

**AGREEMENT**

**BETWEEN**

**SAN FRANCISCO BAY AREA**

**RAPID TRANSIT DISTRICT**

**AND**

**BART POLICE**

**MANAGERS' ASSOCIATION**

**(BPMA)**

**EFFECTIVE**

**JULY 1, 2009 - JUNE 30, 2013**



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**1. DURATION OF AGREEMENT**

This Agreement shall become effective on July 1, 2009 and remain in full force and effect up to and including June 30, 2013.

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**2. AGENCY SHOP**

Within thirty (30) days of the execution of this Agreement, or of beginning employment with the District, an employee must execute and maintain a dues or equivalent service fee deduction authorization acceptable to the District in accordance with Section 5, *Dues or Service Fee Deduction*. The effective date of the authorization shall be the effective date of this Agreement except for employees hired or promoted subsequent to such effective date, whose date of hire or promotion will be the effective date of the authorization. Such execution and maintenance shall be a condition precedent to continued employment.

Equivalent service fees shall be no greater than the regular and usual membership dues and assessments.

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**3. ASSOCIATION RECOGNITION**

- A. The District recognizes the BART Police Managers' Association (BPMA) as the exclusive bargaining representative for all District Police employees in classifications placed in the "Police Management Unit" by the decision of the California State Department of Industrial Relations dated January 2, 1979.
- B. Effective July 1, 2009, the position of Commander will no longer be covered by the January 2, 1979 "Police Management Unit," determination made by the California State Department of Industrial Relations.

All new Commander positions will be non-represented.

- C. The District also recognizes the following civilian supervisors within the Police Department as members of the BPMA bargaining group:

- Police Administrative Supervisor
  - Police Communications Supervisor
  - CAD/RMS Administrator

- D. The District also recognizes that the term Non-Sworn and Civilian are synonymous. Effective July 1, 2009 all references to Non-Sworn will be replaced by Civilian.

#### **4. ASSOCIATION REPRESENTATIVES**

One (1) Association representative, either the Association President or Vice President or designee for the particular problem in question, shall be recognized to assist employees in resolving grievances at the lowest possible administrative level. On July 1, of each year, the District shall establish a 120-hour bank for time off as may be needed by the Association president or a BPMA Executive Board member designee, for Association business (e.g., investigation and processing of grievances, meetings with Management, District Board meetings, PORAC meeting, labor symposiums, or other requests as approved by the Chief of Police or designee), without loss of pay or benefits provided advance notification is given to, and approved by, the immediate supervisor.

Requests for time off from this bank will be submitted in writing on an Absence Report form and must be signed by the president of the Association or designee and approved by the Chief of Police or designee. Said bank shall not be carried over from one fiscal year to the next fiscal year.

The time off may be taken concurrently by such representatives under this Section with approval of the Chief of Police or designee.

Representatives will be given the privilege of utilizing the District's inter-office mail, e-mail, and existing telephone facilities as may reasonably be necessary in the conduct of Association business.

Each employee recognized by the District as a member of the duly elected or appointed Association Negotiating Committee, who attends Association-Management contract negotiation meetings will be compensated for actual work time lost as a result of such meetings.

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#### **5. DUES OR SERVICE FEE DEDUCTION**

The District agrees to make payroll deductions as hereafter indicated from the pay of employees covered by this Agreement. Such deductions shall commence upon submission by the employee of a written authorization satisfactory to the District. Deductions shall include monthly membership dues, assessment, insurance premium initiation fees, or their equivalents, and shall be forwarded monthly to the Association. Dues and assessments shall be uniformly applicable to all employees in the same job classification or pay level.

No fines or penalty imposed on an individual by the Association shall be collected by means of payroll deduction.

The Association agrees to furnish the District with written notice of changes in amounts to be deducted by the tenth (10th) of the month in which such changes are to be effected.

The Association shall hold the District harmless from any and all claims, and will indemnify it against any unusual costs in implementing these provisions.

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## **6. MANAGEMENT RIGHTS**

The management of the operations and business of the District and the management and direction of the work and work forces are vested solely and exclusively in the District unless expressly limited or provided for elsewhere in this Agreement or by any other rule, or regulation, of the District. All other inherent management rights not expressly limited by this Agreement or any rule or regulation of the District are reserved by the District. The foregoing is not intended to be all inclusive or a complete enumeration of the management rights of the District, but to indicate, in general, the types of rights generally inherent in Management and is not deemed to exclude the exercise of other inherent management rights nor to ban the filing, processing, and the resolving of any grievance under Section 60, Grievance Procedure, of this Agreement concerning the exercise of any such management right. The right of Management to establish or enforce rules, or regulations, separate and apart from this Agreement implementing or enforcing any area which solely concerns management rights is hereby recognized subject only to the provision of the grievance procedure herein set forth.

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## **7. NO STRIKES AND NO LOCKOUTS**

- A. It is the intent of the District and the Association to assure uninterrupted service to the public and protection of District property during the life of this Agreement. Accordingly:
1. No employee or Association signatory hereto shall engage in, cause, or encourage any strike, slowdown, picketing, concerted refusal to work or other interruption of the District's operations for the duration of this Agreement as a result of any labor dispute.
  2. The District shall not lock out any employees covered by this Agreement during its term as a result of any labor dispute.
  3. It shall not be a violation and shall not be cause for discharge or other discipline for a District employee to refuse to enter upon any property involved in a labor dispute. This exception shall not be applicable to sworn Police Officers. In the event of a labor dispute, sworn Police

officers shall only be assigned work sworn Police Officers are assigned when there is no labor dispute, and will not replace striking employees.

4. In any case where employee conduct occurs in violation of this Section, the Association will promptly take all necessary action to bring about a termination of such conduct, and where so requested by the District, will give individual notification to the employees involved to cease any such conduct.
  - a. The District may, at its option, discontinue sick leave payments if more than twenty-five percent (25%) of the employees covered by this Agreement are absent from their regularly scheduled duty assignments on the same day.
- B. In the event of any alleged violation of Paragraph A of this Section, either the District or the Association may seek immediate arbitration before one (1) of the named arbitrators to be selected in accordance with the arbitration procedures set forth in Section 60, *Grievance Procedure*. The party seeking such arbitration shall use its best efforts to notify the other party of the referral to arbitration by means of telephone or written notice including fax or e-mail, delivered to the principal office of the party against whom the award is being sought. The question in such arbitration shall be whether either party or any employee covered by this Agreement has engaged or is engaging in activities in violation of this Section.

The arbitrator shall have full equitable power to resolve the dispute, including the power to immediately issue an order to terminate the activities in violation of this Section. Such award shall be binding on both parties and employees. The expenses of the arbitration shall be borne by the party against whom the award is entered. Unless the parties agree that the arbitrator shall retain jurisdiction to decide the underlying dispute at the same hearing, the moving party shall refer the dispute leading to or determined to be the cause of the alleged violation of Paragraph A of this Section to the appropriate grievance and arbitration procedure provided under this Agreement. If either party raises an issue of arbitrability of the dispute allegedly causing the violation of Paragraph A of this Section, said preliminary issue of arbitrability shall be decided by the same arbitrator selected to hear the underlying dispute on the merits.

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## **8. NON-DISCRIMINATION, AFFIRMATIVE ACTION**

There shall be no discrimination in the application of provisions of this Agreement. In recognition of such, the parties are committed to ensure these provisions are applied equally to all employees without regard to race, color, religion, disability, gender,



marital status, sexual orientation, age or national origin and in a manner consistent with the stated Affirmative Action Policy of the District.

Finally, the parties agree no employee covered by this Agreement shall suffer discrimination because of membership and participation in the Association.

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## **9. ASSOCIATION ACCESS TO WORK LOCATIONS**

Non-employee and employee Association representatives will be permitted access to District office facilities, except for specific facilities reasonably excluded by the Chief of Police and prohibited by law, for purpose of conducting Association business. Where reasonable and practical, they will notify area supervisors of their intent to visit and/or of their arrival at a given work location. They will be permitted entry upon presentation of acceptable identification and will be required to observe all safety and other rules and regulations of the District.

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## **10. ACCESS TO PERSONNEL FILES**

Association represented employees shall be provided a copy of all performance related memoranda (including performance evaluations) placed in their official personnel file which is retained in the Human Resources Department, and their "Administrative File" which is retained in the Police Department.

An employee shall have thirty (30) days from the date of placement of the derogatory material in the official personnel file or "Administrative File" within which to file a written response to any adverse comments entered in the official personnel file or administrative file. Such written response shall likewise be included in the official personnel file or "Administrative File."

An employee shall be permitted at any time during regular office hours to inspect the official personnel file or "Administrative File" provided that a three (3) business day advance notice is given to the respective department. The employee may also authorize in writing, that an Association representative can inspect the official personnel file or "Administrative File" provided the same three (3) day advance notice is given. Such reviews shall be made in the Human Resources Department or Police Department subject to the presence of a member of the Human Resources Department or Police Department staff or its designee.

Material in the official personnel file shall be confidential and disclosed only in accordance with provisions of law.

Material contained in the Internal Affairs Section files shall be removed and destroyed after five (5) years from placement in the files, unless litigation relating to such material is pending. In such case, the potentially relevant material shall be retained in the files until the matter has been fully and finally adjudicated or until at least five (5) years have passed since the material was placed in the file, whichever occurs later.

The contents of the Internal Affairs File shall be purged and destroyed in accordance with applicable law.

All documented disciplinary actions shall be removed from the employee's official personnel file and "Administrative File" in accordance with the District's Progressive Discipline Guidelines for each specified action taken.

This section shall always be in compliance with the Public Safety Officers Procedural Bill of Rights Act, as appears in Government Code Sections 3300-3312, and all provisions of law. Civilian employees shall not be granted any additional rights under the Public Safety Officer's Procedural Bill of Rights Act beyond those stated in this section.

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## **11. TRUTH DETERMINATION EXAMINATIONS**

No employee shall be requested or required to submit to, or in any way provide data for, any mechanical "truth determining device." No disciplinary action or other recrimination, including involving promotion, shall be taken against an employee refusing or not volunteering to submit to such an examination, nor shall any comment be entered anywhere that the employee refused or did not volunteer to take such an examination.

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## **12. BULLETIN BOARD**

One (1) clear covered bulletin board with lock and key will be provided to the BART Police Managers' Association for the sole use of notices of meetings or other business pertaining to the Association. Any additional number of boards and their locations shall be mutually agreed upon by the parties.

Association material shall be authenticated by the signature of the designated representative of the Association. Such Association bulletin boards shall be maintained by the Association.

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**13. AGREEMENTS FURNISHED**

The District and the Association shall meet and proof the Agreement within sixty (60) days of signing. The District will ensure that copies of this Agreement are printed within sixty (60) days of proofing and will pay the full cost of printing such Agreements.

The District will provide eighty (80) copies of the Agreement to the Association in 8½" x 11" format. The District will provide a copy of the Agreement to all current employees within two (2) weeks of receipt of printed copies. New members will be provided a copy of the Agreement upon employment by the Human Resources Department. Additionally, an electronic copy shall be provided by the District to the Association.

Copies of any side letters or other modifications agreed to within the life of the Agreement shall be provided by the District to the Association for attachment to each copy.

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**14. SUCCESSOR RIGHTS**

In the event the operations of the District, in whole or in part, are assumed by any other entity, public or private, the successor organization or organizations shall agree, as a condition precedent of said assumption, to all terms and conditions of this Agreement as though said Agreement were more fully set forth in the assumption agreement by and between the District and the assuming party or parties.

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**15. BEREAVEMENT LEAVE**

When a death occurs or appears imminent in the immediate family of an employee, the employee shall be granted up to a total of forty (40) hours for child, step-child, parent, and domestic partner or current spouse and other immediate family members or eligible domestic partner (per Board Resolutions 4455 and 4757) of cumulative leave without loss of pay, payable only if the days of leave are regularly scheduled workdays. Such leave shall not be deducted from any other leave accrual. To be eligible for compensation for bereavement pay, the employee, upon his/her return, must provide written verification by the attending physician of death or imminence and indication of relationship of the member of the immediate family involved. False information given concerning the death, imminence, or relationship shall be cause for discharge. The immediate family of an employee is defined as spouse, an employee's eligible domestic partner, child, eligible dependent child of an employee's eligible domestic partner, parent, brother, sister, grandparent, great-grandparent; and current mother-in-law, father-in-law, step-parent, step-child and legal guardian.

The parties understand that alternate forms of leave, e.g., vacation, floating holidays, leaves of absence without pay, are available to employees who may wish to extend the bereavement period and such reasonable request for said extensions have been granted in the past and shall continue to be considered and granted in the same manner.

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#### **16. MILITARY LEAVE**

Employees of the District who are ordered to active duty with the Armed Forces for a period not to exceed one hundred eighty (180) calendar days per fiscal year, including travel time, will be granted a temporary Military Leave of absence for time required to meet military obligations as established by State and Federal law. Employees must furnish the District with a copy of the orders as early as possible prior to such leave.

During such Military Leave, employees with one (1) year of District service will be eligible for their existing straight time rate of pay for the first thirty (30) calendar days per fiscal year of any such absence.

For purposes of this Section, weekend military training sessions shall not be considered as Military Leave; however, employees who have military training sessions on weekends (Saturday and Sunday), and whose assigned workweek includes Saturday or Sunday, or both, may request adjustment of their scheduled rest day or days off where work is available which they are qualified to perform in order to attend such sessions without loss of pay. Employees must request such arrangements in writing as far in advance as possible and provide verification of attendance upon return to work. No additional compensation, shift premiums or other extra costs to the District shall result from such adjustments.

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#### **17. PARENTING LEAVE**

- A. A Parenting Leave of absence will be granted each employee covered by this Agreement who becomes pregnant. Such leave will begin no later than the date the employee's doctor states in writing, or once it is established by the process set forth in Paragraph D herein, it is established that she should discontinue working. An employee shall notify the Chief of Police immediately upon determination of pregnancy.
- B. The Parenting Leave will continue until the date on which the employee's doctor states in writing she is capable of returning to work, or until such time as an additional leave of absence granted by the District expires. The District may require confirmation of ability to work from a doctor acceptable to the District.

- C. Employees may utilize unused sick leave for pregnancy consultations as provided by Section 18, Sick Leave, and to the extent possible, should there be a determination that there is a pregnancy-related disability, the Disability Insurance provided by the District.
  - D. A sworn or civilian employee whose duties involve law enforcement activities including the protection of the District property shall provide her doctor with a detailed description of her assigned duties, prepared by the District, which will include the physical requirements associated with her position. She should also consult her doctor at least every four (4) weeks while working during her pregnancy, or more frequently if requested by her doctor, in order to assure that her doctor will have a frequent opportunity to review her ability to continue working and her doctor's opinions shall be furnished in writing to the District. At any time after determination of pregnancy, the District may require such an employee to obtain approval to continue working from a doctor acceptable to the District. District required examinations shall be paid for by the District, and the employee shall suffer no loss of income, as the same is provided in Section 76, Medical Examinations. Moreover, inconsistent findings shall be resolved as provided in Section 76, Medical Examinations.
  - E. The parties agree that "Parenting Leave" shall be granted in compliance with applicable State and Federal Law.
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## **18. SICK LEAVE**

- A. Covered employees will accrue one (1) day of sick leave for each full month of employment. Sick Leave credits may be accumulated to a total of two thousand five hundred (2500) hours.

Sick leave will be paid when an employee is required to be absent because of:

1. Illness, injury, quarantine, or similar exposure to contagious disease;
2. Required attendance upon a seriously ill spouse or child;
3. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours of the employee, provided that a minimum of forty-eight (48) hours advance notice is given and provided subsequent confirmation that the appointment was kept is given, if requested by Management.
4. An employee whose attendance is required by a doctor upon a seriously ill mother or father, subject to verification, shall be allowed to use sick leave.

All sick leave may be verified by telephone or by personal visit during the affected employee's scheduled hours of duty provided:

The employee's supervisor or next higher in command shall "only" contact the employee at home for verification purposes when he/she calls in sick, where there is an identifiable pattern of abuse or suspected pattern of abuse of sick leave.

If, after several attempts, an employee cannot be contacted at the address/telephone number provided at the time the employee reported the illness, the supervisor will request a memo from the employee explaining his whereabouts on the day and time in question. In addition to said memo a supervisor may request medical verification of the illness. In either case, the affected employee must respond within seven (7) calendar days and the absence shall remain denied until acceptable verification has been received.

Employees whose record of absenteeism gives evidence of being excessive or shows a pattern shall be subject to having future absences verified by acceptable medical documentation. Such medical verification may be required from the employee for a specified period of time, as determined by the employee's supervisor.

Inability of the District to obtain such verification shall result in the affected employee not receiving sick leave payment for any such work shift during which verification is unavailable. Within forty-eight (48) hours of the employee's return to work, the District shall notify the affected employee of the withholding of sick leave benefits. In any instance where the District is unable to verify per above paragraph and consequently proposes to deny sick leave benefit, parties agree written evidence of an employee's having received professional health services at the time during which District was unable to verify per above paragraph shall constitute such verification. It is further agreed such written proof of professional health service having been received shall be submitted within seven (7) calendar days of employee's return to work.

**B. Incentive For Sick Leave Accrued And Unused On Or After October 19, 2009:**

To encourage employees to maintain maximum attendance and improve performance the District offers employees the following two (2) incentives beginning October 19, 2009.

**1. PERS Retirement Service Credit For Sick Leave**

The District will amend its contract with CalPERS to provide the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit, with an

effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009, for service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the member during the normal course of his/her employment. For employees whose effective date of retirement is within four months of separation from employment with the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009, shall not be considered "unused" sick leave and the District will not certify such sick leave to CalPERS, unless the employee has made the one-time election to convert such pre-October 19, 2009 sick leave to PERS credit eligible sick leave pursuant to Paragraph C below.

**2. Annual Buy-Back Or MPPP Incentive:**

The District shall give employees the option each year to make an irrevocable election on the schedule indicated below to buy back or to deposit into their Money Purchase Pension Plan (MPPP) accounts, the dollar value of the sick leave earned within the annual accrual period indicated in paragraph B(2)(a) below, less sick leave taken during that period on an after tax basis.

- a. Sick Leave Accrual/Election Periods:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 Work Plan and one hundred twenty (120) hours for employees on a 4-10 Work Plan. Sick leave for which such an election has been made shall not be included by the District in the certification to CalPERS under the retirement service credit plan described above.

<b>Salaried</b>	
<b>Election Period</b>	<b>Accrual Period</b>
9/01/09 – 09/15/09	9/21/09 – 9/19/10
9/1/10 – 9/15/10	9/20/10 – 9/18/11
9/1/11 – 9/15/11	9/19/11 – 9/16/12
9/1/12 – 9/15/12	9/17/12 – 9/15/13

- b. Buy-Back/MPPP Deposit Amounts:** An election to "buy back" or to deposit into the MPPP must also include an election as to the percentage amount of the "buy-back," based on the percentage increments and maximums provided below. The maximum Buy-

Back percentage that will be allowed is based on the employee's attendance record during the accrual period.

<b>Days</b>	<b>Eligible Buy-back Percentage of Unused Earned Sick Leave</b>
0	5% up to 50% (in 5% increments)
1 - 3	5% up to 40% (in 5% increments)

Buy-Back and MPPP amounts shall be calculated at the employee's base rate of pay at the end of the accrual period, less applicable tax withholding.

**c. Impact Of Buy-Back/MPPP Election:**

Employees may select only one option ("Buy-Back" or MPPP) for each accrual period.

Once the buy-back or MPPP Incentive election is made, for any accrual period, it may not be changed. Employees will receive the buy-back checks or MPPP credit no later than December 1 - following the end of the accrual period.

Unused sick leave hours for which an election to buy back or transfer into MPPP is not made shall be carried over the next year, subject to the maximum accumulation limit, and will no longer be available for any future Annual buy-back/MPPP Incentive election.

If an employee's absence which qualifies for paid sick leave also qualifies as statutory family and medical leave (i.e., FMLA/CFRA), the employee may elect to preserve eligibility for participation in the annual buy-back or transfer into the MPPP of eligible accruals, if elected during the election period, by requesting to substitute vacation, floating holidays (for increments of a full day, only) or compensatory leave pay or, if he/she has no accrued vacation, floating holidays or compensatory leave, requesting to take the leave unpaid. The request must be made before receipt of sick pay.

