

Memorandum of Understanding  
Between the  
City of Oakland  
And  
International Brotherhood of Electrical Workers, Local 1245

July 1, 2002 to June 30, 2008

## **PREAMBLE**

We the undersigned, duly appointed representatives of the City of Oakland and of the International Brotherhood of Electrical Workers, Local 1245, a recognized unit member organization, hereinafter referred to as "City" and "Union", having met and conferred in good faith, and having agreed on certain recommendations to be submitted to the City Council of the City of Oakland, do hereby jointly prepare and execute on the \_\_\_ day of January, 2003, the following written Memorandum of Understanding. It is understood that the provisions herein set forth and as modified in Appendix C supersede previous Memoranda of Understanding between City and Union and apply to City of Oakland unit members officially designated to be members of Representation Unit IE1 -- Electrical Workers and part-time City of Oakland unit members officially designated to be members of Representation Unit TV1 -- Part-time Electrical Workers, represented by Union.

## **ARTICLE 1 - GENERAL PROVISIONS**

### **1.1 Recognition.**

The City agrees to recognize the Union as the exclusive recognized bargaining representative, within the scope of representation as described in the Meyers-Milias-Brown Act, as amended, and the Unit member Relations Rules adopted by the City Council, of Unit IE1 - Electrical Workers, composed of the following classes: Electrician Helper, Electrician, Electrician Leader, Telecommunications Electrician, Senior Telecommunications Electrician and Telecommunications Technician; and Unit TV1 - Part-Time Electrical Workers, composed of the classification of Part-time Electrician as set forth in Appendix C.

## **ARTICLE 2 - NONDISCRIMINATION**

### **2.1 Discrimination Prohibited.**

The City and the Union agree that they shall not discriminate in any way within the meaning of the law, on account of race, color, creed, religion, sex, national origin, political affiliation, age, sexual orientation, or disability, Acquired Immune Deficiency Syndrome ("AIDS"), AIDS Related Complex ("ARC"), or marital status of a member legally qualified to perform the job. The City further agrees that no unit member shall be discriminated against because of Union membership, or protected union activity.

### **2.2 Reasonable Accommodation**

The City will make reasonable accommodation for a unit member's known physical or mental disability unless the City demonstrates that the proposed accommodation will produce undue hardship to the City's operation or that the City is otherwise not obligated to accommodate the unit member. Reasonable accommodations will be consistent with provisions of this MOU and of Civil Service Rules that affect the unit member being accommodated to the extent the law at the time the accommodation is implemented permits. At the request of the Union, the City agrees to discuss a proposed unit member accommodation with the Union.

## **ARTICLE 3 – UNION RIGHTS**

### **3.1 Bulletin Board Space.**

The City shall provide reasonable space on bulletin boards for official Union notices of a non-controversial nature at each central work area.

### **3.2 Meeting Space.**

The City shall reasonably make available conference rooms and other meeting areas for the purpose of holding Union meetings during off-duty time periods. The Union shall provide timely advance notice of such meetings. The Union agrees to pay any additional costs of security, supervision, damage and clean-up, and shall comply with City regulations for assignment and use of such facilities.

### **3.3 Inter-Office Mail Service**

Union shall be allowed reasonable use of City inter-office mail service for the distribution of non-controversial written materials for the information of stewards and officers, with proper identification of the addressees by the Union.

### **3.4 Union Access to Work Locations.**

Union officers and representatives shall be granted reasonable access to unit member work locations, upon the consent of the department head or his/her designated representative, for the purpose of contacting members concerning business within the scope of representation. Access shall be granted only if it does not interfere with work operations or with established safety and security requirements.

### **3.5 Union Stewards.**

The City and Union agree that good labor relations are fostered and maintained through prompt, decisive and fair adjustment of individual grievances at the lowest possible administrative level.

#### **3.5.1 Number of Stewards.**

The Union may select a reasonable number of stewards in each geographic work location. The Union shall provide a current list of stewards, regularly updated, to the City, showing unit member name, classification, department, and work location. The City shall provide Union with a copy of its current instruction recognizing stewards designated by the Union.

### **3.5.2 Scope of Stewards.**

A steward may represent a member of the units covered by this Memorandum at the appropriate level of the grievance procedure concerning a dispute of the rights of the unit member under the terms of this Memorandum within the scope of representation. Stewards shall have the right, upon the request of the unit member involved, to represent such unit member in a review of the unit member's performance evaluation. This right of representation does not include the initial discussion between the unit member and the supervisor who prepared the evaluation, but it is clearly understood that each unit member has the right thereafter to request a review of his/her performance evaluation with the steward present. A steward shall also have the right, upon the request of the unit member involved, to represent the unit member at a disciplinary "Skelly" meeting. The City shall include in the "Skelly" notice of intent letter that the unit member may, if the unit member wishes, be represented at the "Skelly" meeting by a Union representative.

### **3.5.3 Steward Time Off.**

A steward shall be allowed reasonable time off for the purposes defined in Section 3.5.2, above, with the approval of his/her department head. It is recognized that performance of the steward's job duties comes first.

## **3.6 Union Security.**

### **3.6.1 Dues Deduction.**

The City shall deduct, biweekly, the amount of Union regular and periodic dues and service fees as may be specified by the Union under the authority of an authorization card furnished by the Union and signed by the unit member.

The deductions together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office. Dues shall be deducted only for members of the Union within the represented units.

At the time of initial employment, the City shall distribute to new unit members Union-prepared information about Agency fee and Union-prepared payroll deduction forms. Each pay period, the City shall provide the Union with a list of newly hired unit members.

## **3.6.2 Agency Fee**

### **3.6.2.1 Condition of Employment**

Any bargaining unit member who is not a member of the Union, or who does not make application for membership within ten (10) working days from the date of commencement of assigned duties within the bargaining unit, shall as a condition of continued employment in the City become a member of the Union or pay the Union an agency fee. A unit member may authorize payroll deduction for the amount of the agency fee as described in Section 3.6.1 of this Agreement. If a bargaining unit member has not authorized a payroll deduction within ten (10) working days from the date of commencement of assigned duties within the bargaining unit, the City shall immediately begin automatic payroll deduction.

### **3.6.2.2 Agency Fee Exemption**

Unit members who certify that they hold good faith religious beliefs that oppose membership in, or financial contributions to, labor organizations shall not be required to join or financially support the Union as a condition of employment. In lieu of the agency fee, or Union dues obligation, these unit members shall be required to contribute an amount equal to the agency fee to one of the following non-religious, non-labor charities exempt from taxation under IRS Section 501(c)(3): (1) Friends of the Oakland Public Library; (2) Friends of the Asian Branch Library; (3) Friends of Oakland Parks and Recreation; (4) the Oakland Museum Foundation; or, (5) Friends of Oakland Seniors.

### **3.6.2.3 Union's Obligations**

The service fee payment shall be established annually by the Union, provided that this agency shop service fee will be used by the Union only for the purposes of collective bargaining, contract administration, and matters authorized by law.

The Union will comply with all applicable agency fee laws and regulations. Annually the Union will provide an explanation of the fee and sufficient financial information to enable the service fee payer to gauge the appropriateness of the fee. The Union will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the Union and will make provision for an escrow account to hold

amounts reasonably in dispute while challenges are pending.

**3.6.2.4 Indemnification**

The Union shall indemnify and save harmless the City, its officers and unit members, from and against any and all loss, damages, costs, expenses, claims, attorneys' fees, demands, actions, suites, judgments, and other proceedings arising out of any action relating to this provision.

**3.7 Distribution of Information.**

**3.7.1 State of California Worker's Compensation Information.**

The City shall distribute literature to each new unit member clearly describing the rights and benefits of all unit members under State of California Workers' Compensation laws.

**3.7.2 On-the-job Injury Fact Sheet**

The City agrees to continue using the "On-the-job Injury Fact Sheet" by distributing it at new unit member orientations and making a supply available to the Union for distribution as the Union deems appropriate. Further, the City will mail a copy of the On-the-job-injury Fact Sheet to injured unit members when their injury has been reported in accordance with established City procedures.

**3.7.3 Union Information**

**3.7.3.1** Upon the Union's specific written request and provided that the disclosure does not violate state or federal law, the City shall provide all information that is necessary and relevant for the Union to discharge its representation. Relevant and necessary information shall be determined by applying PERB regulations. Relevant and necessary information includes but is not limited to a list of all unit members, their names, home addresses, work addresses, rates of pay, and salary schedule information.

**3.7.3.2** The City agrees to make reasonable efforts to provide orientation regarding Oakland City government and unit member benefits to newly hired unit members within sixty (60) days of commencement of employment.

**3.7.3.3** The City shall provide the Union with copies of any Administrative Instruction or Administrative Bulletin, periodically issued by the City, which applies to unit members.

**ARTICLE 4 – CITY RIGHTS**

**4.1** This article, which relates to subjects covered in the Employee Relations Rules, Resolution No. 55881 C.M.S., is included in this Agreement in order to provide explanatory information agreed to be desirable by the parties. Including this Section shall in no way affect the City's rights, established by the Meyers-Milias-Brown Act as amended, which Act sets forth the basis, substantive and procedural, under which the City Council adopted the Rules.

## **ARTICLE 5 – COMPENSATION**

### **5.1 Salary Schedules.**

**5.1.1** Wages for represented unit members covered by this Agreement Memorandum shall be increased by six percent (6.0%) effective July 6, 2002; three percent (3%), effective June 21, 2003; one percent (1%), effective July 3, 2004; four percent (4%), effective July 2, 2005; four percent (4%), effective July 1, 2006; four percent (4%), effective June 30, 2007.

### **5.3 Salary Deductions.**

#### **5.3.1 Adjustments for Overpayments.**

In the event the City erroneously overpays a unit member, regardless of fault, the City shall recover overpayment as described in Section 5.3.1.1 or 5.3.1.2.

**5.3.1.1** If the City notifies the unit member of the overpayment before the end of the pay period following the overpayment and gives the unit member a correct paycheck, the unit member shall, within five (5) calendar days of receiving the notice of overpayment and the correct paycheck, return to the City the full amount of the overpayment.

**5.3.1.2** If the City notifies the unit member of the overpayment after the end of the pay period following the overpayment, the City shall recover the overpayment by deducting from that unit member's regular paycheck either the full amount of the overpayment or ten (10) percent of the unit member's gross salary, whichever is less, and continue said deductions for as many consecutive pay periods as is necessary until full overpayment is recovered. The City shall not commence recovery by payroll deductions until written notification, which includes all the details of the overpayment, the amount of overpayment and the schedule of repayment, has been given to the unit member at least ten (10) working days in advance.

#### **5.3.2 Court Ordered Salary Deductions**

If a court of competent jurisdiction orders the City to garnish the wages of any unit member or if a court of competent jurisdiction orders the City to make payroll deductions from the unit member's wages in favor of the City or a third party, the City shall assess and collect against the unit member's regular salary one dollar (\$1.00) per deduction per pay period to compensate the City for the costs of making such court-mandated payroll adjustments.

