mutual agreement between the Association and the City Manager, or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of selection of the arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

#### 40.4 Arbitrator Decisions

Arbitrator decisions on matters properly before them which pertain to grievances as defined in Section 40.1 of this Understanding shall be in the forms of recommendations to the City Manager, who may, within five (5) days of receipt of said decision, reject said decision. In the event of said rejection, then, as to that particular grievance, the fees and expenses of the arbitrator and the court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

#### 40.5 Grievance of Affirmative Action Program

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

40.6 No arbitrator shall entertain, hear, decide or make recommendations on any dispute unless the Association seeks a determination or if the dispute involves 1) the issue of unit determination; 2) a question of representation; 3) an aggrieved employee not in a classification of the units represented by the Association; or 4) non-punitive transfers, promotional decisions, and probationary employee terminations except as provided in Sections 34.5 and 40.8.5 et seq. of this Understanding.

#### 40.7 Compensation Grievances

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understandings contained in any memorandum agreement which has resulted from the meet-and-confer process shall be considered as

grievances. Any other matters of compensation are to be resolved in the meet-and-confer process and, if not detailed in the Memorandum of Understanding which results from such meet-and-confer process, shall be deemed withdrawn until the meet-and-confer process is next opened for such discussion.

#### 40.8 Disciplinary Appeals

Disciplinary Appeals shall be processed in the following manner:

40.8.1 **Step 1:** Except as provided for suspensions of not more than three (3) days as provided in Section 37.2, the imposition of a disciplinary demotion, pay reduction, suspension or discharge of an employee will be in the form of a written recommendation from the Chief of Police to the City Manager. For suspensions of not more than three (3) days, the Chief of Police may impose such discipline subject to the appeal procedures set forth hereunder. No disciplinary appeal involving the disciplinary demotion, pay reduction, suspension or discharge of an employee will be entertained unless it is filed in writing with the Chief of Police within five (5) days of the time at which the affected employee was notified of such action in writing.

40.8.2 **Step 2:** The affected employee may appeal the recommendation to impose discipline, or the imposition of discipline for suspensions of not more than three (3) days, to the Chief of Police or his or her designee. The affected employee shall be entitled to a personal conference with the Chief of Police or his or her designee or the affected employee may choose to make an appeal in written form. The Chief of Police or his or her designee shall communicate a decision in writing within ten (10) days after the completion of the personal conference with the affected employee or receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure.

40.8.3 **Step 3:** Any disciplinary appeal which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager within five (5) days after conclusion of Step 2 by the affected employee or the Association. The City Manager shall designate a personal representative to meet with the affected employee and/or the employee's Association representative and hear the disciplinary appeal or the affected employee may choose to make an appeal in written form.. The City Manager's designee shall communicate a decision within twenty (20) days after the completion of the personal conference with the affected employee or, if the employee chooses to make an appeal in written form, receipt of the written appeal. If the City Manager's designee, in pursuance of the procedures outlined above resolves a disciplinary appeal as defined in Section 40.2 above, the City Manager's designee may order payment for lost time or wages or reinstatement with or without payment for lost time. This shall conclude Step 3 of the Disciplinary Appeal Procedure.

40.8.4 **Step 4:** If the Association is not satisfied with the City Manager's designee's decision at Step 3 of the disciplinary appeal procedure, the Association may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 3.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by mutual agreement between the Association and the City Manager or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of receipt of the City Manager's response.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction or discharge of an employee shall be final and binding on both parties.

40.8.5 Notwithstanding their probationary status, probationary employees may use the grievance process for disciplinary actions other than termination.

40.8.5.1 **Probationary Employees' Appeal of Discipline:** Notwithstanding his or her probationary status, a probationary employee has appeal rights for disciplinary action where the employee alleges that the City's action was for an illegal or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally protected activities; provided, however, that any appeal by a probationary employee of rejection from probation alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment and Housing Act (California Labor Code Section 12900 et. seq.) may be pursued as provided in the City's Affirmative Action program, which shall be specifically amended to allow probationary employees a right of appeal under that program. Nothing in this Section 40.8.5.1 is intended to preclude a probationary employee from seeking enforcement of rights through state and/or federal regulatory agencies or in courts of competent jurisdiction.

40.8.5.2 **"Lubey" Hearing:** A probationary employee who is terminated on grounds of misconduct may establish a formal record of the circumstances surrounding his or her termination, but is not entitled to a determination that his or her dismissal was for "just cause." Such a grievance shall terminate upon the conclusion of Section 40.8.3. The City Manager's decision at Section 40.8.3 is final and is not subject to further review.

#### 40.9 Days Defined

All references in this Section 40 to "days" shall mean calendar days unless otherwise provided.

#### 40.10 Waiver of Time Lines

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

## ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS

### SECTION 41: 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 or underpayment, no adjustment shall be retroactive for more than the applicable statute of limitations. As to any 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.

In the event that the employee disputes the determination of the Auditor's Office as to a reasonable accommodation for repayment, the employee may appeal the Auditor's Office decision to the City Manager. The employee may appeal the decision of the Auditor's Office in writing within thirty (30) days of the Auditor's Office decision as to a repayment schedule. The City Manager, or his/her designee, shall meet with the affected employee and consider the matter for final determination. The City Manager's decision shall be issued no later than thirty (30) days from the date the affected employee met with the City Manager or his or her designee. The determination of the City Manager shall be final.

In the event that (1) the employee does not respond within 5 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

**SECTION 42: PERSONAL CONDUCT**

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

**SECTION 43: UNIFORMS**

- 43.1 Effective June 27, 2010, the annual uniform allowance shall be \$1,400. The uniform allowance is intended to cover uniform expenses incurred by the employee during the six months prior to the payment and shall be paid semi-annually in installments of equal amounts. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding. The Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).
- 43.2 Effective June 29, 2008, in addition to the annual uniform allowance set forth in Section 43.1, employees assigned to the Special Response Team (S.R.T) shall be paid an annual uniform allowance of \$1,500. The S.R.T. uniform allowance is intended to cover uniform expenses incurred by the employee in the performance of training and duties related to this assignment and shall be paid annually in December for those members of the S.R.T. team who are members of the team on November 1<sup>st</sup> of any year. However, the amount the City contributes toward the S.R.T. uniform allowance is subject to federal and state income tax withholding. The S.R.T. Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).

43.3 Pro-Rated Uniform Allowance

Employees who are hired during the year or are absent from work by reason of leave without pay shall receive a reduced uniform allowance in accordance with the following schedule:

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

43.4 Uniform and Equipment Committee

The Uniform and Equipment Committee will be charged with adopting specifications and regulations governing the wearing of uniforms and plain clothes. All components of the uniform are subject to the approval of the Chief of Police.

43.5 Rain Gear

Rain Gear specifications as currently listed in the Uniform/Equipment Specifications Manual under subsection XIX (e) will be updated to reflect optional rain gear (Jacket and Pants) that may be purchased at the employee’s expense for use during inclement weather.

**SECTION 44: SAFETY GLASSES**

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

**SECTION 45: SAFETY AND TRAINING**

45.1 Responsibility

Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties.

45.2 Special Training Courses

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Chief of Police.

45.3 Ammunition and Firing Range Program

The City shall provide the necessary amount of ammunition for employees for use in City-sponsored range programs. The Department will enforce requirements of regular employees participating in range programs. Employees who do not perform at a passing

standard will receive instruction and retake the test during the regularly scheduled range program. Employees who are not able to achieve the minimum standard within a reasonable period of time will be immediately assigned to work on an intensive basis with the range master who will evaluate the severity of the problem. Consistent inability to meet the standard may be cause for termination.

#### 45.4 Safety Programs

The City and the Association will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or perform duties that are not in compliance with safety procedures or protocols. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Association and appropriate supervisory personnel.

45.5 No employee shall be required to drive a vehicle, the mechanical condition of which is in violation of the Vehicle Code of the State of California.

### SECTION 46: USE OF AUTOMOBILES

The City Manager shall govern the use of City-owned automotive equipment and privately owned automobile equipment by such rules and regulations as he or she may establish. The mileage reimbursement will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with the IRS standard mileage rate.

### SECTION 47: ANNUAL PHYSICAL EXAMINATION

47.1 Employees in the classifications of Police Officer, Police Sergeant, Police Lieutenant and Police Captain shall each year receive a City-paid mandatory physical examination ) physical examination based on the City's specification as to scope of examination and with the City's designated Occupational Medicine Provider.

47.2 As an alternative to receiving an annual physical examination with the City's designated Occupational Medicine Provider, an employee may provide verification that the employee received a physical examination consistent with the City's requirements as to the scope of examination with the employee's own personal physician. Employees who choose their own personal physician must notify Policy Personnel and training at least sixty (60) days prior to a deadline to be announced by the City to conduct the annual physical examination. Failure by the employee to meet the sixty (60) day notification deadline will result in the employee needing to receive the annual physical examination with the City's designated Occupational Medicine provider.

47.3 The City will not ask for, request or receive any confidential medical information from the medical professionals, their agents or contractors administering, conducting or participating in the annual examination described in this Section 47. The only information to be provided to the City will confirm whether the examination was administered.

**SECTION 48: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

48.1 **Employees on Workers' Compensation Leave:** The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member's personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member's personal/family scheduling for the period of the modified duty the Department is not precluded to change the member's shift.

48.2 Non-industrial Disabilities

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

48.2.2 The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

**SECTION 49: ANNUAL PERFORMANCE EVALUATION**

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

**In Line of Duty Death Notification Package:** At this time, each employee shall be given an opportunity to update or fill out his or her "In Line of Duty Death Notification Package". This Package is to be maintained by the Administrative Captain in a sealed envelope and be opened only in the event of the officer's death.

**SECTION 50: RESERVE OFFICER FUNCTIONS**

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

50.2 Special Events

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

<ul style="list-style-type: none"> <li>• Asian Pacific Heritage Fair</li> <li>• Berkeley Beer Festival</li> <li>• Berkeley Cycle Club</li> <li>• Berkeley Jazz Festival</li> <li>• Berkeley Kite Festival</li> <li>• Berkeley Unified School District Football Games</li> <li>• Berkeley Unified School District Youth Celebration</li> <li>• Cajun Music Festival</li> <li>• Cinco de Mayo</li> <li>• Civic Center Criterium</li> <li>• Earth Day Celebration</li> <li>• Elmwood Street Fair</li> </ul>	<ul style="list-style-type: none"> <li>• How Berkeley Can You Be?</li> <li>• Indigenous Peoples Day</li> <li>• Juneteenth</li> <li>• July 4th Fireworks</li> <li>• Jupiter Jam Concerts</li> <li>• Korean Day</li> <li>• Live Oak Park Faire</li> <li>• People’s Park Celebration</li> <li>• Solano Stroll</li> <li>• Telegraph Avenue Holiday Fair</li> <li>• Telegraph Avenue Street Fair</li> <li>• Triple Rock Beer Festival</li> <li>• 4th Street Bicycle Race</li> </ul>
<p><u>University of California Events (samples listed below)</u></p> <ul style="list-style-type: none"> <li>○ University of California Football events</li> <li>○ University of California Basketball Team Parade</li> <li>○ University of California dignitary visits</li> </ul>	

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

**SECTION 51: CLEAN WORK SITE**

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

**SECTION 52: WEIGHT ROOM**

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

**SECTION 53: PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS**

- 53.1 The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties.
- 53.2 Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within 48 hours of such an examination.
- 53.3 Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he or she may also supply a brief non-intrusive analysis as it relates to the employee's ability to perform his or her duties. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.
- 53.4 Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline under Section 37.

**SECTION 54: YMCA MEMBERSHIP**

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

**SECTION 55: PARKING**

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

## ARTICLE 8 - CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### SECTION 56: PUBLIC EMPLOYEES' RETIREMENT SYSTEM

#### 56.1 Participation

The City shall continue participating under the Safety Members Plan of the California Public Employees' Retirement System (CalPERS).

