MEMORANDUM OF UNDERSTANDING

Between

CITY OF OAKLAND

and

OAKLAND POLICE MANAGEMENT ASSOCIATION

CITY OF OAKLAND

OAKLAND POLICE OFFICERS ASSOCIATION

July 1, 2006 through June 30, 2015

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PREAMBLE

We, the undersigned, duly appointed representatives of the City of Oakland and of the Oakland Police Management Association, a recognized employee organization, hereinafter referred to as "City" and "Association," do hereby jointly prepare and execute on the _____ day of _____, 2011, the following written Memorandum of Understanding. It is understood that the provisions set forth apply to City of Oakland employees officially designated to be members of Police Management Unit.

IT IS THEREFORE AGREED as follows:

ARTICLE I GENERAL PROVISIONS

A. Recognition

City agrees to recognize the Oakland Police Management 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 the Police Management Unit.

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, disability of a member legally qualified to perform the job. City 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. Dues Deduction

Upon receipt of a written voluntary authorization from the employee, the 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.

2. 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.

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 MOU, in accordance with the provisions of Charter Section 910 and this MOU.

Except as limited by Charter Section 910 and by the specific provisions of this MOU, 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 MOU, neither the City nor the Union concede or relinquish its rights under Charter Section 910.

ARTICLE III DIRECT PAY FOR SERVICE

A. Salary

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

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

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

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

5. Effective January 1, 2014, the base salary for represented employees shall be increased by two percent (2%).

6. Effective January 1, 2015, the base salary for represented employees shall increase by two percent (2%).

B. Step Adjustment

Payment for first step police officer classification only will be reduced by ten percent (10%) for those sworn employees hired on or after July 1, 2011.

C. Police Officer Trainee Pay

For those employees hired on or after July 1, 2011, those classified as Police Officer Trainee will receive a salary that is fifteen percent (15%) less than the new first step established in Article III, Section B of this MOU.

D. 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.

E. 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.

F. Overtime

All bargaining unit members are exempt from overtime under the Fair Labor Standards Act. No employee shall be entitled to receive overtime compensation or compensatory time for work performed under this Memorandum of Understanding. Assignments that are

reimbursable by third parties may, at the Chief's discretion, be paid at time and one-half. Bargaining unit members shall not be entitled to compensatory time for such work.

ARTICLE IV PERFORMANCE INCENTIVES

A. Longevity 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
(1) 7 through 9 years of service	$1275	
(2) 10 through 14 years of service	$1475	
(3) 15 through 19 years of service	$1675	
(4) 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.

ARTICLE V RETIREMENT

A. Retirement Contribution

The City agrees to continue to contract with the Public Employee's Retirement System (PERS) to provide the 3% at 50 retirement plan for each active bargaining unit member hired prior to July 1, 2011.

The City agrees to contract with PERS to provide the 3% at 55 retirement formula for employees hired on or after July 1, 2011.

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

Effective July 1, 2011, all represented members shall pay the full, normal employee retirement contribution of nine percent (9%) to PERS. 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.

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.

C. PERS One Year Final Compensation

The retirement allowance of all bargaining unit members hired prior to July 1, 2011 and who are presently members of the Public Employees Retirement System (PERS) is based on the twelve (12) highest paid consecutive months under the plan.

For bargaining unit members first employed on or after July 1, 2011 the City shall amend its PERS contract to provide for the calculation of pension benefits based on the final average salary of the years under Government Code 20037.

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. Deferred Compensation Plan

Represented employees may participate in the City's established deferred compensation plan. The Oakland Police Management Association shall have one voting member on the City's Deferred Compensation Committee. The OPMA may designate an existing member of the Committee to represent its interests.

F. 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 OPMA shall participate in discussions undertaken by the City with employee representatives of other bargaining units.

Any change directly affecting compensation as provided by this MOU will have an effective date of on or after July 1, 2010.

ARTICLE VI INSURANCE PROGRAMS

A. 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 dependent health insurance coverage in the applicable Bay Area Kaiser (PEMHCA) plan.

