

2021-2024 Memorandum Agreement

**Berkeley Housing Authority
Council 57**

PEU Local One AFSCME



**Memorandum
of
Understanding**

between

Berkeley Housing Authority

and

Local One AFSCME Council 57 AFSCME Council 57

June 27, 2021– June 22, 2024

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June 22, 2017 through June 30, 2021		A-1
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APPENDIX 1 CONFLICT RESOLUTION PROCESS		Appendix 1

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APPENDIX 3 EEO COMPLAINT INVESTIGATION AND RESOLUTION
PROCEDURE Appendix 3-4

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Berkeley Housing Authority

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MEMORANDUM OF UNDERSTANDING

between

BERKELEY HOUSING AUTHORITY

and

THE BERKELEY PROFESSIONAL MANAGEMENT UNION

LOCAL ON1 AFSCME COUNCIL 57

ARTICLE 1 - ADMINISTRATION

SECTION 1: PREAMBLE

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

The Executive Director is the representative of the Berkeley Housing Authority, hereinafter referred to as "the Authority," in employer-employee relations as provided by Resolution of the Board of Commissioners.

The parties have met and conferred in good faith on certain terms and conditions of employment of the employees whose positions are officially and exclusively represented by the Berkeley Professional Management Union, Local One AFSCME Council 57, hereinafter referred to as "the Union." The parties have agreed to the terms and conditions of employment for the employees represented by the Union.

Local One AFSCME Council 57 is the sole Recognized Employee Organization for mid- and senior-level management positions at the Authority.

The parties agree that the purpose of this Memorandum of Understanding is to promote and provide harmonious relations, cooperation and understanding between the Authority and the employees covered herein, to enhance government efficiency, productivity and service to the customers of the Authority, and the citizens of Berkeley, and to set forth the agreement of the parties reached as a result of meeting and conferring in good faith regarding the terms and conditions of employment as specified in this Memorandum of Understanding.

The Union and the Authority shall maintain a professional working environment and collaboratively promote a supportive workplace culture that values honesty, mutual respect, dignified treatment, and teamwork of all employees. The Union and the Authority share the common goal of creating a working environment free from hostility, intimidation, and disrespect.

This Memorandum of Understanding shall be presented to the Authority's Board of Commissioners as the joint recommendation of the undersigned, and, upon approval by the Board of Commissioners, shall recognize this agreement as a binding and legal contract between the two parties.

SECTION 2: RECOGNITION

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The Union: The Authority hereby confirms its certification of the Union as the recognized employee organization for the employees in the M-1 Management Berkeley Housing Authority (Career) unit.

The Authority agrees to meet and confer and otherwise deal exclusively with the Union on all matters relating to the scope of representation pertaining to the said employees.

Authority Management: The Executive Director retains all traditional rights and responsibilities for the operation of the Authority except as expressly modified by the Understanding.

SECTION 3: NON-DISCRIMINATION

The Authority and Union agree that they will not discriminate against any employee covered by this Agreement in a manner which would violate any applicable laws because of race, creed, color, religion, political affiliation, sexual orientation, sex, gender, gender identity, gender expression, national origin, physical or mental disability, medical condition (including HIV status), genetic information, , marital status, ancestry, military and veteran status, age, or any other basis protected by applicable federal, state and local laws. The Authority agrees that there shall be no discrimination on the basis of protected Union activity. Furthermore, the Authority and Union agree to comply with all applicable federal, state and local laws pertaining to non-discrimination and affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (to include the pregnancy disability amendments), Equal Pay Act of 1963, Age Discrimination Employment Act, Executive Order 11246, Vietnam Era Veterans Readjustment Act, Rehabilitation Act of 1973, California Civil Rights Law, (Government Code Sections 12900-12996), Authority Ordinances, resolutions and policies.

SECTION 4: UNION SECURITY

- 4.1 **Maintenance of Membership:** Employees who are currently members of the Union, or are new or returning members, may authorize deductions of member dues or initiation fees and/or assessments. Union deduction authorizations and cancellations will be provided to the employer by the Union.
- 4.2 **Indemnification:** The Union shall indemnify and hold harmless the Authority, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorney fees, demands, actions, suits, judgments and other proceedings arising out of any action resulting from this Section.
- 4.3 **New Hire Information:** The Authority shall furnish the Union, on a monthly basis, with the name, date of hire, salary, classification and work location on all newly-hired employees subject to the Understanding. The Authority shall furnish newly-hired employees with information concerning the Union as supplied by the Union, which shall include a copy of (1) the job description, (2) the Understanding, and (3) the Union's new membership information packet, including a dues-withholding authorization form.
- 4.4 **Orientation Meetings:**

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A representative of each Chapter of the Union will be given sixty (60) minutes of Union release time per quarter per calendar year to provide information on the Union to employees represented by the Union. The Union shall notify the Authority of the date, time and location of the quarterly orientation meetings at least one (1) month in advance of the meetings to ensure that the supervisor/management is able to release employees to attend the quarterly orientation meetings. The Union shall also provide the Authority with the names of the employees the Union expects to attend the quarterly meetings at least two (2) weeks in advance of the meeting. Employees attending the orientation will also be given sixty (60) minutes of Union release time to attend the scheduled orientation.

Each newly hired Local One AFSCME Council 57 represented employee shall participate in a one (1) hour mandatory and in-person orientation meeting conducted by the Union within the first seven (7) calendar days from the date of hire during regular working hours without loss in compensation. The Union steward conducting the orientation shall also suffer no loss in compensation. The Authority shall provide the designated Union representative with at least ten (10) days notice of the anticipated first day of employment of each newly hired employee. If the newly hired employee's start date is fewer than ten (10) days after the date of hire, the Authority shall give the Union notice within twenty-four (24) hours of the date of hire.

SECTION 5: DEDUCTION OF UNION DUES

The Authority shall deduct, once monthly, the regular and periodic Union dues or insurance premiums as may be specified by the Union under the authority of an authorization card signed by the employee, as verified by written acknowledgment from the Union. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office. This article shall also apply to the assessments by the Union. The Union shall provide sixty (60) days notice on any changes in dues or assessments or premiums. Employees may change union insurance deductions no more than twice in any one (1) year period for each policy.

SECTION 6: SHOP STEWARDS & OFFICIAL REPRESENTATIVES

- 6.1 **Attendance at Meetings:** Designated Shop Stewards of the Union or official representatives of the Union shall be allowed to attend meetings with Authority staff held during regular working hours by Authority time as follows:
- 6.1.1 If their attendance is required by the Authority at a specific meeting;
 - 6.1.2 If their attendance is sought by a hearing body or presentation of testimony or other reasons;
 - 6.1.3 If their attendance is required for meetings scheduled at reasonable times agreeable to all parties, required for settlement of grievance / complaints filed pursuant to Article 6, Section 47 and 48 (Grievance and Appeal Procedure) of this Memorandum of

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Understanding;

- 6.1.4 If they are designated as a Shop Steward, in which case they may utilize a reasonable time at each level of the proceedings to assist an employee to present a grievance provided the meetings are scheduled at reasonable times agreeable to all parties;
- 6.1.5 If they are designated as spokesperson or representatives of the Union and as such make representations or presentations at meetings or hearings on wages, salaries, and working conditions; provided in each case advance arrangements for time away from the employee's work station or assignment are made;
- 6.1.6 All requests for release time may be required to be made in advance and are subject to approval, such requests not to be unreasonably denied;
- 6.1.7 Under no circumstances will release time be compensated at overtime or other premium rate.

- 6.2 **Union Representatives Time Off:** Designated representatives of the Union shall be allowed time off on Authority time for meetings during regular working hours when formally meeting and conferring in good faith or consulting with designated Authority representatives on matters within the scope of representation, provided that the number of such representatives shall not exceed the below specified limits without the prior approval of the Executive Director or his or her designee, and that advance arrangements for time away from the work station or assignment are made with the appropriate manager.

The President shall be released plus the following:

Representational Unit	Number of Employees
Management (M)	3

- 6.3 **Notification:** Business Agent(s) shall be permitted to enter work areas where their members are employed during normal working hours for the purpose of ascertaining whether the terms of the Memorandum of Understanding are being complied with, to observe employment conditions under which their members are employed and to assist in adjusting grievances of the members. The Business Agent(s) shall notify the Executive Director or other designated representative(s) at the earliest time, and at least upon entering such work areas, and shall not interfere with or interrupt the conduct of work in such areas.
- 6.4 **Union/Management Meetings:** The Authority and the Union agree that administration of the Understanding may be facilitated by consultation meetings. Either party may request a meeting where they believe a resolution of a problem(s) may be feasible. Such request shall include the topic, and such meeting will be scheduled within five (5) working days whenever possible.

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The Authority and the Union shall schedule regular monthly meetings between the Executive Director and Union officials. Agendas for such meetings shall be provided at least three (3) working days in advance.

- 6.5 **Union Release Time:** The Union will be entitled to up to one-hundred and twenty (120) hours of paid leave of absence each calendar year to be granted collectively to employees who are designated elected officials or stewards of the Union, subject to prior approval by the Executive Director, to attend seminars, conferences, or conventions away from the job site. The Executive Director may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets.

SECTION 7: ORGANIZATIONAL RIGHTS

- 7.1 **Distribution of Materials:** The Union may distribute organizational materials to its members by either (1) hand distribution to work locations where Union members are employed, or (2) mail distribution through the Authority's interdepartmental mailing systems, upon the prior approval of the City Manager or his or her designee.
- 7.2 **Posting of Materials:** Posting of Union meeting notices, posters and similar materials will be permitted only on designated bulletin boards or other appropriate areas and after approval from the Executive Director or his or her designee.
- 7.3 **Bulletin Boards:** The Union may use designated Authority bulletin boards to announce meetings or the posting of related Union material.
- 7.4 **Use of Facilities:** The Union shall be allowed to use Authority facilities for regular / special meetings upon prior approval from the Authority. Said usage of Authority facilities will be in conference / meeting rooms. The Union shall provide the Authority with the requested date, time and locations of the usage of said facilities.
- 7.5 **Requests for Authority Information:** The Union shall receive from the Authority requested written information on matters affecting its members and shall include, but not be limited to, computer printouts on membership, new employees in the Unit(s), Personnel Board materials, agendas and summaries of Authority Board meetings, proposals from Authority departments and proposals from consultants on matters within the scope of representation.

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SECTION 8: SECRETARIES TO BOARDS, COMMISSIONS & TASK FORCES

Problems and suggestions relating to orientation and interaction between commissioners and secretaries to commissions may be directed to the Executive Director by the Union for resolution at any time.

SECTION 9: MAINTENANCE OF CONDITIONS

Proposed changes to working conditions that impact the terms and conditions of employment shall require the Authority to extend an offer to the Union to meet and confer on the potential impact(s) of the Authority's decision to change the working conditions.

Working conditions and practices will not be continued unless they are included in this Understanding or have been or are hereafter specifically authorized by resolution of the Authority Board, or unless they are:

- 9.1 not the subject of bargaining during the development of this Understanding;
- 9.2 are a continuing practice which was general, not individual in application, and mutually agreed to by the parties.

SECTION 10: SEPARABILITY OF PROVISIONS

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

SECTION 11: FINALITY OF RECOMMENDATIONS

The recommendations set forth above are final. No changes or modifications shall be offered, urged, or otherwise presented by the Public Employees Union Local One AFSCME Council 57 or the Executive Director prior to June 30, 2017; provided, however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent.

SECTION 12: DURATION

This Agreement covers the period of June 27, 2021 through June 22, 2024. New provisions are effective June 27, 2021, except as otherwise provided herein and shall remain in full force and effect to and including June 22, 2024. This Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 22, 2024.

2021-2024 Memorandum Agreement**Berkeley Housing Authority****PEU Local One AFSCME Council 57****ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES****SECTION 13: SALARIES**

- 13.1 **Salaries for BHA Classifications:** Salary rates for the period of June 27, 2021 through June 22, 2024, shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibits "A" and attached hereto and made part hereof as provided below.
- 13.2 **Transfers and Part-Time Salary:** Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit A, and employed or working on a part-time basis, shall be paid in proportion to the time worked and described in their appointment.
- 13.3 **Maximum Salary Rate:** No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the Authority, provided that step increases within the salary range shall occur on the anniversary date of the appointment.
- 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 one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such pay.
- 13.4 **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. When an employee on a Y rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 13.1.
- 13.5 **Pay Frequency:** Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 p.m. Friday, to and including 12:00 noon Friday two weeks following, if the employee has elected the 9/80 work schedule. Each payment shall be made not later than the Thursday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.
- 13.6 **Step Increases:** Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase.
- 13.7 **End of Year Pay Period:** For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year for sick leave. For excess sick leave only, the end of the year shall be treated as the last day of the last pay period nearest March 31.

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- 13.8 **Effective Date of Salary and Benefit Adjustments:** The Authority and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of a pay period, unless otherwise mutually agreed.
- 13.9 **Equity Studies:** The Authority and the Union agree that for salary equity studies, the following jurisdictions shall be used:

Housing Authorities of: <ul style="list-style-type: none"> ▪ Alameda County ▪ Alameda City ▪ Contra Costa ▪ Oakland ▪ Richmond 	
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Jurisdictions may be added or deleted as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the Authority that within available funding limits, equity adjustments which are in the interests of the service will be considered. The Union and the Authority shall examine a reasonable number of specified classifications during contract negotiations or wage re-openers and shall meet and confer on the results of such study.

The Authority and the Union agree to meet and discuss salary methodology, including the current comparison cities and how compensation and comparable classifications are determined.

The Authority shall provide for a differential between any level of supervision and employees supervised. The Authority shall furnish salary survey data regarding differentials.

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- 13.10 **Concurrent Equity and COLA Increases:** Whenever the cost of living increase and the equity increase take effect on the same day, the increases will be added together rather than compounded.

Cost of Living Adjustments:

Effective June 27, 2021, the first full pay period including July 1, 2021, the salaries of represented employees shall be increased by four percent (4.0%) to reflect a cost of living adjustment.

Effective June 25, 2022, the first full pay period including July 1, 2022, the salaries of represented employees shall be increased by an additional three percent (3.0%) to reflect a cost of living adjustment.

Effective June 25, 2023, the first full pay period including July 1, 2023, the salaries of represented employees shall be increased by an additional one percent (1.0%) to reflect a cost of living adjustment.

