

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE OFFICERS' ASSOCIATION

Effective July 1, 2006 through June 30, 2013

Pursuant to the March 11, 2008 Interest Arbitration Decision and Award

Issued by Arbitrator Barry Winograd

TABLE OF CONTENTS

PREAMBLE 1

ARTICLE I GENERAL PROVISIONS 1

 A. Recognition 1

 B. Discrimination Prohibited 1

 C. City-Association Relationship 1

 1. Association Security 1

 2. Dues Deduction 2

 3. Release Time 3

 4. Limitations 3

 5. Bulletin Board Space 4

 6. Use of City Facilities 4

 7. Police Administration Building Lounge 4

ARTICLE II MANAGEMENT RIGHTS 4

 A. General 4

 B. Scheduling 5

 1. Non-Patrol Officers 5

 2. Patrol Officers 5

 3. Arbitration 6

 C. Deployment 6

 D. Labor Management Committee Regarding Rest Periods 6

ARTICLE III DIRECT PAY FOR SERVICE 6

 A. Salary 6

 B. Adjustments for Overpayments 7

 C. Court Ordered Salary Deductions 7

 D. Salary Steps for Rank of Police Officer 7

 E. Overtime 8

 1. Overtime 8

 F. Premium Pay 10

 1. Acting Pay 10

 2. Standby Pay 10

 3. Bilingual Pay 10

 4. Other Premium Assignment Pay 11

 5. Longevity Premium Pay 11

 6. Master Police Officer – Terrorism Advisor 12

 7. Premium Pay Provisions and Restrictions 12

ARTICLE IV RETIREMENT 13

 A. Retirement Contribution 13

 B. Employer Paid Member Contribution Program 13

 C. PERS One Year Final Compensation 14

 D. Military Service Credited as Public Service 14

 E. Police and Fire Retirement System "Pick-up" Program 14

 F. Limitation to Operability 14

 G. Deferred Compensation Plan 14

 H. Retiree Medical Liability 14

 I. Retiree Medical Trust (ERISA) 15

ARTICLE V	INSURANCE PROGRAMS.....	15
A.	Insurance Programs	15
1.	Health Insurance	15
2.	Dental Insurance	15
3.	Helicopter Insurance	16
4.	Life Insurance	16
ARTICLE VI	LEAVES AND HOLIDAYS	16
A.	Vacation Leave	16
1.	Entitlement	16
2.	Usage.....	16
3.	Paychecks During Vacation	17
4.	Buy-back	17
B.	Sick Leave	17
1.	Definition	17
2.	Accrual	17
3.	Pregnancy Disability Leave.....	18
C.	Leave of Absence Without Pay	18
D.	Family Death Leave	18
1.	Definition of Immediate Family	18
2.	Entitlement	18
E.	Military Leave.....	18
F.	Family Care and Medical Leave	19
G.	Holidays	19
1.	Designated Holidays	19
2.	Floating Holiday	20
3.	Holiday Pay	20
4.	Unpaid Holidays During FY 2009-2010, 2010-2011, and 2011-2012	21
ARTICLE VII	ALLOWANCES.....	21
A.	Uniform Allowance	21
1.	Initial Uniform Allowance.....	21
2.	Annual Uniform Allowance	21
3.	Uniform Boots	22
4.	Body Armor	22
B.	Shift Differential	22
C.	Meal Allowance.....	23
ARTICLE VIII	SELF-IMPROVEMENT INCENTIVES.....	23
A.	Intermediate and Advanced Post Certificates	23
1.	Intermediate Post Certificate.....	23
2.	Advanced Post Certificate.....	24
3.	Single Benefit Eligibility	24
B.	Education Incentives.....	24
1.	Associate of Arts Degree	24
2.	Bachelor and Master Degrees	24
3.	Single-Benefit Eligibility.....	24
C.	Retirement System Contingency	24

D.	Tuition Reimbursement.....	25
ARTICLE IX	SPECIAL PROVISIONS	25
A.	Transfer Policy	25
B.	Promotional MOU	25
C.	Use of Non-Sworn Employees.....	25
D.	Equipment.....	26
E.	Employee Health Assistance Programs.....	26
1.	Psychological Counseling	26
2.	Substance Abuse Treatment Program	27
F.	Physical Fitness/Exercise Physiology Program	27
G.	Reduction in Force.....	27
H.	Workers Compensation	28
I.	Probationary Period	28
J.	Transitional Assignments for Employees Temporarily Disabled	28
1.	Temporary Industrial Disabilities	28
2.	Temporary Non-Industrial Disabilities	29
K.	Administrative Interviews	30
ARTICLE X	GRIEVANCE PROCEDURE	30
A.	Definition.....	30
B.	Election of Grievance Appeal Process.....	30
C.	Procedure	30
1.	Step 1 Initial Procedure.....	30
2.	Step 2 Appeal to Department Head	31
3.	Step 3 Employee Relations Officer - Association Representative	31
4.	Step 4 Conflict Resolution Process.....	32
5.	Step 5 Civil Service Board/Arbitration	32
D.	Time Limits	33
E.	Immediate Dispute Resolution	33
F.	Consolidation	34
G.	Closing Arguments	34
H.	Grievances that Involve Appeal of Discipline	34
I.	Complaints.....	34
J.	Caloca Appeals.....	34
K.	NSA Compliance	35
ARTICLE XI	SCOPE	35
A.	Resolution.....	35
B.	Full Understanding.....	35
C.	Existing Benefits	35
D.	Waiver.....	35
E.	Modification.....	36
F.	Non-Nullification Clause.....	36
G.	Duration	36
APPENDIX A	- ARBITRATOR'S AWARD	38
APPENDIX B	- UNIT PT BENEFITS/EXCLUSIONS	52
APPENDIX C	- CIVIL SERVICE BOARD/HEARING OFFICER	55
APPENDIX D	- POLICE & FIRE RETIREMENT SYSTEM "PICK-UP" PROGRAM	58

APPENDIX E - SHIFT DIFFERENTIAL IMPLEMENTATION AGREEMENT 60
ATTACHMENT 1 - CITY ADMINISTRATIVE INSTRUCTION NO. 567 61
ATTACHMENT 2 - DEPARTMENTAL GENERAL ORDER B-4 75

PREAMBLE

We, the undersigned, duly appointed representatives of the City of Oakland and of the Oakland Police Officers' Association, a recognized employee organization, hereinafter referred to as "City" and "Association," do hereby jointly prepare and execute on the ____ day of _____, **2008** the following written Memorandum of Understanding. This Memorandum of Understanding is, in part, the result of the Interest Arbitration Decision and Award issued March 11, 2008 by Arbitrator Barry Winograd, attached as Appendix A.

It is understood that the provisions set forth and as modified in Appendix B apply to City of Oakland employees officially designated to be members of Representation Unit PP -- Uniformed Police Officers and, as proscribed by Appendix B, Unit PT -- Police Officer Trainees, represented by the Association.

ARTICLE I GENERAL PROVISIONS

A. Recognition

City agrees to recognize the Oakland Police Officers' Association as the exclusive recognized bargaining representative, within the scope of representation as described in the Meyers-Milias-Brown Act, as amended, for City employees officially designated to be members of Representation Unit PP, and for members of Unit PT as set forth in Appendix B.

B. Discrimination Prohibited

City and Association agree that they shall not discriminate in any way on account of race, creed, religion, gender, national origin, political affiliation, age, sexual orientation, mental or physical disability, medical condition, political affiliation or military service. City further agrees that no employee shall be discriminated against because of Association membership or activity.

C. City-Association Relationship

City and Association hereby restate their joint commitment to the achievement and maintenance of a relationship built on open communication, which fosters the equitable resolution of the concerns of each party regarding wages, hours, and other terms and conditions of employment.

1. Association Security

An employee in one of the classes included in Units PP and PT employed during the term of this Agreement shall, as a condition of continuing employment with the City and, in the case of a newly hired employee, within thirty (30) calendar days of employment, execute a payroll deduction authorization form as furnished by the Association, and thereby become and remain a member in good standing in the

Association; or execute a payroll deduction authorization form as furnished by the Association, and thereby pay to the Association a service fee; or, in the case of employees who certify that they are members of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations, execute a payroll deduction authorization form as furnished by the Association, and thereby pay sums equal to service fees to (1) Oakland Police Activities League; or (2) Friends of the Oakland Public Library; or (3) Friends of Oakland Parks and Recreation.

Upon seven (7) days notice to the City from the Association that an employee described above has failed to maintain the employee's membership in good standing or has failed to maintain employee's current service fee payment or has failed to maintain employee's current charitable contribution payments to the charity designated above, then the City shall (1) counsel the employee of the employee's obligation under this provision, and (2) inform the employee that further failure to maintain the appropriate payments shall subject the employee to discharge.

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

The OPOA acknowledges its obligations to individuals in the bargaining unit pursuant to Gov. Code 3502.5 and shall comply therewith.

The parties further acknowledge the City's obligation, subject to applicable state law, to collect funds on behalf of the OPOA and transfer said funds to the OPOA within forty-five (45) days of the date of collection.

Annually, the Association will provide an explanation of the fee and sufficient financial information to enable the service fee payer to gauge the appropriateness of the fee. The Association will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the Association and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

The Association shall indemnify and hold harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorney fees, demands, actions, suits, judgments, and other proceedings arising out of any discharge action resulting from this provision.

2. Dues Deduction

City shall deduct, at least monthly, the amount of Association regular and periodic dues and insurance premiums as may be specified by the Association. Said deduction, together with a written statement of names and amounts deducted, shall be forwarded promptly to the Association office.

3. Release Time

a. General Release Time

Except as provided below, no City employee or officer of the OPOA shall be compensated for conducting Association business:

- (i) An Association representative processing a grievance shall be allowed a reasonable period of release time to do so, provided that no more than one such representative will be granted such release time to process the grievance.
- (ii) A reasonable number of Association representatives shall be allowed reasonable release time to engage in meet and confer discussions, or other discussions, with representatives of the City.
- (iii) In addition, the Association President will be granted full release time from his/her normal duties at his/her rank base pay, including all benefits.
- (iv) No employee may use City equipment, including vehicles, for Association use or when performing Association-related activities.

b. Release Time Bank

The City shall establish a release time bank for employee contributions of vested leave time (vacation or CTO). Bargaining unit members may contribute vested leave time in full-hour increments to the release time bank. This time will be converted to release time on an hour-for-hour basis. The Union shall designate elected officers or members who may use the time in the release time bank for up to fifty (50) working days paid leave of absence during each year of the term of this Memorandum, subject to approval of the department head, to attend educational and training programs for labor and employee relations. The time is to be utilized by such persons when said seminars, conferences, or conventions are held at a time or location which precludes attendance in addition to the performance of his/her regular duties.

4. Limitations

No organization other than the Association, through its designated representatives, shall conduct Association business with the City in matters concerning wages, hours, and other terms or conditions of employment. If such activity (i.e., a violation of the Recognition Section, Article I, A, of this Memorandum of Understanding) has occurred, the City shall discontinue any dues deduction for said organization as might be collected by the City. The provisions of this Section shall not, however, preclude the rights of an individual to represent himself/herself as provided by applicable State law.

5. Bulletin Board Space

The City shall provide reasonable space on bulletin boards for official Association notices at each central work area, provided that such notices are approved for posting by the Chief of Police or his/her designated representative and further provided that such approval shall be reasonably given. Posted material shall not be obscene, defamatory, or of a partisan political nature, nor shall it pertain to public issues which do not involve the City or its relations with City employees.

6. Use of City Facilities

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

7. Police Administration Building Lounge

Association may continue to use the space provided by the City in the Police Administration Building Lounge to provide food and beverage service for use by City and County employees and their guests. In lieu of any monthly rental obligation to the City, the Association agrees to make a three hundred dollar (\$300.00) monthly payment directly to the Police Activities League.

In the event that the Association no longer can provide such food and beverage service, and upon written notice from the Association to the City and the Police Activities League, the provisions of this section shall expire.

ARTICLE II MANAGEMENT RIGHTS

A. General

The City retains and reserves all the rights, power, authority, duty, responsibility, and obligations conferred on and vested in it by its Charter and by the laws and Constitutions of the State of California and the United States of America.

The City reserves its right to determine matters outside the scope of representation.

The City reserves its right to propose changes in wages, hours, and other terms and conditions of employment not covered by this Agreement, in accordance with the provisions of Charter Section 910 and this Agreement.

Except as limited by Charter Section 910 and by the specific provisions of this Agreement, the City retains all rights, powers, and authority granted to it by law or the Charter, including, but not limited to, the exclusive right to determine the merits, necessity, and organization of any service or activity the City may now or hereafter

provide; to determine the City's mission and the mission of the Police Department and its employees, and to assign work to, direct, and schedule employees; to set standards of service; to determine the methods, means, and personnel by which the City will conduct its operations; to finance City operations and to determine financing methods; to establish and enforce reasonable dress and grooming standards and to determine the style or type of City-issued apparel, equipment, and technology; and to take all actions necessary to carry out its mission and these reserved rights.

Except as expressly provided in this Agreement, neither the City nor the Union concede or relinquish its rights under Charter Section 910.

B. Scheduling

Except for employees assigned to positions with flexible work schedules, the City shall notify the affected members at least fourteen (14) calendar days prior to implementation of any change to an employee's regular schedule. The City shall exercise good faith in establishing work schedules. The functional needs of the City shall prevail in work scheduling.

1. Non-Patrol Officers

- a. The Department may change the schedules of employees assigned to positions with existing flexible work schedules (e.g. PSOs, CRT).
- b. For employees assigned to CID, the City has discretion to flex start times on regularly scheduled days. Days off may be changed in accordance with existing Department rotations and assignment policies (e.g., "probable cause weekend"). Regularly scheduled days off may be changed at the time of the patrol draw.

2. Patrol Officers

- a. For purposes of this section, "Patrol Officer" is defined as an individual whose primary function is responding to dispatched calls for service. These officers are assigned to the Bureau of Field Operations, participate in the patrol draw, and attend a regularly scheduled lineup consistent with their start times.
- b. The Department will establish the start and end times of available patrol shifts prior to the patrol draw. It is understood that the Department shall not make any permanent changes to shift times except at the time of the patrol draw.
- c. Patrol Officers shall maintain the same regular schedule for the length of the draw period, except as permitted in this section.
- d. Up to three (3) times per year, the City may "flex" schedules by advancing the start and end times of Patrol Officers assigned to two

power shifts with starting times after 12:00 pm, up to three (3) hours (for example: 1:00 pm to 4:00 pm) for a period of not less than fourteen (14) days and not more than sixty (60) days. However, no officer shall be flexed for more than one-hundred and twenty (120) days per year.

- (i) Flex Premium. Patrol Officers with flexed power shift schedules shall receive a five percent (5%) premium to their base pay for their entire shift during the flex period.
- (ii) Shift Differential. Shift differential and other premium pays shall continue to be paid to eligible Patrol Officers with flexed power shift schedules.
- (iii) Notice. The City shall notify the affected members at least fourteen (14) calendar days prior to the effective date.

3. Arbitration

Shift scheduling is not subject to interest or expedited arbitration.

C. Deployment

The City retains the right to direct its workforce. This right includes but is not limited to the rights to temporarily re-deploy personnel during their assigned shift from one assignment to another. The functional needs of the City shall prevail in deploying personnel. Matters pertaining to deployment shall not be subject to interest or expedited arbitration.

D. Labor Management Committee Regarding Rest Periods

Within thirty (30) days of the adoption of this Agreement, the parties will establish a labor-management committee to develop plans to insure sufficient rest between work assignments for officers working patrol, taking into account court, administrative, or other duties required by lawful process, with the objective of an eight (8) hour rest being guaranteed, and utilizing either schedule flexing/shifting, or other means mutually agreeable to individual officers and the Department. Arbitrator Barry Winograd has expressly retained jurisdiction over this issue. If the Committee does not develop a policy within sixty (60) days of its establishment, the issue will be submitted to the Arbitrator for final determination.

ARTICLE III DIRECT PAY FOR SERVICE

A. Salary

Effective July 1, 2006, the base salary for represented employees shall be increased by two percent (2%).

Effective January 1, 2007, the base salary for represented employees shall be increased by two percent (2%).

Effective July 1, 2007, the base salary for represented employees shall be increased by four percent (4%).

Effective July 5, 2008, the base salary for represented employees shall be increased by four percent (4%).

B. Effective January 1, 2013, the base salary for represented employees shall be increased by four percent (4%). Adjustments for Overpayments

In the event an employee is erroneously overpaid by the City, regardless of fault, the City shall recoup 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 less, and continue said deductions for as many consecutive pay periods as is necessary until full overpayment is recovered. The City shall not commence recovery by payroll deductions until it has given the employee thirty (30) days written notice of the details of the overpayment, the amount of the overpayment and the schedule for recovery.

In the event the overpayment is such that the gross amount the employee receives is more than twice the gross amount earned in the pay period, the employee shall notify the City of the overpayment. The City shall notify the employee of the amount of the overpayment as soon as practicable. Upon notification of the exact amount of the overpayment, the employee shall repay the full amount of the overpayment within one pay period.

C. Court Ordered Salary Deductions

If the City is ordered by a court of competent jurisdiction to garnish the wages of any employee or if a court of competent jurisdiction orders the City to make payroll deductions from the wages of any 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.

D. Salary Steps for Rank of Police Officer

Except as regards to probationers as set forth in the paragraph below, advancement within the salary schedule specified for an employee's classification shall be on the basis of one (1) year's satisfactory service as evidenced by a performance evaluation. A salary step increase for an employee who is entitled to such an increase shall be effective at the beginning of the pay period in which the anniversary date of appointment in such classification falls.

With regard to probationers, advancement to step 2 shall occur upon the successful completion of probation.

