



MEMORANDUM AGREEMENT

BETWEEN

BERKELEY HOUSING AUTHORITY

AND

**SERVICE EMPLOYEES INTERNATIONAL
UNION
LOCAL 1021**

June 27, 2021– June 22, 2024

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2021-2024 Memorandum Agreement

Berkeley Housing Authority

SEIU Local 1021

ADMINISTRATION

SECTION 1: RECITALS

This Memorandum Agreement, herein after referred to as "Agreement," is entered into pursuant to the Meyers-Milias- Brown Act (Government Code, Sections 3500 et seq.), as amended, and has been jointly prepared by the parties.

The Executive Director is the representative of the Berkeley Housing Authority, herein after referred to as "the Authority," in employer - employee relations.

Local 1021, Service Employees International Union, is the Recognized Employee Organization for Representation Unit H-1 (career office and clerical employees in the Housing Authority) and H-2 (career miscellaneous and administrative employees in the Housing Authority). The employee positions in such Representation Unit are set forth herein and made a part hereof, and Local 1021, Service Employees International Union, hereinafter referred to as "the Union," is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of the employees in said Representation Units H-1 and H-2; have exchanged freely information opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

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

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

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

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SECTION 2: PARTIES TO AGREEMENT

- 2.1 **The Union:** The Union is the exclusive representative of all employees within Representation Units H-1 (career office and clerical employees) and H-2 (career miscellaneous and administrative employees and shall continue to be recognized as such unless, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Units H-1 and H-2.
- 2.2 **Authority Management:** Responsibility for management of the Authority and direction of its work force is vested in Authority officials and the Executive Director, whose powers and duties are specified by law. Such rights and responsibilities shall be applied consistent with the Meyers-Milias-Brown Act.
- 2.3 The Union and the Authority shall create a working environment free from hostility, intimidation and disrespect.

SECTION 3: NO DISCRIMINATION

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

SECTION 4: UNION SECURITY

4.1. Authorization of Payment of Dues

Upon written certification from the Union that it has and will maintain a payroll deduction form for an employee, the Authority will deduct from the employee's pay the appropriate dues and contributions as established.

4.2 Deduction of Union Dues

- 4.2.1 Upon written notification by the Union, the Authority shall deduct, once monthly, the regular and periodic Union dues, voluntary COPE contributions, or insurance premiums as may be specified by the Union. Employees may change union

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insurance deductions no more than twice in any one (1) year period for each policy. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly by the Union office to the City's designated representative. COPE deductions, and any special membership assessments as may be specified by the Union under the authority of an authorization card furnished by the Union and signed by the unit member.

- 4.2.2 Such deductions shall continue unless the employee revokes authorization with the terms of the Union's authorization form and shall terminate in accordance with the procedure in 4.2.3 below.
- 4.2.3 Changes to dues and union insurance premiums shall be processed within the same month if received in writing by the Authority's payroll representative prior to 5:00pm on the 3rd day of the same month. Any changes to deductions received in writing by the union after the 3rd of the month shall be processed in the following month.
- 4.2.4 The Authority shall remit to the Union the dues and contributions in accordance with the Union's monthly written report submitted to the Authority along with a report confirming the deductions consistent with the Union's written report.
- 4.2.5 The Union shall provide the Authority at least 2 months' notice of any change in the Union's dues deduction and dues procedures affecting more than 30% of the bargaining unit.
- 4.2.6 The Union shall not provide the Authority a copy of the employee's authorization unless a dispute arises about the existence or terms of the authorization and/or change in deductions requested by the employee.

4.3 Indemnification

The Union shall indemnify and hold the Authority harmless from any and all claims made by the employee, including but not limited to, demands, fees, reimbursements, suits, judgments, awards, penalties, court costs and attorneys' fees, or any other action arising from compliance with any provision of Section 4.0 or Section 4.2. The Authority shall promptly provide notice to the Union regarding such claims.

4.4 The Authority shall not deter or discourage employees or applicants from voluntarily authorizing the Union to deduct dues and insurance deductions

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4.5 Records

The Authority shall furnish the Union, on a monthly basis, the name, date of hire, salary, last payment, last date of employment (if applicable), classification and work location of employees and new-hired employees subject to this Agreement, along with verification of monthly transmittals of any charitable contributions, in a malleable format.

4.6 Contract Distribution

The person or entity performing human resources functions for the Authority or his/her designee shall issue a copy of the Agreement to all probationary and provisional employees entering the Authority's workforce on the date of hire.

The Authority shall print the Agreement and have it ready for distribution within 120 calendar days of final ratification. The Authority shall provide each permanent, probationary and provisional employee in the bargaining unit with a copy of the new Agreement within 120 calendar days of final ratification.

Any additions or changes to the Agreement agree to by both parties subsequent to the printing of the Agreement shall be distributed to all employees in the bargaining unit in a form that can be easily added to the printed Agreement. The Authority shall provide new hires in the bargaining unit with a copy of the then-applicable agreement upon hiring.

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4.7 Orientation Meetings

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

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

2021-2024 Memorandum Agreement**Berkeley Housing Authority****SEIU Local 1021****SECTION 5: UNION REPRESENTATIVES****5.1 Release Time - General**

Union representatives employed and recognized by the Authority shall assist employees in resolving grievances at the lowest possible administrative level. These employees shall be afforded reasonable time for the investigation and processing of grievances and for meetings with management without loss of pay or benefits upon notification to their first level supervisor not in the bargaining unit. Union representatives shall advise their first level supervisor not in the bargaining unit or his/her designee prior to engaging in union business. Such request for release time shall normally be made twenty-four (24) hours in advance and shall include the location, and area of activity, the approximate time needed and the general nature of union business involved. Such request shall not be unreasonably denied.

5.2 Release Time - Maximum Number of Representatives

- 5.2.1. With respect to the meet and confer process, two (2) Union representatives shall be the maximum number who will be allowed concurrent paid time off.
- 5.2.2. With respect to the informal level of the grievance procedure, one (1) Union representative will be allowed paid time off.
- 5.2.3. With respect to the first level of the grievance procedure or the pre- disciplinary hearing, one (1) Union representative will be allowed concurrent paid time off.
- 5.2.4. With respect to the second level of the grievance process, the Skelly meeting, or Arbitration hearing, one (1) Union representative shall be allowed concurrent paid time off.
- 5.2.5. For all other matters, where the participation of the Union is agreed to, the Union may designate one (1) representative
- 5.2.6. The Authority will provide release time to Union members to meet with a Union representative for the purpose of discussing a possible grievance. The member shall contact the Chapter President or Chief Steward who will then contact the supervisor to notify the Authority of the necessity for the meeting. The release time shall be granted within 24 hours of the request subject to operational necessity.

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5.3 Official Attendance at Meetings

Any employee requested by the Executive Director or his/her designee to attend conferences, seminars, governmental agencies or bodies shall be compensated with pay or release time.

SECTION 6: SEPARABILITY OF PROVISIONS

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

SECTION 7: EXISTING MEMORANDA AGREEMENT

This Agreement shall supersede all existing Agreements between the Authority and the Union. Working conditions and practices will not be continued unless they are included in this Agreement or have been or are hereafter specifically authorized by ordinance or by resolution of the Authority, or unless they are 1) not the subject of bargaining during the development of this Agreement, and 2) a continuing practice which was general, not individual in application, and mutually agreed to by the parties.

SECTION 8: FINALITY OF RECOMMENDATIONS

The recommendations set forth above are final. No change or modifications shall be offered, urged, or otherwise presented by the Union or the Executive Director prior to June 30, 2017 provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent and ratification.

SECTION 9: DURATION

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

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SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

SECTION 10: SALARIES

10.1 Salary Resolution

Salary rates for the period of June 27, 2021 through June 22, 2024, for all classes of positions in Units H-1 and H-2, shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibits "A" and attached hereto and made part hereof as provided below.

10.1.1 Cost of Living Adjustments

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

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

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

10.1.2 Lump Sum Payment

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

10.2 Application of Rates

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibits "A". The minimum rate for the class shall apply to employees upon original appointment of the position. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Employees appointed to any of the positions set forth herein in Exhibit "A" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

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10.3 **Salary Advancement**

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

An employee's pay increase shall not be affected by any leave of absence without pay, if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

10.4 **Y Rates**

10.4.1. Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his/her present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

10.5 **Payment of Salaries (Bi-weekly) - Pay Periods / Pay Days**

10.5.1. Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 p.m. Friday, to and including 12:00 noon Friday two weeks following, if the employee has elected the 9/80 work schedule. Each payment shall be made not later than the Thursday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

10.5.2. Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such employees shall be determined as follows:

For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary specified herein) divided by 2080 hours carried to three decimal places.

10.5.3. Bi-weekly payment to part-time employees in a class for which monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the

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number of hours worked during the pay period. The hourly rate for such part-time employees shall be computed in the same manner as for full time employees.

10.5.4. Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

10.6 Thursday Bank Closures

On Thursday bank holidays, Authority employees shall be paid in accordance with present paycheck procedures for Authority Holidays that fall on Thursday. Paychecks shall be dated the date received by employee.

10.7 End of Year

For excess leave only, the end of the year shall be treated as the last day of the last pay period nearest March 31st.

10.8 Equity Studies

It is the policy of the Authority that within available funding limits, equity adjustments which are in the interests of the service will be considered. Job classifications which fall below the median for these jurisdictions may be reviewed.

10.9 Anniversary Dates

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest to the anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

SECTION 11: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the Executive Director shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the Finance Manager. In the case of under payments, the Finance Manager shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee directly by the Finance Manager. Under payments will be processed as soon as practicable.

