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OAKLAND

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# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
 ATTN: Dan Lindheim  
 FROM: Department of Human Resources Management  
 DATE: July 28, 2009

RE: **Resolution Approving the Memorandum of Understanding between the City of Oakland and the Deputy City Attorney V and Special Counsel Association, Representing Employees in Representation Unit U41 and Covering the Period from July 1, 2008 to June 30, 2011**

### SUMMARY

The City of Oakland has reached a tentative agreement on wages and other terms and conditions of employment with the Deputy City Attorney V and Special Counsel Association (DCAVSCA). Key provisions include represented employees assuming full payment of employee portion of the retirement contribution (an additional five percent, totaling eight percent) effective July 1, 2009; represented employees being subject to unpaid closure days (12 in FY 2009-10 and 12 in FY 2010-11); and additional language updates and revisions.

### FISCAL IMPACT

It is estimated that the proposed contract would capture significant savings each year as detailed below:

ITEM	% FY 09/10	\$ FY09/10 (in millions)	% FY09/10	\$ FY10/11 (in millions)
5% additional retirement	5%	\$.06 All Funds \$.05 GPF	5%	\$.06 All Funds \$.05 GPF
4 unpaid December closure days (no accruals)	1.5%	\$.02 All Funds \$.02 GPF	1.5%	\$.02 All Funds \$.02 GPF
Additional unpaid days (no accruals)	3.1% (8 days)	\$.05 All Funds \$.04 GPF	3.1% (8 days)	\$.05 All Funds \$.04 GPF
<b>TOTAL SAVINGS</b>	<b>9.6%</b>	<b>\$.13 All Funds \$.11 GPF</b>	<b>9.6%</b>	<b>\$.13 All Funds \$.11 GPF</b>

Item: \_\_\_\_\_  
 City Council  
 July 28, 2009

## BACKGROUND

The current Memorandum of Understanding between the City of Oakland and the Deputy City Attorney V and Special Counsel Association expired June 30, 2008. This labor agreement represents the culmination of negotiations that began in the winter of 2008 with representatives of DCAVSCA, who represent approximately 9 employees in the City of Oakland. Items of significance include represented employees assuming an additional five percent (5%) of the employee retirement contribution, totaling the full eight percent (8%); an agreed number of closure days for the remaining two fiscal years, including a December period shut-down; and a cap on the carry forward hours of Professional Leave.

## KEY ISSUES AND IMPACTS

Discussed below are core economic issues, other economic matters, and other significant tentative agreements.

### *CORE ECONONMIC ISSUES*

This tentative agreement represents an average of ten percent (10%) concessions (reduction in total compensation) for the two remaining years of the three-year contract, with 9.6% savings each year. This is accomplished by represented employees assuming their full employee share of retirement costs and implementing an agreed-upon number of City closure days.

#### Represented employees assuming full employee-share of retirement costs

The total retirement contribution rate for a DCAVSCA represented employee is approximately 27%. The Employee Paid Member Contribution (EPMC) is 8% and the remaining 19% is the employer share. Prior to this proposed agreement, the City paid 24% of the total retirement contribution and employees paid 3%. Through this proposed agreement, employees will assume the full amount of their EPMC, totally 8%. This additional contribution represents approximately \$60,000 in annual savings for the remaining two years of this contract.

#### Closure days

The proposed agreement has a total of 12 closure days represent 4.6% contribution for each year. During the closure days, represented employees will not be able to use accrued leave nor will they accrue leave during those days. Four of the closure days will occur during the December holiday period as listed below:

- December 2009: 28, 29, 30 and 31
- December 2010: 27, 28, 29 and 30

The remaining closure days will be determined by the City. Additionally, the City will exercise its discretion to determine which represented employees are required to work on closure days, generally limited to emergency and revenue-generating functions. These employees will be required to take an equivalent amount of days off at another time to foster equity in the bargaining unit.

Item: \_\_\_\_\_  
City Council  
July 28, 2009

Another aspect of this tentative agreement is the sideletter regarding unpaid days off. In that sideletter, the City agrees it will not impose additional closure days though it expressly reserves its contention that closure days are a form of layoff and not within the mandatory subject of bargaining.

### ***OTHER ECONOMIC MATTERS***

In addition to above tentative agreements related to economic proposals, there are tentative agreements on other economic matters, including a "re-opener" provision and a sideletter regarding equity among bargaining units.

#### Re-opener

In the event that the City's financial situation should greatly improve based on objective financial information, the Union will have an option to re-open the contract on the narrow terms of wages and/or number of closure days. The ability for the Union to re-open requires a 10% increase in the sum of property, real estate transfer and sales tax revenues from FY 2008-09 to FY 2009-10.

#### Sideletter regarding equity among bargaining units

This sideletter will not be attached to the agreement but it will provide the union the right to re-open the contract if equivalent levels of savings and/or benefit reductions are not actualized with any of the miscellaneous bargaining unit representatives. Essentially, if the City is unable to achieve equivalent savings with other miscellaneous units, the Union shall have the option to re-open negotiations.

#### Employee and Retiree Medical Coverage and Costs Committee

To address the rapidly expanding costs of employee and retiree health care, this multi-union committee will fully explore alternative strategies to deliver cost-effective employee and retiree health, dental and vision insurance. The City will release DCAVSCA representatives to staff this committee along with representatives from the other miscellaneous bargaining units. This committee shall report its findings to the City Administrator and City Council no later than July 1, 2010.

### **SUSTAINABLE OPPORTUNITIES**

No sustainable opportunities have been identified.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

The agreement contains a "non-discrimination" provision, which states that the City will make reasonable accommodations to the extent the law permits at the time the accommodation is implemented. There are no changes to this provision. There are no senior citizen access issues contained in this report.

Item: \_\_\_\_\_  
City Council  
July 28, 2009

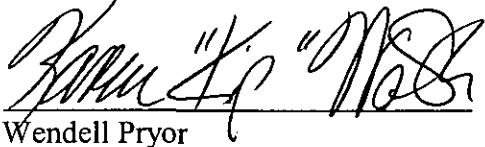
**RECOMMENDATION AND RATIONALE**

Staff recommends that Council approve the tentative agreement negotiated with the Deputy City Attorney V and Special Counsel Association (DCAVSA). Represented employees from DCAVSCA will schedule a ratification vote of this agreement. The tentative agreement meets the interests of both parties and represents a fair and reasonable settlement.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution.

Respectfully submitted,

  
for Wendell Pryor  
Director, Human Resources Department

Prepared by:  
Trinette Gist Skinner, Principal Human Resource Analyst  
Office of Personnel Resource Management

APPROVED AND FORWARDED TO THE CITY COUNCIL:

  
\_\_\_\_\_  
Office of the City Administrator

**AGREEMENT  
BETWEEN  
CITY OF OAKLAND**

**AND**

**DEPUTY CITY ATTORNEY V**

**And**

**SPECIAL COUNSEL ASSOCIATION**

**June 30, 2008 – June 30, 2011**

## TABLE OF CONTENTS

ARTICLE	PAGE NO.
2.1 Non-Discrimination .....	3
2.2 Reasonable Accommodation.....	3
4.1 Deductions.....	5
4.2 Union Access To Work Locations .....	5
4.3 Union Representatives .....	5
4.3.1 Stewards.....	5
4.3.2 Negotiating Team .....	5
4.4 City-Provided Information.....	6
4.5 Labor Relations Committee .....	6
4.6 Exempt Limited Term Duration And Temporary Contract Services.....	6
4.6.1 Definitions .....	6
4.6.2 Information.....	7
4.6.3 Bargaining Unit .....	7
4.6.4 Acknowledgment Of City Policy .....	7
5.1 Salary Schedule .....	8
5.2 Salary Deductions .....	8
5.2.1 Adjustments For Underpayment.....	8
5.2.2 Adjustments For Overpayments .....	8
5.2.3 Court Ordered Salary Deductions.....	9
5.3 Salary Steps .....	9
5.3.1 Initial Salary .....	9
5.3.2 Salary Range Advancement Up To The Mid-Point .....	9
5.3.3 Salary Range Advancement Above The Mid-Point.....	9

5.3.4	Definitions .....	9
5.3.5	Consequences Of Failure To Evaluate .....	10
5.4	Premium Pay .....	10
5.4.1	Pay For Acting In A Higher Classification .....	10
5.5	Allowances .....	10
5.5.1	Automobile Allowance .....	10
5.5.2	Meal Allowance.....	11
5.5.3	Commuter Check.....	11
6.1	Professional Memberships .....	12
6.2	Conferences, Seminars, And Meetings .....	12
6.3	Mandatory Continuing Education .....	12
7.1	Retirement Contributions .....	13
7.1.1	2.7% At 55 .....	<b>Error! Bookmark not defined.</b>
7.1.2	Special Compensation .....	13
7.1.3	Premium Pays .....	13
7.1.4	Tax Liability.....	13
7.2	Optional Benefits .....	14
7.2.1	Military Service Credited As Public Service .....	14
7.2.2	One Year Final Compensation.....	14
7.2.3	Post-Retirement Survivor Allowance To Continue After Remarriage.....	14
8.1	Medical Insurance .....	15
8.1.1	Medical Insurance Under PEMHCA.....	15
8.1.2	City Contribution To PERS .....	15
8.1.3	Change In PERS Regulations.....	15
8.2	Full Medical Insurance Comparable To Rate Charged Under PEMHCA Kaiser North Plan.....	16