## **5.4 Salary Steps.**

### **5.4.1 Initial Salary.**

A unit member's initial salary shall be the salary attached to the lowest rate of the salary schedule established for the classification to which the unit member is appointed; provided, however, that the appointing authority may appoint a new unit member at any step in the applicable salary schedule for the classification involved if there has been unusual difficulty in recruiting competent unit members at the lowest rate of said salary schedule and the higher rate is commensurate with the appointee's education and experience.

### **5.4.2 Minimum Salary Increase When Promoted.**

Whenever a unit member is promoted to a position of higher salary schedule within the same classification series, the unit member shall receive compensation at the salary schedule for the new position that represents a minimum of one rate increment over the amount the unit member received in the former position; provided, however, that the appointing authority, with discretion and for good cause, may provide for compensation at any step in the applicable salary schedule for the classification involved if the unit member has demonstrated outstanding achievement in the public service.

### **5.4.3 Salary Steps.**

Advancement within the salary schedule specified for a unit member's classification shall be on the basis of one (1) year's satisfactory service, as evidenced by a performance evaluation in the classification, without having received during that one year a step increase in salary. A salary step increase for a unit member who is entitled to such an increase shall be effective at the beginning of the pay period closest to the anniversary date of appointment in such classification falls, provided, however, that an unit member who has demonstrated outstanding achievement in the public service may receive a step increase at an interval other than set forth above.

## **5.5 Premium Pay.**

### **5.5.1 Overtime.**

Whenever, in the judgment of an authorized City official, a unit member is required to work in excess of the regular work week for his/her classification, he/she shall be compensated for such overtime worked at the rate of one and one-half (1-1/2) times the hourly rate of pay for his/her classification.

#### **5.5.1.1 Compensatory Leave.**

City agrees to credit each unit member with sixteen (16) hours compensatory leave at the beginning of the pay period that includes July 1 during each year of this agreement. Said compensatory leave shall be used within the fiscal year in which it is credited.

#### **5.5.2 Minimum Overtime Guarantee.**

When an authorized City official requires a unit member to report to work on the unit member's day off or requires a unit member to return to work after the unit member has completed the unit member's regular shift and has left the City work site; the City shall compensate the unit member for at least two and one-half hours at the rate of one and one-half times the hourly rate of pay for the unit member's classification.

When an authorized City official requires a unit member to work overtime contiguous to the unit member's regular shift, the City shall compensate the unit member at the overtime rate of pay for the time actually worked, with no minimum number of hours guaranteed.

#### **5.5.3 Shift Differential.**

Whenever in the judgment of the department head it is deemed necessary for any unit member to work a night shift, such unit member shall be paid an additional five percent (5.0%) of their hourly rate of pay.

"Night Shift" is defined, for the purposes hereof, as five or more hours between the hours of 5 p.m. and 8 a.m.

#### **5.5.4 Acting Pay.**

Any unit member who has been assigned, in writing by his/her department head, and who, pursuant to such assignment, does assume and perform all of the ordinary day-to-day duties and responsibilities of a position of a higher classification other than his/her own for one (1) or more consecutive working days shall be paid an additional six percent (6.0%) of the hourly rate of pay of his/her own classification for such time worked in a higher classification. It is expressly understood that an unit member who acts in a position of higher classification under this provision, for a consecutive period of thirty (30) calendar days or less, shall not receive acting pay during any period(s) of paid leave occurring during his/her acting assignment. However, an unit member who acts in a position of higher classification, under this provision, for a consecutive period in excess of thirty (30) calendar days shall receive acting pay during period(s) of paid leave occurring during his/her acting assignment, commencing on the

thirty-first day of the acting assignment and continuing until said acting assignment is terminated.

#### **5.5.5 Premium Pay During Paid Leave.**

Notwithstanding Article 5.5.4, above, shift differential and other regular premium pay shall continue to be paid during vacation leave, and during sick leave up to a total of thirty (30) calendar days, for an unit member who is then regularly assigned to a position in which he/she is eligible for such differential or premium pay.

#### **5.5.6 No Pyramiding.**

There shall be no "pyramiding" of premium and/or overtime pay, unless otherwise provided herein, except that this provision shall not apply to unit members receiving overtime in accordance with the provisions of the Fair Labor Standards Act.

### **5.6 Allowances.**

#### **5.6.1 Meal Allowance.**

**5.6.1.2** Each unit member who, when directed to do so, works continuously two (2) hours or more immediately before or after his/her regular shift working day shall be paid a meal allowance of ten dollars and seventy-five cents (\$10.75). If the unit member continues to work beyond the first two (2) hours, and the work is not a part of his/her regular shift, he/she shall be paid an additional meal allowance of ten dollars and seventy-five cents (\$10.75) for each successive two (2) hour period so worked.

**5.6.1.3** Each unit member who is directed to return to work overtime within fewer than twenty-four (24) hours after the unit member has completed his/her regular shift and has left his/her place of employment, and who so works four (4) hours or more shall be paid a meal allowance of ten dollars and seventy-five cents (\$10.75). Unit members shall be paid an additional meal allowance of ten dollars and seventy-five cents (\$10.75) for each successive four (4) hour period continuously so worked.

**5.6.1.3** Each unit member who is scheduled to work overtime on his/her scheduled day off with fewer than twenty-four (24) hours advance notice and who so works four (4) hours shall be paid one meal allowance of ten dollars and seventy-five cents (\$10.75). In the event the unit member continues to work on his/her scheduled day off for a total of more hours than his/her normal shift working day, he/she shall be paid such

additional meal allowance(s) as may be appropriate under the formula described in the provisions of subparagraph (a) above.

It is expressly understood that, under the above provisions, meal allowances shall not be paid for overtime which is scheduled at least twenty-four (24) hours in advance where such work is not an extension of the regular workday or in those instances where the City furnishes meals.

**5.6.2 Safety Shoe Allowance.**

For each unit member required by the City to wear safety shoes, the City shall provide a voucher from the City-designated department for up to \$100 annually toward the cost of acquiring one pair of safety shoes through the City vendor. Effective January 1, 2005, the City shall provide a voucher from the City-designated department for up to \$115 annually toward the cost of acquiring one pair of safety shoes through the City vendor.

## **ARTICLE 6 - INDIRECT PAY AND ALLOWANCES** c

### **6.1 Retirement Contributions.**

The City shall contribute to the Public Employee's Retirement System (PERS), the designated percent of the regular salary for the unit member's retirement purposes, as determined in accordance with applicable state law, on behalf of each unit member. In addition, the City agrees to pick up the unit member's normal contribution to PERS which shall be credited to each individual unit member's PERS Account. In addition, the City agrees that this seven percent (7%) employer paid member contribution shall be reported to PERS as "special compensation" as provided under Government Code Section 20023(c)(4) pursuant to Section 20615.

Each unit member is solely and personally responsible for any federal, state or local tax liability of the unit member that may arise out of receipt of said pick up by the City or any penalty that may arise out of receipt of said pick up by the City or any penalty that may be imposed therefor.

Under the Public Unit members' Retirement System, the City currently provides the following optional benefits:

#### **6.1.1 Military Service Credited as Public Service.**

Up to four (4) years of military service can be granted for time during which a member served continuously with the active armed forces or the Merchant Marines including any period of rehabilitation, plus six (6) months thereafter. The unit member is required to contribute unit member and employer contributions except that service rendered prior to September 1, 1970 may be granted at no cost to the unit member.

#### **6.1.2 One Year Final Compensation.**

The retirement allowance of a unit member is based on the twelve (12) highest paid consecutive months under this plan.

**6.1.3 Automatic One-Half Continuance.**

The beneficiary receives one-half the amount of the retiree's allowance after the death of the retired unit member with no reduction in retirement allowance during the life of the retired unit member.

**6.1.4 Post-Retirement Survivor Allowance To Continue After Remarriage.**

If a surviving spouse remarries on or after January 1, 1985, the one-half survivor continuance allowance will not cease.

**6.1.5 2% At 55.**

Effective July 1, 1992, the City's contract with PERS provides the 2% at 55 plan for all unit members. The City shall make the employer contribution to PERS for each unit member. In addition the City shall pay 4% of the "unit member" contribution for each unit member. With state and federal income tax on the "unit member" contribution deferred to the extent permitted by law, each unit member shall pay through payroll deductions 3% of the "unit member" contribution. Except as specifically stated in this Section, the City shall pay for any increase in the employer rate and shall retain any savings from a decrease in the employer rate and for contribution credits (rebates) from PERS.

**6.1.6 2.7% At 55.**

Effective July 1, 2004, the City's contract with PERS shall be amended to provide the 2.7% at 55 plan for all unit members. The City shall make the employer contribution to PERS for each unit member. In addition the City shall pay 5% of the "unit member" contribution for each unit member. The City agrees that this five percent (5%) employer paid member contribution shall be reported to PERS as "special compensation" as provided under Government Code Section 20023(c)(4) pursuant to Section 20615. With state and federal income tax on the "unit member" contribution deferred to the extent permitted by law, each unit member shall pay through payroll deductions 3% of the "unit member" contribution. Except as specifically stated in this Section, the City shall pay for any increase in the employer rate and shall retain any savings from a decrease in the employer rate and for contribution credits (rebates) from PERS.

**6.2 Insurance Programs.**

**6.2.1 Medical Insurance.**

**6.2.1.1 Medical Insurance Under PEMHCA.**

City agrees to maintain its contract with the Public Unit members' Retirement System (PERS) providing medical insurance coverage through the Public Unit members' Medical and Hospital Care Act (PEMHCA) plans. Eligibility of active unit member's and retired unit members to participate in this program shall be in accordance with state law and regulations promulgated by PERS.

**6.2.1.2 City Contribution to PERS.**

The City shall pay directly to PERS twenty dollars (\$20.00) per month as a contribution towards the PEMHCA plan medical insurance premium for each active unit member and retired unit member who elects to enroll in a PHEMCA medical plan.

**6.2.1.3 Change in PERS Regulations.**

In the event PERS requires additional employer payment in excess of twenty dollars (\$20.00) per month referenced above, the City shall not be bound by any obligation under Article 6.2.1 and 6.3, but rather the parties shall meet and confer regarding restructuring the provisions of Article 6.2.1 and 6.3 provided that, for a reasonable time period to allow for meeting and conferring, the City shall continue the benefits under these Sections B and C.

**6.2.2 Other Benefits for Active Unit members.**

**6.2.2.1 Dental Plan.**

The City shall contribute an amount equal to one hundred percent (100%) of the cost of unit member and dependent coverage in the City dental plans which include orthodontia and a preferred provider option. For the purpose of this provision, "dependent" shall include domestic partners of unit members who have filed a Declaration of Domestic Partnership in accordance with established City policy.

**6.2.2.2 Vision Care.**

City agrees to provide unit member and dependent coverage in the established City vision care plan (Plan C, \$10 deductible). For the purpose of this provision, "dependent" shall include domestic partners of unit members who have filed a Declaration of Domestic Partnership in accordance with established City policy.

### **6.2.2.3 Life Insurance.**

City agrees to provide a term life insurance policy for each full-time unit member equal to one times the unit member's annual salary, including an accidental death and dismemberment benefit of equivalent amount.

### **6.2.2.4 Deferred Compensation.**

A unit member may enroll in the City's deferred compensation program.