B. 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 shall 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.

C. 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 VII LEAVES AND HOLIDAYS

A. Management Leave

Management Leave may be granted pursuant to AI 516 (Appendix A for informational purposes).

B. Vacation Leave

1. **Benefit**

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 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.

2. **Usage**

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

3. **Vacation 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.

C. 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 bank accruals in excess of 480 hours shall be converted pursuant to section (b) of this subsection 2. credits may be accumulated not to exceed four hundred eighty (480) hours.

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 service.

a. Sick Leave Incentive Program

Effective July 1, 2011 fifty percent (50%) of all accrued sick leave time in members' secondary/"virtual" sick time banks shall be converted to vacation time. Once the conversion occurs, the secondary/"virtual" sick time banks shall be eliminated. Thereafter, members' sick leave bank accruals in excess of four-hundred and eighty (480) hours shall be converted annually in January of each calendar year. Fifty percent (50%) of the excess sick leave hours shall be converted into vacation time. Upon final separation from service, members' sick leave bank accrued balances shall be cashed out on a fifty percent (50%) basis..

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. 657 (Appendix B for informational purposes), 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.

D. 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.

E. 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. Benefit

Upon approval of the department head or his designated representative, an employee may be granted family death leave up to an amount not to exceed five (5) working days. 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.

F. 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 service 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 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 normal 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 active 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 unpaid. The period of city compensation for military may be extended by resolution of the city council.

G. 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.

H. 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.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no additional holiday pay for September 9th, known as “Admissions Day.” Employees who work Admissions Day will receive straight time pay. Those employees who do not work Admission Day will not receive holiday compensation.

2. **Floating Holiday**

The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no credit of eight (8) hours of compensatory time a the beginning of each fiscal year.

3. **Holiday Pay**

All bargaining unit members will be paid eight (8) hours of straight time for each holiday as defined in Article VII Section H.

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 entire provision (VII.H.4) will expire on June 30, 2012.

ARTICLE VIII ALLOWANCES

A. 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.

B. Uniform Boots

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

C. 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.

ARTICLE IX 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, these incentives will be treated as separate incentives.

A. Education Incentives

1. P.O.S.T. Management Certificate

Effective July 1, 2008, a bargaining unit member covered by this MOU who has obtained the Post Management Certificate shall receive five percent (5%) of his/her regular base salary.

Employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

2. **Bachelor's Degree**

Effective July 1, 2008, a bargaining unit member covered by this MOU who has obtained a Bachelor's degree from an accredited college or university shall receive an additional five percent (5%) of his/her regular base salary. Employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

3. **Masters Degree**

Effective July 1, 2008, a bargaining unit member covered by this MOU who has obtained a Master's degree from an accredited college or university shall receive an additional five percent (5%) of his/her regular base salary. Employees who qualify shall be eligible beginning with the first full pay period after submission of verification of eligibility.

B. Tuition Reimbursement

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

GRADE REIMBURSEMENT:

A - 100% of the cost of a course.
B - 75% of the cost of a course.
C - 50% of the cost of a course.

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. An employee shall be allowed to take up to two (2) courses eligible for reimbursement at any one time. The combined cost of the courses shall not exceed the cost of part-time enrollment (0-6 units) in the California State University System at the tuition rate applicable as of Spring 2008 (semester and quarter). The employee shall be required to provide proof of registration costs at the time they seek reimbursement.

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

C. Bilingual Pay

An employee who has been certified as a bilingual speaker by the Office of Personnel shall receive an additional Fifty Dollars ($50.00) per pay period. Bilingual pay may be discontinued if and when the Chief of Police or his/her designee determines that an employee receiving bilingual pay is in an assignment that does not have significant public

contact with speakers of the qualifying languages. Determinations made by the Chief of Police and his/her designee under this provision shall not be subject to the grievance procedure.

ARTICLE X SPECIAL PROVISIONS

A. 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, the OPMA may designate a member of the selection committee to represent their interests.

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

2. Substance Abuse Counseling

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.

B. Physical Fitness/Exercise Physiology Program

City agrees to provide a Physical Fitness/Exercise Program for more than one-half (1/2) of all employees per year.