8.3	Other Benefits For Active Employees.....	16
8.3.1	Dental Insurance.....	16
8.3.2	Vision Care .....	16
8.3.3	Blood Bank .....	16
8.3.3.1	Sponsor .....	16
8.3.3.2	Eligibility.....	16
8.3.3.3	Program Operation .....	17
8.3.4	Life Insurance .....	17
8.3.5	Disability Insurance.....	17
8.3.6	Chemical Dependency Treatment Program.....	17
8.3.7	Continuation Of Coverage While On Paid Leave .....	17
8.3.8	Deferred Compensation Plan .....	17
8.3.9	Medical And Dependent Care Reimbursement Plan .....	18
8.3.10	Maximum Medical And Dependent Care Reimbursement Plan.....	18
8.3.11	Administrative Fees .....	18
8.3.12	Tax Liability For Flexible Spending Benefit.....	18
8.4	Retiree Benefit.....	19
9.1	Sick Leave .....	20
9.1.1	Annual Earned Sick Leave .....	20
9.1.2	Accumulated Earned Sick Leave.....	20
9.1.3	Use Of Sick Leave .....	20
9.1.3.1	Minimum Usage.....	20
9.1.3.2	Family Illness .....	20
9.1.3.3	Sick Leave Buy-Back – Leaving City .....	21
9.1.3.4	Annual Sick Leave Sell-Back/Conversion.....	21
9.1.3.5	Verification Of Leave .....	22



9.1.3.6	Return To Work .....	22
9.2	School Activities Leave.....	22
9.3	Family Death Leave.....	22
9.3.1	Definition Of Immediate Family.....	22
9.3.2	Special Circumstances .....	23
9.3.3	Entitlement.....	23
9.4	On-The-Job Injury Leave And Compensation.....	23
9.4.1	City Paid Leave Entitlement.....	23
9.4.1.1	Represented Employee With Less Than One Year.....	23
9.4.1.2	Represented Employee With More Than One Year .....	23
9.4.1.3	Long Term Permanent.....	24
9.4.1.4	Workers' Compensation Claim .....	24
9.4.1.5	Physical Examination.....	24
9.4.1.6	Workers' Compensation Benefits .....	24
9.4.2	Limited/Modified Duty .....	25
9.5	Military Leave .....	25
9.6	Jury Leave .....	25
9.7	Family Care And Medical Leave/Pregnancy Disability .....	25
9.8	Leave Of Absence Without Pay .....	25
9.9	Disability Insurance .....	25
9.10	Integration Of Disability Insurance Coverage And Paid Leaves .....	26
9.11	Management Leave.....	26
10.1	Entitlement .....	28
10.2	Accrued Leave.....	28
10.3	Limitation On Unused Vacation Leave Balances .....	28
10.4	Minimum Usage.....	29

10.5	Interruption Of Leave.....	29
10.6	Paychecks During Vacation.....	29
10.7	Vacation Leave Sell-Back.....	29
11.1	Designated Holidays.....	30
11.2	Christmas Or New Year's Eve.....	30
11.3	Holidays On Regular Day Off.....	31
12.1	Paid Leave.....	32
12.2	Holidays.....	32
13.1	Health And Safety.....	33
13.2	Departmentally Designed Alternative Work Schedules.....	33
13.3	Alternative Work Schedule And Telecommuting Program.....	33
14.1	Personnel File.....	34
14.2	Classification Appeals.....	34
14.3	Performance Appraisals.....	34
14.4	Civil Service And Personnel Rules.....	35
14.5	Incompatible, Inconsistent, Or Conflicting Activities.....	35
14.6	Posting Job Openings.....	36
15.1	Definition.....	37
15.2	Procedure.....	37
	15.2.1 Step 1(a): Informal Discussion.....	37
	15.2.2 Step 1(b): Formal Submission.....	37
	15.2.3 Step 2: Appeal To Assistant City Attorney.....	37
	15.2.4 Step 3: Appeal To City Attorney.....	37
	15.2.5 Step 4: Arbitration.....	38
15.3	Time Limits.....	38
15.4	Right Of Representation.....	38

16.1	Completion Of Negotiations.....	39
16.2	Savings (Zipper) Clause .....	39
16.3	No Strike Clause.....	39
16.4	Duration .....	40

## **PREAMBLE**

We, the undersigned, duly appointed representatives of the City of Oakland ("City") and of Deputy City Attorney V and Special Counsel Association ("Union"), a recognized employee organization, having met and negotiated in good faith, jointly prepare and execute on this 23<sup>rd</sup> day of July 2009, the following written Collective Bargaining Agreement. It is understood that the provisions in this Agreement apply to City of Oakland employees officially designated to be members of Representation Unit U41.

## **ARTICLE 1: RECOGNITION**

The City agrees to recognize the Union as the exclusive recognized bargaining representative, within the scope of representation as described in the Meyers-Milias-Brown Act, as amended, and the Employee Relations Rules adopted by the City Council pursuant to the Meyers-Milias-Brown Act, for full-time and permanent part-time City employees in classifications assigned to Unit U41. Unit U41 shall include all Deputy City Attorneys V and Special Counsels. The Union agrees the City may designate specific positions as confidential. Unit U41 shall not include non-attorneys.

## **ARTICLE 2: NONDISCRIMINATION**

### **2.1 Non-Discrimination**

The City and Union agree that they shall not discriminate in any way on account of race, color, creed, religion, gender, sexual orientation, national origin, political affiliation, disability, age, Acquired Immune Deficiency Syndrome ("AIDS"), AIDS Related Complex ("ARC"), or marital status as provided by law. The City agrees that no employee shall be discriminated against because of Union membership, or protected union activity.

### **2.2 Reasonable Accommodation**

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

### **ARTICLE 3: MANAGEMENT RIGHTS**

The City's rights are stated in Section 4 of Employee Relations Rules Resolution No. 55881.

The Union agrees that the City has the right to unilaterally make decisions on all subjects that are outside the scope of bargaining, including determining and modifying levels of service to the public; determining and modifying job qualifications; determining work to be performed by equipment and technology; promulgating and enforcing standards of performance and deciding to lay off employees. The City's exercise of its management rights is not subject to challenge through the grievance procedure or in any other forum, except where otherwise in conflict with a specific term of this collective bargaining agreement.

## ARTICLE 4: UNION RIGHTS

### 4.1 Deductions

The City shall deduct, biweekly, the amount of Union regular and periodic dues, service fees, and insurance premiums as may be specified by the Union under the authority of an authorization card furnished by the Union and signed by the represented employee. No deductions are required during the term of this Agreement.

This deduction, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

Dues shall be deducted only for represented employees.

### 4.2 Union Access To Work Locations

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

### 4.3 Union Representatives

#### 4.3.1 Stewards

The Union may select two stewards from the unit and shall provide the City with an accurate list of those stewards on or about each January 1 and July 1.

A steward may represent a represented employee in the grievance procedure under the terms of this Agreement.

A steward or a Union officer shall be offered reasonable time off for the purpose described in this section with the approval of the City Attorney or designated representative. It is recognized that performance of the steward's or officer's job duties comes first.

If, in the City's opinion, a Union steward is failing to maintain a satisfactory level of performance, the City may call that matter to the attention of an appropriate Union official by letter outlining the specifics of the complaint. The Union will act promptly to discuss the matter with the steward in order to resolve the complaint and, failing that, another steward will be designated.

#### 4.3.2 Negotiating Team

The Union negotiators shall be limited to three represented employees and their professional representatives. Both the City and the Union may on



occasion have additional persons attend meetings. For example, knowledgeable City employees or subject matter specialists may be invited to negotiation sessions as long as the other party is notified in advance of the individual and the purpose of his/her attendance.

#### 4.4 City-Provided Information

Upon the specific written request of the Union, the City shall provide all information that is necessary and relevant for the Union to discharge its representation duties. Relevant and necessary information shall be determined by applying PERB regulations. Relevant and necessary information includes, but is not limited to, a list of all represented employees, their names, home addresses, work addresses, rates of pay, and salary schedule information.

#### 4.5 Labor Relations Committee

The City and the Union agree to establish a Labor Relations Committee for the purpose of discussing issues of mutual concern impacting management and represented employees. Each party shall appoint two members of the Labor Relations Committee. The Committee shall have the responsibility for determining when and how often they will meet and for establishing other operating procedures.