### **6.2.2.5 State Disability Insurance.**

City agrees to cover unit members under the State of California Disability Insurance (SDI) Program. Premiums for such coverage will be paid by the City. SDI will be integrated with sick leave consistent with State law.

### **6.2.2.6 Dependent Care Assistance Program.**

The City shall maintain a Dependent Care Assistance Program (DCAP) for unit members covered by this Agreement. If the City, in its sole discretion, determines that administration of the program will require the services of an outside entity or contractor that charges participating unit members a fee for implementing DCAP deductions and/or payments, those unit members shall in that event be responsible for paying that fee.

## **6.2.3 Medical and Dependent Care Reimbursement Plan**

The City shall maintain a salary reduction plan as provided by Section 125 of the Internal Revenue Service Code permitting permanent unit members to designate a portion of their annual salary to be withheld and subsequently used to provide pre-tax reimbursements for verified medical (MCAP) and dependent care (DCAP) expenses, subject to the rules of the IRS and governing regulations.

If a unit member receives medical insurance coverage through their spouse or partner, signs the City form electing not to receive City paid medical coverage, and provides the City with satisfactory proof of insurance coverage, the unit member shall receive one of either:

- \$125 per month in cash; or
- \$125 per month City contribution into the unit member's DCAP or MCAP account.

Effective January 1, 2004, the monthly in-lieu amount shall be increased to \$135.00. Effective January 1, 2005, the monthly in-lieu amount shall be increased to \$145.00. Effective January 1, 2006, the monthly in-lieu amount shall

be increased to \$150.00. Effective January 1, 2007, the monthly in-lieu amount shall be increased to \$160.00.

**6.2.4 Maximum Reimbursement Amounts**

The maximum annual amount that may be deducted from a unit member's annual salary for reimbursement of non-medical dependent care expenses is \$5,000. The maximum amount that may be deducted from the unit member's annual salary for reimbursement of personal and dependent medical expenses is \$5,000. All medical and dependent care expenses for which reimbursement is requested must comply with the requirements of the IRS code.

**6.2.5 Administrative Fees**

If the City in its sole discretion, determines that administration of the program will require the services of an outside entity or contractor that charges a fee for administering DCAP and MCAP deductions and reimbursements, participating unit members shall be responsible for paying that fee.

**6.2.6 Full Medical Insurance Comparable to Rate Charged Under PEMHCA Kaiser North Plan.**

For active unit members enrolled in a PEMHCA medical insurance plan, the City shall pay to PERS an amount of money on behalf of the unit member which, when combined with the amount stated in 6.2.1.2., shall be the equivalent to one hundred percent (100%) of the premium cost of the Kaiser North Health Plan. If a unit member chooses to participate in a PEMHCA plan which is more expensive than the Kaiser North Health Plan, the unit member shall pay the additional cost.

**6.2.7 Retiree Benefit.**

Any unit member who retires from the City on or after January 1, 1987, who has ten years or more of service with the City in either a permanent full-time or permanent part-time position, and who enrolls in a PERS PEMHCA plan shall receive for such time as they maintains their enrollment in a PEMHCA health plan the following benefit:

Effective January 1, 2000: the lessor of a monthly payment of four hundred twenty-five dollars and forty-two cents (\$425.42) or one hundred percent (100%) of the unit member's PEMHCA plan premium computed by combining the provisions of 6.2.1.2 above with this benefit.

The above payments shall be made on a quarterly basis. The City shall provide the option of direct deposit if it becomes available for this benefit. The obligations set forth in this subsection shall be subject to the following conditions:

**6.3.1** Each person receiving the benefit shall be responsible for payment of federal, state and local taxes, if required. The City shall not withhold taxes when awarding this benefit unless otherwise required to do so by a governmental taxing agency and shall not be obligated by this Agreement to issue a 1099 to persons receiving this benefit.

**6.3.2** Each person receiving the benefit shall be obligated to notify the City within thirty (30) days of the retiree's and/or eligible family member's eligibility for Medicare.

**6.3.3** An eligible family member of PEMHCA coverage who survives the death of a retiree shall continue to receive this benefit as long as it is allowed by PERS, as long as the survivor remains enrolled in a PERS plan, and as long as the survivor has been designated to receive the survivor's benefit under PERS and is receiving the survivor's benefit under PERS.

## ARTICLE 7 – LEAVES OF ABSENCE

### 7.1 Sick Leave.

#### 7.1.1 Accrued Leave Status.

City agrees to provide regularly to each unit member on his/her paycheck stub an unofficial record of his/her current accrued leave. Verification of a unit member's official accrued leave record will be provided upon receipt of a reasonable request for such verification by the City.

#### 7.1.1.1 Annual Earned Sick Leave.

Unit members shall accrue sick leave on a biweekly basis at the rate of one (1) full working day per month of service to the City, except that sick leave shall not be credited until the completion of the first three months of service.

#### 7.1.1.2 Accumulated Earned Sick Leave.

Sick leave with pay that is not used shall be cumulative. Sick leave credits may be accumulated, not to exceed one hundred and fifty (150) working days.

#### 7.1.1.3 Use of Sick Leave.

##### 7.1.1.3.1 Minimum Usage

Sick leave may be used in minimum increments of one (1) hour.

##### 7.1.1.3.2 Family Illness.

Each unit member who is otherwise eligible to take sick leave may, in the event of serious illness in his/her immediate family, take a maximum of twelve (12) working days' family sick leave in any calendar year. Such family sick leave shall be charged against the unit member's accumulated sick leave credits and is subject to acceptable medical verification. For the purposes of this provision, immediate family shall be defined as mother, father, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, grandchildren in the custody of grandparents who are unit members, and

domestic partners of unit members who have filed a Declaration of Domestic Partnership, in accordance with established City policy. Serious illness for this purpose shall mean a critical or terminal illness of a member of the immediate family. In lesser family illnesses the unit member may use family sick leave only for the limited time necessary to make arrangements for the care, and if the unit member undertakes the care himself/herself, the time beyond that shall be charged to vacation or leave without pay.

This section does not extend the maximum period of leave to which a represented unit member is entitled under the Family and Medical Leave Act of 1993 (29 U.S.C. Section 2606, et seq.), the California Family Rights Act (Government Code Section 12945.2) and City policies implementing these Acts, regardless of whether the represented unit member receives sick leave compensation during that leave. (See Labor Code Section 233.)

**7.1.1.3.3 Performance Evaluation.** Where it is clearly established that sick leave was taken for a valid reason and is of a protracted nature (e.g., industrial injury, sickness or injury with confinement of more than ten (10) days' duration, etc.), said absence shall not be taken into account in the performance evaluation.

**7.1.1.3.4 Annual Sick Leave Sell-Back/Conversion**

Unit members may sell back a portion of their unused sick leave or convert it to additional days of vacation, provided that the unit member must have a minimum of sixty (60) days of accumulated sick leave at the beginning of the calendar year (January 1). The unit member may exercise one of the following options during the month of January:

- (1) Accumulate sick leave credits to the one hundred and fifty day (150) maximum; or,
- (2) Convert sick leave earned in excess of the basic requirement of sixty (60) days to vacation ratio of two (2) sick leave days to one (1) day of vacation up to a maximum of six (6) vacation days.
- (3) Sell back sick leave earned in excess of the basic

requirement of sixty (60) days, at the ratio of two (2) sick leave days to one (1) days of pay, up to maximum of six (6) days pay.

**7.1.1.3.5 Sick Leave Buy-Back – Leaving City**

City agrees to compensate, in cash, unit members leaving City service after ten (10) cumulative years of employment, uninterrupted by a single period of absence in excess of one (1) year, for thirty-three and one-third percent (33 – 1/3%) of accrued sick leave.

**7.1.1.3.6 Verification Of Leave**

When a unit member has been absent under personal illness for more than five consecutive working days or has established a pattern of personal illness exceeding 20 working days in one work year, the City is authorized to request that the unit member have a physical examination by a City selected physician and a certification by that physician of the unit member's physical fitness to return and continue the duties requisite to employment. The City will pay the cost of this examination and certification.

**7.1.1.3.7 Return To Work**

If requested by the City management, a unit member shall not return to work until she/he submits a medical doctor's authorization to return to work. The City will pay for the cost of any portion of the certification requested by the City that is not paid by medical insurance.

**7.1.2 School Activities Leave**

The City shall permit a unit member who is a parent, guardian, or grandparent having custody of a child in kindergarten or grades 1 to 12, inclusive, or attending a licensed child day care facility, to take up to 40 hours each year, not exceeding eight hours in any calendar month of the year, to participate in activities of the school or licensed child day care facility of any of the unit member's children. Unit members must give their supervisor notice at least four workdays prior to the planned absence.

The unit member shall use existing vacation, personal leave, compensatory time off, or time off without pay for purposes of the planned absence described in this section.

If requested by the unit member's supervisor, the unit member shall provide documentation from the school or licensed child day care facility as proof that the unit member participated in school or licensed child day care facility activities on a specific date and at a particular time.

### **7.1.3 Family Death Leave**

#### **7.1.3.1 Definition of Immediate Family**

For purposes of this provision, immediate family shall be defined as mother, father, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandchild, father-in-law, mother-in-law, and domestic partners of unit members who have filed a Declaration of Domestic Partnership in accordance with established City policy, and parents and children of the domestic partner.

#### **7.1.3.2 Entitlement.**

Upon approval of the department head or his/her designated representative, an unit member may be granted family death leave with pay not to exceed five (5) working days. In special circumstances, involving exceptional hardship, the department head or designated representative may consider granting family death leave under this provision to affected unit members in the case of a death of a family member other than those specified in subparagraph (a) above. In such cases, the unit member must receive written approval from the department head or designated representative prior to departure on such leave. Such leave shall not be charged against vacation or sick leave to which an unit member may be entitled, but shall be in addition to that leave. In order to be eligible for family death leave, an unit member must have worked full-time for the City for a period of six (6) consecutive months. An unit member may be requested to furnish satisfactory verification for his/her use of family death leave. Examples of satisfactory verification include such items as: death certificate, obituary notice, funeral/memorial services notice, or proof of travel.

### **7.1.4 Industrial Injury Leave.**

A unit member shall be granted industrial injury leave when the employee is unable to work because of any on-the-job injury or illness as defined in the Worker's Compensation Act.

#### **7.1.4.1 City Paid Leave Entitlement.**

Effective January 28, 2003, an entry probationary unit member shall not be entitled to City paid leave entitlement under Section 8.3.1.

Permanent unit members shall be entitled to a maximum of sixty (60) days of City paid industrial injury leave per illness or injury. Recurrences of an injury/illness shall not be considered a new injury/illness and shall not entitle the unit member to a new sixty (60) days free period. The sixty (60) days does not have to be used consecutively. The 60-day industrial injury leave entitlement, commonly referred to as the "free period," is not deducted from accrued sick leave or any other accrued paid leave. Permanent unit members with ten (10) consecutive years of service to the City as of January 1, 2003, shall be entitled to a maximum of ninety (90) days of paid industrial leave per injury or illness with the same standards as stated in Section 8.3.1.2.