#### 56.2 "Classic Employees" Definition

Classic Employees are defined as current employees and future employees who do not qualify as a "New Member" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### 56.3 "New Members" Definition

New Members are defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### 56.4 CalPERS Retirement Formula for New Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with highest three (3) year average final compensation as set forth in PEPRA.

56.5 CalPERS Retirement Formula for Classic Employees Hired on or After November 27, 2012 (current employees and employees who do not qualify as "New Members" under PEPRA)  
Current employees or former City of Berkeley employees who were members of CalPERS while employed with the City and had membership with CalPERS prior to December 31, 2012 and who are rehired on or after November 27, 2012 and other employees who do not qualify as "new Members" under PEPRA shall be entitled to or continue to be entitled to the 3% at age 55 retirement formula as provided in Section 21363.1, with highest three years average final compensation as provided in Section 20037.

56.6 CalPERS Retirement Formula for Classic Employees Hired Before November 27, 2012  
Employees hired before November 27, 2012 shall continue to be entitled to the 3% at age 50 retirement formula as provided in Section 21362.2 (July 7, 2002), with highest One-Year Final Compensation as provided in Section 20042 (July 22, 1976).

#### 56.7 Optional Benefits

For both Classic and New Members, the City's contract with CalPERS shall include the following optional benefits:

56.7.1 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).

56.7.2 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).

56.7.3 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).

56.7.4 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).

56.7.5 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

56.7.6 Fourth Level of 1959 Survivor Benefits as provided in Section 21574 (October 15, 1998).

56.7.7 Pre-Retirement Optional Settlement 2 Death Benefit as provided in Section 21548 (November 6, 1998).

56.7.8 Military Service Credit as Public Service as provided in Section 21024 (November 6, 1998).

#### 56.8 Classic Employees' Pension Contribution

Effective July 1, 1994, the City increased the base salary of employees by nine percent (9%). Employees then assumed and shall continue to assume an obligation to pay this 9% normal employee contribution retirement to CalPERS. Employees also contributed three percent (3%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis from July 1, 2012 through June 30, 2015. The City and Association agree that, effective January 1, 2016 employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

#### 56.9 New Members' Pension Contributions

New Members hired on or after January 1, 2013, shall pay 50% of the normal share of cost required by PEPPRA. The City and Association agree that, effective January 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

## ARTICLE 9 - LAYOFF PROCEDURE

### SECTION 57: LAYOFF POLICY

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

#### 57.1 Announcement of Layoff

57.1.1 The City Council, City Manager, and the Chief of Police shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to layoff career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, a material change in duties and organization, adverse working conditions, return of employees from leaves of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

57.1.2 Immediately following a decision which may involve the potential layoff of career employees, the City Manager shall freeze all current vacancies in the Police Department service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, or temporary (see glossary) positions which are expected to last six (6) months or more, and notify the department head that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 57.6.

#### 57.2 Seniority Service Date

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

57.2.2 All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.

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

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

### 57.3 Establishment of Seniority Lists

57.3.1 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.

57.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in Section 57.4 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.

57.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.

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

### 57.4 Employee Retreat Rights

57.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classifications through which he or she was originally promoted or any subsequently created intermediate-level career classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

57.4.2 In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from a combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent Identification Expert will be available only to employees who have previously held such ranks on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions.

57.4.3 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.

57.4.4 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.

## 57.5 Employee Notification

57.5.1 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.

57.5.2 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.

57.5.3 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 day notification if targeted for release, reassignment, or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after receipt of the offer, the employee forfeits further right to employment retention. Acceptance of a reassignment or retreat does not remove the right of appeal under Section 57.9.

## 57.6 Flexible Placement Program

57.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 57.1, 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.

57.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff or retreat have been identified and the provisions under Section 57.3 and 57.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.

57.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.

57.6.4 Offers to positions under the Flexible Placement Program shall be made according to City seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 57.3. 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.

57.6.5 If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after receipt of the offer, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 57.7.

## 57.7 Reemployment Lists

57.7.1 The names of all probationary and permanent employees released or retreated from positions in the competitive service as a result of layoff or retreat must be placed on reemployment priority lists for those classifications from which the employee was removed, as well as all other classifications to which they have retreat rights in accordance with Section 57.4.

57.7.2 The reemployment priority list for employees who were laid off shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.

57.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.

56.8.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.

57.7.5 If a former employee fails to accept a bona fide written offer of reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer to reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was original terminated.

57.7.6 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.

#### 57.8 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."

#### 57.9 Appeal Procedures

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

#### 57.10 Audit

57.10.1 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 57.7. In the event vacancies for which reemployment priority lists are in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear

to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

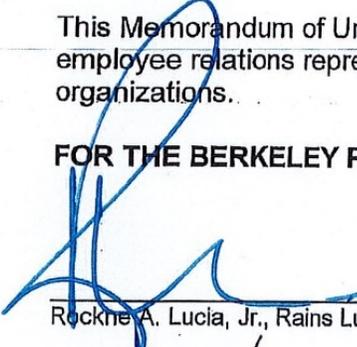
- 57.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally to fill the vacancy shall continue to be retained in City employment.

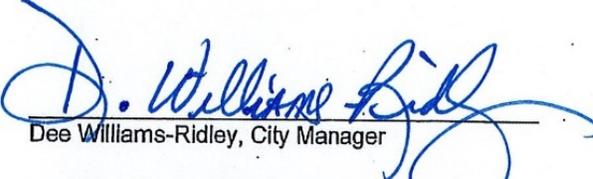
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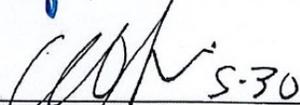
This Memorandum of Understanding is executed this 31st day of July, 2018, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

FOR THE BERKELEY POLICE

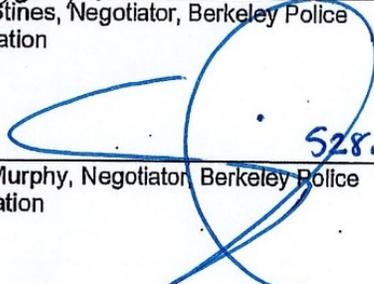
FOR THE CITY OF BERKELEY

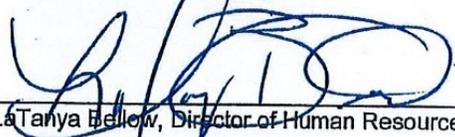
  
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Dee Williams-Ridley, City Manager

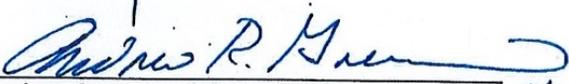
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Chris Stines, Negotiator, Berkeley Police Association

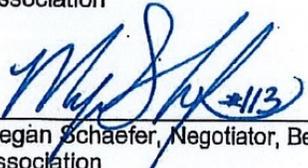
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Emily Murphy, Negotiator Berkeley Police Association

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LaTanya Bellow, Director of Human Resources

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Daniel Breaux, Negotiator, Berkeley Police Association

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Andrew Greenwood, Police Chief

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Megan Schaefer, Negotiator, Berkeley Police Association

 9-5-18  
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Margarita Zamora, Employee Relations Manager

**EXHIBIT A**

<b>Hourly Salary Schedule as of January 1, 2018</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	78.8681	81.5017	84.1952	87.0244	89.9210
Police Lieutenant	68.8383	71.1109	73.4734	75.8959	78.4393
Police Officer (Steps A-E)	45.5287	47.6427	49.8625	51.4803	53.1432
Police Officer (Steps F-G)	54.8888	56.6644			
Police Sergeant	57.4016	59.2828	61.2317	63.2556	65.3473

<b>Hourly Salary Schedule as of August 12, 2018 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	82.0228	84.7618	87.5630	90.5054	93.5178
Police Lieutenant	71.5918	73.9553	76.4123	78.9317	81.5769
Police Officer (Steps A-E)	47.3498	49.5484	51.8570	53.5395	55.2689
Police Officer (Steps F-G)	57.0844	58.9310			
Police Sergeant	59.6977	61.6541	63.6810	65.7858	67.9612

<b>Hourly Salary Schedule as of July 16, 2019 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	85.3037	88.1523	91.0655	94.1256	97.2585
Police Lieutenant	74.4555	76.9135	79.4688	82.0890	84.8400
Police Officer (Steps A-E)	49.2438	51.5303	53.9313	55.6811	57.4797
Police Officer (Steps F-G)	59.3678	61.2882			
Police Sergeant	62.0856	64.1203	66.2282	68.4172	70.6796

<b>Hourly Salary Schedule as of January 12, 2020 (One Percent (1%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	86.1567	89.0338	91.9762	95.0669	98.2311
Police Lieutenant	75.2000	77.6826	80.2635	82.9099	85.6884
Police Officer (Steps A-E)	49.7362	52.0456	54.4706	56.2379	58.0545
Police Officer (Steps F-G)	59.9615	61.9011			
Police Sergeant	62.7065	64.7615	66.8905	69.1014	71.3864



## EXHIBIT C

### GLOSSARY

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

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

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

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

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

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

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

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

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

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

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

**Jury Duty Period:** The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such

service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

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

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

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

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

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

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

**Reemployment:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 55.7 of the Layoff section in this Understanding.

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

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

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

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

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

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

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

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

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



**Memorandum of Understanding**

**between**

**City of Berkeley**

**and**

**Berkeley Police Association**

**July 1, 2017 to June 30, 2021**



RESOLUTION NO. 68,582-N.S.

MEMORANDUM OF UNDERSTANDING: BERKELEY POLICE 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 Police Association 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 by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period July 1, 2017 through June 30, 2020 with the Berkeley Police Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

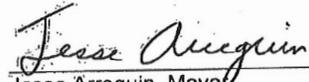
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

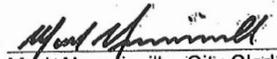
The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Harrison.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

RESOLUTION NO. 68,583-N.S.

APPROVE A NEW CLASSIFICATION AND SALARY RESOLUTION FOR THE BERKELEY POLICE ASSOCIATION AND RESCINDING RESOLUTION NO. 67-187-N.S.

WHEREAS, the City Council has approved a new three-year Memorandum of Understanding with the Berkeley Police Association which includes cost of living adjustments; and

WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum of Understanding.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Units E (sworn, managerial employees in the Police Department), and Representation Unit F (sworn, non-managerial employees in the Police Department) effective July 1, 2017 through June 30, 2020 to incorporate changes to the salary schedule as shown in Exhibit A, attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that Resolution No. 67-187-N.S is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Harrison.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

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## ARTICLE 1 – ADMINISTRATION

### SECTION 1: RECITALS

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

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

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

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

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

### SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION

- 2.1 The Association is the majority representative of all employees within Representation Units E and F and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or as said Resolution may be amended, the Association is no longer certified as the recognized employee organization for employees in Representation Units E and F.
- 2.2 Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments, set standards of service to be offered to the public and exercise control and discretion over the City's organization and operations. It is also the exclusive right of the City Manager to take disciplinary action for just cause, to implement a layoff pursuant to Section 57 of this Understanding, determine the methods, means and personnel by which the City's operations are to be conducted and to take all necessary actions to maintain uninterrupted service to the community and carry out the City's mission in emergencies; provided, however, the Association shall be notified of any proposed changes affecting wages, hours and other terms and conditions of employment of employees represented by the Association, and the City Manager shall, upon request, meet and confer with representatives of the Association and endeavor to reach agreement on the practical consequences of any such changes in wages, hours and other terms and conditions of

employees represented by the Association except as otherwise provided in this Understanding.