E. Overtime

1. Overtime

Whenever, in the judgment of the Chief of Police or his/her designated representative, an employee is required to work in excess of his/her regular work week or regular work day, including work on a holiday as designated in Article 5 Section G, he/she shall be compensated for such overtime worked at the rate of one and one-half (1-1/2) times the hourly base rate of pay for his/her classification. Where the City's obligations under the FLSA exceed its obligations under this MOU, the City will pay overtime based on FLSA requirements. It is understood that the City's obligations under the FLSA are calculated based on a 28-day cycle under section 7K of the FLSA pursuant to Administrative Instruction 124.

a. Minimum Overtime Guarantee

An employee who is called back to work after he/she has completed his/her regular shift and has left his/her place of employment, or who is required to make a job-related court appearance on off-duty hours shall be compensated for a minimum of two and one-half (2-1/2) hours of overtime worked. An employee who is required to make a job-related court appearance on his/her scheduled day off shall be compensated for a minimum of four (4) hours of overtime worked. An employee who is required to work on his/her scheduled day off shall be compensated for a minimum of five (5) hours of overtime worked. It is expressly understood that an employee who works overtime (including court appearances) immediately prior to or subsequent to his/her regular work shift shall be compensated at the overtime rate of pay for the time actually worked, with no minimum number of hours of overtime guaranteed; further, it is understood that an employee who is on compensatory leave (OTA) or other paid leave of absence, excepting vacation leave, is not eligible for overtime compensation.

b. Form of Compensation

An employee who works overtime and who is thus eligible for overtime compensation, shall receive overtime compensation in the form of cash or compensatory leave subject to the following provisions:

- (i) Except for (a) special events and third party or other reimbursed overtime (which is "paid only"), (b) when a category of work is offered as either "paid only" or "CTO" only, or (c) as provided in subsection (iii) below, employees will have the option to receive overtime in cash or compensatory leave. Provided the City's determination is consistent, the City can choose, for reasons of budgetary and fiscal soundness, whether a particular category or type of work will be subject to overtime or comp time.
- (ii) Employees who are exempt from the provisions of FLSA choosing cash compensation for direct charge overtime

pursuant to Article III Section E, may defer payment for a later date. Employees covered under the provisions of FLSA choosing cash compensation for overtime may defer payment for a later date on overtime hours earned up to the 171 hour FLSA work period limit. Employees shall receive deferred overtime pay a maximum of twice each fiscal year, payable in the months of December and July. Deferred overtime payment requests for December must be made in writing by November 1 on a form, which shall be provided by the Department. Payments for such requests will be by separate check payable on the first Friday, in the month of December, which is not a payday. Any remaining or unclaimed deferred overtime will be paid at the end of each fiscal year by separate check on the first Friday, in the month of July, which is not a payday. Deferred overtime cannot be accumulated from one fiscal year to the next and it will be paid at the salary level at which it was earned.

- (iii) The maximum amount of compensatory time which may be accrued shall be three hundred (300) hours. Any employee who has a balance of three hundred (300) or more hours in his/her compensatory time bank (this includes both the pre-April 5, 1986 compensatory time bank and post-April 5, 1986 compensatory time bank) shall receive any subsequent overtime earned in cash, until the balance once again drops below three hundred (300) hours. The City will buy down CTO banks in excess of three hundred (300) hours at a rate of no more than a total of two hundred (200) hours per calendar year.
- (iv) However, notwithstanding this provision, the City may elect to buy down any overtime worked (OTW) credit in excess of ninety-six (96) hours.

c. Canine Handlers

Each employee regularly assigned and working as a Canine Handler is authorized to spend and shall be deemed to have spent fifteen (15) hours per month, over and above his/her regularly scheduled hours of work, in ordinary care and informal training of the assigned dog for such ordinary care and training that cannot be performed during regularly scheduled work hours. For those overtime hours incident to caring for the dog only, the employee shall receive overtime compensation at the rate of one and one-half (1 1/2) times the hourly rate of the state minimum wage. This same overtime compensation rate of one and one-half times the state minimum wage per hour shall also be paid for hours in addition to the above referenced fifteen hours for extraordinary care of the dog. Any duly authorized additional work performed by such individual not related to caring for the dog, shall be compensated pursuant to Article III,

Section E, paragraph 1 at the rate of one and one-half (1 1/2) times the employee's hourly base rate of pay.

In addition to overtime compensation for the ordinary and extraordinary care of the dog, each canine handler shall receive a monthly allowance of fifty dollars (\$50.00) to cover dog food and expenses related to the care of the dog.

F. Premium Pay

1. Acting Pay

Any employee who has been assigned, in writing, by an authorized City official, and who, pursuant to such assignment, assumes and performs all of the ordinary day-to-day duties and responsibilities of a position of higher classification other than his/her own for one (1) work day shall be paid the salary of that higher classification for such higher classification time worked. Lieutenants acting as Captains in patrol positions shall not be entitled to Acting Pay. Lieutenants acting as Captains in non-patrol positions may receive acting pay in the discretion of the Chief of Police. Lieutenants acting as Captains shall not be eligible to receive overtime pay except as provided by Article III, D of the Oakland Police Management MOU (effective July 1, 2006 – June 30, 2010).

2. Standby Pay

An employee who is placed on standby duty, in writing by an authorized supervisor, shall receive one dollar (\$1.00) for each hour on standby up to a maximum of twenty-four (24) hours per day. In the event an employee is called out to work during his/her standby period, the standby pay for that calendar day shall be reduced by the amount of overtime compensation paid for such work.

3. Bilingual Pay

On recommendation of the Chief of Police and the Director of Personnel, the City may approve payments of Twenty-five Dollars (\$25.00) per pay period to a bilingual employee whose abilities have been determined by the Director of Personnel as qualified to fill positions requiring bilingual speaking and/or writing ability. Bilingual skill payments will be made when:

- a. Public contact requires continual eliciting and explaining information in a language other than English (including sign language); or
- b. Where translation of written material in another language is a continuous assignment; or
- c. The position is in a work location where there is a demonstrated need for language translation in providing services to the public.

A bilingual employee whose assignment is comprised of at least fifty percent (50%) non-English speaking members of the public, as determined by the Chief of Police, or an employee whose assignment utilizes their bilingual skills at a higher level, as determined by the Chief of Police, may receive bilingual payments of an additional Twenty-five Dollars (\$25.00) per pay period.

Determinations made by the Chief of Police and/or the Director of Personnel under this provision shall not be subject to the grievance procedure.

4. Other Premium Assignment Pay

a. Motorcycle

An employee who has completed a Department approved motorcycle training program and who, thereafter, is regularly assigned to duty as a motorcycle officer shall receive five percent (5.0%) in addition to his/her regular base rate of pay.

b. Aerial Patrol Duty

An employee who is assigned to the Helicopter/Airport Security Section of the Patrol Division shall receive five percent (5%) in addition to his/her regular base rate of pay when the employee is assigned to the Helicopter Unit on a fulltime basis, whether as a licensed pilot or as a pilot trainee.

c. Field Training Officers

An employee who is certified in writing by the Chief of Police to be a Field Training Officer (FTO) shall receive seven and one-half percent (7.5%) in addition to his/her regular base rate of pay.

d. Evidence Technician Premium

An employee who is assigned in writing and who, pursuant to such assignment, regularly performs the duties of an Evidence Technician, including leading civilian evidence technicians as needed, shall receive a five percent (5%) premium in addition to his/her regular base rate of pay.

5. Longevity Premium Pay

At the beginning of each fiscal year during the term of this Memorandum, eligible represented employees shall receive longevity premium pay in accordance with the rates enumerated below:

	PERS	P&F
a. 7 through 9 years of service	\$1275	
b. 10 through 14 years of service	\$1475	

c. 15 through 19 years of service	\$1675	
d. 20 or more years of service	\$1875	\$1168.30

Payment shall be in a lump sum, included with uniform allowance. Such payment shall be by separate check, payable on the first Friday, in the month of July, which is not a payday. Eligibility for receipt of special premium pay under this provision shall be determined as of the beginning of each fiscal year.

6. Master Police Officer – Terrorism Advisor

Effective September 19, 2009, an employee assigned as Master Police Officer – Terrorism Advisor (CCR § 571(a)(1)) shall receive a five percent (5%) premium in addition to his/her base rate of pay.

Master Police Officers assigned to patrol will assist patrol officers training in the identification and recognition of terrorism cells. Master Police Officers will be the direct link between patrol officers and members of the FBI’s joint terrorism task force. To qualify as a Master Police Officer – Terrorism Advisor, a member must:

1. Have completed 20 years of service in the Oakland Police Department; and,
2. Maintain fully effective overall performance appraisal during the assignment; and,
3. Attend and complete POST approved anti-terrorism / law enforcement response course; and,
4. Be assigned to patrol division.

Master Police Officer – Terrorism Advisor premium pay shall sunset and be removed from the contract upon expiration of the contract.

7. Premium Pay Provisions and Restrictions

a. Premium Pay During Paid Leave

Premium pay shall continue to be paid during a paid leave of absence for an employee who, during such leave, is regularly assigned to a position in which he/she is eligible for such premium pay. Such regular assignment or removal from such regular assignment shall be accomplished by a personnel order.

b. Premium Pay During Non-Paid Leave

Premium pay shall not be paid during an unpaid leave of absence.

c. No Pyramiding

There shall be no "pyramiding" of premium and/or overtime pay. Nothing in this section prevents an employee from receiving multiple premium payments, which are computed on his/her base rate of pay.

d. Retirement System Contingency

It is expressly understood and agreed that premium pay provided herein shall not be construed for any purposes as "compensation," as that term is used in the Police and Fire Retirement System (Article XXVI of the City Charter).

If a court of competent jurisdiction determines that the premium pay rates, or any of them, are subject to the Police and Fire Retirement contributions, then the obligation of the City shall be such that the new premium pay rates (as reduced) plus the City's obligation to said system, shall be equal to the premium pay rate(s) as described herein.

e. Premium Pay - Retirement Systems

The City and Association agree that the City contribution rate for agreed upon premium pay and longevity premium pay for members of the Public Employees' Retirement System (PERS) shall be such that the amount, plus the PERS retirement contribution, shall be equal to the premium pay for the members of the Police and Fire Retirement System.

ARTICLE IV RETIREMENT

A. Retirement Contribution

The City agrees to continue to contract with the Public Employees' Retirement System (PERS) to provide the 3% at 50 retirement plan for each active bargaining unit member.

The City shall contribute, on behalf of each represented employee, the designated percent of regular salary for retirement purposes of such employee, in accordance with applicable Charter provisions and/or provisions of State law except as otherwise herein provided.

B. Employer Paid Member Contribution Program

The City agrees to pay the entire employees' normal contribution (currently nine percent) to the Public Employees' Retirement System until December 31, 2012.

Effective January 1, 2013, the employer shall reduce the contribution toward the employee normal contribution by two percent (2%) to seven percent (7%) and the employee shall pay a two percent (2%) contribution to the Public Employees' Retirement System.

In the event the existence of any state or federal tax law creates any personal tax liability for an employee by virtue of the employer's paying the employee's normal PERS retirement contribution, nothing contained in this section shall relieve the employee of any tax liability prescribed by law nor give rise to a grievance against the City, requiring it to assume the employee's tax liability.

C. The City agrees that the employer paid member contribution made pursuant to this section shall be reported to PERS as "special compensation" as provided under Government Code Section 2636.PERS One Year Final Compensation

The retirement allowance of all Unit PP members who are presently or will become members of the Public Employees Retirement System (PERS) is based on the twelve (12) highest paid consecutive months under the plan.

D. Military Service Credited as Public Service

Members may elect to purchase Military Service Credit in accordance with applicable CalPERS Service Credit Purchase Options requirements.

E. Police and Fire Retirement System "Pick-up" Program

See Appendix D.

F. Limitation to Operability

This provision shall be operative only as long as the City of Oakland "pickup" of employee retirement contributions continues to be excludable from gross income of the employee under the provisions of the Internal Revenue Code.

G. Deferred Compensation Plan

Represented employees may participate in the City's established deferred compensation plan. The Oakland Police Officers' Association shall have one voting member on the City's Deferred Compensation Committee.

H. Retiree Medical Liability

The parties agree that the provisions of the MOU may be reopened by either party in order to address the funding and payment of any identified unfunded liability, future liability and the associated and underlying payment for other post-employment benefits (OPEB).

During the term of this MOU, the OPOA will participate in discussions undertaken by the City with employee representatives of other bargaining units.

No change adversely affecting compensation and arising from GASB discussions will be implemented during the term of this agreement.

If the parties do not arrive at an agreement on GASB/retiree medical liability issues for a successor MOU, the issues will be subject to a combined interest arbitration proceeding on all unresolved successor MOU issues commencing no later than September 30, 2010, pursuant to Article XI (G) (Duration).

I. Retiree Medical Trust (ERISA)

The parties agree that no later than one year from the approval of this MOU by the City Council, the parties will contract with a third party administrator for purposes of permitting the members of OPOA to participate in an IRS qualified retirement medical trust. The plan shall enable members of the OPOA to make pre-tax voluntary contributions into the trust. The City shall pay administrative fees in an amount not to exceed fifteen dollars (\$15.00) per member per year.

ARTICLE V INSURANCE PROGRAMS

A. Insurance Programs

1. Health Insurance

The City agrees to contribute toward the premium cost of coverage in the established Public Employees' Medical and Hospital Care Act Plan (PEMHCA). Such contribution shall be an amount equal to one-hundred percent (100%) of the premium cost of employee and dependant health insurance coverage in the applicable Bay Area Kaiser (PEMHCA) plan.

2. Dental Insurance

For Department employees, OPOA will continue to provide dental insurance. Upon verification by Delta Dental the City shall contribute the amount the City would be required to pay to obtain the current benefit level under a plan covering active employees administered by the City through Delta Dental. Until such time as verification is provided, the City will continue to pay one hundred thirty six dollars and eighty-seven cents (\$136.87) per month per employee to OPOA.

Both parties agree to provide all waivers necessary to determine and verify the appropriate amount of the City's contribution. The City agrees to provide the OPOA with Delta Dental's written estimate of premiums.

The parties waive their right to any legal action or remedy regarding the dispute and claims over dental payments and calculation errors made pursuant to the 2001-06 MOU, and submitted to Arbitrator Winograd at the interest arbitration held January 2008. The waiver is effective for all claims existing prior to March 1, 2008. Pursuant to Arbitrator Winograd's Award (attached as Appendix A), any monies in the OPOA IBT Trust will remain in the trust, subject to the terms and conditions of the trust plan document; and any monies held in escrow by the City shall be released from escrow and retained by the City.

3. Helicopter Insurance

City agrees to provide life insurance coverage in the amount of one hundred thousand dollars (\$100,000) for each employee while flying in a City helicopter on official duty.

4. Life Insurance

The City agrees to contribute the amount of twelve dollars (\$12.00) per month per represented employee toward the cost of employee life insurance coverage.

ARTICLE VI LEAVES AND HOLIDAYS

A. Vacation Leave

1. Entitlement

- a. Employee shall be credited with vacation leave from the date of his/her appointment by the City as a member of the Police Department, at the rates enumerated in subsections (i) through (iv) below. Such leave shall be at his/her regular base rate of pay, plus any applicable premium rate of pay and/or self-improvement incentive pay.
 - (i) One hundred twenty hours (120 hours) per year through the first ten (10) continuous years of service.
 - (ii) One hundred forty-four hours (144 hours) per year beginning with the eleventh (11th) year of service, up to and including the thirteenth (13th) continuous full year of service.
 - (iii) One hundred sixty hours (160 hours) per year beginning with the fourteenth (14th) year of service, up to and including the twentieth (20th) continuous full year of service.
 - (iv) Two hundred hours (200 hours) beginning with the twenty-first (21st) year of continuous service.
- b. Effective the first pay period after January 1, 2009, employees' vacation banks will be credited with accrued vacation on a biweekly basis.
- c. Effective the first pay period after January 1, 2009, Police Officers will be given the option to use their accrued vacation before entering the FTO program.

2. Usage

Vacation leave may be taken only upon the approval of the Chief of Police or his/her designated representative.

3. Paychecks During Vacation

If a pay period falls within an employee's scheduled vacation period, the 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) which would normally be received during said period.

This provision shall apply only to employees whose scheduled vacation leave is five (5) consecutive working days or longer.

4. Buy-back

Employees may sell back to the City up to eighty (80) hours of accrued vacation leave each calendar year provided that:

- a. The employee has taken at least eighty (80) hours of vacation leave during the preceding calendar year;
- b. The employee's remaining balance, after buy-back has occurred, is at least one (1) year's accrual at the accrual rate applicable at the time of buy-back.

B. Sick Leave

1. Definition

Sick leave is defined as a period of time taken by a bargaining unit member for the purpose of recuperation from a non-industrial injury or illness. Sick leave is a non-vested benefit and may not be cashed out or used for any purpose, except in accordance with this MOU.

2. Accrual

Effective July 1, 2008 a bargaining unit member shall earn sick leave at the rate of 3.692 hours per pay period up to a maximum of ninety-six (96) hours per calendar year. Sick leave credits may be accumulated not to exceed four hundred eighty (480) hours.

a. Transition Credit

In recognition of the transition from the sick leave program in existence prior to the implementation of this MOU, bargaining unit members will be credited with ninety-six (96) hours per year of sick leave credit during the past five years, up to a maximum of four hundred eighty (480) hours.

b. Sick Leave Incentive Program

The City and OPOA will develop a sick leave incentive program. The details of this revised sick leave program, such as (1) the disposition of hours over the 480 hour cap; (2) conversion and transition terms; and (3) the development, if feasible, of a retiree health benefits trust, will be subject to interest arbitration if needed.