**C. One Time Election To Convert Sick Leave Accrued Prior To October 19, 2009 To PERS Creditable Sick Leave**

During the month of October 2009, employees will be given a one-time opportunity to convert unused sick leave that has been accrued prior to October 19, 2009, to PERS-credit-eligible sick leave (described in paragraph B(1)



above). This election shall be irrevocable, and will include all of the employee's unused sick leave, including banked sick leave pursuant to D(1), and/or unbanked sick leave pursuant to D(3) below. If an employee makes this election, such accrued leave will no longer be eligible for payout at termination/retirement (previously banked leave) or at retirement (unbanked leave). All leave converted pursuant to this paragraph C will be subject to CalPERS rules for service credit eligibility. Leave converted under this paragraph will thereafter be considered, for purposes of disposition at the end of employment only, to have been accrued on or after October 19, 2009.

**D. Sick Leave Accrued Prior To October 19, 2009:**

Sick leave accrued prior to October 19, 2009, which is not converted to PERS creditable sick leave pursuant to paragraph C above, shall be preserved in accounts separate from sick leave accrued on or after October 19, 2009, and shall be used pursuant to the terms of this paragraph D, including subsections (1) – (3).

**1. Banked Sick Leave (Under Previously Exercised Option)**

This section refers to sick leave which has been “banked” in accordance with this Labor Agreement as it was in effect on June 30, 2009, or banked pursuant to Agreements previously in effect. It excludes sick leave electively converted to PERS-creditable sick leave pursuant to paragraph C above. It includes sick leave for which a banking election was made during the 2008 or earlier option periods.

Banked sick leave, as defined above, will be preserved in a separate account for use by the employee in accordance with the provisions of the Labor Agreement in effect on June 30, 2009, including the following:

- a) Such bank shall be set aside for payment upon death/retirement/termination and shall not be included in the calculation of unused sick leave pursuant to paragraph B(1) above or Government Code Section 20965.
- b) Sick leave hours banked will be paid at the employee's base rate of pay, effective on the employee's date of death or retirement/termination from District's employment.
- c) Employees who experience an illness/injury and exhaust their existing sick leave that is available, may utilize sick leave that was previously banked in accordance with the Labor Agreement in effect June 30, 2009 provided they make a written request to do

so through their Department Manager at the time of the illness/injury and the circumstances qualify for sick leave.

2. **Sick Leave Buy-Back (Under Previously Exercised Option)**

Employees who exercised the option during the September 2008 option period specified in the Labor Agreement in effect on June 30, 2009, to make an irrevocable election to buy back or deposit into the MPPP the value of sick leave earned during the annual accrual period, less sick leave taken during the annual accrual period shall receive the buy-back payments and the MPPP deposits required by the prior Labor Agreement.

Buy-back checks for the 2009 accrual period will be distributed to employees no later than December 1 following the end of the accrual period, and MPPP elections for that period will be deposited by that same date.

3. **Retirement Buy-Back**

Sick leave accrued prior to October 19, 2009, and not (1) banked pursuant to paragraph 1 above; (2) bought back or deposited in the MPPP pursuant to paragraph 2 above; (3) converted to PERS creditable sick leave pursuant to paragraph C above; or (4) used pursuant to paragraph E below, shall be available for use as a Retirement Buy-Back Incentive. Employees leaving District service on a service retirement shall be paid fifty percent (50%) of this accrued sick leave balance upon the effective date of service retirement. This accrued sick leave shall not be included in the calculation of unused sick leave pursuant to paragraph B above or Government Code Section 20965.

E. **Order Of Use Of Sick Leave From Separate Accounts**

When using sick leave, employees' sick leave balances will be deducted in the following order:

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009, which an employee has elected to convert to PERS creditable sick leave pursuant to paragraph C above, if any.
2. If the accruals described in paragraph E(1) are exhausted, unbanked sick leave accrued prior to October 19, 2009, if any.
3. If the accruals described in paragraphs E(1) and E(2) above are exhausted, banked sick leave, if any, may be used subject to the terms of paragraph D(1)(c) above.

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**19. TEMPORARY MODIFIED DUTY**

The District may assign Temporary Modified Duty (TMD) to an employee who has been released to return to work with restrictions by a medical doctor. In order for an employee to be placed in a TMD assignment, the work must be available and the employee must be qualified to perform the required duties of the assignment.

Upon receipt of the medical doctor's restricted release and/or return of the District's return-to-work medical questionnaire (necessary if the doctor's note is too vague), the Employee Services Division of the Human Resources Department shall contact the Chief of Police or designee to determine that a TMD assignment exists, which fits within the employee's restrictions and limitations. The Employee Services Division of the Human Resources Department shall contact the TMD-eligible employee for assignment. The determination of the existence of a TMD assignment and the contacting of the affected employee shall be done within five (5) days of receiving the medical doctor's release and/or District medical questionnaire.

Employees working in a TMD assignment as a result of an industrial injury/illness will be paid their regular rate of pay, including any shift differential that was paid prior to the injury/illness, regardless of the TMD shift assignment.

Employees working in a TMD assignment as a result of a non-industrial injury/illness will be paid their regular rate of pay and any applicable shift differential, dependent upon the assigned shift.

TMD assignments shall be for ninety (90) days. Five (5) days prior to the conclusion of the assignment, the Employee Services Division in Human Resources shall determine if any other TMD-eligible employees are waiting for a TMD assignment. If there is a TMD-eligible employee waiting to be assigned and no other assignment is available, except the work being done by the employee concluding a ninety (90) day assignment, the employee will conclude the TMD assignment. If there is no TMD-eligible employee waiting for an assignment or there are additional assignments available, the employee occupying the assignment shall be extended on a week-to-week basis as work remains available, not to exceed an additional ninety (90) days.

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**20. MANAGERIAL LEAVE**

Each July 1, BPMA eligible members will be allowed three (3) managerial leave days per fiscal year. Eligibility for Managerial Leave requires vesting period of five (5) years of BPMA service before entitlement for new members promoted after June 30, 2009. The leave may not be used in less than one (1) day increments. Any unused days will not be

carried over to the following year and they are not compensable. These days are provided for additional incidental duties required of managers outside the scheduled workday (e.g., line-up preparation, brief telephone calls, checking e-mail, etc.).

## 21. HOLIDAYS \*

The District shall observe the following fixed holidays:

New Year's Day	(January 1 <sup>st</sup> )**
President's Day	(3 <sup>rd</sup> Monday in February)
Memorial Day	(last Monday in May)
Independence Day	(July 4 <sup>th</sup> )
Labor Day	(1 <sup>st</sup> Monday in September)
Columbus Day	(Federal government observed day)
Veteran's Day	(Federal government observed day)
Thanksgiving Day	(4 <sup>th</sup> Thursday in November)
Day After Thanksgiving	(4 <sup>th</sup> Friday in November)
Christmas Day	(December 25 <sup>th</sup> )

In addition to the above fixed holidays, each employee shall be credited with three (3) floating holidays per fiscal year granted consistent with the scheduling ability of the employee's department. Up to three (3) unused floating holidays may be carried over per year.

On termination, an employee will be paid in a lump sum, at the rate of pay in effect for the employee at the time of termination, for all unused floating holidays.

### **Total Holidays per year - thirteen (13)**

\*\*Swing shift employees shall be given New Year's Eve as a holiday and day shift and graveyard shift employees shall be given New Year's Day as a holiday.

### **Annual Elections**

#### **Pre-Retirement Bank Election**

During the month of June each year, employees may elect to deposit extra floating holidays into a "Pre-Retirement Bank" which may be used as terminal holidays prior to service retirement or paid off in cash upon service retirement. Employees' "Pre-Retirement Bank" accumulations shall be capped at one hundred (100) hours or their existing amount as of June 30, 1998 whichever occurs first. Thereafter, unused floating holidays in excess of six (6) at the end of the fiscal year shall be paid off in a lump sum at the rate in effect on June 30. Service retirement means voluntary separation by an employee who has attained a minimum age of fifty (50) and accumulated five (5) years

of service credit to qualify for retirement through PERS. Once placed in the Bank, holidays are frozen and cannot be withdrawn for use prior to service retirement. However, if termination occurs prior to service retirement, all excess holidays in the "Pre-Retirement Bank" shall be paid off in cash upon termination at the rate of pay in effect for the employee at time of termination.

### **Pre-Accrual Buy-Back Election**

During the month of June each year, employees shall also have the option to make an irrevocable election to buy-back floating holidays newly earned during the following fiscal year but not used during that year (unused fiscal year accrual) as follows:

- 1) Employees may elect to buy back all or part of any unused fiscal year accrual up to a maximum of six (6) days, with such floating holidays paid off subsequent to the end of the fiscal year earned.
- 2) In the event an employee fails to make an election during the election period regarding the following fiscal year's unused accrual or makes an incomplete election, such accruals may: a) be carried over, subject to the maximum carry-over, or b) may be deposited in the Pre-Retirement Bank, if elected as provided above and subject to the maximum provided above.

When an employee takes a floating holiday, his/her current fiscal year accrual will be charged only after he/she has exhausted floating holidays accrued prior to the current fiscal year.

Floating holidays shall be granted consistent with the scheduling ability of the employee's department. Employees must give five (5) working days' notice of desire to take a floating holiday. Failure of an employee to give such notice may be cause for refusal of that request.

Holiday overtime work outside the regular work schedule shall be compensated at two (2) times the employee's regular base rate for actual hours worked in addition to straight time holiday pay. In the case of holiday work performed within the regular work schedule, actual hours worked shall be compensated at one and one-half (1.5) times the employee's regular straight time rate plus, at his/her option, either eight (8) hours of pay at the employee's straight time rate, or eight (8) hours off with pay.

Should a holiday be observed on an employee's day off, the employee, at his/her option, shall receive an extra eight (8) hours of pay at the employee's existing straight time rate or eight (8) hours time off with pay.

Should a holiday be observed during an employee's recognized vacation, the employee, at his/her option, shall receive eight (8) hours of pay at the employee's existing straight time rate, or an extra eight (8) hours off with pay.

Should work be required on the day a holiday is observed, and a sufficient work force, as determined by Management, is unavailable voluntarily, assignments shall be made at District's sole discretion. Rotation among qualified employees insofar as feasible shall be considered by Management in making holiday assignments. Unused holidays, if caused by action or inaction of the District, may be carried over into the next fiscal year subject to the above restrictions. Holiday overtime premium for employees above the rank of Lieutenant must receive prior approval of the Chief of Police.

Effective after the Business Advancement Plan (BAP) goes live, an employee may elect to deposit the post tax equivalent value of the unused fiscal year accrual that is eligible for buy-back, as provided above, into the employee's MPPP account, subject to applicable law and the terms of the MPPP.

**\* Minute Clarification**

The parties agree that the deletion from the Agreement of the third paragraph of Section 20, Holidays, shall not in any way change the District's existing practice of not compensating BPMA, AFSCME and Non-Represented employees who are in an unpaid status for holiday pay. In order to be eligible for holiday compensation, an employee must be in a paid status.

Definition of an unpaid status is as follows: 1) authorized leave of absence; 2) employee receiving disability insurance after thirty-one (31) continuous days; 3) suspension of more than fifteen (15) days.

**\* Minute Clarification**

Employees shall also have the option, during the month of June 1998, to elect to buy back up to a maximum of six (6) previously accrued but unused floating holidays, which may be paid off subsequent to the end of the fiscal year. Thereafter, any elections to buy back floating holidays will be pursuant to pre-accrual election as provided in this Section.

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**22. VACATION \***

The parties agree to the following provisions in managing reduction in hours of straight time pay:

In order to achieve cost reductions, the District and BPMA agree to reduce labor costs by the equivalent of 30 straight time base pay hours for each full-time employee in each of the 2010/2011, 2011/2012, 2012/2013 Contract Years as follows:

1. Employees must forego new vacation and holiday accrual as follows:
  - (a) In the 2010/2011 contract year, employees may elect to forego up to 30 hours of new vacation accrual or new floating holiday accrual.
  - (b) In the 2011/2012 contract year, employees may elect to forego up to 30 hours of new vacation accrual or new floating holiday accrual.
  - (c) In the 2012/2013 contract year, employees may elect to forego up to 30 hours of new vacation accrual or new floating holiday accrual.
2. Employees shall submit a completed election form provided by the District indicating their choices among the options for contract year in question. Employees shall submit an election form provided by the District indicating their choices among the options for the 2010/2011 contract year on or before July 1, 2010. Employees shall submit an election form provided by the District indicating their choices among the options for the 2011/2012 contract year on or before July 1, 2011. Employees shall submit an election form provided by the District indicating their choices among the options for the 2012/2013 contract year on or before July 1, 2012. Employees will indicate on the election form the number of vacation and/or floating holidays to be deducted from the amount the employee would otherwise accrue in the year in questions, and the number of hours to be taken off without pay.
3. Employees who have not satisfied or made provision for satisfying the 90-hour reduction through the provisions of paragraphs 1 and/or 2 above will be required to forfeit additional equivalent vacation, compensatory time, or managerial leave as is necessary to meet the 90-hour reduction requirement. The date(s) of the leave shall be determined by the District after consultation with the affected employee, and shall be in full or half-day increments.

The total reduction of vacation and floating holiday time off required by this Agreement shall not exceed the equivalent of 90 straight time base pay hours for each employee.

- (a) The District will grant three (3) weeks of vacation following one (1) year of service, four (4) weeks of vacation after five (5) years of service, five (5) weeks vacation after fourteen (14) years of service and six (6) weeks vacation after nineteen (19) years of service, and three (3) weeks of vacation after twenty-five (25) years of District service with a minimum of five (5) years as an employee covered by the BPMA Collective Bargaining Agreement, or twenty-five (25) years of safety service with a minimum of ten (10) years as an employee covered by the BPMA Collective Bargaining Agreement. The practice of awarding an employee "pop-up" vacation time for each bench mark year of service is hereby discontinued.

Provided adequate notice is given, employees will be permitted to take four (4) uninterrupted weeks of vacation at least every other year. If an approved vacation is cancelled by the District, the employee is entitled to be reimbursed for actual and reasonable unrecovered expenses.

When an employee terminates or retires, he/she shall be granted pro rata vacation cash payoff based upon his/her accrued credits.

Vacation allocation will be scheduled throughout the calendar year; however, to the maximum extent possible, consideration consistent with operating requirements will be given to allow employees to take their vacations during the summer months.

Years of service shall be based upon the employee's date of District employment by the District or in the case of 13(c) employees, in accordance with the 13(c) Award.

Vacation accrual will not be continued in the event an employee is in a non-pay status for more than thirty (30) days.

The maximum annual vacation carry over is sixty (60) days. Upon termination, for whatever reason, employees shall receive compensation for all accrued and unused vacation in the Carry-Over Account at the rate of pay in effect for the employee at the time of termination. Final compensation shall be paid in lump sum, however, employees voluntarily terminating may elect to utilize sixty (60) days of such accrual as terminal vacation prior to separation from the payroll.

(b) **Pre-Retirement Bank Election**

During the month of December each year, employees with four (4) weeks or more of accrued vacation may elect to deposit extra vacation into a "Pre-Retirement Bank." Employees may deposit unlimited vacation hours into the Pre-Retirement Bank and elect to be paid off in cash for all



banked hours upon separation or service retirement. For use as terminal vacation, employees are restricted to a maximum of two hundred (200) "banked" vacation hours. Service retirement means voluntary separation by an employee who has attained a minimum age of fifty (50) and accumulated five (5) years of service credit to qualify for retirement through PERS. Once placed in the Bank, vacation time is frozen and cannot be withdrawn for use prior to service retirement. However, if termination occurs prior to service retirement, all excess vacation in the "Pre-Retirement Bank" shall be paid off in cash upon termination at the rate of pay in effect for the employee at the time of termination.

Effective after the Business Advancement Plan (BAP) goes live, an employee may elect to deposit the post tax equivalent value of the unused fiscal year accrual that is eligible for buy-back, as provided above, into the employee's MPPP account, subject to applicable law and the terms of the MPPP.

(c) **Pre-Accrual Buy-Back Election**

During the month of December each year, employees will also be given the opportunity to make an irrevocable annual election to buy back vacation which will be newly earned during the following calendar year but not used during that year (unused calendar year accrual) as follows:

- 1) Employees may elect that in the event they have a total of four (4) or more weeks of total accruals at the end of the following calendar year, they will buy-back up to a specified number of days, not to exceed sixty (60) hours of unused calendar year accrual, if any.
- 2) In the event an employee fails to make an election during the election period regarding the following calendar year's unused accrual or makes an incomplete election, such accruals may: a) be carried-over, subject to the maximum annual vacation carry-over, or b) may be deposited in the "Pre-Retirement Bank" if elected as provided above and subject to the maximum provided above.

When an employee takes vacation, his/her current calendar year vacation accrual will be charged only after he/she has exhausted vacation accrued prior to the current calendar year.

(d) **Annual Vacation Selection**

In January of each year, available vacation periods for the succeeding twelve (12) months shall be posted for two (2) weeks. Employees shall

be allowed to select vacation periods on the basis of their respective seniority within each classification provided the request does not exceed the individual's annual vacation accrual in-effect at the time of the vacation period selected. The exception to this limitation is when the employee is receiving Longevity Pay. In such cases, the employee may continue to select up to a maximum of six (6) vacation periods during the annual vacation selection provided the employee has the hours previously accrued.

Notwithstanding the annual vacation selection, BPMA members may submit additional vacation requests at any time during the year after the initial sign-up.

BPMA member vacation requests shall be approved provided there is an open - unfilled vacation slot available for the affected rank; Civilian Supervisor, Sergeant, and Lieutenant. Other vacation requests, which fall beyond open slots, will be considered on an individual basis based upon the needs of the Department. Requests for less than full weeks of guaranteed vacation shall be for at least three (3) days during a four (4) day workweek or four (4) days during a five (5) day workweek.

Members may choose one additional day of vacation contiguous to each selected vacation period, respectively. This additional vacation day(s) shall be deemed part of the guaranteed vacation period(s).

Once a vacation period is approved, it shall only be cancelled upon declaration of a legitimate District emergency by the Chief of Police.

Members whose vacations are cancelled shall be entitled to reimbursement for all actual and reasonable uncovered expenses as provided for in Section 21.A. of the BPMA Agreement.

(e) **Vacation Period Selection Slots**

During the regular Annual Vacation Selection in January each year the following guaranteed slots shall be available for the succeeding twelve (12) months.

Patrol Sergeant	4 slots *
Patrol Lieutenant	2 slots

**\* Minute Clarification**

If the number of authorized patrol sergeants reaches twenty-five (25) or more, the number of vacation slots available for patrol sergeants shall be five (5). Subsequently, if the authorized number of patrol sergeants is reduced below twenty-five (25), the

available number of vacation slots may be reduced to four (4) by the District, after consultations with the Association. However, if the number of slots is reduced, any slot already signed into shall be honored.

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### **23. BENEFITS REVIEW**

The District and the Association agree that the Department Manager of Human Resources or designee and the President of the Association and/or designee shall meet annually between the months of March and May to discuss the District's benefits plans, if requested by the Association. This discussion may include a review of the status of the plans, the preceding year's experience under the plans, levels of coverage, alternative benefits, and other matters relating to employee benefits.

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### **24. FIRST AID**

Prompt ambulance service and first aid to injured employees shall be provided on all shifts.

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### **25. FREE TRANSPORTATION**

The District will provide free transportation over its lines during normal hours of operation to full-time and retired employees and their spouses and dependent children provided they properly display their District identification card.

Dependent children under the age of five (5) years will not be required to display their identification cards. Dependent children (including legally adopted children) includes unmarried children to their 19th birthday, or to their 23rd birthday if they are enrolled full-time at an accredited institution of learning and are dependent on the employee for their support and maintenance.

There will be a twenty dollar (\$20) fee to replace an employee's identification card. Dependents will be charged a twenty dollar (\$20) fee to replace a dependent's first identification card. The fee to replace any subsequent dependent's identification card shall be thirty dollars (\$30). These fees may be waived upon presentation by the employee to the District of verifiable proof that the loss or destruction was beyond the control of the employee or dependent.

The District will provide an identification card to one (1) representative designated by name by the Association authorizing free transportation on the system to conduct negotiations or contract administration on behalf of members of the BPMA bargaining unit.

Failure to properly display identification or any attempt to misuse this privilege will be cause for refusal of entry into the system, revocation of privilege and/or disciplinary action.