Effective the first full pay period including July 1, 2020, the salaries of represented employees shall be increased by an additional two percent (2.0%) to reflect a cost of living adjustment.

13.11 **Lump Sum Payment**

Effective the first full pay period after Union ratification and BHA Board adoption of the Tentative Agreement, a onetime non-pensionable lump sum payment of \$1,000.00 for each bargaining unit employee shall be conferred. Eligible employees must be current BHA employees in paid status for the full pay period this lump sum is conferred and shall not apply to unit members who are in unpaid status. Such payment shall be subject to required payroll tax deductions. The parties agree that this lump sum provision does not create or bind the BHA to any precedent or past practice.

SECTION 14: WORKING IN A HIGHER CLASSIFICATION

- 14.1 **Requirement:** The Executive Director will work all employees within their career classification. The Executive Director may assign an employee to work temporarily in a higher classification. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one (1) week in duration shall be approved in advance by the Executive Director, or his or her designee.

Eligibility: To be eligible for a higher classification assignment, the employee must work a minimum of one (1) day in the higher classification, meet the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements will be compensated at the lowest step of the higher classification that provides at least a five percent (5%) differential. Excluded from this provision are all employees whose job classifications description explicitly includes regularly assuming administrative and/or supervisory responsibilities in the absence of another.

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- 14.2 **Training:** For training purposes, employees not meeting all of the minimum qualifications for a higher classification may be temporarily assigned for a minimum of one (1) week, to perform the duties of the higher classification and will receive a five percent (5%) increase in their current base salary. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the Executive Director, or his or her designee by an Employee Transaction Form, to be included the employee's official Personnel file.
- 14.3 **Notification of New Classification:** The Authority shall notify the Union and upon written request discuss in advance the establishment of new career classifications if the work is related to work performed by classifications in Unit M-1. This procedure shall also be applicable to the reclassification of positions and changes to the minimum qualifications of classifications presently in such units.
- 14.4 **Desk Audits:** Upon request of the employee the Authority shall, within ninety (90) days if possible, audit the position of the employee to determine if he or she is working out of classification. If the audit determines that the employee has been working in the higher class, the employee shall receive back pay to the payroll period closest to the date the position description questionnaire was received by the employee's supervisor. There will be a maximum of one (1) audit in a twenty-four (24) month period unless the employee is assigned to a different job in which case there may be another audit. This section 14.4 is not applicable to salary equity reviews when the assignment fits within the existing classification.
- Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion, or promotion. Upon request, the Authority will provide the Union with a written yearly report of audits affecting Local 1 classification requested and performed.
- 14.5 **Reclassifications:** In the event the Authority reclassifies a position from a lower level classification to a higher level classification as a result of a Desk Audit as specified in Section 14.4 (Desk Audits) above, an incumbent occupying such position shall be reclassified without competitive examination provided he or she meets the minimum qualifications, has performed the duties of the new class for twelve (12) months and has not received an unsatisfactory evaluation during that period. All other employees shall pass an examination for the higher classification and shall serve the normal probationary period.

SECTION 15: PROJECT BASED POSITION EMPLOYEE

The Authority and the Union agree there is a need to establish a method of employment selection to provide staffing for a "Project Based Position". A Project Based Position means a position, regardless of funding source of limited duration not to exceed three years to be utilized to complete a project or for an external grant funded position whose funding is uncertain as to amount or duration. Prior to appointment of an employee in a project-based position, the Authority will provide the Union with a

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written explanation of the reasons for its creation, including the job classification, expected timeline, expected source of funds, and reasons why use of a Project Based Position is in the best interest of the Authority. It is understood between the parties that the use of this employment method is not to circumvent the creation of a permanent position within the right of representation by the Union. An employee receiving an initial appointment to such "Project Based Position" may be terminated no later than upon completion of the project or the duration of the external grant funding but in any case no longer than three years from the date of the original appointment.

All applicants for a "project based position" must meet the minimum qualifications of the classification. Career employees of the Authority will be given an opportunity to apply for a "Project Based Position(s)" and if appointed will be returned to their former position held prior to selection at termination. If a career employee is appointed to a "Project Based Position" the Authority will be permitted to fill the vacated position with another "Project Based Position" appointment. An employee selected to fill a position from the outside receiving an appointment to a Project Based Position shall be fully benefited and may be terminated for cause at any time by the Executive Director. Any employee hired from the outside to temporarily backfill a vacancy created by the appointment of a career employee to a Project Based Position shall have no retention rights under the Layoff Policy and shall be subject to bumping by career employees. An employee appointed to a Project Based Position will be subject to the provisions of Section 2 of the Memorandum of Understanding.

Prior to the appointment of any Project Based Position, the Authority and the Union will meet jointly with the employee(s) affected by the "Project" in order to review and make clear their employment rights at the completion of the project.

SECTION 16: PROVISIONAL APPOINTMENTS

The Union may request a listing of provisional appointments of Local One AFSCME Council 57 represented employees as needed, not to exceed one (1) request every four (4) months.

SECTION 17: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the Authority 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 Finance staff. In the case of under payments, the Finance staff shall process the appropriate adjustments as soon as practicable.

Payroll errors identified will be communicated to the employee directly by the Executive Director or his or her designee. Under payments will be processed as soon as practicable.

In the event of an overpayment, the Executive Director will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Finance staff. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an

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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 Authority and the Union agree that the Authority 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 ten (10) working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within twenty (20) working days of the employee being notified of the overpayment, the Executive Director will proceed to implement a reasonable repayment schedule.

Generally, overpayment shall be recaptured at least at the rate at which the overpayment occurred. Overpayment shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except (1) by permission of the affected employee, or (2) if the repayment amount per pay period would otherwise be less than five percent (5%) of gross base salary each pay period, or, (3) the overpayment was of \$99 or less, in which case it must be recouped in one lump sum. However, should an employee with a repayment schedule leave the employ of the Authority before repaying the Authority the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the Authority. Where an employee requests and the Authority concludes that s/he has justified a modified repayment schedule, the Authority may, in its sole discretion, permit exceptions to these standards.

The Authority and the Union agree that the Authority is authorized to recover any salary overpayment made to the employee from the employee's wages, except that the Authority shall not attempt to recover overpayments which would be barred by a four year statute of limitations in a court action for their recovery. However, once a repayment schedule is implemented, the Authority will retain the right to recover the full amount of the overpayments covered by the schedule, and the limitations period for those overpayments shall be tolled for the duration of the repayment schedule.

Nothing in this policy shall prevent the Authority from taking such other or additional action, such as a lawsuit, as is appropriate and necessary to recover overpayments to employees.

SECTION 18: BILINGUAL PREMIUM PAY

Positions requiring bilingual abilities, including Braille and sign language, will be allocated to subcategories of the otherwise appropriate classifications. The incumbent in each such position will receive compensation at a rate of \$60.00 per month greater than he or she would receive in the applicable non-bilingual major classification. Each bilingual sub-classification will be treated as a separate class except that, in a layoff situation unless otherwise required by outside funding, it will be treated as fully included in the applicable non-bilingual major classification for purposes of determining seniority, bumping, transfer, reassignment, etc. The bilingual premium will not be applicable under any circumstances except to an employee who both possesses second language competency required and is serving in a position which has been formally classified in the bilingual subcategory.

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SECTION 19: HOURS AND DAYS OFF

- 19.1 **Rules:** Consistent with the provisions of the Fair Labor Standards Act (FLSA), the Executive Director shall establish by written rules the workday / workweek for all Authority employees.
- 19.2 **Definitions:** The normal working hours for all employees in Units M, and M-1 shall extend from 7:30 a.m. and 5:45 p.m. The individual workday is defined as that period of time an employee works during the Calendar Day, normally a period of eight (8) hours. The individual Workweek is defined as that period of time an employee works during the Calendar Week, normally a period of forty (40) hours.
- 19.3 **Flex Work Schedule:** The Authority operates under a 9/80 schedule with all employees working Monday through Thursday the first week, and Monday through Friday the second week, with hours between 7:30 a.m. and 5:45 p.m. All employees are required to be present during core hours, 8:00 a.m. to 4:30 p.m.
- 19.4 **Workweek:** The work week will begin at 12:01 a.m., Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.
- 19.4 **Lunch and Rest Periods:** Lunch periods shall be a minimum of one-half (1/2) hour to a maximum of one (1) hour. Employees shall receive a rest break of fifteen (15) minutes during each half shift.

SECTION 20: OVERTIME

- 20.1 **FLSA Designation:** Consistent with the provisions of the Fair Labor Standards Act (FLSA), the Housing Authority 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 Union shall be provided a list of all such exempt positions along with information as to the reasons for exemption status for employees in Unit M-1.
- 20.2 **Eligibility:** All employees not specifically designated as eligible to receive Administrative Leave shall receive compensation for all work performed in excess of their regular workday or in excess of their workweek. Payment for all work performed in an overtime status shall be compensated at a rate not less than one and one-half (1 1/2) times the regular hourly rate of pay of the employee designated and authorized to work overtime. The actual hourly rate of pay shall be consistent with the requirements of FLSA.
- 20.3 **Maximum Accumulation:** Employees entitled to compensation for overtime worked may accumulate compensatory time for all hours worked in excess of the regular workday / workweek in lieu of compensation at the rate of one and one-half (1 1/2) hours for each hour worked. Compensatory time off may accumulate to an amount not to exceed ninety (90) hours in any one calendar year. Accumulation of compensatory time off in excess of ninety (90) hours may be

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allowed at the discretion of the Executive Director.

- 20.4 **Executive Director Discretion:** Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the Executive Director.
- 20.5 **Final Compensation:** In the event of a layoff, resignation or termination of an employee, he or she shall be entitled to compensation for all accumulated overtime worked or accrued.
- 20.6 **Call Back:** Employees eligible for overtime who are called from their living quarters for emergency work or duty on days other than their normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked. The minimum time for such overtime compensation to be paid shall be four (4) hours. If such overtime worked is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for actual time worked.

ARTICLE 3 - LEAVES

SECTION 21: ADMINISTRATIVE LEAVE

All employees in classifications identified as not eligible for Overtime under Section 20 of this Understanding shall be credited with forty (40) 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 22 shall apply to Administrative Leave. The classifications eligible to receive Administrative Leave are designated in Exhibits "A" of this Understanding.

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 22: VACATION

- 22.1 **Entitlement:** All employees who have worked for the Authority six (6) months or more and who have worked half-time or more shall be entitled to vacation leave.
- 22.2 **Vacation Approval:** The times during the calendar year at which an employee shall take vacation shall be determined by the Executive Director with due regard for the wishes of the employee and particular regard for the needs of the service. Whenever practical, employees working in the same classification within the Authority shall be given preference of vacation time by seniority. If the Authority cannot allow the vacation that the employee requested, the employee, with the Executive Director's approval (if the service permits), may take vacation at another mutually

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agreed upon time during the same calendar year. If the requirements of the service are such that the Executive Director cannot permit an employee within the Authority to take an annual vacation leave, or any part of such leave within a particular calendar year, the Executive Director may permit the employee to take the deferred vacation during the following year. In no instance shall an employee lose his or her entitlement to vacation earned but not taken under the circumstances described in this section.

With advance supervisory approval, vacations may be taken in increments of one (1) hour.

22.3 Accrual and Use

22.3.1 Accrual, Use, and Limitations for Employees: Each employee during the first two (2) years from date of hire shall be entitled to vacation leave credits at the rate of 5/6 work day for each calendar month of service. Each such employee shall be entitled to take, during these first two (2) years, only such actual vacation leave as he or she earns; provided, however, that no employee with less than six (6) months of service shall be entitled to take his or her earned vacation leave.

The provisions contained in this subdivision 22.3.1 shall apply to all reappointments except reinstatements or reemployments.

22.3.2 Accrual Rate as of March 1, 1988: Effective March 1, 1988 employees shall earn and be entitled to take annual vacation leave as follows:

First (1 st) through third (3 rd) years of service	2 work weeks
Fourth (4 th) through eleventh (11 th) years of service	3 work weeks
Twelfth (12 th) through seventeenth (17 th) years of service	4 work weeks
Eighteenth (18 th) through twenty-fourth (24 th) years of service	5 work weeks
Twenty-fifth (25 th) and subsequent years of service	6 work weeks

22.3.3 Accrual for Employees Subject to Administrative Leave: Employees in classifications included in the Administrative Leave Policy shall earn and shall be entitled to take annual vacation leave as follows:

First (1 st) two (2) years of service	2 work weeks
Third (3 rd) through fifth (5 th) years of service	3 work weeks
Sixth (6 th) through seventeenth (17 th) years of service	4 work weeks
Eighteenth (18 th) through twenty-fourth (24 th) years of service	5 work weeks
Twenty-fifth (25 th) and subsequent years of service	6 work weeks

22.3.4 Calculation Based on Actual Years of Service: 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

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actual years of service with the Authority shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), and six (6) weeks rate.

22.3.5 Prorated Vacation for Intermittent or Part-Time Employees: Each employee working on an intermittent or part-time basis and who has worked half-time or more in the preceding calendar year without a termination of employment, shall be entitled to a pro-rated vacation leave based upon the total actual years of service with the Authority and upon the actual amount of time worked in the preceding calendar year.

22.3.6 Effect of Military Leave on Vacation Eligibility: For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), and six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the Authority.

22.4 Effect of Holidays Upon Vacation Leave: In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly.

22.5 Maximum Vacation Accumulation: Employees may defer all or any portion of earned vacation to succeeding calendar years up to a maximum accumulated vacation of eight (8) weeks (320 Hours).

The Authority shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Understanding. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Understanding, the Authority will provide the Union with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Understanding to schedule a vacation to be taken before the last pay period in February of each year of this Understanding, the Authority has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation to a maximum of 320 hours.

If, due to operational necessity, the Executive Director denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee

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to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to no more than 320 hours.

22.5.1 **Terminal Vacation:** Accumulated vacation may not be used immediately prior to retirement in order to extend the date of retirement, but shall instead be paid out in full upon retirement.

22.6 Effect of Extended Leave and Other Actions

22.6.1 **Return from Leave:** An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the Authority service, to a prorated vacation based upon the total years of service with the Authority, and upon the total number of months of actual service with the Authority during the said calendar year. For succeeding calendar years, his or her vacation leave shall be as provided in the other sections of the Understanding pertaining to vacation leave.

