

June 30, 2018 - June 28, 2019

BUENA PARK CITY EMPLOYEES' ASSOCIATION



MEMORANDUM OF UNDERSTANDING

NO. 18-19

ADOPTED JUNE 12, 2018, RESOLUTION No. R13796
AMENDED JULY 10, 2018, RESOLUTION No. R13828

**MEMORANDUM OF UNDERSTANDING
BUENA PARK CITY EMPLOYEES' ASSOCIATION**

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MEMORANDUM OF UNDERSTANDING
Between
THE CITY OF BUENA PARK
and
BUENA PARK CITY EMPLOYEES' ASSOCIATION

EMPLOYER – EMPLOYEE RELATIONS

PREAMBLE

Pursuant to Government Code, Section 3500, *et seq.* representatives of the Buena Park City Employees' Association (hereinafter referred to as Association) have met and conferred with representatives of the City of Buena Park (hereinafter referred to as the City), and have reached an understanding and recommend that the Buena Park City Council adopt this Memorandum of Understanding (MOU).

ARTICLE 1 – TERM

The term of this Memorandum of Understanding shall be June 30, 2018, through midnight on June 28, 2019, unless otherwise specified in provisions hereinafter. Terms and conditions of employment already in effect on June 29, 2018, shall be considered minimums for the purpose of this agreement except as amended or repealed by specific provisions hereinafter.

ARTICLE 2 – REPRESENTATION AND RECOGNITION

The Association is the only employee organization entitled to meet-and-confer in good faith on matters within the scope of representation on behalf of employees in the field maintenance unit, which shall consist solely of the classifications listed in Exhibit A.

ARTICLE 3 – MANAGEMENT RIGHTS

A. In order to ensure that it is able to carry out its functions and responsibilities imposed by law, the City has and will retain the exclusive right to manage and direct the performance of City services and the work force performing such services. Therefore, the following matters will not be subject to the meet-and-confer process, but shall be within the exclusive discretion of the City:

1. To determine issues of public policy;
2. To determine the merits, necessity or organization of any service or activity conducted by the City;

3. To determine and change the facilities, methods, means and personnel by which City operations are to be conducted;
4. To expand or diminish services;
5. To determine and change the number of locations, relocations, and types of operations, and the processes and materials to be employed in carrying out all City functions, including, but not limited to, the right to subcontract any work or operation;
6. To determine the size and composition of the work force, to assign work to employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments, and to establish the days and hours when employees shall work;
7. To relieve employees from duty because of lack of work or other non-disciplinary reasons;
8. To discharge, suspend, or otherwise discipline employees for proper cause;
9. To determine job classifications;
10. To hire, transfer, promote, and demote employees for non-disciplinary reasons;
11. To determine policies, procedures and standards for selection, training and promotion of employees;
12. To establish employee performance standards, including but not limited to, quality and quantity standards;
13. To maintain the efficiency of governmental operations;
14. To take any and all necessary actions to carry out its mission in emergencies;
15. To exercise complete control and discretion over its organization and the technology of performing its work services;
16. To establish reasonable work and safety rules and regulations in order to maintain the efficiency and economy desirable in the performance of City services.

The City, in exercising these rights and functions, will not discriminate against any employee because of membership or non-membership in any employee organization.

- B. All management rights, powers, authority and functions, whether heretofore or hereinafter exercised, shall remain vested exclusively with the City. No third party neutral shall have the authority to diminish any of the management rights which are included in this Article.
- C. Management will meet-and-confer prior to the implementation of any management rights which are normally considered matters concerning wages, hours, and other terms and conditions of employment under the provisions of the Meyers-Milias-Brown Act.

ARTICLE 4 – BOARD OF DIRECTORS’ MEETINGS

Each member of the Association Board of Directors shall receive up to one-and-one-half hours time off per month for Board meetings.

The City will allow the Association time to hold its General membership meetings twice in a calendar year.

On duty personnel attending such meetings shall be on an on-call status and shall respond to calls for service. At no time shall coverage be compromised. No overtime or compensatory time will be paid for the meeting.

Prior to scheduling and holding a general membership meeting, the Association shall make notification in writing to the Department Head or his/her designee within seven calendar days of such meeting to be held.