Pass privileges will be revoked when an employee is terminated from the District.

The spouse and any dependent children as defined in the second paragraph above shall be entitled to retain such passes upon the death of a retired employee. This privilege will be revoked upon remarriage of the spouse of deceased retiree.

An employee's eligible domestic partner and their eligible children shall be entitled to the same pass privileges under this section as spouses and dependent children of the employee, per Board Resolutions 4455 and 4757.

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## **26. AMMUNITION**

The District will provide sworn employees one hundred (100) rounds of ammunition per year for all approved firearms, on or before September 1<sup>st</sup>. The 100 rounds are in addition to the replacement rounds provided at Department range qualifications.

Any requests for additional rounds must be made in writing and approved by the Chief of Police or designee.

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## **27. EDUCATIONAL ASSISTANCE PROGRAM**

The District's Educational Assistance Program will be continued during the life of this Agreement. Employees who wish to enroll in job-related and promotion oriented courses, which will improve their job knowledge, and performance will be compensated by the District for expenses as follows:

- A. When an employee is in the process of acquiring a sixty (60) calendar semester unit or a ninety (90) quarter unit degree (e.g., Associate of Arts, Certificate of Achievement), or when an employee is properly authorized to enroll in a correspondence course and/or a specific course of study that may not result in a degree, said employee shall be reimbursed up to a maximum of seven hundred and fifty dollars (\$750) per fiscal year.
- B. When an employee exceeds sixty (60) semester units or ninety (90) quarter units and is enrolled in upper division course work, said employee shall be reimbursed up to a maximum of one thousand dollars (\$1,000) per fiscal year.
- C. The maximum amount that an employee may be reimbursed under this program in any fiscal year is one thousand dollars (\$1,000).

Out-of-pocket expenses for required textbooks and course materials may be included for reimbursement within the above dollar limits. Textbooks may be retained by the employee upon completion of the course.

Courses must be taken at an accredited institution or at a non-accredited institution, if approved by the Chief of Police, or by correspondence if comparable courses are not available in local schools or if the work assignment of the individual is such that it does not permit regular classroom attendance.

Except for unusual circumstances, employees will not be granted time off from their regular work schedule to attend courses taken under this Section.

Courses must be approved by the employee's Department Head prior to enrollment. Reimbursement shall be made after presentation of proper receipts and upon completion of the course with at least a "C" grade or its equivalent.

At the employee's option, an advance may be secured from the District against tuition costs by agreeing to payroll deduction of the amount of the advance if:

1. Satisfactory evidence of completion of the course taken is not provided to the District within thirty (30) days following completion of the course, or
2. The course is not completed with at least a grade "C" or its equivalent, or
3. The course is failed, or
4. The employee voluntarily drops the course for any reason, including voluntary shift change or termination of employment with the District.

If the employee's course is not completed due to a District required shift change or reduction in force, repayment of the advance will not be required.

#### **Definition**

- a) District required shift change: a reorganization or District mandated classification rebid resulting in an involuntary shift change due to the seniority of an employee.
  - b) District required reduction in force: reduction in force action as described in Section 59 of this Agreement, resulting in employee being placed in lay off status with recall rights.
  - c) Voluntary shift change: any shift change in which the individual has the ability to control movement affecting him/her adversely, i.e., promotion, reverting to his/her former position, shift sign ups, etc.
-

**28. EMPLOYEE ASSISTANCE PROGRAM**

The parties agree that the District will continue a referral program for the purpose of assisting in a confidential manner, employees and their families with marital, psychological, alcohol, or drug problems, to obtain counseling and other services.

The BPMA agrees to cooperate with the District in the administration of this program.

The District shall retain a consultant to provide referrals as appropriate in the above described problem areas. The District shall pay the cost of this consultant's referral services, which will constitute the entire District monetary contribution to this program.

The costs for all other services provided to employees or their families under this program shall be borne by the participating employee/family member to the extent such services are not covered by the employee's medical or other benefit plans.

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**29. PRESCRIPTION SAFETY GLASSES/ EQUIPMENT REIMBURSEMENT \***

Employees shall be reimbursed for the cost of personal equipment if lost, damaged or stolen in the line of duty in accordance with the following schedule:

Wrist Watch: Not to exceed \$100.00.

**Prescription Safety Glasses**

- A. Those employees who presently wear prescription glasses will be furnished prescription safety glasses by the District.
- B. Those employees who presently wear prescription glasses will be required to take an eye examination and utilize whatever medical coverage they have which includes eye examinations. If the employee's medical coverage does not include eye examinations, the District will provide; however, this does not include "first time" eye examinations.
- C. Safety prescription glasses provided under this program shall not be altered without prior District approval.
- D. The District will pay for glasses and employees may select whatever style he/she wishes provided the glasses comply with prescription safety glasses specifications (American National Standards, Z87 1-1989) and do not exceed the District's safety glasses plan coverage costs. Only District authorized optical vendors shall be patronized. The District will provide an updated price list and vendor location list to the Association as soon as it is made available to the District.

- E. Prescription safety glasses furnished under this Section will become the property of the employee and a condition of employment is the requirement to wear them while on the job.
- F. The District will pay for the replacement cost of damaged or destroyed prescription glasses or for the repair of damaged glasses providing District authorized vendors are patronized.

### **Firearms and Other Equipment**

The District shall replace or reimburse an employee at fair market value for personal equipment that is damaged or stolen in direct consequence with the performance of an employee's duties. In order to be reimbursed, an employee must obtain and submit to the District cost estimate(s) for replacement from District approved vendors. If more than one estimate is required, reimbursement shall be for the lowest estimate.

#### **\* Minute Clarification**

In the event any equipment covered herein is stolen, the affected employee must file a police report.

### **30. SWORN MONEY PURCHASE PENSION PLAN**

- A. The Money Purchase Pension Plan which provides that all members of the BART Police Managers' Association will be included in the District's Money Purchase Pension Plan in previously negotiated contracts is suspended for FY10 through FY13 for the duration of this four-year contract where savings will begin effective January 1, 2010.

*“Except as otherwise provided in Section 37 of this Agreement, the District will deposit an amount equivalent to six and sixty-five hundredths percent (6.65%) of the employee's base rate monthly compensation (after deducting the first one hundred thirty-three dollars and thirty-three cents [\$133.33] paid during the month) up to a maximum annual contribution of one thousand eight hundred and sixty-eight dollars and sixty-five cents (\$1868.65) in a Money Purchase Pension Plan in the employee's name. The base rate monthly compensation equals one hundred seventy-three and one third (173.33) hours X base straight time hourly rate.”*

The foregoing language is suspended for the life of this contract.

- B. If the District's employer PERS account becomes superfunded in any fiscal year commencing before the fiscal year beginning July 1, 2034 and, if in the next fiscal year the Retiree Health Benefit Trust (See Section 38) has an unfunded actuarial liability as determined by the District's actuaries, the District shall, at the commencement of the fiscal year after superfunding status begins, discontinue its payment of the EPMC for members of the bargaining unit from the operating budget and shall, instead, direct an equal amount into the District's Retiree Health Benefit Trust.

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**31. CIVILIAN MONEY PURCHASE PENSION PLAN**

- A. The Money Purchase Pension Plan which provides that all members of the BART Police Managers' Association will be included in the District's Money Purchase Pension Plan in previously negotiated contracts is suspended for FY10 through FY13 for the duration of this four-year contract where savings will begin effective January 1, 2010.

"For non-sworn employees, the District will continue to deposit an amount equivalent to six and sixty-five hundredths percent (6.65%) of the employee's base rate monthly compensation (after deducting the first one hundred thirty-three dollars and thirty-three cents [\$133.33] paid during the month) up to a maximum annual contribution of one thousand eight hundred and sixty-eight dollars and sixty-five cents (\$1,868.65) into a Money Purchase Pension Plan. The base rate monthly compensation equals one hundred seventy-three and one third (173.33) hours X base straight time hourly rate."

The foregoing language is suspended for the life of this contract.

- B. Effective July 1992, the District, in addition to the above described deposits, shall begin contribution of one and six hundred twenty-seven thousandths percent (1.627%) of payroll to the Public Employees' Retirement System (PERS) to provide for the two percent (2%) at 55 "miscellaneous" retirement feature. This payment shall continue until June 30, 2012. After that date the District shall reinstate contributions of this amount to the District's Money Purchase Pension Plan, except as provided in Section 38 of this Agreement.
- C. If the District's employer PERS account becomes superfunded in any fiscal year commencing before the fiscal year beginning July 1, 2034 and, if in the next fiscal year the Retiree Health Benefit Trust (See Section 38) has an unfunded actuarial liability as determined by the District's actuaries, the District shall, at the



commencement of the fiscal year after superfunding status begins, discontinue its payment of the EPMC for members of the bargaining unit from the operating budget and shall, instead, direct an equal amount into the District's Retiree Health Benefit Trust.

- D. Additional contributions to Civilian Employees' Money Purchase Pension Plan during PERS Superfunding.

Beginning October 1, 2001, and for the period(s) during which the District's PERS account is superfunded, the District shall make an additional contribution to each civilian employee's Money Purchase Pension Plan account in the amount of 3.5% of gross straight-time wages. This contribution is 50% or one-half of the 7% PERS Employer Paid Member Contribution (EPMC). The other 3.5% will be available to the District for discretionary obligations and purposes. The 7% EPMC will be discontinued during the period(s) of superfunding.

If the GASB (Government Accounting Standards Board) adopts a change in accounting standards for the retiree medical insurance unfunded liability and compliance with that standard requires an increase in contributions toward that liability, said increase will be paid proportionally (i.e. in equal portions) from the employer's full 3.5% share of the 7% and from no more than 1.5% ( $3/7^{\text{ths}}$ ) of the employee's share of the 7%. As long as superfunding is in effect, the District's contribution to the civilian employee's MPPP shall be a minimum of 2%.

The terms of this subsection apply whenever the District's PERS account is superfunded as defined by PERS.

To the extent it is within their respective authority, the District and Union will amend the Money Purchase Pension Plan as needed to implement this section, including amendments regarding changes in the contributions described above related to PERS account superfunding status.

If compliance with GASB accounting standards requires a change as described above, the parties shall meet concerning implementation of any required changes. The contributions by the District and employees will be based on the minimum amount necessary to meet the accounting standards.

If compliance with GASB accounting standards requires a change as described above, the ratio of employer contributions to employee contributions is two and one-third to one. For example, if the District is required to contribute 1.75% of its 3.5% share, civilian employees would contribute 0.75% for their 1.5% share.

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**32. SWORN PERS PICK-UP**

The District shall continue to pick up the employee's contribution to the Public Employees' Retirement System (PERS). During the life of this Agreement, earnings may accrue to the District by reason of a reduction of the District's or employees' contribution to PERS.

The District agrees that should the current rate of employee contribution to PERS increase during the term of this Agreement, the District shall include such rate increase in the affected pick up due subsequent to the rate increase. The parties agree that any additional cost to the District resulting from any increase in the percentage level of employee contributions occurring after November 1979, shall be borne by the District until the expiration of this Agreement.

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the District or any penalty that may be imposed therefore.

The parties recognize that it may be contended that some of these payments were unlawful and that they could not have been made in the absence of an amendment to the District's contract with PERS and recognize further that BART has not sought such an amendment.

Should the District be required to reimburse PERS for back contributions related to these payments, BART pick up of employee PERS contributions will cease until an amount equivalent to the amount required to be reimbursed to PERS has been placed by BART in an escrow account pending mutual agreement by the parties as to alternative benefit(s). Such benefit(s) shall not increase BART's aggregate direct or indirect payroll cost above the amount it would otherwise have incurred by continuation of the PERS Pick-Up Program.

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**33. CIVILIAN PERS PICK-UP****A. Civilian Personnel**

For civilian personnel, the District will continue to pick up the employee's contribution to the Public Employees' Retirement System.

**B. Civilian Bargaining Unit Employees**

During the life of this Agreement, earnings may accrue to the District by reason of a reduction of the District's or employee's contribution to PERS. Each employee is solely and personally responsible for any federal, state or local tax

liability of the employee that may arise out of the receipt of said pick up by the District or any penalty that may be imposed therefore.

The parties recognize that it may be contended that these payments were unlawful and that they could not have been made in the absence of an amendment to the District's contract with PERS and recognize further that BART has not sought such an amendment.

Should the District be required to reimburse PERS for back contribution related to these payments, BART's pick up employee PERS contributions will cease, but an equivalent amount shall be placed by BART in an escrow account pending mutual agreement by the parties as to alternative benefit(s). Such benefit(s) shall not increase BART's aggregate direct or indirect payroll cost above the amount it would have otherwise incurred by continuation of the PERS Pick Up Program.

Any PERS saving accrued by the District on or after July 1, 1989 remains the property of the District and shall not be shared with employees.

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#### **34. PENSIONS AND RETIREMENT \***

- A. Sworn personnel shall remain "safety members" of the State Public Employees' Retirement System for the "3% at Age 50" Safety Retirement Plan, including the 1959 Survivors Benefit, but not including the one-half survivors continuance and will not be covered by federal Old Age, Survivors, Disability, and Health Insurance Program (Social Security).
- B. Subject to Public Employees' Retirement System (PERS) approval, the District shall amend its PERS contract pursuant to Section 20615.5 of the California Public Employees' Retirement System 1996 Optional Public Agency Contract Provisions and Amendment Procedures. By doing so, the District will stop paying those contributions during the final compensation period (one year) and instead increase the pay rate of the members by the amount of employer-paid member contributions (EPMC).

Except for this change, the District shall continue its present level of participation in PERS for all BPMA members.
- C. Employees may purchase up to four (4) years of service credit for any continuous active military service prior to employment with BART pursuant to Government Code Sections 20930.3 and 20930.33. The employees will bear all costs for this PERS option.
- D. The District will provide the Fourth Level of 1959 Survivor Benefits for Safety Members pursuant to California Government Code Section 21574.

The covered employees will bear all costs for this benefit. To that end, the employer contribution will be deducted from the Member Surplus in the 1959 Survivor Benefits Account until such time as that account is exhausted.

Thereafter, deductions will be made from the paychecks of covered employees to cover the employer cost. The employee will continue to be responsible for the employee contribution.

- E. The District will provide, upon an employee's retirement exit meeting, a copy of the documentation reported to PERS as the employee's PERSable single highest year compensation. This documentation will consist of a breakdown of each PERSable category reported.

**\* Minute Clarification**

It is understood the District will continue to make the payments to PERS on behalf of members by withholding the appropriate deduction from the members' paycheck.

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**35. CIVILIAN RETIREMENT**

- A. Civilian personnel shall remain "miscellaneous members" of the State Public Employees' Retirement System.
- B. During the life of this Agreement, the District agrees to continue its participation in the Public Employees' Retirement System (PERS) for miscellaneous members to include the one (1) year "final compensation" feature.
- C. The District shall amend its contract with the Public Employees' Retirement Systems (PERS) to provide the two percent (2%) at 55 retirement option for miscellaneous members in the bargaining unit. This change shall become effective August 31, 1992, or as soon thereafter as practicable. The District will take all reasonable steps necessary to implement this amendment so that it can be effective on August 31, 1992, or as soon thereafter as practicable. Except for this change, the District shall continue its present participation in PERS for miscellaneous members at existing levels.
- D. To partially offset the cost of this new benefit, effective July 1, 1992, the District shall retain its contribution of one and six hundred twenty-seven thousandths percent (1.627%) of payroll to the District's Money Purchase Pension Plan on behalf of members in the bargaining unit. The retention of the one and six hundred twenty-seven thousandths percent (1.627%) contribution shall remain in effect up to and including June 30, 2012. After that date, the District shall reinstate contributions of this amount to the District's Money Purchase Pension Plan, except as provided in Section 38 of this Agreement.

- E. The Association shall approve all changes and execute all documents including, without limitation, documents relating to the PERS contract and the Money Purchase Pension Plan necessary to implement the two percent (2%) at 55 retirement benefit, and the change in the District's Money Purchase Pension Plan contribution rate.
  - F. Pursuant to PERS rules and regulations, the District shall amend its contract with PERS to provide the Employer Paid Member Contributions (EPMC) pursuant to Section 20692 of the California Public Employees' Retirement System 2001 Optional Public Agency Contract Provisions and Amendment Procedures for civilian employees with an effective date of July 1, 2002. By doing so the District will stop paying those contributions during the final compensation period (one year) and instead increase the pay rate of the members by the amount of EPMC.
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### **36. GROUP INSURANCE AND DISTRICT SELF-FUNDED PLANS - GENERAL \***

The terms, conditions and provisions of all current group insurance policies issued by insurance companies to the District, or hereafter negotiated between the parties, and of all self-funded employee benefits plans, exclusive of the Money Purchase Pension Plan and Deferred Compensation Plan, under which individual employees are to receive benefits, are incorporated by reference herein and shall be controlling in all matters pertaining to benefits hereunder.

The District agrees that it will not change, or seek to change, the benefits under the group insurance policies, or under the self-funded benefit plans or fail to provide reasonable and customary claims services under which individual employees are to receive benefits, without mutual agreement of the parties to this Agreement.

The District agrees that it will promptly notify the Association of any proposed changes to group insurance policies or self-funded benefit plans which may be mandated by law or required by insurers, or proposed by the District.

Married employees and employees in an eligible domestic partnership who both work for the District shall receive full coverage under group insurance policies and self-funded benefit plans. They shall each receive their allotted employee and dependent coverages. In no event will these employees or their dependents be entitled to such combined coverage in excess of their actual expenses.

**DEPENDENT DEFINITION**

The definition of a dependent for purposes of District-paid medical benefit plans shall be as follows:

1. The covered employee's legally wedded spouse or domestic partner per Board Resolutions 4455 and 4757 and BART and Health plan eligibility guidelines.
2. The unmarried a) natural born child, b) legally adopted child, c) stepchild, or d) child for whom the covered employee or the employee's domestic partner became the legal guardian before age 19, of the covered employee or the employee's domestic partner who is under age 19 and who is dependent on the covered employee or the employee's domestic partner for his/her principal support and maintenance. This also includes any such maintenance. This also includes any such child as listed above who is under age 23 (or under age 24 in accordance with the individual health plan) provided they are attending school on a continuous, full-time basis (12 units or more), at an accredited academic or vocational institution.

This also includes any such child as listed above who is incapable of sustaining employment by reason of mental retardation or physical handicap, if such was incurred prior to age 19 (or prior to age 23, or prior to age 24 in accordance with the individual health plan, if the child was attending school as a full-time student as defined above), provided the child resides in the covered employee's household or a custodial facility.

3. Any unmarried child, including the eligible child of an employee's domestic partner, under age 19 (or prior to age 23, or prior to age 24 in accordance with the individual health plan, if attending school as a full-time student as previously defined) for whom the covered employee is mandated by court decree to provide health benefits.

Proof of dependency and/or incapacity must be furnished annually during the period specified by BART or as required by the individual health plan.

4. The District and the Association agree that it is not the intent of this section to eliminate coverage from those currently receiving the Districts paid benefits. To that end, any person or group currently receiving District paid benefits shall continue to receive them up to the limits provided above, as long as they qualify.

**\* Minute Clarification**

The parties agree that the second paragraph of this Section means that the District will not make changes to current group insurance policies, which adversely affects the level of benefits without mutual agreement of the parties.

This Section shall not apply to benefits, which are provided pursuant to Section 38.0, PERS-MEDICAL & PRESCRIPTION DRUG BENEFITS, and Section 39.0, SURVIVOR BENEFITS. Section 38.0, PERS-MEDICAL & PRESCRIPTION DRUG BENEFITS, and the PERS rules, regulations and plan documents shall control on all issues concerning medical and prescription drug benefits.

**\* Minute Clarification**

Living Trust – An employee who is diagnosed as terminally ill and is on disability shall have the option to collect his/her life insurance benefits subject to the terms, conditions and provisions of the Principal Financial Group's "Accelerated Benefits" plan.

**37. PERS-MEDICAL AND PRESCRIPTION DRUG BENEFITS \***

**A. PERS Medical And Prescription Drugs**

The District will provide group medical and prescription drug benefits, as provided below, through the Public Employees' Retirement System (PERS). The PERS rules, regulations and plan documents will control on all issues concerning benefits, including the types and levels of benefits offered and eligibility for those benefits. The Association acknowledges that it understands these benefits may not equate to benefits previously available to employees and retirees through the various optional medical plans and the prescription drug plan. Because coverage will be provided through PERS, the District and the Association understand that PERS may terminate or change covered expenses, benefit payments and co-payments on covered benefits, deductibles, lifetime and/or annual maximums and may implement various cost control features.