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In the event of an overpayment, the Finance Manager will notify the employee of the nature and the amount of overpayment and will determine a reasonable repayment schedule and inform the employee of the schedule directly. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an alternative repayment schedule. The total overpayment of \$100 or more shall be recaptured at the rate at which the overpayment occurred but not less than \$50 per pay period. For a total overpayment of \$99.99 or less, the overpayment shall be recouped in two (2) equal amounts over two consecutive pay periods.

Overpayments shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except by permission of the affected employee. Should an employee with a repayment schedule leave the employ of the Authority before repaying the Authority the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the Authority. Where an employee requests and the Authority concludes that s/he has justified a modified repayment schedule, the Authority may, in its sole discretion, permit exceptions to these standards.

The Authority and the Union agree that the Authority is authorized to recover any salary overpayment made to the employee from the employee's wages. In the event that (1) the employee does not respond within ten (10) working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within fifteen (15) working days of the employee being notified of the overpayment, the Finance Manager will proceed to implement a reasonable repayment schedule.

SECTION 12: TEMPORARY, PROVISIONAL AND PROJECT BASED APPOINTMENTS, OUT OF CLASSIFICATION PAY AND TEMPORARY AGENCY EMPLOYEES

12.1. Executive Director Approval Required for Higher Class Assignments

The Executive Director will work all employees within their classification. The Executive Director shall approve higher-class assignments over one week in duration in advance.

12.2. Temporary Appointments to a Higher Classification

The Executive Director may assign an employee to work in a higher class provided the employee meets the minimum qualifications for the assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. To be eligible for higher-class pay, the employee must work a minimum of one day in the higher classification, meet the minimum qualifications, and perform the duties of the higher class. Employees meeting these requirements will be compensated at the lowest step of the higher classification that provides at least a five percent (5%) differential for the days worked.

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12.3. Provisional Appointments

A career employee who is appointed to serve temporarily in a higher classification shall be designated as a provisional employee. No employee shall hold a provisional appointment in the same position for more than twelve (12) months. The Executive Director may extend the provisional appointment beyond this 12-month limitation after notification and consultation with the Union. No provisional appointment in the same position will be extended beyond twenty-four (24) months. No employee shall hold a provisional appointment(s) in one or more positions for more than twenty-four (24) consecutive months within a thirty (30) consecutive month period.

An employee who holds provisional status in a classification shall receive step increases in such classification as if the employee held permanent appointment thereto.

The Authority does not guarantee a permanent promotion to the employee working as a provisional employee. An employee who is removed from a provisional appointment, shall have the right to be reinstated to his / her former classification at the appropriate pay level, before the provisional appointment. The employee shall suffer no loss of classification seniority in his / her original classification as a result of holding provisional status.

12.4 Working in a Classification Outside the Bargaining Unit

An employee provisionally appointed to a classification outside the bargaining unit shall work the work schedule and receive the salary of the classification of the provisional appointment. If assigned in excess of 30 days, the employee shall be subject to the overtime provisions that apply to the higher-level classification. All the health and welfare benefits and all other terms and conditions of employment set forth in this agreement shall apply to an employee provisionally appointed to a classification outside the bargaining unit.

12.5. Temporary Assignment Training Pay

For training purposes, employees not meeting all of the minimum qualifications for a supervisory position may be temporarily assigned for a minimum of one week (five consecutive working days), to perform the duties of supervisor and will receive a five percent (5%) increase in their current salary.

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12.6. **Temporary Agency Employees**

An employee hired through a temporary agency shall not be retained longer than six (6) months, unless the employee is replacing a career employee on leave. In no case shall the said retention period exceed the duration of the absence. The Authority will not attempt to extend the six (6) month period by replacing or exchanging temporary agency employees. However, nothing shall preclude temporary agency employees from competing for positions in the career service.

SECTION 13: HOURS AND DAYS OF WORK

13.1. **Rules**

Hours and days of work shall be governed by rules established by the Executive Director. At the present time, Authority operates under a 9/80 schedule, with all employees working Monday through Friday the first week, and Monday through Thursday the second week, with hours between 7:30 a.m. and 5:45 p.m. All employees are required to be present during core hours, 8:30 a.m. to 4:30 p.m.

13.2. **Work Schedule**

A change in the daily work schedule that requires an employee to work beyond the regular work schedule shall not require the employee to flex his or her hours except by mutual consent of the employee and the supervisor.

In the event that the Authority changes an employee's work hours on a permanent basis, the Authority will provide the employee notice at least thirty (30) calendar days in advance of the date of the change. For the purposes of this Section, the schedule change shall mean a change in the employee's work hours of at least one (1) hour. If the employee is unable to work the newly scheduled hours, the Authority will seek volunteers in the same classification who are willing to work the newly scheduled hours.

At least annually (typically in July), each employee shall submit a request for an approved work schedule, designating the desired start time, length of lunch period, and end time. Such requests should not unreasonably be denied.

13.3. **Work Assignment**

Each new employee shall be provided with a written description of his/her job class, and each supervisor shall discuss with the new employee the duties of his/her position as a part of the departments' orientation.

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SECTION 14: OVERTIME

Employees required to work in excess of their basic workweek shall be compensated for such overtime services as follows:

14.1. Overtime Pay Eligibility and Rates

All work in excess of nine (9) hours in any 24-hour period, which begins with the employees' scheduled or actual starting time, whichever is earlier, shall be paid for at one and one-half (1½) times the regular rate for the first four (4) hours of such excess and at two (2) times the regular rate for the balance of such excess. This provision shall not be applicable when excess hours are required by a schedule adjustment requested by the employee or part of a regular flextime schedule requested by the employee.

14.2. Compensatory Time

Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time.

Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the Executive Director. Utilization of compensatory time shall be determined by the Executive Director with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equal to ninety (90) hours of time off work. In the event of layoff or termination, the employee shall be compensated for all compensatory time accrued but still unused.

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the Executive Director.

Employees who have an accrued compensatory time bank shall be permitted, at the employee's option, to use such compensatory time in lieu of vacation time for any scheduled vacation days.

14.3. Payment Upon Termination

In the event that an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime.

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14.4. **Work Week**

For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 p.m. Friday and ending at 12:00 noon the following Friday, if the employee has elected the 9/80 work schedule.

14.5. **Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal work days or on normal work days outside of their regular work hours shall be paid emergency overtime compensation for actual time worked; provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be three (3) hours; and provided, further, that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the Executive Director or his/her designee approves in advance.

14.6. **Natural Disaster/Declared Emergency**

If an emergency is declared by the Authority, county, state or national authority:

14.6.1. If an employee is called outside of normal working hours, the employee gets time and one half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).

14.6.2. Thereafter: the first eight hours at regular rate and seven and one half percent (7½%) for hours worked between 5:00 p.m. and midnight; ten percent (10%) for hours worked from midnight to 7:00 a.m. For hours greater than eight (8) in a shift, the employee gets time and one half (1½) the normal rate of pay but no shift differential on those hours above eight (8).

14.6.3. There will be no reduction in the number of hours in the regular work week schedule.

14.7. **Clerical Unit Overtime and Scheduling**

14.7.1. The parties recognize that employees may be required to work overtime from time to time and that employees may have personal constraints that limit the ability of the employee to work overtime.

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14.7.2. The Authority will notify Clerical unit employees at least 5 days in advance of the need to work overtime. However, the parties acknowledge that there may be unforeseen, unpredictable circumstances which arise in which the Authority is unable to provide 5 day advance notice of the need for overtime. In such case the Authority will provide as much notice as possible of the needed overtime. The Authority will seek volunteers to perform the work. If no volunteers are available, overtime may be mandated based on the needs of the Authority.

14.7.3. The Authority will use flexible scheduling in the work unit to ensure coverage with the intent to limit the necessity for last minute overtime. The Authority shall solicit input from staff on flexible scheduling to set a schedule that works best for the employees and meets the needs of the Authority.

SECTION 15: SPECIAL ASSIGNMENT PAY

15.1. Bilingual Premium Pay

15.1.1. An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the Authority will receive a Bilingual Premium Pay Differential of five percent (5%). The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of five percent (5%) will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

15.1.2. An employee assigned occasionally to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of two percent (2%). The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of two percent (2%) will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

15.1.3. The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to

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test for second language appropriate competency prior to a Bilingual Premium Pay Differential.

15.1.4. The Authority may designate an employee to receive either the five percent (5%) or two percent (2%) Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

15.2 Training Differential

Employees assigned in writing by the Executive Director as qualified trainers or instructors for specific specialized skills shall be compensated for hours actually worked training at five percent (5%) differential. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

15.3 Longevity Pay

Employees completing twenty-four (24) years of service (including employment with the City of Berkeley) shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

LEAVES

SECTION 16: VACATION

16.1 Eligibility

All employees who have worked for the Authority six (6) months or more and have worked half-time or more in the preceding calendar year shall be entitled to vacation leave.

16.2 Scheduling

The times during the calendar year at which an employee shall take vacation shall be determined by the Executive Director with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees working in the same classifications within the Authority shall be given preference of vacation time by seniority. If the requirements of the service are such that the Executive Director cannot permit an employee within the department to take an annual vacation leave or any part of such leave within a particular calendar year, the Executive Director may permit such employee to take the deferred vacation during the following year.