ARTICLE 5 – ADDITIONAL ITEMS

During the term of this Memorandum of Understanding, no additional items will be placed under discussion for purposes of meet-and-confer unless agreed upon by both parties.

The parties shall cooperate to improve the format, clarity, and consistency of the Memorandum of Understanding.

PAY

ARTICLE 6 – ASSIGNMENT OF CLASSES TO PAY RANGES

Each classification is assigned to a pay range as shown in Exhibit A.

ARTICLE 7 – BASE PAY SCHEDULE

- A. The schedule of base pay rates is contained in Exhibit A.
- B. Ratification Bonus. A one-time, single Ratification Bonus payment in the amount of \$3,000.00 shall be paid to all employees in the classifications in Exhibit A on payroll as of the effective date of this contract. Ratification Bonus payments will be subject to all applicable federal and state tax withholdings. Ratification Bonus payments will not be considered compensation reportable to CalPERS or included in the calculation of regular rate for overtime, benefits, or for any other purpose.

ARTICLE 8 – BILINGUAL PAY

An employee shall receive an additional \$35.00 per month if the following conditions are met:

- A. The employee passes a qualifying examination administered by Human Resources.
- B. The employee uses bilingual skills as required by the City.

ARTICLE 9 – CERTIFICATE PAY

A. Incumbents of the following classifications who possess a California State Health Department Water Distribution Operator Certification shall receive an additional \$50.00 per month.

- Sewer Services Technician
- Water Services Technician

- Sr. Sewer Services Technician
- Sr. Water Services Technician

- Lead Sewer Services Technician
- Lead Water Services Technician

No employee may receive more than one Certificate Pay benefit at a time.

The City will complete a classification and compensation study on these positions. Upon completion of the classification and compensation study, the Certificate pay shall be converted to base pay.

- B. Incumbents of the following classifications who achieve National Institute for Automotive Service Excellence (ASE) Master Technician status in the Automobile Series or Master Technician status in the Medium-Heavy Truck Series shall receive an additional \$35.00 per month.

- Fleet Mechanic
- Lead Fleet Mechanic

Each employee must recertify in each test area every five years in accordance to the ASE requirements. Employees who let one of the required certifications expire will lose their Master Technician status and the monthly certificate pay. Employees may regain certification by taking the Recertification Test(s), even after they let a certification expire.

No employee may receive more than one Certificate Pay benefit at a time.

ARTICLE 10 – COMMERCIAL VEHICLE OPERATOR LICENSE

- A. An employee who has a State of California Commercial Vehicle Operator License shall receive an additional \$50.00 per month and is subject to the provisions of the City's Drug and Alcohol Policy, which includes, but is not limited to, Post-Accident Testing, Random Testing, Reasonable Suspicion Testing, and Return-to-Duty/Follow-Up Testing.
- B. Employees in the following job classifications shall maintain a valid California commercial driver license (Class A or B):

- Senior Maintenance Worker
- Lead Maintenance Worker

- Fleet Mechanic
- Lead Fleet Mechanic

- Sewer Services Technician
- Senior Sewer Services Technician
- Lead Sewer Services Technician

- Senior Water Services Technician
- Lead Water Services Technician

- Bus Driver/Scheduler

- C. Employees hired prior to September 13, 2006, who cannot be medically qualified (as determined by a City-designated physician) to hold a commercial driver license, will be “grandfathered” with respect to the commercial driver license requirement. Such employees will not drive commercial vehicles and will not receive this additional pay.
- D. The cost of training, and paid time for training, for employees hired prior to September 13, 2006, shall be borne by the City. Employees hired on or after that date will not be paid for training time and will bear the cost of their own training. However, at the sole discretion of management, the City may provide informal training to those employees interested in obtaining a commercial license.
- E. Employees hired prior to September 13, 2006, who fail the initial skills test, will have six months from the initial failure to pass the skills test. Additional training and/or testing after the initial failure shall be on the employee’s own time and at his/her own expense. If an employee is unable to pass the skills test within the six-month grace period, he/she shall be demoted to the next highest classification which does not require a commercial driver license. An employee who is demoted will be “Y-Rated.”

The cost of maintaining a commercial driver license shall be borne by the City.