Except for Survivor Benefits, as provided for in Section 39, the Association waives the right to any group medical or prescription drug benefit granted expressly or impliedly under other sections of this Agreement, or by any other agreement between the parties or by any District guideline, policy or practice if that benefit is not offered through the PERS medical plan.

**B. Employee And Retiree Contributions For Health Insurance**

All employees eligible for PERS medical benefits who enroll for such benefits shall be responsible for a premium contribution in the amount of twenty-six dollars and forty-nine cents (\$26.49) per month, except as provided below.

1. The employee's twenty-six dollars and forty-nine cents (\$26.49) monthly employee contribution toward the medical insurance premium shall increase by forty-eight dollars and fifty-one cents (\$48.51) on January 1, 2006. Each January 1 thereafter, the monthly employee contribution shall

increase by an escalator amount of three percent (3%). For example, the total monthly employee contribution on January 1, 2007 will be seventy-seven dollars and twenty-five cents per month. (The calculation that arrives at this number is as follows:  $\$26.49 + \$48.51 = \$75 \times 1.03 = \$77.25$ .) The employee contribution amounts provided by this subsection shall be in addition to any costs for coverage in excess of the amounts specified in paragraph C below:

<u>DATE</u>	<u>Maximum Employee Monthly Contribution</u>
01 Jan. - 06	\$75.00
01 Jan. - 07	\$77.25
01 Jan. - 08	\$79.57
01 Jan. - 09	\$81.95
01 Jan. - 10	\$84.41
01 Jan. - 11	\$86.95
01 Jan. - 12	\$89.55
01 Jan. - 13	\$92.24
01 Jan. - 14	\$95.01
01 Jan. - 15	\$97.86
01 Jan. - 16	\$100.79
01 Jan. - 17	\$103.82
01 Jan. - 18	\$106.93
01 Jan. - 19	\$110.14
01 Jan. - 20	\$113.44
01 Jan. - 21	\$116.85
01 Jan. - 22	\$120.35
01 Jan. - 23	\$123.96
01 Jan. - 24	\$127.68
01 Jan. - 25	\$131.51
01 Jan. - 26	\$135.46
01 Jan. - 27	\$139.52
01 Jan. - 28	\$143.02
01 Jan. - 29	\$148.02
01 Jan. - 30	\$152.46
01 Jan. - 31	\$157.03
01 Jan. - 32	\$161.74
01 Jan. - 33	\$166.60
01 Jan. - 34	\$171.59

- The District shall continue to retain all of the one and six hundred twenty-seven one-thousandths percent (1.627%) Money Purchase Plan contribution for the term of this agreement.



3. Effective July 1, 2013 and continuing through June 30, 2034, the District shall retain all or part of the 1.627% of payroll (as defined by the Money Purchase Pension Plan), not to exceed one thousand eight hundred sixty-eight dollars and sixty-five cents (\$1868.65) from the Money Purchase Pension Plan contributions for sworn employees that are otherwise provided for under Section 30. If 1.627% of an employee's payroll exceeds one thousand eight hundred sixty-eight dollars and sixty-five cents (\$1868.65), the base salary of the employee, as provided in Section 50 of this Agreement, will be reduced by the amount necessary to make up the shortfall and achieve a total of 1.627% of payroll. The terms of subsection D.5 below shall govern the retention of Money Purchase Pension Plan contributions and the reduction of base salary as provided for herein.
4. Each eligible retiree shall pay the same premium contribution as active employees. Employees' premium contributions will be paid for through tax-exempt payroll deductions. Retiree premium contributions will be deducted from the retirement allowance paid by PERS. If a retiree's retirement allowance is not sufficient to pay the entire contribution, the retiree must pay the balance due on such premium contribution directly to PERS. If such payment is not received by the due date, health care coverage will automatically, immediately and permanently cease. These rules are intended to comply with the premium contribution procedures established by PERS, which may be modified by PERS. The District, Association and employees shall comply with the PERS procedures in effect from time to time.

**C. Maximum District Contributions For Health Insurance**

Beginning on January 1, 2010, the District shall contribute an amount up to the applicable level of plan participation (i.e., one party, two party, or family) and the same Medicare status as elected by the eligible employee or retiree, equal to the Bay Area Basic Premium Rates for the PERS HMO Blue Shield Access + or PERS HMO Kaiser Plan, whichever is greater, less the employee and retiree contributions provided for in 38(B) above. This District contribution shall be the District's maximum payment toward employee health insurance premiums. Employees and retirees electing coverage with a cost greater than the District's maximum contribution shall have the difference deducted automatically from the unit member's pay or as set forth in 38(B)(4) above, in addition to amounts to be deducted in accordance with subsection B above.

**D. Retiree Insurance Funding**

1. Beginning July 1, 2007, the District shall contribute into its Retiree Health Benefit Trust (“RHBT”) amounts that, at minimum, reflect an eight (8) year “ramp up” to District payment of the full Government Accounting Standards Board (“GASB”) compliant Annual Required Contribution (“ARC”) beginning July 1, 2013 using an open group valuation method with a closed 30 year amortization schedule for unfunded liability ending June 30, 2034. Except as provided in paragraph 3 below, each pay period the District shall contribute to the RHBT an amount equal to the below-listed percentages of straight time bargaining unit base pay paid to bargaining unit members in that pay period into the RHBT. (For example, if base pay in the pay period in FY ‘07 is one million dollars [\$1,000,000], the District will contribute \$34,900 into the RHBT for that pay period).

Date	Percentage
July 1, 2007 (FY 08)	3.49%
July 1, 2008 (FY 09)	3.64%
July 1, 2009 (FY 10)	3.79%
July 1, 2010 (FY 11)	3.94%
July 1, 2011 (FY 12)	4.10%
July 1, 2012 (FY 13)	4.27%

2. In addition, on or before June 30, 2009 the District shall, at minimum, contribute into the RHBT an amount equal to three and twenty-two one-hundredths percent (3.22%) of straight time bargaining unit base pay paid in FY ‘06 and three and thirty-six one-hundredths percent (3.36%) of straight time bargaining unit base pay paid in FY ‘07. These figures represent the “ramp up” percentages for those fiscal years.
3. The District shall perform an actuarial study of the retiree medical insurance plan liabilities and funding needs (including the Annual Required Contribution – “ARC”) after the end of each calendar year but before the beginning of the next fiscal year for which the results provide guidance. For each fiscal year beginning with FY 2007, the actuaries shall adjust the above “ramp up” percentages for the fiscal year for which the study was prepared and for each remaining fiscal year in the “ramp up” period. The last such adjustment will be in the study performed prior to July 1, 2013 for FY 2013. The revised percentages shall be the percentages contributed by the District to the RHBT for those years, except that the District shall pay no less than the percentages specified in subsections 1 and 2 above.

4. Beginning July 1, 2013, the District shall, at minimum, contribute to the RHBT each pay period an amount equal to the full GASB compliant Annual Required Contribution (ARC) percentage of straight time base pay paid to bargaining unit members during that pay period using an open group valuation method with a closed thirty (30) year amortization schedule for unfunded liability ending June 30, 2034. (For example, if the base pay during the pay period is one million dollars [\$1,000,000] and the ARC percentage is fourteen percent [14%], the District will contribute one hundred forty thousand dollars [\$140,000] to the RHBT for that pay period.)
  
5. Effective July 1, 2013, the District shall retain the contributions referred to in subsections B.2 and B.3 above and implement the base salary reductions provided for in B.3 above, to the extent necessary to compensate the District for paying the difference between the actual ARC and the baseline ARC described below. The District shall retain this amount through June 30, 2034. In any year in which the actual ARC does not exceed the baseline ARC by an amount equal to the amount of the retained MPPP contributions and salary reductions provided for in B.2 and B.3, the District shall make appropriate adjustments to the base salaries of sworn personnel and appropriate contributions to the MPPP's of sworn and civilian personnel, but only to the extent that the amount the actual ARC exceeds the baseline ARC is less than the dollar value of the retained MPPP 1.627% of payroll. For sworn personnel, the District shall first adjust base salary up to the amount it was reduced for the period provided in B.3, before reinstatement of any portion of the MPPP contribution retained pursuant to B.3.

EXAMPLE: Assume that the actual ARC is fifteen percent (15%) in the particular year, the baseline ARC is fourteen percent (14%) in the particular year, and that the difference between the two is one million dollars (\$1,000,000). Assume further that the value of the retained 1.627% is one million five hundred thousand dollars (\$1,500,000). The District would then distribute the total excess of five hundred thousand dollars (\$500,000) as adjustments to base salary and MPPP contributions prorated in the same manner as the reductions provided in B.2 and B.3 were determined. For sworn personnel, base salary adjustments will occur before any MPPP adjustments

The baseline ARC is as follows:

<u>FY Year Beginning</u>	<u>Baseline ARC</u>
7/1/13	11.88%

7/1/14	11.94%
7/1/15	12.00%
7/1/16	12.06%
7/1/17	12.12%
7/1/18	12.18%
7/1/19	12.24%
7/1/20	12.30%
7/1/21	12.36%
7/1/22	12.42%
7/1/23	12.48%
7/1/24	12.54%
7/1/25	12.60%
7/1/26	12.66%
7/1/27	12.72%
7/1/28	12.78%
7/1/29	12.84%
7/1/30	12.90%
7/1/31	12.96%
7/1/32	13.02%
7/1/33	13.08%

6. Effective July 1, 2013 the District shall direct the Trustee of the RHBT to pay retiree health insurance premiums from the RHBT. No premiums will be paid

**E. In Lieu Of Medical Payments**

During any open enrollment period after July 1, 2009, an eligible employee who has medical coverage under a spousal or other alternate plan may elect, in accordance with procedures established by the District to opt out of the group medical and prescription drug benefits covered under Section 38(A) (“38(A) Coverage”).

The District shall make a monthly payment of \$100 “in lieu of medical” to each eligible employee who opts out of 38(A) coverage.

Tax treatment of these payments will be subject to applicable Internal Revenue Code (“IRC”) and Internal Revenue Service (“IRS”) rules. The payments will be made in a manner that will not impact the income tax status of medical premiums under IRC requirements and to allow an employee to receive the amounts as cash monthly payments.

An eligible employee who opts out of 38(A) coverage may subsequently enroll in such coverage as permitted under the terms of the plan(s) described in Section 38(A).

**F. Trust Review Committee**

1. The District's three (3) unions and two (2) Associations shall each appoint one (1) member to serve on a trust review committee ("TRC"). The District Labor Relations Manager and Human Resources Manager shall serve on the TRC for the District. The TRC shall meet quarterly. Employee members of the TRC will be released from regularly scheduled duty with pay for quarterly TRC meetings.
2. The District will direct the Trustee of the Trust to provide the Unions/Associations with quarterly reports of all RHBT operations, including audited and un-audited financial statements and investment performance reports, and other consultant reports in advance of the quarterly TRC meetings. (The parties acknowledge that audited financial statements are performed only once per year.)
3. The Trustee will attend the TRC meeting to answer questions concerning the information provided to the TRC. However, the TRC shall in no way attempt to assist, direct, or otherwise involve itself in matters concerning the investment of Trust assets. However, the TRC may advise the Trustee on other Trust matters to the extent such advisory activity does not affect the legal status of the Trust. It shall be within the sole discretion of the Trustee whether to follow or not follow such advice.
4. The TRC members shall be released from regularly scheduled duty with pay to attend meetings of the Human Resources Manager and Labor Relations Manager with the District's actuaries and other professionals to discuss assumptions to be included in annual GASB valuation studies, the preliminary and final results of such studies. Such studies shall include ARC projections through at least the year 2035. The District will provide the Unions/Associations with a copy of the final version of such study on or before February 1<sup>st</sup> each year or as soon thereafter as is practicable.

**G. Retiree Health Benefits Trust.**

Within one hundred twenty (120) days after the signing of this agreement by the parties hereto, the District shall amend the Trust Agreement to provide that:

1. Trust assets shall be held for the sole and exclusive purpose of providing health benefits to eligible BART retirees and to defray the reasonable expenses of administering the RHBT.
2. The only District benefit plans for which payments may be made from the RHBT shall be those retiree health benefit plans offered to eligible District retirees as a result of its collective bargaining agreements, or District

policy which extends such plans to non-represented employees. In addition, for District personnel on a District plan that is no longer generally offered to District employees, payments may be made from the RHBT. However, the District shall ensure sufficient separate funding and the Trustee shall separately account for benefits paid for such personnel.

3. The District may terminate the trust, subject to its duty to bargain in good faith to agreement or impasse over such termination with the Association. If the District gives the Association notice of the termination of the RHBT, the trust shall not terminate until the assets then remaining are exhausted. Such assets shall be used only as provided in paragraph 1 above.

Each eligible retiree pays the same premium co-payment as active employees.

Employees' premium co-payments will be paid for through payroll deductions. Retiree premium co-payments will be deducted from the retirement allowance paid by PERS. If a retiree's retirement allowance is not sufficient to pay the entire co-payment, the retiree must pay the balance due on such premium co-payment directly to PERS. If such payment is not received by the due date, health care coverage will cease automatically, immediately and permanently. These rules are intended to comply with the premium co-payment procedures established by PERS, which may be modified by PERS. The District, Association and the employees shall comply with the PERS procedures in effect from time to time.

The District reserves the right to terminate or change any part or all of the health benefits program at any time with respect to active or retired employees, however, any such action will be taken only after the District has satisfied its obligations under applicable Collective Bargaining Agreements. The District's obligation to provide health benefits coverage to retired employees shall terminate upon the expiration of this Agreement. By providing benefits to retirees, the parties do not intend to vest retirees with such benefits.

#### **\* Minute Clarification**

The parties mutually understand that the only obligation to continue the health benefits of active employees after the expiration of the Agreement is that which may arise from the general legal duty to bargain in good faith.

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### **38. SURVIVOR BENEFITS**

Subject to the restrictions, limitations and eligibility requirements of the applicable health plans, employees may elect a survivor benefit which would pay a portion of

premiums or provide reimbursement for the enrollment of their previously eligible covered survivor(s) in the medical, dental, and vision care plans upon the death of the employee. The cost for this program is fifteen dollars (\$15) per month. After the employee's death, the survivor must continue to contribute fifteen dollars (\$15) per month to receive the medical, dental, and vision coverage.

Part-time employees (less than forty [40] hours per week) and employees who are ineligible for District health plan coverage, including, without limitation, limited term intermittent employees, are ineligible for the Survivor Benefits Program. In order for the survivor of an employee or retiree who dies before the effective date of this Survivor Benefits Program to be eligible for survivor benefits, the employee and survivor must have been covered by District medical benefits at the time of termination by death or retirement. In order for the survivor of an employee or retiree who dies after the effective date of this Survivor Benefits Program to be eligible for survivor benefits, the employee/retiree and survivor must have been covered by District medical benefits and enrolled in the Survivor Benefits Program at the time of death.

Payment for those who choose this benefit must commence within ninety (90) days of the beginning of the one time open enrollment period for the program. This benefit shall be made available to eligible new hires when they commence the fifteen dollars (\$15) monthly assessment within ninety (90) days of hire. Former employees who retired prior to the effective date of this Survivor Benefits Program are not eligible for this program. Survivors of employees or retirees who died after 11/17/88 and prior to the effective date of this program will have a specified one time open enrollment period to elect this or a similar reimbursement benefit described below.

Failure to pay the required fifteen dollars (\$15) per month assessment by the due date established by the District shall permanently and irrevocably terminate eligibility for the Survivor Benefits Program.

The various categories of individuals eligible to elect this program, and the additional conditions applicable to each category, are described below.

#### **SURVIVORS OF EMPLOYEES WHO DIE IN SERVICE AFTER THE EFFECTIVE DATE OF SURVIVOR BENEFITS PROGRAM**

The survivors of employees who were not eligible for a PERS retirement allowance and who die in service after the effective date of the Survivor Benefits Program are eligible for benefits if they are eligible under the optional PERS Survivors Benefits Program provided for at Government Code 22821 (the optional program). The District will pay the entire premium to PERS for the optional program upon payment of the fifteen dollars (\$15) per month contribution.

The survivors of employees who were eligible for a PERS retirement allowance and who die in service after the effective date of the Survivor Benefits Program are eligible for

survivor benefits only if the survivors are receiving a survivor's allowance from PERS and having the survivor's portion of the retiree medical premium withheld from the allowance. They will be reimbursed for the difference between the amount withheld and the required fifteen dollars (\$15) per month contribution. However, if the surviving spouse is not eligible for a PERS annuity only because he/she was married to the employee for less than a year, or only because he/she was a PERS annuitant and became ineligible for an annuity because of remarriage, the District will provide medical benefits as follows:

- (1) If the survivor meets the eligibility requirements for the optional PERS program, the District will pay the entire premium to PERS for the optional program upon payment of the fifteen dollars (\$15) per month contribution;
- (2) If the survivor does not meet the eligibility requirements for the optional program, the District will reimburse the survivors for medical premiums paid for any medical plan or coverage in which they may participate, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

#### **SURVIVORS OF EMPLOYEES WHO DIED IN SERVICE AFTER 11/17/88 BUT BEFORE EFFECTIVE DATE**

The survivors of employees who died in service after November 17, 1988 but before the effective date of this program may elect the survivor benefits. If the survivors are receiving a survivor's allowance from PERS and having the survivor's portion of the retiree medical premium withheld from the allowance, they will be reimbursed for the difference between the amount withheld and the required fifteen dollars (\$15) per month contribution. If the survivors are not receiving a survivor's allowance from PERS, the District will provide dental and vision coverage and will reimburse the survivors for medical premiums paid for any medical plan or coverage in which they may participate, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

#### **SURVIVORS OF RETIREES WHO DIED AFTER 11/17/88 BUT BEFORE EFFECTIVE DATE**

The survivors of retirees who died after November 17, 1988 but before the effective date of this program may elect survivor benefits. If the survivors are receiving a survivor's allowance from PERS and having the survivor's portion of the retiree medical premium withheld from the allowance, they will be reimbursed for the difference



between the amount withheld and the required fifteen dollars (\$15) per month contribution. If the survivors are not receiving a survivor's allowance from PERS, the District will provide dental and vision coverage and will reimburse the survivors for medical premiums paid, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower.

Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

#### **SURVIVORS OF RETIREES WHO DIE AFTER EFFECTIVE DATE OF PROGRAM**

The survivors of retirees who retired before the effective date of this program but who die after the effective date are ineligible for this program. If an employee who elected this program retires and then dies, his or her survivors are eligible for dental and vision coverage, but medical coverage will be provided only if the survivors are receiving a PERS survivor's allowance. However, if the PERS survivor's allowance is not available only because the survivor and employee were married less than one year, or because the survivor remarries, then the District will reimburse the survivor for medical premiums paid, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

The District reserves the right to terminate or change any part or all of the Survivor Benefits Program at any time with respect to active or retired employees or survivors. However, any such action will be taken only after the District has satisfied its obligations under applicable Collective Bargaining Agreements. The District's obligation to provide survivor benefits coverage shall terminate upon the expiration of this Agreement.

The effective date of this Survivor Benefits Program shall be the first day of the second month following the effective date of the PERS Medical contract.

Employees may obtain the same benefits with respect to health, dental, and vision care for surviving spouses and children of surviving spouses of members of the Board of Directors under Resolution 4290 (adopted November 17, 1988), upon payment of an assessment of fifteen dollars (\$15) per month to partially defray the costs of such coverage. Payment for those who choose this benefit must commence within ninety (90) days of the ratification of this contract. This benefit shall be made available to new hires when they commence the fifteen dollars (\$15) monthly assessment within ninety (90) days of hire. All persons who would have been eligible to receive this benefit had it been available as of November 17, 1988 shall be entitled to receive said benefit

regardless of length of service accrued as of November 17, 1988, upon payment of the fifteen dollars (\$15) per month assessment. This benefit shall not be eliminated except if Resolution 4290 is amended to eliminate such benefits for members of the Board of Directors.

### 39. VISION CARE PLAN \*

The District will continue to provide and pay for a Vision Care Plan for employees and eligible dependents. Per Board Resolutions 4455 and 4757, an employee's eligible domestic partner and his/her eligible dependents shall also be covered. The plan shall provide:

<b>Coverage</b>	<b>Intervals</b>
Visual Examinations	12 months
Lens Replacement	12 months
Frames Replacement	24 months

There shall be a ten dollar (\$10) deductible.