C. Reduction in Force

The City agrees that there will be no layoff of members for the duration of this MOU. This provision does not apply to termination based on disciplinary proceedings.

Subject to other provisions in this section, 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, as same existed on June 1, 1981, 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.

This article shall not apply to members holding the rank of Deputy Chief.

D. Rank Reversion

There shall be no involuntary reversions or demotions of members for the duration of this MOU. This provision does not apply to rank reversions or demotions based on disciplinary proceedings.

E. Furloughs

There shall be no involuntary furloughs of members for the duration of this MOU.

F. Annuitant Employees

There shall be no annuitants, per diem or hourly contract employees employed at the Oakland Police Department in positions that have traditionally been performed by sworn members for the duration of this MOU. This provison shall not apply to the existing seven (7) individuals (identified by the parties) currently working in Internal Affairs Divison (IAD) and Office of the Inspector General (OIG) on issues related to compliance of the Negotiated Settlement Agreement ("NSA") arising out of the *Allen v. City of Oakland* litigation.

G. Patrol Schedule

For the duration of this MOU, the current 4/10 shift schedule shall be the core shift in patrol. There shall be no 5/8 shift schedule in patrol for the duration of this MOU.

H. Personnel Files

Members of the Association shall be afforded access to their personnel files, including but not limited to supervisory notes files, pursuant to the provisions of the Public Safety Officers' Procedural Bill of Rights (Gov. Code Section 3300 *et seq.*).

I. New Hires

The Association and the City agree to discuss compensation and benefits for new hires through the term of this MOU. Any modifications to wages and/or benefits for new hires shall be subject to mutual agreement. Such discussions shall not be deemed, nor shall constitute a reopener of the MOU, nor lead to impasse proceedings.

J. Worker's 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 24 hours of injury, or as soon as reasonably possible.

2. To the extent permitted by applicable law, the City shall advise the OPMA 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.

ARTICLE XI GRIEVANCE PROCEDURE

A. Definition

A grievance is hereby defined as any dispute which involves the interpretation or application of this MOU, 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. The Department/City shall thoroughly and adequately investigate all allegations and comply with the members' due process rights. 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 MOU.

This article shall not apply to members holding the rank of Deputy Chief.

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). This provision does not preclude an appeal of a written reprimand to arbitration pursuant to Section C of this Article. It is understood that no bargaining unit member shall be suspended for a period of less than forty (40) hours. Nothing in this MOU is intended to limit individual employee rights and alternate appeal processes under the PSOBR.

C. Procedure

1. Step 1 -- Submission

The employee or Association representative may submit the grievance, in writing and on a form provided for that purpose, to the Chief of Police. The grievance shall state the specific section of the Memorandum of Understanding or departmental rules or general orders alleged to be violated, or the disciplinary action taken, and the proposed solution. The 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.

2. Step 2 -- Appeal to Director of Personnel

Should the grievance remain unresolved, the employee or Association representative may, within seven (7) calendar days after receipt of the Chief's response, submit the grievance in writing to the Director of Personnel. The Director of Personnel, 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 depute. The Employee Relations Officer or designee shall respond in writing to the grievance within fifteen (15) days after any attempt to resolve the dispute is complete.

3. Step 3 -- Civil Service Board/Arbitration

Should the grievance remain unresolved, either the City or the Association may, within fourteen (14) calendar days of the second 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, 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 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 MOU or departmental rules or general orders; provided that, if any inconsistency between this MOU and any of the foregoing rules or orders exists, this MOU shall prevail.

Unless otherwise agreed to by the employee, in writing, all meetings and hearings for any disciplinary mater 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 and Two may be waived by mutual agreement between the Association and the Department.

ARTICLE XII RESOLUTION – FULL UNDERSTANDING NON-NULLIFICATION AND DURATION

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 MOU represent the full, complete, and entire understanding of the parties of matters within the scope of representation. In addition, this MOU terminates and supersedes all practices, agreements, procedures, traditions, and rules and regulations inconsistent with any matters specifically covered in this MOU.