22.6.2 **Leave of Absence Without Pay:** An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours or more, his or her vacation shall be as provided for in Section 22.6 and 22.7.

22.6.3 **Prorated Vacation:**
Employees shall be entitled to prorated vacation leave credits for each hour the employee either works or is paid. An employee who is in an unpaid status shall not accrue vacation benefits for the period the employee is not working and is not receiving pay.

22.7 **Computation of Vacation Leave Upon Termination, Extended Military Leave or Other Extended Leave of Absence Without Pay:** If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his or her estate shall be paid for vacation leave credits in excess of the actual amount of vacation leave taken or such employee or his or her estate shall reimburse the Authority for the actual amount of vacation leave taken in excess of vacation leave credits, as the case may be, in accordance with the provisions of this section.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee or his or her estate shall be paid for the excess of the credits on the basis hereinafter set forth. If the actual amount

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of vacation leave taken exceeds the credits, such employee or his or her estate shall reimburse the Authority on the same basis. The basis for such payment by the Authority or for such reimbursement to the Authority shall be as follows: The number of hours of vacation credits (for excess hours taken) x bi-weekly hourly rate (based on the employee's monthly salary at date of termination, extended military leave, or other extended leave of absence without pay - terminal vacation payment due (or owed).

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in a lump sum at time of termination, extended military leave or other extended leave of absence without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Understanding and receive a lump sum repayment for the balance of vacation leave credits, if any.

- 22.8 **Vacation Changed to Sick Leave:** Employees on vacation leave who become sick or injured shall, for purposes of compensation, have their vacation leave stopped and be placed on sick leave. Entitlement to this benefit is subject to (a) notification to the Executive Director that the employee is sick or injured, and (b) medical verification of same.
- 22.9 **Vacation Past Accrual Rates:** Employees past accrual rate are based upon the vacation accrual rates in effect during the applicable periods of employment.
- 22.10 **Computation:** Vacation leave credits shall be computed for each employee on the basis of the authorized annual vacation leave during such employee's years of service with the Authority at the following rates:

Authorized Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of service)	Vacation Leave Credits (in hours earned per month of service)
2	0.833	6.667
3	1.250	10.000
4	1.667	13.333
5	2.083	16.667
6	2.500	20.000

- 22.11 **Sabbatical Leave:** After eight (8) consecutive years of employment with the Authority, an employee may apply for a sabbatical leave without pay of up to six (6) months. Such leave may be granted by the appropriate authority upon the recommendation of the employee's manager but such leave shall not be unreasonably denied. There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurance shall be paid by the Authority for the duration of an approved Sabbatical Leave.

Every Sabbatical Leave shall require an employee commitment of two years service following

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return from leave. In the event the full two year service commitment is not performed, the employee shall repay a pro rata amount of the life and health insurance premium paid by the Authority based on the percentage of the two year service commitment not performed.

SECTION 23: HOLIDAYS

23.1 Recognized Holidays: Recognized holidays for employees in Unit M-1 shall be:

- 23.1.1 New Year's Day
- 23.1.2 Martin Luther King Junior's Birthday - observed on the third Monday in January
- 23.1.3 Lincoln's Birthday
- 23.1.4 Washington's Birthday - observed on the third Monday in February
- 23.1.5 Malcolm X's Birthday - observed on the Monday or Friday nearest May 19
- 23.1.6 Memorial Day - observed on the last Monday in May
- 23.1.7. Juneteenth National Independence Day – observed on the Monday or Friday, nearest to June 19
- 23.1.8. Independence Day
- 23.1.9. Labor Day - observed on the first Monday in September
- 23.1.10. Indigenous Peoples' Day - observed on the second Monday in October
- 23.1.11. Veterans Day
- 23.1.12. Thanksgiving Day
- 23.1.13. The day after Thanksgiving Day
- 23.1.14. Christmas Day

23.2 FLSA Covered Employees Who Work on a Holiday: An employee eligible for overtime whose work week is Monday thru Friday and who is required to work on any day that is a holiday shall be paid for the number of hours worked during such day. Such payment shall be at the rate of one and one-half (1 1/2) times the straight-time rate, based upon the employee's regular monthly salary, or shall be granted compensatory time off in any amount equal to one and one-half (1 1/2) times the number of hours worked on such holiday. The hours worked on such a holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday also includes overtime, as provided in Section 20 of this Memorandum of Understanding, payment will be made for the hours worked either as overtime under Section 20, or as holiday pay under Section 23, but will not be made under both Sections.

23.3 FLSA Exempt Employees Who Work on a Holiday: An employee not eligible for overtime who is required to work on a holiday shall be given another day off preferably during the same pay period, or on another day that is mutually agreeable to the employee and the Executive Director.

23.4 Holidays for Part-Time Employees: Regularly scheduled part-time employees working 20 hours or more per week shall be entitled to holiday pay on a pro-rata basis.

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- 23.5 **Holiday Pay:** Employees regularly scheduled to work full-time, eighty-hours bi-weekly, forty-hour (40) hour week, shall be entitled to holiday pay computed on an eight (8) or nine (9) hour day basis, in accordance with the 9/80 schedule.
- 23.6 **Floating Holidays:** Employees shall be granted three (3) floating holidays each calendar year. The days selected shall be by mutual agreement between the employee and the Executive Director (or his or her designee). In the event mutual agreement cannot be reached on the selection of the floating holidays, the employee shall have three (3) days added to his or her accrued vacation time.
- 23.7 **Floating Holiday Accrual Upon Employment:** In the first calendar year of employment, an employee hired before May 1, shall be entitled to three (3) floating holidays; and an employee hired on or after May 1, shall be entitled to two (2) floating holidays and an employee hired on or after September 1, shall be entitled to one (1) floating holiday in that first year.
- 23.8 **Limitations:** No monetary award shall be authorized for unused accumulated Floating Holidays for employees who terminate employment prior to the completion of six (6) months of continuous Authority service.

SECTION 24: SICK LEAVE

- 24.1 **Eligibility:** Employees represented by this Understanding shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 24.2 and 24.7, inclusive.
- 24.2 **Accrual:** Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of Section 24, a month of service shall mean thirty (30) consecutive calendar days during which the employee is working or receiving pay in the case of employees working on a full-time or part-time basis, and shall mean one hundred seventy three (173) hours of work in the case of employees working on an intermittent basis.

- 24.3 **Part-Time Accrual:** An employee working on a part-time basis shall be entitled to use earned sick leave only on a prorata basis; for example, if an employee works half-time, the employee shall be paid for time off on sick leave on a half-time basis.

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

- 24.4 **Maximum Accumulation:** Such sick leave as provided in Section 24.2, when not used is

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cumulative. The accumulated unused sick leave shall not exceed two hundred (200) working days regardless of the length of service. When the maximum has been reached, and thereafter part of the maximum has been used, the number of accumulated sick days may be brought back up to the maximum at the applicable rate provided in Section 24.2.

- 24.5 **Sick Leave Bonus:** Employees with six (6) months perfect sick leave attendance after July 1, 2007 shall earn eight (8) hours of paid leave. A leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus. That leave earned in accordance with this provision will be subject to those used, accrual and pay provisions applicable to vacation.
- 24.6 **Payment Upon Retirement/Termination 20-28 Years of Benefited Service:** All accumulated sick leave shall be canceled when an employee terminates or is terminated, except that employees retiring or voluntarily terminating with a vested pension, and with between twenty (20) years and twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to thirty eight percent (38%) of their accrued sick leave days up to a maximum of the two hundred (200) day maximum accumulation. Any employee retiring on a permanent disability arising out of and incurred in the course and scope of employment with the Authority shall be entitled to receive payment at retirement for 38% of accumulated unused sick leave days, but not, in any event, more than 38% of the 200 day maximum accumulation.
- 24.7 **Payment Upon Retirement/Termination 28 Years of Benefited Service:** Employees who terminate with at least twenty eight (28) years of benefited Authority service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the Authority with at least twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two-hundred (200) unused sick leave days.
- 24.7.1 **Sick Leave Payout to 401(a) Plan:** The Authority and the Union have met and conferred on an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement. This plan and trust agreement was originally negotiated with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 and has been submitted to the Internal Revenue Service for a Determination Letter and a Private Letter Ruling which are pending. If the City receives a positive response from the Internal Revenue Service, the plan and trust agreement will be extended to the employees in the bargaining unit. This will provide the employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.
- 24.7.2 **Annual Sick Leave Payout:** Employees who regularly work one-half (1/2) time or more who have attained the two hundred (200) day maximum sick leave accumulation, shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days, or if earning sick leave at the rate of two (2) working days each month of

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service, one-third (1/3) of the first twenty-four (24) days of sick leave days, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than the first full pay period in January. Such payment shall be at the employee's salary rate in effect on the preceding December 31, and shall be made only in units of whole days, and will not be made for any fraction of a day.

24.7.3 **Sick Leave After Reemployment:** Accumulated unused sick leave that has been canceled by reason of an employee's termination shall be credited back to such employee if he or she returns to Authority employment within three (3) years of such termination.

24.7.4 **CalPERS Sick Leave Conversion:** Effective June 26, 1988, the Conversion of Unused Sick Leave to Retirement Credit under CalPERS Section 20965 shall be made available.

24.8 **Purpose of Sick Leave:** Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only

- (i) in case of sickness or disability of the employee;
- (ii) in the case of serious illness within the immediate family of the employee; or
- (iii) for an employee who is a victim of domestic violence, sexual assault or stalking for purposes of:
 - a. Seeking medical attention for injuries caused by domestic violence, sexual assault, or stalking;
 - b. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
 - c. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
 - d. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

An employee shall be allowed to use sick leave in the case of serious illness within the immediate family of the employee. Not more than twelve (12) working days in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family.

The immediate family of an employee, for the purpose of this Section shall be defined as a dependent residing in the employee's household or parent, spouse, son, daughter, domestic partner or niece or nephew residing in the employee's household; or (b) a family member living outside the employee's home, for whom the employee is the primary care giver, including a parent, spouse, son or daughter, domestic partner or niece of nephew.

24.9 **Family Medical Leave:** Administrative Regulation 2.4 governs the use of family medical leave under the Family and Medical Leave Act of 1993, and the California Family Rights Act. The Administrative Regulation specifies requirements/conditions for family medical leave and includes definitions of family members, use of paid leaves, and health and welfare benefit continuation.

24.10 **Effect of Outside Employment on Sick Leave:** No sick leave shall be allowed for any injury

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incurred while working for another employer unless the employee has obtained advance written permission to hold the other job and is not eligible for workers compensation or sick leave from the other employer.

- 24.11 **Leave Without Pay:** An employee who is granted a leave of absence without pay and is otherwise off the payroll shall not earn sick leave credit.

The Authority may establish a reasonable program for the control of abuse of sick leave and absenteeism.

- 24.12 **Salary Continuation:** Workers' compensation payments shall commence, in accordance with State law, on the fourth day following injury, unless the employee is hospitalized, ("Hospitalized" meaning confinement), in which case payment commences on the first day of injury. Employees whose disability requires absence of more than 21 days will receive retroactive compensation, both pay and leave, for the three-day waiting period. Employees shall be on administrative leave with pay for the initial three (3) days. Such leave shall not be deducted from the employee's leave balance.

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the Authority will cease to pay the difference.

The Authority shall continue to calculate salary continuation at pre-disability gross pay. The Authority may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employee's combination of disability payments and salary continuation payments below employee's pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

- 24.13 **Catastrophic Leave/Recovery Time Transfer**

Recover time transfer shall be granted to an employee when a catastrophic illness or injury incapacitates the employee or the employee's dependent family member such that it limits the employee's ability to perform the essential functions of his or her usual and customary occupation and the injury or illness is anticipated to be permanent or to last more than thirty (30) day.

Recovery Time Transfer is that system whereby an employee grants time from earned compensatory time off, vacation leave, or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury,

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threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the Authority Executive Director. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The Authority reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition.

24.13.1 An employee may donate compensatory time off and/or vacation leave time.

24.13.2 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:

24.13.2.1 The employee donating sick leave must maintain a sick leave balance of at least one hundred twenty (120) hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the Authority shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.

24.13.2.1.1 An employee may donate up to sixteen (16) hours of sick leave per calendar year and be charged one (1) hour of sick leave for each one (1) hour of sick leave time donated for Recovery Time Transfer; or,

24.13.2.1.2 After the first sixteen (16) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two (2) hours of sick leave for each one (1) hour of sick leave donated for use as Recovery Transfer Time.

SECTION 25: STATE DISABILITY INSURANCE INTEGRATION

25.1 **State Disability Insurance:** Except as provided in 25.1.3 below, any employee who is absent due to personal illness for more than seven (7) calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance (SDI) benefits.

25.1.1 **State Disability Integration:** After such employee has been absent from work due to personal illness for six (6) workdays, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

25.1.1.1 The Authority will determine the weekly SDI benefit amount based on the amount of wages earned with the Authority in the SDI base period.

25.1.1.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability

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plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integrating with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee as discussed below.

- 25.1.1.3 Any employee may choose not to apply for State Disability Insurance but it is his or her responsibility to notify the departmental payroll clerk of this fact, in writing, to stop sick leave integration. The employee must also notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.
- 25.1.1.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his or her payroll clerk to verify dates covered by SDI and the amount to be paid. The employee must inform his/ her payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated leave as will meet but not exceed, the standard earnings of the employee for his or her normal workweek, up to a maximum of five (5) days.

SECTION 26: BEREAVEMENT LEAVE

- 26.1 **Benefit and Covered Individuals:** In the case of death within the immediate family of an employee, the employee shall be entitled to remain absent from employment with pay in order to attend the funeral or memorial service, for a period not to exceed three (3) working days, or, in the case of a funeral or memorial service outside the State of California, for a period not to exceed five (5) working days. Members of the employee's immediate family, as used in this Section means the mother, father, grandmother, or grandfather of the employee or of the spouse of the employee, and the spouse, domestic partner, son and daughter of the domestic partner, son, son-in-law, daughter, daughter-in-law, brother or sister of the employee, aunt or uncle of the employee, grandchild, or any relative living in the immediate household of the employee.

Leave of absence with pay because of death in an employee's immediate family shall not be charged against vacation or sick leave, but shall be in addition thereto.

