



Office of the City Manager

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Memorandum of Understanding: Berkeley Fire Fighters Association/I.A.F.F.  
Local 1227 Berkeley Chief Fire Officers Association

RECOMMENDATION

Adopt a Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as “MOU”) with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association (hereafter referred to as the “Association”) with a term of June 30, 2020 through June 30, 2021 and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new Memorandum Agreement provide for a 0% salary increase, a 4.8% Higher Class Duty Chief premium for Assistant Chief and 5.6% for Battalion Chiefs, and twenty (20) hours of additional Floating Holiday stipend in lieu of COVID 19 leave to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID 19 Leave from forty (40) hours will provide the majority funding for two new vehicles. The additional floating holiday hours are in direct response to the COVID 19 pandemic.

The cumulative total cost for the new Memorandum Agreement is approximately \$22,000 over the term of the agreement (Fiscal Year 2021). The funding for this Memorandum Agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City’s labor contract with the Union expired and was fully terminated as of June 29, 2020. In an effort to reach agreement on a successor Memorandum Agreement, representatives of the City and representatives of the Union held approximately six negotiating sessions beginning in May 6, 2020. The parties reached agreement on all outstanding economic issues on December 1, 2020.

While the labor contract expired and fully terminated on June 29, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the

expired contract remain in full force and effect until modified through the collective bargaining process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues.

**BACKGROUND**

There are 6 employees represented by the Association in one representational unit (Unit A). The City’s philosophy during negotiations with the Association was to follow City Council policies to protect the City’s short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

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

Major provisions of the new labor contract are as follows:

Term	June 30, 2020 through June 30, 2021
Wage Increases	0% increase for the term of the contract
COVID Leave Stipend	Twenty (20) hours of Floating Holiday COVID stipend. The reduction of COVID 19 Leave from forty (40) hours will provide the majority funding for two new vehicles
Standby – Duty Chief Coverage	4.8% increase to Higher Class Duty Chief for Assistant Chief, 5.6% for Battalion Chiefs

**ENVIRONMENTAL SUSTAINABILITY**

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

**RATIONALE FOR RECOMMENDATION**

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

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6800

Attachments:

1. Resolution – Memorandum of Understanding: BFFA Local 1227 I.A.F.F. Berkeley Chief Fire Officers Association
  - Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association – June 30, 2020 through June 30, 2021 (Edited Version)
  - Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 30, 2020 through June 30, 2021 (Clean Version)

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

MEMORANDUM OF UNDERSTANDING: BFFA LOCAL 1227 I.A.F.F.

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

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 30, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F. Berkeley Chief Fire Officers Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

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

Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association – June 30, 2020 through June 30, 2021 (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association – June 30, 2020 through June 30, 2021 (Clean Version)



## MEMORANDUM OF UNDERSTANDING

between

City of Berkeley

and

**Berkeley Fire Fighters Association, Local 1227 I.A.F.F.  
Berkeley Chief Fire Officers Association**

June ~~1730~~, ~~2018-2020~~ to June ~~2930~~, ~~2020~~2021

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

MEMORANDUM OF UNDERSTANDING: BERKELEY FIRE FIGHTERS ASSOCIATION, I.A.F.F  
LOCAL 1227 / BERKELEY CHIEF FIRE OFFICERS ASSOCIATION

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

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 30, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., Local 1227, Berkeley Chief Fire Officers Association Chapters, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

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

The foregoing Resolution was adopted by the Berkeley city Council on January 19, 2021 by the following vote:

Ayes:

Noes:

Absent:

Attest:





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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1.1: RECITALS**

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

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

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

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit A; have exchanged freely information, opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees. This Memorandum of Understanding (MOU) shall be presented to the City Council as the joint recommendation of the undersigned.

### **SECTION 1.2: RECOGNIZED EMPLOYEE ORGANIZATION**

#### **1.2.1 Recognition**

The Association is the majority representative of all employees within Representation Unit A (Represented Fire Management) (FC00); and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S.

#### **1.2.2 Deduction of Dues**

The City shall deduct, once monthly, the amount of the membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City

employee and forward the amount to the Association, save amounts deducted due to religious objectors which amount shall be forwarded to the designated charitable organization. An exception from these deductions shall exist in situations when an employee is in a leave without pay or other unpaid status such that there is no payroll amount from which to make a deduction. The City shall continue to deduct insurance premiums and other such deductions as may be specified by the employee in accordance with past practice. The Association shall provide sixty (60) day notice on any changes in dues or assessments or premiums.

**1.2.3** The City and the Association recognize this MOU (see Glossary) as a binding and legal contract between the two parties.

**1.2.4** The City shall print the new MOU in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with twenty (20) copies of the booklet to assure availability for each member of Unit A.

### **SECTION 1.3: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, marital or domestic partner status, gender, age, sexual orientation, national origin, political affiliation, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City; and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.

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

The City of Berkeley Harassment Prevention Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10318>, in the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## SECTION 1.4: ASSOCIATION REPRESENTATIVES

### 1.4.1 Association Release Time

The City shall allow two (2) representatives of the Association, subject to the conditions set forth in Sections 1.4.2 (Negotiations) and 1.4.3 (Advance Notice), reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect MOU which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this MOU in the future.

### 1.4.2 Negotiations

With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off for negotiations of a successor MOU.

### 1.4.3 Advance Notice

The representative shall advise his or her Fire Chief or Deputy Fire Chief through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his or her job without the approval of a chief officer.

### 1.4.4 Association Representative

Per the requirements of the Fire Fighters' Bill of Rights Act, an employee who requests such may have an Association representative present at any meeting with the Deputy Fire Chief and/or the Fire Chief which could result in punitive action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.

## SECTION 1.5: SEVERABILITY OF PROVISIONS

This MOU is subject to all current and future applicable federal and states laws and regulations, and all lawful rules, policies, and regulations of the City of Berkeley in effect at the time this MOU is adopted, except as expressly modified by this Agreement. If any provision of this MOU is determined to be in conflict or inconsistent with any laws, rules, and/or regulations or is otherwise held to be invalid or unenforceable, such provision may be suspended or superseded, and the remainder of this MOU shall continue in full force and effect. If any provision is invalidated, the parties shall meet and confer in good faith regarding a replacement provision.



Should any City rule, regulation or policy conflict with the MOU, the MOU shall supersede.

#### **SECTION 1.6: FINALITY OF RECOMMENDATIONS**

The recommendations set forth in this MOU are final. No change or modifications shall be offered, urged, or otherwise presented by the Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this MOU from meeting and conferring and making modifications herein by mutual consent. No such amendments to this MOU shall be effective until adopted by City Council and ratified by the Association.

This MOU shall supersede all existing memoranda agreement between the City and the Association.

#### **SECTION 1.7: DURATION**

The term of this MOU shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this MOU be effective prior to 0001 hours, June 17, 2018. This MOU and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours, June 29, 2020.

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

**SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications ~~and with the effective dates as~~ listed in Exhibit "A" to this MOU and attached hereto. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

~~Effective the first full pay period after Union ratification and Council approval on its regular agenda, the salary ranges for those classifications covered by this MOU as listed in Exhibit A will receive a salary increase of three percent (3.0%) and shall be shown in Exhibit A.~~

~~Effective the first full pay period in July 2019, the salary ranges for those classifications covered by this agreement as listed in Exhibit A will receive a salary increase of two percent (2.0%) and shall be shown in Exhibit A.~~

**Equity Increases**

~~Equity Adjustment effective the first full pay period following Council Adoption: Equity Adjustment for the Battalion Chief classification with corresponding percentage of adjustment is also reflected in Exhibit "A":~~

<b>Classification Title</b>	<b>Equity Increase</b>
<del>Battalion Chief</del>	<del>3.0%</del>

**2.1.1 Ranges**

Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto.

**2.1.2 Step Increases**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City, provided that step increases within the salary range shall occur on the anniversary date of the appointment, subject to the exception in Section 2.1.5 (Unpaid Leave Effect on Pay Increases) for extended unpaid leaves of absence.

**Step Increases for Assistant Fire Chief and Fire Marshal:** Steps shall be reinstated for the Assistant Fire Chief and the Fire Marshal classifications. Each incumbent will remain in their current salary pending their next Anniversary Date (of promotion or appointment to current position), at which time they will be placed in the higher step of the range closest to their current salary.

### **2.1.3 Salary Placement and Entry – Lateral Incentive**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's classification as set forth in Exhibit "A" for the appropriate anniversary date of promotion or appointment. The minimum rate for the classification shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a "lateral entry appointment" shall be defined as a person who has completed the probationary period as an Assistant Fire Chief, Fire Marshal, or similar equivalent classification in a paid organized Fire Department or transfers from another agency. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral appointment be made at a salary step or pay schedule range above the entry pay rate that is commensurate with the appointee's years of service as an Assistant Fire Chief or Fire Marshal with a paid organized Fire Department.

### **2.1.4 Maximum Pay Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

### **2.1.5 Unpaid Leave Effect on Pay Increases**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week. If the employee is off the payroll for one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase, except that employees on approved parental leave or military leave are exempt from such requirement. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.

### **2.1.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or any employee occupying a position in a class for which the salary rate or range is reduced, shall

continue to receive his or her present salary. Such salary shall be designated as "Y-rate". When an employee on a "Y-rate" vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 2.1.2 (Step Increases).

**2.1.7 Bi-Weekly Payments**

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

**2.1.7.1 Payment of Annual Salary in Equal Amounts:** The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.

**2.1.7.1.1 40-Hour Week:** For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to four (4) decimal places.

**2.1.7.1.2 56-Hour Week:** For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.

**2.1.7.1.3 Work Period:** For Battalion Chiefs, who are eligible for overtime under this MOU, the work period is defined as twenty-four (24) days with an FLSA overtime threshold of 192 hours.

**2.1.8 Matrix of Comparable Cities**

The following list of jurisdictions is established for the purpose of comparing total compensation:

City of Alameda	City of Fremont	City of Palo Alto
County of Alameda	City of Hayward	City of Richmond
County of Contra Costa	Livermore-Pleasanton Fire Department	City of San Mateo
City of Daly City	City of Oakland	City of Vallejo

The City reserves the right to modify these survey agencies, in its discretion, no later than the first MOU negotiations meeting.

**2.1.9 Emergency Medical Technician Differential**

Unit A employees who maintain current Emergency Medical Technician (EMT) certification shall receive an EMT pay differential of four percent (4%). This EMT shall be reported to CalPERS as Emergency Medical Technician Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**2.1.10 Pay Effective Dates**

All changes in pay rate will go into effect at the beginning of a pay period (see Section 2.1.7 (Bi-Weekly Payments)) and stay in effect until the last day of a pay period if they are a result of the following:

- a) Application of a cost of living adjustment;
- b) Step increases;
- c) Retroactive adjustments;
- d) Implementation of CalPERS options;
- e) Change of employee's status from career to hourly or vice versa;
- f) Promotion or demotion;

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

**2.1.11 End of Year Calculation**

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

**2.1.12 Longevity Pay**

Represented employees in Unit A who complete nineteen (19) years of service shall receive a five percent (5%) differential beginning with their anniversary date that starts their twentieth (20<sup>th</sup>) year of service with the City of Berkeley, and this differential shall apply to all hours in a paid status.

**2.1.13 Standby – Duty Chief Coverage**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8 % (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, stand-by pay of eight dollars and thirty cents (\$8.30) per hour for each hour so assigned, . When functioning as a Duty Chief, members shall be available for service at any time when called.

~~If an employee assigned as the Duty Chief is not available when called or is unable or fails for any reason to perform the service when call, the employee shall not receive the pay provided for those hours. equivalent to two hundred dollars (\$200.00) per 24-hour assigned shift-~~

~~Standby service shall mean being available for service outside of regular working hours at any time when called. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided herein.~~

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section 2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## SECTION 2.2: PAYROLL ERRORS

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

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

In the event of an overpayment, the Auditor’s Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Deputy Fire Chief. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee’s normal salary, and other financial obligations of the employee. The City and the Association agree that the City is authorized to recover any salary overpayment made to the employee from the employee’s wages. In the event that (1) the employee does not respond within 10 working days of being notified of the

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

## SECTION 2.3: BILINGUAL PREMIUM PAY

Effective December 8, 2015, the Fire Chief may make a Bilingual Premium Pay Differential assignment of two percent (2%) of an employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### 2.3.1 Applications

The Fire Chief will accept applications from employees wishing to apply for a bilingual differential in the first quarter of each year, or within the first three months of employment.

### 2.3.2 Competency

The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. The Fire Chief reserves the right to require testing for second language appropriate competency prior to a Bilingual Premium Pay Differential and be required to demonstrate use at least on a monthly basis.

### ~~2.3.3 Competency~~

~~The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. The Fire Chief reserves the right to require testing for second language appropriate competency prior to a Bilingual Premium Pay Differential and be required to demonstrate use at least on a monthly basis.~~

## SECTION 2.4: ACTING IN HIGHER CLASSIFICATION

### 2.4.1 Temporary Assignments to a Higher Classification

In order for an employee to be paid for temporary assignment to a higher classification, the following requirements must be observed. Prior to the starting date of the assignment, the employee must be specifically assigned in writing by the Fire Chief or his or her authorized representative with the prior, written approval of the City Manager to temporarily serve in a higher classification. The employee must work a minimum of one (1) day, meet the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements shall be paid at the lowest step or range of the higher classification that provides a five percent (5%) differential. An employee will only be eligible for



## SECTION 2.5: HOURS & DAYS OF WORK / ALTERNATE WORK SCHEDULE PROGRAM

Hours and days of work shall be governed by rules established by the City Manager and the Department Head.