#### \* Minute Clarification

Employees shall have the option to purchase, at their own expense, an enhanced Vision Care Plan. Benefits and premiums shall be established by the District annually based on plan experience. Premiums for this benefit will be paid through payroll deduction.

### 40. DENTAL INSURANCE COVERAGE \*

Present coverage for preventative care, restorative care, prosthodontic care and orthodontic care will continue. Coverage will be as follows:

- A. **Preventative Care:** Insurance will pay one hundred percent (100%) of Usual and Customary charges.
- B. **Restorative Care:** Insurance will pay one hundred percent (100%) of the Usual and Customary charges.
- C. **Prosthodontics:** Insurance will pay one hundred percent (100%) of the Usual and Customary charges.
- D. **Orthodontics:** Insurance will pay seventy five percent (75%) of the Usual and Customary charges, with the employee paying the balance.

Maximum benefit payable for a combination of preventative, restorative, and prosthodontic care is two thousand dollars (\$2,000) for each calendar year. Each calendar year, the employee may place the maximum benefit payable for preventative, restorative and prosthodontic care for each employee and dependent in a family bank. Maximum benefit payable for orthodontic care is three thousand five hundred dollars (\$3,500) lifetime maximum, with fifty dollars (\$50) deductible for employees and dependents.

An employee's eligible domestic partner and their children shall be entitled to the same coverage under this section as spouses and dependent children of the employee, per Board Resolutions 4455 and 4757.

**\* Minute Clarification**

Employees shall have the option to purchase, at their own expense, an enhanced dental plan. Benefits and premiums shall be established by the District annually based on plan experience. Premiums for this benefit will be paid through payroll deduction.

**41. DISABILITY COVERAGE**

The District will provide the Peace Officers' Research Association of California (PORAC) sponsored Premier Plus — Long Term Disability Plan (hereinafter referred to as PORAC) for all BPMA members, and the District will pay the premium for PORAC for the duration of the contract (members will be responsible to pay \$3.00 per person, per month, toward this plan, through payroll deduction). It is further understood that BPMA members will be subject to the conditions of PORAC, and that BPMA members who may have claims, issues or other concerns regarding PORAC will be referred to PORAC for assistance. The PORAC rules, plan documents and insurance agreements will control all issues and benefits, including the types and levels of benefits offered and eligibility for those benefits. The following is the current schedule of coverage for the Premier Plus — Long Term Disability Plan under PORAC.

<b>LTD Benefit:</b>	70% of the first \$12,857 of Pre-disability Earnings, reduced by Deductible Income.
<b>Maximum Benefit:</b>	\$9,000 per month
<b>Waiting Period:</b>	(30) Days. Sick Leave may be frozen after (60) days. (0) days industrial.
<b>Maximum Benefit Period:</b>	See Plan Document.

<b>Minimum Benefit:</b>	\$200 per month while receiving sick pay for Non-Industrial Disabilities. Nothing while receiving 4850 pay.
<b>Pays Benefits During Workers' Compensation Litigation:</b>	YES. Refund only the amount actually received from Workers' Compensation.
<b>Survivors Benefits:</b>	Dependents will receive 6 months of member's benefit.
<b>Mental and Nervous Benefits:</b>	Safety Members: 12 months each occurrence or as long as hospitalized.  Non-safety Members: 6 months each occurrence or as long as hospitalized.
<b>Drug and Alcohol Benefits:</b>	12 months lifetime
<b>Deductible Benefits: (Income from Other Sources)</b>	A. Sick Pay B. Retirement Benefits C. Social Security Benefits D. Other Group Disability Benefits. E. Worker's Compensation 4850 Pay or Temporary Disability Pay
<b>Death Benefit:</b>	\$50,000 – Natural Causes \$55,000 – Accidental Causes
<b>50/50 Integration Benefit:</b>	Receive 100% of base pay through use of 50% leave time and 50% LTD Benefit
<b>Cost of Living Adjustment: (COLA)</b>	Increase LTD benefits up to 5% compounded annually. COLA benefit is limited to non-industrial claims only.

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## 42. ASSAULT INSURANCE

The District will provide Assault Insurance as indicated under the existing insurance policy in the amount of seventy-five thousand dollars (\$75,000) for each District employee in the bargaining unit.

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### **43. GROUP LIFE INSURANCE**

#### **Basic Life Insurance**

The District will provide a Basic Group Life Insurance Policy (Basic Group) with accidental death and dismemberment provisions for each BPMA employee, equivalent to two (2) times the employee's annual base earnings, two thousand and eighty (2,080) hours X base straight-time hourly rate, rounded to the next higher even thousand dollars (\$1,000).

Coverage reduces thirty-five percent (35%) of the Basic Group amount at age sixty-five (65), fifty percent (50%) at age seventy (70), sixty-five percent (65%) at age seventy-five (75) and will remain at the thirty-five percent (35%) level until the employee retires.

#### **Additional Life Insurance**

All BPMA employees are eligible to participate in Additional Life Insurance (Additional Life) which is a flat amount equal to one (1) times the employee's annual base earnings, two thousand and eighty (2,080) hours times base straight-time hourly rate, rounded to the next higher even thousand dollars (\$1,000) with accidental death or dismemberment provisions. Premiums for this coverage are paid fifty percent (50%) by the District and fifty percent (50%) by the employee.

Coverage reduces thirty-five percent (35%) of the Additional Life amount at age sixty-five (65), fifty percent (50%) at age seventy (70), sixty-five percent (65%) at age seventy-five (75) and will remain at the thirty-five percent (35%) level until employee retires.

#### **Voluntary Life Insurance**

All BPMA employees are eligible to purchase this coverage at their individual option. The plan provides protection in a flat amount equivalent to one (1) times the employee's annual base earnings, two thousand and eighty (2,080) hours times base straight-time hourly rate, rounded to the next higher even thousand dollars (\$1,000) with accidental death and dismemberment provisions (AD&D). Premiums for this coverage are fully paid by the employee.

Coverage reduces thirty-five percent (35%) of the Voluntary Life amount at age sixty-five (65), fifty percent (50%) at age seventy (70), sixty-five percent (65%) at age seventy-five (75) and will remain at the thirty-five percent (35%) level until employee retires.

Employees who participate in either plan or both will be required to sign a payroll deduction authorization form for the premiums.

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#### 44. PENSIONERS' LIFE INSURANCE

Life insurance will be provided to all employees who retire from the District on either a service or a disability retirement as follows:

- A. The first year of retirement, fifty percent (50%) of the employees' annual base earnings rounded to the next higher even thousand dollars (\$1,000);
- B. The second year of retirement, forty percent (40%) of the employees' annual base earnings rounded to the next higher even thousand dollars (\$1,000);
- C. The third year of retirement, thirty percent (30%) of the employees' annual base earnings rounded to the next higher even thousand dollars (\$1,000);
- D. The fourth and subsequent years of retirement, twenty percent (20%) of the employees' annual base earnings rounded to the next higher even thousand dollars (\$1,000).

This Section is subject to the provisions of Section 35 - Group Insurance and Self-Funded Plans - General.

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#### 45. INDUSTRIAL INJURIES

- A. **Civilian Personnel** - An employee suffering an industrial injury or illness will be entitled to receive for each separate injury or illness up to five (5) days industrial accident-leave before normal sick-leave credits are utilized. Both industrial and accident-leave and sick-leave payments will be coordinated with Workers' Compensation payment to maintain the employee's basic straight-time earnings.
  - B. **Sworn Officers Only** - Effective April 6, 1989, sworn Police Officers of the BART Police Managers' Association, who on that date were disabled or who thereafter become disabled by illness or injury, arising out of and in the course of their duties, will be accorded the benefits of city Police Officers or other law enforcement personnel pursuant to Section 4850 of the California Labor Code. Holidays, vacation and sick leave shall continue to accrue during the period of industrial absence or for one (1) year, whichever is shorter. Upon return to work, sick leave credits utilized during such absence shall be restored.
  - C. All Sworn members of this bargaining unit shall be afforded the same medical presumptions provided to police personnel from cities under Sections 3212.5 and 3212.6 of the Labor Code.
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**46. PHYSICAL FITNESS PROGRAM**

Employees participating in the District's Physical Fitness Program will receive up to fifty (\$50) dollars per month reimbursement when using a District approved Health Facility.

The procedure governing this program is outlined in Employee Relations Guideline #32.

Employees will also be encouraged to use professional coaches and coordinators available within the approved facilities and programs (e.g., weight loss, gym, smoking cessation).

Reimbursement will be on a quarterly basis throughout the year. Verification of payment is required for reimbursement. Verification of visits is not required. Participation in the physical fitness program is voluntary.

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**47. PAY PROCEDURES \***

All salaried professional employees shall continue to be considered salaried and shall be paid on a bi-weekly basis. The District shall make available an electronic direct deposit system for payroll checks. Such feature shall be available to all employees individually on a voluntary basis.

The District shall continue the present system of itemizing deductions during the life of this Agreement.

All shortages above fifty dollars (\$50) shall be corrected within the time limits set below. The employee's immediate or appropriate supervisor shall assure that the documentation necessary to correct the shortage has been delivered to Payroll within one (1) workday, exclusive of weekends and holidays, after he/she receives written notification of the shortage from the employee. Payroll shall correct the shortage and cause a check to be available at the employee's normal work location within three (3) accounting workdays, exclusive of weekends and holidays, after receipt of the written notification. All other shortages shall be added to the next paycheck. In the event overpayment is made in error, it shall be deducted from the employee's first regular paycheck following discovery of such overpayment by the District.

Any employee taking a scheduled vacation shall be provided an advance paycheck, provided such payday falls within the scheduled vacation period and provided a written request is submitted to the District no less than five (5) accounting workdays prior to the scheduled vacation.

Final termination paychecks shall be issued to terminating employees within seventy-two (72) hours after such termination becomes effective.

The District will promptly process Public Employees' Retirement System (PERS) refund forms following an employee's termination.

**\* Minute Clarification**

The parties have reached the following understanding with respect to repayment of overpayments made to employees.

Where repayment of the entire amount of the overpayment in a lump sum would work a hardship on the affected employee, the Association may request development of a reasonable repayment schedule through the Human Resources Department. Such request will not be unreasonably denied by Human Resources Department.

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**48. WAGE GUIDELINES**

Both parties recognize this Agreement is the result of negotiations between the parties for represented employees and, in the event any wage increase or other benefit or condition provided in this Agreement results in any challenge or determination by any governmental agency, the parties agree to use their best efforts in a joint appeal to such governmental agency to uphold the validity and propriety of such section.

Pending exhaustion of such appeal, the challenged section shall be suspended except that, the parties may commence negotiations within thirty (30) days of such challenge to ensure that the superseded portion(s) shall be rewritten to conform legally as nearly as possible to the original intent.

In the alternative, the parties may negotiate an alternate provision not exceeding the cost of the section challenged.

Should the parties fail to agree, the grievance procedure may be invoked in its entirety by either party.

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**49. COMPENSATION**

A. Effective July 1, 2009, members of the Association shall be compensated in accordance with the monthly pay levels contained herein.

All annual performance ratings shall be prepared on or before the members' anniversary date.

Step increases shall become effective on the employee's anniversary date.

Employees will be evaluated every two (2) years on their respective anniversary



dates subsequent to reaching the top step of the classification wage schedule.

Members of the Association who are rated "Unsatisfactory" or "Marginal" in their annual performance evaluation shall not be granted a wage increase. However, members rated "Marginal" shall be given ninety (90) days to improve their performance, at which time they will be rated again. Upon achieving a rating of "Effective" or higher, the employee will then be granted a wage increase effective the subsequent review date. Members rated "Unsatisfactory" or who retain a "Marginal" rating after the ninety (90) day review period shall not receive a wage increase and shall not be rated again until the subsequent evaluation period is completed.

Individual employee's written performance evaluations are not subject to the established grievance procedure to determine the content or overall rating. However, in order to insure that fair, objective, complete, and accurate performance appraisals are prepared by raters, members who believe their performance appraisals have been improperly prepared will have recourse to the Performance Review process. Employees shall discuss their concerns regarding their performance appraisal with his/her immediate supervisor. If dissatisfied with the results of the discussion, affected members must file their appeal in writing within ten (10) calendar days of receipt of their performance appraisal under dispute. The written appeal shall be directed to the Chief of Police and shall contain a brief outline of the facts and reasons giving rise to the appeal. The Chief of Police may meet with the employee if necessary and shall respond in writing to the appeal within twenty (20) days after receiving the appeal or upon conclusion of the meeting with the employee.

If the Chief of Police's decision does not resolve the dispute, with the concurrence of BPMA, the affected member may, within five (5) calendar days, request in writing to the Manager of Labor Relations that a Performance Review Board be convened to hear the appeal. The Association shall designate a BPMA member of his/her choosing to sit on the Board. The Manager of Labor Relations shall serve as Chairperson of the Board, and shall be a voting member of the Board.

The Chief of Police shall appoint the third member of the Board. The Performance Review Board shall meet within twenty (20) calendar days of receipt of the appeal.

The involved employee shall appear in person before the Review Board and may elect to have a BPMA representative present his/her case including all relevant documents or other evidence as may be appropriate. The rater shall be present and shall have the right to present statements, oral or written, in support of his/her position as it relates to the performance appraisal.

After hearing all evidence, the board shall prepare a report of their findings with a recommendation to the General Manager. The General Manager's decision in this matter shall be final and binding. Members prevailing in the review process shall receive the appropriate compensation retroactive to July 1st.

During the term of this Agreement, the employees who are members of BPMA shall be compensated in accordance with the following wage schedule. Placement in a pay level is based on accumulated service within a classification as of the effective date cited below. Employees promoted from one classification to another classification shall be granted a minimum of five percent (5%) salary adjustment upon promotion, provided no promotional salary adjustment under this Section shall be made above the maximum step of the salary range of the new classification then in effect.

**WAGE CHART:** See Appendix A.

#### **ANNUAL SALARY INCREASES**

During the term of this contract effective July 1, 2009 through July 1, 2013, base rate of pay shall remain the same with no scheduled annual increases.

#### **B. Education/Skill Allowance**

In order to attract and retain the most well-educated, skilled, and experienced police managers possible, the District will pay the following Education/Skill-Experience Allowance to members with a minimum of five (5) years with the District as an employee covered by the BPMA Collective Bargaining Agreement.

<b><u>SWORN</u></b>		
<b>Education/Skill</b>	<b>BPMA Supervisory Experience</b>	<b>Incentive</b>
POST Advanced Certificate and POST Supervisory Cert. and minimum of an A.A. Degree	5 Years	3.0%
POST Advanced Certificate and POST Supervisory Cert. and minimum of a B.A. or B.S. Degree	5 Years	4.0%
POST Advanced Certificate and POST Supervisory Cert. and minimum of an A.A. Degree	10 Years	7.5%
POST Advanced Certificate and POST Supervisory Cert. and minimum of a B.A. or B.S. Degree	10 Years	9.0%
POST Advanced Certificate and POST Supervisory Cert. And minimum of a M.A. or M..S. Degree	10 Years	13.0%
POST Advanced Certificate and POST Supervisory Cert. and B.A. or B.S. Degree	13 Years	13.0%

<u>CIVILIAN</u>		
Education/Skill	BPMA Supervisory Experience	Incentive
Completion of POST Supervisory Course and minimum of an A.A. Degree	5 Years	3.0%
Completion of POST Supervisory Course and minimum of a B.A. or B.S. Degree	5 Years	4.0%
Completion of POST Supervisory Course and minimum of an A.A. Degree	10 Years	7.5%
Completion of POST Supervisory Course and minimum of a B.A. or B.S. Degree	10 Years	9.0%
Completion of POST Supervisory Course and minimum of an M.A. or M.S. Degree	10 Years	13.0%
Completion of POST Supervisory Course and minimum of a B.A. or B.S. Degree	13 Years	13.0%

This incentive, if paid, shall become a part of the base wages but shall not be considered a part of the base wages for determining a base wage associated with a promotion. Receipt of the incentive is predicated on maintaining or exceeding an overall performance rating of "Effective." Employees shall be eligible for only one (1) incentive at any given time.

The effective date of the Education/Skill Allowance shall be no earlier than the first day of the month in which the eligible member notifies the District that he/she meets the qualifications as cited above. No member will be paid the Education/Skill Allowance prior to their date of eligibility. The allowance will be paid for non-worked time, such as holidays, sick leave or vacation provided the employee was in a paid work status and not on personal leave or non-industrial disability leave.

**C. On-Call Status**

Anytime that management places an employee in an on-call status, the employee shall receive ten (10) hours compensatory time for each on-call week worked. Employees cannot volunteer to work or sign into overtime while in on-call status.

**D. Longevity Pay**

A member completing twenty-five (25) years of District service with a minimum of five (5) years as an employee covered by the BPMA Collective Bargaining Agreement, or twenty-five (25) years of safety service with a minimum of ten (10) years as an employee covered by the BPMA Collective Bargaining

Agreement, shall have eight and four-tenths percent (8.4%) longevity incentive pay added to their base salary. This pay shall not be used for the purpose of comparing, adjusting or setting salaries.

The employee shall notify the Chief of Police in writing within ninety (90) days of eligibility. The memo shall contain the required District BPMA, and/or safety service dates. The Chief of Police will verify eligibility, and forward the memo of the compensation to Human Resources for implementation.

This incentive pay shall be reported to CalPERS as Longevity Incentive Pay.

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## **50. SPECIAL ASSIGNMENT PAY**

In order to attract and retain qualified managers for special assignments, the District will compensate members assigned to the following special assignments \$350 per month for the duration of the assignment.

- Canine Sergeant
- Detective Sergeant
- Revenue Sergeant
- Train Team Sergeant
- TAG/SET Sergeant
- Training and Human Resources Sergeant
- Internal Affairs Sergeant
- Traffic Sergeant

Special assignment compensation will be discontinued upon the civilianization of a position; or whenever a special assignment is eliminated by the Chief of Police.

Upon the addition of any special assignments, the Chief of Police shall meet and confer with the Association to determine if these additional assignments shall receive special assignment pay. The final decision shall remain with the Chief of Police.

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## **51. ACTING PAY ON TEMPORARY ASSIGNMENT \***

An employee temporarily assigned by the Chief of Police to perform the full duties of a higher classification will receive either the first step rate of such higher classification or five percent (5%) above their present rate of pay, whichever is greater, as acting pay while fulfilling said assignment. However, in instances where the temporary assignment does not involve performance of the full duties of the higher classification, the employee will receive only five percent (5%) acting pay for the duration of the temporary assignment. In no case will an employee be paid more than the top step of the salary range of the higher classification.

**\* Minute Clarification**

This is to include Educational/Skill Allowance and Longevity Pay, if being received by the employee in an acting status.

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**52. OVERTIME**

All hours worked in excess of eight (8) hours in the regular workday or forty (40) hours in the regular workweek shall be compensated at one and one-half (1.5) the regular base rate for actual overtime hours worked.

All hours worked on the employees' first regular day off (RDO) shall be compensated at one and one-half (1.5) times the employee's regular base rate. All hours worked on the second regular day off (RDO) shall be compensated at two (2) times the employee's regular base rate provided that the employee worked the first regular day off (RDO). Extra compensation for hours worked in excess of eight (8) in one (1) day shall not apply in those cases where employees are assigned to a special four (4) day workweek. In those cases, overtime compensation shall be computed only for those hours, which exceed ten (10) in one (1) day or forty (40) in one (1) week. In lieu of the above, employees may elect to be compensated by compensatory time off rather than payment.

Employees are restricted from working more than twenty (20) consecutive hours and, as such, are prohibited from signing up for or attempting to sign up for any extra duty, including overtime, that would place the employee in the position of having to work more than twenty (20) consecutive hours.

Employees who work sixteen (16) hours or more within any twenty (20) hour period must have a minimum of eight (8) hours break before the next work shift.

All overtime must be assigned and approved in advance and the performance of such overtime shall be mandatory. If no qualified employee volunteers to work overtime, mandatory overtime shall be assigned to qualified employees by virtue of inverse department seniority.

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**53. STANDBY TIME, COURT TIME AND CALL-BACK TIME**

**A. Standby Time**

1. Employees assigned to remain on standby duty subject to call-in shall be compensated at one-half (.5) their regular straight time rate of pay for

each hour so assigned until such employee is called and released from such standby assignment.