3. Pregnancy Disability Leave

Pregnancy Disability Leave will be determined by an appropriate Departmental policy. In the absence of a revised Departmental policy, City Administrative Instruction No. 567 (Attachment 1), as it may be amended from time to time, will apply. If either policy is in conflict with any provision of this MOU, the MOU shall prevail. This provision is not subject to the MOU grievance procedure.

C. Leave of Absence Without Pay

At the discretion of the Chief of Police, a permanent employee may be granted a leave of absence without pay for up to one hundred and twenty (120) calendar days.

D. Family Death Leave

1. Definition of Immediate Family

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

2. Entitlement

Upon approval of the department head or his/her designated representative, an employee may be granted family death leave up to an amount not to exceed forty (40) hours. Such leave shall not be charged against vacation or sick leave. In order to be eligible for family death leave, an employee must have worked full time for the City for a period of three (3) consecutive months.

E. Military Leave

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. section 4301 *et. seq.*), an employee taking a leave of absence to perform military performance is entitled to be reemployed, with reinstatement of benefits, on completion of the service, as long as the following prerequisites are satisfied:

1. With certain exceptions, the cumulative leave must not have exceeded five years;

2. The employee must have provided proper advance notice to the City of the employee's military service;

3. The employee must report back to work or submit an application for reemployment in a timely manner after conclusion of military service; and

4. The employee must not have been separated from military service with a disqualifying discharge or under other than honorable conditions.

If an employee is eligible to be reemployed, the employee must be restored to the job and benefits the employee would have attained if the employee had not been absent due to military service. An employee taking military leave retains all of his/her seniority-based benefits as if continuously employed. The employee returning from military leave is also entitled to pension benefits as if continuously employed throughout the leave period.

During a leave for military service, an employee has the right to elect to continue his/her existing health insurance plan for up to twenty-four (24) months. If the employee does not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Although the USERRA does not require that the City pay an employee during a military leave of absence, pursuant to state law, the City will compensate employees for up to thirty (30) calendar days of paid military leave, at the regular base rate of pay for the employee's assigned classification, for each fiscal year the employee is formally ordered to active military service, so long as the employee has completed a minimum of one year of service with the City or one full year of combined military service and City service at the time the leave is granted. (Cal. Mil. & Vet. Code Section 389 *et. seq.*) An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is paid. The period of city compensation for military which is unpaid. The period of city compensation for military may be extended by resolution of the city council.

F. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time.

This provision is not subject to the MOU grievance procedure.

G. Holidays

1. Designated Holidays

The following days are designated as 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.

The last Monday in May.

July 4th.

The first Monday in September.

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th

The Chief or designee shall determine which positions shall be filled on each designated holiday. However, all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw.

2. Floating Holiday

In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

3. Holiday Pay

All qualifying bargaining unit employees will be paid straight time for the full length of their regularly scheduled shift for each holiday as designated in Article VI Section G. In order to qualify for receipt of compensation for a designated holiday, a unit member must be in paid status the work day before and the work day after the designated holiday.

Pursuant to Article III, Section E, in addition to the straight-time holiday pay, if the holiday is worked, the employee shall be paid for all hours worked at the overtime rate

of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay at the straight time rate. In the event that a holiday falls on a member's day off, the member may take the holiday in pay or comp time at straight time, at his/her election.

4. Unpaid Holidays During FY 2009-2010, 2010-2011, and 2011-2012

For six holidays in the three fiscal years cited above, employees shall receive no pay for holidays that are not worked and shall only receive straight time pay for holidays that are worked.

The six unpaid holidays shall be designated by the Chief of Police after consultation with the Union.

This provision shall not preclude members from receiving overtime when working a holiday if the total hours worked in the pay period otherwise qualify the individual member for overtime.

ARTICLE VII ALLOWANCES

A. Uniform Allowance

1. Initial Uniform Allowance

The City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of four hundred dollars (\$400.00).

A new employee shall receive the annual uniform allowance payable at the time of employment; provided however that the annual uniform allowance at the beginning of the first full year of employment shall be prorated on the basis of service from the date of employment up to and immediately preceding the first full fiscal year, to the extent that such service period is less than a full fiscal year.

2. Annual Uniform Allowance

Effective the first pay period after July 1, 2008, the City shall provide an annual uniform allowance of eight hundred dollars (\$800.00) to represented employees covered by this Memorandum.

In the event that an employee separates from City service, for whatever cause (except in the case of death resulting from on-the-job injury), during the fiscal year for which the annual uniform allowance has been paid, such payment shall be adjusted on a pro rata basis in relationship to the period of service in the final fiscal year of employment.

The annual Uniform Allowance shall be paid in combination with Longevity Premium Pay, as a separate check.

3. Uniform Boots

An employee who becomes regularly assigned as a motorcycle officer after the effective date of this Agreement shall receive one pair of approved boots which shall meet specifications set forth in the pertinent Police Department General Order.

4. Body Armor

Employees who elect to purchase body armor in-lieu-of standard City issued body armor shall receive a voucher for the cost of standard City issued body armor provided however that all body armor worn by employees and eligible for reimbursement under this provision must meet minimum safety requirements set by the City. Further, employees shall be entitled to a voucher only in accordance with the normal schedule for replacement of body armor, unless otherwise approved by the Chief of Police or his/her designee.

B. Shift Differential

1. Shift differential pay is provided as an incentive for retention of employees in certain off-hours work assignments. Accordingly, only employees who are assigned in writing by the Chief of Police or his/her designee to a work unit that requires a regular work schedule with late evening and/or early morning hours or to an assignment with a flexible hours schedule, may be eligible for shift differential pay.

2. Effective September 19, 2009, no officer with four (4) or less than four (4) years of continuous service shall be eligible for the differentials set forth below. This paragraph shall not pertain to members assigned to CRT or serving as PSO's. This provision shall sunset upon the expiration of the contract.

3. When so assigned, employees whose regular scheduled shift includes five or more hours between the hours of 5:00 P.M. and 12:00 midnight shall receive a six and one quarter percent (6.25%) shift differential premium in addition to his/her regular base rate of pay. Employees whose regular scheduled shift includes five of more hours between the hours of 12:00 midnight and 7:00 A.M., shall receive an eight and one-quarter percent (8.25%) shift differential premium in addition to his/her regular base rate of pay.

4. Problem Solving Officers (PSO) and Crime Reduction Team (CRT) Members shall receive a six and one quarter percent (6.25%) shift differential premium in addition to his/her regular base rate of pay to compensate for their flexible schedules. PSO's and CRT's are not eligible for flex pay or any other shift differential.

5. Shift differential shall continue to be paid during vacation leave, sick leave, and during other paid leave up to a total of thirty (30) calendar days, for an employee who is then regularly assigned to a position in which the employee is eligible for such differential or premium pay. Provided, however, that continued payment of shift differential for employees on paid leave resulting from an on the job injury shall be in accordance with Labor Code section 4850 et seq. and applicable case law.

Implementation of shift differential shall be accomplished in accordance with Appendix E.

C. Meal Allowance

Each employee who, when directed to do so, works continuously two (2) hours or more immediately before or after his/her regular shift working day shall be paid a meal allowance of ten dollars and seventy-five cents (\$10.75). In the event such an employee continues to work beyond such first two (2) hours, and such work is not a part of his/her regular shift, he/she shall be paid an additional meal allowance of ten dollars and seventy-five cents (\$10.75) for each successive four (4) hour period continuously so worked. Meal allowance shall not be paid for regularly scheduled overtime work (i.e., overtime scheduled at least twenty-four (24) hours in advance, where such overtime is not an extension of a regular work day), or in those instances where the City furnishes meals. However, an individual who works overtime beyond the scheduled overtime shift of eight (8) hours shall be entitled to receive meal allowances as provided above.

ARTICLE VIII SELF-IMPROVEMENT INCENTIVES

City and Association recognize the importance and the desirability of creating self-improvement incentives to motivate employees to upgrade their skills and develop their careers throughout the department, resulting in mutual benefits to the employee and to the City. It is agreed by the parties that these objectives can best be met through special training and continuing higher education. To this end, the following incentives are established. Effective July 1, 2008, POST Premiums and Educational Incentives will be treated as separate premiums.

A. Intermediate and Advanced Post Certificates

1. Intermediate Post Certificate

Effective July 1, 2008, a permanent employee covered by this Memorandum who has obtained the Intermediate Post Certificate shall receive one and one-half percent (1.5%) of his/her regular base salary. Permanent employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

2. Advanced Post Certificate

Effective July 1, 2008, a permanent employee covered by this Memorandum who has obtained the Advanced Post Certificate shall receive four and one-half percent (4.5%) of his/her regular base salary. Permanent employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

3. Single Benefit Eligibility

There shall be no pyramiding of POST premiums. An employee shall be entitled to receive only one (1) of the benefits in Article VIII (A) at any one time. The benefit attaches to the highest certification the employee has earned.

B. Education Incentives

1. Associate of Arts Degree

Effective July 1, 2008, a permanent employee covered by this Memorandum who has obtained an Associate of Arts degree from an accredited college shall receive an additional one and one-half percent (1.5%) of his/her regular base salary. Permanent employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

2. Bachelor and Master Degrees

Effective July 1, 2008, a permanent employee covered by this Memorandum who has obtained a Bachelor's degree from an accredited college or university shall receive four and one-half percent (4.5%) of his/her regular base salary; a permanent employee who has obtained a Master's degree from an accredited college or university shall receive five and one-half percent (5.5%) of his/her regular base salary. Permanent employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

3. Single-Benefit Eligibility

There shall be no pyramiding of Education Incentives. An employee shall be entitled to receive only one (1) of the benefits in Article VIII (B) at any one time. The benefit attaches to the highest certification or degree the employee has earned.

C. Retirement System Contingency

It is expressly understood and agreed that the self-improvement incentives provided herein shall not be construed for any purposes as "compensation", as that term is used in the Police and Fire Retirement System (Article XXVI of the City Charter).

If a court of competent jurisdiction determines that the self-improvement incentive rates, or any of them, are subject to Police and Fire Retirement System contributions,

then the obligation of the City shall be such that the new self-improvement incentive rate(s) (as reduced), plus the City's obligation to said system shall be equal to the self-improvement incentive rate(s) as described herein.

D. Tuition Reimbursement.

City shall reimburse, upon notice of completion, an employee for the cost of a job-related academic course, approved in advance by the department head or his/her designated representative, in accordance with the following table:

GRADE	REIMBURSEMENT
A	100% of the cost of the course, or \$400.00 whichever is less
B	75% of the cost of the course, or \$400.00 whichever is less
C	50% of the cost of the course, or \$200.00 whichever is less

An employee failing or not completing a course, or receiving a grade lower than C, shall not be reimbursed. In the event that the course is graded on a Pass/Fail basis, reimbursement shall be made at fifty percent (50%) of the cost of the course, or two hundred dollars (\$200.00) whichever is less.

An employee shall be allowed to take up to two (2) courses eligible for reimbursement at any one time.

Tuition Reimbursement shall be paid through regular payroll check or in a manner specified by the City.

ARTICLE IX SPECIAL PROVISIONS

A. Transfer Policy

It is understood that the City and Association have agreed to a revised transfer policy (Attachment 2) which it may change from time to time during the term of this Agreement subject to the Association's meet and confer rights.

B. Promotional MOU

It is understood that the City and Association have agreed to a revised promotional MOU (Attachment 3) which it may change from time to time during the term of this Agreement subject to the Association's meet and confer rights.

C. Use of Non-Sworn Employees

1. The Chief of Police or designee may assign or re-assign to non-sworn employees any work which is not required to be performed by a peace officer so long as; (a) the assignment or re-assignment of the work does not result in the layoff of any

member of the bargaining unit or the elimination of any currently budgeted bargaining unit position; or (b) there is no adverse impact on officer safety.

2. The Department will notify the Union fourteen (14) calendar days prior to implementation of the proposed change. In the event that the Union identifies negotiable impacts of such assignment or re-assignment (under the MMB), the parties shall meet and confer over those impacts. However, such meeting and conferring will not alter the City's right to implement the change or the timing thereof unless stayed pursuant to Paragraph 3.

3. In the event that the Union asserts an objection based upon officer safety (Section 1 hereinabove), and the parties do not reach a resolution of the dispute the matter will be submitted to expedited arbitration pursuant to Article X Section E (IDR). An arbitrator may stay the change pending expedited impasse resolution procedures pursuant to the standards and procedures set forth in Article X Section E (IDR) regarding the identified safety impact.

4. Absent agreement between the parties, the Department will not civilianize any radio room sergeant or desk officer position until the completion of any IDR procedures

D. Equipment

The City shall establish, as a flexible goal, an upper service limit of eighty thousand (80,000) miles for marked patrol vehicles. The concept of selective retention shall be used in evaluating marked patrol vehicles which exceed the above goal, since it is recognized that some vehicles, such as marked patrol wagons, accumulate mileage but can continue to provide efficient and safe service when properly maintained.

The City and Association agree that it is desirable for officers routinely assigned to field duties to be equipped with hand-held radios. As soon as reasonably possible, the City shall establish and maintain a supply of hand-held radios adequate to reasonably ensure that each such officer can be equipped with a functioning handheld radio during his/her tour of duty.

The Department shall ensure the assignment of a person to coordinate activities associated with the acquisition, design, use and maintenance of police vehicles, radios, and other field equipment including safety equipment. The Association shall designate a representative to work with the Departmental Coordinator. They shall maintain liaison and work cooperatively in efforts to ensure the adequate supply, the appropriate configuration, and proper maintenance of such equipment.

E. Employee Health Assistance Programs

1. Psychological Counseling

The City agrees to provide psychological counseling program for unit members. City agrees to pay the annual cost of providing psychological counseling services to

employees and/or dependents. It is understood that the City contribution is intended to provide a maximum of twelve (12) counseling sessions per employee per year. In the event that a change in current provider is contemplated, Association President or his/her designee will represent Association on the selection committee.

The City agrees to maintain confidentiality of medical records as provided by law.

2. Substance Abuse Treatment Program

a. Substance Abuse Counseling

The City agrees to provide in-patient and out-patient treatment for alcohol and drug abuse for bargaining unit members, as determined by the Employee Assistance Program Coordinator. The cost of such services shall be limited to an aggregate lifetime benefit of \$30,000 or a maximum of two counseling programs, whichever is less, per eligible employee. Treatments must be authorized by the City of Oakland Employee Assistance Program Coordinator.

b. Confidentiality Agreement

All information obtained in the course of examination, rehabilitation and treatment of bargaining unit members with chemical dependency program shall be protected as confidential medical information. No data concerning this information or participation in any approved rehabilitation program will be made part of the bargaining unit member's personnel file or will be provided to any party without the written consent of the bargaining unit member.

F. Physical Fitness/Exercise Physiology Program

City agrees to provide a Physical Fitness/Exercise Program for no more than one-half (1/2) of all employees per year.

G. Reduction in Force

In the event that a reduction in force is required, it shall be accomplished in accordance with the provisions of Section 9.02, Layoff Procedure, of the Personnel Manual, except with respect to paragraph (a) which is amended as follows:

(a) Seniority Credit. Credit in the class of layoff shall be granted at the rate of one point for each month of service in that class or in any class higher in the Police Department in a promotional line of progression. Credit in a class that has been abolished, combined, divided or otherwise altered shall be granted at the same rate when the Personnel Director determines that such class was equal to or higher in level than the class of layoff; otherwise credit for service in such class shall be computed at the rate of one-half point per month. Service that is less than full-time shall receive seniority credit on a pro-rata basis.

H. Workers Compensation

1. An employee that sustains an injury must notify the Medical Office within eight (8) hours of the injury. The employee must complete either an Initial Injury Packet or Declination Packet within twenty-four (24) hours of injury, or as soon as reasonably possible.

2. To the extent permitted by applicable law, the City shall advise the OPOA of members who are receiving workers compensation benefits. The City shall provide such notice at a minimum of once each month.

3. The City agrees to honor the presumptives specified in and required by the California Labor Code sections 3200 through 3219 as amended and any other presumptives in the Code that apply to police officers. An individual medically diagnosed with a presumptive condition shall be placed in the ICF pay code. Provided, however, the City reserves the right to challenge such presumptive diagnosis as provided for by law. Further, the City reserves the right, as permitted by law, to recover the ICF pay code and other costs resulting from a presumptive diagnosis of an injury/illness that is subsequently determined to be non-work related. Pending the outcome of a disputed presumptive diagnosis, the affected individual shall remain in the ICF pay code.

I. Probationary Period

The probationary period of an employee appointed to the rank of Police Officer shall not exceed twelve (12) months in duration except that:

In the case of an individual employee requiring further consideration, the City, at its option, shall extend the probationary period by an additional three (3) months. However, the option may be exercised only when the officer's eleventh month evaluation is rated below "standard" in any category.

In the case of an individual employee requiring further consideration as a result of an on-the-job-injury or illness or transitional assignment, the City, at its option, shall extend the probationary period by the amount of time lost as a result of such injury or illness.

In the event of such extension, the probationary period shall be lengthened to provide for POST required additional training, at the City's expense, if POST so requires.

J. Transitional Assignments for Employees Temporarily Disabled

1. Temporary Industrial Disabilities

The City, in its sole discretion, may assign to modified duty, known as Transitional Assignment, any employee who has been medically released to return to work with restrictions after an industrial injury. Said assignments will be made pursuant

to the Citywide Return-to-Work Program and in accordance with the Workers' Compensation laws in the California Labor Code.

Transitional Assignment will not exceed ninety (90) days without the approval of the Medical Officer and in consultation with the Chief of Police or his/her designee. If extended, the Medical Officer will instruct the employee to request an accommodation through the City's Equal Opportunity Program Division (EOPD).