**7.1.4.2 Workers' Compensation Claim.**

An industrial injury/illness must qualify as a workers' compensation claim under standards applied by the Workers' Compensation Appeals Board. The Workers' Compensation Appeals Board's rejection of a unit member's claim shall result in disqualification of the unit member's injury/illness for leave under this provision. On-the-job injury leave previously granted for a disqualified injury/illness will be deducted from the unit member's other accrued paid leave balances, or the unit member may reimburse the City in cash.

**7.1.4.3 Physical Examination**

The City's third party workers' compensation administrator may require a unit member to submit to a physical examination by a City-selected physician to verify that the injury/illness exists and occurred while the unit member was performing work for the City and/or to approve the unit member's return to work.

**7.1.4.4 Workers' Compensation Benefits**

Payment under this provision shall not be cumulative with any benefit that the unit member may receive under the California Labor Code as the result of the same injury. If, after the period of entitlement, the unit member is still disabled, the unit member may supplement any benefits paid under the Labor Code with accumulated sick leave and vacation to the extent necessary to

make up the difference between the amount of the award and the normal weekly base pay for each week of continuing disability.

#### **7.1.4.5 Limited/Modified Duty**

Upon either party's request, City and Union shall meet to discuss the development of a limited duty policy for unit members unable to perform their normal work duties because of injury or illness on a department by department basis. The priority of any such agreement reached shall be industrially injured unit members, however, the policy may include coverage of non-industrially injured unit members, if considered feasible by the City. In the absence of any such policy, the City shall maintain the right and sole discretion to grant or continue any light duty assignment.

#### **7.1.5 Military Leave.**

The City shall provide military leave to unit members in accordance with City Council Resolution 77044.

#### **7.1.6 Jury Leave.**

Leave of absence with pay may be granted to a unit member who has been selected for jury duty and from which they cannot be excused. A unit member who serves on jury duty shall be paid their regular salary for the period of such duty.

The unit member shall keep any fees they receive for jury duty.

#### **7.1.7 Family Care And Medical Leave**

Represented employees may take unpaid family care and medical leave as prescribed in the federal Family and Medical Leave Act Of 1993 ("FMLA") and the California Family Rights Act of 1991, as amended ("CFRA"). Implementation of this Article is governed by the FMLA and the federal regulations adopted at 29 C.F.R. Part 825 and by the CFRA and the state regulations adopted at California Code of Regulations, title 2, division 4, sections 7297.0-7297.11.

##### **7.1.7.1 Eligibility**

To be eligible for family care and medical leave, on the date on which leave is to begin, a represented employee must have been employed by the City for at least 12 months, and have been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. (29 C.F.R §825.110,

Government Code §12945.2(a))

7.1.7.1.1 For the purposes of meeting the 1,250 hours of service eligibility test of this Article, the determining factor is the number of hours a represented employee has worked for the City within the meaning of the Fair Labor Standards Act of 1938 [FLSA] (29 U.S.C. 297). (29 C.F.R. §825.110(c). (See 29 C.F.R. 785 for FLSA))

7.2 Family Care And Medical Leave Entitlement

Subject to the provisions of these administrative regulations and state and federal law, an eligible represented employee is entitled to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

- (1) The birth of a child and to care for the newborn child;
- (2) The placement with the employee of a child for adoption or foster care by the represented employee. (29 C.F.R. §825.200(a), §825.112(a); Government Code §12945.2(c)(3))
- (3) To care for the represented employee's child, parent, or spouse who has a serious health condition. (See 29 C.F.R. §825.113 and 2 C.C.R. 7297.0 for definitions; Government Code §12945.2(c)(1)) To care for the employee's domestic partner who has a serious health condition and the employee has filed a Declaration of Domestic Partnership in accordance with established City policy.
- (4) Because of a represented employee's own serious health condition that makes the represented employee unable to perform the functions of the represented employee's position, except for disability on account of pregnancy, childbirth, or related medical conditions, which are covered by pregnancy disability leave. (Government Code §12945.2(c)(3)(c); see 29 C.F.R. §825.114-115 for definitions of "serious health condition" and "unable to perform the functions of the employee's position" and Government Code §12945.2(c)(8))

7.2.1 For family care and medical leave purposes, the "12-month period" in which the 12 weeks of leave entitlement occurs shall be defined as a "rolling" 12-month period measured backward from the date the represented employee uses any family care and medical leave.

7.2.2 "Twelve workweeks" means the equivalent of 12 of the represented employee's normally scheduled workweeks. For eligible represented employees who work more or less than five days a week, or who work on alternative work schedules, the number of working days which constitutes "12 work weeks" is calculated on a pro rata or proportional basis.

7.2.3 “Serious health condition” means an illness, injury (including on-the-job injuries), impairment, or physical or mental condition of the represented employee or a child, parent, spouse or domestic partner of the represented employee, which involves either:

7.2.3.1 Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential health care facility, or

7.2.3.2 Continuing treatment or continuing supervision by a health care provider, as described in detail in the FMLA and its implementing regulations.

### 7.3 Minimum Duration Of Leave

7.3.1 “Intermittent leave” is leave taken in separate blocks of time due to a single qualifying reason, rather than for one continuous period of time. (29 C.F.R. §825.203(a))

7.3.2 A “reduced leave schedule” is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday. (29 C.F.R. §825.203(a))

#### 7.3.3 Minimum Duration Of Leave Taken For Serious Health Condition Of A Parent, Child, Spouse, Or Domestic Partner Or For The Serious Health Condition Of The Represented Employee

Subject to the provisions of this Article, a represented employee may take family care and medical leave intermittently or on a reduced leave schedule to care for a sick spouse, parent, child, or domestic partner when medically necessary or for the represented employee’s own serious health condition when medically necessary. (2 C.C.R. §7297.3(d), (e))

7.3.3.1 The following conditions must be met for a represented employee to take family care and medical leave on an intermittent or a reduced leave schedule under this section:

- (1) there must be a medical need for leave (as distinguished from voluntary treatments and procedures);
- (2) the medical need can be best accommodated through an intermittent or reduced leave schedule;
- (3) and the represented employee must provide certification of the medical necessity of intermittent leave or leave on a reduced schedule. The certification of a serious health condition required below meets this requirement. (29 C.F.R. §825.117)

7.3.4 Minimum Duration For Leave Taken For The Birth, Adoption, Or Foster Care Placement Of A Child

Family care and medical leave taken because of the birth, adoption, or foster care placement of a child of the represented employee does not have to be taken in one continuous period of time. Any leave(s) taken shall be concluded within one year of the birth or adoption or foster care placement of the child with the represented employee. The basic minimum duration of the leave shall be two weeks. However, the City shall grant a request for a leave of less than two weeks duration on any two occasions. (2 C.C.R. §7297.3(d))

7.3.5 Leaves shall be taken in increments of at least one hour. Only the amount of leave actually taken will be counted toward the 12 weeks of leave to which a represented employee is entitled. (29 C.F.R. §825.203(d), 29 C.F.R. §825.205, see also 2 C.C.R. 7297.3(c)(2) and (e))

7.3.6 Represented employees needing intermittent leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the City's operations. (29 C.F.R. §825.117)

7.3.7 The City may, at its discretion, assign a represented employee to an alternative position with equivalent pay and benefits that better accommodates the represented employee's intermittent or reduced leave schedule, as determined by the City. (29 C.F.R. §825.117, 29 C.F.R. §825.204)

7.4 Pay Status And Benefits

7.4.1 Except as provided in this section, the family care and medical leave will be unpaid. The City will continue to provide and pay for group health benefits during the period of leave on the same basis as coverage would have been provided had the represented employee been continuously employed during the entire leave period. (29 C.F.R. §825.207, 29 C.F.R. §825.209; Government Code §12945.2(d), (e), (f); 2 C.C.R. §7297.5(c))

7.4.1.1 The represented employee will be required to continue to pay the represented employee's share of premium payments, if any. A represented employee's premium payment for the entire period of the unpaid leave is due before the leave begins. (29 C.F.R. §825.210, 29 C.F.R. §825.210(a) and (e))

7.4.1.2 The City's obligation to maintain health insurance coverage ceases if a represented employee's premium payment is more than 30 days late. (29 C.F.R. §825.212(a) and (c); Government Code §12935(a), 12945.2), 2 C.C.R. §7297.5(f))

7.4.1.3 As permitted by law, the City will recover from a represented employee its share of health plan premiums during a period of unpaid family care and medical leave if the represented employee fails to return to work after the represented employee's family care and medical leave entitlement has expired, if the represented employee's failure to return to work is not due to the represented employee's own serious health condition or to circumstances beyond the represented employee's control. (Government Code §12945.2(f), 2 C.C.R. §7297.5; §825.212 and 29 C.F.R. §825.213)

#### 7.4.2 Other Benefits

While on unpaid family care and medical leave, a represented employee will not accrue seniority, sick leave, vacation leave, or retirement credit. (2 C.C.R. §7297.5(d); Government Code §12945.2(f)(2))

#### 7.4.3 Relationship Of Unpaid Family Care And Medical Leave To Other Leaves

##### 7.4.3.1 Use Of Other Paid Leave

A represented employee may elect or the City may require the substitution of a represented employee's accrued vacation or other accrued paid leave, other than sick leave (except as provided in Section 1.3.2, Family Illness leave), for any part of the represented employee's unpaid family care and medical leave. A represented employee shall be required to use all but 10 days of his/her accrued sick leave when a represented employee takes unpaid family care and medical leave because of the represented employee's own serious health condition.

7.4.3.2 Any leave of absence that qualifies as family care and medical leave and is designated by the City as family care and medical leave will be counted as running concurrently with any other paid or unpaid leave to which the represented employee may be entitled or required to use for the same qualifying reason under a memorandum of understanding, Board policy, or state law. (Government Code §12945.2(e); 29 C.F.R. §825.207, §825.208; 29 C.C.R. §7297.5)

##### 7.4.3.3 Workers' Compensation Leave

The City may count any time off for a represented employee's on-the-job injury against the represented employee's family care and medical leave entitlement when the represented employee's injury meets the criteria for a serious health condition; however, an employee's accrued paid leave may not be substituted for any part of a FMLA leave that is also a workers' compensation leave. (29 C.F.R. 825.207(d)(2), also, 825.210. (f), 825.216(d), 825.220(d), 825.307(a)(1))

#### 7.4.3.4 Relationship To Pregnancy Disability Leave

The family care and medical leave provided under this section is in addition to any leave taken on account of pregnancy, childbirth or related medical conditions for which a represented employee may be qualified under state law and described in City policy or memorandum of understanding. (Government Code §12945.2, §12935(a); 2 C.C.R. §7297.6)

### 7.5 Notices To City

7.5.1 A represented employee should request a family care and medical leave by submitting a completed Family Care and Medical Leave application and a Health Care Provider Certification form to the represented employee's department personnel representative.

7.5.2 The represented employee must provide written notice to the City as far in advance of the leave as possible and as soon as the represented employee reasonably knows of the need for the leave. If the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the notice must be provided at least 30 calendar days in advance of the leave. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.