### **SECTION 3: NO DISCRIMINATION**

- 3.1 The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, age, gender, sexual orientation, marital or domestic partner status, gender identify or gender expression, parental status, pregnancy, national origin, political affiliation, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City, and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.
- 3.2 Neither the City nor the Association shall discriminate against any employee covered by this Understanding in a manner which would violate any applicable laws because of race, creed, color, religion, political affiliation, sexual orientation, sex, national origin, disability, or age (including AIDS.) The City and the Association agree that no employee shall be discriminated against on the basis of membership or non-membership in the Association or any lawful activity on behalf of the Association.

### **SECTION 4: ASSOCIATION SECURITY**

- 4.1 All employees who are, or hereafter voluntarily choose to become, members of the Association shall maintain such membership in good standing as a condition of continued employment for the duration of this Understanding; provided, however, that withdrawal from membership shall be allowed during the month which precedes the month in which this Understanding expires. Employees may withdraw by sending written notice of withdrawal to the Association (with a copy to the Director of Human Resources of the City) during the withdrawal period.
- 4.2 The Association shall indemnify and save the City harmless from any and all claims, demands, suits, or any other action arising from Section 4 or from complying with any request for termination of employment under Section 4. The Association will not undertake to compensate the City for any time which may be spent by the City Attorney or anyone on the staff of the City Attorney in preparing for or defending any legal action which may be filed. The Association will, however, pay directly any fine or reimburse the City for the payment of any fine which may be assessed against the City by virtue of its agreement to Sections 4.1 and 4.2, and the Association will pay any judgment or award, including the payment of any wages lost by an employee whose services are temporarily or permanently terminated because of his or her failure to comply with the provision of Section 4.
- 4.3 It is understood and agreed that the City Council retains the right, in its sole discretion, to determine that the Association is not discriminating against any employee or class of employees. It is further understood and agreed that the City Council retains the right to

withdraw the Association security privilege if at any time it determines that the Association is discriminating against any individual or classifications prohibited by Section 3 of this Understanding.

- 4.4 The City shall furnish the Association, on a monthly basis, the name, date of hire, salary, classification, and work location of all newly hired employees subject to the Understanding. The City shall furnish newly hired employees with information concerning the Association as supplied by the Association.

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

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

## **SECTION 6: ASSOCIATION REPRESENTATIVES**

- 6.1 The City shall allow representatives of the Association, subject to the conditions set forth in Sections 6.2 and 6.3, reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memoranda of Understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Understanding in the future. The Parties agree to work cooperatively to negotiate the rules of procedure governing the conduct of the Police Accountability Board with the goal of completing negotiations no later than June 30, 2021.

### **6.2 Representatives**

With respect to the meet-and-confer process, four (4) Association representatives shall be the maximum number who will be allowed concurrent time off. In all other cases, such as disputes defined in Section 6.1, the maximum number allowed concurrent time off shall be two (2).

### **6.3 Notice Requirements**

Association representatives seeking time off to carry out functions described in Section 6.1 shall advise their supervisors at the earliest possible time and, except in emergency cases,

no later than 24 hours in advance before leaving their work assignments. The Department will not unreasonably deny release time to the Association President (or Acting President) so that he or she may schedule the duties specified in Section 6.1; there may be times, however, when the City will, on short notice, need to modify or adjust such release time because of unpredictable service needs.

6.3.1 In emergency situations which require the immediate attention of said employee, the employee shall notify a supervisor upon his or her return to work. It is understood that employees will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

6.3.2 To the extent possible, the Association will attempt to schedule all release time to avoid impacting service levels. If necessary, however, Association representatives' workloads will be adjusted on the basis of approved release time. Employees shall record release time for activities described in Section 6.1 with the appropriate code on their time sheets and cards.

#### 6.4 Meetings

Reasonable release time will be available so that members can attend periodic meetings of the Association which occur during their shift.

#### 6.5 Bulletin Boards

The City shall provide bulletin board space for Association use at each of its work centers where covered employees are regularly employed.

#### 6.6 Board of Review

All time spent in attendance at Board of Review meetings and Police Review Commission meetings, interviews, and hearings as an official representative of the Association by appointed Association officers shall be considered time worked, and shall be compensated in accordance with Section 19 of this MOU. The compensable time outside of an employee's regularly schedule shall be limited to one person.

6.7 Up to three (3) officers designated by the Board of Directors of the Association may meet with the City Manager and Chief of Police every second month to foster communication. These meetings will be scheduled so that Association representatives can attend during regular work hours. Association representatives will record time spent in such meetings as work (rather than release) time.

### SECTION 7: ASSOCIATION RELEASE TIME

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

**SECTION 8: SEVERABILITY OF PROVISIONS**

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

**SECTION 9: FINALITY OF RECOMMENDATIONS**

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

**SECTION 10: DURATION**

The term of this Understanding shall commence when the terms and conditions set forth herein have been adopted by resolution by the City Council but in no event shall this Understanding be effective prior to 0001 hours July 1, 2017. Those provisions which have been assigned effective dates herein will become effective on those dates. This Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2020.

Parties agree to extend the July 1, 2017 to June 30, 2020 Memorandum of Understanding (MOU or Agreement) for a period of one-year; until June 30, 2021, with no changes in compensation or terms.

Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.

The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinances, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of bargaining, to informally consult upon the request of the Union to receive input regarding the impact of such changes.

The parties agree to meet at least quarterly to discuss changes in the City's financial condition during the extended term of this agreement.

## ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### SECTION 11: SALARIES

- 11.1 Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto. Effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, represented employees still employed in that pay period shall receive a 4.0% wage increase. Also effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, employees still employed in that pay period shall receive a 1-time stipend of \$1,500, less applicable payroll taxes. Effective the first full pay period in July 2019, employees shall receive a further 4.0% wage increase. Effective the first full pay period in January 2020, employees shall receive a further 1.0% wage increase.

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

- 11.2 Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "A". The minimum rate for the class shall apply to employees upon original appointment to the position except in cases of lateral entry. Lateral entry shall be provided for Police Officer only, and the Chief of Police, with the approval of the Director of Human Resources and City Manager, may pay to lateral entrants a salary above the first step. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.
- 11.3 No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.
- 11.3.1 An employee's salary step increase as provided in Section 12 (Salary Advancement) shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such salary step increase.
- 11.4 Salary reductions may be made as a result of an employee's diminished service value or as part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program. No reduction shall be made below the minimum rate established for the class to which the reduced employee's position is allocated. Notice of the

reduction shall be given to the employee not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall be entitled to receive a written statement of the reasons for such action.

11.4.1 Salary reductions which are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program shall not be subject to the provisions of Sections 11.4, 11.5 or 56.

11.5 Y Rate

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a "Y" rate. When an employee on a "Y" rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

11.6 Pay Periods

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

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

11.8 **Effective Date of Salary and Benefit Adjustments**

The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of the pay period closest to the date otherwise specified or applicable.

11.9 **Effective Date of Step Increases**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).

**SECTION 12: SALARY ADVANCEMENT**

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

Length of Service – Police Officer	Salary Step
0 to completion of 12 months	Step A
Beginning of 13 <sup>th</sup> month to completion of 24 <sup>th</sup> month	Step B
Beginning of 25 <sup>th</sup> month to completion of 36 <sup>th</sup> month	Step C
Beginning of 37 <sup>th</sup> month to completion of 48 <sup>th</sup> month	Step D
Beginning of 49 <sup>th</sup> month to completion of 60 <sup>th</sup> month	Step E
Beginning of 61 <sup>st</sup> month to completion of 72 <sup>nd</sup> month	Step F

Beginning of 73 <sup>rd</sup> month and beyond	Step G
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12.2 Effective July 7, 2002, employees in the classifications of Police Sergeant, Police Lieutenant and Police Captain will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

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

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

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

**SECTION 13: PREMIUM/SPECIAL ASSIGNMENT**

13.1 Explosives Ordinance Technician  
 An employee assigned as an Explosives Ordinance Technician shall receive double his or her regular straight-time rate for that time spent (from call to completion) in dealing with explosives. Said double time shall be the total compensation for such time spent, whether on regular duty time or when called in from off-duty. If an employee is assigned as an Explosive Ordinance Technician while on regular duty and not while on overtime, those hours worked as an Explosive Ordinance Technician on regular duty shall be reported to CalPERS as Hazard Premium Pay.

13.2 Special Response Team (S.R.T)  
 An employee assigned as a member of the Special Response Team (S.R.T.) shall receive a five percent (5%) salary differential when involved in an active S.R.T. incident. If an employee is assigned as a member of the Barricaded Subjects Hostage Negotiation Team while on regular duty and not while on overtime, those hours worked as a S.R.T. member on regular duty shall be reported to CalPERS as Hazard Premium Pay.

13.3 Supervisor Special Assignment  
 When a Police Sergeant is assigned to function as the Field Training Officer Supervisor, he or she shall receive a five percent (5%) salary differential while occupying that position. If an employee is assigned as the Field Training Officer Supervisor, while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.

- 13.4 **Field Training Officer Special Assignment:**  
Employees assigned as Field Training Officers shall receive a ten percent (10%) differential during any calendar year when actually working as a Field Training Officer. If an employee is assigned as a Field Training Officer while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.
- 13.5 **Hazard Premium Pay - Mental Health Crisis Intervention Pay**  
The City of Berkeley (City) and Berkeley Police Association (Association) agree that the parties may agree under this MOU provision that the City will provide Hazardous Premium Pay for particular hazardous duties and activities. At present, the City and Association have agreed that, effective the first full pay period after Council approval of this MOU, all sworn employees shall receive a Hazard Premium Pay called Mental Health Crisis Intervention Pay equal to 1.0% of base salary, which pay shall be provided on all hours the employee is in a paid status. This pay shall be in recognition of the fact that the City's sworn personnel are routinely and consistently exposed to uniquely hazardous conditions arising from law enforcement interactions with the mentally ill and are required to complete training intended to enhance sworn personnel's ability to perform the hazardous and specialized mental health related law enforcement duties which Berkeley's sworn personnel are consistently and routinely asked to perform, including arrests, potential arrests and addressing other mental health related disputes. Effective the first full pay period of January 2016, the amount of pay shall increase to 2.0% of base salary.
- 13.6 **Homicide Detail**  
A Police Sergeant assigned to the Homicide Detail shall receive a four percent (4%) salary differential. If a Police Sergeant is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay. A Police Officer assigned to the Homicide Detail shall receive a three percent (3%) salary differential. If a Police Officer is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay.
- 13.7 **Peace Officer Standards and Training (POST)**  
In addition to the salary set forth in the Exhibit "A" of this MOU, employees covered by this MOU who qualify under regulations promulgated by the California Commission on Peace Officer Standards and Training shall receive the following educational/training incentive compensation. To receive the Intermediate Certificate and/or Advanced Certificate differential pay below, employees must submit documents required by the Berkeley Police Department Professional Standards Division verifying POST eligibility, including but not limited to copies of college transcripts, proof of a college degree and other related forms. Failure of the employee to submit documents required by the Professional Standards Division shall delay the POST incentive pay eligibility until such time as the employee provides all required documentation.
- 13.7.1 **Intermediate Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Intermediate Certificate, the

employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay. Effective the first full pay period following Council approval of this MOU, this Intermediate POST Certificate differential shall increase to three percent (3%) of base salary. Effective January 1, 2016, this Intermediate POST Certificate differential shall increase to four percent (4%) of base salary. Effective July 1, 2016, this Intermediate POST Certificate differential shall increase to five percent (5%) of base salary.

13.7.2 **Advanced Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Advanced Certificate, the employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay.

13.7.3 An employee may simultaneously receive the Intermediate and Advanced Certificate differential for a total differential of four percent (4%), five percent (5%) following Council approval of this MOU, six percent (6%) effective January 1, 2016, and seven percent (7%) effective July 1, 2016.