An employee on Transitional Assignment shall be paid at the regular rate of pay. Employees performing Transitional Assignments in positions where shift and premium benefits normally are assigned shall receive such benefits.

The City will periodically review such modified assignments in order to determine the assignment's continued feasibility.

An employee must meet standards of satisfactory performance to be considered for Transitional Assignment. The employee on a modified assignment must meet standards of satisfactory performance for the duration of the work assignment as outlined in the Transitional Assignment Agreement.

Administration of the Transitional Assignment Program shall be in accordance with the Citywide Return-to-Work Program guidelines.

2. Temporary Non-Industrial Disabilities

The provisions set forth above for industrial disabilities shall also apply to employees recovering from a non-industrial injury or illness except:

- a. That the sole determination of the employee's medical ability to perform a transitional assignment with restrictions shall be in the judgment of the employee's primary treating physician and the City Physician; and
- b. Priority for transitional assignments shall be given to persons temporarily disabled by industrial disabilities. The City Physician's determination shall be based on medical criteria and it shall be the department's sole determination as to whether the medical restrictions can be accommodated.
- c. The assignment may not exceed ninety (90) days. Should a non-industrial injury require greater than ninety (90) days accommodation, the Medical Office will instruct the employee to request an Americans with Disabilities Act (ADA) accommodation through the City's EOPD.

K. Administrative Interviews

The Department shall make reasonable efforts to schedule administrative interviews with represented employees during normal business hours. Nothing in this provision shall preclude the Department from scheduling administrative interviews during non-business hours where operational needs, exigent circumstances or economic considerations warrant.

ARTICLE X GRIEVANCE PROCEDURE

A. Definition

A grievance is hereby defined as any dispute which involves the interpretation or application of this Agreement, or disciplinary action taken against an employee, or controversy concerning the application of Departmental rules or general orders which are within the scope of bargaining.

It is the expressed intent of the parties that employees shall receive fair treatment and shall be disciplined only for just cause. Grievances shall be resolved expeditiously and at the lowest possible administrative level. No grievance filed by an employee, pursuant to the provisions of this Article, may be resolved inconsistent with the terms of this Agreement.

B. Election of Grievance Appeal Process

Disciplinary action, defined as written reprimand, suspension or termination, imposed upon an employee may be appealed through the Grievance Procedure as set forth in Section C of this Article. Alternatively and only in the case of a suspension, fine, demotion, or disciplinary discharge, the affected employee may submit his/her appeal directly to the Civil Service Board in accordance with Section 3, Subsection 6, of the Personnel Ordinance (Ordinance No. 8979 C.M.S. as amended). Nothing in this MOU is intended to limit individual employee rights and alternate appeal processes under the PSOBR.

Once an affected employee has elected to pursue one of the above procedures for appeal, within the applicable time parameters, such election shall be irrevocable. After such election, the terms of the Personnel Ordinance or the terms of this Memorandum of Understanding (whichever is applicable) shall apply, including, if the grievance procedure of this Memorandum of Understanding is chosen, the subsequent option for appeal to the Civil Service Board at Step Four (4) as described therein.

C. Procedure

1. Step 1 Initial Procedure

a. Informal Discussion

The employee or the Association representative may present the grievance orally to the immediate supervisor within seven (7) calendar days from such time as the employee or Association should reasonably have been aware of the occurrence of the incident giving rise to the grievance. The supervisor shall provide his/her response within seven (7) calendar days following the informal discussion.

b. Formal Submission

Should the grievance remain unresolved, the employee or Association representative may submit the grievance, in writing and on a form provided for that purpose, to the employee's Bureau Chief. The formal submission shall be made within seven (7) calendar days of the supervisor's response to the informal presentation of the grievance, or, if no response is received, at the conclusion of the seven (7) day period provided for informal discussion. The grievance shall state the specific section of the Memorandum of Understanding, the Personnel Rules, or departmental rules or orders alleged to be violated, or the disciplinary action taken, and the proposed solution. The Bureau Chief shall render a decision in writing to the employee and/or Association within seven (7) calendar days of receipt of the formal submission of the grievance. Copies of all written grievances filed by employees shall be provided to the Association within a period not to exceed five (5) calendar days. Copies of responses thereto shall also be provided to the Association.

2. Step 2 Appeal to Department Head

Should the grievance remain unresolved, the employee or Association representative may, within seven (7) calendar days of receipt of the Bureau Chief's decision, submit the grievance in writing to the Chief of Police. The Chief, or his/her designated representative, shall respond to the grievance in writing within seven (7) calendar days after receipt of the grievance. It is understood that nothing shall preclude the Association from presenting a grievance to the Chief of Police if it is deemed that such action is warranted by the nature or circumstances of the grievance.

3. Step 3 Employee Relations Officer - Association Representative

Should the grievance remain unresolved, the employee or Association representative may, within seven (7) calendar days after receipt of the department head response, submit the grievance in writing to the Employee Relations Officer. The Employee Relations Officer, or a designated representative shall contact the employee or representative within seven (7) calendar days of receipt of the grievance to schedule a meeting to attempt to resolve the dispute.

The Employee Relations Officer or designee shall respond in writing to the grievance within thirty (30) days after the third step hearing. If the Employee Relations Officer fails to respond within the thirty (30) days, the Association may move the grievance to the next step.

4. Step 4 Conflict Resolution Process

The City and the Association encourage grievant(s) to attempt to resolve grievances through informal means. Either party to the grievance may request an informal resolution conference. The conference shall be attended by the individual grievant(s), a representative from the OPOA and the Director of Personnel or his/her designee. Said conference shall be convened within ten (10) working days of the request initiated by either party. Participation in, or refusal by either the grievant(s), the OPOA or the City to participate in the conference, as well as any evidence, discussions, documents, statement, findings, recommendations, awards, orders, or any other record of the conference, shall not be presented as evidence, nor referred to any appeal or hearing by the grievant(s), Association or the City. In the event that all parties agree, they may request the assignment of a mediator from the State Mediation and Conciliation Service to assist in the informal resolution process.

No documentation regarding the Step Four (4) process shall be placed in any personnel file or other official file maintained for the purpose of making personnel decisions.

While the parties are utilizing the conflict resolution process set forth in Step Four (4), the parties may agree to extend the time limits described in Section D of this Article by no more than forty-five (45) days.

5. Step 5 Civil Service Board/Arbitration

Should the grievance remain unresolved, either the City or the Association may, within fourteen (14) calendar days of the third step response, submit the grievance to an impartial arbitrator who shall be selected by mutual agreement or, if such agreement is not reached, by alternately striking names from a list of seven (7) arbitrators to be developed by the parties. In the absence of agreement on a list of arbitrators, the parties will request a list from the California State mediation and Conciliation Service.

In accordance with Civil Service Rules, the employee or Association may elect to submit a grievance concerning a suspension, fine, demotion or discharge to the Civil Service Board in lieu of arbitration. Such election is irrevocable.

If the Civil Service Board is selected, appeals shall be handled in accordance with the procedures established in the Personnel Ordinance and as modified by Appendix C of this Memorandum of Understanding.

If arbitration is selected, it is agreed that the decision of the arbitrator shall be final and binding on all parties and that the arbitrator's fees shall be borne equally by the parties. It is expressly understood that the arbitrator shall have no power or authority to add to or subtract from the provisions of this Agreement or departmental rules or general orders; provided that, if any inconsistency between this Agreement and any of the foregoing rules or orders exists, this Agreement shall prevail.

Notwithstanding the above, the option of arbitration may not be elected in grievances filed by probationary employees in entry level positions whose basis is failure to successfully complete the probationary period, or Police Officer Trainees who are removed from employment for failure to successfully complete the Recruit School.

Unless otherwise agreed to by the employee, in writing, all meetings and hearings for any disciplinary matter shall be private and confidential, and shall include only the parties and exclusive representatives.

D. Time Limits

Time limits prescribed in Section C above may be modified by mutual agreement of the City and Association. Failure by the employee or Union to follow time limits, unless so extended, shall nullify the grievance. Failure by the City to follow the limits, unless so modified, shall cause the grievance to advance to the next step.

Steps One (1) and Two (2) may be waived by mutual agreement between the Association and the Department.

E. Immediate Dispute Resolution

1. In the event there is a dispute regarding the interpretation or application of this Agreement that imminently affects the City's interests, the Association, or a substantial number of members represented by the Association, either the City or the Association may upon written notice request suspension of the grievance process as described in Section (c) of this Article and proceed to immediate resolution discussions with the Chief of Police, the Employee Relations Officer, and an Association Representative. Such informal labor-management discussions shall be concluded within thirty (30) days of the date of the initial request for same.

2. Should the dispute still not be resolved within the thirty (30) day period, the parties have an additional fifteen (15) days to select an arbitrator from the panel of four (4) professional neutral arbitrators to be identified by the parties. The arbitrator assigned to hear the merits of the case will hold a hearing that is no longer than one (1) day and issue a decision within forty-five (45) calendar days of the selection of the arbitrator. The timelines or length of hearing may be shortened or extended by mutual agreement or upon an arbitrator's ruling on a request for an order shortening or extending time.

3. The arbitrator shall have no power to add to or to subtract from the provisions of this Agreement, the Personnel Rules, or departmental rules or orders in rendering his/her award.

4. The informal labor-management discussions will not automatically stay the City's action. However, the Association may demand a cease and desist order at any time upon invocation of the IDR process. If the Association makes such a demand, the first arbitrator from the list of four (4) professional neutral arbitrators, selected at random, that is available within a forty-eight (48) hour period shall hear the request for a

temporary cease and desist order. The arbitrator shall have the authority to issue a temporary cease and desist order to stay the implementation of the proposed change upon a proper showing of irreparable harm and inadequacy of normal grievance procedure remedies.

5. It is expressly understood and agreed that the provisions of this Section shall not be invoked for actions involving employee disciplinary actions or individual grievances.

F. Consolidation

Upon mutual agreement concurrent grievances alleging violations of the same provisions shall be consolidated for the purpose of this procedure as a single grievance.

G. Closing Arguments

If mutually agreed, closing arguments by the parties may be oral.

H. Grievances that Involve Appeal of Discipline

Appeals of written reprimands shall be initiated at Step One (1). Appeals of fines, demotions, suspensions and termination may be initiated at Step Three (3), following completion of the Skelly process.

I. Complaints

External complaints that are placed in the employee's personnel file shall be removed after five (5) years if there are no subsequent complaints regarding the same behavior/concerns. It is expressly understood that this paragraph shall not apply to the retention of complaints in the files of the Internal Affairs Department pursuant to the Negotiated Settlement Agreement (NSA).

In the event that the Department uses oral reprimands, Unit Commanders/Supervisors shall purge information noted on subordinates' oral reprimand records that is older than three (3) years old by completely blacking out the old entry(ies) and initialing and dating the correction(s), except as required by the NSA. In the event the verification of the oral reprimand is listed on a separate card or documentation the entire document or card shall be removed from the file and destroyed. The documentation of a reprimand will be purged only if no new offenses of a similar nature have occurred in the interim.

J. Caloca Appeals

Caloca appeals shall be heard by the Chief of Police or his/her designee.

K. NSA Compliance

The parties agree and represent that nothing in this agreement interferes with full compliance of the Negotiated Settlement Agreement (NSA). The parties further agree that should the federal court determine that any provision of this Agreement is in conflict with the NSA, the parties shall meet and confer pursuant to Section I and XV.C of the NSA.

ARTICLE XI SCOPE

A. Resolution

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

B. Full Understanding

The terms and conditions contained in this Agreement represent the full, complete, and entire understanding of the parties of matters within the scope of representation. This Agreement supersedes all previous Memoranda of Understanding between the City and Association. In addition, this Agreement terminates and supersedes all practices, agreements, procedures, traditions, and rules and regulations inconsistent with any matters specifically covered in this Agreement.

The parties agree to attach to this Memorandum of Understanding any sideletter appropriately executed after the adoption of this Agreement. Any sideletter executed prior to the adoption of this Agreement is hereby terminated and shall no longer be binding on the parties.

C. Existing Benefits

Existing benefits that are within the scope of representation, provided by Department Rule and Regulation, ordinance, or resolution of the City Council, and not covered in this Agreement shall be continued without change unless modified by using the procedure described in Section E below during the term of this Agreement.

D. Waiver

The City and the Union expressly waive the right to meet and negotiate with respect to any subject covered in this Agreement. Although nothing in this Agreement precludes the parties from mutually agreeing to meet and confer or negotiate on any subject within the scope of representation during the term of this Agreement, neither party may require the other party to meet and confer or negotiate on the subject matter covered by this Agreement. This provision shall not apply to matters covered by the provisions in Article XI, Sections E and F.

E. Modification

The parties to this Agreement intend that ordinances, resolutions, rules, and regulations enacted or revised by this Agreement shall be administered and observed in good faith. When the Department proposes to change any subject within the scope of representation but not covered or waived in this MOU, the Department will provide the Union with notice of the proposed change at least seven days prior to implementation of the proposed change. If the proposed change materially impacts any matter within the scope of representation, the parties agree to meet and confer or negotiate over the impact. If no agreement is reached within thirty (30) calendar days after the request to meet and confer, either party may declare impasse. In the event of impasse, the parties will resolve the matter pursuant to the impasse procedures of Section 910 of the City Charter as modified below.

Either party, in its sole discretion, shall notify the other if it desires expedited arbitration within fifteen (15) days after declaration of impasse. An arbitrator to hear such case shall be selected by the parties from a panel of four (4) professional neutral arbitrators to be identified by the parties. The arbitrator must conclude a single day arbitration hearing and issue a decision within sixty (60) calendar days of the date of selection. The timelines and/or length of hearing may be shortened or extended by mutual agreement or upon an arbitrator's ruling on a request for an order shortening or extending time, or for an extended hearing.

During the life of this MOU, interest arbitration under Charter Section 910 will be limited to disputes over new subjects not otherwise covered, waived or subject to different standards or procedures under the terms of this MOU.

If there is a dispute over whether a matter is covered by the MOU, the dispute will be subject to grievance arbitration. When a grievance is filed and the following occurs: (1) the matter goes to a grievance arbitration; (2) the arbitrator determines that the dispute in question is not otherwise covered by the Agreement; but (3) the matter is subject to arbitration under Charter Section 910 as limited by the preceding paragraph, then the arbitrator shall have the same authority as if selected as the neutral arbitrator under the provisions of Charter Section 910 and this Agreement.

F. Non-Nullification Clause

If any provision of this Agreement should be held invalid or restrained by operation of law or by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby.

G. Duration

This Memorandum shall become effective July 1, 2006, upon adoption by the City Council of implementing ordinances or resolutions. Upon approval by the City Council, the MOU shall be extended from its original termination date (June 30, 2010) to June 30, 2013. Provided, however, that the wage provisions set forth in Article III, section A and Article VI, section G (4) shall be effective July 1, 2009.

If the parties do not reach agreement on the successor MOU by June 30, 2013, the parties shall select an arbitrator. Interest arbitration over a successor MOU shall commence no later than September 30, 2013.

FOR THE CITY OF OAKLAND

FOR THE OAKLAND POLICE OFFICERS'
ASSOCIATION

APPROVED: _____
Dan Lindheim, City Manager

APPROVED BY THE CITY COUNCIL ON: _____

ATTEST: _____
LaTondra Simmons
City Clerk and Clerk of the Council of the City of Oakland, California

APPENDIX A

ARBITRATOR'S AWARD

BARRY WINOGRAD
Arbitrator and Mediator
1999 Harrison Street, Suite 1400
Oakland, CA 94612
(510) 465-5000

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between:)	
)	
CITY OF OAKLAND,)	Arbitrator's
)	File No. 07-139-IA
Claimant)	
)	
v.)	
)	INTEREST ARBITRATION
)	<u>DECISION AND AWARD</u>
OAKLAND POLICE OFFICERS ASSOCIATION)	(March 11, 2008)
)	
Respondents)	
)	
[Re: Interest Arbitration])	
_____)	

Appearances: Jonathan Holtzman and Charles Sakai (Renne, Sloan, Holtzman & Sakai), attorneys for claimant; Rockne A. Lucia and Michael Rains (Rains, Lucia & Wilkinson), attorney for respondents.

Following several days of evidentiary hearings in December 2007 and January 2008, after the submission of proposals, briefing and oral argument on unresolved issues, following a Notice of Intended Ruling dated February 29, 2008, and the

APPENDIX A

absence of any request for further argument by March 7, 2008, the following Interest Arbitration Award resolves remaining differences over the terms of a successor Memorandum of Understanding (MOU). The terms of this Award will be incorporated into final language for the successor MOU, subject to the arbitrator's limited retention of jurisdiction as set forth below.

1. Supersession

To be included in integration and past practice provision under No. 3, below.

2. Sideletters

Tentative agreement reached. (Past sideletters the parties agree to incorporate will be incorporated into new MOU, and any new sideletters will be attached hereafter. If past sideletter not in MOU, it will no longer be in effect.)

3. Beneficial Past Practices and Integration Clause

A. Modify Firefighter MOU Section 12 to apply to OPOA

APPENDIX A

unit.

B. Include expedited arbitration per IDR process in No. 8, below, at City or POA option, with carve-out for City prerogative for deployment and scheduling based on "functional needs." Disputes, if any, over application of management action based on "functional needs" remain subject to regular grievance and arbitration process.

C. POA can seek immediate stay from arbitrator in IDR process who will have authority to issue temporary cease and desist order upon proper showing of irreparable harm and inadequacy of normal grievance procedure remedies.

4. Management Rights

Modify Firefighter MOU Section 1.6 to apply to OPOA unit.