The written notice must inform the City of the reasons for the leave, the anticipated duration of the leave, and the anticipated start of the leave. The represented employee should use the City's Family Care and Medical Leave application whenever possible. (29 C.F.R. §825.302; 2 C.C.R. §7297.4)

7.5.3 If a represented employee fails to give 30 calendar days notice for foreseeable leave with no reasonable excuse for the delay, the City may deny the family care and medical leave request until at least 30 calendar days after the date the represented employee provides notice to the City of the need for family care and medical leave. (29 C.F.R. §825.304(b))

7.5.4 The represented employee shall consult with the City and make a reasonable effort to schedule any planned medical treatment supervision so as to minimize disruption to the City's operations. Scheduling, however, shall be subject to the approval of the health care provider of the represented employee or the represented employee's child, parent, spouse or domestic partner. (2 C.C.R. §7297.4(a)(2))

### 7.6 Medical Certification

- 7.6.1 A represented employee's request for family care and medical leave to care for a child, a spouse, a domestic partner, or a parent who has a serious health condition shall be supported by a certification issued by the health care provider of the individual requiring care. If additional leave is required after the expiration of the time originally estimated by the health care provider, the employee shall provide the City with recertification by the health care provider. (Government Code §12945.2(j); 29 C.F.R. §825.305-306; 2 C.C.R. §7297.11, §7297.0(a))
- 7.6.2 A represented employee's request for family care and medical leave because of the represented employee's own serious health condition shall be supported by a certification issued by the represented employee's health care provider. (Government Code §12945.2(k))
- 7.6.3 As a condition of a represented employee's return from leave taken because of the represented employee's own serious health condition, the represented employee is required to obtain certification from his/her health care provider that the represented employee is able to resume work. (29 C.F.R. §825.310)
- 7.6.4 Represented employees are required to use the "Certification of Health Care Provider or Practitioner" form available from the City to meet the certification and recertification requirements of this policy. (Form attached.) In addition, for the "fitness for duty" certification required under 1.6.3 above, the City may provide the health care provider with the City's customary "fitness for duty" forms, which may include a job position description and a list of the job position's essential functions.
- 7.6.5 If the City has reason to doubt the validity of the certification provided by a represented employee for the represented employee's own serious health condition, at the City's discretion and expense, the City may require that the represented employee obtain the opinion of a second health care provider designated or approved by the City in accordance with the appropriate statutory provisions. At the City's discretion and expense, the City may also require the opinion of a third health care provider, in accordance with the appropriate statutory provisions, in the event that the second opinion differs from the opinion in the original certification. At the represented employee's request, the City shall provide the represented employee with copies of any second and third medical opinions. (Government Code §12945.2(k); 29 C.F.R. §825.307-308; 2 C.C.R. §7297.4(b)(2))
- 7.6.6 Under this Article, "health care provider" means a health care provider as defined in federal and state regulations implementing the FMLA and the CFRA. (29 C.F.R. §825.11; 2 C.C.R. §7297.(j))
- 7.6.7 In cases of adoption or foster care placement, the represented employee must provide written verification such as an adoptive home study, an adoption

placement agreement, or a juvenile court order.

7.6.8 A represented employee shall provide any health care certification or recertification or adoption/foster care verification required by the City under this Article within 15 calendar days of the City's request, unless it is not practicable for the represented employee to do so despite the represented employee's good faith efforts. A represented employee's failure to submit a required certification, recertification, or verification can result in a denial or delay of leave approval.

#### 7.7 City Response To Leave Request

It is the City's responsibility to designate leave, paid or unpaid, as family and medical leave-qualifying and to notify the represented employee of the designation. The City shall respond to the leave request as soon as practicable and no later than ten calendar days after receiving the request. (2 C.C.R. 7297.4(a)(6))

#### 7.8 Dual Parents Employment

Where both parents are entitled to family care and medical leave and both are City employees, allowable leave for the birth, adoption or foster care placement of their child is limited to a total of 12 work weeks in a 12-month period between the two employees. Their family care and medical leave entitlement is not limited or combined for any other qualifying purpose. (2 C.C.R. 7297.1(c))

#### 7.9 Represented Employee's Status On Returning From Leave

Except as provided by law, on a timely return from family care and medical leave a represented employee is entitled to be returned to the same position the represented employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. A represented employee has no right to return to the same position. A represented employee has no greater right to reinstatement than if the represented employee had been continuously employed during the leave period. The leave shall not constitute a break in service for purposes of longevity or seniority under this memorandum of understanding or any represented employee benefit plan. (Government Code §12945.2(g); 29 C.F.R. §825.214-219; 2 C.C.R. §7297.5(f))

#### 7.10 Pregnancy Disability Leave And Bonding Leave

Pregnancy disability means that, in the opinion of her health care provider, a represented employee is unable because of pregnancy to work at all or is unable to perform any one or more of the essential functions of her job or to perform those functions without undue risk to herself, the successful completion of her pregnancy, or to other persons. Pregnancy disability also includes severe "morning sickness" and time off needed for prenatal care.

### 7.10.1 Duration Of Leave

7.10.1.1 A represented employee is entitled to up to four months of leave for the period(s) of time the employee is actually disabled by pregnancy, childbirth, or related medical conditions.

7.10.1.2 Pregnancy disability leave may be taken as needed intermittently or on a reduced work schedule when medically advisable, as determined by the represented employee's health care provider. Only the amount of leave actually taken may be counted toward the four months of leave to which the represented employee is entitled.

7.10.1.3 There is no length-of-service requirement before a represented employee disabled by pregnancy is entitled to a pregnancy disability leave.

### 7.10.2 Transfer

#### 7.10.2.1 Conditions

The City will grant the transfer request of a represented employee affected by pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties if both of the following conditions are met:

- (1) The represented employee's request is based on her health care provider's certification that a transfer is medically advisable; and
- (2) The City can reasonably accommodate a transfer. Any duty assignments resulting from an approved transfer request under this section will be determined by the City Manager or the City Manager's designee.

#### 7.10.2.2 Eligibility For Transfer

There is no length of service requirement before a represented employee affected by pregnancy is eligible for a transfer under this section.

#### 7.10.2.3 Transfer To Accommodate Intermittent Leave Or A Reduced Work Schedule

If it is medically advisable for a represented employee to take intermittent leave or leave on a reduced work schedule and it is foreseeable based on planned medical treatment because of pregnancy, the City may require the represented employee to transfer

temporarily to an available alternative position. This alternative position must have the equivalent rate of pay and benefits, the represented employee must be qualified for the position and it must better accommodate recurring periods of leave than the employee's regular assignment. The temporary assignment does not have to have equivalent duties. Transfer to an alternative position may include altering an existing job to accommodate better the represented employee's need for intermittent leave or reduced work schedule.

#### 7.10.2.4 Right To Reinstatement After Transfer

When the represented employee's health care provider certifies that there is no further medical need for the transfer, intermittent leave, or leave on a reduced work schedule, the represented employee must be reinstated to her same or comparable position in accordance with Article 8.6.

#### 7.10.2.5 Requesting Leave Or Transfer

7.10.2.5.1 A represented employee shall provide at least verbal notice sufficient to inform the City of the represented employee's need for pregnancy disability leave or transfer, and the leave/transfer's anticipated timing and duration.

7.10.2.5.2 A represented employee must provide at least 30 days advance notice before the leave/transfer is needed if the need for the leave or transfer is foreseeable. If 30 days advance notice is not practicable, for example because the represented employee does not know approximately when the leave/transfer will be required to begin, a change in circumstances or a medical emergency, notice must be given as soon as practicable.

7.10.2.5.3 The represented employee shall consult with the City and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruptions to the City's operations. Scheduling, however, shall be subject to the represented employee's health care provider's approval.

7.10.2.5.4 The City shall respond to the request as soon as practicable and in any event no later than 10 calendar days after receiving the request. The City will try to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

#### 7.10.2.6 Medical Certification

7.10.2.6.1 A request for a pregnancy disability leave or transfer must be supported by medical certification.

7.10.2.6.2 A medical certification for a pregnancy disability leave is sufficient if it contains:

- (1) The date the represented employee became disabled due to pregnancy;
- (2) The probable duration of the period(s) of disability; and
- (3) An explanatory statement that, due to the disability, the represented employee is unable to work at all or is unable to perform any one of more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy, or to other persons.

7.10.2.6.3 A medical certification indicating that it is medically advisable for the represented employee to be transferred to a less strenuous or hazardous position or to less strenuous or hazardous duties is sufficient if it contains:

- (1) The date the need to transfer became medically advisable;
- (2) The probable duration of the period(s) of the need for the transfer; and
- (3) An explanatory statement that, due to the woman's pregnancy, the transfer is medically advisable.

#### 7.10.2.7 Terms Of Pregnancy Disability Leave

7.10.2.7.1 A pregnancy disability leave is unpaid except that a represented employee shall be required to use all but 10 days of her accrued and accumulated sick leave during the otherwise unpaid pregnancy disability leave. A represented employee may choose to use any accrued sick leave, vacation, or other accrued paid personal time off that the represented employee is otherwise eligible to use during the otherwise unpaid pregnancy disability leave.

- 7.10.2.7.2 During unpaid pregnancy disability leave, the represented employee is entitled to accrue seniority and to participate in all employee benefit plans to the same extent and under the same conditions as would apply to any other unpaid disability leave under established City policy or memorandum of understanding.
- 7.10.2.7.3 During any portion of a pregnancy disability leave that a represented employee is using other accrued paid leave, the represented employee is entitled to accrue seniority and to participate in all employee benefit plans to the same extent and under the same conditions as apply to any paid sick leave, vacation, or other paid time off under established City policy or this memorandum of understanding.
- 7.10.2.7.4 During any portion of a pregnancy disability leave that is also a FMLA leave, the City will continue to provide and pay for group health benefits on the same basis as coverage would have been provided had the represented employee been in paid status. When the represented employee has exhausted any FMLA portion of the leave and the represented employee continues on pregnancy disability leave only, the represented employee's entitlement to continued health benefit coverage will be the same as any other represented employee on an unpaid disability leave of absence.
- 7.10.2.7.5 A represented employee returning from pregnancy disability leave shall return with no less seniority than the represented employee had when the leave began for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits.
- 7.10.2.7.6 The represented employee shall retain employee status while on pregnancy disability leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under the memorandum of understanding or under any represented employee benefit plan. Benefits must be resumed on the represented employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualifying conditions.
- 7.10.2.7.7 As a condition of the represented employee's return to work from pregnancy disability leave or transfer, the represented employee must obtain a release to return to work from her

health care provider stating that she is able to resume her original job duties.

#### 7.10.2.8 Right To Reinstatement From Pregnancy Disability Leave/Transfer

7.10.2.8.1 Subject to state law and regulations, a represented employee returning from a pregnancy disability leave or transfer is usually entitled to reinstatement to the same position. If the City is excused by law from reinstating her to the same position, the represented employee is usually entitled to reinstatement to a comparable position.

#### 7.10.2.8.2 Reinstatement To The Same Position

A represented employee has no greater right to reinstatement to the same position or to other benefits and conditions of employment than if the represented employee had been continuously employed in her position during the leave or transfer period. The City may refuse to reinstate the represented employee to her same position or duties for either of the following reasons:

- (1) The represented employee would not otherwise have been employed in her same position at the time she requests reinstatement for legitimate business reasons unrelated to the represented employee's pregnancy disability leave or transfer, such as a layoff.
- (2) Each means of preserving the job or duties for the represented employee, such as leaving it unfilled or filling it with a temporary employee, would substantially undermine the City's ability to operate safely and efficiently.