#### **SECTION 14: BILINGUAL PREMIUM PAY**

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

#### **SECTION 15: LONGEVITY PAY**

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

#### **SECTION 16: SUPPLEMENTAL RETIREMENT INCOME PROGRAM**

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

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

### 17.1 Acting Assignment

When an employee occupying a position in any of the classifications covered by this Memorandum of Understanding is specifically assigned by the Chief of Police or his or her authorized representative to temporarily serve in a higher classification for a minimum of one (1) entire shift (either 8, 10 or 12.5 hours depending on the employee's shift schedule), said employee shall be paid at the lowest step of the higher classification which provides at least a five (5) percent differential or the lowest step of the higher classification to which the employee is assigned, whichever is greater. To be eligible for a higher class assignment the employee must meet the minimum qualifications, as outlined in the class description, and perform the duties of the higher classification. In no case, however, will an employee acting in a higher classification be paid in excess of the top step of the salary range of the higher class. In no instance shall an acting assignment last for more than thirty (30) consecutive days; any assignment over thirty (30) consecutive days shall be deemed a provisional assignment.

### 17.2 Temporary Vacancy

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary assignment from that list.

### 17.3 Provisional Appointment

An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.

### 17.4 Duration

Temporary and provisional assignments may be made up to six (6) months in any calendar year.

## SECTION 18: HOURS AND DAYS OF WORK

18.1 Subject to the terms of this MOU, hours and days of work shall be governed by rules established by the City Manager and the Chief of Police. The work schedule is attached as Exhibit "B" for illustrative purposes and is described as follows:

18.1.1 **4/10 Work Schedule:** Employees assigned to the 4/10 Work Schedule shall be assigned to begin work on Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall have a normal work week of four (4) consecutive ten (10) hour days. Scheduled days off shall be Friday, Saturday and Sunday.

18.1.2 **3/12.5 Work Schedule:** Employees assigned to the 3/12.5 Work Schedule shall be assigned to begin work on Friday, Saturday and Sunday. Employees assigned to this Work Schedule shall have a normal work week of three (3) consecutive twelve and one-half (12.5) hour days. Scheduled days off shall be Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall also work one additional ten (10) hour shift on either the first, second or third Thursday of each Fair

Labor Standards Act (FLSA) 28 consecutive day work period depending on the Team Assignment of the employee.

18.1.3 Either party may request to modify the work schedule after initial implementation and any modification shall be subject to the meet and confer process.

18.1.4 There may be some special assignments including, but not limited to Sergeants assigned to the Internal Affairs Bureau or the Sergeant assigned to the Professional Standards Division who work a 4/10 schedule from Tuesday through Friday with scheduled days off on Saturday, Sunday and Monday.

18.1.5 When an employee's schedule is changed from the 3/12.5 to the 4/10 schedule, the employee shall be given the option of working the additional four (4) hours or taking earned vacation or compensatory time to cover the pay period shortage.

#### 18.1.6 Daylight Savings Time

18.1.6.1 **Spring:** In the Spring when transitioning to Daylight Savings Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Chief to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

18.1.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime and one-and-one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the Fair Labor Standards Act (FLSA).

#### 18.2 Shift Trades

The practice of trading of work shifts (where one Unit F employee trades a shift with another of the same rank) shall be limited as set forth in Police Department General Orders which include the following provisions:

18.2.1 Each Unit F employee shall be allowed no more than four (4) trades of shifts in any calendar month. Employees desiring in excess of four (4) trades of shifts must first seek and receive permission for additional trades of shifts from the Commanding Officer of the division involved.

18.2.2 Notwithstanding the foregoing, under no circumstances will employees be allowed to regularly or systematically trade shifts with one another in a manner that negates or converts the hours or days any employee is regularly scheduled to work (e.g., to work a four [4] day work week on a regular basis).

18.2.3 Permission for additional trades of shifts shall generally be granted if the request is supported by a bona fide reason and the request will not circumvent the requirements of Section 18.2.2 above.

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

### 18.3 Lunch Period

Employees may, upon clearance by the on-duty supervisor, extend their lunch period by no more than thirty (30) minutes in order to work out. Employees availing themselves of this opportunity will limit their workout within the Berkeley City limits and remain available and reachable by telephone during the entire period in the event of a specific need. As is the case with any lunch period, the needs of the City and Department take precedence.

## SECTION 19: OVERTIME/SHIFT EXTENSION

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

As set forth in Section 18.1 of this Understanding, employees at the rank of Police Lieutenant or below shall be assigned to work either a 4/10 Work Schedule or a 3/12.5 Work Schedule. Overtime is defined as all hours an employee is required to work in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the FLSA.

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

- 19.1.1.1 The overtime rate applicable under this section shall be one and one-half (1½) times the straight-time rate based upon the hourly rate of the employee who works the overtime.
- 19.1.1.2 Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department director.
- 19.1.1.3 Flexing of shifts will only be used on a voluntary basis. Members shall notify the BPA before they flex their schedule.

- 19.1.1.4 **Work Week:** For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.
- 19.2 Employees holding the rank of Captain shall be ineligible for overtime compensation. The practice of permitting Captains to receive overtime for special events such as U.C. Berkeley football games, the Fourth of July celebration, and for Federal Emergency Management Act (FEMA) disaster work is hereby discontinued.
- 19.3 Emergency On-Call Status  
An employee shall be paid or given compensatory time off for being placed on emergency on-call status as follows:
- 19.3.1 An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.3.2 An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.4 Compensatory Time Off  
Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum, effective July 1, 1984, of one hundred twenty (120) hours in such compensatory time. Consistent with FLSA regulations, upon termination of employment, employees will be paid for the full amount of compensation for accumulated but unused compensatory time. Utilization of compensatory time shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of service, consistent with FLSA regulations.
- 19.5 Administrative Leave for Captains
- 19.5.1 Effective January 1 of each year, Captains shall be credited with forty (40) hours of Administrative Leave. Such leave shall be in lieu of overtime earned by individuals in the ranks of Lieutenant and below. After successful completion of six (6) months of initial employment, employees are able to use Administrative Leave. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 22 shall apply to Administrative Leave.
- 19.5.2 Persons appointed to the rank of Captain during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.
- 19.6 Any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

19.7 Emergency Overtime

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

**SECTION 20: COURT TIME**

20.1 Court Overtime

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

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

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

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

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

20.1.6 To receive court overtime credit, an employee shall submit an Extraordinary Duty Report.

20.1.6.1 Subpoena should be attached and case number indicated if either or both are available.

20.1.6.2 Report is to be completed by the employee and should specify the amount of time required for "testifying/conferring," "time waiting," or if "not needed."

20.1.6.3 The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the Activity Code and the proper project designation.

20.2 Court Overtime/Telephone Stand-By

20.2.1 Sworn employees who are placed on telephone stand-by for the court will be compensated by earned compensatory time as follows:

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

## SECTION 21: RECOVERY TRANSFER TIME

- 21.1 Recovery Time Transfer is that system whereby an employee grants time from earned compensatory time off, vacation leave or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager or designee. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition.
- 21.2 An employee may donate compensatory time off or vacation leave.
- 21.3 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:
  - 21.3.1 An employee may donate one hour of sick leave for each hour of compensatory time off and/or vacation leave time donated for Recovery Time Transfer. To donate sick leave hours beyond the number of hours of compensatory time off and/or vacation leave time, the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Time Transfer.
  - 21.3.2 The employee donating the sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time.

### ARTICLE 3 - LEAVES

#### SECTION 22: VACATION

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

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

22.3.1 Employees shall accrue vacation leave at the following rates:

Vacation Hours Earned Per Year	Hours of Vacation Earned per Hour of Regularly Scheduled Work
90	0.0385
120	0.0577
160	0.0769
200	0.0962
240	0.1154

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

22.3.3 **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 22.1, an employee appointed through lateral entry shall accrue and take Vacation Leave commensurate with his or her experience as a sworn peace officer.

## 22.4 Calculation of Vacation for Part-Time or Intermittent Employees

For an employee who has worked on a part-time or intermittent basis, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation as specified in Section 22.3.

**22.4.1 Pro-Ration of Vacation for Part-Time or Intermittent Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

**22.4.2** For the purpose of computing length of service in determining eligibility for vacation, time spent on an extended military leave shall be counted as time spent in the service of the City.

## 22.5 Maximum Vacation Leave Accrual Carryover

Employees can carry over from one vacation year (see glossary) to the next no more than three hundred twenty (320) hours of earned vacation.

**22.5.1 Annual Vacation Leave Sell Back:** Once per year, an employee will have the option to sell to the City up to one hundred sixty (160) hours of accumulated vacation time. The employee shall notify the Department on a form provided by the Auditor that he or she is exercising this option no later than March 1 of any calendar year. The City will pay the employee for the purchased vacation hours by March 31 of the same calendar year.

**22.5.2 Excess Vacation:** Not later than October 1 of each vacation year, the City will notify each affected employee of the amount of the employee's earned vacation projected to exceed three hundred twenty (320) hours at the end of the vacation year. By October 31, those employees notified of projected excess vacation will submit to the Chief of Police a proposal for use of the projected excess vacation prior to the end of the vacation year. Such a proposal may include both vacation leave and "sell back" to the City.

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

## 22.6 Return from Extended Unpaid Leave

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

**22.7** Any employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty (160) consecutive hours shall be entitled to a full vacation. If

such an employee is off the payroll for the employee shall not earn vacation leave credit for each one hundred–sixty (160) consecutive hours that he or she is off the payroll. Vacation leave shall be accrued on hours worked or in a paid status exclusive of overtime.

## 22.8 Payment upon Death, Termination or Extended Leave

If, after six (6) months of continuous service, an employee dies, is terminated or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate shall be paid for accrued but unused vacation leave.

22.8.1 Upon death or termination, if the vacation balance is negative, for employees who received advanced vacation, such employee, or his or her estate, shall, on the same basis, reimburse the City or the City may deduct the balance due from the employee's salary due, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

22.8.2 Payment for excess of vacation leave shall be made in lump sum at the time of termination or death, as soon as possible.

## SECTION 23: HOLIDAYS

23.1 All employees in Representation Units E and F who are required to work on any of the hereinafter enumerated holidays, shall have the option of receiving compensation, in addition to their regular monthly salaries, either in the form of holiday pay or compensatory overtime. The holiday pay will be equivalent to the employee's regular hourly salary multiplied by the number of hours worked during such day, except that the sum of the hours compensated by holiday pay and hours taken as time off shall not exceed eight (8) for any single holiday; or the employee shall receive compensatory time off at the straight-time rate on the same basis. For purposes of overtime computation, holiday pay is not to be considered compensation for time worked. Employees may utilize accrued compensatory time off, vacation, floating holidays and/or administrative leave (if applicable) for the difference between 8 hours and the number of hours in their regularly scheduled shift.

23.2 In the event that any of the enumerated holidays fall on a day which is not a regularly scheduled workday, such employees shall, in addition to the regular salary which such employees receive, be paid for eight (8) hours for each such holiday at straight-time rate based upon their regular monthly salary or shall, at the discretion of the Chief of Police, be given eight (8) hours of compensatory time off at a straight-time rate.

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

<ul style="list-style-type: none"> <li>• New Year's Day</li> <li>• Martin Luther King, Jr.s' Birthday</li> <li>• Washington's Birthday</li> <li>• Lincoln's Birthday</li> <li>• Malcolm X's Birthday</li> <li>• Memorial Day</li> <li>• Independence Day</li> <li>• Labor Day</li> </ul>	<ul style="list-style-type: none"> <li>• Indigenous People's Day</li> <li>• Veteran's Day</li> <li>• Thanksgiving Day</li> <li>• Day after Thanksgiving</li> <li>• Christmas Day</li> </ul> <p><i>(Any other special holiday as declared by the City Manager)</i></p>
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23.4 Floating Holidays

After successful completion of six (6) months of initial employment, employees shall be granted three (3) floating holidays, equivalent to eight (8) hours each, during the calendar year. The days selected shall be by mutual agreement between the employee and the Chief of Police or his or her designee. In the event mutual agreement cannot be reached, the time sought shall be added to his or her accrued vacation time. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holidays.