2. Off-duty employees required to appear in court on District business who are directed to standby shall be paid for the verifiable time spent from subpoena time until reporting time or until time of release at one-half (.5) their straight time rate. Release time shall be deemed to be no later than 3:00 p.m. of the same day unless verified to the contrary.

**B. Court Time and Call-Back Time**

1. Employees required to appear in court on District business relating directly to sworn officer's duties outside of his/her regular shift or workday shall be paid at the one and one-half (1.5) overtime rate.
2. Employees called back for unscheduled work (training does not apply to this provision/section) outside of his/her regular shift or workday shall be paid for a minimum of one-half (.5) shift at the applicable overtime rate.
3. If such assignment exceeds four (4) hours, six (6) hours compensation shall be paid. If such assignment exceeds six (6) hours, eight (8) hours compensation shall be paid. Compensation for assignments over eight (8) hours shall be limited to the actual hours assigned. This Section shall be limited to specific assignment where broken time is involved. In no event shall an employee be eligible for standby and call back pay for the same hours.
4. In "send home early" situation, the existing practice of giving the employee the option of finishing his/her scheduled shift and receiving overtime pay for the excess hours, or going home early, shall continue.
5. Court time pay as provided in this Section shall not be granted for attendance at court cases or administrative proceedings on regular days off (RDO's) involving employment prior to BART or under any circumstances for outside BART employment.

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**54. COMPENSATORY TIME OFF**

All compensatory time shall be accrued at the time and one-half rate.

A maximum of two hundred (200) hours may be accrued.

- A. Compensatory time credit shall be allowed only when an employee's record permits full crediting of the applicable hours worked. No credit shall be allowed

in those cases where the hours worked exceed the record limits set forth above or when a partial payment would result.

- B. Once a selection of compensatory time has been made, no employee shall be permitted to receive cash payment for credited time at a rate higher than the straight time rate. Terminating employees shall be compensated at a straight time rate for all hours credited to their record at the point of termination.

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#### **55. WORKWEEK AND PAY WEEK \***

A workweek, which has been assigned to an employee, will be that employee's scheduled workweek. No premium shall be paid for Saturday and/or Sunday if such days are part of the scheduled workweek. All hours worked on off-duty days shall be compensated at the applicable overtime rate set forth herein. The pay week shall consist of seven (7) consecutive days commencing at midnight Sunday and ending at midnight the following Sunday.

For the purpose of a pay week, a shift started prior to midnight Sunday, where fifty percent (50%) or more of that shift is worked on Monday, shall be considered as worked on Monday.

No employee shall be compensated for less than forty (40) hours as a result of any shift changeover, or when required by Management to assume a new assignment or work schedule.

#### **\* Minute Clarification**

The parties agree that the language changes reflected in this Section from that in the 1992-1995 Agreement are intended to reflect the current practice regarding the pay week and shall not result in any additional cost to the District.

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#### **56. 4-10 WORKWEEK**

The District may establish an alternate workweek in areas to be identified consisting of four (4) days per week and ten (10) hours per day (4-10 Plan). Employees working under this Plan shall be governed by the following conditions:

- A. Vacation and Sick Leave shall be accrued and used based upon a "ten (10) hour workday" and not an "eight (8) hour workday."
- B. Holidays as provided for under this Agreement shall be accrued and paid on the basis of a "ten (10) hour workday" and not an "eight (8) hour workday."

- C. The workdays and workweek for employees in this Plan shall be as follows:
1. A workday shall consist of ten (10) consecutive hours of work, with a scheduled starting time. Paid rest and lunch breaks provided herein shall be considered as hours worked.
  2. The assigned workweek shall consist of four (4) workdays within a seven (7) consecutive day period, with a minimum of two (2) consecutive days off.
- D. Overtime shall be governed as follows:
1. Employees who work their first regular day off (RDO) during any workweek will be compensated at time and one-half (1.5);
  2. Employees who work their 2nd RDO during any workweek will be compensated at double time for all hours worked provided the employee has worked a full shift on the 1st RDO;
  3. Employees who work their 3rd RDO during any workweek will be compensated at double time for all hours worked, provided the employee has worked the full shift on the 1st and/or 2nd RDO;
  4. All hours worked in excess of a regularly scheduled workday on a holiday shall be compensated at double time, in addition to straight time holiday pay with holiday pay not to exceed ten (10) hours.
  5. When requested by Management, employees on their regular days off (RDO) who volunteer to work on a holiday shall be compensated at double time in addition to straight time holiday pay, not to exceed ten (10) hours.
- E. The staffing of shifts and the weekly distribution of the work force shall be determined by Management.
- F. The provisions of this Section shall prevail whenever they conflict with other provisions of this Agreement for employees working under this Plan.
- G. No employee work unit not currently working on the 4-10 Plan as of the effective date of this Agreement shall be required to work the 4-10 Plan without the concurrence of the parties.
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**57. UNIFORM ALLOWANCE / EQUIPMENT**

The District agrees to pay all members annually for the cleaning, upkeep, and maintenance (excluding custom tailoring) of all BPMA uniforms and the purchase of uniform shoes (excluding safety shoes). Payments shall be made in the first payroll period in October as follows:

October 2009	\$1,005
October 2010	\$1,005
October 2011	\$1,005
October 2012	\$1,005

The uniform allowance shall be reported to CalPERS as Uniform Allowance.

The District agrees to reimburse employees for actual costs incurred for replacement of worn-out or damaged uniforms and damaged shoes. The District further agrees to reimburse employees for actual costs incurred for replacement of damaged, lost or destroyed equipment if such damage, loss or destruction is the direct consequence of the discharge of the employee's duties or of his/her obedience to the directions of the District.

Employees must obtain prior approval for replacement of worn-out, damaged, lost or destroyed uniforms or items of equipment listed above. After approval is received, employees may purchase the uniform or item of equipment with an approved replacement. Compensation to employees for such replacement shall be accomplished by means of reimbursement upon presentation of a valid receipt.

Employees who are absent from work on leave of absence or non-industrial disability leave for extended periods of time, shall receive a reduced uniform allowance in accordance with the following schedule:

<b>Absence</b>	<b>Percentage Reduction</b>
30 Days	25%
60 Days	50%
90 Days	100%

**58. TRAVEL ALLOWANCE**

A. **Travel Expense - Local.** Insofar as possible, authorized travel within the District shall be by local transit facilities or by District automobile. In the event taxicab use is necessary, actual reimbursement shall be paid. In the event private automobile is used, the Internal Revenue Service standard mileage rate will be

paid by the District in addition to actual parking and toll fees. While on assigned District business away from the employee's assigned office or area, reimbursement for lunch expense will be twelve (\$12) dollars.

- B. **Travel Expense - Outside of District.** Travel for distances in excess of one hundred fifty (150) miles will be provided by public carrier. Mode of travel and commencement of travel status will be determined by the District prior to departure. Hotel charges will be reimbursed at the actual cost. The actual cost of meals will be reimbursed when traveling outside the District. Other necessary travel expenses including, but not limited to, local transportation, telephone, laundry and cleaning, will be reimbursed on the basis of the actual cost to employee.
- C. **Travel Allowance.** When assigned outside the District in excess of twenty-four (24) hours, employees of the District may, in lieu of receiving reimbursement for actual costs of travel, elect to receive actual receipted cost of lodging plus an allowance established by the District's Management Procedure No. 20, Section II, Travel Outside The District as reimbursement for all other travel costs.
- D. Employees may chose either "B" or "C" for travel expenses. If "B" is selected, a reasonable cash or check advance in such sums as may be deemed necessary, considering the character of the expense, shall be made.
- E. If an employee is attending training on the employee's RDO, travel time is not included, as the employee is not reporting to the employee's bidded location to start work. This applies to all counties BART serves.

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## 59. REDUCTION IN FORCE

- A. In the event a reduction in force within the Police Management Unit becomes necessary in order to meet the budget reduction requirements, an appropriate number of Sergeant/Civilian Supervisors with twelve (12) months or less service as a Sergeant/Civilian Supervisor who were promoted from within the Police Department shall exercise their reversion rights. The affected employee(s) who, by an exercise of departmental seniority, displaces a less senior employee shall be compensated at the step in the new classification equal to or closest to his/her present step rate of pay provided that no increase in gross pay results. Prior to Management's decision to implement any further reduction in force, the District agrees to meet and discuss with the Association alternative methods to accomplish necessary budget reductions in lieu of further lay-offs.
- B. The effective date and duration of any reduction in force or alternative budget reduction solutions shall be determined by Management. However, each succeeding fiscal year the BPMA reserves the right to meet and discuss with the

District the continued implementation of prior alternative budget reduction solutions.

- C. In the event a reduction in force becomes necessary, the following procedure shall apply:
1. An employee shall be ranked by classification grouping in accordance with his/her appointment to the specific classification. Groupings in descending order are:  
  
Police Lieutenant  
Police Sergeant/Civilian Police Supervisor  
CAD/RMS Administrator
  2. Position reductions within classification groupings shall be in inverse classification seniority order with the least senior employee appointed to the classification affected first.
  3. An affected employee shall be allowed to displace a less senior employee within any descending classification grouping by an exercise of department seniority providing such displacing employee is fully qualified to perform the functional tasks of the displaced employee. No training other than familiarization/orientation shall be conducted by the District. An employee failing to qualify after displacing a lesser senior employee by an exercise of seniority shall be laid off.
  4. An employee who by an exercise of department seniority displaces a less senior employee shall be compensated at the step in the classification equal to or closest to his/her present step rate of pay in effect at the time of the reduction in force provided that no increase in gross pay results. Recall rights cease eighteen (18) months subsequent to the date the employee was laid off.
  5. An employee laid off by the District by the above reduction in force procedure shall be recalled in accordance with department seniority to a position which he/she is qualified to perform. Recall shall be by certified mail, return receipt requested. Failure to indicate reinstatement intentions within five (5) working days of delivery of the recall letter shall be considered as a voluntary resignation and such employee shall be terminated by the District. An employee who fails to return to work within ten (10) additional working days for reasons other than temporary physical disability as certified by a physician shall be terminated in a like manner.

6. An employee last holding a position of higher rank shall have first opportunity, by classification seniority, to revert to a position classification formerly held whether such employee is temporarily displaced within the department or separated from the District through voluntary layoff.

**D. Alternate Position Placement Option**

**1. Notification**

An employee shall be informed personally by the Department Head or designee as soon as possible after a termination decision has been made. At that time, the employee will be told the reason for termination, the scope and purpose of this procedure, and furnished a copy of the tentative schedule of future events affecting him/her.

**2. Resume**

The employee selecting the Alternative Position Placement Option shall have five (5) working days to prepare and submit a current resume for interdepartmental distribution. Assistance in resume preparation may be requested from District's Human Resources Department staff or a consultant selected by the District. If no resume is submitted or if the employee is not interested in the Placement Option, this procedure shall move directly to Subsection D.7 as if all responses were negative.

**3. Distribution**

If a resume is submitted, it will be distributed within three (3) days of receipt to all District Department Heads and to Division Managers within large departments along with a letter indicating the name, the functional and pay classifications of the affected employee, and information concerning his/her availability.

**4. Responses**

Department Heads/Division Managers shall respond within ten (10) working days by returning resumes to the originating Department Head with a response either positive or negative indicated thereon. The responses shall indicate present and foreseeable vacancies, which may be developing within the next six (6) months.

**5. Results**

The employee shall be informed within three (3) working days of the result of this process by the originating Department Head or designee.

**6. Positive Response**

If positive responses are received, the employee shall be given five (5) working days to confer with the department(s) involved; and to indicate a preference. The District shall ensure that the conference occurs within that time period.

- a) If the employee selects a position, a personnel action to effect a transfer shall be initiated by the original Department Head. The effective date of transfer shall be as mutually agreed by the Department Heads involved. Salary adjustments, if any, shall be determined through discussion between the receiving Department Head and the Human Resources Department staff prior to any discussion with the employee.
- b) If the employee rejects all positive responses, he/she shall be terminated in the same manner as if all responses were negative.

**7. Negative Responses**

If all responses are negative, the employee shall be given notice that the District is unable to place him/her in another position and that he/she will be terminated at the end of ten (10) working days following issuance of the notification, in accordance with the District's separation procedures.

**8. Termination Compensation**

Employees shall receive, in addition to compensation for accrued and unused vacation and accrued compensatory time, severance compensation based on two (2) weeks' pay for each full year of service with the District.

Final compensation, calculated pursuant to this subsection shall be paid in lump sum. Employees shall not be permitted to remain on the payroll for any periods based on factors in that calculation and continuous service with the District shall terminate concurrent with issuance of the lump sum final compensation.

**9. Placement Assistance and Employment Counseling**

Placement assistance and employment counseling shall be provided employees to include reproducing a reasonable number of resumes at District expense, arranging for letters of recommendation if requested, and counseling by the District's Human Resources Department staff as to

the local and transit industry job market. This phase shall be completed within the ten (10) working day period in Subsection D.7 above.

10. Employees terminated as a direct result of valid reorganizations or reduction in force, shall be entitled to reinstatement to open positions for which they are qualified for a period not to exceed eighteen (18) months from the date of termination. Reinstatement consideration shall be limited to those specific positions of interest identified by the employee, in writing, prior to the date of termination. The District's obligations under this Subsection shall cease immediately upon rejection of any offer of reinstatement and/or employment by the District. However, nothing in this Section shall affect the employee's right to recall as defined in Subsection C.5 above.
  11. This procedure may be altered by mutual agreement of the parties.
- 

## **60. GRIEVANCE PROCEDURE \***

Each employee covered by this Agreement shall receive fair and just treatment in his/her employment relationship. No employee shall be disciplined, suspended or discharged except for just and sufficient cause. The following procedure shall be administered to assure the orderly resolution of employee grievances. A grievance is a claimed violation, misinterpretation, inequitable application or non-compliance with provisions of this Agreement or of District rules, regulations, or practice affecting status or working conditions of employees including matters of discipline.

Whenever possible grievances will be promptly resolved by discussion between the employee and his/her immediate supervisor. If discussion does not result in a satisfactory resolution, the employee may present his/her grievance in writing.

The parties recognize that disputes should be resolved expeditiously at the lowest possible administrative level. However, grievances protesting a policy directive or policy decision may by-pass the initial step(s) of the procedure provided the decision-maker who rendered the policy directive or policy decision is at a higher administrative level. In such instances, the grievance may be filed directly at the decision making level. This provision does not apply to grievances pertaining to the application or interpretation of such policy directives or policy decisions. Such grievances must be filed at the lowest possible administrative level.

### **Step 1 - Formal Grievance**

The employee must present his/her grievance in writing to his/her immediate supervisor within twenty-five (25) calendar days of the occurrence. The written grievance must clearly identify the facts giving rise to the alleged grievance, state the

relief being sought, and be signed and dated by the employee. The immediate supervisor will acknowledge receipt by signing and dating the employee's copy. The immediate supervisor shall meet with and shall reply to the employee in writing within twenty-five (25) calendar days of the receipt of the grievance. The employee must acknowledge receipt by signing and dating the immediate supervisor's copy of the reply. The Chief of Police must review and approve the Step One response prior to it being presented to the grievant.

If the employee is not available to accept and acknowledge the response, the time limits shall be extended until forty-eight (48) hours after the employee returns to work or is otherwise available to accept and acknowledge the immediate supervisor's response.

### **Step 2 - Review By The Chief Of Police**

If the grievance is not resolved by the employee's immediate supervisor, the employee may appeal in writing within twenty (20) calendar days of receipt of the reply to the Chief of Police. The Chief of Police, or his/her designated representative, will acknowledge receipt of the grievance by signing and dating the employee's copy. The Chief of Police shall meet with and reply to the employee in writing within twenty (20) calendar days of the receipt of the grievance. If the grievance is filed directly at Step Two, the Chief of Police shall meet with and reply to the employee within twenty-five (25) calendar days of receipt of the grievance. The employee must acknowledge receipt of the reply by signing and dating the Chief of Police's copy.

If the employee is not available to accept and acknowledge the Chief of Police's response, the time limits shall be extended until forty-eight (48) hours after the employee returns to work or is otherwise available to accept and acknowledge the Chief of Police's response.

### **Step 3 - Grievance Review/Labor Relations**

If the grievance cannot be resolved under Step 2, the Association may, within twenty (20) calendar days of receipt of the Chief of Police's decision, convene a meeting between the Association's representative and the Labor Relations Division to attempt to resolve the grievance on a mutually acceptable basis. Labor Relations shall respond in writing to the Association with a copy to the grievant within ten (10) calendar days following the meeting. If the grievance is filed directly at Step Three, Labor Relations shall meet with and reply to the employee within twenty-five (25) calendar days of receipt of the grievance.

### **Step 4 - Review Board/Arbitration**

If no resolution is reached under Step Three, the Association and Labor Relations may either, within fifteen (15) calendar days of the determination, agree to convene a

Review Board to hear the dispute within sixty (60) calendar days of the determination, or submit the dispute to formal arbitration to determine the resolution.

**A. Review Board**

The Review Board shall be comprised of one (1) Association representative selected by the grievant, one (1) member designated by the Manager of Labor Relations, and an impartial third member. The impartial third member shall be determined as follows: either party may request the California State Mediation and Conciliation Service to furnish a list of five (5) persons from which the parties shall within five (5) working days of receipt of such list agree upon selection of the third member or determine by lot the order of elimination and thereafter each shall in that order alternately eliminate one (1) name until only one name remains. The remaining person on the list shall be the impartial third member. The expenses of the third impartial member shall be borne fully by the non-prevailing party. Both parties agree not to use outside consultants or legal counsel in preparing for and presenting the facts before the Review Board. Both parties to the grievance shall prepare an outline detailing the items or issues in dispute setting forth any relevant background, facts, data, or arguments in support of their position for presentation to the Review Board.

The Review Board shall, by majority vote, render a final and binding bench decision to resolve the dispute upon conclusion of the review process. No decision of the Board shall be considered a precedent for the disposition of any other case submitted to the Board, or to formal arbitration, or to any other dispute resolution forum.

**B. Formal Arbitration**

Disputes arising between BART and the Association regarding any grievance as defined in the first paragraph of this Section that the parties elect not to submit to the Review Board may be submitted to final and binding arbitration provided, however, that BART need not submit to arbitration, unless the District so elects, any grievance which deals solely with any Management rights decision or policy which affects the operation and conduct of the District's business and which has no practical consequence or effect on the wages, hours, or other terms and conditions of employment of any employee covered by this Agreement.

In the event the parties to this Agreement are unable to agree upon the selection of an arbitrator, then either party may request the California State Mediation and Conciliation Service to furnish a list of five (5) persons from which the arbitrator shall be selected. The parties shall within five (5) working days after the receipt of such list determine by lot the order of elimination and thereafter each shall in that order alternately eliminate one (1) name until only



one (1) name remains. The remaining person on the list shall be the arbitrator. The decision of the arbitrator shall be final and binding.

In any arbitration held pursuant to the Agreement the person acting as arbitrator shall act in a judicial, not legislative manner. The arbitrator shall not amend, modify, nullify, ignore, add to or subtract from the provisions of the Agreement but, rather, shall interpret and apply its terms. The arbitrator shall consider and decide only the issue or issues agreed upon by the parties, including the issue of arbitrability. If the parties are unable to decide upon the issue or issues to be submitted to the arbitrator, the arbitrator shall decide what the issue or issues are, based upon the grievance that was filed. If the arbitrator sustains the grievance, he or she shall fashion an appropriate remedy that does not conflict with provisions contained in this Agreement.

The salary and expenses of the arbitrator shall be borne equally by the parties to the proceedings and all other expenses shall be paid by the party incurring them.

**C. Immediate Arbitration**

Either party may waive the grievance procedure time limits specified in this Section and proceed to Immediate Arbitration in any case where either party alleges that the other is threatening to take an action in violation of this Agreement in so short a period of time as to disallow the other party from proceeding within the time limits of this Section.

Immediate Arbitration for this purpose shall be defined to mean the earliest arbitration date available after at least ten (10) working days from the date that the request to schedule/ substitute is received by the respondent. Either party may substitute the subject grievance in lieu of the first arbitration, after the ten (10) working day period, which is scheduled between the parties for another matter. Should the parties not decide to make such a substitution with the first available arbitration after the ten (10) working day period, no other substitution is permitted, except by mutual agreement.