### 2.5.1 48/96 Work Schedule

Battalion Chiefs will be required to work a 56-hour suppression work week. This may require a 48/96 schedule as their regular schedule.

### 2.5.2 48/96 Impacts

If the Fire Chief determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, the Union agrees to meet with the Fire Chief upon request to discuss concerns, if any, the Fire Chief might have in the future regarding the 48/96 schedule.

### 2.5.3 Evaluation

The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of workload secondary to consecutive work hours.

### 2.5.4 Daylight Saving Time

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

2.5.4.2 **Fall:** In the Fall when transitioning from DST, employees Battalion Chiefs working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1 ) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 2.6 (Overtime) of this MOU.



**SECTION 2.6: OVERTIME****2.6.1 FLSA Designation**

Consistent with the provisions of the Fair Labor Standards Act (FLSA), the City shall designate certain administrative, professional, and management positions to be exempt. Said designation shall be in writing and shall include the basis for such exclusion. The Association shall be provided with a list of all such exempt positions along with information as to the reasons for exemption status for employees in Unit A.

**2.6.2 Eligibility and Rate**

Battalion Chiefs, who are not eligible to receive Administrative Leave, shall receive compensation for all work performed during the employee's day off, off-shift, or other scheduled time off during the tour of duty. Battalion Chiefs designated and authorized to work overtime shall be paid for all work performed in an overtime status and shall be compensated at a rate of one and one-half (1 ) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this MOU at the time he or she works the overtime.

**2.6.3 Battalion Chief Compensatory Time Off or Payment**

A Battalion Chief may request compensation for overtime by compensatory time off or by payment. The Fire Chief shall consider the employee's preference. Whether the employee shall be compensated for overtime by compensatory time or by payment shall be at the sole discretion of the Fire Chief.

**2.6.4 Battalion Chief Compensatory Time and Maximum Accumulation**

For the purposes of this MOU the term "Compensatory Time" shall mean the same as the term "Due Time".

A Battalion Chief may accumulate compensatory time for hours worked in excess of the regular workday / workweek in lieu of compensation at the rate of time and one-half (1 ) hours for each hour worked. Compensatory time off shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time a Battalion Chief assigned to a fifty-six (56) hour week work schedule. Compensatory time in excess of 162 shall automatically be paid as compensation.

**2.6.5 Workweek Computation**

For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.

**2.6.6 Battalion Chief Overtime Activities**

Overtime for approved activities not related to suppression staffing or emergency callbacks require the Deputy Fire Chief's approval in advance.

## 2.6.7 Battalion Chief Call-Back

- 2.6.7.1 **Normal Staffing Needs:** Battalion Chiefs who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.
- 2.6.7.2 **Emergency Call-Back:** A Battalion Chief who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.
- 2.6.7.3 **Minimum Call-Back:** In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.
- 2.6.7.4 **Overtime Practices:** The Department will adhere to the overtime hiring procedures and policy as stated in the Overtime Policy and Procedures General Order.

## SECTION 2.7: COURT PAY

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

## **ARTICLE 3 - LEAVES**

### **SECTION 3.1: ADMINISTRATIVE LEAVE**

Employees in classifications identified as not eligible for Overtime under Section 2.6 (Overtime) of this MOU shall be credited with fifty (50) hours of Administrative Leave each January 1. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 3.3 (Vacation) shall apply to Administrative Leave. The classifications eligible to receive Administrative Leave are designated in Exhibit A of this MOU.

Persons appointed to classifications not eligible for overtime compensation during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.

### **SECTION 3.2: INCREMENTAL TIME OFF**

Incremental Time Off is considered time off using vacation, due time, or sick leave bonus.

### **SECTION 3.3: VACATION**

#### **3.3.1 Vacation Leave**

Employees shall be entitled to annual vacation leave subject to the provisions in this chapter. Moreover, all employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.

#### **3.3.2 Vacation Approval**

All vacation must be approved, in advance, by the Fire Chief or Deputy Chief, on forms or scheduling system utilized by the City.

#### **3.3.3 Vacation Periods**

3.3.3.1 **48/96 56-Hour Week Employees:** For employees on the 48/96 schedule, a vacation period for employees on a 56-hour week shall consist of three (3) 24-hour shifts (See Glossary).

3.3.3.2 **Incremental Time Off (Battalion Chief):** Incremental vacation shall be taken in increments of ten (10) hours (days) from 0700 hours to 1700 hours or fourteen (14) hours (nights) from 1700 hours to 0700 hours.

**3.3.4 Vacation Accrual Schedule**

3.3.4.1 **Battalion Chief:** The vacation accrual schedule is as follows:

Years of Service (as provided in Sections 3.3.8; 3.3.8.1; and 3.3.9)	Vacation Accumulation	
	56 Hours	40 Hours
Through the first five (5) years of service	2 Vacation Periods	
	144 hours	80 hours
Six (6) through eleven (11) years of service	3 Vacation Periods	
	216 hours	120 hours
Twelve (12) through eighteen (18) years of service	4 Vacation Periods	
	288 hours	160 hours
Nineteen (19 through twenty-four (24) years of service	5 Vacation Periods	
	360 hours	200 hours
Twenty-five (25) and subsequent years of service	6 Vacation Periods	
	432 hours	240 hours

3.3.4.2 **Assistant Fire Chief and Fire Marshal:** The vacation accrual schedule for FLSA Exempt employees eligible for Administrative Leave in the classifications of Assistant Fire Chief and Fire Marshal is as follows:

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

**3.3.5 Lateral Entry Vacation Accrual Rate at Time of Appointment**

Subject to the provisions of Section 3.3.3 (Vacation Periods), an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 2.1.3 (Salary Placement and Entry – Lateral Incentive) of this MOU, shall accrue at time of appointment, and continue to accrue, and be eligible to take Vacation Leave commensurate with his or her years of experience as a sworn Fire Fighter. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

**3.3.6 Accrual Based on Hours in Paid Status**

Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay. Employees shall earn vacation leave according to the following schedule:

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

**3.3.7 Utilization**

Each employee shall be entitled to take only such annual vacation leave as the employee has accrued; provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

**3.3.8 Length of Service Computation**

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more, or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) vacation period rate.

3.3.8.1 **Part-Time and Intermittent Work Accrual:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

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

**3.3.9 Maximum Carryover of Vacation**

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

**3.3.10 Hours in Excess of Maximum Accumulation**

An employee who has attained maximum accumulation may be required to take all projected excess earned vacation or receive pay in lieu thereof, at the option of the City. By October of each year, the City will advise employees who have attained a maximum accrual of vacation and whether such excess earned vacation

must be scheduled as time off prior to the end of the vacation year, which begins in March of each year according to schedules established by the Fire Chief. By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year.

Employees who accrue unused vacation beyond the eight (8) week maximum shall be paid out annually.

### **3.3.11 Vacation Leave before Retirement**

An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He or she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he or she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.

### **3.3.12 Return from Leave Prorated Vacation**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 3.3 (Vacation).

### **3.3.13 Extended Leave Accrual Impact**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours or more for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours or more for employees assigned to a fifty six (56) hour work week, the employee's vacation shall be as provided in Sections 3.3.15 (Payment upon Termination, Military or Extended Unpaid Leave); or 3.3.16 (Vacation Buy Back).

### **3.3.14 Payment upon Death**

If, after six (6) months of continuous service, an employee dies, the employee's estate shall be paid for all accrued unused vacation periods at the employee's base rate at the time of death, and such employee or his or her estate shall reimburse the City for the actual amount of vacation taken in excess of vacation leave earned, as the case may be.

**3.3.15 Payment upon Termination, Military or Extended Unpaid Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee shall be paid for 100% of the excess of vacation credits that the employee has earned, banked or held over, at the employee's base rate at the time of termination, military or extended unpaid leave. If the vacation balance is negative, such employee shall reimburse the City or the City may deduct the balance due from the employee's salary due, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

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

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

**3.3.16 Vacation Buy Back**

By March 1 of any calendar year, employees may exercise an option to buy back up to one-half (1/2) of his or her accrued but unused vacation leave, up to a maximum of four (4) weeks.

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

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

**3.3.19** The vacation buy back provision as provided for in this section applies only to Personnel assigned to fire suppression and medical response vehicles.

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

**3.3.20.1** Vacation leave accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 0.7143.

**3.3.20.2** Vacation leave accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying



number of hours of vacation leave accrued by the conversion factor of 1.4.

**SECTION 3.4: HOLIDAYS**

Assistant Fire Chiefs and the Fire Marshal shall be allowed the following holidays off with pay at the eight (8) hour straight time salary rate based on their regular monthly salaries.

Battalion Chiefs, who are assigned to a 24-hour work schedule (those regularly scheduled to work fifty-six (56) hours) will receive twelve (12) hours of holiday pay as part of the base salary.

The holidays to which this provision applies are:

Holiday	Day Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Malcolm X's Birthday	Monday or Friday nearest May 19
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Floating Holiday	
Indigenous Peoples' Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
The Day After Thanksgiving Day	Fourth Friday in November
Christmas Day	December 25
Any Special Holiday Declared by the City Manager	

For historical reference only, in addition to the above-referenced 14 holidays (time off with pay), effective June 27, 1999 and as provided in Resolution Nos. 59,954-N.S. and 59,953-N.S., the City converted Holiday Pay (14 holidays, valued at 6.154% of base salary) as additional compensation and rolled the additional compensation into the Unit A classifications base salary (Assistant Fire Chief). When the Fire Marshal and Battalion Chief classifications were established in 2010, the pay range included Holiday Pay in the base salary.

**3.4.2 COVID Leave**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.



**SECTION 3.5: SICK LEAVE**

**3.5.1 Sick Leave Use**

An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 3.5.2 (Accumulation of Sick Leave) to 3.5.6 (Sick Leave Not a Privilege) inclusive.

**3.5.2 Accumulation of Sick Leave**

Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

**3.5.3 Maximum Accumulation**

Such sick leave as provided in Section 3.5.2 (Accumulation of Sick Leave) when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

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

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

**3.5.4 Annual Payout for Excessive Sick Leave**

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

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate provided in Section 3.5.2 (Accumulation of Sick Leave).

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

**3.5.5 Accrued Sick Leave Canceled Upon Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated.

**3.5.5.1 Unused Sick Leave Payment at Retirement or Termination for Employees Hired on or Before June 30, 2014:** All employees hired on or before June 30, 2014 that retire (non-disability) or voluntarily terminate with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

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

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his or her employment with the City. Employees hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

**3.5.6 Sick Leave Not a Privilege**

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than twelve (12) sick leave days (6 24-hour shifts or 144 hours for a 56-hour schedule, or 96 hours for a 40-hour schedule) in any calendar year may be taken because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.

**3.5.7 Injury Incurred in Outside Employment**

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

**3.5.8 Notice Requirement**

An employee who is unable to report to duty due to illness shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift in order to receive compensation while absent on sick leave.

**3.5.9 Absence Reporting (2 24-Hour or 3-Days):**

If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts or three (3) days, it shall be reported immediately to the Deputy Chief or Fire Chief via telephone or email.

**3.5.10 Effect of Leave without Pay on Sick Leave Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.

**3.5.11 Control of Abuse**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.

**3.5.12 Restoration of Sick Leave upon Re-Employment**

Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.

**3.5.13 Bonus for Unused Sick Leave**

For every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave bonus time. Leave without pay and a Workers Compensation leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus, except for partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim which absences shall not disqualify an employee from the sick leave bonus described in this paragraph. Such bonus

time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave. The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

### **3.5.14 Use of Sick Leave Bonus**

The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Deputy Chief or Fire Chief.

### **3.5.15 Accrual Conversion Rate**

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

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

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

## **SECTION 3.6: WORKERS' COMPENSATION**

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

## **SECTION 3.7: BEREAVEMENT LEAVE**

### **3.7.1 Bereavement Leave and Qualified Immediate Family Members**

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding 48 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per week work schedule. The immediate family of an employee, for the purpose of this Section, shall be defined as wife, husband, domestic partner (see Glossary),

mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

**3.7.2 Bereavement Leave Charge**

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

**3.7.3 Discretionary Approval:**

An employee may submit a request for additional time off as vacation or compensatory time to adjust to the death of a family member.

**SECTION 3.8: MILITARY & MARITIME LEAVE**

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

**SECTION 3.9: PARENTAL LEAVE**

Any employee with one (1) or more years of benefitted employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave upon the birth of a child or the adoption of a child who is five (5) years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

**SECTION 3.10: LEAVE OF ABSENCE WITHOUT PAY**

**3.10.1 Authorization for Leave without Pay**

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

**3.10.2 Required Exhaustion of Accrued Leave**

An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay.

**3.10.2.1 Leave Due to Illness:** In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay.

However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he or she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

## **SECTION 3.11: JURY DUTY LEAVE**

### **3.11.1 Absence from Duties**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.

### **3.11.2 Service during Off-Shift**

Employees who receive compensation for jury service during off-shift hours shall not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.

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

### **SECTION 4.1: MEDICAL, DENTAL & LIFE INSURANCE**

#### **4.1.1 Medical Insurance Maximum City Payment**

The City will pay 100% of the premium for the applicable (single, two party, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. The cost difference between the Kaiser Plan and more expensive plans will be borne by the employee. Effective July 1, 2019, employees shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction towards their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two party, or family employee category. This requirement for employees to contribute toward their health premiums shall only be effective if Department Head employees at the City are paying at least this amount as of July 1, 2019.