23.5 Pro-Rated Holidays

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

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

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

23.7 Eligibility

To be eligible for holiday pay, an employee must be on paid leave status on the employee's last regularly scheduled workday before the holiday.

**SECTION 24: SICK LEAVE**

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

## 24.2 Sick Leave Accrual

Each employee shall be credited with one (1) eight-hour work day of sick leave with full pay for each month of service. Provided further that employees hired on or after September 11, 2012 shall accrue eight (8) hours of paid sick leave for each month of service. Employees hired before September 11, 2012 shall accrue sixteen (16) hours of paid sick leave for each month of service after the completion of twenty (20) years of service.

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

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

## 24.4 Intermittent Employees Use of Sick Leave

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

## 24.5 Notice Requirements

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

## 24.6 Sick Leave Program

Effective December 23, 2012, the following Sick Leave Program went into effect.

**24.6.1 Five (5) Year Payout to PORAC Trust:** If a sworn member of the Berkeley Police Department ("Employee") has an accrued sick leave balance on December 23, 2012 that exceeds 200 hours, one half of all those hours in excess of 200 shall be maintained in a separate account. The financial value of those hours shall be converted and deposited into the employee's retiree Peace Officers Research Association of California (PORAC) medical trust account over five successive years in equal installments commencing on January 1, 2013 to January 1, 2017. The conversion shall be at the Employee's rate of pay on December 23, 2012. The City may accelerate the payment of hours to be converted.

The remaining fifty percent (50%) of the sick leave balance in excess of 200 hours shall be credited into the employee's separate "catastrophic/service time" bank no later than February 1, 2013 up to a maximum of 500 hours.

**24.6.2 Annual Conversion to Cash:** At the end of each calendar year, if an employee has an accrued sick leave balance of 200 hours or more of sick leave, fifty percent (50%) of all hours accrued in excess of 200 hours shall be converted to a cash equivalent at the end of each calendar year. The annual cash conversion shall be calculated at the employee's hourly rate including additional pay such as POST Pay, Bilingual Pay and Longevity Pay then in effect at the end of the calendar year. The

annual cash conversion shall be limited to 50% of the hours an employee has accrued in excess of 200 hours as of December 31<sup>st</sup> of each year. The City shall pay the annual cash equivalent into an employee's retiree PORAC medical trust account on behalf of the employee member. Upon retirement, any sick leave hours that have not been converted onto an employee's PORAC medical trust account, used for the purpose of additional retirement service credit as provided in PERL Section 20965, or "catastrophic/service time" bank shall be forfeited.

The remaining fifty percent (50%) of accrued hours in excess of 200 hours, up to a maximum of 500 hours, shall be maintained in the employee's separate "catastrophic/service time" bank. These hours are available for the employee's use in the event that the employee has a catastrophic illness or injury and has exhausted all accrued sick leave hours and compensatory time off hours. At the time of the employee's retirement or termination, any sick leave balance in the catastrophic/service time bank may only be used for additional retirement service credit as provided in PERL Section 20965 and the employee cannot cash it out at retirement or separation.

**24.6.3 Catastrophic/Service Time Bank of Hours:** The catastrophic/service time bank of hours is available for use subject to the following conditions.

- 24.6.3.1 Employee or employee's dependent family member must be suffering from a catastrophic illness or injury. Catastrophic illness or injury means an unanticipated life threatening illness or injury, either for a permanent or temporary period anticipated to exceed thirty (30) working days, that results in the incapacity of an employee or the employee's dependent family member and by virtue of the illness or injury to the employee or the employee's dependent family member, the employee's ability to perform the essential functions of his or her usual and customary occupation is limited.
- 24.6.3.2 Employees may also utilize "catastrophic/service time" bank hours for the birth or adoption of a child.
- 24.6.3.3 Employee shall provide the City proof of catastrophic injury or illness from an authorized health care provider on a form to be provided by the City
- 24.6.3.4 The employee must have exhausted all of his or her available paid leave balances (except accrued vacation) and, as a result, will be placed on unpaid leave status unless the catastrophic/service time bank is utilized.

**24.6.4** Employee is prohibited from using the catastrophic/service time bank under the following circumstances:

- 24.6.4.1 Employee is prohibited from using the catastrophic/service time bank for any industrial injuries or illnesses that are covered by the California workers' compensation laws and regulations, except and

until the employee has exhausted all benefits under Labor Code Section 4850 and all the employee's available paid leave balances.

24.6.4.2 Employee is prohibited from simultaneously using the catastrophic/service time bank and receiving benefits under any Berkeley Police Association sponsored Long Term Disability benefit.

24.6.4.3 The employee is not permitted to extend employment into retirement through the use of catastrophic/service time.

24.6.4.4 Any balance in the catastrophic/service time bank at time of employee's retirement will not be cashed out. However, an employee may use any balance to purchase CalPERS additional service credit.

#### 24.7 Family Sick Leave

Sick leave shall not be considered a privilege which an employee may use at the employee's discretion but shall be allowed only in case of sickness or disability or in the case of serious illness of the employee or within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4-Family Care Leave, federal Family and Medical Leave Act. The immediate family of an employee, for the purposes of this section, shall include: dependent residing in the employee's household, spouse, son, daughter, parent and other relationships as determined by the City, such as domestic partner (see glossary).

#### 24.8 Sick Leave Bonus

Employees shall be entitled to receive an additional eight (8) hours of paid leave for every six (6) months of uninterrupted non-use of sick leave. Leave of absence for any reason other than Vacation Leave, Administrative Leave, use of Compensatory Time Off or Bereavement Leave, or partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim, disqualifies an employee for this bonus. This additional leave accrual is prorated for part-time employees. Not more than sixteen (16) additional hours per year may be achieved; this paid leave may be used for any leave purpose covered by this Understanding.

#### 24.11 Absenteeism Control System

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

## **SECTION 25: WORKERS' COMPENSATION**

- 25.1 All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California (specifically Labor Code Sections 4850 et seq.).
- 25.2 No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of Section 24 shall be allowed only if such outside employment has been approved by the City.
- 25.3 Workers' Compensation salary in lieu of temporary disability payments as provided in California Labor Code Section 4850 are reportable to CalPERS as compensation earnable for a period not to exceed one year. Any temporary disability benefits, which are coordinated with the employee's available leave accruals, paid after one year is not reportable to CalPERS as compensation earnable.

## **SECTION 26: FUNERAL LEAVE**

- 26.1 In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) consecutive working days, or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) consecutive working days. The immediate family of an employee, for the purpose of this section, shall be defined as: wife, husband, domestic partner, (see glossary), mother, father, sister, brother, child, grandmother, grandfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grand-children. A working day for the purpose of this section is based on the actual number of hours an employee is normally scheduled to work (i.e., eight (8) hours; ten (10) hours; or twelve and a half (12.5) hours).
- 26.2 Leave of absence with pay because of death in an employee's immediate family is allowed provided the employee attends a funeral or memorial service during the time off, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

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

In addition, employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement funeral leave by using accrued vacation, compensatory time, or floating holidays.

**26.3 Bereavement Leave Statement:**

Any employee requesting funeral leave must submit a statement and provide documentation if possible, i.e., obituary or funeral home or church program or notice, that the family member meets the definition of “immediate family members” as provided in Section 26.1. In recognition that there may be situations where an employee is unable to provide funeral or memorial service documentation because there was no formal service, the employee must so note that on the statement confirming that the service occurred during the time period the employee was off work on funeral leave.

**SECTION 27: MILITARY AND MARITIME LEAVE**

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

**SECTION 28: FAMILY CARE LEAVE**

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

**SECTION 29: LEAVE OF ABSENCE WITHOUT PAY**

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

29.2 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.

29.3 In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available prior to receiving authorization for leave without pay.

**SECTION 30: JURY DUTY LEAVE**

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

## ARTICLE 4 - HEALTH AND WELFARE BENEFITS

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

#### 31.1 Medical Coverage

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

The Understanding can be reopened on health plan topics by mutual consent. In addition, the Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2018 ACA excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the current cost of health benefits.

#### 31.2 Dental Coverage

The City shall provide a dental care program for employees. Dental benefits will remain at 90% coverage of the Bay Area Usual, Customary and Reasonable charges for the life of this Understanding. Effective January 1, 2002, the maximum annual coverage will increase to \$3,000 per calendar year and the lifetime limit on orthodontia will be increased to \$3,000. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

31.3 Should the City deem it feasible to provide the same level of benefits through another provider or to provide such benefits on a non-insured basis, it will notify the Association and, upon written request, will meet and confer on the matter.

#### 31.4 Life Insurance

The City shall provide term life insurance of \$100,000 for each employee that shall include a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

#### 31.5 Pro-Ration for Less Than Full-Time Employees

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

#### 31.6 Cash In-Lieu

Effective the first full pay period following Council approval of this MOU, and for those employees who show proof of alternate medical coverage, the City will compensate the employee \$560.72 per month.

**SECTION 32: RETIREE MEDICAL COVERAGE**

**32.1 Sick Leave Trust Fund**

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

**32.2 Retiree Health Coverage**

The City will establish an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefit provided in this Section.

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

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

**32.2.1 Payment:** If payment is made under the Code section 401(a) plan, the payment to be made on a monthly basis shall be made directly to the retiree, or if the retiree is deceased, to the surviving spouse. If payment is made under the retiree health premium assistance plan per Section 32.3, the payment to be made on a monthly basis shall be made directly to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible, per Section 32.5.2). The retiree or surviving spouse assumes full responsibility for the tax consequences for this benefit.

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

**32.2.3 Notification of Change of Address:** The retiree or surviving spouse is exclusively responsible for notification to the City of his or her current mailing address. A change in mailing address must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department,

2180 Milvia Street, Berkeley, CA. If the U.S. Postal Service returns payment checks for two consecutive months, the City will cease making payments under this Section. However, if the retiree and/or surviving spouse re-establishes contact with the City and notifies the City in writing of a new mailing address, the City shall resume making payments including arrears payments for the period when payment checks were undeliverable.

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

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

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

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

For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 1, 2007, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50.

However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.7 Overpayments:** In the event of an overpayment, the procedures set forth in Section 41 (Payroll Errors) of the Understanding shall apply to the recovery of overpayments under this Section, with adjustments as appropriate to reflect that retirees are no longer on the active payroll, so offsets or reductions must be made to future payments that would become due under the applicable plan providing benefits to the retiree or his or her surviving spouse.

### 32.3 Retiree Health Premium Assistance Coverage

Effective September 19, 2012, the City will cease making contributions to an Internal Revenue Code Section 401(a) plan for the purpose of paying the retiree health care benefit provided under this Section for any employees hired on or after that date who would otherwise have qualified for benefits under the terms described in this Section 32. Any employees hired on or after September 19, 2012, as well as any current employees who retire on or after such date, shall receive the benefits described in this Section 32.3 as a benefit provided by the City under a newly established retiree health premium assistance plan and related trust agreement. Any benefits payable to employees who have retired prior to such date or to their surviving spouses may continue to be made under the Internal Revenue Code Section 401(a) plan that was established for such purpose to the extent benefits are not provided for such retirees under the new retiree health premium assistance plan. Under the newly established retiree health premium assistance plan, benefits will be the same as previously provided under the 401(a) plan, except for different eligibility criteria and that payment under the 401(a) plan was made directly to the retiree or his or her surviving spouse, and under the new plan the City will pay the retiree health premium assistance amount to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible per Section 32.5.2. Upon the death of the retiree, the amount provided to an eligible surviving spouse will be an amount equivalent to the appropriate percentage of the single party active Kaiser monthly medical insurance premium amount, which will continue until the death of the eligible surviving spouse. The maximum amount the City shall pay towards coverage for the retiree or his or her surviving spouse, either directly or to a health care provider on his or her behalf, is based on the following schedule set forth in Section 32.5 et seq.