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

16.3. Accrual

The vacation accrual rate shall be as follows:

Years of Service	Authorized Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of svc.)	Vacation Leave Credits (in hours earned per month of svc.)
Through the first three years of service	2	0.833	6.667
Fourth through eleventh years of service	3	1.25	10
Twelfth through seventeenth years of service	4	1.667	13.333
Eighteenth through twenty- fourth years of service	5	2.083	15.667
Twenty-fifth year of service and each year thereafter	6	2.5	20

16.4. Eligibility - First Two (2) Years

Each employee, during that portion of the calendar year in which the employee was originally appointed and during that next succeeding calendar year, shall be entitled to vacation leave credits at the rate of 0.833 work days for each calendar month of service. Each such employee shall be entitled to take, during these two (2) calendar years, only such annual vacation leave as the employee earns; provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

16.5. Eligibility - Effects of Part-Time and Interrupted Service

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently re-employed, the actual years of service with the Authority shall be used for the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) and six (6) weeks' rate.

16.5.1. Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment, shall be entitled to a prorated vacation leave based upon the actual years of service with the Authority and upon the actual amount of time worked in the preceding calendar year.

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16.5.2. For the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the Authority.

16.6. **Holidays During Scheduled Vacation**

In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, but rather coded "45" holiday.

16.7. **Maximum Accumulation**

Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the Authority. Not later than October 1 of each year, the Authority will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to the end of the year. Such time off shall be scheduled in accordance with the provision of Section 16.2.

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

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

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the three hundred and twenty (320) vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than three hundred and twenty (320) hours.

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16.8. Effect of Military Leave Or Break In Service

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the Authority service, to a prorated vacation based upon the total years of service with the Authority and upon the total number of months of actual service with the Authority during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 16.

16.9. Payment / Reimbursement Upon Termination or Extended Leave

If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his or her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his or her estate shall reimburse the Authority for the actual amount of vacation taken in excess of vacation leave credits, as the case may be.

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

The basis for such payment by the Authority or for such reimbursement to the Authority shall be as follows:

The employee's normal hourly rate at date of termination, extended military leave or other extended leave of absence without pay, and multiplied by the number of vacation hours accrued but not used.

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in a lump sum at time of termination, extended leave without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section 16 and receive a lump sum payment for the balance of vacation leave credits, if any. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.

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SECTION 17: HOLIDAYS

17.1. Recognized Holidays

Recognized holidays for employees in Representation Units H-1 and H-2 shall be:

- 17.1.1. New Year's Day
- 17.1.2. Martin Luther King, Jr.'s Birthday (3rd Monday of January)
- 17.1.3. Lincoln's Birthday (observed on the 2nd Monday of February)
- 17.1.4. Washington's Birthday - observed on the 3rd Monday in February
- 17.1.5. Malcolm X's Birthday - observed on the Monday or Friday nearest May 19 that is a regularly scheduled work day
- 17.1.6. Memorial Day
- 17.1.7. Juneteenth National Independence Day – observed on the Monday or Friday, nearest to June 19
- 17.1.8. Independence Day
- 17.1.9. Labor Day - observed on the first Monday in September
- 17.1.10. Indigenous Peoples' Day - observed on the second Monday in October
- 17.1.11. Veterans Day
- 17.1.12. Thanksgiving Day
- 17.1.13. The day after Thanksgiving Day
- 17.1.14. Christmas Day

17.2 Employees shall be granted three (3) floating holidays each calendar year.

Employees in the competitive service who have worked for the Authority six (6) months or more shall be granted three (3) floating holidays each calendar year. In the first calendar year of employment, employees shall be granted pro rata floating holidays as follows: Hired January 1 through April 30 – 3 days; Hired May 1 through August 31 - 2 days; Hired September 1 through December 31 - 1 day. Employees may take floating holidays in one-hour increments.

17.3. Effects of Work Week

Employees shall be allowed all holidays with pay which fall within such work week. Holiday Pay will be 9 hours for each holiday taken on a 9-hour day and will be 8 hours if taken on the 8-hour day.

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SECTION 18: SICK LEAVE

18.1. Eligibility

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 18.2 to 18.7, inclusive.

18.2. Accrual

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 18, a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on full-time or part-time basis, and shall mean one hundred and seventy-three (173) hours of work in the case of employees working on an intermittent basis.

18.3. Use – Part-Time Employees

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half time the employee shall be paid for time off on sick leave on a half-time basis.

18.4. Accumulation / Cancellation / Restoration / Payout

18.4.1. Such sick leave as provided in Section 18.2, when not used shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and there after part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 18.2.

18.4.2. Except as otherwise provided below, all accumulated sick leave shall be canceled when an employee terminates or is terminated, except that employees retiring or voluntarily terminating with a vested pension and at least twenty (20) and not more than twenty-eight (28) years of service shall be entitled to receive payment at retirement or termination with a vested pension of thirty eight percent (38%) accumulated unused sick leave days, but not in any case more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation. Employees who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefited Authority service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days

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up to a maximum of two hundred (200) unused sick leave days. The employee may choose to convert unused sick leave to retirement credit as provided by CalPERS.

18.4.3. Any employee retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the Authority shall be entitled to receive payment at retirement for thirty eight percent (38%) of accumulated unused sick leave days, but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation. Employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the Authority with at least twenty-eight years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

18.4.4. Employees who regularly work one-half (1/2) time or more and who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days, or if earning sick leave at the rate of two working days for each month of service, one-third (1/3) of the first twenty four (24) days of sick leave days, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar-year basis, and payment for such sick leave for any calendar year shall be made no later than January 22nd of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31st and shall be made only in units of whole days and will not be made for any fraction of a day. However, the liquidation of accrued sick leave at time of retirement as provided in Section 18.4.2 will not result in a payout of accumulation of sick leave as provided in this Section.

18.4.5. Accumulated sick leave which has been canceled by reason of an employee's termination shall be credited back to such employee if the employee returns to Authority employment within two (2) years of such termination.

18.5. Purpose / Definitions

Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only

- (i) in case of sickness or disability of the employee;
- (ii) in the case of serious illness within the immediate family of the employee; or
- (iii) for an employee who is a victim of domestic violence, sexual assault or stalking for purposes of:
 - a. Seeking medical attention for injuries caused by domestic violence, sexual assault, or stalking;
 - b. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.

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- c. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- d. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

18.6. **Family Sick Leave**

Not more than fifteen (15) working days (120 hours) in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as a dependent or wife, husband or domestic partner, mother, father, sister, brother, child, dependent child of the domestic partner, grandmother, grandfather, mother-in-law father-in-law, mother and father of the domestic partner, brother-in-law, sister-in-law, son-in-law, daughter-in-law and grandchildren, aunts and uncles.

18.7. **Bonus For Unused Sick Leave**

For every six (6) months of perfect sick leave attendance, the employee will receive eight (8) hours of bonus time. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and liquidation at time of termination of employment. Such crediting shall occur no later than forty-five (45) working days after having been earned.

18.8. **Injury Incurred In Outside Employment**

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

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18.9. Notice Required

In order to receive compensation while absent on sick leave, the employee shall make every reasonable attempt to directly contact his or her designated supervisor within one hour of beginning of shift. If the Supervisor is not available to receive the message, an attempt shall be made to notify the Executive Assistant, Executive Director or Finance Manager within one hour of beginning of shift.

18.10. Absenteeism / Sick Leave Abuse

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

18.11. Calculations

All sick leave shall be calculated upon actual paid hours. This provision shall go into effect upon implementation of necessary data processing changes.

18.12. Voluntary Leave Exchange for Catastrophic Illness

18.12.1. Recovery Time Transfer is that system whereby an employee grants time from earned compensatory or vacation leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is:

- (a) unable to work due to their own illness or injury; or
- (b) unable to work due to illness or injury of someone for whom the employee is the primary caregiver; and is threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the Executive Director. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The Authority reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition. The Authority may transfer an employee receiving Recovery Transfer Time into another position in the same classification.

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

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- 18.12.2.1. The employee donating sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the Authority shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.
- 18.12.2.2.1. An employee may donate compensatory time off and/or vacation leave time; or
- 18.12.2.2.2. An employee may donate up to forty (40) hours of sick leave per calendar year and be charged hour per hour for each hour of sick leave donated; or,
- 18.12.2.2.3. After the first forty (40) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Transfer Time.

SECTION 19: WORKERS' COMPENSATION

Workers' Compensation payments shall commence according to law. Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment with the Authority, shall be paid for a period not to exceed three hundred and sixty-five (365) days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustment to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State Law and the Authority will cease to pay the difference. Temporary disability payments plus the moneys paid under the Authority's salary continuation program shall be equivalent to the employee's regular pre-disability pay. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the Authority to CalPERS as compensation. In determining the employee's pre-disability pay the Authority may use either pre-disability net or gross pay based on administrative capabilities. This decision shall be applied uniformly and is not intended to reduce salary continuation benefits below those in effect under the prior Agreement.

SECTION 20: STATE DISABILITY INSURANCE

State Disability Insurance Integration: Any employee who is absent due to personal illness for more than seven (7) days (or for any period of time if hospitalized) may apply for State Disability Insurance benefits. Application forms shall be available from the Executive Director.

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The Authority shall integrate the employee's pay with the employee's State Disability benefits upon receipt of the "Notice of State Disability Claim Filed" in the following way:

- 20.1. The Authority will determine the weekly State Disability Insurance benefit amount based on the amount of wages earned with the Authority of Berkeley in the State Disability Insurance base period.
- 20.2. Where employee has accrued sick leave, the weekly benefit will be subtracted from the employee's normal weekly wage and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from the sick leave and paid on normal Authority payroll.
- 20.3. When employee receives State Disability Insurance check, he or she will contact payroll if the amount of the benefit is anything other than the maximum amount and payroll will make up the difference from sick leave, vacation, or comp time if the employee has any accrued to use for this purpose.

Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated sick leave as will meet but not exceed, the standard earnings of the employee for his or her normal work week, up to a maximum of five (5) days.

- 20.4. An Employee may integrate his/her vacation or comp time with State Disability Insurance as set forth above. If an employee wishes to exercise this option, he/she must notify the Authority prior to exhausting his/her sick leave integration.

SECTION 21: BEREAVEMENT LEAVE

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to be bereaved, for a period not exceeding three (3) working days, or in the case of the need to travel outside of the State of California, for a period not exceeding five (5) working days. The immediate family of an employee, for the purpose of this Section, shall be defined as a dependent or wife, husband or domestic partner, mother, father, sister, brother, child, dependent child of the domestic partner, grandmother, grandfather, mother-in-law father-in-law, mother and father of the domestic partner, brother-in-law, sister-in-law, son-in-law, daughter-in-law and grandchildren, aunts and uncles.

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

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

SECTION 22: MILITARY AND MARITIME LEAVE

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

SECTION 24: PARENTAL LEAVE

A continuous leave of up to one year will be granted to any employee with one (2,080 hours) or more years of employment with the Authority (or equivalent in the case of part-time employees) upon the birth of a child or the adoption of a child who is five (5) years or younger, providing that:

- 24.1. the one year parental leave must commence no later than thirteen (13) months from the date of birth or adoption and must expire no later than twenty-five (25) months from the date of the birth or adoption, and
- 24.2. approved parental leave shall not be deducted from the Seniority Service Date, and
- 24.3. to be eligible to exercise their rights under this section, employees must provide thirty (30) working days' notice prior to the anticipated commencement date of the parental leave, when possible.

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

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

During approved parental leave, after all earned leaves (except sick leave) are exhausted, the Authority agrees to maintain life and health insurance coverage for the duration of the approved parental leave, subject to any regular participation requirement of the employee. Thereafter the Authority agrees to continue coverage for the employee at the employee's expense.

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SECTION 24: LEAVE OF ABSENCE WITHOUT PAY

24.1. Request

Upon request of the employee, the Executive Director may grant a leave of absence to an employee without pay for a period not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days, except upon the written request of an employee and approval of the Executive Director. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge. Employees shall, when possible, return to their original position upon return from an approved leave without pay.

24.2. Union Training Leave

24.2.1. A union training leave without pay shall be granted at the request of an employee and the Union for the purpose of attending a training course sponsored by the Union. The maximum duration of such leave shall no exceed two (2) consecutive payroll periods in a calendar year. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

24.2.2. Conditional upon prior approval and upon receipt of certification of completion, the Authority shall reimburse an employee who is an elected official or steward of the Union for up to one half of his/her time spent in such training at the employee's permanent rate of pay, not to exceed twenty hours of paid leave in a calendar year.

24.2.3. Time spent by Union officials in retreats provided for in Section 6.3 of this Agreement shall be counted toward the above 20 hour limit but may not be subject to the provision for payment of only half of the total time.

24.3. Eligibility

No leave of absence shall be granted to any employee until the employee has utilized all accrued vacation time and any other time owed to the employee, except sick leave.

If the absence without leave is due to reasons for which the employee would be eligible for sick leave, then all sick leave must be exhausted first as well.

SECTION 25: JURY DUTY LEAVE

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury duty or while required to be present in court as a result of a call to jury duty. Employees are required to submit a written proof of jury duty service issued by the court in order to receive payment for Jury Duty Leave. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee

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will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations; and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. Employees who serve jury duty on their days off shall be granted an equivalent number of days off during their normal workweek. The employee will keep any payment received for jury service including mileage reimbursement.

25.1. Court Time

The Authority will guarantee a minimum of four (4) hours pay for every court appearance required by an employee in the conduct of official Authority job duties on the employee's scheduled day off and four (4) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official Authority of Berkeley job duties will be compensated by earning recovery time as follows:

- (i) Duty day, outside of scheduled working hours: one (1) hour minimum recovery time and hour for hour thereafter.
- (ii) Day off: two (2) hour minimum recovery time and hour for hour thereafter.

HEALTH AND WELFARE BENEFITS

SECTION 26: HOSPITAL-MEDICAL AND DENTAL COVERAGE

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

26.1. Health Insurance

The Authority shall pay for the cost of health insurance coverage for employees who have such coverage under any group health insurance plan authorized by the Authority Board of Commissioners. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal income tax withholding.

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

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

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The Authority agrees to extend all medical and dental benefit coverages to dependents of Authority employees up to the date of their 26th birthday.

26.2. **Dental Insurance**

The Authority shall provide a dental care program for employees.

Benefits provided under the Dental Program shall be increased to an annual limit of \$2,000 for dental work and a lifetime limit of \$2,000 for orthodontics. The co-insurance rate shall be ninety percent (90%). If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal income tax withholding.

26.3. **Part-time Employees**

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

When an employee's hours are reduced to less than full time due to lay off provisions, the Authority shall continue to pay full medical, hospital, dental, and any other health insurance premiums.

26.4. **Flexible Spending Account**

The Authority shall maintain an Internal Revenue Code Section 125 Flexible Spending Account that allows an employee to elect pre-tax deductions from salary for the purpose of paying allowable medical expenses.

26.5. **New Providers**

The Authority shall make reasonable efforts when contracting with any new providers for hospital and medical plans to contract with those providers which provide coverage for all dependents residing in the employee's household.

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26.6. Medical and Dental Benefits

Medical and Dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

26.7. Discipline and Treatment

The union may request, where merited, on a case by case basis, that pending disciplinary action be held in abeyance pending successful completion of a treatment program by the employee, and thereafter as long as the employee maintains a positive performance and participates in an ongoing recovery program.

SECTION 27: GROUP LIFE INSURANCE

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

The Authority shall continue to provide group life insurance, by a carrier of the Authority's choice, for each employee in the amount of \$50,000 with a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the Authority's insurance carrier and subject to any medical exam as required by the insurance carrier.

SECTION 28: RETIREE MEDICAL COVERAGE

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

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

The City began providing the retiree medical coverage set forth in this Section on July 1, 2000. An employee's entitlement to any and all benefits provided by the Authority under this retiree medical coverage plan are subject to the funding limitations set forth in subsection 29.7.

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28.1. Eligibility

An employee is eligible for the retiree health insurance coverage set forth in subsection 28.2 below if he/she meets all the following criteria:

28.1.1. retires on or after July 1, 2000,

28.1.2. is vested with CalPERS,

28.1.3. has at least eight (8) years of CalPERS qualifying service with the City of Berkeley and/or Authority,

28.1.4. is at least age 55.

28.2. Pre Age 65 Retiree Health Insurance

Beginning July 1, 2000, the City/Authority shall make available health insurance coverage to the employee and his/her spouse or domestic partner. The City/Authority will pay on the employee's behalf no more than \$181.56 per month for an employee electing single party health coverage and no more than \$363.12 per month for an employee electing two party coverage. The actual monthly amount of money the Authority will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

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

Employee will pay the difference between the Authority's monthly contribution and the actual monthly insurance premium charged by the health plan he/she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are

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increased, the amount the Authority contributes shall increase no more than 4.5% above the previous year's contribution. Any increase in the amount contributed by the Authority will occur on July 1 of each year.

28.3. Retiree Benefits for Employees Age 65 and over

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his/her eligibility for the retiree medical benefits set forth in subsection 28.2 ceases. On reaching age 65, the Authority will make available health insurance coverage for a Medicare Risk Policy. When an employee or retiree reaches age 65, the Authority will contribute no more than \$17.65 per month on the employee's behalf for single party health insurance coverage and no more than \$35.32 per month for two party health coverage.

28.4. Termination by Authority of Retiree Medical Benefit

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the Authority of any further obligation to provide any further benefits under this section.

28.5. Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the Authority will retain eligibility for the retiree medical benefits provided in subsection 28.2 when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from Authority employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the Authority has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.

For eligible retirees between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the Authority contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 28.2. Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 28.2. Effective July 1, 2011, the amount the Authority contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 28.2.

28.6. Employees Retiring with a CalPERS Approved Disability Retirement

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If an employee retires from the Authority before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 28.2 when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from Authority employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the Authority has no further obligation to provide any benefits under this section to the employee and/or his/her spouse or domestic partner.

28.7. **Authority Funding of Retiree Health Benefit**

City of Berkeley contributions to the retiree medical benefit began on June 26, 2000. Funding of this benefit will be set aside in a trust to be established by the Authority.

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

For employees in Representation Unit H-2, an additional charge of one quarter percent (0.25%) of payroll will be charged each year in the final four years of the 2002-2008 Agreement so that contributions are at two percent (2%) in the final year of that Agreement. The purpose of this one percent (1%) increase in payroll contribution is to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan is seventy-seven dollars (\$77) effective July 7, 2002 for all post 65 retirees formally represented by the union as well as future retirees.

The Union understands and acknowledges that the Authority conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of seven percent (7%) it must achieve to fund the retiree health benefit provided in this section. The Authority will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and Authority agree that if the Actuary concludes that the Authority's funding of this benefit by contribution of one percent (1%) of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the Authority shall not be required to increase its funding for this benefit to more than one percent (1%) of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the Authority and the Union agree to meet and confer regarding the Authority's distribution of its one percent (1%) contribution.

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TERMS AND CONDITIONS OF EMPLOYMENT

SECTION 29: **PROBATIONARY PERIOD**

29.1. Length

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of six (6) months (1,040 hours) actual work exclusive of all leave and light duty and shall be completed within a one (1) year period. However, time spent on workers' compensation leave or on modified duty as a result of an industrial injury shall not be considered as actual service and shall not be included as time served toward completion of the probationary period.

Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to Authority service. No provision of this Section shall be interpreted to preclude the Authority from establishing new classifications which may require a probationary period of more than six (6) months.

29.2. Effect of Provisional Appointment

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

29.3. Completion

If the service of the probationary employee has been satisfactory to the Executive Director, the Executive Director shall change the employment status to permanent, noting that retention of such probationer in the service is desired. If such service has been unsatisfactory, the Executive Director shall change the employment status, and reject the employee.

Probationary employees may request periodic conferences with their supervisors regarding the adequacy of their performance.

29.4. Rejection

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 36.

2021-2024 Memorandum Agreement**Berkeley Housing Authority****SEIU Local 1021****SECTION 30: PROMOTION**

- 30.1. Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination, has been given and a promotional list established. In line with this, the Authority shall consider advancing career employees to vacancies in promotional positions before considering hiring temporary workers from outside the Authority service. Consistent with Authority past practices, each candidate for promotion must be either a permanent employee in the competitive service or a permanent employee on an active mandatory layoff reemployment list, and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit to which that classification is assigned.
- 30.2. If in the opinion of the Executive Director, the Authority is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or substitution of related experience and education may be made in promotional examinations, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than one (1) year, will be provided to facilitate job adjustment and to compensate for waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates his or her on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one (1) year to allow the employee time to demonstrate development of the necessary job knowledge and skills.
- 30.3. If, in the opinion of the Executive Director, the best interests of the service can be served by an open, competitive examination instead of closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the Executive Director may instruct the person or entity performing human resources functions for the authority to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligible list.
- 30.4. Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.
- 30.5. If the Authority elects to give an open, competitive examination for a promotional position, the Authority shall establish two (2) lists. List A shall be a Promotional List, and shall rank successful candidates who are presently Authority career employees. List B shall rank all successful candidates who are not presently career employees. The Authority shall seriously consider all candidates on List A before hiring from List B.

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30.6. **Step Increase**

If any employee is entitled to a step increase and receives a promotion within one (1) month of the increase, said employee is to be placed at the second higher step.

SECTION 31: DEMOTION

- 31.1. The Executive Director may demote an employee who so requests it, or whose ability to perform required duties falls below standard. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the person or entity performing human resources functions for the authority.
- 31.2. Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion and a copy of said notice shall be filed with the person or entity performing human resources functions for the authority. Any employee who has been demoted shall be entitled to receive a written statement of the reason for such action.
- 31.3. An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.
- 31.4. Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 40.

SECTION 32: SUSPENSION

- 32.1. The Executive Director may suspend an employee from his/her position for disciplinary purposes based on just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any fiscal year. Any employee to be suspended shall be entitled to receive a written statement of the reasons for such action.
- 32.2. The Executive Director may suspend an employee for disciplinary purposes based on just cause for not more than three (3) working days for any one (1) offense.
- 32.3. **Immediate Suspension**

An employee who the Executive Director determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.

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SECTION 33: DISCHARGE

An employee may be discharged at any time by the Executive Director, but if the probationary period has been completed, then such discharge must be for cause. Any employee who has been discharged shall be entitled to receive written statement of the reasons for such action.

SECTION 34: RESIGNATION

An employee wishing to leave the competitive service in good standing shall file with the Executive Director, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the person or entity performing human resources functions for the authority with a statement by the Executive Director as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee, and may be cause for denying future employment by the Authority. The resignation of an employee who fails to give notice shall be reported by the Executive Director immediately.

SECTION 35: REINSTATEMENT

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.

An employee who is reinstated under this Section who has completed probation in the classification to which the employee is being reinstated shall not serve a probationary period on reinstatement. An employee who is reinstated under this Section who has not completed probation in the classification to which the employee is being reinstated shall be required to serve a new probationary period on reinstatement. The duration of the probationary period determined by the classification and the provisions of Section 30 of this Agreement.

GRIEVANCE/ARBITRATION PROCEDURE

SECTION 36: GRIEVANCE/ARBITRATION PROCEDURE

It is the policy of the Berkeley Housing Authority to provide its employees with a fair and swift method for resolving problems. It is also the policy of the Berkeley Housing Authority to provide various levels of management within the Authority with ample opportunities to resolve the problems at the lowest possible level. In order to implement this policy, the Authority establishes the grievance procedure contained in this section.

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36.1. Definitions/General Conditions for Filing a Grievance

- 36.1.1 **Grievance:** A Grievance is any complaint of a member of the bargaining unit involving the interpretation, application, alleged violation, or any other matter of this Agreement or within the scope of representation of the Union.
- 36.1.2. **Administrative Complaint:** An Administrative Complaint is a grievance filed by a grievant or the Union specifically regarding payment of compensation or the interpretation and application of contract provisions and past practices, or allegations of past practice.
- 36.1.3. **Discrimination Complaint:** A Discrimination Complaint is a grievance filed by a grievant or the Union regarding a violation of Section 3 of this Agreement.
- 36.1.4. **Disciplinary Complaint:** A Disciplinary Complaint is a grievance filed by grievant or the Union regarding the recommendation of or implementation by an employee's supervisor or the Executive Director related to the suspension, demotion, salary reduction or discharge of an employee covered by this Agreement.
- 36.1.5 **Days:** The term "days" as used in this section shall mean calendar days. If the date that an act must be done falls on a weekend or a holiday observed by the Authority, the time to perform the act shall be extended to the next working day.
- 36.1.6. **Non-Bargaining Unit Management Employee:** The Non-Bargaining Unit Management Employee is the management employee designated by the Executive Director to whom the grievant reports.
- 36.1.7 **Union Representation:** The grievant shall be entitled upon request to representation by the Union at all levels of the grievance procedure. In situations where the Union has not been requested to represent the grievant, the Authority will not agree to a final resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to respond and state its view on the matter. The Union will be given ten (10) days in which to respond.
- 36.1.8. **Time Limits:** Failure by the Union to file or appeal a grievance within the time limits specified constitutes a dropping of the grievance. Failure by the Authority to respond by the specified times shall entitle the Union to move the matter to the next higher step of the grievance procedure. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 36.1.9. **Witnesses:** The Authority and/ or the grievant may call witnesses.

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36.1.10. **Release Time:** If an employee covered by this Agreement gives testimony in connection with the grievance procedure during working hours, the employee shall suffer no loss of pay. If the grievant's hearing is scheduled during working hours, the grievant shall suffer no loss of pay in order to present his or her grievance.

36.1.11. **Written Reprimand:** In the event that an employee receives a written reprimand, the Union or the employee may request a meeting with the supervisor to discuss the reprimand. Such meeting shall occur within fifteen (15) days of the request. The employee may write a rebuttal to any written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand.

36.2. Informal Discussion

Employees are encouraged to attempt to resolve any grievance they have directly with their supervisor or, if the grievance involves the employee's supervisor or they have no direct supervisor, with the Executive Director.

36.3. Steps in the Grievance Process

36.3.1. Step One – Non-Bargaining Unit Management Employee

Any employee who has a grievance that has not been resolved by informal discussion shall submit the grievance in writing to the Authority Non-Bargaining Unit Management Employee designated by the Executive Director within ten (10) days after the Informal Discussion takes place, or within thirty (30) days of the occurrence of the incident, giving rise to the grievance or the discovery thereof by the grievant, whichever date is later. The Non-Bargaining Unit Management Employee shall hold a meeting with the grievant to discuss the grievance. The grievant must be personally present and participate in the proceeding. If a satisfactory solution is not reached at this meeting, the Non-Bargaining Unit Management Level Employee shall render his/her decision on the grievance within ten (10) days. If this decision is not satisfactory, the grievance may be advanced to Step Two (if the grievance recommends disciplinary actions including suspension for more than five (5) working days, demotion or termination) or to Step Three (for all other grievances).

36.3.2. Step Two – Skelly Meeting

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If the Non-Bargaining Unit Management Employee issues an intent to recommend suspension for more than five (5) work days, demotion or termination, the employee will have the right to request a *Skelly* meeting within ten (10) days of receipt of the unsatisfactory recommendation. At the *Skelly* meeting, the employee has the right to request a review of the intended suspension, demotion or termination action and to present evidence that may contradict the findings upon which the intended suspension, demotion or termination recommendation is based. The *Skelly* Meeting officer shall be mutually-agreed to by the Union and BHA from the following panel: the Executive Director of the Alameda County Housing Authority, the Deputy Executive Director of the Alameda County Housing Authority, Executive Director of the Richmond Housing Authority, the Executive Director of the Alameda City Housing Authority, or the Deputy Executive Director of the Oakland Housing Authority.

The *Skelly* Meeting officer will make a decision on the recommended action within ten (10) days of completion of the hearing.

36.3.3. **Step Three – Executive Director**

Any employee who wishes to appeal the decision of the Non-Bargaining Unit Management Employee, or the decision of the *Skelly* Meeting officer as to demotions, suspensions less than five (5) days or terminations, must submit the appeal in writing to the Executive Director within fifteen (15) days of receipt of an unsatisfactory response. The Executive Director, or his/her designated representative, shall have ten (10) days in which to review and respond to the grievance in writing. The Executive Director or his/her designated representative may hold a meeting with the grievant to discuss the grievance. The grievant must be personally present and participate in the proceeding.

36.3.4. **Step Four -- Arbitration**

If the grievant or Union is not satisfied with the results rendered in Step Three, the Union may require that the grievance be referred to an impartial arbitrator by notifying the Executive Director. Such notification of desire to go to arbitration must be filed in writing within twenty (20) days of the conclusion of Step Three.