4.1.1.1 **Dependents:** Dependent status will be available until the dependent reaches the age of twenty-six (26) providing the dependent(s) meet the definition of "dependency" in the Internal Revenue Code.

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

#### **4.1.2 Annual Maximum Increase**

The amount the City contributes each calendar year toward the payment of health insurance premiums will increase by the lesser of twenty percent (20%) (single, two party, family) or the amount of the Kaiser HMO premium amount (single, two party, family) in effect on that date. The amount the City contributes each calendar year uses the premium rate of the previous calendar year as the basis for the calculation and there shall be no year-to-year carryover.

#### **4.1.3 Medical Cash in Lieu**

The cash in lieu payment to employees who show proof of alternate coverage will be a flat dollar amount of \$560, pro-rated for part-time employees.

#### **4.1.4 Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. The maximum annual coverage is \$3,000 and the lifetime orthodontia limit is \$3,000.



**4.1.5 Prorated Fringe Benefits**

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

**4.1.6 Life Insurance**

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

**4.1.7 Replacement Health Plan Meet and Confer:**

The Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2015 Affordable Care Act (ACA) excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the cost of health benefits.

**SECTION 4.2: RETIREE MEDICAL COVERAGE****4.2.1 Reimbursement Plan**

The City will assist in the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse/domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is described below and is based on the combination of the following factors:

- 4.2.1.1 the years of service of the employee at time of retirement
- 4.2.1.2 whether the employee is eligible to participate in Medicare
- 4.2.1.3 the annual increase of 4.5% on the amount the City will reimburse for the cost of the medical insurance premium.

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

The maximum amount the City will reimburse for the cost of the Medical Insurance



Premium is based on the following schedule (to clarify, there is no “pro-rata” incremental increase between these thresholds):

Years of City Service to be Completed	Percentage of City Reimbursement
10	25%
15	50%
20	75%
25	100%

4.2.1.4 **Annual Increase:** Effective each January 1, the base rates reimbursement as provided throughout this Section shall be increased by 4.5%.

#### 4.2.2 Employees Who Retired On or After July 1, 1997 through June 30, 2006

4.2.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4221.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the employee retires, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage.

4221.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City’s maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), total \$749.86 for two party coverage for the retiree and spouse or domestic partner or \$376.24 for single party coverage.

4.2.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4222.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the retiree reaches age 65 and is eligible for Medicare, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage.

42222 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

#### 4.2.3 Employees Who Retired On or After July 1, 2006

4.2.3.1 **Not Medicare Eligible:** For employees who retire on or after July 1, 2006 and are not eligible for Medicare, the City will reimburse the retiree and/or surviving spouse or domestic partner for the cost of the Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

4231.1 **Reimbursement Amount as of July 1, 2006:** On July 1, 2006, the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$327.76 per month (single party) and \$653.86 per month (two party).

4231.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$1,015.42 for two party coverage for the retiree and spouse or domestic partner or \$509.00 for single party coverage.

4.2.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

42321 **Reimbursement Amount as of July 1, 2006:** Effective July 1, 2006, each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$393.05 per month (two party) or \$196.52 per month (single party).

42322 **Reimbursement as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

**4.2.4 Retiree Definition**

For the purposes of this section a "Retiree" is anyone who meets all the following conditions: is vested in CalPERS; has reached the age of CalPERS retirement (age 50 for classic employees or age of 57 for new members as defined in Section 8.1 (California Public Employees' Retirement System) of this MOU; and has separated from the City.

4.2.4.1 **Disability Retirement:** A "Retiree" is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.

**4.2.5 Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.

**SECTION 4.3: SUPPLEMENTAL RETIREMENT PLAN (401a)**

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

**SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

Employees in the classification of Assistant Fire Chief are enrolled effective July 2, 1995, employees in the classification of Battalion Chief are enrolled effective March 10, 2009, and employees in the classification of Fire Marshal on January 20, 2015.

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

### **SECTION 5.1: PROBATIONARY PERIOD**

#### **5.1.1 Original Appointment**

Original appointments from employment lists shall be tentative and subject to a probationary period of one (1) year of actual service.

#### **5.1.2 Satisfactory Service**

If the service of the probationary employee has been satisfactory to the Fire Chief, the Fire Chief shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired.

#### **5.1.3 Service Unsatisfactory**

If such service has been unsatisfactory, the Fire Chief shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

### **SECTION 5.2: EXAMINATIONS**

#### **5.2.1 Examination Process**

Examinations may consist of any method of evaluation to measure the capacities of the persons examined to execute the duties and responsibilities of the career classification to which they seek to be appointed. The probationary period shall be considered as a portion of the examination process.

#### **5.2.2 Promotional Examinations**

Promotional examinations may be conducted whenever the needs of the service require. Promotional examinations may include any of the selection techniques as deemed appropriate by the Director of Human Resources. Only permanent employees in the career service or on active mandatory layoff reemployment lists who meet the requirement set forth in the class specification may compete in promotional examinations.

#### **5.2.3 Notification of Results and Review of Papers**

Each candidate in a formal written examination where scores are provided shall be given notice of the results thereof, and if successful, of the final earned score and/or rank on the employment list.

All such candidates shall have the right to inspect their written test answer sheet within ten (10) working days after the results are mailed. Such personal examination shall be made in the presence of the Director of Human Resources, or his or her authorized representative, and no notes shall be made by the

applicant.

**SECTION 5.3: METHOD OF FILLING VACANCIES**

**5.3.1 General Provisions**

All vacancies in the career service shall be filled by transfer, demotion, re-employment, reinstatement, or from eligible list certified by the Director of Human Resources, if available. In the absence of persons eligible in these ways, temporary appointments may be made in accordance with the provisions of this MOU.

**5.3.2 Promotion and Open Competitive**

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

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

**5.3.3 Scheduling & Announcing Examinations**

Promotional examinations shall be administered in accordance with the schedule noted below:

Test	CYCLE BEGINS	QUARTER FOR TEST	INTERVAL BETWEEN TEST
Battalion Chief	2018 and then Even Years	First Quarter	2 Years starting 2018
Assistant Fire Chief	2018 and then Even Years	First Quarter	2 Years starting 2018

**5.3.4 Seniority**

5.3.4.1 The Fire Department shall establish and maintain two (2) seniority lists, one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be issued in January of each year. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.

#### SECTION 5.4: PERFORMANCE EVALUATION

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

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

### **SECTION 6.1: GRIEVANCE PROCEDURE**

#### **6.1.1 Definition**

A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the MOU between the City and the Association. The grievance procedure discussed below shall be the sole grievance mechanism applicable to employees covered by this MOU.

#### **6.1.2 Deadline for Filing**

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture by the City, the City will comply with the request for resolution. However, the provisions of Section 6.1.9 (Suspension of Discharge) of this MOU will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

#### **6.1.3 Grievances Process**

Grievances shall be processed in the following manner:

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

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

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

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

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

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

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

The fees and expenses of the State Mediation and Conciliation Services arbitrator and the court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post-hearing briefs, if any. The Association shall provide the City with half of the cost charged by State Mediation to provide the parties with an arbitrator list no later than 30 days following notification to the City Manager that the Association wishes to advance the grievance to arbitration. Failure to timely do so shall result in a waiver of the right to advance the grievance to arbitration.



**6.1.4 Suspensions or Discharge Arbitration Decisions**

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

**6.1.5 Non-Disciplinary Arbitration Matters**

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

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

**6.1.6 Letters of Reprimand**

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

**6.1.7 Equal Employment Opportunity (EEO) Program**

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

**6.1.8 Limits of Arbitrator**

No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.

**6.1.9 Suspension or Discharge**

No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 6.1.3 (Grievance Process) above, resolves a grievance which involves suspension or discharge, he or she may order payment for lost time or reinstatement with or without payment for lost time.

**6.1.10 Compensation Grievances**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any MOU which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.4 (Step IV – Arbitration).

**6.1.11 Changes to Agreement**

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

**6.1.12 Probationary Employees**

**6.1.12.1 Appeal Limitations:** Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is that the City's action was for an illegal

or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally-protected activities; provided, however, that any appeal by a probationary employee alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Equal Employment Opportunity program, which shall be specifically amended to allow probationary employee rights of appeal under that program.

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

**6.1.13 Calendar Days**

All references in this Section 6.1 (Grievance Procedure) to days shall mean calendar day unless otherwise provided.

**6.1.14 Association Right to File**

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

## **ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 7.1: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

#### **7.1.1 Uniform Allowance**

Annual uniform allowance shall be \$1,100.00 and is to be paid annually by the first pay period in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

7.1.1.1 **Advance:** The City agrees to advance the sum of \$550.00 to new hires, which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.

7.1.1.2 **Payment:** The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 8.1 (California Public Employees' Retirement System). The check title shall be "Uniform Allowance".

7.1.1.3 **Purpose:** The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the term of this MOU. The City shall continue to purchase turn out gear.

### **SECTION 7.2: SAFETY COMMITTEE**

(1) The Assistant Fire Chief assigned to the Training and Safety Division shall be the designated safety officer for the department. The Safety Officer shall appoint a safety committee consisting of three (3) individuals on each shift (preferably one (1) complete company). The City's Occupational Safety Officer shall be a standing member of that Committee.

7.2.2 The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.

## SECTION 7.3: ANNUAL PHYSICAL EXAMINATIONS

### 7.3.1 Wellness Fitness Initiative (WFI)

The City and the Association are committed to maintaining a wellness program that provides represented employees with information and resources that aid in maintaining health and wellness. Part of this WFI may include a physical assessment (based on the City's specification as to scope of examination and examiner), diagnostics, education and referrals to other practitioners at a schedule to be determined by the Fire Chief or when required by the Association MOU, departmental policy, and/or applicable law.

## SECTION 7.4: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

### 7.4.1 Industrial Disability Modified Duty

The City may accommodate, when feasible, employees covered by this MOU who are on Workers' Compensation leave, and such work assignments are to incorporate the following provisions:

- 7.4.1.1 The modified assignment shall be consistent with medical limitations as determined by the attending physician.
- 7.4.1.2 The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.

### 7.4.2 Non-Industrial Disability Modified Duty

The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment.

- 7.4.2.1 **Modified Duty for Pregnancy:** However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the

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City of Berkeley BFFA, Local 1227, I.A.F.F., BCFOA  
employee is qualified, and the position must better accommodate recurring periods of leave than the employee's regular job.

#### 7.4.3 City Manager Authority on Modified Duty

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

### SECTION 7.5: RESIDENCY REQUIREMENT

~~Employees who are hired subsequent to January 1, 1995, may not reside greater than forty (40) air miles from Berkeley City limits~~ Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

### SECTION 7.6: MEAL PERIODS

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

### SECTION 7.7: STAFFING

- 7.7.1 Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be at least one promoted or acting Battalion Chief assigned per shift (total of 3). During the term of this 2018 to 2020 MOU, the City agrees to provide notice to the Union and meet and discuss permanent staffing changes related to the Assistant Fire Chief and Fire Marshal classifications.
- 7.7.2 The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a "fiscal emergency" via a 2/3 vote of the City Council.
- 7.7.3 If the City Manager determines during the Fiscal Year that fund revenues have or will decline substantially below the estimate of fund revenues in the adopted

Budget and/or expenditures have or will increase substantially above the projected expenditures in the adopted Budget, the City Council may declare a "fiscal emergency" that shall thereupon cause the City of Berkeley and the Berkeley Chief Fire Officers Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.

- 7.7.4 Prior to a policy change which will result in a temporary reduction in the number of Chief Officers (see Sections 7.7.1 through 7.7.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 7.7.5 As soon as possible following the end of the "fiscal emergency", it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 7.7.6 The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 7.7.7 All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.

## SECTION 7.8: TRADES

Battalion Chiefs are allowed shift trades as detailed in the Trade Policy General Order.

## SECTION 7.9: PHYSICAL & PSYCHOLOGICAL EXAMINATIONS

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

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



reports or conclusions to the City.

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

## **SECTION 7.10: HAIR SAFETY STANDARDS**

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

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

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

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

## **SECTION 7.11: YMCA**

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

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

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

## **SECTION 7.12: REIUMBURSEABLE INCIDENTS AND TRAINING**

In recognition of the Alameda County Mutual Aid System, the Fire Chief may authorize employees to participate in mutual aid deployments, such as strike team assignments; overhead deployments; urban search and rescue missions; or other events where the



City is reimbursed from the state or federal government for the labor costs incurred by the City.

If an employee works on the Alameda County Mutual Aid System beyond the employee's normal work week, the employee shall be reimbursed at the California Governor's Office of Emergency Service, Salary Survey/Actual Administrative rate but in no case will the employee's compensation for participating in the Alameda County Mutual Aid System exceed the rate that is reimbursed to the City by the State of California or other external entity.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

### **SECTION 7.13: USE OF CITY VEHICLES**

At the direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

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

### **SECTION 8.1: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **8.1.1 Continued Participation**

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

#### **8.1.2 New Members' CalPERS Retirement Formula**

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

#### **8.1.3 Classic Employees' CalPERS Retirement Formula**

Current employees and other employees who do not qualify as "New Members" under PEPRAs shall continue to be entitled to the 3% at 50 retirement formula in effect since December 22, 2000, with single highest year compensation. In addition to the single highest year earnings formula, Classic Employees' retirement benefit will continue to include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law.