### 32.4 Amendment or Termination of 401(a) Plan

As provided under Section 32.2 (Retiree Health Coverage), the City established an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefits for retirees and their surviving spouses provided under this Section 32 (Retiree Medical Coverage). Section 12 of that plan (Berkeley Police Supplemental Retirement Plan) provides that such plan may be amended or terminated in accordance with a Memorandum of Understanding between the City and the Association. The City and the Association have determined that it is desirable, to the extent legally permissible and administratively practicable, to offer benefits previously provided under that Berkeley Police Supplemental Retirement Plan through a retiree health premium assistance plan and related trust under Section 115 of the Internal Revenue Code. Additionally, the parties have agreed that the City may take reasonable steps to amend or terminate the Berkeley Police Supplemental Retirement Plan, or spin-off assets and liabilities under such Plan for certain covered participants into

a new section 401(a) plan that also may be amended or terminated, to the extent such actions are necessary or desirable to accomplish, in providing future retiree medical premium assistance benefits as described in this Section 32 (Retiree Medical Coverage) for some or all of the covered retirees and their surviving spouses through a newly established retiree health premium assistance plan and related trust.

### 32.5 Retiree Medical Coverage

For those employees who retire on or after September 19, 2012 and effective immediately upon the date of retirement, the City will assist in the payment of medical insurance premium payments for the retiree and/or surviving spouse/domestic partner by making payments directly to the medical insurance provider. Retirees shall be permitted at their discretion to enroll in non-City sponsored health plans. In that event, the City shall make medical insurance premium payments directly to the health insurance provider equal in value to the City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner will pay the administrative set up fee and the monthly administrative fee established by the third party administrator. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner.

There shall be no cash in lieu payments made under this benefit.

32.5.1 For employees that retire on or after September 19, 2012 the City will discontinue the current practice of paying directly to the retiree the cash equivalent of the active two-party Kaiser rate. However, for those employees who retired before September 19, 2012, the City shall continue to make cash payments to these retirees under the MOU provisions in effect at the time of their retirement.

32.5.2 **Qualifying Spouse or Domestic Partner.** A retiree will receive the appropriate percentage of two-party coverage for a spouse or domestic partner that meets any of the following criteria ("Qualifying Spouse"): (1) the spouse or domestic partner of the retiree at the time of retirement; (2) for a retiree that did not have a spouse or domestic partner at the time of retirement, the initial spouse or domestic partner a retiree adds to his or her health plan after retirement; or, (3) for any retiree, a subsequent spouse or domestic partner if the previous spouse or domestic partner died. For all times that a retiree does not have a Qualifying Spouse, the City will only pay the appropriate percentage of single party premium for that retiree. If a retiree predeceases a Qualifying Spouse, the City will continue to pay the appropriate percentage of single party premium for that individual.

32.5.3 In the event that an employee retires and initially elects not to utilize the Berkeley retiree medical plan as described above, the employee may opt back into the Berkeley retiree medical plan during any open enrollment period with either single only coverage or two-party coverage, if applicable.

32.5.4 The City will comply with any lawfully executed Qualified Domestic Relations Order (QDRO) but under no circumstances will it provide retiree medical benefits to more than two persons.

32.5.5 In order to be eligible for the Retiree Health Premium Assistance Coverage a "Retiree" must meet all of the following criteria (note, this is different criteria than used for previous plans):

32.5.5.1 A person who is vested in CalPERS, and

32.5.5.2 Has reached the age of 50, and,

32.5.5.3 Has retired from the City at age 50 or thereafter, and

32.5.5.4 Has applied for and is receiving a pension from CalPERS at the time of retirement.

However, a "retiree" is also anyone, regardless of age, who receives a disability retirement benefit, either industrial disability or non-industrial disability, from CalPERS.

32.5.6 The maximum amount the City will contribute toward the payment of medical insurance premiums is based on the employee's years of service as a sworn member of the Berkeley Police Department at time of retirement. The retiree must have at least 10 years of service as a sworn member of the Berkeley Police Department to qualify for this benefit.

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

Years of Service	Percentage to be Paid by the City
10 Years of Service	City to provide medical premium assistance equal to 25% of either the single party or two party amount as determined below
15 Years of Service	City to provide medical premium assistance equal to 50% of either the single party or two party amount as determined below
20 Years of Service	City to provide medical premium assistance equal to 100% of either the single party or two party amount as determined below

There will be no pro-rating of years of service.

32.5.8 The City will assist the retiree and/or surviving spouse/domestic partner in the payment of the medical insurance premium as follows:

32.5.9 **Early Retirees who are not Medicare Eligible:** Beginning September 19, 2012, each month after the employee retires, the City will pay the health care service provider an appropriate percentage based on the chart in Section 32.5.7 of an

amount equal to \$1,200.00 per month for two party coverage for the retiree and a qualifying spouse/domestic partner or \$600.00 per month for single party coverage. Upon the death of either the retiree or the retiree's spouse, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse/domestic partner at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/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. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and effective each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the early retiree plan medical premium for that year, or 6%, whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

- 32.5.10 **Retirees who reach Medicare eligibility age:** Beginning September 19, 2012, for retirees who reach Medicare eligibility age, the City will pay the health care service provider the appropriate percentage based on the chart in Section 32.5.7 of an amount equal to \$765.80 per month for two-party coverage for the retiree and spouse/domestic partner or \$382.90 month for single party coverage. Upon the death of either the retiree or spouse/domestic partner, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the health care service provider on behalf of the surviving retiree or spouse/domestic partner. 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/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. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the retiree medical premium for that year, or 6% whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

Former employees who leave employment prior to age 50 and do not qualify as a "Retiree" under the definition above ("non-qualifying retiree") will not receive any funds from the City, either directly or indirectly, for payment of medical insurance premiums. However, a non-qualifying retiree shall be permitted to purchase health insurance from the retiree medical pool if **all** of the following criteria are met:

- 32.5.10.1 The former employees is vested in CalPERS, and

- 32.5.10.2 Has reached the age of 50, and,
- 32.5.10.3 Has applied for and is receiving a pension from CalPERS, and
- 32.5.10.4 The City sponsored group health plan permits the retiree to enroll in the retiree medical pool, and
- 32.5.10.5 The retiree pays all cost associated with enrolling and maintaining eligibility in the group health plan, including, but not limited to, the administrative set up fee and the monthly administrative fee established by the third party administrator.

**SECTION 33: SUPPLEMENTAL RETIREMENT PLAN**

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

## ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT

### SECTION 34: PROBATIONARY PERIOD

#### 34.1 Police Officer

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

**Completion of Probationary Period upon Return from Military Leave:** Probationary employees who are granted military leaves of absences shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 34 shall be interpreted to preclude the City from establishing new classifications which may require probationary periods of varying lengths.

**Field Training Officer Rating:** Probationary Police Officers will be rated daily/weekly while in the Field Training Officer (FTO) program, and then semi-annually thereafter.

#### 34.2 Other Probationary Periods

Original and promotional appointments to classes above the rank of Police Officer shall be tentative and subject to a probationary period of six (6) months of actual service and shall be completed within a one (1) year period.

#### 34.3 Provisional Appointments during Probationary Period

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

#### 34.4 Completion of Probationary Period

If the service of the probationary employee has been satisfactory to the Chief of Police, the Chief of Police shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

#### 34.5 Rejection during Probationary Period

During the probationary period, an employee may be rejected at any time without right of appeal or hearing except as provided by the procedures mandated by Government Code 3303 and 3304, as well as provided in Section 40.8.5 of this Understanding. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 37.

**SECTION 35: PROMOTION/EXAMINATION****35.1 Promotional Exams**

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

**35.2 Tests and Applications**

Regular tests shall be given for all ranks including promotional ranks. Applications for Police Officer shall be accepted on a continuous testing basis. Tests for Sergeant, Lieutenant and Captain shall be given at least every two years.

**35.3** From the time that a promotional list no longer contains any names, 1) the City will make a conscientious effort to hold a written examination within ninety (90) days, but in any event will hold the examination within one hundred twenty (120) days; and 2) the City will announce the written examination at least sixty (60) days before the examination takes place.**35.4 Notice of Examinations**

Selection criteria shall be reflected on all examination announcements. All phases of each examination shall be listed in the examination announcement. A study list shall be included in each examination announcement. Each examination shall be announced no less than 60 calendar days in advance of the written test date.

**35.5 Open Competitive Examination**

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

**35.6 Criteria for Promotion**

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

**SECTION 36: DEMOTION****36.1 City Manager Authority**

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

### 36.2 Notice Requirements

Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion, and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

### 36.3 Permanent Status

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

### 36.4 Demotion to Vacant Position

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 57.

## **SECTION 37: SUSPENSION AND DISCHARGE**

### 37.1 30 Calendar Day Maximum Suspension

The City Manager may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any one-year period.

### 37.2 Suspensions of 3 Days or Less

For just cause, the Chief of Police may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager. At any step in the process of reviewing recommended disciplinary actions, the City Manager may elect to impose more severe discipline.

### 37.3 Discharge

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

### 37.4 120 Day Limit on Imposition of Discipline

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline

that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows:

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City's discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.

- 37.5 Suspension of FLSA Exempt Employees  
Notwithstanding any of the above, FLSA exempt employees in the rank of Captain and above shall not be suspended except as permitted by the Fair Labor Standards Act.
- 37.6 All references in Sections 37.1 and 37.2 to "days" shall be calculated in terms of eight (8) hour equivalencies, unless otherwise provided.

### **SECTION 38: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Chief of Police, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Chief of Police as to the resigned employee's service, performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Chief of Police immediately. Resignations shall take effect on the last day of the pay period in which an employee works unless the City Manager determines that it is in the City's best interest to accept the resignation immediately.

### **SECTION 39: REINSTATEMENT**

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

## ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE

### SECTION 40: GRIEVANCE & DISCIPLINARY APPEAL PROCEDURE

- 40.1 A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Understanding between the City and the Association or with any City ordinance, rule, or regulation which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of City employees covered by the Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process. The grievance procedure discussed below shall be the dispute resolution mechanism applicable to employees covered by this Understanding.
- 40.2 A disciplinary appeal is the procedure established hereunder to afford an employee his or her due process rights. An employee may appeal the recommendation or imposition of discipline for demotion, pay reduction, suspension or discharge other than probationary discharge.
- 40.3 Grievance Procedure  
Grievances shall be processed in the following manner:
- 40.3.1 **Step 1:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) may discuss the employee's complaint with the Chief of Police or with such subordinate management official as the Chief of Police may designate. Nothing in this Section precludes an employee from utilizing the chain of command to solve grievances and/or complaints. If the issue is not resolved within five (5) days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified.
- 40.3.2 **Step 2:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the affected employee or by the Association within ten (10) working days of receipt of the decision at Step 1. Any such referral shall be in writing, and the specific issues involved shall be detailed in such referral, together with a statement of the resolution which is desired. The City Manager shall designate a representative to investigate the merits of the complaint and to meet with the complaining employee (and/or the employee's Association representative). The City Manager shall issue a written decision to the grievant and the Union within ten (10) working days of the meeting. This shall conclude Step 2 of the Grievance Procedure.
- 40.3.3 **Step 3:** If the Association is not satisfied with the City Manager's decision at Step 2 of the Grievance Procedure, the Association may require that the grievance be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 2. Either the Association or the City may require that the grievance be referred to an impartial arbitrator if for any reason forty-five (45) days have elapsed from the date upon which the grievance was received by the City Manager.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by either mutual agreement between the Association and the City Manager, or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of selection of the arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

#### 40.4 Arbitrator Decisions

Arbitrator decisions on matters properly before them which pertain to grievances as defined in Section 40.1 of this Understanding shall be in the forms of recommendations to the City Manager, who may, within five (5) days of receipt of said decision, reject said decision. In the event of said rejection, then, as to that particular grievance, the fees and expenses of the arbitrator and the court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

#### 40.5 Grievance of Affirmative Action Program

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

40.6 No arbitrator shall entertain, hear, decide or make recommendations on any dispute unless the Association seeks a determination or if the dispute involves 1) the issue of unit determination; 2) a question of representation; 3) an aggrieved employee not in a classification of the units represented by the Association; or 4) non-punitive transfers, promotional decisions, and probationary employee terminations except as provided in Sections 34.5 and 40.8.5 et seq. of this Understanding.