The City Attorney agrees that the Union may place the following issues on the Labor Relations Committee agenda:

- *Equitable advancement on the salary schedule/ranges within the Office of the City Attorney and with other City departments.*
- A compensation survey comparing employment terms and conditions in the Office of the City Attorney with the terms and conditions in comparable public agencies.

No later than March 15, 2008, the City and the Union agree to schedule a meeting of the Labor Relations Committee. Additional meetings will be scheduled at reasonable intervals.

#### 4.6 Exempt Limited Term Duration And Temporary Contract Services

##### 4.6.1 Definitions

For the purpose of this Agreement, an "Exempt Limited Duration Employee" position is a position not included in the classified service that is created because of a special project, a temporary increase in the workload, or to cover the work of a permanent employee who is off duty without pay.

For the purpose of this Agreement, a "Temporary Contract Service Employee" is a temporary part-time classification not eligible for any compensation other than the hourly wage and not eligible for any benefits except those required by law.

#### 4.6.2 Information

During the months of February and August of each fiscal year, the City shall provide the Union with the names, hire dates, departments, and work locations of all Exempt Limited Duration Appointments and Temporary Contract Service Employees.

#### 4.6.3 Bargaining Unit

The Union and the City agree that the Union is not the exclusive recognized bargaining representative for Exempt Limited Duration Appointments and/or Temporary Contract Service Employees.

#### 4.6.4 Acknowledgment Of City Policy

The Union and the City acknowledge that a Temporary Contract Service Employee may work for a maximum of 960 hours per fiscal year. Similarly, the Union and the City acknowledge that an Exempt Limited Duration Employee may work for no more than one year.

## ARTICLE 5: COMPENSATION

### 5.1 Salary Schedule

#### Salary Schedule

~~As described in Section 5.3, represented employees shall be compensated on the salary schedule established for the classification to which the represented employee is appointed.~~

Wages for represented employees unit members covered by this Agreement shall be increased by four percent (4.0%), effective July 1, 2006 and four percent (4.0%), effective June 30, 2007 the same as those in effect on June 30, 2008. This increase is reflected in the salary schedules attached and incorporated into this Agreement as Appendix A, Salary Ordinance/Schedule.

### 5.2 Salary Deductions

#### 5.2.1 Adjustments For Underpayment

Upon verification that a represented employee was underpaid by the City, regardless of fault, the City will within thirty (30) calendar days of discovery adjust the employee's wages in an amount equal to the underpayment.

#### 5.2.2 Adjustments For Overpayments

In the event the City erroneously overpays a represented employee, regardless of fault, the City shall recover overpayment as described in Section 5.2.2.1 or 5.2.2.2.

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

5.2.2.2 If the City notifies the represented employee of the overpayment after the end of the pay period following the overpayment, the City shall recover the overpayment by deducting from that employee's regular pay check either the full amount of the overpayment or ten percent (10%) of the employee's gross salary, whichever is lesser, and continue said deductions for as many consecutive pay periods as is necessary until full overpayment is recovered. The City shall not begin recovering overpayment by payroll deductions until written notification, including all the details of the overpayment, the amount of overpayment and the schedule of repayment, has been given to the employee at least ten (10) working days in advance.

### 5.2.3 Court Ordered Salary Deductions

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

## 5.3 Salary Steps

### 5.3.1 Initial Salary

A represented employee's initial salary shall be the salary attached to the lowest rate of the salary schedule established for the classification to which the employee is appointed; provided, however, that the City Attorney may appoint a new employee at any rate in the applicable salary schedule for the classification involved if there has been unusual difficulty in recruiting competent employees at the lowest rate of the salary schedule and the higher rate is commensurate with the new employee's education and experience.

### 5.3.2 Salary Range Advancement Up To The Mid-Point

Advancement within the salary schedules specified for a represented employee's classification assigned to the salary range plan shall be on the basis on one (1) year's satisfactory service as evidenced by a Performance Appraisal. Advancement of five percent (5.0%) per year of satisfactory performance shall be made up to the mid-point of the salary range, effective at the beginning of the pay period in which the anniversary date of appointment in the classification falls.

### 5.3.3 Salary Range Advancement Above The Mid-Point

Represented employees may progress above the mid-point of the salary range at the rate of two and one-half percent (2.5%) to five percent (5.0%) per year, based on performance as demonstrated by the represented employee's Performance Appraisal, if recommended by the Agency Head and approved by the City Administrator. Represented employees may receive no more than one (1) salary adjustment during any twelve (12) month period.

### 5.3.4 Definitions

For purposes of the salary advancement provisions of Section 5.4, a represented employee shall be deemed to have performed satisfactory service if the Performance Appraisal for the period includes an overall rating of "fully effective" or "exceeds expectations."

### 5.3.5 Consequences Of Failure To Evaluate

In the event that a represented employee has not received a Performance Appraisal within forty-five (45) calendar days of the date the appraisal was due, the represented employee shall be entitled to receive a salary advancement under Sections 5.3.2 and 5.3.3 without Performance Appraisal evidence of satisfactory service. Salary advancements granted under this subsection shall be effective as described in Sections 5.3.2 and 5.3.3.

## 5.4 Premium Pay

### 5.4.1 Pay For Acting In A Higher Classification

The City Attorney shall assign all represented employees to duties within their classification. In appropriate situations, the City Attorney may require a represented employee to perform duties that reasonably relate to the represented employee's position and classification.

If the City Attorney assigns a represented employee to perform substantially the full range of duties in a higher classification, the represented employee shall be paid Acting Pay for the entire period the represented employee is required to act in a higher classification. Each acting pay assignment shall be made in writing, shall specify the permanent budgeted and vacant position in which the represented employee is acting, and shall confirm that the represented employee meets the minimum qualifications of the higher classification. The City Attorney or designee shall approve in advance any acting assignment continuing for a period longer than one month.

A represented employee meeting the requirement of this section shall be compensated at the lowest step of the higher classification which provides the represented employee at least a 6.0% differential above represented employee's regular rate of pay.

For the purpose of this section, a permanent budgeted position shall be vacant either because a regular employee is on an approved leave of absence or because a regular employee has resigned, accepted a promotion/demotion, or has been terminated.

## 5.5 Allowances

### 5.5.1 Automobile Allowance

The City agrees to provide transportation to represented employees when required for official City business. Full-time represented employees who prefer to use their private vehicles for City business may do so, upon approval by the City and subject to City regulations for safety, driver's licenses, and automobile liability insurance. Represented employees shall

not be required to name the City as an additional insured nor submit the employee's vehicle to an inspection.

The City shall reimburse represented employees designated by the City Attorney as recipients of Category II Automobile Allowance at the rate of three hundred fifty (\$350.00) dollars per month pursuant to Administrative Instruction #4403.

#### 5.5.2 Meal Allowance

The City shall reimburse represented employees up to \$10 per meal when required to attend job-related meetings that extend beyond 7:00 p.m. Such meetings shall include City Council, City Boards and Commissions, and community meetings. Receipts for meals shall be required prior to reimbursement. A reimbursement shall not be allowed for meetings extending beyond 7:00 p.m. if meals are provided for staff.

#### 5.5.3 Commuter Check

Effective July 2, 2005, the City agrees to pay the five dollar (\$5) monthly administrative fee for represented employees participating in the Commuter Check Program.

## ARTICLE 6: PROFESSIONAL DEVELOPMENT PROVISIONS

### 6.1 Professional Memberships

The City shall pay up to one hundred percent (100%) of the cost of represented employees' membership in the California State Bar and one State Bar Section membership. The fees the City pays will not include any Hudson Assessment on the State Bar membership forms. Represented employees, and not the City, are responsible for penalties incurred if they fail to submit State Bar Membership forms in a timely manner.

### 6.2 Conferences, Seminars, And Meetings

It may be desirable for a represented employee to attend conferences, seminars, or meetings that have as their primary purpose professional development, or acquiring concepts and knowledge that are directly beneficial to the represented employee in the performance of his/her job; and/or where such attendance is in the City's best interests. In addition to using the CEB Passport described in Section 6.3 below, each represented employee shall be entitled to use up to a maximum of \$1,300 per fiscal year to pay for the costs of professional development materials and professional development conferences, seminars, or meetings, including associated travel expenses. Represented employees shall submit requests for City-paid professional development funding to the City Attorney. The City Attorney or designee will approve the funding request upon determining that: (1) the requested professional development will directly benefit the represented employee's job performance; (2) the professional development is in the City's interests; (3) the represented employee has not exceeded the \$1,300 fiscal year annual cap; and (4) the represented employee's absence from his or her regular duties on the proposed dates will not be detrimental to the City. The City Attorney or designee shall either directly pay the provider/vendor or reimburse the represented employee.