ARTICLE 11 – OVERTIME PAY

- A. OVERTIME PAY. An employee required to work in excess of 40 hours in a seven-day cycle shall receive pay at the rate of time and one-half his/her regular rate of pay. The regular rate of pay shall include the following components in addition to base pay.

- Shift Differential
- Educational Incentive
- Bilingual Pay
- Special Assignment Pay
- Excess Medical
- Waiver of Medical Insurance

In determining an employee's eligibility for the overtime regular rate, paid and unpaid leaves of absences shall be excluded from the total hours worked. Paid leaves of absence include, but are not limited to, the following:

- Vacation Leave
- Holiday Leave
- Sick Leave
- Administrative Leave
- Compensatory Leave
- Workers’ Compensation Leave

- Jury Duty
- Bereavement Leave
- Military Leave

For overtime not otherwise paid at the regular rate, it shall be paid at time and one-half of the hourly equivalent of the employee's bi-weekly base pay rate for all hours worked in excess of the employee's daily work schedule, or for all hours earned in excess of 40 hours per week. The term "earned" shall include hours for vacation, holiday, sick leave and jury duty.

There shall be no pyramiding of overtime. Hours worked by an employee in any workday or workweek on which premium rates have once been allowed shall not be used again in any other overtime calculation other than computing total actual hours worked.

B. COMPENSATORY TIME.

1. **Fair Labor Standards Act (FLSA).** In lieu of receiving overtime pay pursuant to Paragraph A above, an employee may elect to receive compensatory time off on a time and one-half basis. The employee shall be allowed to "bank" compensatory time at a time and one-half basis. No employee shall accrue more than 60 hours of such compensatory time. (This 60 hour maximum bank is in conjunction with Section B below.) Should any employee exceed 60 hours of accrued compensatory time, he/she shall be paid at time and one-half his/her regular rate.

An employee may use such compensatory time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the department.

2. **Non-Fair Labor Standards Act (Non-FLSA).** Overtime hours not otherwise subject to the FLSA regular rate of pay (after taking paid leave time exclusions into account) may be taken as compensatory time off. Such hours shall be earned, banked, and taken off at the straight time rate. No employee shall accrue more than 60 hours of such compensatory time. (This 60 hour maximum bank is in conjunction with Section 2 above.) Should any employee exceed 60 hours of accrued compensatory time, he/she shall be paid at time and one-half his/her base rate.

C. AUTHORIZATION.

1. All overtime requests must have the prior authorization of a supervisor prior to the commencement of such overtime work. Where prior written authorization is not feasible, explicit verbal authorization must be obtained. Calls for service beyond the end of duty time are considered as authorized.

2. An employee's failure to obtain prior approval may result in the denial of the overtime request.
3. The City may prescribe reasonable periods of overtime work to meet its operational needs.

D. CLOTHES CHANGING. Each employee is provided with a locker for his/her own personal convenience. An employee may or may not utilize the locker for storage and changing purposes at his/her own discretion.

Nothing herein prevents an employee from wearing his/her uniform to and/or from his/her residence to work.

Nothing herein prevents an employee from wearing his/her uniform while conducting personal business during lunch time.

Time spent in changing clothes before or after a shift, is not considered worked and is not compensable in any manner whatsoever.

E. TRAINING TIME. Training time outside normally scheduled work hours shall be compensated pursuant to Code of Federal Regulations (CFR), Section 785.27, *et seq.*

Travel time outside normally scheduled work hours shall be compensated pursuant to CFR Section 785.33, *et seq.*

When feasible, the City will adjust the employee's work schedule to minimize the impact of travel and training time.

F. CITY VEHICLE USE. An employee who is provided with a City vehicle to travel to and from work shall not be compensated in any manner whatsoever for such travel time in the City vehicle.

This provision also applies in those situations where the radio must be left on and monitored.

G. CALL-BACK PAY. Call-back duty occurs when an employee is ordered to return to duty on a non-regularly scheduled work shift. Call-back does not occur when an employee is held over from his/her prior shift or is working prior to his/her regularly scheduled shift. An employee called back to duty shall be credited with a minimum of two hours work commencing when he/she leaves his/her residence and will terminate at the end of the two hour minimum, or if the call-back lasts longer than two hours the time he/she returns to his/her residence.