5. Civilianization

A. Chief can assign duties to non-sworn personnel if sworn officer not required.

B. Two calendar weeks notice required, with opportunity for OPOA to express position.

APPENDIX A

C. Reassignment of duties permitted, provided no adverse impact on officer safety, and no layoffs will result, with any dispute subject to expedited arbitration as set forth in No. 3, above. As a further limitation, there will be no change in the assignment of radio room sergeants or desk officers without the proposed change being first submitted to the IDR process under No. 8, below.

6. Interest Arbitration During Term of MOU

Interest arbitration under Charter Section 910 for any new subject not otherwise covered or waived in the MOU. Disputes over whether a subject is covered by the MOU will be resolved per Section 10.6 of the Firefighter MOU.

7. Grievance Defined

Tentative agreement.

8. Immediate Dispute Resolution

Modify Firefighters MOU Section 10.7 to apply to OPOA unit, subject to revised time limits, as follows: (a) up to 30 days for

APPENDIX A

informal labor-management discussion to resolve differences; (b) up to 15 additional days to invoke IDR arbitration process and to select an arbitrator; and (c) up to 45 additional days to hold a hearing that is no longer than one day, and to have a decision rendered within that 45 day period. (Time limits can be modified if the parties agree.) The parties will develop a panel of no more than four arbitrators to reserve dates in advance on a quarterly basis. The first available arbitrator on the panel within 48 hours of arbitration being invoked will have authority to issue a temporary cease and desist order subject to the standard set forth in No. 3.C, above.

9. Transfer Policy and Promotional MOU

Currently subject to separate negotiations by the parties.

10. Salary

July 1, 2006:	2.0 percent
January 1, 2007:	2.0 percent
July 1, 2007:	4.0 percent
July 1, 2008:	4.0 percent
July 1, 2009:	4.0 percent

APPENDIX A

11. Shift Scheduling Issues

A. For non-patrol, status quo maintained for shift scheduling, with the following understandings:

1) CRT and PSO: Department has discretion to change with 6.25 percent flex pay already built-in in lieu of other shift premiums.

2) CID: Department has discretion to flex for days already scheduled, and in accord with existing Department rotations and assignment policies. Weekend schedules can be set at time of the annual draw.

B. For patrol, no permanent change of shift times by management except for annual draw.

C. For patrol, City can change two power shifts (1pm and 3 pm) by advancing the shift no more than three hours from the established schedule (that is, 1pm to 4pm, or 3pm to 6pm, maximum), with two weeks notice, for a minimum of 14 days and a maximum of 60 days, three times per year, for a total of not more than 120 days.

D. Shift scheduling not subject to interest or expedited arbitration.

E. Five percent premium for entire shift when flexed from regular schedule.

APPENDIX A

F. No loss of differential or premium pay from original scheduled shift.

G. No Acting Captain pay for Lieutenants.

H. Within 30 days, the parties will establish a labor-management committee to develop plans to insure sufficient rest between work assignments for officers working patrol, including taking into account court, administrative, or other duties required by lawful process, with the objective of an eight hour rest being guaranteed, and utilizing either schedule flexing/ shifting, or other means mutually agreeable to individual officers and the Department. If the committee does not develop a policy within 60 days, the issue will be submitted to the arbitrator for final determination.

12. Comp Time

A. Provided City determination is consistent, City can choose, for reasons of budgetary and fiscal soundness, whether a particular category or type of work will be subject to overtime or comp time; for example, court appearances, community meetings. A list of other discernable categories or types of work subject to City determination will be developed by the City, with prior notice to the POA, by July 1, 2008. Provided, this City

APPENDIX A

discretion will not supercede the overtime pay required for third party activity under No. 12.E, below.

B. Cap of 300 hours, and no accrual above that level.

C. Maximum payout of 200 hours per year to get down to cap.

D. If City wishes, can go down to 96 hour level.

E. Service at special events paid by third parties or by other reimbursed overtime, to be paid at overtime rate, not comp time.

13. Vacation

Status quo, subject to conversion as of January 1, 2009 from traditional model of using days to hours, with biweekly accrual. Academy cadets will not be required to use vacation before assuming regular duties.

14. Sick Leave

Status quo applies for sick leave, with new terms effective July 1, 2008, as to the following:

A. City proposal for 96 hours with 480 hour cap.

B. City and OPOA will develop a sick leave incentive

APPENDIX A

program.

C. The details of this revised sick leave program such as the (1) disposition of hours over the 480 hour cap; (2) conversion and transition terms; and, (3) development, if feasible, of a retire health benefits trust in lieu of cash conversion, will be subject to interest arbitration, if needed.

15. IA Pay

Status quo. City withdraws proposal.

16. Longevity Pay

Status quo. Union withdraws proposal.

17. Post/Education Premiums

Increase existing benefits across the board by 0.5 percent, effective July 1, 2008. There will be no pyramiding of these benefits, except that a single additional extra payment will be made for those with educational degrees, at the highest applicable rate.

APPENDIX A

18. Line-Up Pay and Retirement Calculations

The POA has proposed language to establish a new requirement for payment to P&F retirees of shift differential premium pay in lieu of line up pay. However, because such pay was eliminated in 2001, it is not within the scope of this proceeding because it does not affect current employees.

19. Union Release Time

A. Status quo for Union president incorporated in MOU.

B. Time bank established for vested time bank with total employee contribution for 50 days per year for use by OPOA representatives to attend educational and training programs for labor and employee relations.

20. Uniform Allowance

- A. Initial payment of \$400.
- B. Annual payment of \$800 through CBA term.
- C. Effective July 1, 2008.

APPENDIX A

21. Holidays - Compensation

A. Holiday pay for length of shift scheduled in relevant payroll period, with pay at straight time rate.

B. If the holiday is worked, paid at overtime rate of 1.5 and also paid for holiday at regular rate.

C. If holiday not worked because of regular day off, or by employer request, will be paid holiday pay at straight time rate.

D. Department requests to work on a holiday in another Department unit will be subject to normal overtime bid process for those being asked to work the holiday, with pay as set forth in No. 21.B, above.

22. Holidays - Coming to Work

Employee paid at overtime 1.5 rate.

23. Holiday - Floating Birthday

Status quo (that is, paid in comp time).

APPENDIX A

24. Holidays - Number

Status quo.

25. Duration

Four years, through June 30, 2010

26. GASB Reopener

City proposal, subject to the following:

- (1) During the term of this MOU, the POA will participate in discussions undertaken by the City with employee representatives of other bargaining units.
- (2) No change adversely affecting compensation and arising from GASB discussions will be implemented during the term of this agreement.
- (3) If the parties do not arrive at an agreement on GASB issues for a successor MOU, it will be subject to an interest arbitration proceeding on all successor MOU issues that are not resolved, commencing no later than September 30, 2010.

APPENDIX A

27. Health Insurance

Status quo (full employer pickup).

28. Dental Insurance

As a consolidated interest and grievance arbitration ruling, and as a condition of the interest arbitration determination:

A. For Department employees, OPOA will continue to provide dental insurance, and, upon verification by Delta Dental of what the City would pay for the same benefit level, the City will pay that cost. Until such time as verification is provided, the City will continue pay the cost of the current benefit level to OPOA.

B. Dollars in Trust stay with Trust.

C. Dollars in escrow by City stay with City.

D. OPOA withdraws issue of calculation errors.

29. Tentative Agreements


All tentative agreements previously agreed upon by the parties are adopted.

APPENDIX A

30. Retention of Jurisdiction

The arbitrator will retain jurisdiction to: (a) resolve any dispute over the formal language to incorporate these terms and conditions into a successor MOU; and, (b) resolve any remaining issues under No. 9 (re: transfer policy and promotional MOU); No. 10 (re implementation of salary increase; No. 11.H (re rest between shifts); and, No. 14.C (re sick leave program).

Date: March 11, 2008



BARRY WINOGRAD
Arbitrator

APPENDIX B

UNIT PT BENEFITS/EXCLUSIONS

The City of Oakland, hereinafter referred to as "City", and the Oakland Police Officers' Association, hereinafter referred to as "OPOA", hereby agree that the provisions of this Memorandum of Understanding which apply to employees in Unit PT are as follows:

PREAMBLE

ARTICLE I - GENERAL PROVISIONS

Entire Article

ARTICLE II - DIRECT PAY FOR SERVICES

A. Salary. Persons employed as Police Officer Trainees will receive a salary that is ten percent (10%) less than the base salary attached to the entry level, A salary step for Police Officers on the PERS retirement system.

E. Overtime. Police Officer Trainees shall receive overtime in accordance with the provisions of the Fair Labor Standards Act. Accordingly, overtime shall be paid on all hours worked over one hundred and seventy-one (171) in the established twenty-eight (28) day work period. All overtime shall be paid in cash.

ARTICLE IV INSURANCE PROGRAMS

A. Insurance Programs.

1. Health Insurance.
2. Dental Insurance.
4. Life Insurance.

ARTICLE V LEAVES AND HOLIDAYS

C. Leaves of Absence.

D. Family Death Leave.

1. Definition of Immediate Family.
2. Entitlement.

Upon Approval of the department head or his/her designated representative, a Police Officer Trainee may be granted family death leave without pay up to an amount not to exceed five (5) working days.

APPENDIX B

ARTICLE VI ALLOWANCES

A. Uniform Allowance.

1. Initial Uniform Allowance.
2. Annual Uniform Allowance.

ARTICLE VII - SELF IMPROVEMENT INCENTIVE

Nothing shall apply.

ARTICLE VIII - SPECIAL PROVISIONS

Nothing shall apply.

ARTICLE IX - GRIEVANCE PROCEDURE

Entire Article

ARTICLE X - RESOLUTION - FULL UNDERSTANDING - NON-NULLIFICATION AND DURATION

Entire Article.

Deferred Compensation. In addition, City and the OPOA, in accordance with Treasury Regulations, Section 31.3121 (b) (7), hereby agree to adopt a deferred compensation plan for employees in Representation Unit T; such plan to be in accordance with the guidelines set forth in Internal Revenue Code Section 457. Under this plan, the City will contribute 3.75% of each participating employee's wages including overtime to a deferred compensation plan administered by Great Western Savings and referred to by the administrator as an "Index Account". Each participating employee will contribute an equivalent 3.75% of "wages", as that term is described above. An employee will be immediately one hundred percent (100.0%) vested as to all contributions made on his/her behalf, whether by the employee or by the City.

Police Office Trainee Training Costs. The parties recognize that in the past a substantial number of persons have accepted the benefit of training at the Oakland Police Academy and then have voluntarily separated from service to join other safety agencies or have decided for personal reasons that police work is not their preference. The purpose of this provision is to insure that the recruit either accept a commitment of service to the City or be responsible for costs associated with Academy training. Thus the parties agree that any member who, prior to completing five years of service, voluntarily separates from service with the department shall be responsible for reimbursing the City, on a full or prorated basis, for the \$8000 cost of his/her training at the Police Academy. A schedule of the member's reimbursement responsibility is set forth as follows: Length of Service % of Repayment Due

APPENDIX B

Separation prior to 1 year. 100% repayment of the \$8,000

Separation after 1 year but before completing the second year 80% repayment of the \$8,000.

Separation after 2 years but before completing the third year 60% repayment of the \$8,000.

Separation after 3 years but before completing the fourth year 40% repayment of the \$8,000.

Separation after 4 years but before completing the fifth year 20% repayment of the \$8,000.

Separation after 5 years 0% repayment

Repayment shall be due and payable at the time of separation and the City shall deduct any amounts owed under this provision from the employee's final paycheck. If said deduction does not fully reimburse the City for outstanding costs, the balance shall thereupon be due and owing.

A member shall not be deemed to have voluntarily separated under this provision if the member can demonstrate that at the time of separation a personal emergency or other extreme facts requiring an absence from service which could not be reasonably accommodated by either a leave of absence or a request for re-employment upon cessation of the emergency or extreme facts. A demonstrated health problem of member or of a person in the member's immediate family is an example of such an emergency.

APPENDIX C

CIVIL SERVICE BOARD/HEARING OFFICER

The City of Oakland, hereinafter referred to as "City", and the Oakland Police Officers' Association, hereinafter referred to as "OPOA", hereby agree that the Civil Service Board may elect to use a Hearing Officer for appeals of suspensions, fines, demotions or disciplinary discharges filed pursuant to Article VI, entitled Grievance Procedure, of the current Memorandum of Understanding between the parties covering the period of July 1, 2001 to June 30, 2006. The parties further agree to the following provisions governing the use of such Hearing Officers:

1. Hearing Officer Panel. Hearing Officers shall be selected from the pool of qualified candidates listed below.

2. Order of Use. The Director of Personnel Resource Management shall establish an ordered list of the Hearing Officers by random. Cases will be assigned to Officers in order on the list.

Both the appellant and the City shall have one peremptory challenge. In the event that such challenges are made, the case will move to the Hearing Officer next in order on the panel list.

If a designated Hearing Officer is not available during the sixty (60) days after the case is assigned, the case will be reassigned to the panelist next in order. No additional peremptory challenges beyond a party's first one will be allowed.

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

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

Closing arguments shall be oral; provided, however, that either party may elect to submit a closing brief. Such an election must be made following the presentation of the evidence. Briefs are to be submitted to the Hearing Officer within twenty (20) calendar days of the close of the hearing. Briefs submitted after the deadline shall not be considered by the Hearing Officer.

4. Hearing Officer Responsibilities. Hearing Officers shall be responsible for the conduct of the hearing and shall identify the appeal issue, determine relevant facts, assess the credibility of witnesses, evaluate the evidence and render an advisory decision to the Civil Service Board.

The Hearing Officer shall render a written finding and advisory recommendation to the Civil Service Board within thirty (30) calendar days of the close of the hearing. If

APPENDIX C

briefs are submitted, the recommendation shall be submitted to the Board within fifty (50) calendar days of the close of the hearing.

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

A. A summation page delineating the case name, issue, brief summary of the case and his/her recommendation.

B. A complete written report documenting the findings.

C. Any documentary evidence, written motions and briefs submitted.

D. The cassette tape(s) of the hearing.

5. Civil Service Board Responsibilities. Upon receipt of a Hearing Officer's recommendation, the Secretary shall calendar the case for the next regularly scheduled Board meeting.

In reaching a decision, the Board shall consider only the recommendation and record but may also consider the cassette tape of the hearing. The Board's decision shall be made in accordance with Ordinance No. 8979, as amended, which requires a majority of a quorum to accept, reject or modify an appeal. Copies of the Board's determination and the recommendation of the Hearing Officer shall be forwarded to the appellant, appellant's attorney, City Attorney's Office and the affected City Department, in writing within ten (10) days of the conclusion of the Board's review of the Hearing Officer's recommendation. If either party disagrees with the Board's determination or the reasons therefore, it may request the Board to reconsider by filing a written request to the Board and serving such request upon the opposing party within twenty (20) working days of the mailing to them of the Board's decision. Any written request must detail the reasons for reconsideration. Any opposition to reconsideration must be received by the Board no later than thirty (30) working days following the mailing of the Board's decision. Thereafter, the Board will review the written reasons for reconsideration and opposition thereto and will allow oral argument at its next regularly scheduled meeting following the expiration of the time period allowed for request and opposition to reconsideration. Any final determination following a request for reconsideration shall be mailed in writing to the parties no later than ten (10) working days after the Board acts upon the request for reconsideration.

6. Costs. Costs for the Hearing Officer shall be borne by the City. Costs for transcribing hearing tapes shall be born 'by the requesting party. Cost for a copy of the hearing tape shall be borne by the requesting party.

APPENDIX C

HEARING OFFICER LIST

Frank Silver
Barry Winograd
Norman Brand
Morris Davis
John Kagel
Bonnie Bogue
Carol Vendrillo

The parties agree to identify additional arbitrators to supplement this list.

APPENDIX D

POLICE AND FIRE RETIREMENT SYSTEM \"PICK-UP\" PROGRAM

The City agrees to implement the provisions contained in Section 414(h)(2) of the Internal Revenue Code concerning the tax treatment of employee retirement contributions to the Police and Fire Retirement System (PFRS) paid by the City of Oakland on behalf of said employees. Pursuant to Section 414(h)(2) contributions to a pension plan, although designated under the plan as employee contributions, when paid by the employer in lieu of contributions by the employee, under circumstances in which the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer, may be excluded from the gross income of the employee until these amounts are distributed or made available to the employee. Implementation of Section 414(h)(2) shall be accomplished through a concomitant reduction in wages equal to the employees' contribution rate to PFRS as determined by City Charter, Section 2619, pursuant to the following provisions:

Definitions

Unless the context otherwise requires, the definitions in this section govern the construction of this provision.

"Employees." The term "employees" shall mean those employees in Representation Unit P who make employee contributions to the PFRS retirement system.

"Employee Contributions." The term "employee contributions" shall mean those contributions to PFRS retirement system which are deducted from the salary of employees and credited to individual employees' accounts.

"Employer." The term "employer" shall mean the City of Oakland.

"Gross Income." The term "gross income" shall mean the total compensation paid to employees in Representation Unit P, by the City of Oakland, as defined in the Internal Revenue Code and rules and regulations established by the Internal Revenue Service.

"Retirement System." The term "retirement system" shall mean the Police and Fire Retirement System as defined in Article XXVI of the City of Oakland Charter.

"Wages." The term "wages" shall mean the compensation prescribed in the Memorandum of Understanding between the parties.

"Compensation." The term compensation shall mean the employee's monthly wages reported to the Police and Fire Retirement System before any reductions pursuant to this pick-up program.

1. Pick-Up of Employee Contributions

APPENDIX D

(a) Pursuant to this provision, the employer shall make employee contributions on behalf of employees, and such contribution shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States. Such contributions are being made by the employer in lieu of employee contributions.

(b) Employer contributions made under Paragraph A of this provision shall be paid from the same source of funds as used in paying the wages to affected employees.