#### **8.1.4 Optional Benefits**

Except as otherwise noted, for both Classic Employees and New Members, the City's contract with CalPERS shall include the following optional benefits:

- a) One-Year Final Compensation as provided in Section 20042 (July 22, 1976) (Classic Employees only).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).  
1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).
- e) Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000).
- f) Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).

#### **8.1.5 Classic Employees' Pension Contribution**

On July 1, 1994, the City increased the base salary for Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed responsibility for payment of the normal employee

retirement contribution to CalPERS. The City designated and shall continue to designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

8.1.5.1 **Classic Employees' Additional Contribution:** Effective November 8, 2015, employees assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payment to the City's CalPERS employer contribution rate as Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code.

### 8.1.6 New Members' Pension Contributions

New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA.

8.1.6.1 **New Members' Additional Contribution:** Effective November 8, 2015, New Members assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) of pensionable compensation (in addition to contributing 50% of the normal cost) towards the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

### 8.1.7 Supplementary Retirement and Income Plan II

In lieu of participating in the Federal Social Security Program, the City provides the Supplementary Retirement and Income Plan II (SRIP II). The City's contributions to this on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death. The City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. Employees in the classification of Assistant Fire Chief enrolled effective July 2, 1995; employees in the classification of Battalion Chief enrolled effective March 10, 2009; and employees in the classification of Fire Marshal on January 20, 2015.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 9.1: LAYOFF PROCEDURE**

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

#### **9.1.1 Announcement of Layoff**

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

9.1.1.2 **Freezing of Positions:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 9.1.7 (Reemployment Lists).

#### **9.1.2 Seniority Service Date**

9.1.2.1 **Time Counted:** All service in the employ of the City shall be counted toward the establishment of the employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as result of formal disciplinary action will be subtracted from the seniority service date.

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

### 9.1.3 Establishment of Seniority Lists

- 9.1.3.1 **Probationary and Permanent Seniority Lists:** Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.
- 9.1.3.2 **Layoff Order:** The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in 9.1.4 (Employee Retreat Rights) below, employees on all lists shall be laid off on the basis of their seniority service dates, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification

will be laid off prior to employees on the permanent seniority list for that class.

- 9.1.3.3 **Provisional Appointments:** Probationary or permanent employees holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.
- 9.1.3.4 **Seniority Tie Break:** If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.
- 9.1.3.5 **Promotions:** If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

#### 9.1.4 Employee Retreat Rights

- 9.1.4.1 **Retreat Consideration:** Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classification through which he or she was originally promoted or any subsequently created intermediate-level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 9.1.4.2 **Process:** In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent basis. Retreat rights to the rank of permanent Assistant Fire Chief, Battalion Chief, Fire Marshal, Deputy Fire Marshal, or Fire Captain will be available only to employees who have previously held this rank on a permanent or probationary basis.

9.1.4.3 **Retreat to More than 1 Classification:** If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

9.1.4.4 **Salary:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### 9.1.5 Employee Notification

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

9.1.5.2 **Provisional Notifications:** Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

9.1.5.3 **Probationary and Career Notifications:** Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release or reassignment or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

**Forfeiture of Offer:** If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 9.1.9 (Appeal Procedures).

### 9.1.6 Flexible Placement Program

9.1.6.1 **Freeze of Vacancies:** In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 9.1.1 (Announcement of Layoff), impose a City-wide freeze on all appropriate



vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

- 9.1.6.2 **Placements by Human Resources:** Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff have been identified and the provisions under Section 9.1.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standard and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.
- 9.1.6.3 **Limits of Assignments:** Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.
- 9.1.6.4 **Offers Made:** Offers of positions under the flexible placement program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 9.1.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times, including written acceptance of the offer.
- 9.1.6.5 **Forfeiture of Offer:** If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after the offer has been made he or she forfeits further rights to employment retention. Acceptance of an alternative job under the flexible placement program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 9.1.7 (Reemployment Lists).

## 9.1.7 Reemployment Lists

- 9.1.7.1 **Placement of Names:** The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with



## Section 9.1.4 (Employee Retreat Rights).

- 9.1.7.2 **List Duration:** A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 9.1.7.3 **Use of Reemployment Priority List:** Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.
- 9.1.7.4 **Order of Rehire from Reemployment List:** When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.
- 9.1.7.5 **Forfeiture of Offer:** If a former employee fails to accept a bona fide written offer or reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.
- 9.1.7.6 **Salary/Step Placement:** Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.
- 9.1.7.7 Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.

### **9.1.8 Career-Exempt Employees**

Only those employees holding full-time, benefited exempt positions who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt".

### **9.1.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under Section 6.1 (Grievance Procedure). In addition, employees may, at all times before, during, and subsequent to layoff, review all records including seniority lists, reemployment priority lists, documentation pertaining to appointments under the flexible placement program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

### **9.1.10 Audit**

- 9.1.10.1 On an annual basis, the City Manager's office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 9.1.7 (Reemployment Lists). In the event vacancies for which reemployment priority lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.
- 9.1.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment.

City of Berkeley 20182020-2020-2021 Memorandum of BFFA, Local 1227, I.A.F.F., BCFOA

**Signature Page**

**Employee Representatives  
Berkeley Fire Fighters Association,  
International Association of Fire Fighters  
Local 1227  
Berkeley Chief Fire Officers Association**

**Employer Representatives  
City of Berkeley**

\_\_\_\_\_  
William Kehoe  
BCFOA President

Date

\_\_\_\_\_  
Dee Williams-Ridley  
City Manager

Date

\_\_\_\_\_  
Jonathan Fischer  
BFFA President

Date

\_\_\_\_\_  
LaTanya Bellow  
Director of Human Resources

Date

\_\_\_\_\_  
Abe Roman  
Assistant Fire Chief

Date

City of Berkeley

~~20182020-2020-2021~~ Memorandum of

BFFA, Local 1227, I.A.F.F., BCFOA

**EXHIBIT A – Salaries**

<b>Initial 3.0% Equity Increase (Battalion Chief only)</b>									
Job Code	Unit	Title	FLSA	AL (Y/N)	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
81740	A	Assistant Fire Chief	E	Y			81.0921		89.2230
81750	A	Battalion Chief	E	N		49.9059	52.4000	55.0202	57.7715
81760	A	Fire Marshal	E	Y			81.0921		89.2294

<b>Period: Effective 10/21/2018 - 3.0% Salary Increase</b>									
Job Code	Unit	Title	FLSA	AL (Y/N)	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
81740	A	Assistant Fire Chief	E	Y			83.5249		91.8997
81750	A	Battalion Chief	E	N		51.4030	53.9720	56.6708	59.5046
81760	A	Fire Marshal	E	Y			83.5249		91.9063

<b>Period: Effective 07/13/2019 - 2.0% Salary Increase</b>									
Job Code	Unit	Title	FLSA	AL (Y/N)	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
81740	A	Assistant Fire Chief	E	Y			85.1954		93.7377
81750	A	Battalion Chief	E	N		52.4311	55.0515	57.8043	60.6947
81760	A	Fire Marshal	E	Y			85.1954		93.7444

## **EXHIBIT B – Glossary of Terms**

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

**ANNIVERSARY DATE:** For the purposes of determining step increases, Anniversary shall be the date an employee is appointed or promoted to their current rank.

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

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

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

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

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

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

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of

the calendar year were December 28, the last day of the payroll year would be December 22.

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

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

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

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

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

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

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

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

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

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

**REEMPLOYMENT:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 9.1.7 (Reemployment Lists) in this MOU.

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

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" of this MOU).

**REINSTATEMENT:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 5.1 (Probationary Period).

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

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

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

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

**TOUR (48/96):** The basic work cycle; for example, the 56-hour employee's tour consists

of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

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

**VACATION YEAR:** A vacation year runs twelve (12) months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

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



**EXHIBIT C – Grievance Forms**

STEP 1 - Informal Step

STEP 1.1 - Deputy Fire Chief Response

STEP 2 – Appeal to Fire Chief

STEP 2.1 – Fire Chief Response

STEP 2.2 – Director of Human Resources Response (Compensation)

STEP 3 – Appeal to City Manager

STEP 3.1 - City Manager Response

STEP 4 – Appeal to Arbitration



BFFA Local 1227 – City of Berkeley
Grievance Form
(Days defined as Calendar Days, unless otherwise noted)



STEP 1 – Informal Step

Important Notes (MOU Section 6.1 (Grievance Procedure)): A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, regulation, or past practice which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process.

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

Grievance Tracking No.:

Form with fields for Grievant First Name, Grievant Last Name, Date, Job Title, Firefighter, Dept/Location, Station One, E-Board Rep, and First, Last Name.

Nature of Grievance (Include specific provisions of the MOU, City ordinance, rule or regulation and/or past practice, and the circumstances involved):

Relief Desired:

Form with fields for Grievant Signature, Rep./Steward Signature, Date Rec'd by Chief Officer, Meeting Requested (Yes/No), Date meeting occurred, Deputy Fire Chief Signature, and Date.

Instructions: The grievant should complete this form electronically and print it out. It should then be given to an Executive Board member who will submit it to the Deputy Fire Chief and obtain a signature confirming receipt. Return a copy of the signed form to your assigned 1227 Executive Board representative.



BFFA Local 1227 – City of Berkeley

Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.:

Grievant First Name | Grievant Last Name | Date:

STEP 1.1 – Deputy Fire Chief Response

Important Note: Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the formal grievance procedure (Step II).

Deputy Fire Chief's Response (1227 must be in receipt of this response within 15-days of their initial receipt of this grievance):

Deputy Fire Chief: | Date:
Signature

Receipt of Return to 1227:

Rep/Steward: | Date Rec'd:

Signature
Rep/Steward: First Name
Printed Name

Response to Deputy Fire Chief (to be completed by 1227 Rep./Steward):

Date:

Deputy Fire Chief's Response is:

Satisfactory: [ ] Unsatisfactory: [ ]

Grievance is:

Appealed: [ ] Withdrawn: [ ]

Instructions: The Deputy Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1st Vice President, or the 2nd Vice President.



BFFA Local 1227 – City of Berkeley  
Grievance Form  
(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: |

**STEP 2 – Appeal to Fire Chief**

**Important Notes:** The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance.

Reasons for the appeal:

Date Rec'd by Fire Chief: \_\_\_\_\_

Fire Chief: \_\_\_\_\_  
*Signature*

Meeting Requested by 1227: Yes  No

Meeting Requested by Fire Chief: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it directly to the Fire Chief along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within 10 working days of receiving the DC response.



# BFFA Local 1227 – City of Berkeley

## Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: \_\_\_\_\_

### STEP 2.1 – Fire Chief Response

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

Fire Chief's Response:

Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:  
Rep/Steward: \_\_\_\_\_ Date Rec'd: \_\_\_\_\_  
*Signature*

**Response to Fire Chief (to be completed by 1227 Rep./Steward):**

Date: \_\_\_\_\_

Fire Chief's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

**Instructions:** The Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



### BFFA Local 1227 – City of Berkeley

### Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2.2 – Director of Human Resources Response (Compensation)

**Important Notes:** The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.3 (Step III - City Manager).

<b>Compensation Matter:</b>		Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
HR Representative:	Enter Name		Date:
Signature			
HR Response (required within 30-working days of receipt of grievance) received:			
Receipt of Return to 1227:			
Rep/Steward:		Date Rec'd:	
Signature			
<b>Response to Human Resources (to be completed by 1227 Rep./Steward):</b>			
Human Resources Response is:			
Satisfactory:	<input type="checkbox"/>	Unsatisfactory:	<input type="checkbox"/>
Grievance is:			
Appealed:	<input type="checkbox"/>	Withdrawn:	<input type="checkbox"/>
Appeal deadline: 10-working days from receipt of HR response.			



# BFFA Local 1227 – City of Berkeley Grievance Form

*(Days defined as Calendar Days, unless otherwise noted)*



Grievance Tracking  
No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

## STEP 3 – Appeal to City Manager

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

The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

Reasons for the appeal:

Date Rec'd by  
City Manager: \_\_\_\_\_

City Manager (or designee): \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Meeting Requested: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within **10 working days** after the termination of Step II. Once a signature of receipt is obtained a copy of this form shall be made and returned to the assigned Executive Board representative.

Grievant First Name | Grievant Last Name | Date: |

**STEP 3.1 – City Manager Response**

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

City Manager Response:

City Manager: | Date: |  
*Signature*

Return to 1227:

Rep/Steward: | Date Rec'd: |  
*Signature*

**Response to City Manager (to be completed by 1227 Rep./Steward):**

Date:

City Manager's Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

Instructions: The City Manager (or his or her designee) shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



Grievant First Name

Grievant Last Name

Date:

**STEP 4 – Appeal to Arbitration**

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

**1227 Executive Board Arbitration Request:**

Date:

City Manager's Response was:

Satisfactory:       Unsatisfactory:

Association Requires Grievance to be Submitted to Arbitration:

Yes:       Withdrawn:

President:	<i>Signature</i>
1 <sup>st</sup> Vice President:	<i>Signature</i>
2 <sup>nd</sup> Vice President:	<i>Signature</i>

**Instructions:** The 1227 Executive Board shall complete this form electronically and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) with copies to the Director of Human Resources, the Fire Chief, the Union President, and the 1<sup>st</sup> Vice President. This must occur within ten (10) **working days** of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

## Exhibit D - Tentative Agreement

### CITY OF BERKELEY / BCFOA (IAFF 1227) 2020 MOU NEGOTIATIONS TENTATIVE AGREEMENT – December 1, 2020

#### SECTION 1.7: DURATION

The Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2021, the last day of the last full pay period in June 2021. Nothing in this agreement shall be retroactive.