The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The Authority and the Union will alternately strike a name until one (1) remains. The remaining name will be the arbitrator. The cost of the arbitrator's decision shall be borne equally by the parties.

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The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the Executive Director and the Union

MISCELLANEOUS TERMS AND CONDITIONS

SECTION 37: GENERAL PROVISIONS

37.1. Personal Conduct

37.1.1. No employee shall accept appointment to the deputyship or assistantship of any County or State Office or position, or otherwise incur an obligation of civil public position, or otherwise incur an obligation of civil public service outside his / her regular municipal employment without first obtaining the recommendation of the head of his / her department and of the Executive Director.

37.1.2. No employee shall be disciplined for off-the-job activities which do not affect the performance of the employee.

37.1.3. Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose recurring burden upon the offices of the Executive Director for the purpose of making collections.

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37.1.4. Full-time Authority employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the Authority.

37.1.5. No official or employee who wears a badge or other official insignia as evidence of his / her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department, or otherwise to leave his / her possession, without approval by the head of the Executive Director

37.2. VDT Glasses

The Authority shall provide glasses as medically required for operators of Video Display Terminals.

37.3. Safety

The Authority and the Union will make every effort to maintain workplaces free of health and safety hazards. No employee shall be required to perform work with unsafe equipment or in situations which can be injurious to their health or safety.

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37.4. Use of Automobiles

The Executive Director shall govern the use of Authority -owned automotive equipment and privately-owned automotive equipment by such rules and regulation as he or she may establish. The cash allowance will be equal to the amount established by the Internal Revenue Service, which is \$0.535 in 2017, but the rate will fluctuate from time to time.

37.5. Subcontracting

The parties recognize that it may be necessary for the Authority to contract out some work that cannot be performed by Authority staff because of compliance requirements of HUD and/or time deadlines. When this contract work is necessary, it will not result in the layoff or reduction of hours of Authority staff. If the Authority finds that it must contract it will provide the Union with at least sixty (60) days advance notice and offer to meet and confer with the Union on the impact of this decision.

37.6. Transit /Parking Benefit

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

37.7. Video Display Equipment

37.7.1. Working Conditions:

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

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

37.7.2. Pregnancies

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

37.7.2.1. such transfer will be limited to other positions which are vacant which the transferee is qualified to perform;

37.7.2.2.

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

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

37.8. **Introduction of New Technology**

The Union shall be given reasonable advance notice of the introduction of new equipment or new processes which may result in the layoff of employees in the bargaining unit. Thereafter, the Authority and the Union shall meet for the purpose of discussing means of mitigating the impact of the introduction of said equipment upon affected employees. The Authority shall provide counseling to any displaced employee and shall assist the employee in securing training opportunities which may qualify him / her to be employed in another position with the Authority. The Authority shall train employees required to operate such new equipment.

37.9. **Assignments for Temporarily Disabled Employees**

37.9.1. The Authority may accommodate, when feasible, employees covered by this Agreement under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:

37.9.1.1. The assignment shall be consistent with medical limitations as determined by the physician of record.

37.9.1.2. The assignment shall be within the Authority and may include hours and days of work other than the employee's regular assignment, at no loss of pay.

37.9.2. The Authority may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Executive Director with a medical statement from his / her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the Authority, other classifications may be considered, subject to the approval of the person or entity performing human resources functions for the Authority. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

37.9.3. In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Executive

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Director will endeavor to place the employee in a position which best serves the interest of the Authority with no loss of pay, but in no event will such placement exceed three (3) months in duration.

37.10. Annual Performance Evaluation

Annual performance evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation which shall be made part of the employee's personnel records.

Prior to annual evaluation, the supervisor must have observed the employee's performance for at least three (3) months in that evaluation period. If extended leave or other circumstances prevent three (3) months observation, the performance evaluation shall be postponed until this minimum time has elapsed. In special circumstances of relief or rotating employees who regularly do not work consecutive periods of over three (3) months with the same supervisor, the evaluation shall be completed as regularly due with the primary supervisors providing a joint evaluation.

37.11. Official Personnel File

- 38.11.1. All official records of the employee's personnel history are maintained by the Authority, including applications for appointment performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history.
- 37.11.2. Employees have the right to inspect their departmental individual personnel files and the official file which is maintained by the Authority during normal business hours, as provided by law. No material of any kind, except documents submitted by the employee, shall be placed in an employee's official personnel file after the date of employment without a copy being given to the employee. The employee may provide a concise written response to any material which is maintained in either personnel file.
- 37.11.3. If the employee believes that any material has been placed in the official personnel file by the Authority in violation of this provision, the employee may send a written request for its removal to the Executive Director. The Executive Director will make a determination of the appropriateness of the inclusion of the material and will notify the employee of the final disposition.
- 37.11.4. In responding to inquiries from prospective future employers, only information available in the individual's official personnel file will be provided.
- 37.11.5. Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's

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personnel file. Such records may be separately maintained but shall not be regarded or treated as part of the individual's personnel file.

37.11.6. Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's personnel file.

37.11.7. Formal letters of reprimand or formal counseling concerning work rules or time and attendance shall be removed from an employees' official files upon request after twenty-four (24) months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employee's official personnel file upon request after forty-eight (48) months provided the employee has maintained satisfactory performance.

37.12. Supplemental Retirement / Disability Insurance Plan

All employees hired after July 22, 1988 are in SRIP II. Provisions of this plan are described in Municipal Code Section 04.38.101 et seq., as amended.

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

37.13. Reclassification of Positions / Job Audits

If a bargaining unit position is upgraded or otherwise reclassified, it shall automatically be included in the bargaining unit if the work performed belongs under the jurisdiction of the Union as determined by the Authority after a review of the position by the person or entity performing human resources functions for the Authority.

In the event the Authority reclassifies a position from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided they have performed the duties of the new class for six (6) months and have not received an unsatisfactory evaluation. All other employees shall pass an examination for the higher class and shall serve the normal probationary period. If a position is reclassified, the employee shall receive back pay to the date of the beginning of the closest pay period that the position description questionnaire is received by the Executive Director. Position description questionnaires shall be available at all times in each department.

37.14. Break Facilities

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Each work location shall include a room that is reserved for use of employees for rest breaks and lunch breaks. Employees who wish to take rest or lunch breaks in these rooms shall have first priority for the use of such rooms unless alternative break facilities are provided.

37.15. Educational Leave

The employee shall be eligible for reimbursement for tuition, and textbooks for training that is required by the Authority or for training that is mutually acceptable to the employee and the Executive Director.

Employees shall be eligible to submit a plan for educational leave to the Executive Director. Upon the Executive Director's approval, the employee shall be allowed to take an unpaid leave of absence not to exceed one (1) year, which may be extended by the Executive Director to a total of three (3) years, with a right to return to their original classification if there is an available position.

If available, the Authority shall allow the employee to accept a lower position in their career series or allow the employee to request a demotion or transfer.

37.15. YMCA/Gym Membership

The cost of YMCA or another recognized gym/fitness club membership will be divided between the Authority and the employees, with the Authority contribution to be seventy-five percent (75%) of the monthly YMCA membership fee. The amount the Authority contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA or other gym/fitness club facility/program by an Authority employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

The Authority or its Claims Administrator may not be liable for any injury which arises out of an Authority employee's participation in and use of a YMCA or other gym/fitness club facility club membership.

The same dollar amount of seventy-five percent (75%) of the YMCA monthly membership fee can be used, instead, towards the employee's membership fee in another recognized gym/fitness club.

37.17. Address and Phone Number

Employees have the responsibility to provide the Authority with their current address, home and cell telephone number, and email address.

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37.18. **Legal Representation**

The Authority will consider on a case by case basis legal representation for employees in cases arising out of the lawful performance of their assigned job duties.

37.19. **Physical Exams**

The Authority may require physical exams by a physician of the Authority's choice for reasonable cause related to fitness for duty.

37.20. **Crimes Against Employees**

The Berkeley Police Department will promptly respond to any calls regarding criminal acts committed against a Authority employee while engaged in his or her employment. Reports of assault or other acts of criminal misconduct committed against an Authority employee will be promptly investigated. The results of the investigation will be submitted to the Alameda County District Attorney for disposition.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

SECTION 38: **PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

- 38.1. **Participation:** The Authority shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System, such Plan to include the single highest year earnings formula for Classic Employees as provided in Section 38.7.1 and the three years final compensation formula for New Members as provided in Section 38.7.2.
- 38.2. **“Classic Employees” Definition:** Classic Employees are defined as current employees and future employees who do not qualify as “New Members” under the California Public Employees Pension Reform Act of 2013 (PEPRA).
- 38.3. **“New Members” Definition:** New Members are defined in the Public Employees’ Pension Reform Act of 2013 (PEPRA), Government code Section 7522.04(f).
- 38.4. **CalPERS Retirement Formula for Members as Defined Under the Public Employees’ Pension Reform Act Of 2013 (PEPRA):** “New Members” as defined by PEPRA who are hired by Authority on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.
- 38.5. **CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e. current employees and future employees who do not**

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qualify as “New Members” under the California Public Employees’ Pension Reform Act of 2013 (PEPRA): The Authority agrees to provide the 2.7% at age 55 retirement formula for Classic Employees. Contributions to the employee’s share (EPMC) made pursuant to section 38.5.2 shall be reported to PERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

38.5.1 Employee Contribution to Employer Share

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

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

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

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

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38.5.2 Employee Contribution to Employee Share

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

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

Effective July 1, 2020, Classic Employees will contribute a total of eight percent (8.0%), toward the eight percent (8.0%) employee contribution to CalPERS. Classic Employees will contribute a total of eight percent (8.0%), toward the eight percent (8.0%) employee contribution to CalPERS

The conversion of unused sick leave to Retirement credit benefit (Government Code Section 20965) offered by CalPERS as an optional benefit to contracting agencies shall be made available to Unit members.