(c) Employee contributions made by the employer under Paragraph A of this provision shall be treated for all purposes other than taxation in the same manner and to the same extent as employee contributions made prior to the effective date of implementation of the "pick-up" program. Nothing contained in this pick-up program is intended to reduce the reportable amount of the employee's monthly compensation under the Police and Fire Retirement System.

(d) The employee does not have the option to receive the employer's contributed amounts directly instead of having them paid to the retirement system.

(e) In the event the existence of any state or federal tax law creates any personal tax liability for an employee by virtue of the employer's paying the employee's normal PFRS retirement contribution, nothing contained in this section shall relieve the employee of any tax liability prescribed by law nor give rise to a grievance against the City, requiring it to assume the employee's tax liability.

APPENDIX E

SHIFT DIFFERENTIAL IMPLEMENTATION AGREEMENT

Vice/narcotics and traffic are not considered to be shift differential assignments. All other assignments that are otherwise eligible for shift differential based on scheduled hours are considered to be shift differential assignments.

Line up pay for those employees currently receiving the pay and working the extra half-hour shall be eliminated the first full pay period after adoption of this agreement by the City Council. Those employees currently receiving line up pay and who are eligible to receive shift differential shall begin to receive the pay at the same time the line up pay is eliminated.

Employees not currently receiving line up pay shall be eligible to receive shift differential effective September 1, 2001.

ATTACHMENT 1



CITY OF OAKLAND ADMINISTRATIVE INSTRUCTION

SUBJECT: Family Care and Medical Leave, Pregnancy Disability Leave, and Paid Family Leave

NUMBER: 567

REFERENCE:

EFFECTIVE

DATE: August 3, 2004

SUPERSEDES: AI 567 dated February 5, 1994

I. POLICY

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

II. PURPOSE

The purpose of this Administrative Instruction is to establish City of Oakland policy, procedures and responsibilities regarding Family Care and Medical Leave, Pregnancy Disability Leave and Paid Family Leave.

III. DEFINITIONS

A. Eligibility

To be eligible for family care and medical leave, on the date on which leave is to begin, an employee must have been employed by the City for at least 12 months, and have been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. (29 C.F.R. §825.110, Government Code §12945.2[a])

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

ATTACHMENT 1

B. Family Care and Medical Leave Entitlement

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

1. The birth of a child and to care for the newborn child;
2. The placement with the employee of a child for adoption or foster care by the employee. (29 C.F.R. §825.200[a], §825.112[a]; Government Code §12945.2[c][3]);
3. To care for the employee's child, parent, or spouse who has a serious health condition; (See 29 C.F.R. §825.113 and 2 C.C.R. §7297.0 for definitions; Government Code §12945.2[c][1]);
4. To care for the employee's domestic partner who has a serious health condition and the employee has filed a Declaration of Domestic Partnership in accordance with established City policy;
5. Because of an employee's own serious health condition that makes the employee unable to perform the functions of the employee's position, except for disability on account of pregnancy, childbirth, or related medical conditions, which are covered by pregnancy disability leave. (Government Code §12945.2[c][3][c]; see 29 C.F.R. §825.114-115 for definitions of "serious health condition" and "unable to perform the functions of the employee's position" and Government Code §12945.2[c][8])
 - a. For family care and medical leave purposes, the "12-month period" in which the 12 weeks of leave entitlement occurs shall be defined as a "rolling" 12-month period measured backward from the date the employee uses any family care and medical leave.
 - b. "Twelve workweeks" means the equivalent of 12 of the employee's normally scheduled workweeks. For eligible employees who work more or less than five days a week, or who work on alternative work schedules, the number of working days that constitutes "12 workweeks" is calculated on a pro rata or proportional basis.
 - c. "Serious health condition" means an illness, injury (including on-the-job injuries), impairment, or physical or mental condition of the employee or a child, parent, spouse, or domestic partner of the employee, which involves either:

ATTACHMENT 1

- i. inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential health care facility; or
- ii. continuing treatment or continuing supervision by a health care provider, as described in detail in the FMLA and its implementing regulations.

C. Minimum Duration of Leave

1. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason, rather than for one continuous period of time. (29 C.F.R. §825.203[a])
2. Reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. (29 C.F.R. §825.203[a])
3. Minimum Duration of Leave Taken for Serious Health Condition of a Parent, Child, Spouse, or Domestic Partner or for the Serious Health Condition of the Employee

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

- a. The following conditions must be met for an employee to take family care and medical leave on an intermittent or a reduced leave schedule under this section:
 - i. there must be a medical need for leave (as distinguished from voluntary treatments and procedures);
 - ii. the medical need can be best accommodated through an intermittent or reduced leave schedule; and
 - iii. the employee must provide certification of the medical necessity of intermittent leave or leave on a reduced schedule. The certification of a serious health condition required below meets this requirement. (29 C.F.R. §825.117)

4. Minimum Duration for Leave Taken for the Birth, Adoption, or Foster Care Placement of a Child

Family care and medical leave taken because of the birth, adoption, or foster care placement of a child of the employee does not have to be taken in one continuous period of time. Any leave(s) taken shall be concluded within one year of the birth or adoption or foster care placement of the child with the employee. The

ATTACHMENT 1

basic minimum duration of the leave shall be two weeks. However, the City shall grant a request for a leave of less than two weeks duration on any two occasions. (2 C.C.R. §7297.3[d])

5. Leaves shall be taken in increments of at least one hour. Only the amount of leave actually taken will be counted toward the 12 weeks of leave to which an employee is entitled. (29 C.F.R. §825.203[d], 29 C.F.R. §825.205, see also 2 C.C.R. §7297.3[c][2] and [c])
6. Employees needing intermittent leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the City's operations. (29 C.F.R. §825.117)
7. The City may, at its discretion, assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule, as determined by the City. (29 C.F.R. §825.117, 29 C.F.R. §825.204)

IV. PAY STATUS AND BENEFITS

- A. Except as provided in this section, the family care and medical leave will be unpaid. The City will continue to provide and pay for group health benefits during the period of leave on the same basis as coverage would have been provided had the employee been continuously employed during the entire leave period. (29 C.F.R. §825.207, 29 C.F.R. §825.209; Government Code §12945.2[d], [e], [f]; 2 C.C.R. §7297.5[c])
 1. The employee will be required to continue to pay the employee's share of premium payments, if any. An employee's premium payment for the entire period of the unpaid leave is due before the leave begins. (29 C.F.R. §825.210, 29 C.F.R. §825.210[a] and [e])
 2. The City's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late. (29 C.F.R. §825.212[a] and [c]; Government Code §12935[a], 12945.2), 2 C.C.R. §7297.5[f])
 3. As permitted by law, the City will recover from an employee its share of health plan premiums during a period of unpaid family care and medical leave if the employee fails to return to work after the employee's family care and medical leave entitlement has expired, if the employee's failure to return to work is not due to the employee's own serious health condition or to circumstances beyond the employee's control. (Government Code §12945.2[f], 2 C.C.R. §7297.5; §825.212 and 29 C.F.R. §825.213)
- B. Other Benefits

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

ATTACHMENT 1

C. Relationship of Unpaid Family Care and Medical Leave to Other Leaves

1. Use of Paid Leave

When an employee takes family care and medical leave because of the employee's own serious health condition, he/she shall be required to use all but 10 days of his/her accrued sick leave.

An employee may choose to use any accrued sick leave, vacation or other accrued paid personal time off that the employee is otherwise eligible to use during the otherwise unpaid family care and medical leave.

2. Concurrent Use of Leave

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

3. Workers' Compensation Leave

The City may count any time off for an employee's on-the-job injury against the employee's family care and medical leave entitlement when the employee's injury meets the criteria for a serious health condition; however, an employee's accrued paid leave may not be substituted for any part of an FMLA leave that is also a workers' compensation leave. (29 C.F.R. §825.207[d][2], also, §825.210[f], §825.216[d], §825.2209[d], §825.307[a][1])

4. Relationship to Pregnancy Disability Leave

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

5. California Paid Family Leave ("PFL")

Beginning on July 1, 2004, employees on FML in order to care for a family member or bond with a child, and who are eligible for State Disability Insurance (SDI), may apply for Paid Family Leave benefits (six weeks of partial wage replacement) through the Family Temporary Disability Insurance program, which is administered by the State Disability Insurance program.

ATTACHMENT 1

- a. PFL must be taken concurrently with Family Medical Leave. PFL does not entitle employees to job protection, beyond that provided under FML.
- b. Employees must be off work for seven calendar days and use two weeks of vacation leave, if it has been accrued, before PFL benefits begin. (Employees need not have worked any minimum amount of time to qualify for PFL.)
- c. PFL does not give an employee any additional rights under CFRA or FMLA. Employees whose employment is governed by a collective bargaining agreement that addresses Family Medical Leave may have additional entitlements and rights pursuant to that Agreement.

V. NOTICES TO CITY

- A. An employee should request a family care and medical leave by submitting a completed Family Care and Medical Leave application and a Health Care Provider Certification form to the employee's department personnel representative.
 1. The employee must provide written notice to the City as far in advance of the leave as possible and as soon as the employee reasonably knows of the need for the leave. If the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the notice must be provided at least 30 calendar days in advance of the leave. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.
 2. The written notice must inform the City of the reasons for the leave, the anticipated duration of the leave, and the anticipated start of the leave. The employee should use the City's Family Care and Medical Leave application whenever possible. (29 C.F.R. §825.302; 2 C.C.R. §7297.4)
 3. If an employee fails to give 30 calendar days notice for foreseeable leave with no reasonable excuse for the delay, the City may deny the family care and medical leave request until at least 30 calendar days after the date the employee provides notice to the City of the need for family care and medical leave. (29 C.F.R. §825.304[b])
 4. The employee shall consult with the City and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the City's operations. Scheduling, however, shall be subject to the approval of the health care provider of the employee or the employee's child, parent, spouse, or domestic partner. (2 C.C.R. §7297.4 [a][2])

ATTACHMENT 1

B. Medical Certification

1. An employee's request for family care and medical leave to care for a child, a spouse, a domestic partner, or a parent who has a serious health condition shall be supported by a certification issued by the health care provider of the individual requiring care. If additional leave is required after the expiration of the time originally estimated by the health care provider, the employee shall provide the City with recertification by the health care provider. (Government Code §12945.2[j]; 29 C.F.R. §825.305-306; 2 C.C.R. §7297.11, §7297.0[a])
2. An employee's request for family care and medical leave because of the employee's own serious health condition shall be supported by a certification issued by the employee's health care provider. (Government Code §12945.2[k])
3. As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employee is required to obtain certification from his/her health care provider that the employee is able to resume work. (29 C.F.R. §825.310)
4. Employees are required to use the "Certification of Health Care Provider or Practitioner" form available from the City to meet the certification and recertification requirements of this policy. In addition, for the "fitness for duty" certification required under Article V B-3 above, the City may provide the health care provider with the City's customary "fitness for duty" forms, which may include a job position description and a list of the job position's essential functions.
5. If the City has reason to doubt the validity of the certification provided by an employee for the employee's own serious health condition, at the City's discretion and expense the City may require that the employee obtain the opinion of a second health care provider designated or approved by the City in accordance with the appropriate statutory provisions. At the City's discretion and expense, the City may also require the opinion of a third health care provider, in accordance with the appropriate statutory provisions, in the event that the second opinion differs from the opinion in the original certification. At the employee's request, the City shall provide the employee with copies of any second and third medical opinions. (Government Code §12945.2[k]; 29 C.F.R. §825.307-308; 2 C.C.R. §7297.4[b][2])
6. Under this Article, "health care provider" means a health care provider as defined in federal and state regulations implementing the FMLA and the CFRA. (29 C.F.R. §825.11; 2 C.C.R. §7297.[j])
7. In cases of adoption or foster care placement, the employee must provide written verification, such as an adoptive home study, an adoption placement agreement, or a juvenile court order.

ATTACHMENT 1

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

VI. CITY RESPONSE TO LEAVE REQUEST

It is the City's responsibility to designate leave, paid or unpaid, as family and medical leave-qualifying and to notify the employee of the designation. The City shall respond to the leave request as soon as practicable and no later than 10 calendar days after receiving the request. (2 C.C.R. §7297.4[a][6])

A. Parents' Dual Employment

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

B. Employee's Status on Returning from Leave

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

VII. PREGNANCY DISABILITY LEAVE AND BONDING LEAVE

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

ATTACHMENT 1

1. Duration of Leave

- a. An employee is entitled to up to four months of leave for the period(s) of time the employee is actually disabled by pregnancy, childbirth, or related medical conditions.
- b. Pregnancy disability leave may be taken as needed intermittently or on a reduced work schedule when medically advisable, as determined by the employee's health care provider. Only the amount of leave actually taken may be counted toward the four months of leave to which the employee is entitled.

2. Eligibility for Leave

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

B. Transfer

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

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

C. Eligibility for Transfer

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

1. Transfer to Accommodate Intermittent Leave or a Reduced Work Schedule

If it is medically advisable for an employee to take intermittent leave or leave on a reduced work schedule and it is foreseeable based on planned medical treatment because of pregnancy, the City may require the employee to transfer temporarily to an available alternative position. This alternative position must have the equivalent rate of pay and benefits, the employee must be qualified for the position, and it must better accommodate recurring periods of leave than the employee's regular assignment. The temporary assignment does not have to have equivalent duties. Transfer to an alternative position may include altering an existing job to accommodate better the employee's need for intermittent leave or reduced work schedule.

ATTACHMENT 1

2. Right to Reinstatement After Transfer

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

3. Requesting Leave or Transfer

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

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

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

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

D. Medical Certification

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

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

a. The date the employee became disabled due to pregnancy;

b. The probable duration of the period(s) of disability; and

c. An explanatory statement that, due to the disability, the employee is unable to work at all or is unable to perform any one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy, or to other persons.

ATTACHMENT 1

3. A medical certification indicating that it is medically advisable for the employee to be transferred to a less strenuous or hazardous position or to less strenuous or hazardous duties is sufficient if it contains:
 - a. The date the need to transfer became medically advisable;
 - b. The probable duration of the period(s) of the need for the transfer; and
 - c. An explanatory statement that, due to the employee's pregnancy, the transfer is medically advisable.

E. Terms of Pregnancy Disability Leave

1. A pregnancy disability leave is unpaid except that an employee shall be required to use all but 10 days of her accrued and accumulated sick leave during the otherwise unpaid pregnancy disability leave. An employee may choose to use any accrued sick leave, vacation, or other accrued paid personal time off that the employee is otherwise eligible to use during the otherwise unpaid pregnancy disability leave.
2. During unpaid pregnancy disability leave, the employee is entitled to accrue seniority and to participate in all employee benefit plans to the same extent and under the same conditions as would apply to any other unpaid disability leave under established City policy or memorandum of understanding.
3. During any portion of a pregnancy disability leave that an employee is using other accrued paid leave, the employee is entitled to accrue seniority and to participate in all employee benefit plans to the same extent and under the same conditions as apply to any paid sick leave, vacation, or other paid time off under established City policy or memorandum of understanding.
4. During any portion of a pregnancy disability leave that is also an FMLA leave, the City will continue to provide and pay for group health benefits on the same basis as coverage would have been provided had the employee been in paid status. When the employee has exhausted any FMLA portion of the leave and the employee continues on unpaid pregnancy disability leave only, the employee's entitlement to continued health benefit coverage will be the same as any other employee on an unpaid disability leave of absence.
5. An employee returning from pregnancy disability leave shall return with no less seniority than the employee had when the leave began for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits.

ATTACHMENT 1

6. The employee shall retain employee status while on pregnancy disability leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any memorandum of understanding or under any employee benefit plan. Benefits must be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualifying conditions.
 7. As a condition of the employee's return to work from pregnancy disability leave or transfer, the employee must obtain a release to return to work from her health care provider stating that she is able to resume her original job duties.
- F. Right to Reinstatement from Pregnancy Disability Leave/Transfer
1. Subject to state law and regulations, an employee returning from a pregnancy disability leave or transfer is usually entitled to reinstatement to the same position. If the City is excused by law from reinstating her to the same position, the employee is usually entitled to reinstatement to a comparable position.
 2. Reinstatement to the Same Position

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

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

An employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated. If the City is excused from reinstating an employee to her same position, or to the same duties, under Article VII F-2 then the City will reinstate the employee to a comparable position unless either of the following occurs:

 - a. No comparable position is available; or

ATTACHMENT 1

Family Care and Medical Leave, Pregnancy
Disability Leave, and Paid Family Leave

AI-567

14

VIII. INTEGRATION OF DISABILITY INSURANCE COVERAGE AND PAID LEAVES

An employee may supplement any disability insurance benefits paid under a City provided plan or SDI 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.