#### SECTION 2.1: SALARIES

Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in the attached Exhibit "A" to this MOU. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

#### SECTION 2.1.13: STANDBY – DUTY CHIEF COVERAGE

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8% (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, per hour for each hour so assigned. When functioning as a Duty Chief, members shall be available for service at any time when called. If an employee assigned as the Duty Chief is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the pay provided for those hours.

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section

#### 2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

#### NEW SECTION 2.6.8: ASSISTANT CHIEFS WORKING AS BATTALION CHIEFS

40-hour Assistant Chiefs shall be eligible to work as a Battalion Chief, for straight pay, compensated hour for hour during non-regularly scheduled working hours. This does not apply to relief provided to the on Duty Battalion Chief during an Assistant Chief's normal work schedule.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

#### NEW SECTION 3.4.2: COVID LEAVE

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

#### NEW SECTION 7.13: USE OF CITY VEHICLES

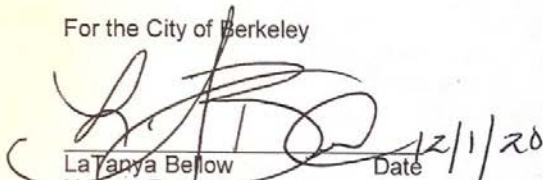
At the Direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

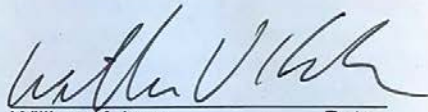
**SECTION 7.5: RESIDENCY REQUIREMENT**

Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

For the City of Berkeley

  
LaTanya Bell  
Human Resources  
Director  
Date 12/1/20

For BFFA, Local 1227

  
William Kehoe  
President, BCFOA, Local 1227  
Date



## **MEMORANDUM OF UNDERSTANDING**

**between**

**City of Berkeley**

**and**

**Berkeley Fire Fighters Association, Local 1227 I.A.F.F.  
Berkeley Chief Fire Officers Association**

**June 30, 2020 to June 30, 2021**

INTENTIONALLY LEFT BLANK

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

MEMORANDUM OF UNDERSTANDING: BERKELEY FIRE FIGHTERS ASSOCIATION, I.A.F.F  
LOCAL 1227 / BERKELEY CHIEF FIRE OFFICERS ASSOCIATION

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

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 30, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., Local 1227, Berkeley Chief Fire Officers Association Chapters, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

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

The foregoing Resolution was adopted by the Berkeley city Council on January 19, 2021 by the following vote:

Ayes:

Noes:

Absent:

Attest:



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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1.1: RECITALS**

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

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

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

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit A; have exchanged freely information, opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees. This Memorandum of Understanding (MOU) shall be presented to the City Council as the joint recommendation of the undersigned.

### **SECTION 1.2: RECOGNIZED EMPLOYEE ORGANIZATION**

#### **1.2.1 Recognition**

The Association is the majority representative of all employees within Representation Unit A (Represented Fire Management) (FC00); and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S.

#### **1.2.2 Deduction of Dues**

The City shall deduct, once monthly, the amount of the membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City

employee and forward the amount to the Association, save amounts deducted due to religious objectors which amount shall be forwarded to the designated charitable organization. An exception from these deductions shall exist in situations when an employee is in a leave without pay or other unpaid status such that there is no payroll amount from which to make a deduction. The City shall continue to deduct insurance premiums and other such deductions as may be specified by the employee in accordance with past practice. The Association shall provide sixty (60) day notice on any changes in dues or assessments or premiums.

- 1.2.3** The City and the Association recognize this MOU (see Glossary) as a binding and legal contract between the two parties.
- 1.2.4** The City shall print the new MOU in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with twenty (20) copies of the booklet to assure availability for each member of Unit A.

### **SECTION 1.3: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, marital or domestic partner status, gender, age, sexual orientation, national origin, political affiliation, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City; and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.

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

The City of Berkeley Harassment Prevention Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10318>, in the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## SECTION 1.4: ASSOCIATION REPRESENTATIVES

### 1.4.1 Association Release Time

The City shall allow two (2) representatives of the Association, subject to the conditions set forth in Sections 1.4.2 (Negotiations) and 1.4.3 (Advance Notice), reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect MOU which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this MOU in the future.

### 1.4.2 Negotiations

With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off for negotiations of a successor MOU.

### 1.4.3 Advance Notice

The representative shall advise his or her Fire Chief or Deputy Fire Chief through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his or her job without the approval of a chief officer.

### 1.4.4 Association Representative

Per the requirements of the Fire Fighters' Bill of Rights Act, an employee who requests such may have an Association representative present at any meeting with the Deputy Fire Chief and/or the Fire Chief which could result in punitive action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.

## SECTION 1.5: SEVERABILITY OF PROVISIONS

This MOU is subject to all current and future applicable federal and states laws and regulations, and all lawful rules, policies, and regulations of the City of Berkeley in effect at the time this MOU is adopted, except as expressly modified by this Agreement. If any provision of this MOU is determined to be in conflict or inconsistent with any laws, rules, and/or regulations or is otherwise held to be invalid or unenforceable, such provision may be suspended or superseded, and the remainder of this MOU shall continue in full force and effect. If any provision is invalidated, the parties shall meet and confer in good faith regarding a replacement provision.

Should any City rule, regulation or policy conflict with the MOU, the MOU shall supersede.

#### **SECTION 1.6: FINALITY OF RECOMMENDATIONS**

The recommendations set forth in this MOU are final. No change or modifications shall be offered, urged, or otherwise presented by the Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this MOU from meeting and conferring and making modifications herein by mutual consent. No such amendments to this MOU shall be effective until adopted by City Council and ratified by the Association.

This MOU shall supersede all existing memoranda agreement between the City and the Association.

#### **SECTION 1.7: DURATION**

The term of this MOU shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this MOU be effective prior to 0001 hours, June 30, 2020. This MOU and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours, June 30, 2021.



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

### **SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in Exhibit "A" to this MOU and attached hereto. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

#### **2.1.1 Ranges**

Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto.

#### **2.1.2 Step Increases**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City, provided that step increases within the salary range shall occur on the anniversary date of the appointment, subject to the exception in Section 2.1.5 (Unpaid Leave Effect on Pay Increases) for extended unpaid leaves of absence.

**Step Increases for Assistant Fire Chief and Fire Marshal:** Steps shall be reinstated for the Assistant Fire Chief and the Fire Marshal classifications. Each incumbent will remain in their current salary pending their next Anniversary Date (of promotion or appointment to current position), at which time they will be placed in the higher step of the range closest to their current salary.

#### **2.1.3 Salary Placement and Entry – Lateral Incentive**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's classification as set forth in Exhibit "A" for the appropriate anniversary date of promotion or appointment. The minimum rate for the classification shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a "lateral entry appointment" shall be defined as a person who has completed the probationary period as an Assistant Fire Chief, Fire Marshal, or similar equivalent classification in a paid organized Fire Department or transfers from another agency. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral appointment be made at a salary step or pay schedule range

above the entry pay rate that is commensurate with the appointee's years of service as an Assistant Fire Chief or Fire Marshal with a paid organized Fire Department.

#### **2.1.4 Maximum Pay Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

#### **2.1.5 Unpaid Leave Effect on Pay Increases**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week. If the employee is off the payroll for one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase, except that employees on approved parental leave or military leave are exempt from such requirement. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.

#### **2.1.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or any employee occupying a position in a class for which the salary rate or range is reduced, shall continue to receive his or her present salary. Such salary shall be designated as "Y-rate". When an employee on a "Y-rate" vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 2.1.2 (Step Increases).

#### **2.1.7 Bi-Weekly Payments**

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

**2.1.7.1 Payment of Annual Salary in Equal Amounts:** The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.

2.1.7.1.1 **40-Hour Week:** For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to four (4) decimal places.

2.1.7.1.2 **56-Hour Week:** For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.

2.1.7.1.3 **Work Period:** For Battalion Chiefs, who are eligible for overtime under this MOU, the work period is defined as twenty-four (24) days with an FLSA overtime threshold of 192 hours.

**2.1.8 Matrix of Comparable Cities**

The following list of jurisdictions is established for the purpose of comparing total compensation:

City of Alameda	City of Fremont	City of Palo Alto
County of Alameda	City of Hayward	City of Richmond
County of Contra Costa	Livermore-Pleasanton Fire Department	City of San Mateo
City of Daly City	City of Oakland	City of Vallejo

The City reserves the right to modify these survey agencies, in its discretion, no later than the first MOU negotiations meeting.

**2.1.9 Emergency Medical Technician Differential**

Unit A employees who maintain current Emergency Medical Technician (EMT) certification shall receive an EMT pay differential of four percent (4%). This EMT shall be reported to CalPERS as Emergency Medical Technician Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**2.1.10 Pay Effective Dates**

All changes in pay rate will go into effect at the beginning of a pay period (see Section 2.1.7 (Bi-Weekly Payments)) and stay in effect until the last day of a pay period if they are a result of the following:

- a) Application of a cost of living adjustment;
- b) Step increases;
- c) Retroactive adjustments;
- d) Implementation of CalPERS options;
- e) Change of employee's status from career to hourly or vice versa;
- f) Promotion or demotion;

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

**2.1.11 End of Year Calculation**

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

**2.1.12 Longevity Pay**

Represented employees in Unit A who complete nineteen (19) years of service shall receive a five percent (5%) differential beginning with their anniversary date that starts their twentieth (20<sup>th</sup>) year of service with the City of Berkeley, and this differential shall apply to all hours in a paid status.

**2.1.13 Standby – Duty Chief Coverage**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8 % (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, per hour for each hour so assigned. When functioning as a Duty Chief, members shall be available for service at any time when called. If an employee assigned as the Duty Chief is not available

when called or is unable or fails for any reason to perform the service when call, the employee shall not receive the pay provided for those hours.

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section 2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## **SECTION 2.2: PAYROLL ERRORS**

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

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

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

## **SECTION 2.3: BILINGUAL PREMIUM PAY**

Effective December 8, 2015, the Fire Chief may make a Bilingual Premium Pay

Differential assignment of two percent (2%) of an employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### **2.3.1 Applications**

The Fire Chief will accept applications from employees wishing to apply for a bilingual differential in the first quarter of each year, or within the first three months of employment.

### **2.3.2 Competency**

The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. The Fire Chief reserves the right to require testing for second language appropriate competency prior to a Bilingual Premium Pay Differential and be required to demonstrate use at least on a monthly basis.

## **SECTION 2.4: ACTING IN HIGHER CLASSIFICATION**

### **2.4.1 Temporary Assignments to a Higher Classification**

In order for an employee to be paid for temporary assignment to a higher classification, the following requirements must be observed. Prior to the starting date of the assignment, the employee must be specifically assigned in writing by the Fire Chief or his or her authorized representative with the prior, written approval of the City Manager to temporarily serve in a higher classification. The employee must work a minimum of one (1) day, meet the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements shall be paid at the lowest step or range of the higher classification that provides a five percent (5%) differential. An employee will only be eligible for higher classification pay when working.

## **SECTION 2.5: HOURS & DAYS OF WORK / ALTERNATE WORK SCHEDULE PROGRAM**

Hours and days of work shall be governed by rules established by the City Manager and the Department Head.

### **2.5.1 48/96 Work Schedule**

Battalion Chiefs will be required to work a 56-hour suppression work week. This may require a 48/96 schedule as their regular schedule.

### **2.5.2 48/96 Impacts**

If the Fire Chief determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, the Union agrees to meet with the Fire Chief upon request to discuss concerns, if any, the Fire Chief might have in the future regarding the 48/96 schedule.

### **2.5.3 Evaluation**

The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of workload secondary to consecutive work hours.

### **2.5.4 Daylight Saving Time**

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

**2.5.4.2 Fall:** In the Fall when transitioning from DST, employees Battalion Chiefs working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1 ) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 2.6 (Overtime) of this MOU.

## SECTION 2.6: OVERTIME

### 2.6.1 FLSA Designation

Consistent with the provisions of the Fair Labor Standards Act (FLSA), the City shall designate certain administrative, professional, and management positions to be exempt. Said designation shall be in writing and shall include the basis for such exclusion. The Association shall be provided with a list of all such exempt positions along with information as to the reasons for exemption status for employees in Unit A.

### 2.6.2 Eligibility and Rate

Battalion Chiefs, who are not eligible to receive Administrative Leave, shall receive compensation for all work performed during the employee's day off, off-shift, or other scheduled time off during the tour of duty. Battalion Chiefs designated and authorized to work overtime shall be paid for all work performed in an overtime status and shall be compensated at a rate of one and one-half (1 ) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this MOU at the time he or she works the overtime.

### 2.6.3 Battalion Chief Compensatory Time Off or Payment

A Battalion Chief may request compensation for overtime by compensatory time off or by payment. The Fire Chief shall consider the employee's preference. Whether the employee shall be compensated for overtime by compensatory time or by payment shall be at the sole discretion of the Fire Chief.

### 2.6.4 Battalion Chief Compensatory Time and Maximum Accumulation

For the purposes of this MOU the term "Compensatory Time" shall mean the same as the term "Due Time".