In any such case, the arbitrator selected to decide the dispute or grievance shall have full and equitable powers to frame a decision, including an order to the party initiating the dispute or grievance to abide by the time limits provided in this Section or a restraining order against the party threatening the action or any other form of arbitration order that would resolve the matter in an equitable and just manner.

**D. Extension Of Time Limits**

The time between the steps of the procedure may be extended by mutual agreement. Failure by the employee or the Association to follow the time limits,

unless extended by mutual agreement, will automatically result in the grievance proceeding to the next step; failure by the District to follow the time limits, unless extended by mutual agreement, will automatically result in the grievance proceeding to the next step.

### **Definition**

The "Occurrence Date" for purposes of establishing time limits means the date the grievant or the Association becomes aware, or reasonably should have become aware of the action giving rise to the grievance.

The first day after the "Occurrence Date" shall become the first day in calculating time limits.

### **\* Minute Clarification**

The parties agree that the intent of the Review Board is to facilitate resolution of non-precedent setting cases. Both parties agree that the Review Board will be utilized in cases not requiring a precedent decision and that neither party will unnecessarily force grievances to a full arbitration without articulated reasons. Both parties recognize the potential that full arbitrations could be used to make resolution economically impractical and that neither party will engage in such practices when handling non-precedent setting grievances.

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## **61. PROGRESSIVE DISCIPLINE PROCEDURE**

The District agrees to comply with the following progressive discipline procedure:

### **Informal Discipline**

- Informal Counseling  
Not Documented
- Letter of Discussion  
Documented (*kept in personnel file for up to six (6) months*)
- Oral Counseling  
Documented (*kept in personnel file for up to one (1) year*)

### **Formal Discipline**

- Written Reprimand  
Documented (*kept in personnel file for up to two (2) years*)

- Pay Step Reduction (*up to six (6) months maximum*)  
Documented (*kept in personnel file for up to two (2) years*)
  - Suspension Without Pay (*thirty(30) days maximum*)  
Documented (*kept in personnel file for up to two (2) years*)
  - Demotion (*kept in personnel file for up to five (5) years*)
  - Termination
- 

## **62. BENEFICIAL PRACTICES**

The District agrees that rules, regulations, or practices within the scope of bargaining will not be changed without notice and opportunity to bargain the impact of the changes.

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## **63. SHIFT DIFFERENTIAL**

Where fifty percent (50%) or more of an employee's shift occurs between the hours of 4:00 p.m. and midnight, a swing shift premium of seven percent (7%) will be paid for all hours worked during the shift at the existing straight time rate of pay.

Where fifty percent (50%) or more of an employee's shift occurs between midnight and 8:00 a.m., a graveyard shift premium of nine and one-half percent (9.5%) will be paid for all hours worked during the shift at the existing straight time rate of pay.

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## **64. SENIORITY**

### **A. Definition**

Seniority is defined for purpose of this Agreement as an employee's relative position with respect to all other employees of a like classification in the department and is determined by the date of his/her appointment to the classification. If two (2) or more employees are appointed to the classification on the same date, seniority ranking shall be determined first by the date of District employment and, if a tie still exists, then by date of birth, with the oldest being senior. All questions pertaining to seniority ranking shall be resolved by the Association.

**B. Personnel Assignments – Sergeants**

Newly hired Sergeants are probationary employees who shall remain on probation for one (1) year. At the discretion of the Chief of Police, probation may be extended when the Chief of Police so designates, not to exceed an additional ninety (90) days. Probationary Sergeants shall be deemed to have completed probation successfully only if they receive an “Effective” or higher rating in each category of the performance appraisal that is given at the end of the probationary period. Probationary Sergeants will not be eligible to select a shift until they have completed thirty (30) days as a TBA. During the TBA period, the employee may be moved to and from any shift, at the discretion of the Chief of Police or designee. At the completion of the TBA period, probationary Sergeants will fill any vacant positions via a supplemental sign-up.

Ten percent (10%) of the patrol Sergeants’ positions will be posted as “floating positions.” Sergeants who bid into floating assignments shall remain a floater during the entire shift sign up. Sergeants signing into these positions shall then be assigned and can be reassigned by the Chief of Police or designee to any of the shift positions based upon the needs of the Department. If staffing requirements necessitate that two or more employees be reassigned at the same time, the affected employees will be polled in seniority order in determining such assignments. If a bid position is vacated (e.g., resignation, promotion, etc.), the vacancy shall be filled via a supplemental sign-up unless there is one month or less remaining in the sign-up period.

Patrol Sergeants’ sign-ups shall be conducted on a six (6) month basis. Sign-ups shall occur in December and June, and will be implemented on the second Monday of January and July respectively. Sergeants shall sign into the posted positions by order of their respective seniority. Sign-up schedules shall be posted for the two (2) week period prior to sign up. The shift implementation will occur approximately two (2) weeks following the sign-up. If the Chief of Police deems it necessary for the best interest of the Police Department, individual shift selection to the graveyard shift may be restricted. The District shall maintain at least seventy-five percent (75%) of the patrol sergeants’ work shifts on the 4-10 Plan. However, in order to maintain consistency and effectiveness of supervision, the District will strive to maintain one hundred percent (100%) of the patrol sergeants’ work shifts on the 4-10 Plan.

**C. Personnel Assignments – Lieutenants****1. Patrol Sign-ups**

Patrol lieutenants’ sign-ups shall be conducted on an annual basis. Lieutenants shall sign into the posted positions by order of their respective seniority except for those Lieutenants who fall within the

meaning of Section 64 C.2. below. This section/provision does not apply to acting lieutenants.

One (1) Lieutenant's position shall be deemed a "floater." This position shall be designated prior to each Lieutenant's annual sign-up. The Floater shall only be floated to an existing sign-up position.

Sign-up schedules shall be posted for the two (2) week period prior to sign-up. The shift implementation will occur on the second Monday in January.

If a bid position is vacated (e.g., resignation, promotion, etc.), the vacancy shall be filled via a supplemental sign-up unless there is one (1) month or less remaining in the sign-up period.

## 2. **Special Assignments**

The Chief of Police will consider input from the Association regarding the selection process for any special assignment. Patrol Special Assignments will be for one (1) year. Memoranda of interest shall be elicited from qualified personnel. The Chief of Police shall make selections to special assignments. If there are no qualified lieutenants interested in the special assignments, the positions will not be filled.

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## 65. **PROFESSIONALISM**

The District will discuss the establishment of job standards for department hiring and promotions as well as requirements, tests, and policies for establishment of a list for Civilian Supervisors, CAD/RMS Administrator, Sergeants, and Lieutenants with the Association prior to implementation.

A promotional selection process shall be published by the Chief of Police for each job classification covered by this Agreement. The selection process for each job classification may be changed from time-to-time, but must always be published a minimum of sixty (60) calendar days prior to the commencement of the next posting for the position. The selection process, once published shall not be altered and may include, but is not limited to the following testing techniques: written examination, oral board, and assessment center.

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**66. INITIAL APPOINTMENTS****A. Appointment/Promotion**

Postings for all BPMA classifications may be open to internal and external candidates. Preference shall be given to internal candidates. Once position opening qualifications are posted, no changes may be made for that posting.

**B. Probationary Period**

All individuals newly appointed to a BPMA classification shall have a probationary period of one (1) year from date of appointment. Newly promoted sergeants are subject to the provisions of Section 64.B.

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**67. JOB DESCRIPTIONS**

Job descriptions shall be provided by the District to the Association by classification, and updates of those descriptions when they occur shall also be provided to the Association.

The Chief of Police shall meet to seek the input of the Association prior to the implementation of job description updates.

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**68. NEW CLASSIFICATIONS**

In the event the District determines, subsequent to the signing of this Agreement, that the needs of the department require the creation of additional classification(s) related to the bargaining unit, the District agrees to discuss with the Association the functions to be performed, the qualifications required, appropriate lines of progression, and to prepare appropriate job descriptions. The salaries of the proposed additional classification(s) shall be subject to negotiations.

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**69. NOTICE PERIODS**

The District shall provide as much notice as is reasonably possible of changes in shifts, days off, or standby assignments. If the notice is less than three (3) days, the slots the employee would have filled shall instead be filled by other employees, including the process of voluntary or mandatory overtime. However, the employee may waive the notice period and accept the changed assignment, shifts, or days off.

It is understood that emergency situations may make it impossible for Management to give other than extremely short notice, and that persons in floating positions are

reasonably entitled to less notice than a non-floater. The District shall use reasonable efforts to give the maximum amount of notice to an employee in a call-back situation.

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#### **70. MINIMUM REST**

Except in a District emergency, employees will be required to have a minimum of ten (10) hours time off-duty between scheduled shift assignments, scheduled shift and training assignments, and scheduled shift changes on the effective date of a sign-up. When practical, this minimum rest will also apply prior to court appearances if minimum staffing will allow for the time off.

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#### **71. SHIFT EXCHANGE AND REPRESENTATION**

Employees may be permitted to trade shifts provided that:

- A. No additional compensation shift premiums or other cost to the District results from such assignment;
  - B. Exchanging employees are fully qualified to perform the required tasks of both assignments. However, special assignments are exempted from this provision/section;
  - C. No exchange shall result in either employee working in excess of two (2) consecutive shifts;
  - D. Written requests for shift representation must be submitted on the prescribed BART Police Department form and approved by the supervisor of the represented employee prior to the start of the requested shift representation date and time, provided both employees are assigned to the same division. In the case where the employees are assigned to different divisions, both supervisors must approve the representation request.
  - E. The District agrees to allow all employees of the same rank to represent each other for purposes of providing functional supervision.
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#### **72. JOB REVERSION RIGHTS**

Employees who accept jobs outside the bargaining unit or are reclassified within the bargaining unit shall not be caused to lose their seniority. Those employees reclassified shall accumulate seniority in their new classification, but shall not accrue seniority in their former classification. If such employees are returned to their former classification

within the time specified herein, they shall regain their previously earned seniority and continue to accumulate seniority.

If such employee is out of the bargaining unit, as provided herein, and does not return within a twelve (12) month period, such right of return shall be forfeited. No employee shall be bumped by any returning employee. The District shall carry one (1) extra position in the returnee's classification. However, the District's obligation in this regard shall cease upon normal attrition in the classification, including but not limited to, retirement, termination or promotion.

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### 73. HEALTH AND REST FACILITIES

Health and rest facilities for use by employees shall be maintained.

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### 74. LEAVE OF ABSENCE

Employees may occasionally be required to request time off without pay. When such time off becomes necessary, it must be requested through the employee's immediate supervisor. A leave of absence, for purposes of this Section, is defined as an absence from work requested in writing by a District employee and approved in writing by the Chief of Police and by the Department Manager of the Human Resources Department. Such leaves must specify an agreed upon period of time normally longer than two (2) days but not to exceed six (6) calendar months.

Leaves of absence generally fall into the following categories:

- A. **Emergency Leave** - To assist an employee in taking care of crisis circumstances or conditions which cannot normally be handled while working full-time.
- B. **Vocational/Educational Leave** - To assist an employee in preparation for possible upward mobility in the District. (The District makes no representation that leave for such purpose will result in promotions or transfers.)
- C. **Leave for Personal Matters** - To allow employees time off to attend to such matters which are not urgent and are purely personal in nature, but which are of such character as to require a short absence from work.

The District will determine the length of time it will grant for such leave in each individual case.

The District reserves the right to extend a given leave if it deems it desirable to do so.



During the period of time in which an employee is on leave of absence, he/she shall accumulate service with the District. Any employee who fails to return to work upon conclusion of the agreed upon leave of absence shall be considered to have voluntarily terminated his/her employment with the District. Employees on a leave of absence shall have the option to pay any costs involved, in order to continue to participate in health and welfare programs and life insurance.

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**75. JURY / WITNESS DUTY \***

**A. Jury Duty**

Pursuant to State law, an employee shall be excused from work on a workday on which he/she performs jury service, providing he/she gives prior notification to his/her supervisor. During such excused absence, an employee shall be paid up to an amount of the difference between jury fees and his/her existing shift earnings, exclusive of reimbursable travel expenses.

No such payment will be made to an employee excused for jury service unless a statement is provided to the District showing the amount of fees paid or payable and the time spent in jury service.

When an employee has served five (5) consecutive days on jury duty, when working a 5-8 workweek, or four (4) consecutive days on jury duty when working a 4-10 workweek, and that service conflicts with one or more of the employee's RDO's, the employee has the option to reschedule their RDO's with his/her supervisor without additional cost to the District.

**B. Witness Duty**

An employee shall be excused from work on a workday on which he/she is subpoenaed as a witness in court, before a Grand Jury or for a deposition, providing he/she gives prior notification to his/her supervisor. During such excused absence, an employee shall be paid up to an amount of the difference between the witness fees and his/her existing shift earnings, exclusive of reimbursable travel expenses.

If an employee is subpoenaed as a witness in court, before a Grand Jury or for a deposition on his/her regular day off on a matter related to his/her employment with the District, the employee shall be paid up to an amount of the difference between the witness fees and his/her applicable rate exclusive of reimbursable travel expenses. In such cases, the employee must provide to his/her supervisor a copy of the subpoena and a statement of the witness fees paid or payable as a condition of being paid.

The pay provisions of this Section shall not apply when an employee is required to appear in court or at a deposition in any matter in which he/she is the plaintiff or as a result of any activities related to other employment.

**\* Minute Clarification**

The parties understand that the compensation provisions of this Section are not applicable where attendance as a witness is related to either prior employment or current non-BART employment (outside employment).

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**76. MEDICAL EXAMINATIONS**

Any medical examinations, including periodic eye tests, required of employees by the District shall be paid for by the District, with the exception of costs incurred as a result of untimely employee cancellation, missed examinations or appointments without valid or justifiable reason which shall be paid by the employee, provided the employee is given one week notice of the appointment.

Medical examinations or follow-up medical appointments for job-related illness or injury may be scheduled during non-work hours if no appointments are available during the employee's regularly scheduled hours. Medical examinations or follow-up medical appointments for job-related illness or injury scheduled during work hours will be at the beginning or end of the employee's shift, so as to minimize time lost from work whenever possible.

In the case of any job-related illness or injury, an employee shall have the right to examination/treatment by a doctor of his/her choosing, provided advance notice is given the District.

**Job-Related Illness/Injury**

Any disputes regarding an employee's industrial medical status and/or appropriate compensation shall be handled in accordance with the State of California Laws including the applicable Workers' Compensation Laws and Labor Code.

**Non-Job-Related Illness/Injury**

Should the District require any medical examination of an employee with a non-job related illness/injury, the District may designate a doctor for such purpose. This doctor may be the employee's doctor, however, if the employee's doctor is selected, the District reserves the right to require a second medical opinion through another District designated doctor.

If the first medical examination is not performed by the employee's doctor, and if the employee disagrees with any medical findings of the District designated doctor, said employee shall have the right to examination by a doctor of his/her choosing.

In either case, should the findings of the two doctors be inconsistent, a third doctor shall be mutually selected by the following procedure:

The District and the Association shall mutually agree upon an odd-numbered panel of doctors for such purpose. If they are unable to agree upon the names to be included on such a panel, they shall request the Department of Industrial Relations to submit the names of independent medical examiners most frequently used in the San Francisco Bay Area in the various specialties of medicine and these shall constitute the panel. The District and the Association shall select a third doctor from this panel within five (5) working days of the date the dispute is established. The conclusions of the third doctor shall be final and binding upon the parties, and the fee shall be shared fifty-fifty (50-50) by both parties.

No employee shall suffer any loss of income or other benefits as a result of any directive to report to a physician, and the time required to report and return from such examination shall be considered as time worked unless the employee is found physically unfit to return to work. If the findings of the District designated and employee selected doctors are inconsistent, no employee shall suffer loss of income or benefits during the first thirty (30) calendar days after the second doctor's inconsistent conclusions are issued or until the conclusions of the third doctor are issued, whichever occurs first.

Should the third doctor uphold the findings of the District designated doctor, the employee shall agree in writing to reimburse the District for any income or benefits received to which he/she was not entitled. Reimbursement to the District shall be completed within thirty (30) calendar days from the employee's return to work.

The District may require bargaining unit employee to undergo a physical examination in accordance with the provisions of Human Resources Guideline #09, Medical Examinations.

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## **77. ENTIRE AGREEMENT**

This Agreement and all Side Letters and Assurances entered into now or hereafter shall be understood to express and constitute the entire Agreement between the parties.

All Side Letters of Agreement and Memoranda of Understanding existing prior to ratification of this Agreement, unless mutually extended, are null and void.

Whenever there is an actual conflict between the provisions of a Police departmental order, operational directive, policy and/or procedure, and a specific provision of the Agreement, the terms and/or provisions of the Agreement shall be controlling.

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IN WITNESS WHEREOF the parties hereto have caused their names to be subscribed by their duly authorized officers and representatives this day, \_\_\_\_\_, 2010

FOR THE DISTRICT

FOR THE UNION

By: \_\_\_\_\_  
Dorothy W. Dugger  
General Manager

By: \_\_\_\_\_  
Nathan Weissich  
President, BART Police Management Association

\_\_\_\_\_  
Maria Robinson  
Chief Negotiator, Labor Relations

District Negotiating Team  
Timothy L. Davis  
Ray Samuels

BPMA Negotiating Team  
Steven Langner  
Terence McCarty  
Keith Curlett  
Matthew Cromer  
Rocky Lucia  
Bud Stone  
Gregg Savage

Appendix A  
Effective July 1, 2009 - Wage Chart:

Salary Admin Plan	Salary Grade	Step Description	FY2010	FY2011	FY2012	FY2013
BPMA Salaried	CS	Civilian Administrator Step 1	7693.000	7693.000	7693.000	7693.000
BPMA Salaried	CS	Civilian Administrator Step 2	8058.000	8058.000	8058.000	8058.000
BPMA Salaried	CS	Civilian Administrator Step 3	8640.000	8640.000	8640.000	8640.000
BPMA Salaried	CS	Civilian Administrator Step 4	8928.000	8928.000	8928.000	8928.000
BPMA Salaried	LT	Police Lieutenant Step 1	9279.000	9279.000	9279.000	9279.000
BPMA Salaried	LT	Police Lieutenant Step 2	9587.000	9587.000	9587.000	9587.000
BPMA Salaried	LT	Police Lieutenant Step 3	9921.000	9921.000	9921.000	9921.000
BPMA Salaried	LT	Police Lieutenant Step 4	10269.000	10269.000	10269.000	10269.000
BPMA Salaried	LT	Police Lieutenant Step 5	10628.000	10628.000	10628.000	10628.000
BPMA Salaried	SGT	Police Sergeant Step 1	7572.000	7572.000	7572.000	7572.000
BPMA Salaried	SGT	Police Sergeant Step 2	8119.000	8119.000	8119.000	8119.000
BPMA Salaried	SGT	Police Sergeant Step 3	8388.000	8388.000	8388.000	8388.000
BPMA Salaried	SGT	Police Sergeant Step 4	8681.000	8681.000	8681.000	8681.000
BPMA Salaried	SGT	Police Sergeant Step 5	8985.000	8985.000	8985.000	8985.000

Note: Education/Skill Incentive:

Eligible employees receive additional Education/Skill Allowance based on years of BPMA Supervisory Experience, degrees and certifications as follows, pursuant to Section 49.0

Sworn:

5 yrs of BPMA Supervisory Experience+ POST Int/Adv Certificates + AA/AS degree = 3.0% incentive  
 5 yrs of BPMA Supervisory Experience + POST Int/Adv Certificates+ BA/BS degree = 4.0% incentive  
 10 yrs of BPMA Supervisory Experience + POST Int/Adv Certificates + AA/AS degree = 7.5% incentive  
 10 yrs of BPMA Supervisory Experience + POST Int/Adv Certificates + BA/BS degree = 9.0% incentive  
 10 yrs of BPMA Supervisory Experience + POST Int/Adv Certificates + MA/MS degree = 13.0% incentive  
 13 yrs of BPMA Supervisory Experience + POST Int/Adv Certificates + BA/AS degree = 13.0% incentive

Civilian:

5 yrs of BPMA Supervisory Experience + POST Supervisory Course + AA/AS degree = 3.0% incentive  
 5 yrs of BPMA Supervisory Experience + POST Supervisory Course + BA/BS degree = 4.0% incentive  
 10 yrs of BPMA Supervisory Experience + POST Supervisory Course + AA/AS degree = 7.5% incentive  
 10 yrs of BPMA Supervisory Experience + POST Supervisory Course + BA/BS degree = 9.0% incentive  
 10 yrs of BPMA Supervisory Experience + POST Supervisory Course + MA/MS degree = 13.0% incentive  
 13 yrs of BPMA Supervisory Experience + POST Supervisory Course + BA/AS degree = 13.0% incentive

Note: Longevity:

A member completing twenty-five (25) years of District service with a minimum of five (5) years as an employee covered by the BPMA Collective Bargaining Agreement, or twenty-five (25) years of safety service with a minimum of ten (10) years as an employee covered by the BPMA Collective Bargaining Agreement, shall have an 8.4% longevity incentive pay added to their base salary, pursuant to Section 49.0.