- 26.2 **Discretionary Approval:** With approval of the Department Head or his or her designee, additional time to adjust to the death may be granted.

In special cases, the Executive Director, or his or her designee may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family.

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- 26.3 **Pro-Rated Benefits:** An employee working on a part-time basis shall be entitled to use bereavement leave only on a pro-rated basis.
- 26.4 **Verification:** Employees requesting leave under section 26.1 may be required to provide documentation of relationship with the eligible family member.

SECTION 27: MILITARY AND MARITIME LEAVE

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran's Code.

SECTION 28: PARENTAL LEAVE

A continuous parental leave of up to one year will be granted to any employee with one (2080 hours) or more years of employment with the Authority (or equivalent in the case of part-time employees) upon the birth of a child or the legal adoption of a child who is five years or younger, providing that:

- 28.1 **Commencement of Parental Leave:** The one year parental leave must commence no later than thirteen (13) months from the date of birth or legal adoption and must expire no later than twenty-five (25) months from the date of birth or adoption and;
- 28.2 **Notice Requirement:** An employee wishing to exercise their rights under this provision must provide the Authority at least 60 calendar days notice prior to the anticipated commencement date of the parental leave.

The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred [200] days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or injury or on vacation during the leave. In the event both parents are employed by the Authority, nothing shall prohibit both employees from taking simultaneous parental leave.

The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

During approved parental leave, after all earned leaves are exhausted, the Authority agrees to maintain life and health insurance coverage subject to any regular participation requirement of the employee. Approved parental leave shall not be deducted from the seniority service date.

2021-2024 Memorandum Agreement**Berkeley Housing Authority****PEU Local One AFSCME Council 57****SECTION 29: JURY DUTY LEAVE**

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

SECTION 30: CONTINUING EDUCATION LEAVE

The Authority shall allow up to sixty (60) hours off with pay per year to employees in Unit M-1 who are required:

- 30.1 To obtain continuing education as a condition of license or certification renewal when the license or certification is required by the Authority for the employment of the employee;

(No more hours than are required by the State shall be granted unless mutually agreed upon by the employee and the Executive Director.

Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as part of their basic curriculum); or

- 30.2 To obtain education and training related to job skills, to enhance performance, or to qualify for promotion at the discretion of the Executive Director.

Employees qualifying under Section 30.1 or 30.2 above who take classes during non-scheduled work hours shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits, to a maximum of sixty (60) hours per year.

SECTION 31: LEAVE OF ABSENCE WITHOUT PAY

- 31.1 **Executive Director Authority:** Upon request of the employee, the Executive may grant to an employee leave of absence without pay for a period not to exceed thirty (30) working days. No

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leave without pay shall be granted for more than thirty (30) working days, except upon the written request of an employee and approval of the Executive Director.

31.1.1 **Exhaustion of Accrued Leave After Sick Leave:** In the event of illness, should an employee exhaust sick leave, he or she must use all available compensatory and vacation leave prior to receiving authorization for leave without pay.

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

31.2 **Employee Notification Requirements:** The Authority has the right to reject or deny employee requests for leaves of absence as provided in this Understanding. All employees who are absent from work for any reason must report their absence and the reason for their absence or obtain prior permission to be on leave as required by this Understanding. Failure by the employee to do so may lead to disciplinary action, up to and including discharge.

ARTICLE 4 - HEALTH AND WELFARE BENEFITS

SECTION 32: HOSPITAL, MEDICAL AND DENTAL COVERAGE

32.1 **Medical Coverage:** The Authority shall pay for the cost of health insurance coverage for the employees who have such coverage under any group health insurance plan authorized by the Authority Board of Commissioners. Medical benefits are extended to full-time employees, the spouse of the employee or domestic partner, and IRS dependents up to the age of 26. 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. Notwithstanding Section 36, an employee working on a part-time basis shall be entitled to health insurance coverage on a pro-rata basis.

Effective January 1, 2010, the Authority will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part-time employees who work 20 to 29 hours per week. The Authority pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

If the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e. Single party, two party, or family) and the plan chosen by the employee from that date forward.

The present level of the health plan benefits described above shall be maintained at Authority expense.

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32.2 **Dental Coverage:** The Authority shall provide a dental care program for employees. Dental benefits are extended to full-time employees, their spouse or domestic partner, and any IRS dependents up to the age of 26. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal income tax withholding for the cost of the benefit unless there is a change in tax law that would allow the benefit without tax. An employee working on a part-time basis shall be included in the dental care program on a pro-rata basis.

Effective January 1, 2011, benefits provided under the Dental Program shall be increased to an annual limit of \$3,000 for dental work and a lifetime limit of \$3,000 for orthodontics. The co-insurance rate shall be ninety percent (90%) of the Bay Area Usual, Customary and Reasonable charges.

32.3 **Notice Requirements to Employees Who Terminate/Resign/on Leave of Absence:** The Authority shall give advance notice to any employee who resigns, is terminated or is on a leave of absence, as to what is necessary to keep the Health Plan in force without a break in coverage.

32.4 **Cash-in-Lieu:**

Effective January 1, 2018, for those employees who show proof of alternate medical coverage, the Authority will compensate the employee at the single Kaiser Plan rate; provided, however, that such compensation shall in no event exceed \$732 per month.

32.5 **Effective Date of Benefits:** New medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

SECTION 33: RETIREE MEDICAL COVERAGE

The benefits referenced herein are currently provided through City of Berkeley plans. The Authority will meet and confer with the Union if and when the Authority receives any notice that the Providers of these City plans intend to discontinue coverage of Authority employees.

The Authority and Union have agreed that the Authority will make available retiree health insurance coverage under certain terms and conditions described below. This retiree medical benefit shall be referred to as Plan Z2B Cap 3. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City began providing the retiree medical coverage set forth in this section on July 1, 1998. An employee's entitlement to any and all benefits provided by the Authority under this retiree medical cover plan are subject to the funding limitations set forth in subsection 33.7.

33.1 **Eligibility:** An employee is eligible for the retiree health insurance coverage set forth in subsection 33.2 below if he or she meets all the following criteria:

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- 33.1.1 retires on or after July 1, 1998,
- 33.1.2 is vested with CalPERS,
- 33.1.3 has at least eight (8) years of CalPERS qualifying service with the Authority,
- 33.1.4 is at least age 55.

- 33.2 **Pre Age 65 Retiree Health Insurance:** Beginning July 1, 2000, the City/ Authority shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The Authority will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two-party coverage. Effective July 1, 2002, the Authority's contribution level shall be \$198.27 per month on the employee's behalf for single party health insurance and no more than \$396.54 per month for two-party health coverage. The actual monthly amount of money the Authority will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

Years of CalPERS Qualifying Service	Percent of Authority Contribution
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

Employee will pay the difference between the Authority's monthly contribution and the actual monthly insurance premium charged by the health plan he or she has elected for retiree medical coverage. If during the term of this Understanding the premiums for such health insurance are increased, the amount the Authority contributes shall increase no more than 4.5% above the previous year's contribution. Any increase in the amount contributed by the Authority will occur on July 1 each year thereafter.

- 33.2.1 **Effective June 29, 2008:** For employees who retire on or after June 29, 2008, the Authority City will pay on the employee's behalf no more than \$421.28 for an employee electing single party health coverage and no more than \$842.56 per month for an

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employee electing two party coverage effective July 1, 2014. The actual monthly amount of money the Authority will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in this Memorandum of Understanding. Pursuant to Section 33.2, the amount the Authority contributes for single or two-party coverage shall increase no more than 4.5% on July 1 of each year.

- 33.3 Retiree Benefits for Employees Age 65 and Over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in subsection 33.2 ceases. On reaching age 65, the Authority will make available health insurance coverage for a Medicare Risk Policy. When an employee or retiree reaches age 65, the Authority will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage. Effective July 1, 2002, the Authority's contribution level shall be \$19.28 per month on the employee's behalf for single party health insurance and no more than \$38.37 per month for two-party health coverage.

34.3.1 Effective June 29, 2008: For eligible employees who retire on or after June 29, 2008, the Authority will pay on the employee's behalf no more than \$353.54 for an employee electing single party health coverage and no more than \$706.68 per month for an employee electing two party coverage effective December 29, 2008. The actual monthly amount of money the Authority will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in this Memorandum of Understanding. Pursuant to Section 33.2, the amount the Authority contributes for either the single or two-party coverage shall increase no more than 4.5% on July 1 of each year. .

- 33.4 Termination by Authority of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the Authority of any further obligation to provide any further benefits under this section.
- 33.5 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the Authority will retain eligibility for the retiree medical benefits provided in subsection 33.2 when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from Authority employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the Authority has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.
- 33.6 Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the Authority before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 33.2 when

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the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from Authority employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the Authority has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.

- 33.7 **Authority Funding of Retiree Health Benefit:** Authority contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established and managed by the City on behalf of Authority employees.

The Authority and Union acknowledge that the Authority is providing this benefit via a contract with the City of Berkeley, and that Authority will accept changes implemented by the City.

The Authority will fund the benefit at approximately one percent (1%) of the payroll for every year thereafter with the intent of achieving a funding level of seventy percent (70%) after thirty (30) years. The funding will be ongoing to maintain a seventy percent (70%) funding level thereafter.

Effective June 28, 2009, the Authority will fund the retiree medical benefit at approximately four and 7/10 percent (4.7%), inclusive of the 1% referenced above, of the payroll during the term of the Understanding and for every year thereafter. The purpose of the increase in payroll contributions is to fund Pre and Post-Age 65 Retiree Health Insurance.

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the Authority will conduct an actuarial study by the outside actuary of the retiree medical plan every year to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and Authority agree that if the Actuary concludes that the Authority's funding of this benefit by contribution of 4.7% of the payroll is insufficient to fully fund the retiree medical benefits, the Authority shall not be required to increase its funding for this benefit to more than 4.7% of the payroll. In the event that there are insufficient funds in the trust to cover Local One AFSCME Council 57 retirees' monthly health premiums, the Authority shall make an across the board reduction in the monthly premium paid on the employees behalf and advise the retiree that he or she is responsible for paying any amounts due the group health plan to cover the difference between the Authority's contribution and the actual monthly group health plan premium.

SECTION 34: GROUP LIFE INSURANCE

- 34.1 **Authority Paid Coverage to \$50,000:** The Authority shall continue to provide group life

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insurance, by a carrier of the City's choice. The Authority shall provide \$50,000 (standard accidental death and dismemberment of a like amount) for all employees in Unit M-1. The Authority shall pay the full amount of the premiums of such life insurance coverage.

- 34.2 **Employee Option to Purchase to \$300,000:** Employees may purchase additional term life insurance coverage in units of \$10,000 to a maximum benefit of \$300,000 subject to requirements of the insurance carrier. Life insurance shall become effective the first day of the calendar month following appointment and shall continue until the last day of the last calendar month in a pay status.

SECTION 35: SUPPLEMENTAL RETIREMENT / DISABILITY INSURANCE PLAN

Effective January 1, 1983, the majority of miscellaneous employees under the then City's contract with the State of California Public Employees' Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program.

In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year / or the current applicable rate / amount in effect) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income Plan (SRIP) which provides investment and long-term disability benefits for those employees previously covered under the integrated PERS / Social Security Plan which provides investment and long-term disability benefits for those employees previously covered under the integrated PERS / Social Security Plan.

The parties mutually acknowledge that the Authority shall assume and incorporate the provision of this plan (described in City of Berkeley Ordinances No. 5864 - N.S. (SRIP I) and No. 5865 - N.S. (SRIP II) as amended.) into an addendum to this Memorandum of Understanding prior to its expiration.

The Authority has assumed the cost of long-term disability insurance for all SRIP II members.

SECTION 36: PART-TIME EMPLOYEES & PRORATED BENEFITS

- 36.1 **Prorating:** Employees working on a part-time basis shall receive benefits on a pro-rated basis.
- 36.2 **Prorating Benefits:** All current career employees who in the future request to become part-time career, working a minimum of 20 hours, but less than 40 hours per week, shall receive prorated, rather than full fringe benefits and shall pay, by payroll deduction, a pro-rata portion of the health and dental insurance premiums.
- 36.3 **Layoff Benefits:** All current career employees who are given the option of accepting part-time employment in lieu of layoff from Authority services shall continue to receive full health, dental and life insurance benefits paid by the Authority in addition to prorated benefits.

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Employees working on a part-time basis shall receive benefits on a pro-rated basis.

- 36.4 **Job Share in Lieu of Layoff Benefits:** Employees who voluntarily job-share to prevent layoffs of coworkers shall continue to receive full health, dental and life insurance benefits paid by the Authority in addition to other prorated benefits.

SECTION 37: OTHER BENEFITS

37.1 YMCA/Gym MEMBERSHIP

The cost of YMCA or another recognized gym/fitness club membership will be divided between the Authority and the employees, with the Authority contribution to be seventy-five percent (75%) of the monthly YMCA 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—or other gym/fitness club facility/program by an Authority employee, as provided for in this Understanding, 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 Authority or its Claims Administrator may not be liable for any injury which arises out of Authority employee's participation in and use of a YMCA or other gym/fitness club facility club membership.

37.2. Transit /Parking Benefit

Upon request, the Authority shall provide public transit passes on a monthly basis in the amount of fifty dollars (\$50).

ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT

SECTION 38: PROBATIONARY PERIOD

- 38.1 **Duration:** Original and promotional appointments from employment lists for classifications in M-1 Berkeley Housing Authority (Career) unit shall be tentative and subject to a probationary period of one (1) year of actual service. However, the Authority will provide written performance evaluations to such probationers at the fourth (4th) month, eighth (8th) month and twelve (12th) month periods (unless rejected from probation as provided in Sections 38.3 and 38.4). The Authority will provide the written performance evaluation to the probationer within 30 calendar days of the fourth (4th) and eighth (8th) month evaluation period and before completion of the twelfth (12th) month. If the Authority fails to provide the aforementioned written performance evaluations for a specific probationer, the Authority will waive its right to enforce the one (1) year

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probationary period for the specific probationer and the probationary period for the specific probationer shall be six (6) months of actual service.

Time spent on workers' compensation leave as a result of an industrial injury shall not be considered as actual service and shall not be included as time served toward completion of the probationary period. Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to Authority service.