#### 7.10.2.8.3 Reinstatement To A Comparable Position

A represented employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated. If the City is excused from reinstating a represented employee to her same position, or to the same duties, under Section 8.6.2, then the City will reinstate the represented employee to a comparable position unless either of the following occurs:

- (1) No comparable position is available.
- (2) If the represented employee is returning from a pregnancy disability leave that does not qualify as a FMLA leave, a comparable position is available, but filling the available position with the returning represented employee would substantially undermine the City's ability to operate safely and efficiently.

7.10.2.8.4 If a represented employee exhausts all available leaves and is still disabled by pregnancy and unable to return to work, the represented employee's reinstatement rights are the same as the reinstatement rights of any other similarly situated represented employee.

#### 7.10.2.9 Relationship Of Pregnancy Disability Leave To FMLA, CFRA, And Other Leaves

7.10.2.9.1 Any period of incapacity or treatment due to pregnancy, including prenatal care, is a "serious health condition" under the FMLA. A represented employee's unpaid pregnancy disability leave will run concurrently with unpaid FMLA leave, up to a maximum of 12 workweeks, and will also run concurrently with any accrued paid leave the represented employee is required to use or elects to use under Article 8.5 above.

#### 7.10.2.9.2 Bonding/CFRA Leave

7.10.2.9.2.1 A represented employee's own disability due to pregnancy, childbirth, or related medical conditions is not included as a "serious health condition" under CFRA. At the end of the represented employee's period(s) of pregnancy disability, or at the end of four months pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take unpaid CFRA leave of up to 12 workweeks for reason of the birth of her child, if the child has been born by this date.

7.10.2.9.2.2 CFRA leave for bonding with the child does not require that either the represented employee or the child have a serious health

condition. There is also no requirement that the represented employee no longer be disabled by her pregnancy before taking CFRA leave for reason of the birth of her child.

7.10.2.9.2.3 The City may, but is not required to, grant unpaid CFRA leave if a represented employee continues to be disabled after exhaustion of pregnancy disability leave and prior to the birth of her child.

7.10.2.9.3 Maximum Entitlement.

The maximum possible entitlement for qualified and eligible employees for both pregnancy disability leave under FMLA, state law, and this article and CFRA leave for the reason of the birth of the child is four months and 12 workweeks.

**7.10.3 Leave of Absence Without Pay.**

The City in its discretion may grant a permanent, full-time unit member may be granted a leave of absence without pay, provided that seniority shall not continue to accrue during a leave of absence without pay.

**7.10.4 State Disability Insurance Coverage And Paid Leaves.**

A unit member may supplement any disability insurance benefits paid under a State Disability Insurance program with accumulated sick leave and vacation to the extent necessary to make up the difference between the amount of insurance benefits paid and the normal weekly base pay for each week of disability.

## **ARTICLE 8 – VACATION LEAVE**

### **8.1 Entitlement.**

A unit member shall accrue vacation leave, from the date of his/her regular appointment by the City, on a biweekly basis at the rates enumerated below. For the purpose of determining the amount of vacation entitlement, an employment year is defined as the period of one year from the anniversary date of such appointment by the City. Vacation rate increases will become effective at the beginning of the pay period that includes the unit member's anniversary date.

8.1.1 Ten (10) days per year through the first four (4) full employment years.

8.1.2 Fifteen (15) days per year beginning the fifth (5th) employment year up to and including the twelfth (12th) full employment year; provided, however, that during the tenth (10th) full employment year an unit member, on his/her anniversary date, shall receive one (1) additional day of vacation for that year only.

8.1.3 Eighteen (18) days per year beginning the thirteenth (13th) employment year up to and including the fifteenth (15th) full employment year provided, however, that during the fifteenth (15th) full employment year an unit member, on his/her anniversary date, shall receive one (1) additional day of vacation for that year only.

8.1.4 Nineteen (19) days per year beginning the sixteenth (16th) employment year up to and including the nineteenth (19th) full employment year.

8.1.5 Twenty (20) days per year beginning the twentieth (20th) full employment year up to and including the twenty-fifth (25th) full employment year provided, however, that during the twentieth (20th) and twenty-fifth (25th) full employment years, an unit member, on his/her anniversary date, shall receive one (1) additional day of vacation for those years only.

8.1.6 Twenty-five (25) days per year beginning the twenty-sixth (26th) full employment year up to and including the twenty-ninth (29th) full employment year.

8.1.7 Thirty (30) days per year beginning the thirtieth (30th) full employment year.

### **8.2 Right to Take Accrued Leave.**

A unit member may take vacation with the prior scheduling approval of the department head.

### **8.3 Limitation on Unused Vacation Leave Balances.**

A unit member may defer vacation to the succeeding calendar year, provided that the amount deferred shall not exceed an amount equal to the amount of leave which would be earned by the unit member in one (1) year, at his/her accrual rate existing at the end of the calendar year. (Vacation earned as a result of holidays falling on the unit member's first day off shall be included in the amount that can be deferred to the next calendar year.) Accrued vacation in excess of the amount which may be deferred at the end of the calendar year shall be removed from the official City record of accrued vacation for an unit member.

Effective January 1, 2001, unit members may accrue vacation leave balances up to a maximum of two (2) times the unit member's annual vacation accrual rate as of the pay period containing January 1 of each year. Should the unit member's vacation leave balance exceed the allowable amount, the unit member will cease to accrue vacation leave until such time as the vacation balance is reduced below the maximum allowable balance.

#### **8.4 Vacation Sell-Back.**

Unit members may sell-back to the City up to ten (10) days of accrued vacation each calendar year, subject to the following conditions:

- (1) The unit member has at least ten (10) days of accrued vacation leave in the preceding calendar year.

#### **8.5 Minimum Usage.**

A unit member may take vacation leave in increments of not less than one (1) day, with the prior scheduling approval of the department head, except as provided in paragraph (e) below.

#### **9.6 Personal Business Leave.**

A unit member shall be allowed to take up to one (1) day per year of accrued vacation leave for personal business purposes, with the prior scheduling approval of the department head. Normally, the leave shall be taken in one-half (1/2) day increments; however, smaller increments may be granted in justified cases by the department head.

#### **9.7 Interruption of Leave.**

In the event that a holiday occurs during a period of authorized vacation leave, the work day which is the holiday shall be charged as a holiday and not as a day of vacation. In the event that a unit member is seriously ill during his/her vacation, the full work day on which such illness occurs shall not be charged to vacation leave, provided that a doctor's certificate or report of treatment is submitted to and approved by the City's medical consultant. It is expressly understood that the use of sick leave during vacation

is reserved for serious illnesses, such as those which confine a unit member to bed, and that the vacation period is not automatically lengthened by its use. Vacation leave not used due to the use of sick leave in an authorized vacation period shall be rescheduled for use at a later date, in accordance with established procedure.

**9.8 Paychecks During Vacation.**

If a pay period falls within a unit member's scheduled vacation period the unit member shall be entitled to receive, prior to the start of such vacation period, upon his/her request in accordance with established City procedures, any regular paycheck(s) which he/she would normally receive during said period. This provision shall apply only to unit members whose scheduled vacation leave is one (1) work week or longer. It is understood that this option shall not be available to those unit members who choose to participate in the City's Direct Payroll Deposit Program.

## **ARTICLE 9 – PAID HOLIDAYS**

### **9.1 Designated Holidays.**

The following days of each year are designated as holidays:

- 10.1.1 January 1st.
- 10.1.2 The third Monday in January known as "Martin Luther King Day".
- 10.1.3 The third Monday in February known as "Presidents' Day."
- 10.1.4 The last Monday in May.
- 10.1.5 July 4th.
- 10.1.6 The first Monday in September.
- 10.1.7 November 11th, known as "Veterans' Day".
- 10.1.8 The Thursday in November appointed as "Thanksgiving Day".
- 10.1.9 The Friday following the Thursday in November appointed as "Thanksgiving Day".
- 10.1.10 December 25th.
- 10.1.11 Three (3) floating holidays, subject to the prior approval of the department head. Holidays are to be taken during the fiscal year in which they are earned. The floating holidays shall be credited at the beginning of the pay period that includes July 1.

In order to qualify for receipt of compensation for a designated holiday, an unit member must in paid status the work day before and the work day after the designated holiday.

### **10.2 Christmas or New Year's Eve.**

**10.2.1** A unit member assigned to a work schedule which requires him/her normally to work on both December 24th and December 31st shall be entitled to one of the following:

- 10.2.1.1 one-half (1/2) of his/her work shift as paid time off on both the above days; or

10.2.1.2 one (1) full work shift as paid time off on either of the above days.

Such time off shall be granted by the department head, subject to the need to provide public services. In the event that an eligible unit member is not allowed time off as provided in either sub-paragraph (a) or sub-paragraph (b) above, he/she shall be paid overtime for the number of hours worked at the rate of time and one-half of his/her regular hourly rate of pay for the paid time off to which he/she is entitled under this provision.

In those years when Christmas and New Years' Eves fall on a Friday, a unit member assigned to a work schedule that requires him/her normally to work on either December 24<sup>th</sup> or December 31<sup>st</sup>, but not both, shall be entitled to one-half of his/her scheduled Friday work day off.

### **9.3 Holiday Pay.**

Any shift that includes five or more hours on a holiday shall be considered a holiday shift and paid at the overtime rate of time and one-half the unit member's regular hourly rate of pay for that shift.

### **9.4 Holiday on Regular Day Off.**

**9.4.1** In the event that a designated holiday falls upon a normal day off which is either a Saturday, as to a unit member who works a Monday through Friday workweek, or the first day off of his/her normal two days off, as to a unit member whose workweek is one other than Monday through Friday, then in either such event such unit member, as the case may be, shall thereafter receive one (1) additional day of vacation therefor; and each such unit member who is required to work on such Saturday or first day off shall, in addition, receive compensation therefor at the rate of time and one-half of his/her regular base rate of pay.

**9.4.2** In the event that a designated holiday falls upon a normal day off which is either a Sunday, as to a unit member who works a Monday through Friday workweek, or the second day off of his/her normal two days off, as to a unit member whose workweek is one other than Monday through Friday, then in either such event such unit member, as the case may be, shall receive the next following day off therefor; and each such unit member who is required to work on such Sunday or second day off shall, in addition, receive compensation therefor at the rate of time and one-half of his/her regular base rate of pay.

## **ARTICLE 10 – WORKING CONDITIONS**

### **10.1 Hours of Work.**

The workweek of unit members in Unit E, exclusive of unit members in the Electrician Helper and the Telephone Services Specialist classifications, shall be thirty-six (36) hours per week.

The workweek of unit members in the Electrician Helper classification shall be forty (40) hours per week.

#### **10.1.1 Rest Period.**

One (1) rest period of no longer than fifteen (15) minutes' duration shall be scheduled during each work period of three (3) or more hours, at the discretion of the department head or authorized supervisor. No salary reduction or time off shall be charged unit members taking authorized rest periods.

If an unit member has worked six (6) hours or more in the eight (8) hour period immediately preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include four (4) hours of his/her workday without loss of his/her regular straight-time pay.

