

**LETTER OF UNDERSTANDING (LOU) BETWEEN
THE CITY OF OAKLAND
AND
CONFIDENTIAL MANAGEMENT EMPLOYEES ASSOCIATION (UNIT U31)

CONSTRUCTIVE RECEIPT**

The City of Oakland (“The City”) and the Confidential Management Employees Association (“CMEA”) (collectively “The Parties”) agree to this Letter of Understanding modifying portions of the 2019-2021 Memorandum of Understanding between the parties (“MOU”) to address issues of constructive receipt.

1. The City has identified concerns involving issues of constructive receipt with regard to certain leave payout provisions of the MOU.
2. The Parties have met and conferred and agreed to address this issue through modification of the MOU.

Therefore, the Parties agree as follows:

- A. Section 9.13 “Usage of Specified Leave Accrual Balances Upon Transfer” will be modified as follows (underscore and ~~strikeout~~ indicate changes to existing text):

9.13 Usage of Specified Leave Accrual Balances Upon Transfer

An employee who transfers to a classification and/or bargaining unit that does not have the same leave banks will be required to use the full leave accrual balance within a period of eighteen (18) months from the job classification date that are not a benefit in the new classification and/or bargaining unit, e.g., Compensatory leave. Any remaining leave balances shall be cashed out at the end of the eighteenth (18th) month following the transfer.

The City makes no representation as to the tax consequences of an employee cashing out accrued leave. It is the employee’s sole responsibility to address the tax consequences.

**LOU (Constructive Receipt)
City of Oakland and CMEA**

- B. Section 9.1.5 “Annual Sick Leave Sell-Back/Conversion” will be modified as follows (underscore and ~~strikeout~~ indicate changes to existing text):

9.1.5 Annual Sick Leave Sell-Back/Conversion

- a) Represented employees may sell back a portion of their unused sick leave or convert it to additional days of vacation, provided that the represented employee must have a minimum of ~~sixty (60) days~~ **four-hundred and eighty (480) hours** of accumulated sick leave at the ~~beginning~~ **end** of the calendar year ~~(December 15)(January 1)~~. The represented employee may exercise one of the following options each calendar year:
- 1) Accumulate sick leave credits to the ~~one hundred and fifty (150) day~~ **one-thousand two hundred (1200) hour** maximum; or,
 - 2) Convert sick leave earned in excess of the basic requirement of ~~sixty (60) days~~ **four-hundred and eighty (480) hours** to vacation ratio of two (2) **hours of** sick leave ~~days~~ to one (1) ~~day~~ **hour** of vacation up to a maximum of ~~seven (7) days~~ **fifty-six (56) hours of** vacation **(112 hours of sick leave)**
 - 3) Sell back sick leave earned in excess of the basic requirement of ~~sixty (60) days~~ **four-hundred and eighty (480) hours**, at the ratio of two (2) **hours of** sick leave ~~days~~ to one (1) ~~day~~ **hour** of pay, up to maximum of ~~seven (7) days~~ **fifty-six (56) hours of** pay.

Requests submitted by the close of business on the second (2nd) Friday in December shall be counted toward the cap for that calendar year.

- b) **Unit members who wish to sell back Sick Leave must file an irrevocable election identifying the number of Sick Leave hours they will sell back in December of the tax year preceding the sell back. The election will apply only to Sick Leave hours accrued in the following tax year.**
- c) **Employees who do not pre-designate a sell back amount by the annual deadline will be deemed to have waived the right to sell back any Sick Leave in the following tax year and will not be eligible to sell back Sick Leave in that year.**
- d) **In the event of financial hardship, an employee may, at any time, sell back unused Sick Leave, even if they have not filed a timely irrevocable election. Financial hardship will be determined in accordance with nondiscriminatory and objective standards, and is defined as a situation where (1) the sellback is needed to address an immediate and heavy financial need, and (2) the sellback is limited to the amount necessary to satisfy that financial need. Financial hardship includes, but is not limited to: medical or other expenses related to the illness, injury or death of the employee or the employee’s immediate family; loss of the**

LOU (Constructive Receipt)
City of Oakland and CMEA

employee's property due to casualty, or repair expenses for damage to the employee's principal residence; or payments necessary to prevent eviction of the employee from the employee's principal residence or foreclosure of the mortgage of that residence. The sell-back shall be limited to the amount necessary to meet the financial hardship, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. However, the total amount of Sick Leave sold back (including both pre-election and hardship withdrawal) shall not exceed one-hundred and twelve (112) hours of Sick Leave (56 hours of pay) per year.

To sell back unused Sick Leave in the event of financial hardship, the employee must provide a signed affidavit describing the type of hardship and the amount of the requested sell-back. The employee shall not be required to produce financial or other private information to support the affidavit. The City shall develop a form which shall be used and which will contain the following statement: "I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct and that the amount of Sick Leave I am requesting to sell-back is limited to the amount necessary to meet the *financial hardship*, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. By signing below, I accept full liability for all tax or other financial consequences in the event that a taxing authority later finds any of the information provided in this affidavit to be inaccurate."