#### 40.7 Compensation Grievances

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understandings contained in any memorandum agreement which has resulted from the meet-and-confer process shall be considered as

grievances. Any other matters of compensation are to be resolved in the meet-and-confer process and, if not detailed in the Memorandum of Understanding which results from such meet-and-confer process, shall be deemed withdrawn until the meet-and-confer process is next opened for such discussion.

#### 40.8 Disciplinary Appeals

Disciplinary Appeals shall be processed in the following manner:

40.8.1 **Step 1:** Except as provided for suspensions of not more than three (3) days as provided in Section 37.2, the imposition of a disciplinary demotion, pay reduction, suspension or discharge of an employee will be in the form of a written recommendation from the Chief of Police to the City Manager. For suspensions of not more than three (3) days, the Chief of Police may impose such discipline subject to the appeal procedures set forth hereunder. No disciplinary appeal involving the disciplinary demotion, pay reduction, suspension or discharge of an employee will be entertained unless it is filed in writing with the Chief of Police within five (5) days of the time at which the affected employee was notified of such action in writing.

40.8.2 **Step 2:** The affected employee may appeal the recommendation to impose discipline, or the imposition of discipline for suspensions of not more than three (3) days, to the Chief of Police or his or her designee. The affected employee shall be entitled to a personal conference with the Chief of Police or his or her designee or the affected employee may choose to make an appeal in written form. The Chief of Police or his or her designee shall communicate a decision in writing within ten (10) days after the completion of the personal conference with the affected employee or receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure.

40.8.3 **Step 3:** Any disciplinary appeal which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager within five (5) days after conclusion of Step 2 by the affected employee or the Association. The City Manager shall designate a personal representative to meet with the affected employee and/or the employee's Association representative and hear the disciplinary appeal or the affected employee may choose to make an appeal in written form.. The City Manager's designee shall communicate a decision within twenty (20) days after the completion of the personal conference with the affected employee or, if the employee chooses to make an appeal in written form, receipt of the written appeal. If the City Manager's designee, in pursuance of the procedures outlined above resolves a disciplinary appeal as defined in Section 40.2 above, the City Manager's designee may order payment for lost time or wages or reinstatement with or without payment for lost time. This shall conclude Step 3 of the Disciplinary Appeal Procedure.

40.8.4 **Step 4:** If the Association is not satisfied with the City Manager's designee's decision at Step 3 of the disciplinary appeal procedure, the Association may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 3.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by mutual agreement between the Association and the City Manager or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of receipt of the City Manager's response.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction or discharge of an employee shall be final and binding on both parties.

40.8.5 Notwithstanding their probationary status, probationary employees may use the grievance process for disciplinary actions other than termination.

40.8.5.1 **Probationary Employees' Appeal of Discipline:** Notwithstanding his or her probationary status, a probationary employee has appeal rights for disciplinary action where the employee alleges that the City's action was for an illegal or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally protected activities; provided, however, that any appeal by a probationary employee of rejection from probation alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment and Housing Act (California Labor Code Section 12900 et. seq.) may be pursued as provided in the City's Affirmative Action program, which shall be specifically amended to allow probationary employees a right of appeal under that program. Nothing in this Section 40.8.5.1 is intended to preclude a probationary employee from seeking enforcement of rights through state and/or federal regulatory agencies or in courts of competent jurisdiction.

40.8.5.2 **"Lubey" Hearing:** A probationary employee who is terminated on grounds of misconduct may establish a formal record of the circumstances surrounding his or her termination, but is not entitled to a determination that his or her dismissal was for "just cause." Such a grievance shall terminate upon the conclusion of Section 40.8.3. The City Manager's decision at Section 40.8.3 is final and is not subject to further review.

#### 40.9 Days Defined

All references in this Section 40 to "days" shall mean calendar days unless otherwise provided.

#### 40.10 Waiver of Time Lines

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

## ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS

### SECTION 41: 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 or underpayment, no adjustment shall be retroactive for more than the applicable statute of limitations. As to any 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.

In the event that the employee disputes the determination of the Auditor's Office as to a reasonable accommodation for repayment, the employee may appeal the Auditor's Office decision to the City Manager. The employee may appeal the decision of the Auditor's Office in writing within thirty (30) days of the Auditor's Office decision as to a repayment schedule. The City Manager, or his/her designee, shall meet with the affected employee and consider the matter for final determination. The City Manager's decision shall be issued no later than thirty (30) days from the date the affected employee met with the City Manager or his or her designee. The determination of the City Manager shall be final.

In the event that (1) the employee does not respond within 5 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

**SECTION 42: PERSONAL CONDUCT**

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

**SECTION 43: UNIFORMS**

- 43.1 Effective June 27, 2010, the annual uniform allowance shall be \$1,400. The uniform allowance is intended to cover uniform expenses incurred by the employee during the six months prior to the payment and shall be paid semi-annually in installments of equal amounts. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding. The Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).
- 43.2 Effective June 29, 2008, in addition to the annual uniform allowance set forth in Section 43.1, employees assigned to the Special Response Team (S.R.T) shall be paid an annual uniform allowance of \$1,500. The S.R.T. uniform allowance is intended to cover uniform expenses incurred by the employee in the performance of training and duties related to this assignment and shall be paid annually in December for those members of the S.R.T. team who are members of the team on November 1<sup>st</sup> of any year. However, the amount the City contributes toward the S.R.T. uniform allowance is subject to federal and state income tax withholding. The S.R.T. Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).

43.3 Pro-Rated Uniform Allowance

Employees who are hired during the year or are absent from work by reason of leave without pay shall receive a reduced uniform allowance in accordance with the following schedule:

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

43.4 Uniform and Equipment Committee

The Uniform and Equipment Committee will be charged with adopting specifications and regulations governing the wearing of uniforms and plain clothes. All components of the uniform are subject to the approval of the Chief of Police.

43.5 Rain Gear

Rain Gear specifications as currently listed in the Uniform/Equipment Specifications Manual under subsection XIX (e) will be updated to reflect optional rain gear (Jacket and Pants) that may be purchased at the employee’s expense for use during inclement weather.

**SECTION 44: SAFETY GLASSES**

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

**SECTION 45: SAFETY AND TRAINING**

45.1 Responsibility

Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties.

45.2 Special Training Courses

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Chief of Police.

45.3 Ammunition and Firing Range Program

The City shall provide the necessary amount of ammunition for employees for use in City-sponsored range programs. The Department will enforce requirements of regular employees participating in range programs. Employees who do not perform at a passing

standard will receive instruction and retake the test during the regularly scheduled range program. Employees who are not able to achieve the minimum standard within a reasonable period of time will be immediately assigned to work on an intensive basis with the range master who will evaluate the severity of the problem. Consistent inability to meet the standard may be cause for termination.

#### 45.4 Safety Programs

The City and the Association will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or perform duties that are not in compliance with safety procedures or protocols. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Association and appropriate supervisory personnel.

45.5 No employee shall be required to drive a vehicle, the mechanical condition of which is in violation of the Vehicle Code of the State of California.

### **SECTION 46: USE OF AUTOMOBILES**

The City Manager shall govern the use of City-owned automotive equipment and privately owned automobile equipment by such rules and regulations as he or she may establish. The mileage reimbursement will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with the IRS standard mileage rate.

### **SECTION 47: ANNUAL PHYSICAL EXAMINATION**

47.1 Employees in the classifications of Police Officer, Police Sergeant, Police Lieutenant and Police Captain shall each year receive a City-paid mandatory physical examination ) physical examination based on the City's specification as to scope of examination and with the City's designated Occupational Medicine Provider.

47.2 As an alternative to receiving an annual physical examination with the City's designated Occupational Medicine Provider, an employee may provide verification that the employee received a physical examination consistent with the City's requirements as to the scope of examination with the employee's own personal physician. Employees who choose their own personal physician must notify Policy Personnel and training at least sixty (60) days prior to a deadline to be announced by the City to conduct the annual physical examination. Failure by the employee to meet the sixty (60) day notification deadline will result in the employee needing to receive the annual physical examination with the City's designated Occupational Medicine provider.

47.3 The City will not ask for, request or receive any confidential medical information from the medical professionals, their agents or contractors administering, conducting or participating in the annual examination described in this Section 47. The only information to be provided to the City will confirm whether the examination was administered.

**SECTION 48: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

48.1 **Employees on Workers' Compensation Leave:** The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member's personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member's personal/family scheduling for the period of the modified duty the Department is not precluded to change the member's shift.

48.2 Non-industrial Disabilities

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

48.2.2 The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

**SECTION 49: ANNUAL PERFORMANCE EVALUATION**

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

**In Line of Duty Death Notification Package:** At this time, each employee shall be given an opportunity to update or fill out his or her "In Line of Duty Death Notification Package". This Package is to be maintained by the Administrative Captain in a sealed envelope and be opened only in the event of the officer's death.

**SECTION 50: RESERVE OFFICER FUNCTIONS**

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

50.2 Special Events

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

<ul style="list-style-type: none"> <li>• Asian Pacific Heritage Fair</li> <li>• Berkeley Beer Festival</li> <li>• Berkeley Cycle Club</li> <li>• Berkeley Jazz Festival</li> <li>• Berkeley Kite Festival</li> <li>• Berkeley Unified School District Football Games</li> <li>• Berkeley Unified School District Youth Celebration</li> <li>• Cajun Music Festival</li> <li>• Cinco de Mayo</li> <li>• Civic Center Criterium</li> <li>• Earth Day Celebration</li> <li>• Elmwood Street Fair</li> </ul>	<ul style="list-style-type: none"> <li>• How Berkeley Can You Be?</li> <li>• Indigenous Peoples Day</li> <li>• Juneteenth</li> <li>• July 4th Fireworks</li> <li>• Jupiter Jam Concerts</li> <li>• Korean Day</li> <li>• Live Oak Park Faire</li> <li>• People’s Park Celebration</li> <li>• Solano Stroll</li> <li>• Telegraph Avenue Holiday Fair</li> <li>• Telegraph Avenue Street Fair</li> <li>• Triple Rock Beer Festival</li> <li>• 4th Street Bicycle Race</li> </ul>
<p><u>University of California Events (samples listed below)</u></p> <ul style="list-style-type: none"> <li>○ University of California Football events</li> <li>○ University of California Basketball Team Parade</li> <li>○ University of California dignitary visits</li> </ul>	

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

**SECTION 51: CLEAN WORK SITE**

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

**SECTION 52: WEIGHT ROOM**

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

**SECTION 53: PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS**

- 53.1 The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties.
- 53.2 Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within 48 hours of such an examination.
- 53.3 Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he or she may also supply a brief non-intrusive analysis as it relates to the employee's ability to perform his or her duties. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.
- 53.4 Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline under Section 37.