### 6.3 Mandatory Continuing Education

Each represented employee is responsible for meeting his/her Mandatory Continuing Legal Education requirements. The City will purchase one Continuing Education of the Bar ("CEB") Passport for the office that will entitle represented employees to attend CEB programs as specified in the Passport agreement selected by the City Attorney.

## ARTICLE 7: RETIREMENT

### 7.1 Retirement Contributions

#### **7.1.1 2.7% At 55**

~~Effective July 1, 2004, the City's contract with PERS shall be amended to provide the 2.7% at 55 plan for all represented employees. The City agrees to continue to contract with the Public Employees' Retirement System (PERS) to provide the 2.7% at 55 retirement plan for each active unit member.~~ The City shall make the employer contribution to PERS for each ~~represented employee unit member.~~ In addition the City shall pay 5.0% of the "employee" contribution for each represented employee. With state and federal income tax on the "employee" contribution deferred to the extent permitted by law, each represented employee shall pay through payroll deductions 3.0% of the "employee" contribution. Except as specifically stated in this Section, the City shall pay for any increase in the employer rate and shall retain any savings from a decrease in the employer rate and for contribution credits (rebates) from PERS.

Effective July 1, 2009, each unit member shall pay his/her own PERS member contribution, with state and federal income tax on the PERS members contribution deferred to the extent permitted by Internal Revenue Code, 26 USC Section 414(h)(2).

#### 7.1.2 Special Compensation

The City paid portion of the member contribution described in Sections 7.1.1 shall be reported to PERS as "special compensation" as provided under Government Code Section 20636(c)(4) pursuant to Section 20691.

##### 7.1.1 Premium Pays

The premium pays listed in Section 5.4 of this Agreement shall be reported to CalPERS as compensation.

##### 7.1.2 Tax Liability

Each represented employee is solely and personally responsible for any federal, state, or local tax liability that may arise out of receipt of the City's pick up or any penalty that may arise out of receipt of the City's pick up or any penalty that may be imposed for the City's pick up.



## 7.2 Optional Benefits

Under the Public Employees' Retirement System, the City shall provide the following optional benefits:

### 7.2.1 Military Service Credited As Public Service

Up to four (4) years of military service may be granted for time during which a represented employee served continuously with the active armed forces or the Merchant Marines including any period of rehabilitation. The represented employee is required to pay the employee and employer contributions.

### 7.2.2 One Year Final Compensation

A represented employee's retirement allowance is based on the employee's highest pay rate for twelve (12) consecutive months of employment as defined under California Public Employees Retirement Law section 20042.

### 7.2.3 Post-Retirement Survivor Allowance To Continue After Remarriage

The City agrees to provide benefits to represented employees pursuant to California Public Employees Retirement Law Sections 21626 and 21628.

### 7.2.4 Basic Death Benefit

Represented employees shall be entitled to the basic death benefit amount as specified in California Public Employees Retirement Law Section 21536.

## ARTICLE 8: INSURANCE PROGRAMS

### 8.1 Medical Insurance

#### 8.1.1 Medical Insurance Under PEMHCA

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

#### 8.1.2 City Contribution To PERS

The City shall pay directly to PERS twenty dollars (\$20) per month as a contribution toward the PEMHCA plan medical insurance premium for each active represented employee and retiree who elects to enroll in a PEMHCA medical plan.

As required by Government Code Section 22825, the City's contribution shall increase as follows:

- \$64.60 per month for calendar year 2006;
- \$80.80 per month for calendar year 2007; and
- \$97.00 per month for calendar year 2008.

These increased City contribution rates shall remain in effect only as long as required by law.

#### 8.1.3 Change In PERS Regulations

In the event PERS requires additional employer payment in excess of the amount stated in 8.1.2, the City shall not be bound by any obligation under Section 8.1.2, but rather the parties shall meet and confer regarding restructuring the provisions of Section 8.1.2 and 8.2 provided that, for a reasonable time period to allow for meeting and conferring, the City shall continue the benefits under Section 8.1.2.

8.2 Full Medical Insurance Comparable To Rate Charged Under PEMHCA Kaiser North Plan

For active represented employees enrolled in a PEMHCA medical insurance plan, the City shall pay to PERS an amount of money on behalf of the employee which, when combined with the amount stated in 8.1.2 above, shall be the equivalent to one hundred percent (100%) of the premium cost of the California Kaiser Permanente family plan. If a represented employee chooses to participate in a PEMHCA plan, which is more expensive than the California Kaiser Permanente family plan, the represented employee shall pay the additional cost.

8.3 Other Benefits For Active Employees

8.3.1 Dental Insurance

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

8.3.2 Vision Care

The City agrees to maintain current employee and dependent coverage in the established City vision care plan. For the purpose of this provision, dependents shall include domestic partners of represented employees who have filed a Declaration of Domestic Partnership in accordance with established City policy.

8.3.3 Blood Bank

The City agrees to enroll represented employees in the City of Oakland Blood Bank Program as described below.

8.3.3.1 Sponsor

City of Oakland, in cooperation with the Blood Bank of the Alameda-Contra Costa County Medical Association, since 1980.

8.3.3.2 Eligibility

All City of Oakland employees and family dependents.

#### 8.3.3.3 Program Operation

The City normally conducts two blood donation drives per year, one in January and one in July. Donations are credited to the City of Oakland Club and are good for one year. Withdrawals are made from the account by submitting requests to the City Manager's Office. City credits remaining at the end of one year are switched into the general Blood Bank Fund. However, by participation in the program, all blood needs of the City are covered, even if there are insufficient credits in the City Club account, without monetary charge or replacement requirement to the represented employee during the term of this Agreement. The City and the Union agree to actively encourage represented employees and dependents to participate in the blood donation drives.

#### 8.3.4 Life Insurance

The City agrees to provide a term life insurance policy for each full-time represented employee in the amount of one times the employee's annual salary, rounded up to the nearest one-thousand dollars (\$1,000), including an accidental death and dismemberment benefit of equivalent amount. The City also agrees to provide represented employees the option of purchasing supplemental term life insurance. This supplemental term insurance is contingent upon the City meeting the plan requirements stipulated by the insurance carrier.

#### 8.3.5 Disability Insurance

The City agrees to pay the premium cost of represented employee participation in the established disability insurance program.

#### 8.3.6 Chemical Dependency Treatment Program

The City agrees to provide a chemical dependency treatment program for represented employees and their eligible dependents up to a maximum of thirty thousand dollars (\$30,000) in total lifetime program benefits.

#### 8.3.7 Continuation Of Coverage While On Paid Leave

The City agrees to continue City contribution to premium payments for represented employees while on authorized paid leaves of absence.

#### 8.3.8 Deferred Compensation Plan

Represented employees may participate in the established City deferred compensation plan.

### 8.3.9 Medical And Dependent Care Reimbursement Plan

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

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

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

Effective January 1, 2005, the monthly in lieu amount shall be increased to \$145. Effective January 1, 2006, the monthly in lieu amount shall be increased to \$150. Effective January 1, 2007, the monthly in lieu amount shall be increased to \$160.

### 8.3.10 Maximum Medical And Dependent Care Reimbursement Plan

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

### 8.3.11 Administrative Fees

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

### 8.3.12 Tax Liability For Flexible Spending Benefit

Notwithstanding the City's intent to comport with I.R.C. Section 125, each represented employee shall be solely and personally responsible for a federal, state, or local tax that may arise out of the implementation of this subsection.

#### 8.4 Retiree Benefit

Any represented employee who retires from the City on or after January 1, 1987, who has ten (10) years or more of service with the City in either a permanent full-time or permanent part-time position, and who enrolls in a PERS PEMHCA plan shall receive for such time as he/she maintains his/her enrollment in a PEMHCA health plan the following benefit: effective January 1, 2003, the lesser of a monthly payment of four hundred twenty-five and forty-two cents (\$425.42) or one hundred percent (100%) of the represented employee's PEMHCA plan premium for the represented employee and one dependant computed by combining the provisions of Section 8.1.2 above with this benefit. These payments shall be made on a quarterly basis. The City shall provide the option of direct deposit if it becomes available for this benefit. The obligations set forth in this subsection shall be subject to the following conditions:

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

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

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

#### 8.5 Participation in Committee To Address Miscellaneous Employee and Retiree Medical Coverage and Costs

City of Oakland Recognizing the rapidly expanding cost of employee and retiree health care, and in order to fully explore alternative strategies to deliver costs effective employee and retiree health, dental and vision insurance, the parties shall convene and participate in a committee with no more than two representatives from each affected union representing miscellaneous employees and the City within 120 days of the City Council adoption of this agreement. The committee shall report its findings to the City Administrator and the Council no later than July 1, 2010.