A Battalion Chief may accumulate compensatory time for hours worked in excess of the regular workday / workweek in lieu of compensation at the rate of time and one-half (1 ) hours for each hour worked. Compensatory time off shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time a Battalion Chief assigned to a fifty-six (56) hour week work schedule. Compensatory time in excess of 162 shall automatically be paid as compensation.

### 2.6.5 Workweek Computation

For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.

### 2.6.6 Battalion Chief Overtime Activities

Overtime for approved activities not related to suppression staffing or emergency callbacks require the Deputy Fire Chief's approval in advance.



## 2.6.7 Battalion Chief Call-Back

- 2.6.7.1 **Normal Staffing Needs:** Battalion Chiefs who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.
- 2.6.7.2 **Emergency Call-Back:** A Battalion Chief who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.
- 2.6.7.3 **Minimum Call-Back:** In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.
- 2.6.7.4 **Overtime Practices:** The Department will adhere to the overtime hiring procedures and policy as stated in the Overtime Policy and Procedures General Order.

## SECTION 2.7: COURT PAY

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

## **ARTICLE 3 - LEAVES**

### **SECTION 3.1: ADMINISTRATIVE LEAVE**

Employees in classifications identified as not eligible for Overtime under Section 2.6 (Overtime) of this MOU shall be credited with fifty (50) hours of Administrative Leave each January 1. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 3.3 (Vacation) shall apply to Administrative Leave. The classifications eligible to receive Administrative Leave are designated in Exhibit A of this MOU.

Persons appointed to classifications not eligible for overtime compensation during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.

### **SECTION 3.2: INCREMENTAL TIME OFF**

Incremental Time Off is considered time off using vacation, due time, or sick leave bonus.

### **SECTION 3.3: VACATION**

#### **3.3.1 Vacation Leave**

Employees shall be entitled to annual vacation leave subject to the provisions in this chapter. Moreover, all employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.

#### **3.3.2 Vacation Approval**

All vacation must be approved, in advance, by the Fire Chief or Deputy Chief, on forms or scheduling system utilized by the City.

#### **3.3.3 Vacation Periods**

**3.3.3.1 48/96 56-Hour Week Employees:** For employees on the 48/96 schedule, a vacation period for employees on a 56-hour week shall consist of three (3) 24-hour shifts (See Glossary).

**3.3.3.2 Incremental Time Off (Battalion Chief):** Incremental vacation shall be taken in increments of ten (10) hours (days) from 0700 hours to 1700 hours or fourteen (14) hours (nights) from 1700 hours to 0700 hours.

**3.3.4 Vacation Accrual Schedule**

3.3.4.1 **Battalion Chief:** The vacation accrual schedule is as follows:

Years of Service (as provided in Sections 3.3.8; 3.3.8.1; and 3.3.9)	Vacation Accumulation	
	56 Hours	40 Hours
Through the first five (5) years of service	2 Vacation Periods	
	144 hours	80 hours
Six (6) through eleven (11) years of service	3 Vacation Periods	
	216 hours	120 hours
Twelve (12) through eighteen (18) years of service	4 Vacation Periods	
	288 hours	160 hours
Nineteen (19 through twenty-four (24) years of service	5 Vacation Periods	
	360 hours	200 hours
Twenty-five (25) and subsequent years of service	6 Vacation Periods	
	432 hours	240 hours

3.3.4.2 **Assistant Fire Chief and Fire Marshal:** The vacation accrual schedule for FLSA Exempt employees eligible for Administrative Leave in the classifications of Assistant Fire Chief and Fire Marshal is as follows:

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

**3.3.5 Lateral Entry Vacation Accrual Rate at Time of Appointment**

Subject to the provisions of Section 3.3.3 (Vacation Periods), an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 2.1.3 (Salary Placement and Entry – Lateral Incentive) of this MOU, shall accrue at time of appointment, and continue to accrue, and be eligible to take Vacation Leave commensurate with his or her years of experience as a sworn Fire Fighter. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

**3.3.6 Accrual Based on Hours in Paid Status**

Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay. Employees shall earn vacation leave according to the following schedule:

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

**3.3.7 Utilization**

Each employee shall be entitled to take only such annual vacation leave as the employee has accrued; provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

**3.3.8 Length of Service Computation**

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more, or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) vacation period rate.

**3.3.8.1 Part-Time and Intermittent Work Accrual:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

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

**3.3.9 Maximum Carryover of Vacation**

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

**3.3.10 Hours in Excess of Maximum Accumulation**

An employee who has attained maximum accumulation may be required to take all projected excess earned vacation or receive pay in lieu thereof, at the option of the City. By October of each year, the City will advise employees who have attained a maximum accrual of vacation and whether such excess earned vacation

must be scheduled as time off prior to the end of the vacation year, which begins in March of each year according to schedules established by the Fire Chief. By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year.

Employees who accrue unused vacation beyond the eight (8) week maximum shall be paid out annually.

### **3.3.11 Vacation Leave before Retirement**

An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He or she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he or she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.

### **3.3.12 Return from Leave Prorated Vacation**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 3.3 (Vacation).

### **3.3.13 Extended Leave Accrual Impact**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours or more for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours or more for employees assigned to a fifty six (56) hour work week, the employee's vacation shall be as provided in Sections 3.3.15 (Payment upon Termination, Military or Extended Unpaid Leave); or 3.3.16 (Vacation Buy Back).

### **3.3.14 Payment upon Death**

If, after six (6) months of continuous service, an employee dies, the employee's estate shall be paid for all accrued unused vacation periods at the employee's base rate at the time of death, and such employee or his or her estate shall reimburse the City for the actual amount of vacation taken in excess of vacation leave earned, as the case may be.

**3.3.15 Payment upon Termination, Military or Extended Unpaid Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee shall be paid for 100% of the excess of vacation credits that the employee has earned, banked or held over, at the employee's base rate at the time of termination, military or extended unpaid leave. If the vacation balance is negative, such employee shall reimburse the City or the City may deduct the balance due from the employee's salary due, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

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

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

**3.3.16 Vacation Buy Back**

By March 1 of any calendar year, employees may exercise an option to buy back up to one-half (1/2) of his or her accrued but unused vacation leave, up to a maximum of four (4) weeks.

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

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

**3.3.19** The vacation buy back provision as provided for in this section applies only to Personnel assigned to fire suppression and medical response vehicles.

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

**3.3.20.1** Vacation leave accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 0.7143.

**3.3.20.2** Vacation leave accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying

number of hours of vacation leave accrued by the conversion factor of 1.4.

**SECTION 3.4: HOLIDAYS**

Assistant Fire Chiefs and the Fire Marshal shall be allowed the following holidays off with pay at the eight (8) hour straight time salary rate based on their regular monthly salaries.

Battalion Chiefs, who are assigned to a 24-hour work schedule (those regularly scheduled to work fifty-six (56) hours) will receive twelve (12) hours of holiday pay as part of the base salary.

The holidays to which this provision applies are:

<b>Holiday</b>	<b>Day Observed</b>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Malcolm X's Birthday	Monday or Friday nearest May 19
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Floating Holiday	
Indigenous Peoples' Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
The Day After Thanksgiving Day	Fourth Friday in November
Christmas Day	December 25
Any Special Holiday Declared by the City Manager	

For historical reference only, in addition to the above-referenced 14 holidays (time off with pay), effective June 27, 1999 and as provided in Resolution Nos. 59,954-N.S. and 59,953-N.S., the City converted Holiday Pay (14 holidays, valued at 6.154% of base salary) as additional compensation and rolled the additional compensation into the Unit A classifications base salary (Assistant Fire Chief). When the Fire Marshal and Battalion Chief classifications were established in 2010, the pay range included Holiday Pay in the base salary.

**3.4.2\_COVID Leave**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

**SECTION 3.5: SICK LEAVE**

**3.5.1 Sick Leave Use**

An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 3.5.2 (Accumulation of Sick Leave) to 3.5.6 (Sick Leave Not a Privilege) inclusive.

**3.5.2 Accumulation of Sick Leave**

Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

**3.5.3 Maximum Accumulation**

Such sick leave as provided in Section 3.5.2 (Accumulation of Sick Leave) when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

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

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

**3.5.4 Annual Payout for Excessive Sick Leave**

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



Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate provided in Section 3.5.2 (Accumulation of Sick Leave).

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

**3.5.5 Accrued Sick Leave Canceled Upon Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated.

**3.5.5.1 Unused Sick Leave Payment at Retirement or Termination for Employees Hired on or Before June 30, 2014:** All employees hired on or before June 30, 2014 that retire (non-disability) or voluntarily terminate with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

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

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his or her employment with the City. Employees hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

**3.5.6 Sick Leave Not a Privilege**

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than twelve (12) sick leave days (6 24-hour shifts or 144 hours for a 56-hour schedule, or 96 hours for a 40-hour schedule) in any calendar year may be taken because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.

**3.5.7 Injury Incurred in Outside Employment**

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

**3.5.8 Notice Requirement**

An employee who is unable to report to duty due to illness shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift in order to receive compensation while absent on sick leave.

**3.5.9 Absence Reporting (2 24-Hour or 3-Days):**

If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts or three (3) days, it shall be reported immediately to the Deputy Chief or Fire Chief via telephone or email.

**3.5.10 Effect of Leave without Pay on Sick Leave Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.

**3.5.11 Control of Abuse**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.

**3.5.12 Restoration of Sick Leave upon Re-Employment**

Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.

**3.5.13 Bonus for Unused Sick Leave**

For every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave bonus time. Leave without pay and a Workers Compensation leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus, except for partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim which absences shall not disqualify an employee from the sick leave bonus described in this paragraph. Such bonus

time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave. The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

### **3.5.14 Use of Sick Leave Bonus**

The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Deputy Chief or Fire Chief.

### **3.5.15 Accrual Conversion Rate**

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

- 3.5.15.1 Sick leave or sick leave bonus time accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time by the conversion factor of 0.7143.
- 3.5.15.2 Sick leave or sick leave bonus time accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time accrued by the conversion factor of 1.4.

## **SECTION 3.6: WORKERS' COMPENSATION**

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

## **SECTION 3.7: BEREAVEMENT LEAVE**

### **3.7.1 Bereavement Leave and Qualified Immediate Family Members**

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding 48 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per week work schedule. The immediate family of an employee, for the purpose of this Section, shall be defined as wife, husband, domestic partner (see Glossary),

mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

### **3.7.2 Bereavement Leave Charge**

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

### **3.7.3 Discretionary Approval:**

An employee may submit a request for additional time off as vacation or compensatory time to adjust to the death of a family member.

## **SECTION 3.8: MILITARY & MARITIME LEAVE**

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

## **SECTION 3.9: PARENTAL LEAVE**

Any employee with one (1) or more years of benefitted employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave upon the birth of a child or the adoption of a child who is five (5) years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

## **SECTION 3.10: LEAVE OF ABSENCE WITHOUT PAY**

### **3.10.1 Authorization for Leave without Pay**

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

### **3.10.2 Required Exhaustion of Accrued Leave**

An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay.

**3.10.2.1 Leave Due to Illness:** In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay.

However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he or she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

## **SECTION 3.11: JURY DUTY LEAVE**

### **3.11.1 Absence from Duties**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.

### **3.11.2 Service during Off-Shift**

Employees who receive compensation for jury service during off-shift hours shall not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.

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

### **SECTION 4.1: MEDICAL, DENTAL & LIFE INSURANCE**

#### **4.1.1 Medical Insurance Maximum City Payment**

The City will pay 100% of the premium for the applicable (single, two party, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. The cost difference between the Kaiser Plan and more expensive plans will be borne by the employee. Effective July 1, 2019, employees shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction towards their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two party, or family employee category. This requirement for employees to contribute toward their health premiums shall only be effective if Department Head employees at the City are paying at least this amount as of July 1, 2019.

4.1.1.1 **Dependents:** Dependent status will be available until the dependent reaches the age of twenty-six (26) providing the dependent(s) meet the definition of "dependency" in the Internal Revenue Code.

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

#### **4.1.2 Annual Maximum Increase**

The amount the City contributes each calendar year toward the payment of health insurance premiums will increase by the lesser of twenty percent (20%) (single, two party, family) or the amount of the Kaiser HMO premium amount (single, two party, family) in effect on that date. The amount the City contributes each calendar year uses the premium rate of the previous calendar year as the basis for the calculation and there shall be no year-to-year carryover.

#### **4.1.3 Medical Cash in Lieu**

The cash in lieu payment to employees who show proof of alternate coverage will be a flat dollar amount of \$560, pro-rated for part-time employees.

#### **4.1.4 Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. The maximum annual coverage is \$3,000 and the lifetime orthodontia limit is \$3,000.

**4.1.5 Prorated Fringe Benefits**

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

**4.1.6 Life Insurance**

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

**4.1.7 Replacement Health Plan Meet and Confer:**

The Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2015 Affordable Care Act (ACA) excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the cost of health benefits.

**SECTION 4.2: RETIREE MEDICAL COVERAGE****4.2.1 Reimbursement Plan**

The City will assist in the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse/domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is described below and is based on the combination of the following factors:

- 4.2.1.1 the years of service of the employee at time of retirement
- 4.2.1.2 whether the employee is eligible to participate in Medicare
- 4.2.1.3 the annual increase of 4.5% on the amount the City will reimburse for the cost of the medical insurance premium.