C. Waiver

The City and the Union expressly waive the right to meet and negotiate with respect to any subject covered in this MOU. Although nothing in this MOU 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 MOU, neither party may require the other party to meet and confer or negotiate on the subject matter covered by this MOU. This provision shall not apply to matters covered by the provision entitled “Modification” in Section D below.

D. Modification

The parties to this MOU intend that ordinances, resolutions, rules, and regulations enacted or revised by this MOU 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 (7) 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 the City Charter.

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 professional neutral arbitrators to be determined 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 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.

E. Non-Nullification Clause

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

F. Duration

The provisions of this MOU shall become effective July 1, 2011 and shall remain in effective until the expiration of June 30, 2015 Provisions of this MOU shall not be retroactive, unless expressly provided herein.

G. Equitable Concessions

Concessions in this MOU made by the Association in July of 2011 were, and continue to be, contingent upon all other bargaining units in the City of Oakland making concessions of equal or greater value.

H. 2011 Concessions

Concessions in this MOU shall be nono-precedential and shall not be introduced in any future collective bargaining or interest arbitration for any purpose by either party. The provisions of this MOU shall not be subject to change in the event the City declares a fiscal emergency.

Should the City Council or any other council committee support, endorse, sponsor, calendar or vote to place on the ballot any measure to eliminate or modify existing provisions of the

City Charter Section 910 as it applies to the Association, the economic concessions made in 2011 and identified in this MOU will be null and void for the term of this MOU. In such case, the terms and conditions of the MOU in existence in May of 2011 will control.

FOR THE CITY OF OAKLAND

10/4/11
LaWanna Preston

10/4/11

10/5/11

FOR THE OAKLAND POLICE OFFICER'S ASSOCIATION

10-4-11
Dominique Arotzarena, President

Barry Donelan, Vice President

J. Bassett
Jake Bassett, Secretary

Devin Underwood, Treasurer

Rockne A. Lucia, Jr., Chief Negotiator

APPROVED: _____
Deanna Santana, City Administrator

APPROVED BY THE CITY COUNCIL ON: _____

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

CITY OF OAKLAND

ADMINISTRATIVE INSTRUCTION

SUBJECT	**Management, Professional & Executive Leave**	NUMBER	516
REFERENCE	Ordinance No. 12903 C.M.S. and Ordinance No. 12918 C.M.S.	EFFECTIVE	May 16 2011
SUPERSEDE	AI 516 Dated June 1, 2010		

I. PURPOSE

This Administrative Instruction sets forth the policies and procedures for awarding Management/ Professional Leave and Executive Leave to eligible employees, in accordance with the Memoranda of Understanding (MOU) between the City and the respective bargaining units; and City Council Ordinances No. 12903 C.M.S. and No. 12918 C.M.S.

II. POLICY

MANAGEMENT OR PROFESSIONAL LEAVE. Management or Professional Leave is a paid leave, fringe benefit that may be awarded to employees in representation units UK1, UM1, UM2, UN1, UN2, UR1, UU1, TM2, U31, and U51 (Management Leave); and TM1, U41, (Professional Leave). Management or Professional Leave, unless otherwise noted, is retroactively granted on July 1 based upon the employee's work/performance during the prior fiscal year. This award may be granted to an individual for two reasons: (a) leave in lieu of overtime hours worked and/or (b) leave for superior performance. A total of ten (10) days maximum may be granted each fiscal year (this amount is prorated for employees hired after July 1 of the preceding year).

Represented employees in units TM2, UM1, UM2, and U41 may cash out up to ten (10) days of Management Leave each fiscal year at the discretion of the employee; Management Leave not used or cashed out will be carried forward to the next fiscal year, subject to limitations detailed under "Use of Management Leave" below.

Represented employees in Units TM1, TM2, UM1,UM2 and U41,shall be awarded five (5) days of Management Leave July 1st of each year, as set forth in the MOU, and may be awarded up to an additional five (5) days for overtime worked or superior performance. For employees in units UK1, UN1, UN2, UR1, UU1, U51 ("unrepresented") and U31, a maximum of ten (10) days Management Leave may be granted to employees who work irregular hours or who demonstrated superior performance during the eligibility period. Department recommendations for Management or Professional Leave awards must be reviewed by the Director of Human Resources and approved by the City Administrator.