## ARTICLE 9: LEAVES OF ABSENCE

### 9.1 Sick Leave

#### 9.1.1 Annual Earned Sick Leave

Represented employees shall accrue sick leave on a biweekly basis at the rate of one (1) full working day per month of service to the City, except that sick leave shall not be credited until the completion of the first three (3) months of service.

#### 9.1.2 Accumulated Earned Sick Leave

Sick leave with pay that is not used shall be cumulative. Sick leave credits may be accumulated not to exceed one hundred and fifty (150) working days. Sick leave credits accrued under this provision shall be expressed in hours.

#### 9.1.3 Use Of Sick Leave

##### 9.1.3.1 Minimum Usage

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

##### 9.1.3.2 Family Illness

Each represented employee who is otherwise eligible to take sick leave may, in the event of illness in the immediate family, take a maximum of twelve (12) working days family sick leave in any calendar year. Such family sick leave shall be charged against the represented employee's accumulated sick leave credits and is subject to acceptable medical verification.

For the purposes of this provision, immediate family shall be defined as mother, father, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, grandchildren in the custody of grandparents who are represented employees, and domestic partners of represented employees who have filed a Declaration of Domestic Partnership, in accordance with established City policy.

In special circumstances involving the illness of a person who has raised the represented employee in lieu of a natural parent or has been raised by a represented employee in lieu of the natural parent, the department head or designated representative may consider granting family illness leave under this provision to the affected represented employee. In such cases, the represented employee must receive a written approval from the department

head or designated representative prior to departure on such leave.

A represented employee may be permitted to take family sick leave in excess of twelve (12) days in any calendar year in the case of the critical or serious illness of the immediate family member, as defined above, who resides in the represented employee's household and where other arrangements for the care of the family member are not feasible.

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

#### 9.1.3.3 Sick Leave Buy-Back – Leaving City

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

#### 9.1.3.4 Annual Sick Leave Sell-Back/Conversion

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

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



#### 9.1.3.5 Verification Of Leave

When a represented employee has been absent under personal illness for more than five (5) consecutive working days or has established a pattern of personal illness exceeding twenty (20) working days in one work year, the City is authorized to request that the represented employee have a physical examination by a City selected physician and a certification by that physician of the represented employee's physical fitness to return and continue the duties requisite to employment. The City will pay the cost of this examination and certification.

#### 9.1.3.6 Return To Work

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

### 9.2 School Activities Leave

The City shall permit a represented employee who is a parent, guardian, or grandparent having custody of a child in kindergarten or grades 1 to 12, inclusive, or attending a licensed child day care facility, to take up to forty (40) hours each year, not exceeding eight (8) hours in any calendar month of the year, to participate in activities of the school or licensed child day care facility of any of the represented employee's children. Represented employees must give their supervisor notice at least four (4) workdays prior to the planned absence.

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

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

### 9.3 Family Death Leave

#### 9.3.1 Definition Of Immediate Family

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

### 9.3.2 Special Circumstances

In special circumstances involving the death of a person who has raised the represented employee in lieu of a natural parent or has been a child who is being raised by the represented employee in lieu of a natural parent, the department head or designated representative may consider granting leave under this provision to the affected represented employee.

### 9.3.3 Entitlement

Upon approval of the department head or designated representative, a represented employee may be granted family death leave with pay not to exceed five (5) working days. Such leave shall not be charged against vacation or sick leave to which a represented employee may be entitled, but shall be in addition to that leave.

In order to be eligible for family death leave, a represented employee must have worked full-time for the City for a period of six (6) consecutive months. A represented employee may be asked to furnish satisfactory verification for use of family death leave.

In cases involving exceptional hardship, the City will consider granting up to one (1) additional day of family death leave with pay. In such cases, the represented employee must receive written approval from the department head or designated representative prior to departure on such leave.

## 9.4 On-The-Job Injury Leave And Compensation

A represented employee shall be granted on-the-job injury/illness leave when the represented employee is unable to work because of any on-the-job injury/illness as defined in the California Labor Code (Worker's Compensation Act).

### 9.4.1 City Paid Leave Entitlement

#### 9.4.1.1 Represented Employee With Less Than One Year

Effective January 28, 2003, a represented employee who has worked as a Deputy City Attorney V or as a Special Counsel for less than one (1) year shall not be entitled to City paid leave entitlement under Section 9.4.

#### 9.4.1.2 Represented Employee With More Than One Year

For any on-the-job injury/illness with a date of injury/illness on or after January 28, 2003, a represented employee who has worked as a Deputy City Attorney V or as a Special Counsel for at least one (1) year shall be entitled to a maximum of sixty (60) working days of City paid on-the-job injury/illness leave per injury or illness. Reoccurrences of an injury/illness shall not be considered a new

injury/illness and shall not entitle the represented employee to a new sixty (60) working day free period. The sixty (60) working days for the same injury or illness does not have to be used consecutively. The sixty (60) working day on-the-job injury/illness leave entitlement, commonly referred to as the "free period," shall not be deducted from the represented employee's accrued sick leave or any other accrued paid leave.

9.4.1.3 Long Term Permanent

A represented employee with ten (10) consecutive years of service to the City as of January 1, 2003, shall be entitled to a maximum of ninety (90) working days of paid on-the-job injury/illness leave per injury or illness with the same standards as stated in Section 9.4.1.2.

9.4.1.4 Workers' Compensation Claim

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

9.4.1.5 Physical Examination

As permitted by state law, City policies, and Civil Service Personnel Rules, the City may require a represented employee to submit to an examination.

9.4.1.6 Workers' Compensation Benefits

Payment under this provision shall not be cumulative with any benefit that the represented employee may receive under the California Labor Code as the result of the same injury/illness. If, after the sixty (60) working day period of City paid leave, the represented employee is still unable to work, the represented employee may supplement any benefits paid under the Labor Code with accumulated sick leave and vacation to the extent necessary to make up the difference between the amount of the award and the normal weekly base pay for each week of continuing disability.

#### 9.4.2 Limited/Modified Duty

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

#### 9.5 Military Leave

The City shall provide military leave to represented employees in accordance with City Council Resolution 79044, attached to and incorporated into this Agreement as Appendix C, Military Leave.

#### 9.6 Jury Leave

Leave of absence with pay shall be granted to a represented employee who has been selected for jury duty that is mandatory, provided, however, that in circumstances where it is deemed necessary by the City, the represented employee shall cooperate by requesting a deferral of such jury duty to a later date. A represented employee who serves on jury duty shall be paid regular salary for the *period of such duty*.

The represented employee shall keep any fees he/she receives for jury duty.

#### 9.7 Family Care And Medical Leave/Pregnancy Disability

Represented employees are eligible for leave under the California Family Rights Act ("CFRA"), the Federal Family and Medical Leave Act ("FMLA"), and the California Pregnancy Disability Act ("PDLA"). The provisions of this Agreement and City policies shall be applied consistent with applicable state and federal law.

#### 9.8 Leave Of Absence Without Pay

In its discretion, the City may grant a permanent full-time or permanent part-time represented employee a leave of absence without pay of up to one (1) year.

#### 9.9 Disability Insurance

To be eligible for the disability insurance coverage described in Section 8.3.5, a represented employee shall be required to use all but ten (10) days of accrued and/or accumulated sick leave.

9.10 Integration Of Disability Insurance Coverage And Paid Leaves

A represented employee may supplement any disability insurance benefits paid under a disability insurance program provided in Section 8.5.5 with accumulated sick leave and vacation to the extent necessary to make up the difference between the amount of insurance benefits paid and the normal weekly base pay for each week of disability.

9.11 Management Professional Leave

Represented employees shall be awarded five (5) days of Management Professional Leave July 1st of each year.

Additionally, represented employees who work irregular work hours or who demonstrate superior performance during the eligibility period of July 1 through June 30 of each fiscal year may also be awarded an additional zero (0) to five (5) days of leave. The awarding of such additional leave will be at the sole discretion of the City Attorney.

~~Management Leave may be cashed out at the discretion of the represented employee. If such leave is taken as paid time off, it must be taken by the last pay period including June 30th of each year. Such leave is not cumulative from year to year, i.e. an eligible represented employee must use the leave, or forfeit it. A total of ten (10) days maximum awarded Professional Leave may be cashed out each fiscal year at the discretion of the represented employee. With their supervisor's approval, individual represented employees are responsible for arranging to use the Management professional leave during the one (1) year period. Leave not used or cashed out will be carried forward to the next fiscal year, subject to the limitations set forth below.~~

~~Additional Management Leave may be awarded at the sole discretion of the City Administrator.~~

~~Effective June 30, 2011, the maximum amount of professional leave that may be carried forward is ten (10) days, except that represented employee with a balance of 200 hours or greater as of June 30, 2009 shall be permitted to carry forward twenty (20) days on June 30, 2011.~~

~~In fiscal years 2009-10 and 2010-11, represented employees with a carry forward balance of 150-200 hours as of June 30, 2009 shall be entitled to cash out accrued professional leave in an amount not to exceed fifteen (15) days in each fiscal year.~~

~~In fiscal years 2009-10 and 2010-11, represented employees with a carry forward balance greater than 200 hours as of June 30, 2009 shall be entitled to cash out accrued professional leave in an amount not to exceed twenty-five (25) days in each fiscal year. Represented employees who separate from City service terminate employment after having been awarded Professional Leave~~

employment shall be paid for such awarded, but unused leave, upon termination separation.