38.2 Promotion or Provisional Appointment Prior to Completing Probationary Period: Unless applying for a closed examination, an employee does not have to complete the probationary period as a prerequisite for promotion. If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

38.3 Report Requirements: The Authority shall give probationary employees in the M-1 representational written probationary period evaluations at the fourth (4th), eighth (8th) and twelfth (12th) months in order to advise the employee of their performance.

Reporting Satisfactory Service: If the service of the probationary employee has been satisfactory, the Executive Director shall provide statement in writing to such effect and stating that the retention of such probationer in the service is desired.

Reporting Unsatisfactory Service: If such service has been unsatisfactory, the Executive Director shall discharge the employee. The provisions of this Section shall in no way limit the rights of the Authority under Section 38.4.

38.4 Rejections During Probationary Period: During the probationary period, an employee may be discharged at any time without right of appeal or hearing in any manner, except that appeal may be held in accordance with Section 46 (Grievances), if it is alleged that the discharge was in violation of Section 3, (Non-Discrimination). An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 46.

38.5 Exception to Probationary Period: Employees reclassified as a result of a desk audit shall not be subjected to a new probationary period provided the employee has performed those duties for six (6) months and has not received an unsatisfactory evaluation during that period.

SECTION 39: TRANSFER

The Authority shall maintain a list of career employees who are interested in transfer. Prior to filling a vacancy with a new (probationary) employee, the Executive Director shall consider qualified current

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employees to transfer into a vacant position. No employee shall be transferred to a position for which the employee does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

Prior to outside recruiting, vacancies will be announced by email to all Authority employees.

2021-2024 Memorandum Agreement**Berkeley Housing Authority****PEU Local One AFSCME Council 57****SECTION 40: PROMOTION**

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

If in the opinion of the Executive Director, the Authority is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or substitution of related experience and education may be made in promotional examinations, with understanding on the part of management and supervisorial personnel that adequate on-the-job training which can be completed within no more than one year, will be provided to facilitate job adjustment and to compensate for waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates his or her on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one year to allow the employee time to demonstrate development of the necessary job knowledge and skills.

Each candidate for promotion must be either a permanent employee in the competitive service or a former permanent employee on an active mandatory layoff Reemployment List and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit.

If, in the opinion of the Executive Director, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a valid promotional list for the higher position from which the vacancy could be filled, then the Executive Director may arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

An Authority employee who is on a closed promotional or an open competitive list shall have the option to interview and be seriously considered for the vacancy. An Authority employee who is unsuccessful and who so requests shall be advised of steps he or she may take to increase his or her competitive standing for future promotional opportunities.

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability and seniority.

SECTION 41: FILLING OF VACANCIES

Prior to outside recruiting, all career vacancies shall be announced on email. Those employees without a designated computer shall be provided with a hard copy of such notice.

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SECTION 42: INCREASED HOURS FOR PART-TIME CAREER EMPLOYEES

Part-time career employees in the same classification shall be notified and have the opportunity to apply for increased hours in a classification before hiring from the outside. Decisions to offer the increased hours shall be based on program necessities. This provision shall not apply when the increased hours are offered to the occupant of the position and he or she has accepted same.

SECTION 43: CLASSIFICATION & COMPENSATION STUDIES

The Authority agrees to meet regularly with the Union or a committee of unions to report on the status of classification, compensation, or similar studies, and to give consideration to the Union's concerns.

Such concerns may also be brought to the attention of the Executive Director at any time.

The Authority and the Union will meet and confer on implementation issues relative to these studies to the extent required by law.

SECTION 44: RESIGNATION

An employee wishing to leave the competitive service in good standing shall file with the Executive Director, at least two (2) weeks before leaving the service, a written resignation stating the effective date and may voluntarily give reasons for leaving. Failure of the employee to give the notice required shall be entered on the service record of the employee, and may be cause for denying future employment by the Authority.

SECTION 45: REINSTATEMENT

A permanent or probationary employee who has resigned with a good record may be reinstated within three (3) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within three (3) years.

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ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE

SECTION 46: GRIEVANCES

46.1 Purpose

46.1.1 This grievance procedure shall be used to process and resolve grievances arising from this Memorandum of Understanding and all pertinent Authority policies, ordinances, administrative directives and past practices.

46.1.2 The purposes of this procedure are:

46.1.2.1 To resolve any grievance informally at the lowest possible level;

46.1.2.2 To provide an orderly procedure for reviewing and resolving grievances promptly.

46.2 Definitions

46.2.1 **Grievance:** A grievance is a good faith complaint of one or a group of employees, or a dispute between the Authority and the Union involving the interpretation, application, or enforcement of the express terms of this Understanding and all pertinent Authority policies, ordinances, administrative directives and past practices as are mutually agreed to by the Union and the Authority. No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after occurrence of the events on which the grievance was based.

46.2.2 **Employee Rights:** The employee retains all rights conferred by the Meyers-Milias-Brown Act, Sections 3500, etc., of the Government Code.

46.2.3 **Supervisor:** As used in this procedure, the term "supervisor" means the individual who assigns, reviews and directs the work of an employee.

46.2.4 **Party:** As used in this procedure, the term "party" means an employee, the Union, the Authority or their authorized representatives.

46.2.5 **Waiver of Time Limits:** A grievance shall be deemed abandoned unless initiated and appealed within the time limits specified in this section. Time limits provided for in this section may be extended or waived only by mutual agreement.

46.2.6 **Non-Response of Authority:** If the Authority fails to respond within the time limits and conditions set forth herein, the grievance may be moved to the next step.

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- 46.2.7 **Days:** Unless otherwise stated, all references to “days” in Article 6, Sections 46 and 47 shall be specified as “working days,” excluding weekends, holidays, and VTO days.
- 46.3 **Grievance Representation Rights:** An employee may request representation at any and all steps in the grievance procedure.
- 46.4 **Grievance Representation Limitations:** No employee shall represent in a grievance any employee he or she regularly supervises.
- 46.5 **Progression of Steps in the Grievance Procedure**
- 46.5.1 **STEP ONE:** An employee who believes he or she has cause for grievance may contact his or her supervisor alone or with his or her representative. If after discussions with the supervisor, the employee does not feel the grievance has been properly adjusted, the grievance shall be reduced to writing and presented to the next level within ten working (10) days of receipt of the 1st level supervisor's response.
- 46.5.2 **STEP TWO:** If the grievance is not resolved under Step One of this procedure, and the employee elects to process a written grievance, the grievance statement shall include the following:
- 46.5.2.1 **Statement:** A statement of the grievance clearly indicating the question raised by the grievance and the Article(s) and Section(s) of this Understanding which the grievant claims has/have been violated or the pertinent Authority policies, administrative directives and past practices.
- 46.5.2.2 **Remedy:** The remedy or correction requested of the Authority.
- 46.5.2.3 **Signatures:** The grievance shall be signed by the grieving employee, the date and time of presentation affixed thereto, and signed as received by the Executive Director or his or her designee.
- 46.5.2.4 **Executive Director Response:** The Executive Director and Union shall mutually agree to have the matter heard by a Skelly Officer, who shall be selected from among the persons occupying the following positions: the Executive Director of the Alameda County Housing Authority, the Deputy Executive Director of the Alameda County Housing Authority, Executive Director of the Richmond Housing Authority, the Executive Director of the Alameda City Housing Authority, or the Deputy Executive Director of the Oakland Housing Authority.
- 46.5.2.5 The Skelly Officer will give his or her answer to the grievance in writing within ten (10) working days from the time he or she received the grievance

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in writing. The answer shall include the following:

46.5.2.5.1 A summary of the facts; and complete statement of the Authority's position and the facts upon which it is based.

46.5.2.5.2 The recommended remedy or correction which has been offered, if any.

46.5.2.6 **Employee Appeal:** An employee may appeal to Step Three within twenty (20) working days of receipt of the answer.

46.5.3 **STEP THREE - ARBITRATION:** If the union is not satisfied with the Skelley Officer's recommendation/response to the grievance at Step Two, or if for any reason, forty (40) working days have elapsed from the date upon which the grievance was received by the Executive Director, the Union may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Union and the Executive Director. The fees and expenses of the Arbitrator and of a Court Reporter shall be shared equally by the Union and the Authority. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them shall be in writing and shall be final and binding on both parties hereto to the extent permitted by the California Law.

46.6 **Discrimination Complaints:** An employee and / or the Union may file a complaint concerning a violation of Section 3 of this Understanding and such a complaint shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the Authority EEO / Affirmative Action Program, except that (1) the employee has the right to be represented by a Union representative at all stages of the informal and formal complaint investigation and resolution procedure; (2) the Equal Employment Opportunity and Diversity Officer shall meet with and report to only the Executive Director during the formal resolution process; and (3) the Executive Director shall make the final decision on the merits of the complaint which may be appealed by the Union to an impartial arbitrator within thirty (30) working days of receipt by the Union of the Executive Director's decision. Such an appeal shall be processed in accordance with Section 46.7 and Section 46.8 of this Understanding.

Quarterly Report: The Authority shall provide the Union, on a quarterly basis, a report that identifies the date of the complaint and its status (accepted or rejected) of all employees subject to this Understanding. The report shall not include any confidential data.

46.6.1 **Arbitration Costs:** The fees and expenses of the arbitrator and of a Court Reporter shall be shared equally by the Union and the Authority. Each party, however, shall bear the cost of its own presentation, including preparation and post hearing briefs, if any. Arbitrator decisions on matters properly before them shall be in writing and shall be final and binding on both parties hereto to extent permitted by the California Law.

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- 46.6.2 **EEO/Affirmative Action Program Complaints:** Complaints seeking to modify or change any policy component of the Authority's EEO/Affirmative Action Program, including but not limited to the assignment of responsibilities, workforce utilization analysis, and affirmative action goals and timetables, shall be subject to the grievance / arbitration procedures of this Understanding.
- 46.7 **Compensation Complaints:** All grievances involving or concerning the payment of compensation shall be initially filed in writing with the Executive Director. In such cases, no adjustment shall be retroactive for more than thirty (30) working days from the date upon which the grievance was filed or thirty (30) working days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievances which allege that employees are not being compensated in accordance with the rules, regulations and resolutions of the Authority Board or in accordance with the understanding contained in any Memorandum of Understanding or Memorandum Agreement which has resulted from the meeting and conferring process, shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the Memorandum of Understanding which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring is next opened for such discussion.
- 46.7.1 **Response Time Limits:** The Executive Director or his or her designee shall issue a decision in writing within twenty (20) working days from the time he or she received the compensation grievance in writing. The grievant may appeal the decision to Step 3 (Section 46.5.23 of this Memorandum of Understanding) within twenty (20) working days of receipt of the answer.
- 46.8 **Issues of Interpretation of the Understanding or Allegations of Past Practice**
- 46.8.1 ***Complaints Filed With:*** Questions regarding the interpretation of the Understanding or allegations of Past Practice shall initially be filed in writing with the Executive Director.
- 46.8.2 ***Filing Period:*** Administrative Complaints regarding interpretation of the Understanding or allegations of Past Practice must be filed within thirty (30) working days of the date the alleged incident occurred, or of the date the grievant or the Union should have reasonably had knowledge of the incident.
- 46.8.3 ***Process:*** The Executive Director or his or her designee shall respond in writing within ten (10) working days of receiving the written complaint. If the grievant is not satisfied, she or he may submit the complaint to the grievance procedure described herein within twenty (20) working days of receipt of the answer. Such appeal shall enter the grievance procedure at Step 3.

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- 46.9 **Employee Organization Jurisdiction:** No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as set forth in Section 46.
- 46.10 **Arbitrator Limitations:** Proposals to add to or change this Memorandum of Understanding or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate this Memorandum of Understanding, nor any matter of subject arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no Arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum of Understanding or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.
- 46.11 **Changes to Memorandum of Understanding:** No changes in this Memorandum of Understanding or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the Authority and the Union.

SECTION 47: DISCIPLINARY APPEALS - DEMOTIONS, SUSPENSIONS AND TERMINATIONS

- 47.1 **Progressive Discipline:** The Authority commits itself to the application and enforcement of a uniform policy of progressive discipline. Management actions may range from informal conversations to formal discharge, depending on the nature and severity of the violations. As used in this Memorandum of Understanding, discipline shall mean discharge, involuntary demotion, or suspension without pay.
- 47.2 **Disciplinary Appeal:** A Disciplinary Appeal is the procedure established hereunder to afford an employee his or her due process rights related to a pending disciplinary action. An employee may appeal the recommendation or imposition of suspension, demotion, or discharge other than when such action is taken during the formal probationary period for that employee.
- 47.3 **Sole Mechanism for Resolution:** The provisions of this Section shall be the sole mechanism for resolving disciplinary appeals pertaining to demotions, suspensions, and terminations. No disciplinary appeals involving the demotion, suspension, or discharge of an employee will be entertained unless it is filed in writing with the Executive Director within five (5) working days of the time at which the affected employee was notified of such action in writing.
- 47.4 **Notice Requirement:** Employees who are to be demoted, suspended or terminated for just cause shall be given written notice of such intended action, including the reasons therefore, and shall be afforded the opportunity for an informal hearing in accordance with the procedures established by the Authority. A copy of such notice shall be sent simultaneously to the Union.

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- 47.5 **Skelly (Due Process) Meeting Right:** The Executive Director proposing demotion / termination or a suspension of any length shall hold a meeting with the employee and his or her Union representative to discuss and consider the reasons for the proposed action. The purpose of the meeting is to give the employee an opportunity to respond to the charges before a final decision is made by the Executive Director. Prior to the meeting the employee shall receive written notice of the reason(s) for the proposed action. A decision on the proposed action shall be issued by the Executive Director within ten (10) working days of the meeting and shall be sent to the affected employee with a copy sent to his or her Union.
- 47.6 **Executive Director Authority to Demote:** The Executive Director may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for just cause. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications. (For demotion in lieu of layoff, refer to Section 56.7.1)
- 47.6.1 **Demotion Notice Requirement:** Notice of the demotion shall be given the employee no later than thirty (30) working days prior to the effective date of demotion and a copy of said notice shall be simultaneously filed with the Authority and the Union. Said notice shall include the reasons for the action.
- 47.6.2 **Permanent Status:** An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.
- 47.7 **Suspensions**
- 47.7.1 **Maximum Suspensions:** The Executive Director may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days. No employee shall be penalized by suspension for more than thirty (30) calendar days within any twelve (12) month period.
- 47.7.2 **Suspension of FLSA Exempt Employees:** Notwithstanding any of the above, FLSA exempt employees shall not be suspended except as permitted by the Fair Labor Standards Act.
- 47.7.3 **Immediate Threat:** An employee who the Executive Director determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.
- 47.7.4 **Demotion or Suspension of Three (3) Days or Less:** The Executive Director may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately in writing to the Union.
- 47.7.4.1 **Appeal:** If the Executive Director decides to demote or suspend the employee three (3) or less working days, the grievant shall have five (5) working days from receipt of the Executive Director 's decision to file a

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formal written grievance appealing the Executive Director's decision to the Executive Director.