Any call-back lasting two hours or less shall result in a credit for two hours worked. When added to the eight hour day or 40 hour work week, an employee shall end up

with a net result of three hours pay (or three hours comp time at time and one-half). Any call-back lasting more than two hours shall result in a credit for actual hours worked. When this credit is added to the eight hour day or 40 hour work week, the net result will be time and one-half the actual hours worked on the call-back.

Similar calculations as outlined above will be used when an employee is entitled to a four hour call-out because the call-back occurs on Sunday, a holiday, or between 12:01 a.m. and 5:00 a.m.

When a call-back occurs on a holiday recognized in Article 27, and lasts for more than four hours, the employee is entitled to an eight hour call-out for all hours worked over the four hour minimum.

The above provision shall not result in a double payment for call-outs lasting less than two hours (or when applicable, four hours). For instance, if an employee works one hour on a call-out, he/she shall be credited with two hours, resulting in three hours of pay or comp time after application of time and one-half. He/she shall not be entitled to the one hour at time and one-half plus the two hour minimum.

An employee who receives multiple calls within the allotted two hour minimum (or when applicable, four hour minimum) is not entitled to double-payment for call-backs even if the employee has returned to his/her residence. For example, if an employee receives a call-back that is completed and returns to his/her residence and then receives a second call-back will result in a continuation of service commencing from the original call-back start time regardless if the call was similar or different than the original call-back.

ARTICLE 12 – STANDBY PAY

Standby pay, in the amount up to \$350.00 for a seven day cycle, pro-rated at \$50.00 per daily cycle, shall be paid to any employee who is the after-hours active duty person, or is placed in a “Standby Position” by the City. In the event of an actual call-back, the employee will be entitled to receive standby pay and pay according to the call-back pay provision in Article 11 of this MOU. The City shall have discretion as to the implementation and maintenance of the standby pay program.

ARTICLE 13 – EDUCATION PROGRAM

A. REIMBURSEMENT.

An employee who is pre-approved by the department head to attend a specified, off-duty education course shall receive reimbursement for certain expenses.

An approved education course is defined as off-duty instruction that will be mutually and immediately beneficial to the employee and the City.

1. Prior to enrolling in the class, an employee desiring reimbursement for expenses shall acquire the department head's approval as to course content and its relationship to the employee's City employment. On completion of the course, with a grade of "C" or better, the employee shall submit a "Request for Educational Reimbursement" form to the department head along with a copy of the official transcripts and receipts for the total cost of the course.

On approval by Human Resources and Finance, the employee shall then be reimbursed a maximum of \$2,000 per fiscal year for tuition, transportation costs where appropriate, registration fees and related expenses necessary for completion of the course.

2. Reimbursement will only be given for coursework taken within the current fiscal year (July 1 – June 30). The difference between the City's maximum obligation during any fiscal year and the total amount of actual reimbursement received by the employee during that fiscal year shall not be carried over or be available for use by the employee in any subsequent year.
3. A copy of the official transcript shall be forwarded to the Human Resources Office for retention in the employee's education file.

B. EDUCATIONAL INCENTIVE ALLOWANCE. An employee with a job-related (as determined by the City) degree or certificate from an accredited educational institution shall receive an additional allowance as follows:

- Associate of Arts Degree \$30.00 per month
- Bachelor of Arts Degree \$60.00 per month
- Master's or Ph.D. Degree \$90.00 per month

Special Certificates:

- 10 or more semester units \$15.00 per month
- 20 or more semester units \$30.00 per month

No employee may receive more than one Educational Incentive benefit at one time.

ARTICLE 14 – SAFETY SHOES

- A. Each employee shall receive up to \$250.00 per fiscal year, through a direct purchase from a City selected vendor, for safety shoes which comply with current California Office of Safety and Health Administration (Cal/OSHA) standards, Title 8, Section 3385, as amended.
- B. Each employee shall wear such safety shoes while performing his/her usual and customary duties, in compliance with Cal/OSHA standards, Title 8, section 3385. Any employee failing to adhere to this requirement shall be subject to disciplinary action, up to and including termination. The City Manager and/or his designee shall have discretion as to the need and necessity of the safety shoe purchase.