## ARTICLE 10: VACATION LEAVE

### 10.1 Entitlement

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

- 10 days per year through the first four full employment years.
- 15 days per year beginning the fifth employment year up to and including the 12th full employment; provided, however, that during the fifth and 10th full employment years a represented employee, on his/her anniversary date, shall receive one additional day of vacation for those years only.
- 18 days per year beginning the 13th employment year up to and including the 15th full employment year; provided, however, that during the 15th full employment year a represented employee, on his/her anniversary date, shall receive one additional day of vacation for that year only.
- 19 days per year beginning the 16th employment year up to and including the 19th full employment year.
- 20 days per year beginning the 20th full employment year up to and including the 25th full employment year; provided, however, that during the 20th and 25th full employment years a represented employee, on his/her anniversary date, shall receive one additional day of vacation for those years only.
- 25 days per year beginning the 26th full employment year up to and including the 29th full employment year.
- 30 days per year beginning the 30th full employment year; provided, however, that during the 30th full employment year and at subsequent five year intervals a represented employee, on his/her anniversary date, shall receive one additional day of vacation for those years only.

### 10.2 Accrued Leave

A represented employee may take accrued vacation with the prior scheduling approval of the City Attorney or designated representative.

### 10.3 Limitation On Unused Vacation Leave Balances

Represented employees may accrue vacation leave balances up to a maximum of two (2) times the represented employee's annual vacation accrual rate as of the pay

period containing January 1 of each year. Should the represented employee's vacation leave balance exceed the allowable amount, the represented employee will cease to accrue vacation leave until such time as the vacation balance is reduced below the maximum allowable balance.

#### 10.4 Minimum Usage

Normally, a represented employee may take vacation leave in increments of not less than one day with the prior scheduling approval of the department head. In special circumstances, with the department head's approval, represented employees may also take a fraction of a day, but in no event less than one hour.

#### 10.5 Interruption Of Leave

In the event that a holiday occurs during a period of authorized vacation leave, the workday that is the holiday shall be charged as a holiday and not as a day of vacation. In the event that a represented employee is ill during a scheduled vacation, the full work days on which the represented employee is ill shall not be charged to vacation leave, provided that a doctor's certificate or report of treatment may be required by the City Attorney. It is expressly understood that sick leave may not be used during vacation to lengthen a vacation, unless authorized by the City Attorney or designee. Vacation leave not used due to the use of sick leave in an authorized vacation period shall be rescheduled for use at a later date, in accordance with established procedure.

#### 10.6 Paychecks During Vacation

If a pay period falls within a represented employee's scheduled vacation period, that represented employee shall be entitled to receive, prior to the start of such vacation period, upon request in accordance with established City procedures, any regular paycheck(s) that would normally be received during said period. This provision shall apply only to represented employees whose scheduled vacation leave is five (5) consecutive working days or longer. It is understood that this option shall not be available to those represented employees who choose to participate in the City's Direct Payroll Deposit Program.

#### 10.7 Vacation Leave Sell-Back

Represented employees may sell back to the City up to fifteen (15) days of accrued vacation each calendar year.



## ARTICLE 11: HOLIDAYS

### 11.1 Designated Holidays

The following days of each year are designated holidays:

January 1st.

- The third Monday in January, known as "Martin Luther King Day."
- February 12th, known as "Lincoln Day."
- The third Monday in February, known as "Presidents' Day."
- The last Monday in May known as "Memorial Day."
- July 4th.
- The first Monday in September, known as "Labor Day."
- September 9th, known as "Admission Day."
- November 11th, known as "Veterans' Day."
- The Thursday in November appointed as "Thanksgiving Day."
- The Friday after "Thanksgiving Day."
- December 25th.
- Floating holiday, subject to prior approval of the department head. Holiday must be taken during the fiscal year in which it is earned. The floating holiday shall be credited at the beginning of the pay period that includes July 1.

In order to be paid for a designated holiday, a represented employee must be in paid status the workday before and the workday after the designated holiday.

### 11.2 Christmas Or New Year's Eve

11.2.1 Represented employees assigned to work schedules that require them to work on both December 24th and December 31st shall be entitled to one of the following:

- one-half of the workshift as paid time off on both the above days; or,
- one full workshift as paid time off on either of the above days.

11.2.2 Represented employees whose regular work week is Monday through Friday, when December 24th and December 31st occur on Saturdays or Sundays, shall be entitled to one of the following:

- one-half of the workshift as paid time off on both the Friday preceding Christmas Eve and the Friday preceding New Year's Eve; or,

- one full workshift as paid time off on either the Friday preceding Christmas Eve or the Friday preceding New Year's Eve.

Such time off shall be granted by the department head, subject to the need to provide public services.

### 11.3 Holidays On Regular Day Off

In the event that a designated holiday falls upon a normal day off that is either a Saturday, as to a represented employee who works a Monday through Friday workweek, or the first day off of a normally scheduled two days off, as to a represented employee whose workweek is one other than Monday through Friday, the represented employee shall receive one additional day of vacation.

In the event that a designated holiday falls upon a normal day off that is either a Sunday, as to a represented employee who works a Monday through Friday workweek, or the second day off of a normally scheduled two days off, as to a represented employee whose workweek is one other than Monday through Friday, the represented employee shall receive the next following day off.

## ARTICLE 12: PERMANENT PART-TIME LEAVE BENEFITS

A permanent part-time represented employee, who works fifty percent (50%) or more of the normal workweek for the full-time equivalent to the represented employee's own class, shall be entitled to the following leave benefits:

### 12.1 Paid Leave

A permanent part-time represented employee shall accrue vacation and sick leave on a pro-rata basis according to the time worked in relation to the normal workweek for the full-time class.

### 12.2 Holidays

A permanent part-time represented employee who works throughout the fiscal year fifty percent (50%) or more of the normal work week for the full-time equivalent of the PPT represented employee's classification shall earn holiday pay on a pro-rata basis according to the time worked in relation to the normal workweek for the full-time class.

## ARTICLE 13: WORKING CONDITIONS

### 13.1 Health And Safety

The City and the Union agree that health and safety are their mutual concerns. The City recognizes its responsibility to maintain health and safety standards in accordance with the California Occupational Safety and Health Act. The Union *recognizes its responsibility to encourage represented employees to work safely and efficiently.*

### 13.2 Departmentally Designed Alternative Work Schedules

The Office of the City Attorney may design departmental alternative work schedules, which shall comply with this section's guidelines addressing public service needs, departmental needs, and represented employee preferences.

Alternative work schedules may only be used in those circumstances in which the City Attorney or designee determines that all requirements for the provision of professional responsibilities, public service, public access, and economic staffing are met, and internal and external contact needs fulfilled.

Represented employees may initiate requests to work alternative work schedules, subject to the City Attorney's approval. The City Attorney or designee will respond to requests in a timely manner, normally within thirty (30) days.

The City Attorney or designee may cancel at any time alternative work scheduling for any or all affected departmental employees.

### 13.3 Alternative Work Schedule And Telecommuting Program

The City Attorney's policy on a pilot Alternative Work Schedule and Telecommuting pilot program shall include the sentence, "The City Attorney or designee and the Union shall each evaluate the pilot program. After the completion of the pilot program and consideration of program evaluations, the City Attorney or designee and the Union may mutually agree to establish a permanent program based on this pilot program. If the parties agree to establish a permanent program, the Agreement shall be attached to and incorporated into this Agreement. If the parties do not agree to establish a permanent program, the status quo between the parties shall be defined as this Agreement without the Alternative Work Schedule and *Telecommuting Pilot Program.*

Tentative Agreement  
Deputy City Attorney V – City of Oakland  
Billable Hours  
July 23, 2009

13.4 Billable Hours Requirement


A minimum of 1500 billable hours is required per fiscal year with 1400 billable hours to Clients and 100 billable hours for various administrative tasks where the City Attorney's Office is the Client. The 1500 hour requirement excludes hours billed to LEAVE (including but not limited to vacation, sick leave, management leave and holidays). Billable hours will be reduced in the unusual case were an employee takes two weeks of management leave and their maximum accrued vacation leave in one year, and those hours combined with holiday hours exceeds 450 hours. In these circumstances the billable hours will be reduced by the amount of leave and holiday hours over the 450 hours. The billable hours requirement is effective July 1, 2009.