DEBORAH EDGERLY
City Administrator

ATTACHMENT 2

VERSION 10



DEPARTMENTAL
GENERAL
ORDER

Effective Date:
28 Apr 08

B-4

Evaluation Coordinator:
BOS Deputy Chief

Index as:

Evaluation Due Date:
dd mmm 08

Personnel Assignments, Selection
Process, and Transfers

Automatic Revision Cycle:
2 Years

TABLE OF CONTENTS

I. DEFINITIONS AND TERMINOLOGY 1

A. Applicable Members 1

B. Duration of Assignment 1

C. Exempt Assignment 1

D. Home Base 1

E. Intra-Divisional Transfer (Re-Assignment) 2

F. Loan..... 2

G. Matrix..... 2

H. Operating Principles..... 3

I. Order of Merit List 4

J. Transfer 5

K. Transfer List..... 5

II. POLICY 5

III. GENERAL TRANSFER PROCEDURES..... 6

A. Officers..... 6

 1. Initial Three (3) Year Patrol Rule 6

 2. One (1) Year Rule 6

B. Sergeants 7

 1. Initial Assignment After Promotion..... 7

 2. One (1) Year Rule 7

IV. TRANSFER LIST PROCEDURES 7

A. Personnel Desiring to Transfer..... 7

B. Specialized Units..... 7

C. Unit Supervisor or Commander/Manager Responsibilities 8

D. Member Responsibilities..... 8

E. Personnel Division Responsibilities..... 9

V. TL SELECTION PROCESS..... 9

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

VI. ORDER OF MERIT LIST PROCEDURES.....10
A. Announcement and Application Process.....10
B. Member Responsibilities11
C. Supervisor, Commander/Manager Responsibilities11

VII. OML SELECTION PROCESS.....12
A. Overall OML Testing Process12
1. Testing Components and Weighting12
B. Testing Components12
1. Written Test12
2. Practical Test13
3. Oral Board13
C. Placement List13
D. Unit Supervisor or Commander/Manager Responsibilities.....13
E. Member Responsibilities14
F. Transfer Limitations14
G. Where No OML Exists14

VIII. CAP EXTENSIONS15

IX. REMOVAL FROM ASSIGNMENT15
A. Duration of Assignment15
B. Voluntary Removal from Assignment.....15
C. Involuntary Removal from Assignment16
D. Permanent Elimination16
E. Temporary Deactivation or Reduction in Staffing16
F. Return to a Reactivated Unit16

X. LOAN PROCEDURES17
A. Final Approving Authority17
B. Member Loaned.....17
C. No Applicable TLs or OML Exists17
D. Unit Commander/Manager Responsibilities17
E. Bureau Deputy Chief/Director Responsibilities17
F. Personnel Division Procedures18

XI. LOAN EXTENSIONS.....18

XII. DEPARTMENT REORGANIZATION18

XIII. ADMINISTRATIVE APPEALS19

APPENDIX20

ATTACHMENT 2



DEPARTMENTAL
GENERAL
ORDER

B-4

Index as:

Personnel Assignments, Selection
Process, and Transfers

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PERSONNEL ASSIGNMENTS, SELECTION PROCESSES, AND TRANSFERS

The purpose of this order is to set forth Departmental policy and procedures to permit members of the rank of Police Officer and Sergeant to transfer to and from assignments in a manner that enhances their professional development and personal growth while adding value to the organization's effectiveness and improved job satisfaction. Additionally, this order describes the knowledge, skills, and abilities that are required to transfer to assignments other than the Patrol Division.

I. DEFINITIONS AND TERMINOLOGY

A. Applicable Members

This policy applies to all members of the rank of Police Officer and Sergeant of Police classifications.

B. Duration of Assignment ("Cap")

The length of time a member may be in an assignment (For synopsis of Cap lengths by type of assignment, refer to the Transfer Policy Summary Worksheet – Appendix).

C. Exempt Assignment

An assignment that is not subject to a Transfer List (TL) or Order of Merit List (OML) process. Members are selected for such assignments at the discretion of the Chief of Police.

D. Home Base

The principle organizational unit to which both police officers and sergeants are assigned is the Patrol Division, not to include T/L or OML assignments.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

E. Intra-Divisional Transfers (Re-Assignment)

The assignment of a member from one unit to another within the same division.

F. Loan

The temporary transfer of a member from one organizational unit to another for a specified period of time, not to exceed 90 days, without authorization by the Chief of Police.

G. Matrix

A selection criteria survey that gauges basic historical performance measures for individual members.

The unit supervisor or commander/manager who announces a vacant T/L or OML position shall prepare a Matrix for each applicant at the time he/she is being considered for transfer. The matrix shall include the following performance measures for the period of three (3) years prior to the selection date (T/L) or the application closing date (OML):

1. Felony Arrests Made – Total number.
2. Misdemeanor Arrests Made – Total number.
3. Citations Issued – Total number.
4. Sick Leave Used – Measured in total number of incidents and hours of each incident. (Do not include other Leaves of Absences)
5. IAD Complaints, excluding unfounded and exonerated – Total number.
6. Preventable Vehicle Collisions – Total number.
7. Positive/Negative Case Evaluations and Report Review Notices – Total number.
8. Commendations, Awards, and Letters of Appreciation;
9. Problem solving projects completed;
10. Departmental seniority;

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

11. Patrol Division Experience – Uniformed Patrol Division assignments as a supervisor, patrol officer, patrol rifle officer, canine handler, and police technician. Time shall be listed in years to the nearest month;
12. Service Time and current status as a Field Training Officer;
13. Other proactive enforcement; and
14. Performance Appraisals based on the last three (3) Overall Performance Appraisals
 - a. For T/L – For review to ensure eligibility.
 - b. For OML – Based on the last three Overall Performance Appraisals, the following numerical credit shall be apportioned as follows:
 - 1) Exceeds Expectations – 100 pts.
 - 2) Fully Effective – 85 pts.
 - 3) Improvement Needed – 60 pts.
 - 4) Unacceptable – 0 pts.

H. Operating Principles

The Department's policy for selection to units outside the Patrol Division is grounded in the following four principles:

1. Fairness

Personnel transfers shall be based on objective criteria and that bias and favoritism shall not influence such decisions.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

2. Transparency

The selection process for assignments outside of the Patrol Division shall be conducted in an open and understandable manner. Testing standards and the skills necessary to succeed in these assignments shall be clearly articulated.

3. Merit

Selection processes shall be designed to ensure that an OML position is filled by a member whose aptitude, skills, and abilities best qualify them for that specific OML position. Seniority shall be considered only when two candidates have equivalent qualifications.

4. Responsibility

Unit commanders/managers who screen and test candidates for assignments shall develop testing procedures that accurately gauge candidates' skill sets. Commanders/managers shall select those candidates whose test results indicate their aptitude, skills and/or abilities most closely match job requirements.

I. Order of Merit List (OML)

1. A list that is developed based on a competitive selection process in order to fill vacant positions for selected out-of-Patrol assignments. The OML is developed based on the results of Division/Section selection processes and lists in numerical order those who scored highest in the selection process (i.e., #1 on the OML) to who scored lowest in that process. An OML shall be valid for:

- a. A maximum of 18 months;
- b. Until the OML is exhausted (i.e., all members on the OML have been selected);
- c. No other suitable candidates remain on the list; or
- d. The list is voided.

2. OML positions shall not use "first come, first served" as a criteria for selection.

3. Out-of-Patrol assignments that are subject to OMLs are listed in the Transfer Policy Summary Sheet.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

J. Transfer

The assignment of a member from:

1. One bureau to another; or
2. From one division to another division within the same bureau.

K. Transfer List (TL)

A list that is developed based on "first-come, first-served" that is utilized to fill out-of-Patrol assignments to which members may wish to transfer. Such out-of-Patrol assignments are not subject to a competitive selection process. TL assignments are detailed in the Transfer Policy Summary Sheet.

II. POLICY

- A. The Chief of Police shall be the final authority regarding transfers of a member to TL, OML, or exempt assignments.
- B. The Chief of Police may pass over an eligible member on a TL or OML for reasons that include:
 1. The member's skills and abilities do not enable the Department to satisfactorily meet its needs, or
 2. The member's past performance deficiencies make the member unsuitable for the position sought.
- C. Caps shall apply to newly promoted sergeants in their initial assignment.
- D. Members shall return to the Patrol Division after reaching the maximum Cap.
- E. A unit commander/manager may extend an assignment until the next Patrol year for members who have an anniversary date falling after 1 Oct.
- F. Probationary members (to include sergeants) who are serving their initial assignment in or out of Patrol may not submit a Transfer Request Form (TF-605) until they have successfully completed their probationary period.
- G. A member assigned to Patrol may have three (3) active TL or OML requests on file at one time.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

- H. In those instances, where a member has submitted a request for a unit or assignment which has subsequently been "deactivated," he/she may have their request remain active but such a request shall be considered one (1) of the member's three (3) active requests.
- I. Members who have returned to Patrol from an out-of-Patrol assignment may submit a Request for Transfer Form (TF-605) up to the limit.
- J. Once a member is selected from a TL or OML and accepts an out-of-Patrol assignment, the member shall only be allowed to have one (1) active request (TL or OML) on file.

The member shall prepare and submit a Transfer Request Form (TF-605) or an OML memorandum, if necessary, to the Personnel Division to meet the one (1) active request requirement.

III. GENERAL TRANSFER PROCEDURES

A. Officers

1. Initial Three (3) Year Patrol Rule

In order to ensure that police officers develop a proper foundation (based on experience and on-going training) in the police profession, all new officers shall be required to complete a minimum of three (3) years in Patrol (includes the time a member spends in the Field Training Program). After completing the three (3) year minimum requirement, officers are eligible to transfer to an out-of-Patrol assignment. The three (3) year requirement may be waived with the approval of the Chief of Police.

2. One (1) Year Rule

- a. After reaching the Cap in an out-of-Patrol assignment, officers shall be required to serve a minimum of one (1) year in Patrol prior to being transferred to an out-of-Patrol assignment.

EXCEPTION: The Chief of Police or designee may approve a transfer of an officer in an out-of-Patrol assignment to another eligible out-of-Patrol assignment within the Cap. The combined Cap of the two (2) assignments shall not exceed eight (8) years.¹

¹ Shall not exceed 10 years if the Homicide Section is the out-of-Patrol assignment that will put the member over the eight (8) year maximum. e.g., If a member is in Homicide for between 8-10 years, the member cannot transfer to another out-of-Patrol assignment. However, if the member is in an out-of-Patrol assignment for four

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

- b. A transfer or loan of a member assigned from Patrol to an out-of-Patrol assignment exceeding 90 days shall not be considered as "Patrol Time" for purposes of calculating the minimum "one (1) year in Patrol" rule.

B. Sergeants

1. Initial Assignment After Promotion

Upon promotion to the rank of Sergeant of Police, the member's first assignment shall be at the discretion of the Chief of Police.

2. One (1) Year Rule

- a. After reaching the Cap in an out-of-Patrol assignment, sergeants shall be required to complete a minimum of one (1) year in Patrol prior to being transferred to an out-of-Patrol assignment.

EXCEPTION: The Chief of Police or designee may approve a transfer of a sergeant in an out-of-Patrol assignment to another eligible out-of-Patrol assignment within the Cap. The combined Cap of the two assignments shall not exceed eight (8) years.²

- b. A transfer or loan of a member from Patrol to a out-of-Patrol assignment exceeding 90 days shall not be considered as "Patrol Time" for purposes of calculating the minimum "one (1) year in Patrol" rule. Exceptions to this rule shall be approved by the Chief of Police.

IV. TRANSFER LIST PROCEDURES

- A. Personnel desiring to transfer from one organizational unit to another shall submit a completed Request for Transfer Form (TF-605) to the Personnel Division.
- B. Specialized Units

(4) years and gets transferred to Homicide, the member may stay in Homicide for a total of four (4) years plus two (2) one (1)-year extensions (total 10 years).

² Same as footnote 1.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

Members who are being considered for transfer or are in the process of transferring to specific specialized units shall comply with the provisions of DGO E-3.1, DEPARTMENT NOTIFICATION COMPLIANCE VERIFICATION.

C. Unit Supervisor or Commander/Manager Responsibilities

The unit supervisor or commander/manager:

1. May make internal staffing changes to fill vacant positions prior to using the established transfer list.
2. Shall notify the top five (5) members on the T/L to determine his/her continued interest in the available position, and if still interested, advise the member they are being considered for transfer.

NOTE: Document notification due diligence.

3. Shall prepare a prospective member's matrix to include the criteria in Part I, G, of this order.³

D. Member Responsibilities

1. Members shall respond within ten (10) calendar days of notification, to the unit supervisor or commander/manager making notification, indicating they are still interested in the position.
2. Failure to respond within the prescribed period shall constitute a declination by the member.
3. Members shall be responsible for removing their names from those transfer lists for positions in which they are no longer interested.

³ Information from iPAS may be obtained through the candidate's immediate supervisor or the PAS Coordinator.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

E. Personnel Division Responsibilities

The Personnel Division shall:

1. Time and date stamp each Transfer Request Form;
2. Update the Transfer List of the specific assignment;
3. Forward a copy of the time and date stamped Transfer Request Form to:
 - a. The submitting member; and
 - b. The unit supervisor or commander/manager of the unit for which the T/L was established.
4. Maintain a copy of the Transfer Request Form(s) until the member:
 - a. Is transferred per the Transfer Request Form;
 - b. Requests removal from the list; or
 - c. The TL expires.

V. TL SELECTION PROCESS

- A. The unit supervisor or commander/manager shall forward the completed matrices and selection recommendations through the chain-of-command to the Chief of Police.
- B. The final selection shall be made by the Chief of Police.
- C. Any member who is passed over shall be notified. This shall not constitute a refusal or declination by the member.
- D. Any member who declines the same TL position on three (3) separate occasions shall be removed from the TL for *that* position.
- E. The unit supervisor or commander/manager shall:
 1. Document a transfer waiver on a Transfer List / Order of Merit List Transfer Waiver Form (TF-605c);
 2. Forward a copy to the Personnel Division;

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

3. Forward a copy to the member; and
 4. Retain a copy in the appropriate unit file.
- F. At no time shall a member be permitted to transfer to a TL position unless the member is able to perform the essential functions of the position, with or without reasonable accommodation.⁴
- G. Where no TL exists, the unit supervisor or commander/manager shall announce the position in the Daily Bulletin. If, after the announcement, there are no responses, the unit supervisor or commander/manager shall confer with the Chief of Police who shall approve a transfer of an appropriate member to meet the functional needs of the Department.

VI. ORDER OF MERIT LIST PROCEDURES

- A. Announcement and Application Process
1. When a unit position vacancy is anticipated and no OML exists, the supervisor, commander, or manager who oversees the position shall prepare a Daily Bulletin announcement.
 2. The announcement shall, at a minimum, contain the following information:
 - a. Position;
 - b. Normal work schedule (days off, work shift);
 - c. List of minimum skills and competencies required;
 - d. Additional desirable skills;
 - e. Duty description to include performance measures and responsibilities;
 - f. Selection process and schedule;
 - g. Source materials for designated selection testing;
 - h. Training and travel requirements related to the position; and

⁴ Reasonable accommodation is defined in accordance with the California Fair Employment and Housing Act and the Americans with Disabilities Act.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

- i. Closing date/time for applications.

B. Member Responsibilities

Upon announcement of an OML position, interested members shall forward an OML Assignment Interest Form (TF-605e) through his/her chain-of-command to the appropriate supervisor or commander/manager seeking qualified candidates. No endorsements shall be documented on the Form.

C. Supervisor, Commander/Manager Responsibilities

The supervisor, commander, or manager shall:

1. At least 28 consecutive days prior to the application closing date, ensure the announcement is forwarded for distribution as follows:
 - a. Daily Bulletin for at least seven (7) consecutive days;
 - b. Personnel Division for posting in the Personnel Division; and
 - c. Department-wide email.
2. Receive and maintain all OML Assignment Interest Forms in unit files.
3. Once the application period is closed, prepare and submit a plan for the selection and testing process to his/her first-level commander/manager for approval.
4. Prepare a matrix for each candidate to include the criteria in Part I, G, of this order.⁵

⁵ Same footnote as 3.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

VII. OML SELECTION PROCESS

A. Overall OML Testing Process

1. Testing Components and Weighting

Testing components that are applicable to each assignment are designated in the Transfer Policy Summary Worksheet. There are four (4) possible testing components:

- a. Matrix (to include performance appraisal numerical credit);
- b. Written Test;
- c. Practical Test; and/or
- d. Oral Board.

2. Every testing process shall use the matrix. If the matrix is the only testing component, it shall be weighted as 100% of the testing process.

3. The sum of multiple testing components shall be 100%.

B. Testing Components

Following the completion of a Matrix for each applicant, the supervisor or commander/manager shall prepare and conduct an appropriate practical test and/or an oral board as indicated in the Transfer Policy Summary Worksheet. Any combination of the practical test and oral board results may be used to determine if the applicant will be allowed to continue in the process.

1. Written Test

The content of the written test shall measure the aptitude, knowledge, skills, and abilities required for the vacant position. All written tests shall be reviewed and approved by the appropriate Division Commander/Manager.

Unit commanders/managers conducting OML testing (written, practical and/or oral boards) shall maintain completed and graded tests until the expiration of the OML.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

2. Practical Test

The content of a practical test shall measure the aptitude, knowledge, skills, and abilities required for the vacant position. A practical test may be given to demonstrate the applicant's ability to perform the essential tasks/job functions of the position.

3. Oral Board

The content of the oral interview shall focus on the applicant's documented work performance and his/her knowledge, skills, and abilities that qualify him/her for the vacant position.

C. Placement List

1. At the completion of the testing process, the supervisor, commander or manager shall tabulate the scores and prepare an Order of Merit List (OML) based on their cumulative score in the testing process.
2. The OML shall be effective for 18 months after the published date of the list or until the list is exhausted or no other suitable candidates remain on the list, or the list is voided.

D. Unit Supervisor or Commander/Manager Responsibilities:

1. The supervisor or unit commander/manager shall
 - a. Personally contact the top five (5) eligible member(s) on the OML and advise that he/she is being considered for transfer when a vacant OML position needs to be filled to determine his/her continued interest in the available position.
 - b. Document a transfer waiver on a Transfer List / Order of Merit List Transfer Waiver Form (TF-605c);
 - c. Forward a copy to the member; and
 - d. Retain a copy in the appropriate unit file.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

2. Specialized Units

Members who are being considered for transfer or are in the process of transferring to specific specialized units shall comply with the provisions of DGO E-3.1, DEPARTMENT NOTIFICATION COMPLIANCE VERIFICATION.