ARTICLE 15 – UNIFORM ALLOWANCE

- A. The City shall provide a work uniform to each employee and shall provide a City-paid cleaning service for such uniforms.
- B. The City agrees to continue to provide uniform cleaning service for those bargaining unit members who currently receive it.
- C. The monetary value for such purchase, rental, and maintenance of the required clothing which is a ready substitute for personal attire (uniform) shall be reported to the California Public Employees' Retirement System (CalPERS) as compensation as required by law. The annual retirement contribution shall be based on the stated amounts listed in Article 19 – Public Employees' Retirement System. Any additional tax liabilities are borne solely by the employee.

ARTICLE 16 – TOOL REIMBURSEMENT

- A. An employee in the classification of Fleet Mechanic and Lead Fleet Mechanic shall be eligible for reimbursement up to a maximum of \$200.00 per fiscal year for the purchase of tools required in the performance of his/her job. To be eligible for reimbursement, the tool purchase must be approved in advance by the Director of Public Works or his/her designee. The City retains the sole discretion to determine the necessity to purchase particular tools.

If the employee remains employed for six months after the actual date of the tool purchase, the employee will own such tools outright. If the employee does not remain employed for six months after the actual date of the tool purchase, the City will retain ownership of such tools upon the employee's separation.

- B. In the event a probationary employee in the above-referenced classifications purchases tools, the time period for outright ownership of the tools is extended to 18 months from the date of hire. After that period, Paragraph A above shall apply.

ARTICLE 17 – MILEAGE

An employee required to use a personal vehicle for City business shall be reimbursed at the rate allowed by the Internal Revenue Service.

RETIREMENT

ARTICLE 18 – PUBLIC EMPLOYEES’ RETIREMENT SYSTEM

A. RETIREMENT PLAN. The City shall maintain its contract for a pension plan with the California Public Employees Retirement System (CalPERS), as originally adopted on March 1, 1964, and amended thereafter.

B. CONTRACT OPTIONS. The City’s contract with CalPERS shall include the following options:

	<u>Government Code Section</u>
1. One Year Highest Compensation	20042
2. Military Service Credit as Public Service	21024
3. 2.5% at 55 – Full Formula	21354.4
4. Fourth Level of 1959 Survivor Benefit	21574
5. Pre-Retirement Optional Settlement 2 Death Benefit	21548

C. SECOND TIER CONTRACT OPTIONS. The City’s contract with CalPERS for employees hired on or after December 22, 2012, shall include the following options:

	<u>Government Code Section</u>
1. Three Highest Years Compensation	20037
2. Military Service Credit as Public Service	21024
3. 2% at 60 – Full Formula	21353
4. Fourth Level of 1959 Survivor Benefit	21574
5. Pre-Retirement Optional Settlement 2 Death Benefit	21548

D. THIRD TIER CONTRACT OPTIONS. The City’s contract with CalPERS for employees hired on or after January 1, 2013, shall include the following options:

	<u>Government Code Section</u>
1. Three Highest Years Compensation	7522.32

2. Military Service Credit as Public Service	21024
3. 2% at 62 – Full Formula	7522.20
4. Fourth Level of 1959 Survivor Benefit	21574
5. Pre-Retirement Optional Settlement 2 Death Benefit	21548

E. CONTRIBUTIONS.

1. Employees hired before December 22, 2012, the full eight percent (8%) cost of the CalPERS member contributions shall be paid by each employee via payroll deduction on a pre-tax basis.
2. Employees hired on or after December 22, 2012, the full seven percent (7%) cost of the CalPERS member contributions shall be paid by each employee via payroll deduction on a pre-tax basis.
3. Employees hired on or after January 1, 2013, shall pay 50% of the normal cost rate for the benefit formula 2% at Age 62 via payroll deduction on a pre-tax basis (Government Code Section 7522.30).
4. 1959 Survivor Benefit. Each employee will pay the employee share required by CalPERS (currently \$2.00 per month) and the City will pay the employer costs.

ARTICLE 19 – SOCIAL SECURITY

In the event the City and its employees are required to participate in the Federal Social Security program, the contribution designated by law shall be the responsibility of the employee, and shall be paid in full by the employee and the City shall not be obligated to pay or “pick-up” any portion thereof.