- C. Section 9.12 "Management Leave" will be modified as follows (underscore and ~~strikeout~~ indicate changes to existing text):

9.12 Management Leave

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

Additionally, U31 employees who work irregular work hours or who demonstrate superior performance during the eligibility period of July 1 through June 30 of each fiscal year may also be awarded an additional zero (0) to five (5) days of management leave at the recommendation of the department/agency head and with final approval of Administrator.

- b) Represented employee may cash out up to ten (10) days of Management Leave each fiscal year at the discretion of the represented employee. Management leave not used or cashed out will be carried forward to the next fiscal year.
- c) Unit members who wish to sell back Management Leave must file an irrevocable election identifying the number of Management Leave hours

LOU (Constructive Receipt)
City of Oakland and CMEA

they will sell back in December of the tax year preceding the sell back. The election will apply only to Management Leave hours accrued in the following tax year.

- d) Employees who do not pre-designate a sell back amount by the annual deadline will be deemed to have waived the right to sell back any Management Leave in the following tax year and will not be eligible to sell back Management Leave in that year.
- e) In the event of financial hardship, an employee may, at any time, sell back unused Management Leave, even if they have not filed a timely irrevocable election. Financial hardship will be determined in accordance with nondiscriminatory and objective standards, and is defined as a situation where (1) the sellback is needed to address an immediate and heavy financial need, and (2) the sellback is limited to the amount necessary to satisfy that financial need. Financial hardship includes, but is not limited to: medical or other expenses related to the illness, injury or death of the employee or the employee's immediate family; loss of the employee's property due to casualty, or repair expenses for damage to the employee's principal residence; or payments necessary to prevent eviction of the employee from the employee's principal residence or foreclosure of the mortgage of that residence. The sell-back shall be limited to the amount necessary to meet the financial hardship, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. However, the total amount of Vacation Leave sold back (including both pre-election and hardship withdrawal) shall not exceed ten (10) days per year.
- f) To sell back unused Management Leave in the event of financial hardship, the employee must provide a signed affidavit describing the type of hardship and the amount of the requested sell-back. The employee shall not be required to produce financial or other private information to support the affidavit. The City shall develop a form which shall be used and which will contain the following statement: "I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct and that the amount of Vacation Leave I am requesting to sell-back is limited to the amount necessary to meet the financial hardship, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. By signing below, I accept full liability for all tax or other financial consequences in the event that a taxing authority later finds any of the information provided in this affidavit to be inaccurate."
- g) Represented employees who separate from City employment shall be paid any unused management leave, upon separation.
- h) For the purpose of this section, a day shall be defined as the number of hours in the represented employee's regularly scheduled work day.

LOU (Constructive Receipt)
City of Oakland and CMEA

D. Section 10.6 “Vacation Sell-Back” will be modified as follows (underscore and ~~strikeout~~ indicate changes to existing text):

10.6 Vacation Sell-Back

- a) Represented employees may sell back to the City up to ~~twenty (20) work days~~ **one-hundred and sixty (160) hours** of accrued vacation each calendar year.

~~Requests submitted by the close of business on the second Friday in December shall be counted toward the cap for that calendar year.~~

- b) **Unit members who wish to sell back vacation must file an irrevocable election identifying the number of Vacation Leave hours they will sell back in December of the tax year preceding the sell back. The election will apply only to Vacation Leave hours accrued in the following tax year.**
- c) **Employees who do not pre-designate a sell back amount by the annual deadline will be deemed to have waived the right to sell back any Vacation Leave in the following tax year and will not be eligible to sell back Vacation Leave in that year.**
- d) **In the event of financial hardship, an employee may, at any time, sell back unused Vacation Leave, even if they have not filed a timely irrevocable election. Financial hardship will be determined in accordance with nondiscriminatory and objective standards, and is defined as a situation where (1) the sellback is needed to address an immediate and heavy financial need, and (2) the sellback is limited to the amount necessary to satisfy that financial need. Financial hardship includes, but is not limited to: medical or other expenses related to the illness, injury or death of the employee or the employee’s immediate family; loss of the employee’s property due to casualty, or repair expenses for damage to the employee’s principal residence; or payments necessary to prevent eviction of the employee from the employee’s principal residence or foreclosure of the mortgage of that residence. The sell-back shall be limited to the amount necessary to meet the financial hardship, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. However, the total amount of Vacation Leave sold back (including both pre-election and hardship withdrawal) shall not exceed one-hundred and sixty (160) hours per year.**

To sell back unused Vacation Leave in the event of financial hardship, the employee must provide a signed affidavit describing the type of hardship and the amount of the requested sell-back. The employee shall not be required to produce financial or other private information to support the affidavit. The City shall develop a form which shall be used and which will contain the following statement: “I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct and that the amount of Vacation Leave I am requesting to sell-back is limited to the amount

**LOU (Constructive Receipt)
City of Oakland and CMEA**

necessary to meet the *financial hardship*, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. By signing below, I accept full liability for all tax or other financial consequences in the event that a taxing authority later finds any of the information provided in this affidavit to be inaccurate.”

This LOU is not intended to modify any provision of the MOU not referenced herein.

**For Confidential Management
Employees Association:**



Jaime Pritchett

Date: December 8, 2020



Jamie Renee Smith

Date: December 8, 2020

For City of Oakland:



Allyson Cook
Assistant Human Resources Director

Date: December 8, 2020