- 47.7.4.2 **Implementation:** Any suspension of three (3) working days or less that is appealed to the Executive Director level of the grievance procedure will be postponed until the Executive Director level is concluded in the grievance procedure.
- 47.8 **Executive Director Authority to Terminate Employment:** An employee may be terminated at any time by the Executive Director. If the probationary period has been completed, then such termination must be for just cause.
- 47.9 **Demotion, Termination or Suspension for More than Three (3) Working Days:** If the Department Head decides to demote, terminate, or suspend the employee for more than three (3) working days, then the decision of the Department Head shall be submitted as a recommendation to the Executive Director and will not become effective unless and until it is ratified and so ordered by the Executive Director.
- 47.9.1 **Appeals to the Executive Director:** Upon receiving a Department Head's recommendation to demote, terminate or suspend a FLSA exempt or non-exempt employee for more than three (3) working days, or upon receiving the Union's appeal of a decision to suspend for three (3) or less working days, the Executive Director or his or her designee shall review the recommendation or the appeal and shall meet with the grievant and his or her Union representative. The Executive Director shall issue a decision sustaining, modifying or rejecting the Department Head's recommendation or the Union's appeal within fifteen (15) working days of the meeting. The Executive Director's decision shall be sent by certified mail to the affected employee with a copy simultaneously sent by certified mail to his or her Union. The Union shall have twenty-five (25) working days from receipt of the Executive Director's decision within which to file a formal written request for arbitration.
- 47.9.2 **Resolution by Executive Director:** If the Executive Director in pursuance of the procedures outlined in Section 47 above resolves a grievance which involved suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.
- 47.10 **Arbitration:** If the Union appeals the Executive Director's decision to arbitration, the disciplinary appeal will be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Union and the Executive Director. The fees and expenses of the Arbitrator and of a Court Reporter shall be shared equally by the Union and the Authority. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them shall be in writing and shall be final and binding on both parties hereto to the extent permitted by California Law.

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47.11 Weingarten (Representation) Rights: An employee may request the presence of a representative during each of the following proceedings:

47.11.1 Disciplinary Interview: During an interview with the Executive Director which the employee reasonably believes may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a representative in attendance, it becomes apparent that disciplinary action could occur, either party may adjourn the interview until a representative can be present.

47.11.2 Skelley (Due Process) Hearing: During any Skelley (due process) meeting prior to the imposition of discharge, suspension without pay or involuntary demotion.

47.11.3 Disciplinary Appeals: During the appeal meetings prior to the imposition of termination, suspension without pay, or involuntary demotion.

47.12 Changes to Understanding: No changes in this Memorandum of Understanding or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the Authority and the Union.

47.13 Representation Limitation: No employee shall represent in a grievance any employee he or she regularly supervises.

SECTION 48: PERSONNEL FILES

All official records of the employee's personnel history, including applications for appointment, performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history shall be maintained in the Authority's Executive Office.

An employee shall have the right to inspect and review any official record(s) relating to his or her performance as an employee or to a grievance concerning the employee which is kept or maintained by the Authority in the employee's personnel file in the Executive Director's Office. The contents of such records shall be made available to the employee for inspection and review at reasonable intervals during the regular business hours of the Authority.

The Authority shall provide an opportunity for the employee to respond in writing to any information which is in the employee's personnel file about which he or she disagrees. Such response shall become a permanent part of the employee's personnel record. The employee shall be responsible for providing the written responses to be included as part of the employee's official personnel file. This Section does not apply to the records of an employee relating to the investigation of a possible criminal offense, medical records and information of letters of reference.

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Disciplinary actions shall be placed into an official personnel file and a copy given to the employee.

- 48.1 Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's personnel file.
- 48.2 Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's personnel file.
- 48.3 Formal letters of reprimand or formal counseling shall be removed from an employee's personnel file upon request after 24 months provided the employee has maintained satisfactory performance. Counseling memos shall not be placed in employee's personnel files.

Copies of a letter(s) of commendation which are to be placed in the employee's personnel file will be given to the employee. Employees have the right to review their official personnel files maintained in the Executive Office during normal business hours.

ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS

SECTION 49: USE OF AUTOMOBILES & PARKING

- 49.1 **Authority and Allowance:** The Executive Director shall govern the use of Authority owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish.

Compensation shall be given in the form of a cash allowance equal to the amount established by the Internal Revenue Service for the use of privately-owned vehicles. This allowance shall apply only to the use of privately-owned vehicles used on Authority business which has been authorized in advance by the Executive Director.

- 49.2 **Use of Private Vehicles:** Employees who are required to utilize their automobiles for Authority business and who, pursuant to prior written authorization of the Executive Director, are using their automobiles for transporting clients, shall be covered by insurance provided by the Authority in case of injury or liability to the client by virtue of the authorized employees' non-negligent operation of the vehicle.

SECTION 50: EMERGENCY APPOINTMENTS

To meet the requirements of an emergency condition which threatens life, property, or the general welfare of the Authority, the Executive Director may employ such persons as may be needed without regard to the regulations as to appointments in these rules.

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SECTION 51: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

- 51.1 **Industrial Disability Modified Duty:** The Authority may accommodate, when feasible, employees covered by this memorandum under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:
- 51.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.
 - 51.1.2 The assignment shall be within the Authority and may include hours and days of work other than the employee's regular assignment.
- 51.2 **Non-Industrial Disability Modified Duty:** The Authority may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Executive Director with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the Authority, other classifications may be considered, subject to the approval of the Executive Director. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.
- 51.2.1 Upon request, a written statement of the specific reasons for not offering modified duty shall be made to the employee and/or the Union.
- 51.3 **Modified Duty for Pregnancy-Related Disability:** In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Executive Director will endeavor to place the employee in a position which best serves the interest of the Authority, with no loss of pay, but in no event will such placement exceed five (5) months in duration.
- 51.4 **Executive Director Authority on Modified Duty:** Nothing herein shall require the Executive Director to approve a modified work assignment nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such refusal may subject an employee to disciplinary action.

SECTION 52: HEALTH AND SAFETY

- 52.1 **Safety Program:** The Authority and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his or her health or safety. To further these purposes, the Authority shall maintain an ongoing safety program which shall include a committee

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comprised of Authority personnel.

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52.2 **Tuberculosis Screening Tests:** The Authority shall provide annually, on Authority time, free tuberculosis screening tests, at no cost to the employee, for all employees who, in the course of their work, are subject to health hazards which may cause tuberculosis.

52.3 Video Display Equipment

52.3.1 **Working Conditions:** The Authority and the Union agree that employees working on video display equipment shall have safe and healthy work environments. These environments shall avoid excessive noise, crowding, contact with fumes, and other unhealthy conditions.

The Authority agrees wherever practical, to design the flow of work to avoid long, uninterrupted use of video display equipment by Authority employees.

52.3.2 **Pregnancies:** The Authority will accommodate requests for transfer from pregnant employees whose job duties require frequent exposures to video display equipment subject to the following:

52.3.2.1 such transfer will be limited to other positions which are vacant which the transferee is qualified to perform:

52.3.2.2 to voluntary trading of positions where both parties are competent to perform the new assignments:

52.3.2.3 to any position held by a temporary employee if the pregnant employee is qualified.

52.3.3 **Visual Screening and Education:** The Authority will develop a visual screening and education program effective 7/1/88 for employees who in the course of their employment operate VDT terminals more than half the time. This program will include visual screening at or near employment, a referral system for employees with possible VDT related vision problems, and a regular follow-up screening at approximately two (2) years.

52.3.4 **VDT Glasses:** The Authority shall provide glasses as medically required for operators of VDT.

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SECTION 53: LEGAL REPRESENTATION

The Authority will provide legal representation to the extent required by law.

SECTION 54: CRIMES AGAINST EMPLOYEE

Any criminal acts committed against an Authority employee while engaged in his or her employment will be promptly investigated by the Police Department in a manner consistent with their service protocols. Reports of assault or other acts of criminal misconduct against an Authority employee will be promptly investigated.

ARTICLE 8 - RETIREMENT

SECTION 55: PUBLIC EMPLOYEES' RETIREMENT SYSTEM

- 55.1 **Participation:** The Authority shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System, such Plan to include the single highest year earnings formula and all other benefits as were in effect as of July 1, 1979 for Classic Employees as provided in Section 55.2 and the three years final compensation formula for New Members as provided in Section 55.3.
- 55.2 **"Classic Employees" Definition:** Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA). The Authority agrees to provide the 2.7% at age 55 retirement formula for Classic Employees.
- 55.3 **"New Members" Definition:** New Members are defined in the Public Employees' Pension Reform Act of 2013 (PEPRA): "New Members" as defined by PEPRA who are hired by Authority on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA. Effective January 1, 2013, Authority shall provide the 2.0% at age 62-retirement formula benefit improvement (as provided in Section 7522.20).
- 55.4 **Payment of Employees' CalPERS Contributions: CalPERS Retirement Formula and Employer Paid Contribution**
- 55.4.1 **Classic Employees** CalPERS Retirement Formula and Employer Paid Member Contribution, i.e. current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA): Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 2.7% at age 55-retirement formula. Contributions to the employee's share (EPMC) made pursuant to section 55.4 shall be

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reported to PERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The aforesaid contribution shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The Authority reserves the right to take said contribution into account for the purpose of salary comparisons with other employers.

The Authority will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service, Franchise Tax Board, or court of competent jurisdiction indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

55.4.1.1 Employee Contribution to Employer Share

From July 1, 2017 through June 30, 2019, Classic Employees will continue to contribute one percent (1.0%) of pensionable income towards BHA's Employer contribution. New Members shall also contribute the PEPRA-required employee contribution as well as one percent (1.0%) of pensionable compensation towards BHA's Employer contribution. The employee contribution shall be made through automatic payroll deductions on a pre-tax basis.

On July 1, 2019, represented employees will no longer contribute one percent (1.0%) of pensionable compensation towards BHA's Employer contribution, and this section shall be ineffective.

55.4.1.2 Employee Contribution to Employee Share

Effective July 1, 2018, Classic Employees will pay one percent (1.0%) of pensionable compensation toward the eight percent (8.0%) employee contribution to CalPERS. The Authority shall continue to "pickup" seven percent (7.0%) of the employee contribution to CalPERS.

Effective July 1, 2019, Classic Employees will pay an additional three percent (3.0%) of pensionable compensation, for a total of four percent (4.0%), toward the eight percent (8.0%) employee contribution to CalPERS. The Authority shall continue to "pickup" four percent (4.0%) of the employee contribution to CalPERS.

Effective July 1, 2020, Classic Employees will pay an additional four

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percent (4.0%) of pensionable compensation, for a total of eight percent (8.0%), toward the eight percent (8.0%) employee contribution to CalPERS.

55.4.2 New Members. New Members as defined in Section 55.3. New members will be required to pay fifty percent (50%) of the normal cost, as provided by CalPERS. New members shall receive any other additional optional CalPERS benefits that the Authority provides to Classic Employees as allowed by PEPRA.

55.5 Conversion of Unused Sick Leave to Retirement Service Credit: The Conversion of Unused Sick Leave to Retirement Credit benefit (Section 20965) offered by CalPERS as an optional benefit to contracting agencies shall be made available to Unit members.

55.6 The Authority's Contract with CalPERS Includes the Following Optional Benefits:

55.6.1 Classic Members

- 55.6.1.1 Prior Service as provided by Government Code Section 20055.
- 55.6.1.2 Post Retirement Survivor Allowance as provided in Government Code Sections 21624 and 21626 (December 16, 1973).
- 55.6.1.3 Post Retirement Death Benefit to continue after remarriage of survivor as provided in Government Code Section 21635.
- 55.6.1.4 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Government Code Section 21023.5 (April 14, 2000).
- 55.6.1.5 Final Compensation 1 Year as provided in Government Code Section 20042
- 55.6.1.6 2% Annual Cost-of-Living-Allowance Increase as per Government Code Section 21329
- 55.6.1.7 Public Service Credit for Period of Layoffs as per Government Code Section 21022.
- 55.6.1.8 Limit Prior Service to Members Employed on Contract Date as per Government Code Section 20938.
- 55.6.1.9 Pre-Retirement Death Benefits to continue after remarriage of survivor as per Government Code Section 21551

55.6.2 New Members

- 55.6.2.1 Final Compensation 3 Year as per Government Code Section 20037.
- 55.6.2.2 Post Retirement Death Benefit to continue after remarriage of survivor as provided in Government Code Section 21635.
- 55.6.2.3 Post Retirement Survivor Allowance as provided in Government Code Sections 21624 21626 (December 16, 1973).
- 55.6.2.4 Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service as provided in Government Code Section 21023.5
- 55.6.2.5 Public Service Credit for Period of Layoffs as per Government Code Section 21022.
- 55.6.2.6 2% Annual Cost-of-Living-Allowance Increase as per Government Code Section 21329

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- 55.6.2.7 Limit Prior Service to Members Employed on Contract Date as provided in Government Code Section 20938
- 55.6.2.8 Prior Service as provided in Government Code Section 20055.
- 55.7 Military Service Credit as Public Service as provided in Government Code Sections 21027 and 21024.
- 55.8 **Fourth Level of 1959 Survivor Benefit and Pre-Retirement Optional Settlement 2 Death Benefit:** The City will obtain a valuation from CalPERS to provide for Fourth Level of 1959 Survivor Benefits as provided in Section 21574, Pre-Retirement Optional Settlement 2 Death Benefit as provided in Sections 21548 and 21620. The parties agree to meet and confer on the results of the CalPERS valuation.