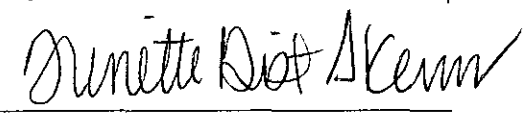
The 1500 hour requirement is based on a full time work schedule of 1950 hours per fiscal year but shall be prorated (reduced) to reflect any of the following City-approved reductions of the full-time work schedule: Mandatory Business Shutdown (MBS) day or Mandatory Leave Without Pay (MLWOP) day extended medical or family medical leave (FAM/FDL) or any unpaid extended leave of 3 months or more approved by the City. Prorating for other leaves involving the use of paid leave, such as sabbatical leave, may be approved at the discretion of the City Attorney.

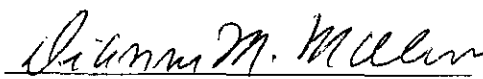
The City will reduce the full-time work schedule by 12 days (90 hours) MLWOP and MBS days in fiscal years July 1, 2009-June 30, 2010 and July 1, 2010-June 30, 2011. The billable hours requirement for fiscal years 2009-2010 and 2010-2011 shall be a maximum of 1410.

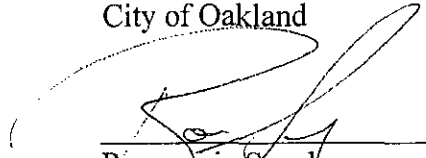
Subject to operational needs, the City Attorney's Office shall continue the current Alternative Work Schedule and Telecommuting Programs as established in the Office and outlined in Section 13.3 of the MOU.

\_\_\_\_\_  
Jon Holtzman  
Chief Negotiator  
City of Oakland

  
Doryanna Moreno  
DCA V

  
Trinette Gist Skinner  
Employee Relations  
City of Oakland

  
Dianne Miller  
DCA V

  
Rosemarie Sanchez  
City Attorney's Office  
City of Oakland

## ARTICLE 14: PERSONNEL PROVISIONS

### 14.1 Personnel File

A represented employee will be given a copy of entries of a derogatory nature when they are placed in the represented employee's official personnel file.

Represented employees may review their official personnel files twice per year and may make copies, at their own expense, of the documents contained in their files, except that copies of all original entries to such files shall be provided at no expense to employees at the time of entry. The City may establish reasonable rules for the control of official personnel files to implement this section.

Represented employees may also authorize, in writing, the Union representative to inspect the represented employee's personnel file related to a dispute concerning that employee.

### 14.2 Classification Appeals

A represented employee may request a review of his/her job classification. The represented employee's request shall be directed to the City Attorney. The City Attorney has sole discretion to determine whether or not to review the represented employee's classification and whether or not to implement recommendations arising from that review. The City Attorney's classification decisions shall be final, and shall not be appealable to the Civil Service Board, the City Council, or to any other administrative body.

### 14.3 Performance Appraisals

The City agrees that represented permanent employees are entitled to Annual Performance Appraisals outlining progress and performance. Performance Appraisals serve the following purposes: (1) ensuring the supervisor's regular review of each represented employee's performance; (2) encouraging improvement in a represented employee's performance; (3) determining whether a represented employee's performance has improved; (4) providing represented employees with effective supervision; (5) complimenting a represented employee's performance and achievement. Each represented employee's Performance Appraisal shall include one of the following Overall Ratings:

- Exceeds expectations;
- Fully effective;
- Improvement needed;
- Unacceptable.

#### 14.4 Civil Service And Personnel Rules

During the term of this Agreement, represented employees shall not be governed by the Oakland Civil Service Commission or the Civil Service Personnel Rules. During the term of this Agreement, the Union agrees not to challenge the legality of this section or assert the applicability of Civil Service or the Personnel Rules to represented employees in any legal proceedings against the City and/or its officers or employers.

#### 14.5 Incompatible, Inconsistent, Or Conflicting Activities

No represented employee may engage in any employment, activity, or enterprise that has been determined to be inconsistent, incompatible, or in conflict with his or her duties or with the duties, functions, and responsibilities of the City Attorney's Office. For purposes of this Agreement, incompatible employment or activity means any employment, activity, or enterprise which: (a) involves the use for private gain or advantage of City time, facilities, equipment, and supplies or the prestige or influence of the represented employee's City employment; or (b) involves receipt by the represented employee of any money or other consideration for the performance of any act required by him or her as a City employee; or (c) involves the performance of an act, in other than his or her capacity as a City employee, that may later be subject directly or indirectly to control, inspection, review, audit, or enforcement by him or her in his or her capacity as a City employee.

No represented employee may engage in any outside employment or activity that would violate the rules of professional conduct for attorneys in California. The City may not require any represented employee to perform any act in City employment that would violate the rules of professional conduct for attorneys in California. Represented employees may not solicit political contributions from other officers or employees of the City, unless such solicitation is part of a solicitation made to a significant segment of the public that may include City employees or officers.

Represented employees shall notify the City Attorney in advance of any outside employment or activity if it is reasonably foreseeable that such employment or activity may violate these rules.

Notwithstanding the above, the City acknowledges that no restriction may be placed on the political activities of represented employees outside of working hours and off City premises.

By ratifying this Agreement, the City Attorney is adopting regulations prohibiting *incompatible activities*, and the City Attorney will continue to maintain regulations that are consistent with Government Code Section 1125, et seq., Government Code Section 3201, et seq., Oakland City Charter Section 1201, and the rules of professional conduct for attorneys practicing in California.

#### 14.6 Posting Job Openings

The City shall post all new and vacant bargaining unit positions on the employee notice bulletin board at least ten (10) days before the application deadline for the position. If there is no application deadline for the position, the City shall not fill the new or vacant position for at least five (5) days from the time of posting. The posting shall consist of the general job description, the posting date and time, and closing dates. The City shall send copies of posted vacancies to the Union.



## ARTICLE 15: GRIEVANCE PROCEDURE

### 15.1 Definition

A grievance is defined as any dispute that involves the interpretation or application of this Agreement. It is the parties' express intent that grievances be resolved expeditiously at the lowest possible administrative level.

### 15.2 Procedure

#### 15.2.1 Step 1(a): Informal Discussion

The represented employee may present the grievance orally to the represented employee's immediate supervisor within ten (10) working days from the time the represented employee should have been reasonably aware of the dispute giving rise to the grievance.

#### 15.2.2 Step 1(b): Formal Submission

If the grievance remains unresolved, the represented employee may submit the grievance in writing to the represented employee's immediate supervisor within the ten (10) working days noted in Step 1(a). The grievance shall state the specific section(s) of the Agreement at issue, or the disciplinary action taken, and the proposed solution. The represented employee's immediate supervisor shall render a decision in writing to the employee and/or Union representative within ten (10) working days after the grievance is formally submitted.

#### 15.2.3 Step 2: Appeal To Assistant City Attorney

If the grievance remains unresolved, the represented employee may, within ten (10) working days after receiving the supervisor's decision, submit the grievance in writing to the Assistant City Attorney. The Assistant City Attorney or designated representative shall respond to the grievance in writing within ten (10) working days after receiving the grievance. Although the Assistant City Attorney may include timeliness as one of the reasons for denying the grievance, time limit shall not be the sole reason for denying the grievance.

#### 15.2.4 Step 3: Appeal To City Attorney

If the grievance remains unresolved, the represented employee may, within ten (10) working days after receiving the Assistant City Attorney's response, submit the grievance in writing to the City Attorney. The City Attorney, or a designated representative, shall investigate the grievance and either respond to the grievance in writing within ten (10) working days after receiving the grievance, or meet with the represented employee and attempt to resolve the dispute within ten (10) working days after the represented employee submits the grievance in writing to the City

Attorney. Although the City Attorney may include timeliness as one of the reasons for denying the grievance, time limit shall not be the sole reason for denying the grievance.

#### 15.2.5 Step 4: Arbitration

If the grievance remains unresolved, within fifteen (15) calendar days of the City Attorney's written response or meeting with the represented employee, either the City or the Union may submit the grievance to an impartial arbitrator who shall be selected by mutual agreement or, if mutual agreement is not reached, by alternately striking names from a list of five arbitrators submitted by the State Mediation and Conciliation Service.

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

#### 15.3 Time Limits

The parties may by mutual agreement extend the time limits prescribed in Section 15.2. The represented employee's or the Union's failure to follow the time limits, unless extended by this section, shall nullify the grievance. The City's failure to follow the time limits, unless extended by this section, shall cause the grievance to move to Step 2 or to Step 3, whichever is the next level.

#### 15.4 Right Of Representation

A represented employee filing a grievance as defined in this Article shall have the right of representation at each step of the grievance procedure.