EXECUTIVE LEAVE. Executive Leave is a paid leave, fringe benefit that the City Administrator may award as a hiring incentive to new agency or department heads. Executive Leave may be awarded for up to ten (10) days and must be documented in a hiring agreement, a copy of which shall be kept in the employee's personnel file.

Executive Leave must be used in the year in which it is awarded, although the provisions of Ordinances 12903 C.M.S. and 12918 C.M.S. allow the City Administrator to permit an employee to carry over Executive Leave for up to two years from their date of hire if the employee is not able to use the leave because the employee's services are or were needed on a time-sensitive or urgent project.

III. DEFINITIONS

A. MANAGEMENT OR PROFESSIONAL LEAVE

Term	Definition
Management or Professional Leave Eligibility Period	The eligibility period for Management or Professional Leave is July 1 through June 30. An employee's award is based on overtime worked and superior performance during the eligibility period and is awarded retroactively the July 1 *following* the eligibility period.
Management or Professional Leave **in Lieu of Overtime** for Units UK1, UN1, UR1, UU1, UN2, U31, and U51	May be granted on July 1 from zero to five (5) days based upon the prior year's work schedule and upon the recommendation of the Department/Agency Head, review of the Director of Human Resources, and with final approval from the City Administrator. If the employee was hired during the fiscal year, the following proration schedule applies to Management Leave awards (these awards are granted on July 1 following the date of hire): Date of Hire between: — Days Awarded: July 1 and Sept. 12 — 5 Sept. 13 and Nov. 24 — 4 Nov. 25 and Feb. 7 — 3 Feb. 8 and Apr. 19 — 2 Apr. 20 and Jun. 30 — 1 If an individual's employment is terminated during the fiscal year for any reason, he/she will not be awarded any prorated Management or Professional Leave for that fiscal year.
Management Leave **in Lieu of Overtime** for Units TM2, UM1,UM2, U41, and TM1	Represented employees in Units TM2, UM1 and UM2 shall be awarded five (5) days of Management Leave July 1st of each year, as set forth in the MOU. **If an individual's employment is terminated prior to July 1 and during the fiscal year for any reason, he/she will not be awarded any Management Leave for that fiscal year.**
Management or Professional Leave for **Superior Performance**	If the employee has sustained performance at a superior level the prior fiscal year and the employee's performance appraisal of April 30 of that year supports it, an additional zero to five (5) days of

for units TM1, TM2, UM1, UM2, UK1, UN1, UR1, UU1, UN2, U31, U41, and U51

Management or Professional Leave may be granted on July 1 at the discretion of the Department/Agency Head and with approval of the City Administrator. The prorating schedule listed below for superior performance is not required for the Local 21 bargaining units.

If the employee was hired during the fiscal year, the award for **Superior Performance** should not exceed the following proration schedule (awarded retroactively July 1):

Date of Hire between:	Maximum Days Awarded:
July 1 and Sept. 12	5
Sept. 13 and Nov. 24	4
Nov. 25 and Feb. 7	3
Feb. 8 and Apr. 19	2
Apr. 20 and Jun. 30	1

If an individual's employment is terminated prior to July 1 and during the fiscal year for any reason, he/she will not be awarded any Management Leave for that fiscal year

Use of Management Leave for Units TM2, UM1, UM2, and U41

Represented employees in units TM2, UM1, UM2, and U41 may cash out up to ten (10) days of Management Leave each fiscal year at the discretion of the employee; Management Leave not used or cashed out will be carried forward to the next fiscal year, subject to the following limitations:

a) In fiscal years 2009-10 and 2010-11, represented employees in units TM2, UM1, UM2, and U41 with a carry forward balance of 150-200 hours as of June 30, 2009 shall be entitled to cash out accrued Management Leave in an amount not to exceed fifteen (15) days in each fiscal year.

b) In fiscal years 2009-10 and 2010-11, represented employees in units TM2, UM1, UM2, and U41 with a carry forward balance greater than 200 hours as of June 30, 2009 shall be entitled to cash out accrued Management Leave in an amount not to exceed twenty-five (25) days in each fiscal year.

c) Effective June 30, 2011, represented employees in units TM2, UM1, UM2, and U41 with a Management Leave balance of 200 hours or greater as of June 30, 2009 may carry forward twenty (20) days on June 30, 2011. For all other employees, the maximum amount of Management Leave that may be carried forward is ten (10) days.