ARTICLE 9 - LAYOFF PROCEDURE

SECTION 56: LAYOFF

This layoff policy for the Authority is intended to provide the maximum employment protection to the Authority staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the Authority's equity and inclusion efforts.

56.1 **Announcement of Layoff**

- 56.1.1 **Notification:** The Board of Commissioners, and Executive Director shall make every reasonable effort to manage and budget the Authority's resources effectively and to plan for the delivery of Authority services in a manner which will avoid the necessity to lay off career Authority employees. If layoffs in Local One AFSCME Council 57's jurisdiction are contemplated, the Authority shall endeavor to notify the Union within sixty (60) days if possible, but in no event later than thirty (30) days prior to the date of the actual layoff. The Union shall have five (5) days after receiving notice to request a meeting with the Authority to discuss alternatives and to meet and confer on the impact of such layoffs.
- 56.1.2 **Freezing of Vacancies:** Immediately following a decision which may involve the potential layoff of career Authority employees, the Executive Director shall freeze all current Authority 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, benefitted, temporary positions which are expected to last six (6) months or more.

56.2 **Seniority Service Date**

- 56.2.1 All service in the employ of the Authority shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well

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as leaves of absence for obligatory military service and approved parental leave while an employee with the Authority. Less than full-time service will be consolidated into equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

- 56.2.2 The Authority Executive Office shall maintain up-to-date and current Seniority Service Dates for all City employees holding probationary and permanent appointments.

56.3 Establishment of Seniority Lists

- 56.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to classification Seniority Lists for probationary and permanent employees.
- 56.3.2 The names of all Authority employees holding permanent and probationary appointments in a given classification will be placed on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the Probationary Seniority List for a specific classification will be laid off prior to employees on the Permanent Seniority List for that class.
- 56.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will be listed only on a Seniority List for the class in which they hold permanent or probationary status and which is targeted for layoff.
- 56.3.4 If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:
- 56.3.4.1 Time in classification - the employees having least time in the class shall be released first;
- 56.3.4.2 By lot.

56.4 Employee Retreat Rights/Out Placement

- 56.4.1 Before an employee with permanent or probationary status may be released from employment with the Authority the Executive Director must consider the employee's right to retreat to lower level classifications through which he or she was originally

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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. Single position classifications, are not considered part of a classification series as specified by this Section.

In addition to providing the employee with the appropriate retreat offer, when it is determined to be in the best interest of the service, the Executive Director may offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the retreat offer (offer to bump another employee) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights under the layoff policy and will be laid off without rights to reinstatement.

- 56.4.2 In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.
- 56.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee and due consideration shall be given to the employee's preferences. However, it is the prerogative of the Executive Director to determine the final placement offer to the employee.
- 56.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement in positions with a higher salary range, i.e., promotion.
- 56.4.5 An employee who is transferred in lieu of layoff when his or her position has been abolished because of reductions in force shall have automatic return rights to the previous position, if it is restored within one (1) year of the date of the transfer.

56.5 Employee Notification

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

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as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

- 56.5.3 Permanent, probationary, and career-exempt employees shall 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. Notice to an employee absent from work for any reason shall be sent by U.S. Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment and/or within fifteen (15) 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 Sub-section 56.10 of this Section.

Together with any layoff notices sent to the Union, a list shall be included of all vacancies which are authorized for filling.

56.6 Flexible Placement Program

- 56.6.1 In order to minimize the negative impact of a layoff, the Executive will, as previously stated in sub-section 56.1 of this Section impose a Authority-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career Authority employees may be necessary.
- 56.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under sub-section 56.1 of this Section have been carried out, the Executive Director 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, 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.
- 56.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.
- 56.6.4 To be considered for flexible placement, an employee must submit an updated job application form, a resume and / or other related materials may also be submitted together with this application form. For this information to be considered in determining the individual's eligibility and qualifications under the Flexible Placement Program, all such materials must be submitted no later than ten (10) days after his or her receipt of layoff notice. In any exceptional circumstances, the Executive Director may waive this time requirement.

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The submitted materials must clearly, accurately and thoroughly reflect all education and experience which the employee wishes to have considered in determining his or her eligibility and qualifications for flexible placement. The Authority shall accept this information as representing the employee's total education and experience in relation to flexible placement considerations; therefore, in making flexible placement decisions, the Authority shall not be obligated to consider any experience or education which is not clearly indicated in this application form.

The Authority may require verification(s) of the information submitted and / or, when experience to be considered is unrelated to that which the employee has performed for the Authority, may check references.

- 56.6.5 Offers to positions under the Flexible Placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Sub-section 56.3 of this Section and in accordance with the following procedures:
- 56.6.5.1 Full-time vacancies authorized to be filled shall be listed in order from highest to lowest based on the actual maximum salary.
 - 56.6.5.2 Part-time vacancies authorized to be filled shall be included in the above list in order based on the actual monthly maximum salary for the hours involved.
 - 56.6.5.3 The individual with the earliest Seniority Service Date (SSD) targeted for layoff will be considered for flexible placement in the top position on the above list.
 - 56.6.5.4 If it is determined that the person with the earliest SSD is eligible and qualified for flexible placement in the top position on the list, the employee shall be offered the position.
 - 56.6.5.5 If the Executive Director determines that the employee is not eligible or not qualified for the top position, the Executive Director shall proceed down the list of vacancies in an effort to identify the next highest position for which the employee is eligible and qualified for flexible placement, the employee be offered the position.
 - 56.6.5.6 The above process shall be repeated until either a match is identified or the list of vacancies has been exhausted.
 - 56.6.5.7 The above process shall be repeated next for the employee with the second highest SSD, and, subsequently in order from earliest to most recent SSD for

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each other employee targeted for layoff.

- 56.6.6 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. Upon request, a written statement of the reasons for not offering an employee a particular position shall be made to the employee and / or the Union.
- 56.6.7 If an employee fails to accept a bona fide written offer of an alternative job within fifteen (15) 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.

A training program shall be developed with the employee, and the supervisor. The employee shall be advised of his or her progress after two months, four months and six months in the new classification. If at the end of this time the employee is unable to adequately perform the assignment, then the employee shall be again subject to the layoff process.

56.7 Reemployment Lists

- 56.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff or retreat must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 56.4.
- 56.7.2 A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated or flexibly placed and remain employed with the Authority.
- 56.7.3 Departments with permanent vacancies in any classification for which there is an active Reemployment Priority List must use the Reemployment Priority List to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate Reemployment Lists have been exhausted.
- 56.7.4 When a permanent vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the Department Head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.
- 56.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the Reemployment Priority List from which the offer was made. Failure to accept an offer

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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.

- 56.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

56.8 Reinstatement List

- 56.8.1 Any former employee on a reemployment list shall be included on the reinstatement list for a specific class at or below the class from which he or she was laid off whenever he or she both:

56.8.1.1 meets minimum qualifications of the specific class and

56.8.1.2 has requested reinstatement in that class.

Such individuals shall be included on the eligibility list certified for a specific position and identified as eligible based on this provision.

- 56.8.2 In order to permit reinstatement in another specific class of an individual who is on a mandatory reemployment list, minimum qualifications may be waived and On-the-Job Training (OJT) may be provided as specified under the Flexible Placement Program.

Such individuals shall be included on the eligibility list certified for a specific position and identified as eligible based on this provision.

- 56.8.3 Consideration for 56.8.1.1 and/or 56.8.1.2 would be based on a written request from an employee for reinstatement in that specific class; such request must include an updated Authority job application form described in 56.6.4.

- 56.9 **Career-Exempt Employees:** Only those employees holding full-time, benefitted 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".

- 56.10 **Appeal Procedures:** Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff, who believes that the layoff procedure has been

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administered in violation of the terms of this Memorandum of Understanding, as it pertains to the employee's case, may appeal the action under Section 48. In addition, employees are entitled to 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.

- 56.11 **Reclassification or Reallocation of Positions:** Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Understanding, including provisions relating to layoff, transfer, demotion or promotion.
- 59.12 **Disputes on Reemployment Priority Lists:** In the event of a dispute between the Union and Authority over the application of the Reemployment Priority Lists and if either party so requests, the Executive Director shall order an audit by an outside auditor of all vacant positions filled and authorized positions which have not been filled, to determine whether the vacancies occurred in classifications for which Reemployment Priority Lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 57.7. In the event vacancies for which Reemployment Priority Lists were in existence remained 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 Executive Director, the Board of Commissioners and the Union.

At the request of the Union, the Agreement shall be reopened if BHA agrees to a successor to the current MOU with SEIU Local 1021 providing economic benefits in excess of the economic benefits provided in this Agreement. It is understood that this reopener only applies to the successor to SEIU Local 1021's current agreement and not to any subsequent successor agreements with SEIU Local 1021.

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SIGNATURE PAGE


Executed this _____ day of _____, 2022 by the Employer and Employee Representatives whose signatures appear below for their respective organizations.


**PUBLIC EMPLOYEES UNION
LOCAL ONE AFSCME COUNCIL 57**

BERKELEY HOUSING AUTHORITY

DocuSigned by:

5AD2082094014A9...
1/20/2022
Jeff Apkarian, Business Agent
Public Employees Union Local One AFSCME Council 57

DocuSigned by:

E7909889FCD0477...
1/20/2022
Rachel Gonzales-Levine Actg Exec Dir
Berkeley Housing Authority

DocuSigned by:

1BD249334A3841F...
1/20/2022
Stacey Cue
Chief Negotiator, Berkeley Housing
Authority

2017-2021 Memorandum Agreement**Berkeley Housing Authority****PEU Local One AFSCME Council 57****EXHIBIT A****Local One****June 27, 2021-June 22, 2024****Salary Ranges in Effect From June 27, 2021 (4% increase)**

	FLSA	A	B	C	D	E
BHA Finance Manager	Y	\$ 9,287	\$ 9,752	\$ 10,240	\$ 10,752	\$ 11,289
BHA Management Analyst	N	\$ 8,306	\$ 8,721	\$ 9,157	\$ 9,615	\$ 10,096
BHA HCV Supervisor	N	\$ 6,901	\$ 7,248	\$ 7,609	\$ 7,990	\$ 8,473

Salary Ranges in Effect From June 26, 2022 (3% increase)

	FLSA	A	B	C	D	E
BHA Finance Manager	Y	\$ 9,566	\$ 10,045	\$ 10,547	\$ 11,075	\$ 11,628
BHA Management Analyst	N	\$ 8,555	\$ 8,983	\$ 9,432	\$ 9,903	\$ 10,399
BHA HCV Supervisor	N	\$ 7,108	\$ 7,465	\$ 7,837	\$ 8,230	\$ 8,727

Salary Ranges in Effect From June 25, 2023 (1% increase)

	FLSA	A	B	C	D	E
BHA Finance Manager	Y	\$ 9,662	\$ 10,145	\$ 10,652	\$ 11,186	\$ 11,744
BHA Management Analyst	N	\$ 8,641	\$ 9,073	\$ 9,526	\$ 10,002	\$ 10,503
BHA HCV Supervisor	N	\$ 7,179	\$ 7,540	\$ 7,915	\$ 8,312	\$ 8,814

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EXHIBIT B

Holiday Office Closure FY2022 – 2024

FY21-22 Christmas to New Year –including holidays, RDO and weekends, the total number of days that we will be closed will be 10 days . Total vacation hours usage: 27 hours . Office re-opens on January 3, 2022 .		
12/24/21 (Friday)	Christmas Holiday observed	
12/25-26/21 (Sat-Sun)	Days-off	
12/27/21 (Monday)		VL – 9 hours
12/28/21 (Tuesday)		VL – 9 hours
12/29/21 (Wednesday)		VL – 9 hours
12/30/21 (Thursday)	New Year Holiday observed	
12/31/21 (Friday)	RDO	
01/01-02/22 (Sat-Sun)	Days-off	
01/03/22 (Monday)	Office re-opens	
FY22-23 Christmas to New Year –including holidays, RDO and weekends, the total number of days that we will be closed will be 10 days . Total vacation hours usage: 27 hours . Office re-opens on January 3, 2023 .		
12/24-25/22	Days off	
12/26/22 (Monday)	Christmas Holiday observed	
12/27/22 (Tuesday)		VL- 9 hours
12/28/22 (Wednesday)		VL- 9 hours
12/29/22 (Thursday)	New Year Holiday observed	VL- 9 hours
12/30/22 (Fri)	RDO	
12/31/2022-01/01/2023 (Sat-Sun)	Days-off	
01/02/2023 (Monday)	New Year Holiday observed	
01/03/2023 (Tuesday)	Office re-opens	
FY23-24 Christmas to New Year –including holidays, RDO and weekends, the total number of days that we will be closed will be 10 days . Total vacation hours usage: 27 hours . Office re-opens on January 2, 2023 .		
12/23-24/23	Days off	
12/25/23 (Monday)	Christmas Holiday observed	
12/26/23 (Tuesday)		VL- 9 hours
12/27/23 (Wednesday)		VL- 9 hours
12/28/23 (Thursday)		VL- 9 hours
12/29/23 (Fri)	RDO	
12/30-31/2023	Days-Off	
01/01/2023 (Monday)	New Year's Day	
01/02/2023	Office re-opens	

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APPENDIX 1

CONFLICT RESOLUTION PROCESS

Preamble

Given that conflict or disagreement may naturally occur in the work environment and given the goals of Section 1 of the Memorandum of Understanding is to “*promote and provide harmonious relations, cooperation and understanding between the Authority and the employees,*” the Authority and Union agree to create a Conflict Resolution Process (separate from the Grievance Procedure) for the employees in the M-1 representation unit, to assist Local One AFSCME Council 57 employees in managing interpersonal conflict while acknowledging the different perspectives in a equitable manner. This is a voluntary process that is recommended for use prior to any grievance being filed with relation to Article 6, Section 47. It is not binding upon persons in the workplace that are not members of Local One AFSCME Council 57. Yet it is recommended in order to promote a work environment in every unit that is congruent with the stated goal of Section 1 of this Memorandum of Understanding. The Conflict Resolution Process does not prevent anyone from filing a grievance. It is a method that is recommended for use to try to prevent the need for a grievance. *This process is not to be used to resolve problems such as workplace health and safety hazards and illegal harassment.* There are other procedures already in place to handle these.

Management and the Union will evaluate the process after 1 year.