E. Member Responsibilities

1. Members shall respond within ten (10) calendar days of notification to the unit supervisor or commander/manager making notification indicating they are still interested in the assignment.
2. Failure to respond within the prescribed period will constitute a declination by the member.
3. Members shall be responsible for removing their names from OML positions in which they are no longer interested.
4. Any member who declines the same OML position on three (3) separate occasions shall be removed from the OML for **that** position.
5. Unit commanders/managers are responsible for notifying the Personnel Division in writing when a member declines an OML position or is removed from an OML for this reason.

F. At no time shall a member be permitted to transfer to an OML position unless the member is able to perform the essential functions of the position, with or without reasonable accommodation⁶ as determined by the unit commander/manager.

G. Where no OML exists, the unit supervisor or commander/manager shall announce the position in the Daily Bulletin. If, after the announcement, there are no responses, the unit supervisor or commander/manager shall confer with the Chief of Police who shall approve a transfer of an appropriate member to meet the functional needs of the Department.

⁶ Same as footnote 3.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

VIII. CAP EXTENSIONS

Out-of-Patrol assignments shall have a Cap of five (5) years in length. A Deputy Chief/ Director may allow three (3)-one (1) year extensions, for a total of eight (8) years in the assignment.

Members assigned to the Homicide Section shall have a Cap of eight (8) years. The BOI Deputy Chief may allow two (2)-one (1) year extensions for a total of 10 years in the assignment.

IX. REMOVAL FROM ASSIGNMENT

A. Duration of Assignment

Members shall be transferred out of an out-of-Patrol assignment in accordance with the Caps listed in the Transfer Policy Summary Worksheet.

B. Voluntary Removal from Assignment

1. Members who are in an out-of-Patrol assignment may voluntarily request a transfer by providing a written request to be transferred to Patrol at any time.
2. Unit commanders/managers shall endeavor to accommodate such requests however, the functional needs of the Department shall prevail.
3. An officer in an out-of-Patrol assignment may voluntarily transfer to another eligible out-of-Patrol assignment, within the Cap, with the approval of the Chief of Police or designee. The combined Cap of the two assignments shall not exceed eight (8) years.
4. Any member who voluntarily transfers back to Patrol before the end of the established out-of-Patrol Cap shall spend a minimum of one (1) year in Patrol before moving to another out-of-Patrol assignment.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

C. Involuntary Removal from Assignment

Members may be transferred for the following reasons:

1. Conduct

A member may be transferred when misconduct makes them unsuited for continued service in his/her assignment.

2. Performance

A member may be transferred when he/she is performing at a less than overall "Fully Effective" level.

D. Permanent Elimination of an Out-of-Patrol Assigned Position

If an out-of-Patrol position is eliminated, the member who held it shall be eligible for another out-of-Patrol position without the one (1) year "Patrol Time" requirement. The combined Cap of the two assignments shall not exceed eight (8) years.

E. Temporary Deactivation or Reduction in Staffing of an Out-of-Patrol Assigned Position

If a member is transferred as a result of a temporary deactivation of an out-of-Patrol assignment, the member shall be placed on the existing transfer list for the respective assignment based on unit seniority. The respective member's Cap time shall cease.

F. Return to a Reactivated Unit

1. Members returning to an out-of-Patrol position that had been temporary deactivated or reduced in staff shall be allowed to return, provided the member remains eligible, to the unit to serve out his/her remaining Cap time. The Department shall use the existing transfer list to fill reactivated positions.
2. If any member, placed on the transfer list as a result of a temporary deactivation and serving less than one (1) year in Patrol, declines the transfer back to the reactivated unit, he/she shall be removed from the transfer list.
3. If a member who was transferred, as a result of a position deactivation, has served one (1) year in Patrol, that member may return to the reactivated unit as a new transfer.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

X. LOAN PROCEDURES

- A. The Chief of Police shall be the final approving authority regarding involuntary loans.
- B. If possible, the member loaned shall be either the first eligible member on the TL (for TL positions) or the first eligible member on the OML (for OML positions).
- C. If no applicable TLs or OML exists, the Chief of Police shall approve loans to meet the functional needs of the Department.
- D. Unit Commander/Manager Responsibilities

A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan.

The justifying loan request shall contain the following information:

- 1. Reason for loan;
- 2. Number of personnel required; and
- 3. The number of days, up to 90 days, during which the loan shall be in force and the duty hours.

- E. Bureau Deputy Chief/Director Responsibilities

The Bureau Deputy Chief/Director to whom a loan request is submitted shall:

- 1. Endorse the request

If approved, the Bureau Deputy Chief/Director shall designate a candidate from within his/her own bureau or, if none is available, the request shall be denied or forwarded to the Chief of Police with an endorsement requesting that the loan be filled from another Bureau. The loan shall be discussed at the weekly Personnel meeting.

- 2. Upon approval by the Chief of Police, the justifying letter shall be forwarded to the Personnel Division.

The member shall be placed on the next issued Departmental Personnel Order and become effective on the date designated by the Chief of Police.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

F. Personnel Division Procedures

1. The Personnel Division shall report the current status of loans on the weekly Personnel Distribution Report (PDR). Loans shall be designated on the Departmental Personnel Order in the same manner as a regular transfer except in the column titled "Replacing" the words "Loan Status" shall be entered with the loan expiration date. The number of loans for the calendar year for each loaned member in the PDR shall also be listed.
2. When the loan date expires, the Personnel Division shall automatically place a loaned person's name on the next Departmental Personnel Distribution Report (PDR) transferring him/her back to his/her previous organizational unit.

XI. LOAN EXTENSIONS

- A. Members are subject to only two (2) consecutive 90-day loans.
- B. Unit commander/managers shall ensure members on loan to their division/unit shall not exceed 90 days without approved authorization.
- C. Prior to the end of the first 90-day loan period, the unit commander/manager may submit an extension request through the chain-of-command to the Chief of Police for approval.
- D. Upon approval, the Personnel Division shall automatically place a person's name on the next PDR extending the loan.

XII. DEPARTMENT REORGANIZATION

Notwithstanding Departmental reorganizations, a member's letters for Transfer List positions and standings on OMLs shall remain in effect. Renaming units or making minor modifications to the job descriptions shall not nullify Transfer Lists or OMLs.

ATTACHMENT 2

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

B-4

Effective Date
28 Apr 08

XIII. ADMINISTRATIVE APPEALS

All rights to redress for Department compliance with procedures contained in this policy shall be subject to the grievance procedure contained in the current Memorandum of Understanding, except that such grievances shall not be subject to Immediate Dispute Resolution, arbitration or any provisions of City Charter Section 910. The Chief of Police or designee shall be the final authority on all grievance issues related to this order.

By Order of

Wayne G. Tucker
Chief of Police

Date Signed: _____

ATTACHMENT 2

ATTACHMENT 2

B-4 Effective Date
28 Apr 08

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

APPENDIX Transfer Policy Summary Worksheet

	Ofc's	Sgts	Min Cap (years)	T/L- OML- Exempt	Written Test	Practical Test	Oral Board	Exempt	Comments
Backgrounds/Recruiting	Y	Y	5	O	N	N	N	N	
BFO Admin	Y	Y	5	O	N	Y	Y	N	
Chief of Staff	Y	Y	N/A	E	N	N	Y	Y	
CID (See Included Units) ⁷	Y	Y	5	O	Y	N	Y	N	
Narcotics Charging	Y	N	5	T/L	Y	N	Y	N	
Weapons Charging	Y	N	5	T/L	Y	N	Y	N	
CLASS	Y	Y	5	T	N	N	Y	N	
Communications Supervisor	N	Y	5	T	N	N	N	N	
CRT	Y	Y	5	O	N	N	Y	N	
Facilities Dev Coordinator	Y	Y	5	O	N	N	Y	N	
Foot Patrol	Y	Y	5	T	N	N	N	N	
FTO Coordinator	Y	Y	5	O	N	N	Y	N	FTO exp is a prerequisite
Helicopter Unit	Y	Y	10	O	Y	Y	Y	N	Chief may extend addit ¹ 10 yrs.
Homicide	Y	Y	8*	O	Y	Y	Y	N	
Intelligence	Y	Y	N/A	E	N	N	Y	Y	
IAD	Y	Y	5	E	N	N	Y	Y	Exempt but subject to Cap.
Information Technology	Y	Y	5	O	N	Y	Y	N	
K-9	Y	N	10**	O	Y	Y	Y	N	
OIG	Y	Y	5	O	N	N	Y	N	
Patrol Rifle Coordinator	Y	Y	N/A	O	N	N	Y	N	PRO experience prerequisite
Problem Solving Officer	Y	N	5	T	N	N	N	N	
Public Information Officer	Y	N	5	O	Y	Y	Y	N	
Ranger Unit Supervisor	N	Y	5	T	N	N	N	N	
Records and Warrants	Y	N	5	T	N	N	N	N	
Fleet Tow Coordinator	Y	N	5	T	N	N	N	N	

⁷ CID includes the following investigative units - Robbery, Assault, Property/Theft, Crime Analysis

ATTACHMENT 3

**MEMORANDUM OF UNDERSTANDING
ON PROMOTIONAL EXAMINATIONS BETWEEN THE
CITY OF OAKLAND
AND
OAKLAND POLICE OFFICERS' ASSOCIATION
JULY 1, 2006– JUNE 30, 2013**

ATTACHMENT 3

Discrimination Prohibited. City and Association shall not discriminate in any way on account of race, color, religion/religious creed, sex/gender, pregnancy, marital status, national origin/ancestry, ages, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law.

Promotional Examinations

Scheduling. Stage 1 of each promotional examination normally will be held within thirty (30) days prior to the date of expiration of the eligibility list for a classification. In the event a promotional list is exhausted and that occurs more than ninety (90) days before the expiration date of the list pursuant to this MOU, stage 1 will commence within ninety (90) days of the date of exhaustion. In the event a promotional list is exhausted less than ninety (90) days before the expiration date of the list, stage 1 will commence within thirty (30) days of the expiration date of the list. In all other circumstances the City retains the right and has the option to extend the list for up to thirty (30) days to fill any existing vacancies. The City will notify the Association if the list is so extended.

Sign-up. An eligible employees may sign up to take the next examination at any time before the announcement of that examination, by sending a completed notice of intent form stating his/her desire to the Personnel Office of the Police Department. The Police Department will issue, with the announcement of an examination, a list of employees who have submitted a notice of intent. Any eligible employee whose name does not appear on the list may sign up for that examination by submitting a notice of intent to compete (promotional exam) form to the Police Personnel Office, within fourteen (14) calendar days from the posting date of the announcement.

Announcement. The announcement for a promotional examination shall include a general description of the examination portions and the weights assigned to each.

Examination Eligibility. Applicants must serve as employees of the Oakland Police Department for the time periods enumerated below to be eligible for the respective promotional examination. Service at another police organization shall not count toward the minimum years of service necessary to take the respective examination.

Minimum Qualification Criteria:

- a) Five (5) years as a Police Officer --- to Sergeant of Police; and
- b) Three (3) years as Sergeant of Police --- to Lieutenant of Police; and

ATTACHMENT 3

- c) Two (2) years as a Lieutenant of Police --- to Captain of Police.

The above periods of service eligibility shall be determined as of the closing date of the application period.

Examination Weights. Weights of portions of a promotional examination shall be based on a current specification/job analysis for the classification being examined, as solely determined by the City.

Observers for promotional examinations shall be selected on the basis of the following criteria:

- a) Prior to the examination, the declared and agreed observer shall be selected by the Chief of Police, the Director of Personnel and the President of the Association.
- b) The observer shall be an active or a retired police officer.
- c) The observer may be from another law enforcement agency and shall have held the rank at least one rank above that of the candidates being examined.
- d) Every reasonable effort shall be made to ensure a panel with a diverse composition.

There shall be one observer per examination.

- a) The observer shall report to the City any and all suspected examination process irregularities, including but not limited to those that may discriminate on the account of race, color, religion/religious creed, sex/gender, pregnancy, marital status, national origin/ancestry, ages, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law. The Association is invited to attend this meeting.

The observer is required to report any suspected irregularities referenced in the preceding paragraph to the Office of Personnel's designated examination administrator by the conclusion of the examination phase in which the alleged irregularity occurs. If the exam administrator fails to address the observer's concern to the observer's satisfaction, the observer shall promptly report the concern to the Director of Personnel Resource Management.

If an observer fails to report the suspected irregularity to the examination administrator by the conclusion of the examination phase in which the suspected irregularity occurs, the observer must report the suspected

ATTACHMENT 3

irregularity to the Director of Personnel Resource Management as soon as reasonably possible.

- b) The observer shall not report on nor disclose the content of an examination.
- c) The observer shall not report on nor disclose the comparative performance of candidates participating in an examination. The observer shall not discuss the performance of an individual candidate, unless that candidate files a grievance alleging discrimination or examination irregularities as defined in Section 7.a, above. In that case, the City, and the observer will meet to discuss the observer's observations regarding the candidate's performance. The Association is invited to attend this meeting.
- d) The observer shall be present at all phases of the examination, including: the training of the raters and the examination portions, except in the case of simultaneous portions/exercises where the observer can physically watch only one exercise without being disruptive. The scoring integration session with the raters may be monitored by the observer.
- e) An examination candidate shall have the right to exclude the observer from any exercise, which requires the candidate to perform alone before any rater(s).
- f) The observer is strictly limited to passively observe and shall not talk, disrupt, provide any information or clues to any candidate or rater during the examination process, nor interrupt proceedings in progress, or otherwise disturb the examination process.
- g) The observer shall at all times protect the confidentiality of the examination content and each and every candidate's performance.

8. Conduct of Examinations.

- a) Some portion of each promotional examination shall be an objective written test. "Objective" means a test that has a predetermined list of correct answers, which eliminates subjective opinion or judgment in the scoring process.
- b) It is the intent of the parties to maintain candidate anonymity during the testing/scoring process of promotional examinations. Candidate's anonymity in the scoring of promotional examinations shall be accomplished as follows:

In the written portion of the examination, candidates shall sign in and receive a pre-numbered test package containing all test materials for this

ATTACHMENT 3

portion of the examination. As soon as possible after the last candidate has signed in, the list of candidates with their test identification numbers shall be sealed in a tamperproof envelope and retained by the Office of Personnel for future identification in the testing process.

As soon as practicable, after the final weighted scale scores, including all challenges, item analysis, etc. have been determined, the envelope containing the list of candidates and their test identification numbers shall be opened in the presence of the neutral observer, and the candidate's name shall be linked to his/her ID number for the written test score. The City will provide a copy of the scale ranked scores to the neutral observer immediately upon completion of it.

If the examination is given in stages, for any stage requiring rating sheets and/or any other scoring instruments, the same numbered process and test materials procedures as outlined above shall be employed.

- c) Candidates shall be required to complete a confidentiality agreement, which precludes candidates from sharing test information until the examination in progress is completed. Candidates violating the confidentiality agreement will have their names removed from the eligibility list.
- d) Pass point shall be established solely at City discretion and will be available for review by the Association only, within a reasonable time period after completion of the promotional exam.
- e) To the extent possible, the same assessors will be used to rate all of the candidates in exam process for each respective exercise.
- e) Sergeant of Police promotional examination shall use the following merit points for service as an FTO:
 - i. Any employee serving in good standing as a FTO, for the Oakland Police Department, for a minimum of one (1) year, in his/her prior five (5) years of service as of the closing date of the application period for the Sergeant of Police promotional examination shall receive one (1) additional point to his/her cumulative raw score.
 - ii. Any employee serving in good standing as an active FTO, for the Oakland Police Department, in excess of two (2) years in his/her prior five (5) years of service as of the closing date of the application period for the Sergeant of Police promotional examination, shall receive two (2) additional points to his/her final score.
- g) Examinations shall be completed according to the following timeliness:

ATTACHMENT 3

Sergeants: Ninety (90) days from the commencement of stage 1 to list publication.

Lieutenants: Sixty (60) days from the commencement of stage 1 to list publication.

Captain: Forty-five (45) days from the commencement of stage 1 to list publication.

- h) Upon written request of an exam candidate, the City will provide the candidate and the OPOA a copy of its multiple choice key review which provides explanations for actions taken on test questions which are challenged, miskeyed, double keyed and/or eliminated.
- i) Nothing in this agreement shall preclude the OPOA and the City, after consultation prior to an examination, from mutually agreeing to alternate methods, dates or any other modifications to provisions of this agreement with regard to conduct of examinations, including but not limited to extending the time deadlines noted above.

9. Duration of Eligibility Lists. Eligibility lists established by promotional examinations shall be in effect for a period of eighteen (18) months. The list may be extended as defined in Section B. 1.

10. Certification of Eligibles to Fill Vacancies.

In the case of certification from a promotional list to fill a position, for which no reinstatement list exists, the Director of Personnel Resource Management shall certify to the appointing authority five (5) names. In the case of certification from such lists to fill multiple vacancies, the Director shall certify a number of names equal to the number of vacancies to be filled and four (4) additional names; provided, however, that a lesser number may be certified when there is not the required number on the eligible list.

No person shall be certified from an eligible list more than six (6) times for the same or a similar position, except at the request of an appointing authority, provided that certification for temporary services shall not be counted as one of such certifications.

- C. Dispute Resolution. If a dispute arises involving the interpretation or application of this Promotional MOU, that dispute shall be resolved as provided by the existing Grievance Procedure contained in the current MOU.
- D. Term. This Promotional MOU shall become effective July 1, 2006 and shall remain in effect for a period of four (4) years, terminating on June 30, 2010.

CITY OF OAKLAND, a Municipal

OAKLAND POLICE OFFICERS'

ATTACHMENT 3

Corporation

ASSOCIATION

By _____

By _____

Date: _____

Date: _____