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

The maximum amount the City will reimburse for the cost of the Medical Insurance

Premium is based on the following schedule (to clarify, there is no “pro-rata” incremental increase between these thresholds):

Years of City Service to be Completed	Percentage of City Reimbursement
10	25%
15	50%
20	75%
25	100%

4.2.1.4 **Annual Increase:** Effective each January 1, the base rates reimbursement as provided throughout this Section shall be increased by 4.5%.

**4.2.2 Employees Who Retired On or After July 1, 1997 through June 30, 2006**

4.2.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4221.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the employee retires, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage.

4221.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City’s maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), total \$749.86 for two party coverage for the retiree and spouse or domestic partner or \$376.24 for single party coverage.

4.2.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4222.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the retiree reaches age 65 and is eligible for Medicare, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage.



42222 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

#### 4.2.3 Employees Who Retired On or After July 1, 2006

4.2.3.1 **Not Medicare Eligible:** For employees who retire on or after July 1, 2006 and are not eligible for Medicare, the City will reimburse the retiree and/or surviving spouse or domestic partner for the cost of the Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

4231.1 **Reimbursement Amount as of July 1, 2006:** On July 1, 2006, the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$327.76 per month (single party) and \$653.86 per month (two party).

4231.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$1,015.42 for two party coverage for the retiree and spouse or domestic partner or \$509.00 for single party coverage.

4.2.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

42321 **Reimbursement Amount as of July 1, 2006:** Effective July 1, 2006, each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$393.05 per month (two party) or \$196.52 per month (single party).

42322 **Reimbursement as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

#### 4.2.4 Retiree Definition

For the purposes of this section a "Retiree" is anyone who meets all the following conditions: is vested in CalPERS; has reached the age of CalPERS retirement (age 50 for classic employees or age of 57 for new members as defined in Section 8.1 (California Public Employees' Retirement System) of this MOU; and has separated from the City.

4.2.4.1 **Disability Retirement:** A "Retiree" is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.

#### 4.2.5 Enrollment in City Group Plans

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.

### SECTION 4.3: SUPPLEMENTAL RETIREMENT PLAN (401a)

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

**SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

Employees in the classification of Assistant Fire Chief are enrolled effective July 2, 1995, employees in the classification of Battalion Chief are enrolled effective March 10, 2009, and employees in the classification of Fire Marshal on January 20, 2015.

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

### **SECTION 5.1: PROBATIONARY PERIOD**

#### **5.1.1 Original Appointment**

Original appointments from employment lists shall be tentative and subject to a probationary period of one (1) year of actual service.

#### **5.1.2 Satisfactory Service**

If the service of the probationary employee has been satisfactory to the Fire Chief, the Fire Chief shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired.

#### **5.1.3 Service Unsatisfactory**

If such service has been unsatisfactory, the Fire Chief shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

### **SECTION 5.2: EXAMINATIONS**

#### **5.2.1 Examination Process**

Examinations may consist of any method of evaluation to measure the capacities of the persons examined to execute the duties and responsibilities of the career classification to which they seek to be appointed. The probationary period shall be considered as a portion of the examination process.

#### **5.2.2 Promotional Examinations**

Promotional examinations may be conducted whenever the needs of the service require. Promotional examinations may include any of the selection techniques as deemed appropriate by the Director of Human Resources. Only permanent employees in the career service or on active mandatory layoff reemployment lists who meet the requirement set forth in the class specification may compete in promotional examinations.

#### **5.2.3 Notification of Results and Review of Papers**

Each candidate in a formal written examination where scores are provided shall be given notice of the results thereof, and if successful, of the final earned score and/or rank on the employment list.

All such candidates shall have the right to inspect their written test answer sheet within ten (10) working days after the results are mailed. Such personal examination shall be made in the presence of the Director of Human Resources, or his or her authorized representative, and no notes shall be made by the

applicant.

**SECTION 5.3: METHOD OF FILLING VACANCIES**

**5.3.1 General Provisions**

All vacancies in the career service shall be filled by transfer, demotion, re-employment, reinstatement, or from eligible list certified by the Director of Human Resources, if available. In the absence of persons eligible in these ways, temporary appointments may be made in accordance with the provisions of this MOU.

**5.3.2 Promotion and Open Competitive**

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

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

**5.3.3 Scheduling & Announcing Examinations**

Promotional examinations shall be administered in accordance with the schedule noted below:

Test	CYCLE BEGINS	QUARTER FOR TEST	INTERVAL BETWEEN TEST
Battalion Chief	2018 and then Even Years	First Quarter	2 Years starting 2018
Assistant Fire Chief	2018 and then Even Years	First Quarter	2 Years starting 2018

**5.3.4 Seniority**

5.3.4.1 The Fire Department shall establish and maintain two (2) seniority lists, one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be issued in January of each year. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.

## SECTION 5.4: PERFORMANCE EVALUATION

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

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

### **SECTION 6.1: GRIEVANCE PROCEDURE**

#### **6.1.1 Definition**

A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the MOU between the City and the Association. The grievance procedure discussed below shall be the sole grievance mechanism applicable to employees covered by this MOU.

#### **6.1.2 Deadline for Filing**

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture by the City, the City will comply with the request for resolution. However, the provisions of Section 6.1.9 (Suspension of Discharge) of this MOU will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

#### **6.1.3 Grievances Process**

Grievances shall be processed in the following manner:

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

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

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

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

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

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

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

The fees and expenses of the State Mediation and Conciliation Services arbitrator and the court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post-hearing briefs, if any. The Association shall provide the City with half of the cost charged by State Mediation to provide the parties with an arbitrator list no later than 30 days following notification to the City Manager that the Association wishes to advance the grievance to arbitration. Failure to timely do so shall result in a waiver of the right to advance the grievance to arbitration.

**6.1.4 Suspensions or Discharge Arbitration Decisions**

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

**6.1.5 Non-Disciplinary Arbitration Matters**

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

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

**6.1.6 Letters of Reprimand**

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

**6.1.7 Equal Employment Opportunity (EEO) Program**

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

**6.1.8 Limits of Arbitrator**

No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.



### **6.1.9 Suspension or Discharge**

No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 6.1.3 (Grievance Process) above, resolves a grievance which involves suspension or discharge, he or she may order payment for lost time or reinstatement with or without payment for lost time.

### **6.1.10 Compensation Grievances**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any MOU which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.4 (Step IV – Arbitration).

### **6.1.11 Changes to Agreement**

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

### **6.1.12 Probationary Employees**

**6.1.12.1 Appeal Limitations:** Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is that the City's action was for an illegal

or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally-protected activities; provided, however, that any appeal by a probationary employee alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Equal Employment Opportunity program, which shall be specifically amended to allow probationary employee rights of appeal under that program.

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

**6.1.13 Calendar Days**

All references in this Section 6.1 (Grievance Procedure) to days shall mean calendar day unless otherwise provided.

**6.1.14 Association Right to File**

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

## **ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 7.1: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

#### **7.1.1 Uniform Allowance**

Annual uniform allowance shall be \$1,100.00 and is to be paid annually by the first pay period in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

7.1.1.1 **Advance:** The City agrees to advance the sum of \$550.00 to new hires, which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.

7.1.1.2 **Payment:** The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 8.1 (California Public Employees' Retirement System). The check title shall be "Uniform Allowance".

7.1.1.3 **Purpose:** The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the term of this MOU. The City shall continue to purchase turn out gear.

### **SECTION 7.2: SAFETY COMMITTEE**

(1) The Assistant Fire Chief assigned to the Training and Safety Division shall be the designated safety officer for the department. The Safety Officer shall appoint a safety committee consisting of three (3) individuals on each shift (preferably one (1) complete company). The City's Occupational Safety Officer shall be a standing member of that Committee.

7.2.2 The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.

## SECTION 7.3: ANNUAL PHYSICAL EXAMINATIONS

### 7.3.1 Wellness Fitness Initiative (WFI)

The City and the Association are committed to maintaining a wellness program that provides represented employees with information and resources that aid in maintaining health and wellness. Part of this WFI may include a physical assessment (based on the City's specification as to scope of examination and examiner), diagnostics, education and referrals to other practitioners at a schedule to be determined by the Fire Chief or when required by the Association MOU, departmental policy, and/or applicable law.

## SECTION 7.4: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

### 7.4.1 Industrial Disability Modified Duty

The City may accommodate, when feasible, employees covered by this MOU who are on Workers' Compensation leave, and such work assignments are to incorporate the following provisions:

- 7.4.1.1 The modified assignment shall be consistent with medical limitations as determined by the attending physician.
- 7.4.1.2 The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.

### 7.4.2 Non-Industrial Disability Modified Duty

The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment.

- 7.4.2.1 **Modified Duty for Pregnancy:** However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the

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

### **7.4.3 City Manager Authority on Modified Duty**

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

## **SECTION 7.5: RESIDENCY REQUIREMENT**

Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

## **SECTION 7.6: MEAL PERIODS**

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

## **SECTION 7.7: STAFFING**

- 7.7.1 Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be at least one promoted or acting Battalion Chief assigned per shift (total of 3). During the term of this 2020 to 2021 MOU, the City agrees to provide notice to the Union and meet and discuss permanent staffing changes related to the Assistant Fire Chief and Fire Marshal classifications.
- 7.7.2 The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a "fiscal emergency" via a 2/3 vote of the City Council.
- 7.7.3 If the City Manager determines during the Fiscal Year that fund revenues have or will decline substantially below the estimate of fund revenues in the adopted Budget and/or expenditures have or will increase substantially above the projected expenditures in the adopted Budget, the City Council may declare a "fiscal

emergency” that shall thereupon cause the City of Berkeley and the Berkeley Chief Fire Officers Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.

- 7.7.4 Prior to a policy change which will result in a temporary reduction in the number of Chief Officers (see Sections 7.7.1 through 7.7.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 7.7.5 As soon as possible following the end of the “fiscal emergency”, it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 7.7.6 The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 7.7.7 All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.

## SECTION 7.8: TRADES

Battalion Chiefs are allowed shift trades as detailed in the Trade Policy General Order.

## SECTION 7.9: PHYSICAL & PSYCHOLOGICAL EXAMINATIONS

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

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

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

## **SECTION 7.10: HAIR SAFETY STANDARDS**

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

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

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

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

## **SECTION 7.11: YMCA**

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

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

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

## **SECTION 7.12: REIUMBURSEABLE INCIDENTS AND TRAINING**

In recognition of the Alameda County Mutual Aid System, the Fire Chief may authorize employees to participate in mutual aid deployments, such as strike team assignments; overhead deployments; urban search and rescue missions; or other events where the

City is reimbursed from the state or federal government for the labor costs incurred by the City.

If an employee works on the Alameda County Mutual Aid System beyond the employee's normal work week, the employee shall be reimbursed at the California Governor's Office of Emergency Service, Salary Survey/Actual Administrative rate but in no case will the employee's compensation for participating in the Alameda County Mutual Aid System exceed the rate that is reimbursed to the City by the State of California or other external entity.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

### **SECTION 7.13: USE OF CITY VEHICLES**

At the direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.



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

### **SECTION 8.1: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **8.1.1 Continued Participation**

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

#### **8.1.2 New Members' CalPERS Retirement Formula**

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

#### **8.1.3 Classic Employees' CalPERS Retirement Formula**

Current employees and other employees who do not qualify as "New Members" under PEPRAs shall continue to be entitled to the 3% at 50 retirement formula in effect since December 22, 2000, with single highest year compensation. In addition to the single highest year earnings formula, Classic Employees' retirement benefit will continue to include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law.

#### **8.1.4 Optional Benefits**

Except as otherwise noted, for both Classic Employees and New Members, the City's contract with CalPERS shall include the following optional benefits:

- a) One-Year Final Compensation as provided in Section 20042 (July 22, 1976) (Classic Employees only).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988). 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).
- e) Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000).
- f) Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).

#### **8.1.5 Classic Employees' Pension Contribution**

On July 1, 1994, the City increased the base salary for Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed responsibility for payment of the normal employee

retirement contribution to CalPERS. The City designated and shall continue to designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

8.1.5.1 **Classic Employees' Additional Contribution:** Effective November 8, 2015, employees assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payment to the City's CalPERS employer contribution rate as Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code.

### 8.1.6 New Members' Pension Contributions

New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA.

8.1.6.1 **New Members' Additional Contribution:** Effective November 8, 2015, New Members assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) of pensionable compensation (in addition to contributing 50% of the normal cost) towards the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

### 8.1.7 Supplementary Retirement and Income Plan II

In lieu of participating in the Federal Social Security Program, the City provides the Supplementary Retirement and Income Plan II (SRIP II). The City's contributions to this on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death. The City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. Employees in the classification of Assistant Fire Chief enrolled effective July 2, 1995; employees in the classification of Battalion Chief enrolled effective March 10, 2009; and employees in the classification of Fire Marshal on January 20, 2015.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 9.1: LAYOFF PROCEDURE**

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

#### **9.1.1 Announcement of Layoff**

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

9.1.1.2 **Freezing of Positions:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 9.1.7 (Reemployment Lists).

#### **9.1.2 Seniority Service Date**

9.1.2.1 **Time Counted:** All service in the employ of the City shall be counted toward the establishment of the employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as result of formal disciplinary action will be subtracted from the seniority service date.

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

### 9.1.3 Establishment of Seniority Lists

- 9.1.3.1 **Probationary and Permanent Seniority Lists:** Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.
- 9.1.3.2 **Layoff Order:** The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in 9.1.4 (Employee Retreat Rights) below, employees on all lists shall be laid off on the basis of their seniority service dates, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification

will be laid off prior to employees on the permanent seniority list for that class.