#### **10.1.2 Lunch Period.**

An uninterrupted lunch period of no longer than one-half (1/2) hour shall be scheduled at or about the mid-point of each work shift, except for electricians working as troublemen whose schedules provide a paid lunch period at or about the mid-point of each work shift.

#### **10.1.3 Public Relations.**

City and Union agree that those in the public service have a responsibility to be sensitive and responsive to their ultimate employer, the citizens, and that awareness of this responsibility is particularly important for field personnel or other City unit members who can be observed by the general public when taking rest periods or lunch breaks.

The parties agree that the image of the public employee in the community must be improved if high levels of employee morale are to be achieved. To this end, the parties agree to mutually pledge their best efforts over the life of this Agreement to continuously encourage unit members to be courteous, helpful, and industrious in all their public contacts and when in public view during the full duty period.

**10.2 Shifts and Schedules.**

The City shall exercise good faith in establishing work schedules. The City's functional needs shall prevail in scheduling, provided that;

**10.2.1** Changes in work schedules and shift starting times for full-time unit members shall be posted at least one (1) week in advance, except in cases of emergency or unusual circumstances.

**10.2.2** City agrees to notify full-time unit members in writing of pending regular transfers or reassignments in work hours or location at least one (1) week in advance, except in cases of emergency or unusual circumstances.

## **ARTICLE 11 – PERSONNEL PROVISIONS**

### **11.1 Personnel File.**

It is agreed that an unit member will be informed if entries of a derogatory nature are made in his/her personnel file.

An unit member may review his/her personnel file in the Personnel Department twice a year and may make copies, at his/her own expense, of the documents contained therein. It is understood that the City may establish reasonable rules for the control of said files in the implementation of this provision.

### **11.2 Entry-Level Examinations.**

#### **11.2.1 Entry-Level**

##### **11.2.1.1 Residency.**

A City of Oakland resident competing in an entry-level examination shall be given an additional five percent (5%) on his/her score, provided he/she initially scores a passing grade on the examination. Residency shall be determined as of the date of certification of the Civil Service Eligible List for that examination.

##### **11.2.1.2 Certification of Eligibles to Fill Vacancies.**

Whenever an entry-level position in the classified Civil Service is to be filled, for which no reinstatement list exists, the appointing authority shall receive the entire eligible list for the entry-level position to be filled, from which a selection shall be made.

#### **11.2.2 Promotional Examinations.**

Whenever a promotional position in the classified Civil Service is to be filled for which no reinstatement list exists, the appointing authority shall receive the entire eligible list for the promotional position to be filled, from which a selection shall be made.

### **11.3 Probationary Period.**

#### **11.3.1 Entry Probationary Period.**

The probationary period of a unit member filling an entry level position shall not exceed twelve (12) months in duration.

**11.3.2 Promotional Probationary Period.**

The probationary period of a unit member filling a position from a promotional examination shall not exceed six (6) months in duration.

**11.4 Job Reassignment.**

An unit member who is permanently incapacitated from performing the regular duties of his/her classification as a result of an on-the-job injury, may, with the concurrence of the employing department and the injured unit member, be assigned to any job in the City structure provided the unit member meets the qualifications for any such position and the salary level is approximately the same. The appointment of an individual under this provision shall take precedence over any existing eligible lists.

**11.5 Contracting Out.**

In accordance with Section 8.02(e) of the City Charter, the City shall not contract out for service where such contract results in the loss of employment or salary by any person having permanent status in the competitive service.

**11.6 Residency Committee.**

The Union agrees to participate in a City Residency Committee. The Committee shall meet and generate alternatives and incentives to encourage City employees to live in the City of Oakland.

**11.7 Sexual Harassment and Violence in the Workplace.**

Any unit member found to have engaged in workplace activity in violation of the City's policy on sexual harassment or violence in the workplace shall be subject to discipline.

**11.8 Tuition Reimbursement**

The City shall reimburse a unit member for the cost of job-related academic courses and books, approved in advance by the department head or the designated representative, upon successful completion, in accordance with the following table:

<u>Grade</u>	<u>Reimbursement</u>
A or B	100% of the tuition fee and books, or \$400 whichever is less.
C	50% of the tuition fee and books, or \$200 whichever is less.

In the event that the course is graded on a pass/fail basis, reimbursement shall be seventy-five percent (75%) of the tuition fee and books, or three hundred dollars (\$300), whichever is less. A unit member failing a course or receiving a grade lower than a C shall not be reimbursed.

A unit member shall be allowed to take up to two (2) courses eligible for reimbursement during any given semester or quarter, with a limit of six (6) total classes per year, regardless of whether the institution is on the semester or quarter system.

#### **11.8 Professional Development Reimbursement**

The City agrees to provide each unit with up to one hundred dollars (\$100) per year for reimbursement of items related to professional development. Such items may include books, subscriptions to professional journals or magazines, dues to professional organizations that are related to current employment, job-related tools and equipment, registration, application or examination fees for registration or certification within his/her profession, and expenses related to professional development including research and training. Requests for reimbursement must be submitted with a receipt in aggregate amounts of at least twenty-five dollars (\$25). However, all receipts for reimbursement, whatever the aggregate value, must be submitted before the end of the fiscal year, and by June 1, if feasible.

## **ARTICLE 12 - GRIEVANCE PROCEDURE**

### **12.1 Definition.**

A grievance is defined as any dispute that involves the interpretation or application of this agreement or disciplinary action taken against a unit member, and the application of the Personnel Rules.

With the exception of grievance concerning suspension, demotion, or termination, which may be filed at Step Two, it is the expressed intent of the parties that grievances be resolved expeditiously at the lowest possible administrative level. Toward that objective, the following steps are prescribed:

### **12.2 Procedure.**

#### **12.2.1 Step 1.**

##### **12.2.1.1 Informal Discussion.**

The unit member or the Union representative may present the grievance orally to the immediate supervisor within ten (10) working days of the occurrence of the dispute or within ten (10) working days seven from such time as the unit member or Union should reasonably have been aware of the occurrence.

##### **12.2.1.2 Formal Submission.**

Should the grievance remain unresolved, the unit member or Union representative may submit the grievance in writing to the immediate supervisor within the ten (10) working days cited above. The grievance shall state the specific section of the Memorandum of Understanding, or the Personnel Rules alleged to be violated or the disciplinary action taken, and the proposed solution. The supervisor shall render a decision in writing to the unit member and/or Union representative within ten (10) working days of the formal submission of the grievance.

#### **12.2.2 Step 2: Appeal to Department Head.**

Should the grievance remain unresolved, the unit member or Union representative may, within seven (7) calendar days of receipt of the supervisor's decision, submit the grievance in writing to the department head. The department head or director or his/her designated representative shall respond to the grievance in writing within seven (7) calendar days after receipt of the

grievance.

### **12.2.3 Step 3: Employee Relations Officer - Union Staff Representative.**

Should the grievance remain unresolved, the unit member or Union representative may, within seven (7) calendar days after receipt of the department head response, submit the grievance in writing to the Unit member Relations Officer. The Unit member Relations Officer, or a designated representative, shall meet with the assigned Union Staff Representative within seven (7) calendar days of submission and attempt to resolve the dispute.

### **12.2.4 Step 4: Civil Service Board - Arbitration.**

Should the grievance remain unresolved, within fourteen (14) calendar days of the meeting described in Section 12.2.3, either party may submit the grievance to an impartial arbitrator who shall be selected by mutual agreement or, if such agreement is not reached, by alternately striking names from a list of five arbitrators submitted by the State Mediation and Conciliation Service. Alternatively, in the case of a grievance concerning discharge or disciplinary action against a unit member, the Union may elect to submit such grievance to the Civil Service Board instead of to an arbitrator. The Civil Service Board, may elect to use a Hearing Officer for such appeals as described in Appendix A. In the event that the Union elects to submit such grievance to the Civil Service Board, the filing of the written grievance in accordance with the provisions of Step 1 (b) above shall satisfy the requirement of the Personnel Ordinance that the unit member gives notice of intent to appeal a discharge or disciplinary action.

If arbitration is selected, it is agreed that the arbitrator's decision shall be final and binding on all parties and the arbitrator's fees shall be borne equally by the parties. The arbitrator shall have no power to add to or subtract from the provisions of this agreement or of the Personnel Rules.

Notwithstanding the above, the option of arbitration may not be elected in grievances filed by probationary unit members whose basis is failure to successfully complete the probationary period.

## **12.3 Time Limits.**

Time limits prescribed in Section B above may be extended by mutual agreement of the parties. Failure by the unit member or Union to follow the time limits, unless so extended, shall nullify the grievance. Failure by the City to follow the time limits, unless so extended, shall cause the grievance to move to Step 2 or Step 3, whichever is the next level.

**12.4 Witnesses.**

Individuals who may have direct knowledge of circumstances relating to the grievance may appear at the mutual request of the parties during any stage of the procedure. In the case of an unit member appearance, he/she shall be compensated at his/her regular rate of pay for actual time spent in such appearance.

**12.5 Immediate Arbitration.**

Either party may waive the time limits specified herein and proceed to immediate arbitration in any case where either party alleges the other is threatening to take an action in violation of this Agreement in so short a period of time as to disallow the other party from proceeding within said time limits. Proceeding to arbitration under this section shall be by mutual agreement, and such agreement shall not be withheld by either party arbitrarily.

In any such case, the Arbitrator shall have no power to add to or subtract from the provisions of this Agreement or of the Personnel Rules, but shall have power to issue an order to the party initiating the grievance to abide by the normal time limits provided in this Article.

An Arbitrator to hear such case shall be selected by the parties from a panel of three (3) arbitrators mutually agreed upon when the provisions of this Section E are invoked. The first Arbitrator, in designated order from the panel, available within a 48-hour period shall be selected.

No post-hearing briefs shall be permitted, and the Arbitrator shall render a decision at the conclusion of the hearing.

**12.6 Consolidation.**

Concurrent grievances alleging violation of the same provisions shall be consolidated for the purpose of this procedure as a single grievance.

## **ARTICLE 13 – GENERAL PROVISION**

### **13.1 Resolution.**

It is understood that this Memorandum or any part thereof is not binding upon the City until and unless the same or provisions of same be adopted by ordinances or resolutions of the City Council. This Memorandum of Understanding resolves in full, for its duration, all issues between the parties concerning wages, hours and other terms and conditions of employment.

### **13.2 Savings Clause.**

In the event any portion of this Memorandum is declared null and void by superseding federal or state law, the balance of the Agreement shall continue in full force and effect, and the parties shall immediately commence negotiations to ensure that the superseded portion(s) shall be re-written to conform as nearly as possible to the original intent.

### **13.3 Duration.**

Pursuant to the adoption by the City Council of implementing ordinances or resolutions, this Memorandum shall become effective July 1, 2002 and shall remain in effect for a period of six (6) years terminating on June 30, 2008.

### **13.4 Completion of Negotiations.**

The terms and conditions described in this Agreement represent the full and complete understanding between the City and the Union. The City and the Union expressly waive the right to meet and negotiate with respect to any subject covered in this Agreement. This Agreement terminates and supersedes those partial practices, agreements, procedures, traditions, and rules or regulations inconsistent with any matters covered in this Agreement. The parties agree that during the negotiations that culminated in this Agreement, each party enjoyed the opportunity to make demands and proposals or counter-proposals with respect to any matter, even though some matters were proposed and later withdrawn, and that the understandings and agreements arrived at after the exercise of that right and opportunity are executed in this Agreement.