38.6 New Members Payment of Employer Paid Member Contribution: New Members as defined by PEPRA who are hired by the Authority on or after January 1, 2013 will be required to pay fifty percent (50%) of the normal cost, as provided by CalPERS. New Members shall receive any other additional optional CalPERS benefits that the Authority provides to Classic Employees as allowed by PEPRA.

38.7 Optional Benefits: The Authority’s contract with CalPERS includes the following optional benefits:

38.7.1. Classic Employees One-Year Final Compensation: Classic Employees, as provided in Government Code Section 20042 (July 9, 1978).

38.7.2 New Members Three Years Final Compensation: Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided in the California Public Employee Pension Reform Act of 2013, or as subsequently amended.

38.7.3. Post Retirement Survivor Allowance as provided in Government Code Sections 21524, 21526 and 21528 (December 15, 1973).

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- 38.7.4. Post Retirement Survivor Allowance to Continue after Remarriage as provided in Government Code Section 21535 (July 18, 1986).
- 38.7.5. Credit for Unused Sick Leave as provided in Government Code Section 20965 (June 26, 1988).
- 38.7.6. 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Government Code Section 21580 (December 15, 1973).
- 38.7.7. Third Level of 1959 Survivor Benefits as provided in Government Code Section 21573 (November 28, 1996).
- 38.7.8. 2% @ 55 for Local Miscellaneous Members as provided in Government Code Section 21354 (June 30, 1992).
- 38.7.9. Military Service as Public Service as provided in Government Code Section 21024 (April 9, 1999)
- 38.7.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Government Code Section 21023.5 (April 14, 2000).

LAYOFF PROCEDURE

SECTION 39: **LAYOFF**

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

39.1. **Announcement of Layoff**

- 39.1.1. The Board of Commissioners and the Executive Director shall make every reasonable effort to manage and budget the Authority's resources effectively, and to plan for the delivery of Authority services in a manner which will avoid the necessity of laying off career Authority employees. If a reduction in the work force is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence or shortage of work or funds, the Executive Director shall notify the person or entity performing human resources functions for the authority of the intended action and the reason for the layoff.

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40.1.2. Immediately following a decision which may involve the potential layoff of career Authority employees, the Executive Director shall freeze all current Authority vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, temporary positions which are expected to last six (6) months or more, in order to implement the provisions of Section 39.6.

39.1.3. If layoffs in Local 1021 's jurisdiction are contemplated, the Authority shall endeavor to notify the Union within sixty (60) days if possible, but in no event later than thirty (30) days prior to the date of the actual layoff. The Union shall have five (5) days after receiving notice to request a meeting with the Authority to discuss alternatives and to meet and confer on the impact of such layoffs.

39.2. Seniority Service Date

39.2.1. All service in the employ of the Authority shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well as leaves of absences for obligatory military service and approved parental leave while an employee of the Authority. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

All leaves of absence without pay, regardless of duration, shall be subtracted from the employee's seniority service date. This provision will go into effect immediately upon implementation of necessary data processing and programming changes.

39.2.2. The person or entity performing human resources functions for the authority will maintain up-to-date and current Seniority Services Dates for all Authority employees holding probationary and permanent appointments. Approved parental leaves shall not be deducted from Seniority Service Dates.

39.3. Establishment of Seniority Lists

39.3.1. Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to Authority-wide classification Seniority Lists. Upon receiving notification that the Executive Director must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs and departments involved, the person or entity performing human resources functions

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for the authority will immediately establish separate Probationary and Permanent Seniority Lists for each classification targeted for layoff.

39.3.2. The names of all Authority employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, i.e., employees with the least amount of total service shall be laid off first. Non-career employees and temporary agency personnel working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the Probationary Seniority List for a specific classification will be laid off prior to employees on the Permanent Seniority List for that class.

39.3.3. Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a Seniority List of the class targeted for layoff in which they hold permanent or probationary status. Any provisional appointment must be terminated prior to the retreat or layoff of a career employee with permanent or probationary status in the same classification.

39.3.4. If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:

39.3.4.1. Time in classification - the employee having least time in the class shall be released first;

39.3.4.2. By lot.

39.4. **Employee Retreat Rights**

39.4.1. Before an employee with permanent or probationary status may be released from employment with the Authority, the person or entity performing human resources functions for the Authority must consider the employee's right to retreat to lower level classification through which he or she was originally promoted or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

39.4.2. In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process.

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In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.

39.4.3. If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the Executive Director to determine the final placement offer to the employee.

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

39.5. Employee / Union Notification

39.5.1. Temporary employees shall be notified individually, in writing of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks' notification is desirable if possible.

39.5.2. Employees with provisional appointments shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days' notification if targeted for release or reassignment.

39.5.3. All notices of layoff under Section 39.5 shall be issued to the Union simultaneously with notice to the affected employee(s). Together with any layoff notices sent to the Union, a list shall be included of all vacancies which are authorized for filling.

If an employee fails to accept a bona fide offer, in lieu of layoff, ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 39.7.

39.6. Reemployment Lists

39.6.1. The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 39.4.

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- 39.6.2. A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated and remain employed with the Authority.
- 39.6.3. Departments with vacancies in any classification for which there is an active Reemployment Priority List must use the Reemployment Priority List to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate Reemployment Priority Lists have been exhausted.
- 39.6.4. When a vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the department head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.
- 39.6.5. If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the Reemployment Priority List from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all Reemployment Priority Lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the Reemployment Priority List for the classification from which he or she was originally terminated.
- 39.6.6. Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.
- 39.7. **Appeal Procedures**
- Any permanent, probationary, or career-exempt employee who is laid off, demoted, reassigned or transferred as a result of layoff and who believes that the layoff procedure has been improperly administered as it pertains to the employee's case, may appeal the action under Section 37. In addition, employees may, at all times, before, during and subsequent to layoff, review all records, including Seniority Lists, Reemployment Priority Lists, documentation pertaining to appointments under the Reemployment Procedure, etc., which pertain to their classification and their rights under the provisions of the layoff policy.
- 39.8. Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

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SIGNATURE PAGE

This Memorandum Agreement is executed this _____ day of _____ 2022 by employer relations representatives whose signatures appear below for their respective organizations.

SEIU Local 1021:

DocuSigned by:
Andre Spearman 1/25/2022
CE0FD6EBC020485...
Andre Spearman, Chief Negotiator,
SEIU Local 1021

DocuSigned by:
Lynda Deshaizer
00F299E908304A5...
1/25/2022

Negotiating Team Member
SEIU Local 1021

David Canham

David Canham, Executive Director
SEIU Local 1021

Peter Masiak

Peter Masiak, East Bay Field Director
SEIU Local 1021

Berkeley Housing Authority:

DocuSigned by:
RACHEL GONZALES-LEVINE 1/20/2022
E7969889FCD0477...
Rachel Gonzales-Levine
Acting Executive Director
Berkeley Housing Authority

DocuSigned by:
Stacey Cue 1/21/2022
1BD249334A3841F...
Stacey Cue
Chief Negotiator, Berkeley Housing Authority

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EXHIBIT A

SEIU Local 1021

June 27, 2021-June 22, 2024**Salary Ranges in Effect From June 27 2021 (4% increase)**

	FLSA	A	B	C	D	E
BHA Accountant	N	\$ 6,663	\$ 6,996	\$ 7,346	\$ 7,713	\$ 8,098
BHA Inspector	N	\$ 5,779	\$ 6,068	\$ 6,371	\$ 6,690	\$ 7,025
BHA Housing Specialist	N	\$ 6,573	\$ 6,902	\$ 7,247	\$ 7,609	\$ 7,989
BHA Office Assistant I	N	\$ -	\$ -	\$ 4,760	\$ 4,998	\$ 5,249
BHA Office Assistant II	N	\$ -	\$ -	\$ 5,480	\$ 5,754	\$ 6,041

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

	FLSA	A	B	C	D	E
BHA Accountant	N	\$ 6,863	\$ 7,206	\$ 7,566	\$ 7,944	\$ 8,341
BHA Inspector	N	\$ 5,952	\$ 6,250	\$ 6,563	\$ 6,891	\$ 7,236
BHA Housing Specialist	N	\$ 6,770	\$ 7,109	\$ 7,464	\$ 7,837	\$ 8,229
BHA Office Assistant I	N	\$ -	\$ -	\$ 4,903	\$ 5,148	\$ 5,406
BHA Office Assistant II	N	\$ -	\$ -	\$ 5,644	\$ 5,927	\$ 6,222

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

	FLSA	A	B	C	D	E
BHA Accountant	N	\$ 6,932	\$ 7,278	\$ 7,643	\$ 8,023	\$ 8,424
BHA Inspector	N	\$ 6,012	\$ 6,312	\$ 6,628	\$ 6,960	\$ 7,308
BHA Housing Specialist	N	\$ 6,837	\$ 7,180	\$ 7,539	\$ 7,915	\$ 8,311
BHA Office Assistant I	N	\$ -	\$ -	\$ 4,952	\$ 5,199	\$ 5,460
BHA Office Assistant II	N	\$ -	\$ -	\$ 5,700	\$ 5,986	\$ 6,284

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EXHIBIT B

Holiday Office Closure FY2022 – 2024

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

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APPENDIX A

BERKELEY HOUSING AUTHORITY

HARASSMENT PREVENTION POLICY

AUTHORITY POLICY

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

LEGAL DEFINITION OF SEXUAL HARASSMENT

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

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

CONDUCT PROHIBITED UNDER THE AUTHORITY'S POLICY

In order to ensure that such offensive conduct does not rise to the level of conduct which is illegal, the Authority has a zero tolerance policy toward a single instance of any such conduct which either by itself or when repeated would constitute sexual harassment. The Authority may consider even a single

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instance of a violation of this policy as grounds for disciplinary action, up to and including termination of employment, depending on its seriousness.