- 9.1.3.3 **Provisional Appointments:** Probationary or permanent employees holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.
- 9.1.3.4 **Seniority Tie Break:** If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.
- 9.1.3.5 **Promotions:** If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

#### 9.1.4 Employee Retreat Rights

- 9.1.4.1 **Retreat Consideration:** Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classification through which he or she was originally promoted or any subsequently created intermediate-level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 9.1.4.2 **Process:** In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent basis. Retreat rights to the rank of permanent Assistant Fire Chief, Battalion Chief, Fire Marshal, Deputy Fire Marshal, or Fire Captain will be available only to employees who have previously held this rank on a permanent or probationary basis.

9.1.4.3 **Retreat to More than 1 Classification:** If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

9.1.4.4 **Salary:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### 9.1.5 Employee Notification

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

9.1.5.2 **Provisional Notifications:** Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

9.1.5.3 **Probationary and Career Notifications:** Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release or reassignment or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

**Forfeiture of Offer:** If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 9.1.9 (Appeal Procedures).

### 9.1.6 Flexible Placement Program

9.1.6.1 **Freeze of Vacancies:** In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 9.1.1 (Announcement of Layoff), impose a City-wide freeze on all appropriate

vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

- 9.1.6.2 **Placements by Human Resources:** Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff have been identified and the provisions under Section 9.1.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standard and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.
- 9.1.6.3 **Limits of Assignments:** Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.
- 9.1.6.4 **Offers Made:** Offers of positions under the flexible placement program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 9.1.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times, including written acceptance of the offer.
- 9.1.6.5 **Forfeiture of Offer:** If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after the offer has been made he or she forfeits further rights to employment retention. Acceptance of an alternative job under the flexible placement program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 9.1.7 (Reemployment Lists).

## 9.1.7 Reemployment Lists

- 9.1.7.1 **Placement of Names:** The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with

## Section 9.1.4 (Employee Retreat Rights).

- 9.1.7.2 **List Duration:** A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 9.1.7.3 **Use of Reemployment Priority List:** Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.
- 9.1.7.4 **Order of Rehire from Reemployment List:** When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.
- 9.1.7.5 **Forfeiture of Offer:** If a former employee fails to accept a bona fide written offer or reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.
- 9.1.7.6 **Salary/Step Placement:** Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.
- 9.1.7.7 Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.



### **9.1.8 Career-Exempt Employees**

Only those employees holding full-time, benefited exempt positions who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt".

### **9.1.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under Section 6.1 (Grievance Procedure). In addition, employees may, at all times before, during, and subsequent to layoff, review all records including seniority lists, reemployment priority lists, documentation pertaining to appointments under the flexible placement program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

### **9.1.10 Audit**

- 9.1.10.1 On an annual basis, the City Manager's office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 9.1.7 (Reemployment Lists). In the event vacancies for which reemployment priority lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.
- 9.1.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment.

**Signature Page**

**Employee Representatives  
Berkeley Fire Fighters Association,  
International Association of Fire Fighters  
Local 1227  
Berkeley Chief Fire Officers Association**

**Employer Representatives  
City of Berkeley**

\_\_\_\_\_  
William Kehoe  
BCFOA President

Date

\_\_\_\_\_  
Dee Williams-Ridley  
City Manager

Date

\_\_\_\_\_  
Jonathan Fischer  
BFFA President

Date

\_\_\_\_\_  
LaTanya Bellow  
Director of Human Resources

Date

\_\_\_\_\_  
Abe Roman  
Assistant Fire Chief

Date

2020-2021 Memorandum of Understanding

City of Berkeley

BFFA, Local 1227, I.A.F.F., BCFOA

**EXHIBIT A – Salaries**

<b>Initial 3.0% Equity Increase (Battalion Chief only)</b>									
Job Code	Unit	Title	FLSA	AL (Y/N)	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
81740	A	Assistant Fire Chief	E	Y			81.0921		89.2230
81750	A	Battalion Chief	E	N		49.9059	52.4000	55.0202	57.7715
81760	A	Fire Marshal	E	Y			81.0921		89.2294

<b>Period: Effective 10/21/2018 - 3.0% Salary Increase</b>									
Job Code	Unit	Title	FLSA	AL (Y/N)	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
81740	A	Assistant Fire Chief	E	Y			83.5249		91.8997
81750	A	Battalion Chief	E	N		51.4030	53.9720	56.6708	59.5046
81760	A	Fire Marshal	E	Y			83.5249		91.9063

<b>Period: Effective 07/13/2019 - 2.0% Salary Increase</b>									
Job Code	Unit	Title	FLSA	AL (Y/N)	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
81740	A	Assistant Fire Chief	E	Y			85.1954		93.7377
81750	A	Battalion Chief	E	N		52.4311	55.0515	57.8043	60.6947
81760	A	Fire Marshal	E	Y			85.1954		93.7444

## **EXHIBIT B – Glossary of Terms**

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

**ANNIVERSARY DATE:** For the purposes of determining step increases, Anniversary shall be the date an employee is appointed or promoted to their current rank.

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

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

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

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

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

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

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of

the calendar year were December 28, the last day of the payroll year would be December 22.

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

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

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

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

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

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

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

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

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

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

**REEMPLOYMENT:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 9.1.7 (Reemployment Lists) in this MOU.

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

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" of this MOU).

**REINSTATEMENT:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 5.1 (Probationary Period).

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

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

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

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

**TOUR (48/96):** The basic work cycle; for example, the 56-hour employee's tour consists

of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

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

**VACATION YEAR:** A vacation year runs twelve (12) months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

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

**EXHIBIT C – Grievance Forms**

STEP 1 - Informal Step

STEP 1.1 - Deputy Fire Chief Response

STEP 2 – Appeal to Fire Chief

STEP 2.1 – Fire Chief Response

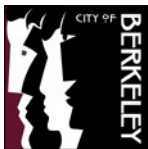
STEP 2.2 – Director of Human Resources Response (Compensation)

STEP 3 – Appeal to City Manager

STEP 3.1 - City Manager Response

STEP 4 – Appeal to Arbitration





BFFA Local 1227 – City of Berkeley
Grievance Form
(Days defined as Calendar Days, unless otherwise noted)



STEP 1 – Informal Step

Important Notes (MOU Section 6.1 (Grievance Procedure)): A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, regulation, or past practice which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process.

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

Grievance Tracking No.:

Form with fields: Grievant First Name, Grievant Last Name, Date, Job Title, Firefighter, Dept/Location, Station One, E-Board Rep, First, Last Name

Nature of Grievance (Include specific provisions of the MOU, City ordinance, rule or regulation and/or past practice, and the circumstances involved):

Relief Desired:

Form with fields: Grievant, Rep./Steward, Date Rec'd by Chief Officer, Meeting Requested, Date meeting occurred, Deputy Fire Chief, Date

Instructions: The grievant should complete this form electronically and print it out. It should then be given to an Executive Board member who will submit it to the Deputy Fire Chief and obtain a signature confirming receipt. Return a copy of the signed form to your assigned 1227 Executive Board representative.



# BFFA Local 1227 – City of Berkeley

## Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

### STEP 1.1 – Deputy Fire Chief Response

**Important Note:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the formal grievance procedure (Step II).

Deputy Fire Chief's Response (1227 must be in receipt of this response within 15-days of their initial receipt of this grievance):

Deputy Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:

Rep/Steward: \_\_\_\_\_ Date Rec'd: \_\_\_\_\_

Rep/Steward: *Signature*  
*First Name*  
\_\_\_\_\_  
*Printed Name*

#### Response to Deputy Fire Chief (to be completed by 1227 Rep./Steward):

Date:

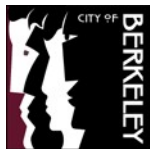
Deputy Fire Chief's Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

**Instructions:** The Deputy Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



# BFFA Local 1227 – City of Berkeley Grievance Form

*(Days defined as Calendar Days, unless otherwise noted)*



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

## STEP 2 – Appeal to Fire Chief

**Important Notes:** The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance.

Reasons for the appeal:

Date Rec'd by Fire Chief: \_\_\_\_\_

Fire Chief: \_\_\_\_\_  
*Signature*

Meeting Requested by 1227: Yes  No

Meeting Requested by Fire Chief: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it directly to the Fire Chief along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within 10 working days of receiving the DC response.



# BFFA Local 1227 – City of Berkeley

## Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: \_\_\_\_\_

### STEP 2.1 – Fire Chief Response

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

Fire Chief's Response:

Fire Chief: \_\_\_\_\_ | Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:

Rep/Steward: \_\_\_\_\_ | Date Rec'd: \_\_\_\_\_  
*Signature*

**Response to Fire Chief (to be completed by 1227 Rep./Steward):**

Date: \_\_\_\_\_

Fire Chief's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

**Instructions:** The Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



### BFFA Local 1227 – City of Berkeley

### Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

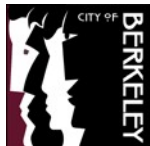
Date:

## STEP 2.2 – Director of Human Resources Response (Compensation)

**Important Notes:** The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.3 (Step III - City Manager).

<b>Compensation Matter:</b>		Yes: <input type="checkbox"/>	No: <input type="checkbox"/>
HR Representative:	Enter Name		Date:
Signature			
HR Response (required within 30-working days of receipt of grievance) received:			
Receipt of Return to 1227:			
Rep/Steward:		Date Rec'd:	
Signature			
<b>Response to Human Resources (to be completed by 1227 Rep./Steward):</b>			
Human Resources Response is:			
Satisfactory:	<input type="checkbox"/>	Unsatisfactory:	<input type="checkbox"/>
Grievance is:			
Appealed:	<input type="checkbox"/>	Withdrawn:	<input type="checkbox"/>
Appeal deadline: 10-working days from receipt of HR response.			



### BFFA Local 1227 – City of Berkeley

### Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

## STEP 3 – Appeal to City Manager

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

The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

Reasons for the appeal:

Date Rec'd by City Manager: \_\_\_\_\_

City Manager (or designee): \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Meeting Requested: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within **10 working days** after the termination of Step II. Once a signature of receipt is obtained a copy of this form shall be made and returned to the assigned Executive Board representative.

Grievant First Name | Grievant Last Name | Date: |

**STEP 3.1 – City Manager Response**

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

City Manager Response:

City Manager: | Date: |  
*Signature*

Return to 1227:

Rep/Steward: | Date Rec'd: |  
*Signature*

**Response to City Manager (to be completed by 1227 Rep./Steward):**

Date:

City Manager's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

Instructions: The City Manager (or his or her designee) shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.

Grievant First Name

Grievant Last Name

Date:

**STEP 4 – Appeal to Arbitration**

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

**1227 Executive Board Arbitration Request:**

Date:

City Manager's Response was:

Satisfactory:       Unsatisfactory:

Association Requires Grievance to be Submitted to Arbitration:

Yes:       Withdrawn:

\_\_\_\_\_  
 President: *Signature*

\_\_\_\_\_  
 1<sup>st</sup> Vice President: *Signature*

\_\_\_\_\_  
 2<sup>nd</sup> Vice President: *Signature*

**Instructions:** The 1227 Executive Board shall complete this form electronically and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) with copies to the Director of Human Resources, the Fire Chief, the Union President, and the 1<sup>st</sup> Vice President. This must occur within ten (10) **working days** of receipt of the City Manager's decision that they intend to move the grievance to arbitration.



Exhibit D - Tentative Agreement

CITY OF BERKELEY / BCFOA (IAFF 1227) 2020 MOU NEGOTIATIONS  
TENTATIVE AGREEMENT – December 1, 2020

**SECTION 1.7: DURATION**

The Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2021, the last day of the last full pay period in June 2021. Nothing in this agreement shall be retroactive.

**SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in the attached Exhibit "A" to this MOU. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

**SECTION 2.1.13: STANDBY – DUTY CHIEF COVERAGE**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8% (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, per hour for each hour so assigned. When functioning as a Duty Chief, members shall be available for service at any time when called. If an employee assigned as the Duty Chief is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the pay provided for those hours.

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section

2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**NEW SECTION 2.6.8: ASSISTANT CHIEFS WORKING AS BATTALION CHIEFS**

40-hour Assistant Chiefs shall be eligible to work as a Battalion Chief, for straight pay, compensated hour for hour during non-regularly scheduled working hours. This does not apply to relief provided to the on Duty Battalion Chief during an Assistant Chief's normal work schedule.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

**NEW SECTION 3.4.2: COVID LEAVE**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

**NEW SECTION 7.13: USE OF CITY VEHICLES**

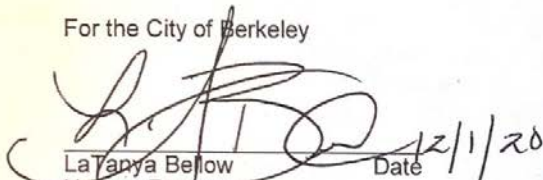
At the Direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

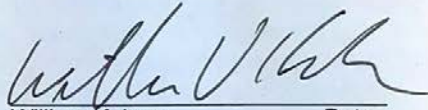
**SECTION 7.5: RESIDENCY REQUIREMENT**

Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

For the City of Berkeley

  
LaTanya Bellow  
Human Resources  
Director  
Date 12/1/20

For BFFA, Local 1227

  
William Kehoe  
President, BCFOA, Local 1227  
Date