Step 1 – 1st Internal Meeting or Initial Discussion of the Problem

The party who perceives a problem should go to the individual with whom they are having this problem and discuss the situation. If the 1st party does not feel comfortable approaching the individual alone, they may do so in the presence of a supervisor/management representative or Union representative who has taken the courses the City of Berkeley offers on conflict resolution and communication. If airing the problem does not resolve the issue, Step 2 may be implemented. If one chooses to implement Step 2, this must be done within 45 days of the meeting.

Step 2 – Departmental Meeting(s)

In Step 2, the parties agree upon a supervisor/management representative and a mutually agreed upon Union representative to meet with both parties. Both the supervisor* and the union representative shall have completed the following courses offered by the City of Berkeley: *Effective Communication, Resolving Conflict in the Workplace and Resolving Conflict between others.* With the mutual agreement of all parties, there will be from one (1) to three (3) such meetings with the parties involved in the conflict, a supervisor and the Union representative. The meetings shall be no more than 30 days apart. Both the Union representative and the supervisor shall be present for all of these meetings unless all parties agree to using just one for any of the meetings.

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APPENDIX 2

BERKELEY HOUSING AUTHORITY

HARASSMENT PREVENTION POLICY

AUTHORITY POLICY

It is the policy of the Berkeley Housing Authority ("Authority") that harassment on the basis of race, color, religion, ancestry, national origin, age, sexual orientation, marital status, political affiliation, family care leave status, physical or mental disability or medical condition, as well as sexual harassment based on gender will not be condoned or tolerated. All employees are guaranteed the right to a work place free of hostility and intimidation. The Authority will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, or non-employees with whom Authority employees have a business, service, or professional relationship. Retaliation against an employee who complains or reports any act of harassment in violation of this policy is prohibited. The Authority is committed to ensuring and providing a work place free of harassment. The Authority will take disciplinary action, up to and including termination, against an employee who violates this policy.

LEGAL DEFINITION OF SEXUAL HARASSMENT

Sexual harassment as defined by law is any unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made a term or condition of employment; or
- b. submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- c. such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

CONDUCT PROHIBITED UNDER THE AUTHORITY'S POLICY

In order to ensure that such offensive conduct does not rise to the level of conduct which is illegal, the Authority has a zero tolerance policy toward a single instance of any such conduct which either by itself or when repeated would constitute sexual harassment. The Authority may consider even a single instance of a violation of this policy as grounds for disciplinary action, up to and including termination of employment, depending on its seriousness.

Specifically, the Authority will not tolerate employees engaging in any of the conduct listed below:

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- a. Unwanted sexual advances.
- b. Offering employment benefits in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as making or using derogatory comments, epithets, slurs, sexually explicit jokes, derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy or via a computer network.
- g. Unwelcome verbal sexual advances or propositions.
- h. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- i. Physical conduct such as touching, assaulting, impeding or blocking movements.
- j. Retaliation for making harassment reports or threatening to report harassment.

An employee engaging in such prohibited conduct shall be subject to appropriate disciplinary action, up to and including termination of employment, regardless of whether the employee engages in the prohibited conduct only once. In addition, any employee who engages in any inappropriate conduct based on or directed at a person's gender will be subject to appropriate disciplinary action, up to and including termination of employment.

Sexual harassment can occur between employees of the same sex. The Authority's policy prohibits males from sexually harassing females or other males, and females from sexually harassing males or other females.

FRIENDLY INTERACTION OR SEXUAL HARASSMENT

There is a clear line in most cases between mutual attraction and a consensual exchange and unwelcome behavior or pressure for an intimate relationship. A friendly, interaction between two persons who are receptive to one another is not considered unwelcome or harassment. Employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intentions, the behavior is unwelcome sexual behavior. An employee confronted with these actions by a co-worker should inform the harasser that such behavior is offensive and tell the harasser to stop. You should assume that sexual comments are unwelcome unless you have clear unequivocal indications to the contrary. In other words, another

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person does not have to tell you to stop for your conduct to be harassment and unwelcome.

Certainly if you are advised by a co-worker that your behavior is offensive, you must immediately stop the behavior, regardless of whether you agree with the person's perception of your intentions.

OTHER TYPES OF HARASSMENT PROHIBITED BY THE AUTHORITY'S POLICY

The Authority's policy also prohibits harassment on the basis of race, color, national origin, sexual orientation, religion, physical or mental disability, age, veteran status, or any other characteristic protected by applicable law. The Authority will not tolerate an employee engaging in any of the conduct listed below.

- a. Verbal conduct such as threats, epithets, derogatory comments or slurs.
- b. Visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures.
- c. Written communications containing statements which may be offensive to individuals in a particular protected group, such as racial or ethnic stereotypes or caricatures.
- d. Physical conduct such as assault, unwanted touching or blocking normal movement.
- e. Retaliation for making or threatening to make harassment reports to the Authority, or for participating in an investigation into harassment allegations.

An employee engaging in conduct prohibited by this policy shall be subject to appropriate disciplinary action, up to and including termination of employment, regardless of whether the employee engages in the prohibited conduct only once. Any employee engaging in inappropriate conduct of a harassing nature on the basis of race, color, national origin, sexual orientation, disability, age or other characteristics prohibited under federal and state anti-discrimination statutes, shall be subject to appropriate disciplinary action, up to and including termination of employment.

EMPLOYEES' RESPONSIBILITIES WHEN SUBJECTED TO HARASSMENT

Any employee who believes he or she has been subjected to harassment prohibited by this policy should immediately tell the harasser to stop his/her unwanted behavior and immediately report that behavior to his or her supervisor or to the Authority's Executive Director. An employee is not required to complain first to his or her supervisor if that supervisor is the individual engaging in the unwanted behavior.

SUPERVISORS' RESPONSIBILITIES

Supervisors are responsible for enforcing the Authority's harassment prevention policy. Supervisors must ensure that all employees are aware of the Authority's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff

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members. Supervisors should be cognizant of employees' behavior and shall not permit any employee under his/her authority to be subject to or engage in any conduct prohibited by the Authority's policy. Supervisors who receive complaints or who observe conduct prohibited by this policy shall inform the employee to cease the conduct immediately and advise the Executive Director. The Authority will take disciplinary action, up to and including termination, against any supervisor who fails in his/her responsibility to take immediate action in response to an employee's complaint of harassment or to stop harassing conduct committed in his/her presence or to stop harassing conduct about which the supervisor has knowledge.

The Authority does not consider conduct in violation of this policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including supervisory and management employees.

ENFORCEMENT RESPONSIBILITIES

The Authority's harassment policy will be enforced by the Executive Director. Each reported incident will be investigated promptly, impartially and in a confidential manner, accompanied by disciplinary action as appropriate. It is reiterated that the Authority will take disciplinary action, up to and including termination for any substantiated violations of this policy. Persons who knowingly report false charges will be subject to appropriate disciplinary actions also.

OUTSIDE AGENCIES

In addition to notifying the Authority about harassment or retaliation complaints, affected employees may also direct their complaints to the following external agencies:

California Department of Fair Employment and Housing
1515 Clay Street, Suite 701
Oakland, CA 94612-2512
(800) 884-1684 or (510) 622-2941

Equal Employment Opportunity Commission
Oakland Local Office,
Oakland Federal Building
1301 Clay Street, Suite 1170, North Tower
Oakland, CA 94612-5217
(510) 637-3230

There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.

If you have any questions or need information regarding your protections under pertinent laws regarding

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harassment or your rights regarding complaint filing with the above compliance agencies, you may contact the Executive Director.

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APPENDIX 3

BERKELEY HOUSING AUTHORITY EEO COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURE

Policy:

In accordance with EEO principles and the policies of the EEO/Affirmative Action Program, all employment practices, procedures, conditions and decisions shall be based on valid job-related criteria and shall be and maintained without discrimination or harassment on the basis of race, color, religion, ancestry, national origin, age, sex, sexual orientation, marital status, political affiliation, physical disability, or medical condition (including cancer and HIV status).

Objectives:

The EEO Complaint Investigation and Resolution Procedure shall apply to all City Authority employees who seek redress from any employment practice, procedure, condition or decision which is believed to have been applied to them in a manner inconsistent with EEO principles or in violation of any policy of the EEO/Affirmative Action Program. The objectives of this procedure are as follows:

1. To provide the structure of due process for Authority employees to use in order to report and seek correction of employment practices, procedures, conditions or decisions which are believed to have been applied to them in violation of EEO principles or any policy of the EEO/Affirmative Action Program;
2. To define appropriate roles, responsibilities and accountability for impartial evaluation, investigation, and revision of practices, procedures or decisions to ensure compliance with EEO principles and EEO/Affirmative Action Program policies;
3. To make Authority departments more conscious of the EEO concerns and issues, and to improve the capability of departments to appropriately respond to and resolve EEO concerns and issues;
4. To provide the Authority with the opportunity to identify, evaluate and appropriately respond to EEO concerns and issues in a timely manner at lowest administrative level possible, and to prevent the necessity for outside intervention by courts or EEO regulatory agencies.

Conditions:

The following conditions shall apply with regard to the application and administration of the EEO Complaint Investigation and Resolution Procedure:

1. No employee, as a result of his/her participation in the EEO Complaint Investigation and Resolution Procedure, shall be subject to retaliation or reprisal by any other employee which:
 - (a) deprives or tends to deprive him/her of employment opportunities;

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- (b) has the effect of creating an intimidating, hostile or offensive working environment;
- (c) has the purpose or effect of unreasonably interfering with his/her work performance;
- (d) otherwise adversely affect his/her status as an employee.

The Authority will take severe disciplinary action, up to and including termination, against any employee who intentionally violates this condition. The Authority may consider even a single instance of a violation of this policy as grounds for disciplinary action, up to and including termination of employment, depending on its seriousness.

2. All internal complaints that allege violation of EEO principles or EEO/Affirmative Action Program policies, and all responses to such complaints may be handled under the provisions of the EEO Complaint Investigation and Resolution Procedure.
3. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file complaints with the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the courts.
4. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlements to file grievances under the provisions of collective bargaining agreements.
5. The EEO Complaint Investigation and Resolution Procedure shall not apply to formal complaints on matters outside the purview of the EEO/Affirmative Action Program.
6. Any corrective or preventative measures undertaken to resolve EEO problems and concerns identified in accordance with this procedure shall be entered into voluntarily by the Authority as part of its ongoing commitment to the provision of equal employment opportunity. Such action shall not be construed as an admission, nor shall such action imply, that the Authority engages in or ever has engaged in unlawful discrimination.
7. All investigation reports prepared in accordance with the provisions of the EEO Complaint Investigation and Resolution Procedure shall remain the sole property of the Authority, and as such shall be established and maintained as confidential material. However, the Authority recognizes its obligations under the Skelly due process procedures and will make such disclosures as required to fulfill its obligations. No persons other than authorized complaint investigators and evaluators shall have any entitlement to access such material. The Authority will take such steps as necessary to secure appropriate legal remedies in response to any unauthorized duplication, distribution or possession of such material.
8. Any party who files a complaint under the provisions of the EEO Complaint Investigation and Resolution Procedure shall be entitled upon request to advice, counsel and representation by an authorized agent of his/her bargaining unit throughout the investigation and resolution process.

Formal Resolution Process:

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1. **Complaint Submission.** Formal complaints must be initiated within thirty (30) days of the date the alleged employment practice, procedure, condition or decision which is believed to have been applied to them in a manner inconsistent with EEO principles occurred, or within thirty (30) days of the date the employee reasonably should have had knowledge of the matter. If the employee attempted to resolve the matter internally, the formal complaint must be initiated within ten (10) working days of the date of the termination of the unsatisfactory internal resolution. The complaint must be submitted in writing to the Executive Director. The formal complaint should include the following information:
 - (a) description of the activities and circumstances believed to be EEO violations;
 - (b) identification of the complaint allegations that have not been addressed in satisfactory manner by the Authority;
 - (c) identification of any policies, practices or procedures believed to have been violated;
 - (d) description of the participants' roles, responsibilities and activities in relationship to the alleged violations;
 - (e) description of desired outcomes, relief, or other corrective measures.
2. **Complaint Rejection.** When presented with a formal complaint, if it is determined that: (a) the complaint does not fall within the scope of this procedure; (b) the complaint was not filed within the specified time limits; (c) the complaint already has or is being processed administratively or through civil proceedings; or (d) a decision has already been made and appropriate steps have been taken by proper authorities; then the Executive Director shall provide written acknowledgment of its receipt to the complainant, and advise the complainant of its rejection, the reasons and his/her right to file civil action.
3. **Complaint Acceptance.** When presented with a formal complaint, and after determining that (a) the complaint falls within the scope of this procedure, and (b) the complainant has satisfied the requirements of pre-complaint processing, the Executive Director shall take the following steps:
 - a) Within ten (10) working days of the receipt of the formal complaint, provide written acknowledgment of its receipt to the complainant, and advise the complainant of the steps of the process and his/her right to file civil action.
 - (b) Within twenty (20) working days of the receipt of the formal complaint, forward the complaint to the Authority's General Counsel who shall (a) conduct a formal investigation of the allegations of the complaint, and (b) submit a comprehensive investigation report with results, conclusions and recommendations to the Executive Director. c) Within thirty (30) working days of the receipt of the formal complaint, provide a formal written response to the complainant that (1) identifies the allegations of the complaint; and (2) summarizes the overall results of the investigation, and any corrective or preventative measures to be taken as appropriate.
 - (c) Within thirty (30) working days of the receipt of the formal complaint, provide a formal written response to the complainant that (1) identifies the allegations of the complaint; and (2) summarizes the overall results of the investigation. The Executive Director shall provide to the

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complainant all documents that the Executive Director considered in making the response, consistent with the Authority's due process Skelly obligations.

4. Complaint Investigation. The formal investigation and written investigation report shall include the following elements:
 - (a) Review and evaluation of the activities and circumstances alleged to be EEO violations;
 - (b) Review and evaluation of the applicable policies, practices, and procedures;
 - (c) Review and evaluation of the participants' roles, responsibilities and activities in relationship to the alleged violations;
 - (d) Review and evaluation of other relevant documentation that may include personnel files, disciplinary, performance, payroll or related records;
 - (e) Assessment of the extent to which allegations are supported by the evidence;
 - (f) Identification of corrective, preventative and other appropriate measures recommended to resolve the problem (including roles, responsibilities, timetables and other relevant considerations)