Specifically, the Authority will not tolerate employees or non-employees with whom Authority employees have a business, service, or professional relationship engaging in any of the conduct listed below:

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

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

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

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FRIENDLY INTERACTION OR SEXUAL HARASSMENT

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

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

OTHER TYPES OF HARASSMENT PROHIBITED BY THE AUTHORITY'S POLICY

The Authority's policy also prohibits harassment on the basis of race, creed, color, ancestry, national origin, sex, gender, gender identity, gender expression, pregnancy, sexual orientation, marital status, religion, physical or mental disability, medical condition (including HIV status), genetic information, family care leave status, age, political affiliation, military or veteran status, or any other basis protected by applicable federal, state or local laws. The Authority will not tolerate an or non-employees with whom Authority employees have a business, service, or professional relationship engaging in any of the conduct listed below.

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

An employee engaging in conduct prohibited by this policy shall be subject to appropriate disciplinary action, up to and including termination of employment, regardless of whether the employee engages in the prohibited conduct only once. Any employee engaging in inappropriate conduct of a harassing nature on the basis of race, color, national origin, sexual

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orientation, disability, age or other characteristics prohibited under federal and state anti-discrimination statutes, shall be subject to appropriate disciplinary action, up to and including termination of employment.

EMPLOYEES' RESPONSIBILITIES WHEN SUBJECTED TO HARASSMENT

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

SUPERVISORS' RESPONSIBILITIES

Supervisors are responsible for enforcing the Authority's harassment prevention policy. Supervisors must ensure that all employees are aware of the Authority's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members. Supervisors should be cognizant of employees' behavior and shall not permit any employee under his/her authority to be subject to or engage in any conduct prohibited by the Authority's policy. Supervisors who receive complaints or who observe conduct prohibited by this policy shall inform the employee to cease the conduct immediately and advise the Executive Director. The Authority will take disciplinary action, up to and including termination, against any supervisor who fails in his/her responsibility to take immediate action in response to an employee's complaint of harassment or to stop harassing conduct committed in his/her presence or to stop harassing conduct about which the supervisor has knowledge.

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

ENFORCEMENT RESPONSIBILITIES

The Authority's harassment policy will be enforced by the Executive Director. Each reported incident will be investigated promptly, impartially, thoroughly and in a confidential manner to the extent possible, accompanied by disciplinary action as appropriate. It is reiterated that the Authority will take disciplinary action, up to and including termination for any substantiated violations of this policy. Persons who knowingly report false charges will be subject to appropriate disciplinary actions also. Employees will not be subject to retaliation for making complaints under this policy or for participating in an investigation under this policy. Any substantiated instances of retaliation will subject the employee to disciplinary action, up to and including termination.

OUTSIDE AGENCIES

In addition to notifying the Authority about harassment or retaliation complaints, affected employees

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may also direct their complaints to the following external agencies:

California Department of Fair Employment and Housing
1515 Clay Street, Suite 701
Oakland, CA 94612-2512
(800) 884-1584 or (510) 622-2941

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

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

If you have any questions or need information regarding your protections under pertinent laws regarding harassment or your rights regarding complaint filing with the above compliance agencies, you may contact the Executive Director.

APPENDIX B

BERKELEY HOUSING AUTHORITY EEO COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURE

Policy:

In accordance with EEO principles and the policies of the EEO/Affirmative Action Program, all employment practices, procedures, conditions and decisions shall be based on valid job-related criteria and shall be and maintained without discrimination or harassment on the basis of race, creed, color, religion, ancestry, national origin, age, sex, gender, gender identity, gender expression, pregnancy, sexual orientation, marital status, political affiliation, physical or mental disability, medical condition (including cancer and HIV status), genetic information, family care leave status, military or veteran status, or any other basis protected by applicable federal, state or local laws. The Authority will neither tolerate nor condone conduct by employees by managers, supervisors, co-workers, or non-employees with whom Authority employees have a business, service, or professional relationship that are inconsistent with EEO principles or in violation of any policy of the EEO/Affirmative Action Program..

The Authority may consider even a single instance of a violation of this policy as grounds for disciplinary action, up to and including termination of employment, depending on its seriousness.

Objectives:

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

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

Conditions:

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

1. No employee, as a result of his/her participation in the EEO Complaint Investigation and Resolution Procedure, shall be subject to retaliation or reprisal by any other employee which:
 - (a) deprives or tends to deprive him/her of employment opportunities;
 - (b) has the effect of creating an intimidating, hostile or offensive working environment;
 - (c) has the purpose or effect of unreasonably interfering with his/her work performance;
 - (d) otherwise adversely affect his/her status as an employee.

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

2. All internal complaints that allege violation of EEO principles or EEO/Affirmative Action Program policies, and all responses to such complaints may be handled under the provisions of the EEO Complaint Investigation and Resolution Procedure.
3. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file complaints with the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the courts.
4. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlements to file grievances under the provisions of collective bargaining agreements.
5. The EEO Complaint Investigation and Resolution Procedure shall not apply to formal complaints on matters outside the purview of the EEO/Affirmative Action Program.
6. Any corrective or preventative measures undertaken to resolve EEO problems and concerns identified in accordance with this procedure shall be entered into voluntarily by the Authority as part of its ongoing commitment to the provision of equal employment opportunity. Such action shall not be construed as an admission, nor shall such action imply, that the Authority engages in or ever has engaged in unlawful discrimination.
7. All investigation reports prepared in accordance with the provisions of the EEO Complaint Investigation and Resolution Procedure shall remain the sole property of the Authority, and as such shall be established and maintained as confidential material, to the extent possible. However, the Authority recognizes its obligations under the Skelly due process procedures and

will make such disclosures as required to fulfill its obligations. No persons other than authorized complaint investigators and evaluators shall have any entitlement to access such material. The Authority will take such steps as necessary to secure appropriate legal remedies in response to any unauthorized duplication, distribution or possession of such material.

8. Any party who files a complaint under the provisions of the EEO Complaint Investigation and Resolution Procedure shall be entitled upon request to advice, counsel and representation by an authorized agent of his/her bargaining unit throughout the investigation and resolution process.

Formal Resolution Process:

1. **Complaint Submission.** Formal complaints must be initiated within thirty (30) days of the date the alleged employment practice, procedure, condition or decision which is believed to have been applied to them in a manner inconsistent with EEO principles occurred, or within thirty (30) days of the date the employee reasonably should have had knowledge of the matter. If the employee attempted to resolve the matter internally, the formal complaint must be initiated within ten (10) working days of the date of the termination of the unsatisfactory internal resolution. The complaint must be submitted in writing to the Executive Director. The formal complaint should include the following information:
 - (a) description of the activities and circumstances believed to be EEO violations;
 - (b) identification of the complaint allegations that have not been addressed in satisfactory manner by the Authority;
 - (c) identification of any policies, practices or procedures believed to have been violated;
 - (d) description of the participants' roles, responsibilities and activities in relationship to the alleged violations;
 - (e) description of desired outcomes, relief, or other corrective measures.

Supervisors who receive complaints or who observe conduct prohibited by this policy shall inform the employee to cease the conduct immediately and advise the Executive Director. The Authority will take disciplinary action, up to and including termination, against any supervisor who fails in his/her responsibility to take immediate action in response to an employee's complaint under this policy or to stop conduct violative of this policy committed in his/her presence or to stop conduct violative of this policy about which the supervisor has knowledge.

2. **Complaint Rejection.** When presented with a formal complaint, if it is determined that: (a) the complaint does not fall within the scope of this procedure; (b) the complaint was not filed within the specified time limits; (c) the complaint already has or is being processed administratively or through civil proceedings; or (d) a decision has already been made and appropriate steps have been taken by proper authorities; then the Executive Director shall provide written acknowledgment of its receipt to the complainant, and advise the complainant of its rejection, the reasons and his/her right to file civil action.

3. Complaint Acceptance. When presented with a formal complaint, and after determining that (a) the complaint falls within the scope of this procedure, and (b) the complainant has satisfied the requirements of pre-complaint processing, the Executive Director shall take the following steps:
 - a) Within ten (10) working days of the receipt of the formal complaint, provide written acknowledgment of its receipt to the complainant, and advise the complainant of the steps of the process and his/her right to file civil action.
 - (b) Within twenty (20) working days of the receipt of the formal complaint, forward the complaint to the Authority's General Counsel who shall (a) conduct a formal investigation of the allegations of the complaint, and (b) submit a comprehensive investigation report with results, conclusions and recommendations to the Executive Director. The investigation shall be conducted in a prompt, impartial and thorough manner. .
 - (c) Within thirty (30) working days of the receipt of the formal complaint, provide a formal written response to the complainant that (1) identifies the allegations of the complaint; and (2) summarizes the overall results of the investigation and any corrective or preventative measures to be taken as appropriate. The Executive Director shall provide to the complainant all documents that the Executive Director considered in making the response, consistent with the Authority's due process Skelly obligations.

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