Use of Management or Professional Leave for units TM1, UK1, UN1, UN2, UR1, UU1, U31, and U51

Prior balances may be carried forward into Fiscal Year 2009-2010. Management Leave not used or cashed out will be carried forward to the next fiscal year, subject to the following limitations:

a) In fiscal years 2009-10 and 2010-11, unrepresented employees in units TM1, UK1, UN1, UN2, UR1, UU1, U31, and U51 with a carry forward balance of

150-200 hours as of June 30, 2009 shall be entitled to cash out accrued Management Leave in an amount not to exceed fifteen (15) days in each fiscal year.

b) In fiscal years 2009-10 and 2010-11, unrepresented employees in units TM1, UK1, UN1, UN2, UR1, UU1, U31, and U51 with a carry forward balance greater than 200 hours as of June 30, 2009 shall be entitled to cash out accrued Management Leave in an amount not to exceed twenty-five (25) days in each fiscal year.

c) Effective June 30, 2011, unrepresented employees in units TM1, UK1, UN1, UN2, UR1, UU1, U31, and U51 with a Management Leave balance of 200 hours or greater as of June 30, 2009 may carry forward twenty (20) days on June 30, 2011. For all other employees, the maximum amount of Management Leave that may be carried forward is ten (10) days.

B. EXECUTIVE LEAVE

Executive Leave as a Hiring Incentive UK1, UN1, UR1, UU1	May be awarded to new agency or department heads at the time of hire and memorialized in a written hiring agreement maintained in the employee's personnel file. Leave may be awarded for zero (0) to ten (10) days as an incentive for new executive management employees. Executive Leave is awarded at the sole discretion of the City Administrator.
Use of Executive Leave	Executive Leave must be used in the year in which it is awarded or it will be forfeited unless the City Administrator allows an employee to carry over Executive Leave for a maximum of two years from the employee's date of hire if the employee is not able to use Executive Leave because the employee's services are or were needed on a time-sensitive or urgent project. The determination must be in writing and a copy of the determination must be placed in the employee's personnel file. A separate determination must be made for each employee and for each fiscal year for which the leave balance is being carried forward.

IV. PROCEDURES

Responsible Party	Action
FMA/ Payroll	1. Enters Management or Professional Leave award of five (5) days (or prorated amount based on the date of hire) into Oracle Payroll system for represented employees in Units TM2, UM1 and UM2 July 1 of each year. 2. By May 15 of each year, distributes a report to each Department Head that provides (a) the current Management or Professional Leave balances for its employees; (b) a Management or Professional Leave Worksheet displaying all

employees within the organization who are eligible for Management or Professional Leave and the maximum possible award days for each eligible employee; and (c) the prior year's Management or Professional Leave award for eligible employees.

3. Instructs Department Heads to indicate their recommendation for awarding eligible employees leave (a) in lieu of overtime, and/or (b) for superior performance, and to forward recommendations to the Director of Human Resources for review by June 1 of each year.
4. Upon receipt of the City Administrator's approval of employees to whom Management or Professional Leave is to be granted, enters Management or Professional Leave awards into the Oracle Payroll system. Awards are reflected on the paycheck stubs for the second pay period of July.
5. Enters Executive Leave award into the Oracle Payroll system upon receipt of written hiring agreements that specify the Executive Leave awarded.

Department Head

1. Reviews reports provided by Payroll of outstanding Management or Professional Leave balances and informs employees of amounts remaining to be taken or cashed out.
2. By June 1 of each year, reviews Payroll reports of department employees eligible to receive Management or Professional Leave. Makes recommendation for current year award for the two types of Management or Professional Leave, provides copies of current year performance appraisals to support "Superior Performance" leave awards, and submits to the Department of Human Resources for review.