**SECTION 54: YMCA MEMBERSHIP**

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

**SECTION 55: PARKING**

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

## ARTICLE 8 - CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### SECTION 56: PUBLIC EMPLOYEES' RETIREMENT SYSTEM

#### 56.1 Participation

The City shall continue participating under the Safety Members Plan of the California Public Employees' Retirement System (CalPERS).

#### 56.2 "Classic Employees" Definition

Classic Employees are defined as current employees and future employees who do not qualify as a "New Member" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### 56.3 "New Members" Definition

New Members are defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### 56.4 CalPERS Retirement Formula for New Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with highest three (3) year average final compensation as set forth in PEPRA.

#### 56.5 CalPERS Retirement Formula for Classic Employees Hired on or After November 27, 2012 (current employees and employees who do not qualify as "New Members" under PEPRA)

Current employees or former City of Berkeley employees who were members of CalPERS while employed with the City and had membership with CalPERS prior to December 31, 2012 and who are rehired on or after November 27, 2012 and other employees who do not qualify as "new Members" under PEPRA shall be entitled to or continue to be entitled to the 3% at age 55 retirement formula as provided in Section 21363.1, with highest three years average final compensation as provided in Section 20037.

#### 56.6 CalPERS Retirement Formula for Classic Employees Hired Before November 27, 2012

Employees hired before November 27, 2012 shall continue to be entitled to the 3% at age 50 retirement formula as provided in Section 21362.2 (July 7, 2002), with highest One-Year Final Compensation as provided in Section 20042 (July 22, 1976).

#### 56.7 Optional Benefits

For both Classic and New Members, the City's contract with CalPERS shall include the following optional benefits:

56.7.1 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).

56.7.2 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).

56.7.3 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).

56.7.4 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).

56.7.5 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

56.7.6 Fourth Level of 1959 Survivor Benefits as provided in Section 21574 (October 15, 1998).

56.7.7 Pre-Retirement Optional Settlement 2 Death Benefit as provided in Section 21548 (November 6, 1998).

56.7.8 Military Service Credit as Public Service as provided in Section 21024 (November 6, 1998).

56.8 Classic Employees' Pension Contribution

Effective July 1, 1994, the City increased the base salary of employees by nine percent (9%). Employees then assumed and shall continue to assume an obligation to pay this 9% normal employee contribution retirement to CalPERS. Employees also contributed three percent (3%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis from July 1, 2012 through June 30, 2015. The City and Association agree that, effective January 1, 2016 employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

56.9 New Members' Pension Contributions

New Members hired on or after January 1, 2013, shall pay 50% of the normal share of cost required by PEPPRA. The City and Association agree that, effective January 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

## ARTICLE 9 - LAYOFF PROCEDURE

### SECTION 57: LAYOFF POLICY

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

#### 57.1 Announcement of Layoff

57.1.1 The City Council, City Manager, and the Chief of Police shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to layoff career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, a material change in duties and organization, adverse working conditions, return of employees from leaves of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

57.1.2 Immediately following a decision which may involve the potential layoff of career employees, the City Manager shall freeze all current vacancies in the Police Department service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, or temporary (see glossary) positions which are expected to last six (6) months or more, and notify the department head that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 57.6.

#### 57.2 Seniority Service Date

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

57.2.2 All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.

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

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

### 57.3 Establishment of Seniority Lists

57.3.1 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.

57.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in Section 57.4 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.

57.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.

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

### 57.4 Employee Retreat Rights

57.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classifications through which he or she was originally promoted or any subsequently created intermediate-level career classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

57.4.2 In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from a combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent Identification Expert will be available only to employees who have previously held such ranks on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions.

57.4.3 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.

57.4.4 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.

## 57.5 Employee Notification

57.5.1 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.

57.5.2 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.

57.5.3 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 day notification if targeted for release, reassignment, or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after receipt of the offer, the employee forfeits further right to employment retention. Acceptance of a reassignment or retreat does not remove the right of appeal under Section 57.9.

## 57.6 Flexible Placement Program

57.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 57.1, 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.

57.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff or retreat have been identified and the provisions under Section 57.3 and 57.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.

57.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.

57.6.4 Offers to positions under the Flexible Placement Program shall be made according to City seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 57.3. 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.

57.6.5 If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after receipt of the offer, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 57.7.

## 57.7 Reemployment Lists

57.7.1 The names of all probationary and permanent employees released or retreated from positions in the competitive service as a result of layoff or retreat must be placed on reemployment priority lists for those classifications from which the employee was removed, as well as all other classifications to which they have retreat rights in accordance with Section 57.4.

57.7.2 The reemployment priority list for employees who were laid off shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.

57.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.

56.8.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.

57.7.5 If a former employee fails to accept a bona fide written offer of reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer to reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was original terminated.

57.7.6 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.

#### 57.8 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."

#### 57.9 Appeal Procedures

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

#### 57.10 Audit

57.10.1 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 57.7. In the event vacancies for which reemployment priority lists are in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear

to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

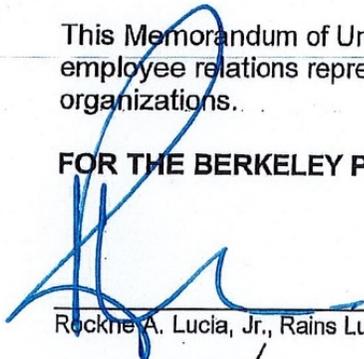
- 57.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally to fill the vacancy shall continue to be retained in City employment.

SIGNATURE PAGE

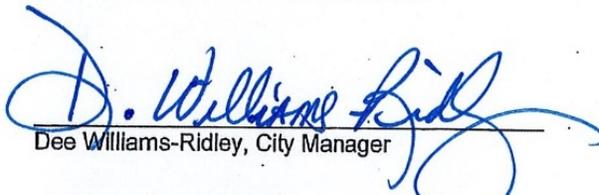
This Memorandum of Understanding is executed this 31st day of July, 2018, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

FOR THE BERKELEY POLICE

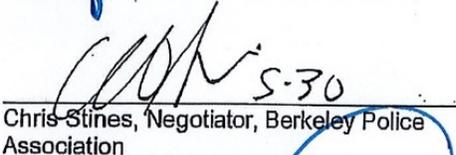
FOR THE CITY OF BERKELEY



Rockne A. Lucia, Jr., Rains Lucia Stern, PC



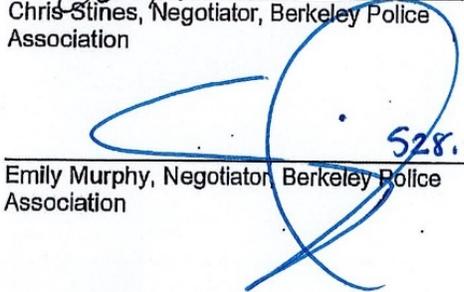
Dee Williams-Ridley, City Manager

 5-30

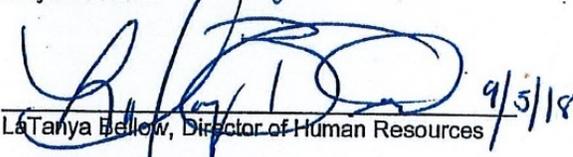
Chris Stines, Negotiator, Berkeley Police Association

 9/5/18

Eddie Kreisberg, Principal Meyers I Nave

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Emily Murphy, Negotiator Berkeley Police Association

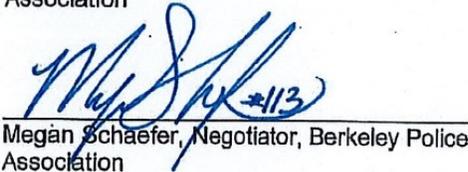
 9/5/18

LaTanya Bellow, Director of Human Resources

Daniel Breaux, Negotiator, Berkeley Police Association

 9/19/18

Andrew Greenwood, Police Chief

 \*113

Megan Schaefer, Negotiator, Berkeley Police Association

 9-5-18

Margarita Zamora, Employee Relations Manager

**EXHIBIT A**

<b>Hourly Salary Schedule as of January 1, 2018</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	78.8681	81.5017	84.1952	87.0244	89.9210
Police Lieutenant	68.8383	71.1109	73.4734	75.8959	78.4393
Police Officer (Steps A-E)	45.5287	47.6427	49.8625	51.4803	53.1432
Police Officer (Steps F-G)	54.8888	56.6644			
Police Sergeant	57.4016	59.2828	61.2317	63.2556	65.3473

<b>Hourly Salary Schedule as of August 12, 2018 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	82.0228	84.7618	87.5630	90.5054	93.5178
Police Lieutenant	71.5918	73.9553	76.4123	78.9317	81.5769
Police Officer (Steps A-E)	47.3498	49.5484	51.8570	53.5395	55.2689
Police Officer (Steps F-G)	57.0844	58.9310			
Police Sergeant	59.6977	61.6541	63.6810	65.7858	67.9612

<b>Hourly Salary Schedule as of July 16, 2019 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	85.3037	88.1523	91.0655	94.1256	97.2585
Police Lieutenant	74.4555	76.9135	79.4688	82.0890	84.8400
Police Officer (Steps A-E)	49.2438	51.5303	53.9313	55.6811	57.4797
Police Officer (Steps F-G)	59.3678	61.2882			
Police Sergeant	62.0856	64.1203	66.2282	68.4172	70.6796

<b>Hourly Salary Schedule as of January 12, 2020 (One Percent (1%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	86.1567	89.0338	91.9762	95.0669	98.2311
Police Lieutenant	75.2000	77.6826	80.2635	82.9099	85.6884
Police Officer (Steps A-E)	49.7362	52.0456	54.4706	56.2379	58.0545
Police Officer (Steps F-G)	59.9615	61.9011			
Police Sergeant	62.7065	64.7615	66.8905	69.1014	71.3864



## EXHIBIT C

### GLOSSARY

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

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

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

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

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

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

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

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

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

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

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

**Jury Duty Period:** The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such

service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

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

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

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

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

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

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

**Reemployment:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 55.7 of the Layoff section in this Understanding.

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

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

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

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

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

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

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

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

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

**Tentative Agreement re: Extension Agreement**

**Between**

**City of Berkeley**

**And**

**Berkeley Police Association**

The City of Berkeley (“City”) and the Berkeley Police Association (“BPA”; collectively “the Parties”), hereby agree to extend the July 1, 2017 to June 30, 2020 Memorandum of Understanding (“MOU” or “Agreement”) for a period of one year, until June 30, 2021, with no change in compensation or terms, except as set forth below:

- If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows:
  - “The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City’s discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.”
- The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinances, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of bargaining, to informally consult upon the request of the Union to receive input regarding the impact of such changes.
- The parties agree to meet at least quarterly to discuss changes in the City’s financial condition.
- This agreement shall be subject to ratification by the BPA and the City Council.
- The Parties agree to work cooperatively to negotiate the rules of procedure governing the conduct of the Police Accountability Board with the goal of completing negotiations no later than June 30, 2021.

The purpose of this extension agreement is to permit additional time to assess the financial effects of the COVID-19 epidemic on the City prior to negotiating a successor MOU. Upon mutual agreement, the Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.

IN WITNESS WHEREOF, the parties hereto have executed this Extension Agreement on June \_\_\_\_, 2020.

**For the City of Berkeley:**

**For the Berkeley Police Association:**

Signed/Dated: \_\_\_\_\_

Signed/Dated: \_\_\_\_\_

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Dee Williams-Ridley, City Manager

Emily Murphy, President

Signed/Dated: \_\_\_\_\_

Signed/Dated: \_\_\_\_\_

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LaTanya Bellow, Director of Human Resources

Scott Salas, Vice President

Signed/Dated: \_\_\_\_\_

Signed/Dated: \_\_\_\_\_

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Andrew Greenwood, Chief of Police

Daniel Morales, Board Director

Approved as to form by:

Approved as to form by:

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Jonathan V. Holtzman

Rockne Lucia