Nothing in this Completion of Negotiations section precludes the City and the Union from mutually agreeing to modify this Agreement.

## APPENDIX A

The City of Oakland, hereinafter referred to as "City", and the International Brotherhood of Electrical Workers, hereinafter referred to as "Union", hereby agree that the Civil Service Board may elect to use a Hearing Officer for appeals of suspensions, fines, demotions or disciplinary discharges filed pursuant to Article VI, entitled "Grievance Procedure", of the current Memorandum of Understanding between the parties.

1. Hearing Officer Panel.

A hearing officer shall be mutually selected by alternately striking names from a list of five (5) arbitrators submitted by the State Mediation and Conciliation Service.

2. Conduct of Hearings.

Hearings will be open to the public unless otherwise requested by the appellant.

Hearings will be tape recorded. Copies of the tape will be available to the appellant, if desired, for a nominal charge. Transcripts of the taped proceedings will be available upon request at the requesting parties' expense.

Closing arguments shall be oral; provided, however, that either party may elect to submit a closing brief. ~~Such an election must be made~~ following the presentation of closing arguments. Briefs are due to the Hearing Officer within ten (10) calendar days of the close of the hearing. Briefs submitted after the deadline shall not be considered by the Hearing Officer.

3. Hearing Officer Responsibilities.

Hearing Officers shall be responsible for the conduct of the hearing and shall identify the appeal issue, determine relevant facts, assess the credibility of witnesses, evaluate the evidence and render an advisory decision to the Civil Service Board. The Hearing Officer shall render a written recommended finding to the Civil Service Board within thirty (30) calendar days of the close of the hearing. If briefs are submitted, the recommendation shall be due to the Board within forty (40) calendar days of the close of the hearing.

The Hearing Officer shall provide the Civil Service Board the following documents which shall constitute the official hearing record:

- a. A summation page delineating the case name, issue, brief summary of the case and his/her recommendation.
- b. A complete written report documenting the hearing.

- c. Any briefs submitted.
- d. The cassette tape(s) of the hearing.

4. Civil Service Board Responsibilities.

After receiving a Hearing Officer's recommendation, the Board Secretary shall schedule the case for the next available Civil Service Board meeting. The Board will make every effort to schedule a case within thirty (30) calendar days of receiving the Hearing Officer's recommendation.

In reaching a decision, the Board shall review the Hearing Officer's report and the cassette tape of the hearing. The Board's decision shall be made in accordance with Ordinance No. 8979, as amended, which requires a majority of a quorum to accept, reject or modify an appeal.

Final determinations will be issued in writing, within ten (10) days of the conclusion of the Civil Service Board review of the Hearing Officer's recommendation. Copies of the Board's determination and the recommendation of the Hearing Officer shall be forwarded to the appellant, appellant's representative, City Attorney's Office and the affected City Department.

6. Costs.

Costs for the Hearing Officer shall be borne by the City.

Costs for transcribing hearing tapes shall be borne by the requesting party.

Cost for a copy of the hearing tape shall be borne by the requesting party.

## APPENDIX B

Shift assignments for unit members covered by this Memorandum of Understanding shall be made according to the following provisions:

1. There will be up to two (2) night shifts, from 3:00 p.m. to 11:00 p.m. or other eight (8) hour night shift period as mutually agreed between the assigned unit member and his/her supervisor, Monday through Friday during the term of this Memorandum of Understanding.
2. All work performed outside of the established shifts or on holidays will be handled on a call-back basis pursuant to the provisions for call-backs as stated in this Memorandum of Understanding.
3. To be eligible for shift assignments, a unit member must be an Electrician with experience in traffic signal and street light repair. The unit member must maintain at least a standard performance rating.
4. Shift assignments will be made in one (1) week increments for a period of up to three (3) months and may be extended upon the request of the unit member at the discretion of management.
5. Shift assignments will be voluntary, based on eligibility and seniority - highest seniority prevailing.
6. In the event shift assignments cannot be filled voluntarily, assignments will be made based on eligibility and seniority - lowest seniority prevailing.
7. A standby list of eligible unit members will be established and standby assignments will be rotated through the list. Standby assignments shall be made for a seven (7) day period, beginning at 4:00 p.m. Monday and terminating at 8:00 a.m. the following Monday. (Assignments will be extended by one (1) day if Monday is a holiday.) Standby assignments will be in addition to normal work assignments.
8. In the event there are fewer than five (5) volunteers on the standby list, assignments will be made based on seniority - lowest seniority prevailing.
9. A unit member on standby assignment will be placed on standby duty and be subject to call-back only during weekends, holidays and during those hours when a shift unit member is unavailable for duty.
10. To be eligible for standby assignments, a unit member must be an Electrician or Electrician Leader with a standard or better performance rating and possess a valid California Class B drivers license (or be in the process of obtaining one.) The unit member must have experience in traffic signal and street light repair and must live within

a twenty-five (25) mile radius of the Municipal Service Center. The unit member will be expected to respond to the Municipal Service Center within forty-five (45) minutes of receiving a call. Management will have the right to determine eligibility based on the best interests of the City.

11. Unit members on standby duty must be available for call-back during the entire duty period. It shall be the responsibility of the unit member to maintain a line of communication with the dispatch center so he/she may be contacted at any time during the duty period. A pager and/or other communications device will be provided by the City.
12. If a unit member on standby duty is called back to work and the period worked extends beyond the minimum overtime guaranteed by the Memorandum of Understanding, overtime will end at the time the unit member leaves the Municipal Service Center.
13. City vehicles will not be taken home by personnel on standby duty.
14. When assigned to standby duty by the department head or other authorized representative, a unit member shall be paid an amount equal to one and seventy-five hundredths (1.75) hours straight time pay for standing by for each eight (8) hour duty period so assigned.

## APPENDIX C

The City of Oakland, hereinafter referred to as "City", and the International Brotherhood of Electrical Workers, Local 1245, hereinafter referred to as "Union" hereby agree that part time unit members in Unit V will be hired on a temporary basis (not to exceed 6 months) for special projects, for relief assignments, or to augment the regular workforce. The City may hire such temporary unit members through the Union's hiring hall or from a current City eligible list, provided such unit members meet the City's minimum qualifications for the positions being recruited. Prior to employing part-time personnel, the City will first maximize overtime opportunities for full-time unit members, provided such overtime does not impact maintenance service levels, is economically feasible and does not delay project deadlines. Additionally, in deploying personnel to special projects, the City will, to the extent that it is operationally and economically feasible and does not impact normal maintenance service levels, offer such assignments to its regular unit members before hiring temporary unit members.

The City and the Union also agree that the provisions of this Memorandum of Understanding which apply to unit members in Unit V are as follows:

### Preamble

Article 1 - General Provisions - Entire Article.

Article 2 – Discrimination Prohibited

2.1 Discrimination Prohibited.

Article 3 – Union Rights – Entire Article

Article 4 – City Rights – Entire Article

Article 5 - Compensation

5.1 Salary Schedules.

5.3 Salary Deductions.

5.4 Salary Steps.

Only 5.4.1 and 5.4.3 (as modified below) apply.

#### **5.4.3Salary Steps.**

Advancement within the salary schedule specified for a unit member's classification shall be on the basis of completion of two thousand eighty (2080) hours of continuous service time in such classification without having received

during said two thousand eighty (2080) hours of service time a step increase in salary. A salary step increase for a unit member who is entitled to such an increase shall be effective at the beginning of the pay period in which the unit member completed the required continuous service time.

#### 5.5 Premium Pay.

##### 1. Overtime.

Whenever unit members are required to work in excess of forty (40) hours within the designated FLSA work period, they shall be compensated for such overtime worked at the rate of one and one-half times the regular hourly base rate of pay for their classifications.

##### 2. Health and Welfare Premium.

The City agrees to pay a health and welfare premium of forty-six cents (\$.46) per hour in addition to the hourly rate of pay for the unit member's classification for each hour worked.

#### Article 6 – Retirement Contributions

##### A. Retirement.

The City of Oakland, in compliance with Treasury Regulations Section 31.3121 (b) (7), hereby agrees to adopt a deferred compensation plan for part-time unit members in Representation Unit V such plan to be in accordance with the guidelines set forth in Internal Revenue Code Section 457, and to be implemented according to the following conditions:

1. The City will contribute 3.75% of each participating unit member's wages including overtime, "health and welfare premium" and shift differential, to a deferred compensation plan administered by The Prudential and referred to by the administrator as an "Index Account". Each participating unit member will contribute an equivalent 3.75% of "wages", as that term is described above.
2. Participating unit members who are required by law to pay 1.45% of their wages as the Medicare portion of F.I.C.A. taxes shall continue such payments.
3. The City will provide information to participating unit members pertaining to the deferred compensation plan described above at the time of enrollment.

##### B. State Disability Insurance.

City agrees to cover unit members with the State of California Disability Insurance Program (SDI). Premiums for such coverage will be paid by the City.

3. On-the Job-Injury Leave.

In the event a unit member is injured in the performance of duties, the unit member will be entitled to Workers' Compensation as prescribed by law.

Article 10 - WORKING CONDITIONS – Entire Article (as modified below).

10.1 Hours of Work.

The Department Head, subject to regulation and control by the City Manager, shall determine the number of hours of work per day and work week which any part-time unit member shall be required to work, or whether such part-time unit member shall work at all, provided, however, that in accordance with City Charter Section 802, no part-time unit member shall work more than one-half the established working hours within a calendar year. Additionally, part time unit members may be removed from employment for any reason other than those prohibited by law without recourse to any appeal process, including the grievance procedure.

10.1.1 Rest Period.

10.1.2 Lunch Period.

10.1.3 Public Relations.

10.2 Shifts and Schedules.

City shall exercise good faith in establishing work schedules. The functional needs of the City shall prevail in scheduling, provided, however, that;

- (1) Changes in work schedules and shift starting times for part-time unit members shall be posted at least one (1) week in advance, except in cases of emergency or unusual circumstances;
- (2) City agrees to notify part-time unit members in writing of pending regular transfers or reassignments in work hours or location at least one (1) week in advance, except in cases of emergency or unusual circumstances.

Article 11 - PERSONNEL PROVISIONS Nothing Shall Apply

Article 12 - GRIEVANCE PROCEDURE Entire Article (as modified below)

12.1 Definition.

For the purposes of this procedure, a grievance is defined as an alleged violation of the Memorandum of Understanding that adversely affects the grieving unit member.

12.2 Procedure.

12.3 Time Limits

12.4 Witnesses.

12.5 Class Action Grievance.

12.6 Immediate Arbitration.

12.7 Consolidation.

Article 13 – GENERAL PROVISION – Entire Article

CITY OF OAKLAND, a municipal corporation

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Local 1245

\_\_\_\_\_  
MICHAEL K. RICH  
Interim Employee Relations Manager

\_\_\_\_\_  
LYNNE MOREL  
Business Representative

Date\_\_\_\_\_

Date\_\_\_\_\_

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