Department of Human Resources	1. By June 15 of each year, reviews Department Heads' recommendations for Management or Professional Leave awards. a. Ensures compliance with MOUs, City Ordinances, and this Administrative Instruction; b. Ensures that eligible employees' current year performance appraisals support "Superior Performance" Management or Professional Leave awards; c. Annotates any concerns on the form provided by Department Heads; and d. Forwards reviewed forms to the City Administrator's Office. 2. Ensures that hiring agreements are maintained in employees' personnel files. 3. Provides written hiring agreements to Payroll that specify the Executive Leave awarded at the time of hire. 4. By September 30 provides an annual report to City Council in compliance with reporting requirements set forth in Ordinances No. 12903 C.M.S. and No. 12918 C.M.S. pertaining to Executive Leave. 5.
City Administrator	1. By June 30 of each year, provides final approval of all Management or Professional Leave awards, based on Department Heads' recommendations and Director of Human Resources review; forwards lists to Payroll for processing. 2. Provides written authorization to Human Resources if it is determined that an employee may carry over Executive Leave in accordance with the provisions of Ordinances No. 12903 C.M.S. and No. 12918 C.M.S.

V. ADDITIONAL INFORMATION

Any leave that an eligible employee takes without pay for more than a month is deducted from the total Management Leave eligibility period, and may result in prorating.

Once awarded, employees may cash out Management Leave in lieu of time off at any time during the year and until June 30 of the current year. Cash-out forms are available through department payroll representatives. Any questions regarding Leave Awards should be directed to the Department of Human Resources Management.

P. LAMONT EWELL
Interim City Administrator

APPENDIX B

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])

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:

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

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 [e])

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])

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.

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])

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.

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.

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.

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.

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 heath 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.

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

b. If the employee is returning from a pregnancy disability leave that does not qualify as an FMLA leave, a comparable position is available, but filling the available position with the returning employee would substantially undermine the City's ability to operate safely and efficiently.

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

G. Relationship of Pregnancy Disability Leave to FMLA, CFRA, and Other Leaves

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

2. Bonding/CFRA Leave

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

b. CFRA leave for bonding with the child does not require that either the employee or the child have a serious health condition. There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for reason of the birth of her child.

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

3. Maximum Entitlement

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

APPENDIX C

LIST OF CLASSIFICATIONS

Rep Unit	Class No.	Classification/Title
UN2	PS106	Captain of Police
UN2	PS107	Captain of Police (PERS)
UN2	EM134	Deputy Chief of Police
UN2	EM135	Deputy Chief of Police (PERS)

APPENDIX D
SALARY SCHEDULE

Classification/Title	Step	Monthly Rate
Captain of Police	1.00	13,930.14
Captain of Police (PERS)	1.00	13,292.20
Deputy Chief of Police	1.00	16,361.90
Deputy Chief of Police (PERS)	1.00	15,612.62

Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

2011 JUN 21 PM 3:20

RESOLUTION NO. 83508 - C.M.S.

RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE OAKLAND POLICE OFFICERS ASSOCIATION, REPRSENTING EMPLOYEES IN REPRESENATION UNIT PP1 AND UN2, EXTENDING THE CURRENT MEMORANDUM OF UNDERSTANDING UNTIL JUNE 30, 2015

WHEREAS, the Memorandum of Understanding between the City of Oakland and the Oakland Police Officers Association, has been presented to the City Council for determination pursuant to Section 3505.1 of the Government Code of the State of California; and

WHEREAS, the current Memorandum of Understanding shall be extended until June 30, 2015;

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

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

FURTHER RESOLVED: That the provisions of the Memorandum of Understanding are effective as of July 1, 2011.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 26 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, [redacted], KAPLAN, KERNIGHAN, NADEL, [redacted] and PRESIDENT REID – 6

NOES - Schaaf, De La Fuente – 2

ABSENT - 0

ABSTENTION - 0

ATTEST: LaTonda Simmons

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California