## ARTICLE 16: RESOLUTION – DURATION

### 16.1 Completion Of Negotiations

Neither this Agreement nor any part of this Agreement is binding upon the City until and unless this Agreement is adopted by the City Council; nor is it binding upon the Union until and unless it is adopted by a vote of the represented employees, consistent with Union rules and regulations. This Agreement resolves in full, for its duration, all issues between the parties concerning wages, hours, and other terms and conditions of employment addressed in this Agreement.

Except as specifically provided in this Agreement, any benefits and/or working conditions within the scope of representation published in the City's Salary Ordinance, or other Council Resolutions and Ordinances, applicable to the Office of the City Attorney, that affect benefits or working conditions presently in effect and not modified by this Agreement, shall remain unchanged unless and until the City and Union meet and confer in good faith pursuant to the provisions of Government Code Section 3054.5 and the City's Employee Relations Rules concerning any such proposed changes.

### 16.2 Savings (Zipper) Clause

The terms and conditions set forth in this Agreement represent the full and complete understanding between the parties. During the term of this Agreement, the Union expressly waives the right to meet and negotiate with respect to any subject covered in this Agreement, unless modified through the voluntary, mutual consent of the parties in a written amendment. This Agreement terminates and supercedes those partial practices, agreements, procedures, traditions, and rules or regulations inconsistent with any matters covered in this Agreement. The parties agree that during the negotiations that culminated in this Agreement, each party enjoyed the opportunity to make demands and proposals or counter-proposals with respect to any matter, even though some matters were proposed and later withdrawn, and that the understandings and agreements arrived at after the exercise of that right and opportunity are executed in this Agreement.

In the event any portion of this Agreement is declared null and void by superseding federal or state law, the balance of the Agreement shall continue in full force and effect.

### 16.3 No Strike Clause

Employees represented by the Union shall not take part in any strike, work action, or other concerted activity of any kind which will result in curtailing, restricting or interfering in any manner with City services during the term of this Agreement.

The Union agrees not to sanction, encourage, or support any such strikes, work actions, or other concerted activity.

*The term "strike, work action or other concerted activity" means any concerted failure to report for duty, any concerted absence from position (including sympathy strikes), any concerted stoppage of work, any concerted slowdown, sick-out, refusal to work, interruption, call-in or failure in whole or in part to carry out the full, faithful, and proper performance of the duties of employment. The term "strike," "work action," "concerted activity" also means any participation in an action interfering with the operation of the City for the purposes of inducing, influencing, or coercing a change in the working conditions, compensation, provided, however, that nothing herein shall preclude employees from engaging in informational picketing or attending Union rallies so long as such activity does not interfere with City operations.*

In the event that a strike, work action, or other concerted activity occurs in violation of this Agreement, the Union shall, on written notice by the City, issue a statement addressed to the employees, a copy of which shall be delivered to the City, declaring the strike or other concerted activity not sanctioned, unlawful, and directing them to immediately return to work, or cease and desist.

In the event any employee covered under this Agreement violates the terms of the No Strike provision, the City retains the right to discharge or otherwise discipline any such employee.

#### 16.4 Duration

Except as stated in specific sections of this Agreement, this Agreement shall become effective July 1, 2006 upon the ratification by the represented employees and the City Council and shall remain in effect for a period of two years, terminating on June 30, 2008 through June 30, 2011.

**APPENDIX A**

**SALARY ORDINANCE/SCHEDULE**

**Salaries for Term of MOU**

**Rep Unit: U41**

<b>Job Class Title</b>	<b>Job Code</b>	<b>Increase</b>	<b>Monthly Min</b>	<b>Monthly Max</b>
Deputy City Attorney	EM136	<b>01-JUL-2006</b>	10818.42	13281.87
Special Counsel	MA147	<b>4%</b>	11359.32	13946.26
Deputy City Attorney	EM136	<b>30-JUN-2007</b>	11251.16	13813.15
Special Counsel	MA147	<b>4%</b>	11813.69	14504.11

**APPENDIX B**

**SIDE LETTERS**

**MLWOP DAYS**

**Mandatory Leave Without Pay (MLWOP)**

All unit members shall be required to take a total of twelve (12) unpaid days during fiscal years 2009-2011. Included in the total unpaid days are the four (4) December closure days detailed below. The City shall designate the dates of the seven (7) unpaid closure days in fiscal year 2009-2010 and eight (8) unpaid closure days in fiscal year 2010-2011 in addition to the four (4) December closure days in each fiscal year. In addition, one (1) unpaid day in fiscal year 2009-2010 shall be designated by the employee with the mutual agreement of his/her supervisor.

**December Closure Days**

The parties acknowledge that the City shall close for four (4) days during the course of the December holiday periods. Unit members shall not be paid for closure days during these periods.

December 2009: 28, 29, 30 and 31

December 2010: 27, 28, 29 and 30

In lieu of Christmas and New Year's Eve holidays as specified in section 11.1.5, unit members shall receive holiday pay on December 24, 2009 and December 31, 2010.

**Effect of MLWOP**

No sick or vacation leave shall accrue on MLWOP days nor may employees utilize any form of paid leave on those days.

MLWOP days shall not impact seniority.

**Implementation**

Notwithstanding any contrary pay provisions in this MOU, to foster equity within the bargaining unit, all unit members shall contribute an equivalent amount to address the City's revenue shortfall. Accordingly, unpaid time shall be proportional to the regular hours worked by employees.

The City shall exercise its discretion to determine which unit members are required to work on closure days. To the extent possible without requiring backfill, such employees shall be required to take alternative unpaid days. If it is not practicable for the City to grant unpaid days without backfill, in accordance with the schedule set forth in "Further

Procedures" (below), the parties will mutually agree upon alternative means of achieving the requirements of "Mandatory Leave Without Pay (MLWOP)" (above).

The City will provide two (2) months advance notice to essential employees required to work on December closure days except in cases of unforeseen circumstances. For the remaining MLWOP days, the City will provide two weeks (10 working days) notice except in cases of unforeseen circumstances.

The City will develop a means of "smoothing" the effect of unpaid days during the December closure.

### **Further Procedures**

Implementation procedures shall be developed within thirty (30) days of the City Council's adoption of this MOU. The City will consult with the Union in the development of such procedures.

The parties shall work with the City's payroll personnel to achieve the above goals.

### **Limitation on Unpaid Days Off**

Except as otherwise provided in this side letter, the 2008-2011 Memorandum of Understanding (MOUs) by and between the City of Oakland (City) and DCASCA (Union) or the Personnel Manual, for the duration of the Deputy City Attorney V MOU, the City shall not impose MLWOP (Mandatory Leave Without Pay), furloughs, MBS (Layoff/Mandatory Business Shutdown days) or other unpaid furloughs or days on any employee covered by this MOU..

### **Legal Effect of Side Letter**

The City expressly reserves its contention that, under existing City rules and precedent, MBS days are layoffs, and therefore not within the mandatory scope of bargaining. This side letter shall not be cited or used as precedent for any future agreement and does not prejudice or constitute a waiver of either party's position regarding the negotiability of MBS days or the characterization of any unpaid leave or days off as layoffs. This side letter shall not be used as evidence in any legal, administrative or arbitration proceeding of any kind except to enforce or defend the specific terms of this side letter or the MOU.

Nothing in this side letter shall limit the City's authority to lay off employees seasonally or for an indefinite period.

This side letter shall sunset at the expiration of the MOU.

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Jon Holtzman  
Chief Negotiator  
City of Oakland

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Doryanna Moreno  
DCA V

---

Trinette Gist Skinner  
Employee Relations  
City of Oakland

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Dianne Miller  
DCA V

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Rosemarie Sanchez  
City Attorney's Office  
City of Oakland



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL

  
City Attorney

2009 JUL 23 PM 5:55 RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE DEPUTY CITY ATTORNEY V AND SPECIAL COUNSEL ASSOCIATION REPRESENTING EMPLOYEES IN REPRESENTATION UNIT U41, COVERING THE PERIOD FROM JULY 1, 2008, THROUGH JUNE 30, 2011.**

**WHEREAS**, the Memorandum of Understanding to be entered into between the City of Oakland and the Deputy City Attorney V and Special Counsel Association has been presented to the City Council for determination pursuant to Section 3505.1 of the Government Code of the State of California; and

**WHEREAS**, the key provisions of the Memorandum of Understanding are described in the Report from the City Administrator dated July 28, 2009; and

**WHEREAS**, the terms and conditions contained in said Memorandum of Understanding are in the best interests of the City; now, therefore, be it

**RESOLVED:** That said agreement be, and is, hereby approved; and, be it

**FURTHER RESOLVED:** That the provisions of said Memorandum of Understanding, to the extent they differ from the prior Memorandum of Understanding, are effective as of the date the City Council approves said Memorandum of Understanding, unless otherwise specified in said Memorandum of Understanding and shall not be retroactive.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California