June 15, 1984

**MEMORANDUM OF UNDERSTANDING IN RESOLUTION OF ARBITRATION #431-83**

Mr. Leo Tamisiea, President  
BART Police Managers Association  
800 Madison Street  
Oakland, California 94607

Dear Mr. Tamisiea:

The parties to this Agreement are: The Bay Area Rapid Transit District and BART Police Managers Association.

Pursuant to an Arbitration Award by Arbitrator William E. Riker dated May 29, 1984 Arbitration #431-83 the parties agree to the following binding interpretation of the Award.

1. The grievance of Sergeant Arden Perkins is sustained.
2. In accordance with Section 65.C, Patrol Bureau Sergeants shall sign up for shifts and days off assignments by order of their respective seniority.
3. The currently designated "Special Assignments" in Patrol Bureau:
  - (a) EPA/Cadet Sergeant
  - (b) S.P.O.T. Sergeant
  - (c) FTO/Admin Sergeantshall be assigned on a voluntary basis. The method of selection may include memos of interests or interviews or by posting. The Chief of Police reserves the right to reject any applicant.
  - (a) In the event there is no volunteer for the FTO/Admin Sgt. Position the Chief of Police retains the right to select from other qualified sergeants, those who have FTO Training to fill the FTO/Admin Sergeant position.
  - (b) In the event there are no volunteers for the S.P.O.T. or EPA/Cadet Sergeant positions they shall be filled by exercise of seniority at the completion of the regular posted sign up for Sergeants.
4. Other Special Assignments within the Patrol Bureau requiring specific and individual skills, talents, or abilities may be assigned by the Chief of Police for the duration of the assignment or until its completion, but normally not to exceed three (3) months, or in the case of specific special projects until completion of the project.







August 2, 2000

**SIDE LETTER OF AGREEMENT: BPMA/SL-10**

**PART A: Parties**

The parties to this side letter are BART Police Managers' Association (hereinafter "BPMA" or "Union") and the San Francisco Bay Area Rapid Transit District (hereinafter "District").

**PART B: Background**

1. The parties are signatories to a 1997-2001 collective bargaining agreement (hereinafter "1997-01 Agreement") covering members of the certified BPMA bargaining unit.
2. The 1997-2001 Agreement does not provide Medical Premium Conversion, Medical Spending Accounts (hereinafter "MSA's"), or Dependent Care Accounts (hereinafter "DCA's"). Medical Premium Conversion, MSA's and DCA's are hereinafter jointly referred to as the "Program." They are mechanisms through which employee health insurance premium contributions, qualified medical expenses not covered by insurance, and qualified expenses incurred by employees to care for certain dependents may be exempted from certain taxes.
3. The parties wish to offer the Program to members of the BPMA bargaining unit. However, to ensure efficient administration, the District is prepared to do so at this time only if all District bargaining units simultaneously agree to participate on the same terms.
4. The District and its unions established a joint labor-management committee to identify and recommend a vendor to provide certain administrative services related to the implementation and management of the Program.
5. The District will perform certain administrative functions it deems reasonable and necessary related to implementation of the Program not performed by the vendor (e.g. Program communications, creation of general ledger records needed to independently validate enrollment, etc.). For cost estimate and fee calculation purposes, the parties have initially agreed to assume that these functions will require one and one-half full-time equivalent positions, including an SA III H1 (payroll) and a Clerk III (benefits).
6. The District will enjoy some savings as a result of the implementation of the Program. However, the District is not a participant in the

non-Medicare portion of the federal Social Security program and will, therefore, not enjoy much of the savings that employers who participate fully in Social Security enjoy when implementing the same program.

7. The fact that the District will not enjoy reduced Social Security costs but will incur substantial expenses means that other revenues must be generated if the Program is to be implemented at no net cost to the District.
8. The joint labor-management committee has discussed methods of funding the District's net program related expenses.
9. The joint labor-management committee has recommended adoption of an initial monthly fee that each District employee enrolled in its medical insurance programs will be charged to defray the District's projected net cost of administering the Program.
10. The Union concurs with the joint labor-management committee's recommendation.
11. The parties acknowledge that the monthly rate may be a mandatory subject of bargaining. However, the parties desire that employees pay the same rate on a District-wide basis insofar as possible that will cover the actual net cost to the District of administrative functions performed in administration of the Program.

The parties agree as follows:

### **PART C: Exchange of Promises and Obligations**

Section 1. PROGRAM INITIATION AND TERMINATION. The District shall establish the details of the Program effective January 1, 2001. The "Program" consists of three parts: Medical Premium Conversion, Medical Spending Accounts and Dependent Care Accounts. The District may terminate the Program or any of its parts if, in the District's judgment, the Program or part no longer meets the requirements of law or does not qualify for tax-exempt treatment.

Section 2. OPEN ENROLLMENT. The District shall establish an open enrollment period for the program to occur either separately or at the same time as other District open enrollment processes. In any event, the open enrollment period, shall occur prior to January 1, 2001 and once per year thereafter.

Section 3. TERMINATION FROM THE PROGRAM. Employees who terminate from District employment (through retirement or otherwise) or who are placed on inactive

status shall be permitted to continue to participate in the Program only in accordance with the terms of the Program and applicable federal and state law. Employees who are terminated from the Program during a given plan year and who are rehired during that same plan year shall be permitted to re-enroll in accordance with the terms of the Program and applicable federal and state law, but in no event later than the next following open enrollment period for the Program. Employees on inactive status include those who have exhausted their available sick leave, vacation leave, holiday leave and available compensatory time off and who are on unpaid leaves of absence or eligible for short or long-term disability or Industrial Accident payments.

Section 4. CHARGE TO EMPLOYEES FOR DISTRICT'S NET ADMINISTRATIVE COSTS.

Subject to Section 5 below, each employee in the BPMA bargaining unit enrolled in a District medical insurance plan shall be charged two dollars and eighty-two cents (\$2.82) each month to defray the District's net District-wide cost for functions it performs that are reasonably necessary to administer and account for the Program. This amount shall be deducted once each month at the last pay date of the month. The District shall maintain a record of staff time and other expenses incurred to administer and account for the Program to provide the parties with objective data on which to base discussions conducted pursuant to section 5 below.

Section 5. REVISIONS TO MONTHLY CHARGE.

- A. Meeting(s) To Discuss Rate. Except as provided in Section 9 below, the parties agree to meet between March 15 and April 1 of each even numbered year beginning in 2002 to discuss possible modification of the monthly charge deducted from employee paychecks pursuant to Section 4 above that will apply for the two years that ensue the following January 1. The parties may propose a modified rate to cover the ensuing two-year period, or may propose separate rates for each of the two ensuing two years. If after ten (10) days from the date of such meeting the parties are unable to reach an agreement on the amount of such charge(s) for the ensuing two year period, the matter shall be submitted to arbitration pursuant to Section 6 below.
- B. Access To Information. During the meeting(s) described in subsection A agrees to share with the other the data and assumptions that A of this section, each party form the basis of the party's proposed rate structure. The parties additionally agree that during the period beginning January 15 immediately preceding the first such meeting and ending with the establishment of a revised rate pursuant to this section, each shall provide the other with such information as is reasonably necessary and reasonably within their control to carry out their respective roles in the discussions and any impasse resolution proceedings carried out pursuant to section 6 below. If the parties are unable to reach agreement on a

revised fee structure, the arbitrator appointed pursuant to section 6 below shall resolve all disputes concerning an alleged breach of this subsection during the thirty (30) day period immediately preceding the hearing date established pursuant to section 6 below. The party that desires resolution of such a dispute shall petition the arbitrator by letter with a copy to the other side. The arbitrator shall consult simultaneously with the parties' respective representatives and thereafter issue an order resolving the dispute.

Section 6. ARBITRATION OF MONTHLY CHARGE.

- A. Scheduling the Hearing Date. On the regular business day nearest to January 10 of calendar years in which the parties will meet to discuss possible revisions to charges pursuant to Section 5 above, the parties shall select an arbitrator in the same manner as for grievance arbitration under the parties' collective bargaining agreement. The selected arbitrator shall be immediately notified of his or her selection and requested to hold the regular business day nearest to but not before May 1 of the same calendar year open for hearing and resolving a dispute over the appropriate monthly charge pursuant to Section 5 above. The parties shall each submit their last-best offer to the arbitrator and to the other party not later than April 20 preceding the hearing date. Neither party may change their last-best offer after it is submitted unless they receive written permission from the other party.
- B. Hearing. The arbitrator appointed pursuant to Section 6(A) above shall conduct a hearing on the date scheduled pursuant to subsection A above of this Section. During the hearing, the arbitrator shall permit each party to present in support of its proposed rate(s) such relevant evidence as it desires concerning the District's past and anticipated costs and savings incurred as a result of its implementation and on-going operation of the Program. Such costs and savings may include but are not limited to:
1. Medicare contributions that the District is not required to make because of the tax laws and rules governing the Program;
  2. Any positive and negative employee Medical Spending and Dependent Care Account balances at the end of the plan year;
  3. Any interest the District may earn on funds in Medical Spending or Dependent Care accounts, if not already accounted for under 2 immediately above.

4. Charges in excess of or less than actual net District costs incurred to implement and administer the Program during the two-year period to which the rate structure in effect at the time of the hearing applies. For example, for the hearing held in May, 2002 the applicable measurement period is January 1, 2001 through December 31, 2002. Charges considered shall include a reasonable projection of the total that will accrue by the end of the applicable two-year period.
  5. Vendor and consultant charges (including outside counsel) incurred by the District in connection with the implementation and operation of the Program.
  6. Costs for work performed by District employees to implement, operate or account for the Program including, but not limited to, conducting open enrollment, change of status enrollments, and new employee enrollments, inputting enrollment data, processing terminations from the Program, inputting termination data, managing participation of retirees in the program pursuant to COBRA, responding to inquiries from employees or their representatives, preparing and disseminating written Program information to employees or their representatives, downloading data to and from the vendor, analyzing data to be downloaded or that has been downloaded, creating and maintaining transaction records independent of those maintained by the vendor to ensure existence of an independent audit trail.
- C. Arbitrator's Decision. Within seven (7) days after the hearing, the arbitrator shall award the rate(s) contained in either the District's or Union's last-best offer submitted pursuant to subsection A above. Such award shall be based on the evidence produced at hearing and reflect the arbitrator's opinion concerning the offer that most closely reflects the District's net district-wide per employee monthly cost for implementing, operating and accounting for the Program in the two year period beginning the following January 1, taking into account any substantial overcharges or undercharges that are established by the evidence for the period in which the hearing occurs.

SECTION 7. ENTIRE AGREEMENT. This written instrument reflects the entire agreement of the parties. There are no terms or promises related to the subject matter addressed, except as expressed in writing herein.

SECTION 8. CHANGES TO CONFORM WITH LAW. The District may immediately implement such changes in the Program as, in the District's judgment, are necessary to ensure that the Program and its parts conform with law and remain tax exempt. The



**SIDE LETTER OF AGREEMENT: BPMA/SL-013  
NOBLE AND CIVILIAN OVERSIGHT**

September 21, 2009

This memorandum serves to notify the District that it is the unequivocal intent of the BART Police Managers' Association (BPMA) to fully cooperate and participate with the District in order to improve and correct any identified deficiencies within the BART Police Department. This would include, but not be limited to: the creation and implementation of the Board approved civilian review model, the successful implementation of progressive discipline, and the achievement of the recommendations suggested by the National Organization of Black Law Enforcement Executives.

We understand that at its sole discretion, the District has the exclusive right to determine the level of discipline and impose that discipline to be charged against an Association member.

As both District and police department managers, we fully understand the need to implement changes for the betterment of the BART Police Department in order to maximize the department's ability to suitably serve and protect the communities that we are beholden to. To that end, the BPMA offers our pledge that we will engage with the District and diligently work within all legal and equitable means in order to create a modeling agency.

CONCUR FOR DISTRICT:

CONCUR FOR BPMA:

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**Maria Robinson**

Acting Department Manager  
Labor Relations

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**Gregory Savage**

President  
BART Police Managers Association



**SIDE LETTER OF AGREEMENT: BPMA/SL-014  
RETIREE MEDICAL ELIGIBILITY AND COST SAVINGS**

August 24, 2009

Mr. Gregg Savage  
President, BART Police Managers Association

Dear Mr. Savage:

This letter of understanding reflects the agreement reached between the District and BART Police Managers Association in regard to potentially increasing the years required for retiree medical eligibility under the District’s medical benefits plan, and to meet and discuss allocation of projected actuarial savings accruing from implementing the retiree medical eligibility schedule, including potential allocation to wage increases in Fiscal Years 2012 and 2013.

Commencing no later than ninety (90) days after ratification of the 2009-2013 contract, the parties, together with all other interested bargaining units, shall meet to outline the terms of a proposed 15 year retiree medical eligibility schedule for future hires. The parties shall jointly seek CalPERS preliminary approval for the proposed retiree medical eligibility schedule, and if necessary, jointly sponsor legislation to amend the California Government Code to permit adoption of a 15 year retiree eligibility schedule under PEMHCA. The parties shall seek to have such legislation introduced in either the California Assembly or Senate in calendar year 2010, or as soon thereafter as practicable. The parties will actively support the passage of such legislation.

If the proposed retiree medical schedule or legislation is approved, the parties, together with all other interested bargaining units, shall meet to discuss allocation of projected actuarial savings accruing from implementing the new schedule, including allocation to wage increases in Fiscal Years 2012 and 2013. If the parties reach agreement, they shall adopt the new retiree medical eligibility schedule and wage increase allocations effective in Fiscal Year 2012 or 2013.

CONCUR FOR DISTRICT:

CONCUR FOR BPMA:

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**Maria Robinson**  
Acting Department Manager  
Labor Relations

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**Gregory Savage**  
President  
BART Police Managers Association

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Implementation Agreement  
BPMA-District Agreement  
Section 22, Vacation  
2009-2013

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The parties negotiated new language in Section 22, Vacation, of the Agreement.

1. In order to achieve cost reductions, the parties agreed to reduce the equivalent of thirty (30) straight time base pay hours for each full-time employee in each of the three contractual years: 2010/2011, 2011/2012, and 2012/2013.
2. The relevant contractual language provides in part:

“Employees must forego new vacation and holiday accrual as follows:

- a. In the 2010/2011 contract year, employees may elect to forego up to 30 hours of new vacation accrual or new floating holiday accrual.
  - b. In the 2011/2012 contract year, employees may elect to forego up to 30 hours of new vacation accrual or new floating holiday accrual.
  - c. In the 2012/2013 contract year, employees may elect to forego up to 30 hours of new vacation accrual or new floating holiday accrual.”
3. The parties have met and reviewed operationally efficient methods for implementing the foregoing language and have agreed to the following protocol:

BPMA members will elect ONE of the leave forfeiture procedures, (a), (b) or (c) below, on an annual basis (for FY11, FY12 and FY13) to satisfy their annual requirement to forego hours. Once submitted, the election will be irrevocable for that fiscal year.

The BPMA will provide a spreadsheet showing the election of all BPMA members on an annual basis. The list will be submitted to Labor Relations and Human Resources, HRIS no later than April 1<sup>st</sup> for the upcoming fiscal year in which reduction must occur. April 1, 2010 is the deadline for FY 11. April 1, 2011 is the deadline for FY 12. April 1, 2012 is the deadline for FY 13.

The leave forfeiture procedures are as follows:

- a. Vacation Accrual Reduction: BPMA members may elect to forfeit thirty (30) hours by electing to forego new vacation accrual as follows:
  - i. For contract year 2010/2011, the District will reduce the annual vacation accrual for BPMA members by thirty (30) hours, at the beginning of the fiscal year, to be distributed over the pay periods of that fiscal year.
  - ii. For contract year 2011/2012, the District will reduce the annual vacation accrual for BPMA members by thirty (30) hours, at the beginning of the fiscal year, to be distributed over the pay periods of that fiscal year.
  - iii. For contract year 2012/2013, the District will reduce the annual vacation accrual for BPMA members by thirty (30) hours, at the beginning of the fiscal year, to be distributed over the pay periods of that fiscal year.
- b. Managerial Leave Accrual Reduction: Eligible BPMA members may elect to forfeit thirty (30) hours by electing to forego new managerial leave as follows:
  - i. For contract year 2010/2011, the District will reduce the annual managerial leave accrual for eligible BPMA members by three (3) days at the beginning of the fiscal year. The contractual three (3) days of managerial leave will not be credited to the BPMA members' leave bank at the beginning of that fiscal year.
  - ii. For contract year 2011/2012, the District will reduce the annual managerial leave accrual for eligible BPMA members by three (3) days at the beginning of the fiscal year. The contractual three (3) days of managerial leave will not be credited to the BPMA members' leave bank at the beginning of that fiscal year.
  - iii. For contract year 2012/2013, the District will reduce the annual managerial leave accrual for eligible BPMA members by three (3) days at the beginning of

the fiscal year. The contractual three (3) days of managerial leave will not be credited to the BPMA members' leave bank at the beginning of that fiscal year.

Only BPMA members eligible to receive Managerial Leave under Section 20 of the Collective Bargaining Agreement may select this option.

- c. Floating Holiday Accrual Reduction: BPMA members may elect to forfeit thirty (30) hours by electing to forego floating holidays as follows:
  - i. For contract year 2010/2011, the District will reduce the annual floating holiday accrual for BPMA members by three (3) days at the beginning of the fiscal year. The three (3) contractual floating holidays set forth in Section 21 of the Agreement will not be credited to the BPMA members leave accrual at the beginning of that fiscal year, FY11.
  - ii. For contract year 2011/2012, the District will reduce the annual floating holiday accrual for BPMA members by three (3) days at the beginning of the fiscal year. The three (3) contractual floating holidays set forth in Section 21 of the Agreement will not be credited to the BPMA members leave accrual at the beginning of that fiscal year, FY12.
  - iii. For contract year 2012/2013, the District will reduce the annual floating holiday accrual for BPMA members by three (3) days at the beginning of the fiscal year. The three (3) contractual floating holidays set forth in Section 21 of the Agreement will not be credited to the BPMA members leave accrual at the beginning of that fiscal year, FY13.
4. The parties agree that if any BPMA member fails to participate in the terms of this Implementation Agreement, then the terms of their leave forfeiture will be governed by the 2009-2013 BPMA / District Agreement, Section 22 (3), Vacations, which provides in relevant part:

“Employees who have not satisfied or made provision for satisfying the 90-hour reduction through the provisions of paragraphs 1 and/or 2 above will be required to forfeit additional equivalent vacation, compensatory

time or managerial leave as is necessary to meet the 90-hour reduction requirement. The date(s) of the leave shall be determined by the District after consultation with the affected employee, and shall be in full or half day increments.”

The parties acknowledge that the District has advised the BPMA that the forfeiture of accrued compensatory, managerial, or vacation leave to satisfy the forfeiture is a taxable event.

FOR THE DISTRICT

FOR BPMA

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Maria Robinson  
Interim Manager, Labor Relations

Date

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Nathan Weissich  
President, BART Police Managers  
Association

Date



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# 2009

## January

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# 2010

## January

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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## February

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

## March

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## April

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

## May

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

## June

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

## July

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

## August

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## September

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

## October

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## November

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

## December

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

# 2011

## January

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

## February

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

## March

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## April

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

## May

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## June

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

## July

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## August

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## September

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

## October

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

## November

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

## December

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

# 2012

## January

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## February

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

## March

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

## April

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

## May

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## June

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

## July

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## August

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

## September

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

## October

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## November

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

## December

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

# 2013

## January

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	18
20	21	22	23	24	24	26
27	28	29	30	31		

## February

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

## March

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## April

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

## May

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

## June

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

## July

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## August

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

## September

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

## October

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## November

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

## December

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				