INSURANCE

ARTICLE 20 – MEDICARE

Employees hired by the City on or after April 1, 1986, shall pay the designated employee contribution to participate in the Medicare Program and the City shall be under no obligation to pay or “pick-up” any such contributions.

ARTICLE 21 – MEDICAL INSURANCE

A. The City shall provide group medical insurance under the California Public Employees' Medical and Hospital Care Act (PEMHCA).

B. City Contribution. The City shall contribute the following monthly amounts for group medical insurance. Any additional contribution necessary to maintain group medical insurance shall be borne solely by the employee.

1. Persons Hired On or Before June 30, 1999

Employees

For coverage effective July 1, 2018

- Employee Only \$ 889.00
- Employee & One Dependent \$1,207.00
- Employee & 2 + Dependents \$1,440.00

Retirees

- Retiree Only \$126.00
- Retiree & One Dependent \$172.00
- Retiree & 2 + Dependents \$195.00

2. Persons Hired On or After July 1, 1999

Employees

For coverage effective July 1, 2018

- Employee Only \$ 889.00
- Employee & One Dependent \$1,207.00
- Employee & 2 + Dependents \$1,440.00

Retirees

The City's contribution for retirees who were hired on or after July 1, 1999, is determined by the California Public Employees Retirement System (CalPERS) in accordance with Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA). The contribution amounts are subject to change each calendar year based on changes to the medical care component of the Consumer Price Index.

- *For coverage effective January 1, 2018: \$133.00/month per retiree*
- *For coverage effective January 1, 2019: \$136.00/month per retiree*

C. EXCESS MEDICAL. An employee who selects a health insurance plan which costs less than the City's maximum monthly contribution may have the difference placed in his/her deferred compensation account, purchase products available through the City's Cafeteria Plan, or receive a cash payout. For example, an employee with no dependents is entitled to a maximum monthly contribution of \$939.00 per month. If he/she has a health insurance plan which costs \$536.99 per month, the employee is entitled to \$402.01 per month in excess medical.

D. WAIVER OF MEDICAL INSURANCE.

1. An employee may elect to not be covered by a City group medical insurance plan if he/she provides proof of coverage from another group medical insurance source. The City may require proof of coverage at any time.
2. An eligible employee may elect to have the City's monthly contribution applied to his/her deferred compensation account, the purchase of products offered through the Cafeteria Plan, and/or receive a cash payout.

The City contributions shall be:

- *For coverage effective June 30, 2018: \$753.00 per month*

E. SERVICE RETIREMENT ACCOUNT (SRA). In addition to the Contribution pursuant to the CalPERS Contract, employees hired on or after July 1, 1999, will be allowed to bank accrued sick leave time for use upon Retirement from Service, into a Service Retirement Account to defer out-of-pocket expenses for purchasing group medical insurance under the City's program. The City will participate in the SRA by matching the employee contribution on a two-for-one basis.

1. SRAs are not subject to fellow employee donations of sick leave or any other leave provisions. However, the SRA will be coordinated with the City's Sick Leave Buyback program.

2. To be eligible, an employee must have a sick leave balance of at least 480 hours, and must maintain at least 480 hours of sick leave after making such deposit.
3. An eligible employee may place up to one-half of any unused portion of his/her annual sick leave accrual into the SRA, with the City matching contribution of two-to-one. This provision will be coordinated with the Sick Leave buyback provision, thereby limiting buyback and SRA deposits to one-half of any unused portion of their annual sick leave accrual.
4. The SRA is not subject to bearing interest. Eligible employee deposits and the City's matching contributions are flat deposits.
5. Sick leave placed in the SRA will be converted into cash at the employee's base pay rate and thus will no longer be available as sick leave once deposited in the SRA.
6. The donor employee shall have two options for withdrawal of funds from the SRA.
 - a. At the option of the employee, upon retirement from service, the SRA will be paid at the then-hourly rate for the depositor. This shall include the employee contribution as well as the City's matching portion, which will be used to offset/defer costs associated with purchasing group medical insurance plans during retirement.
 - b. The employee may, at any time, withdraw hours from the SRA to convert to cash, and will be paid at the base pay rate in effect when the original deposit was made. An employee making an early withdrawal from the SRA shall not be entitled to any of the City's matching contribution, and shall lose that equal portion of the matching contribution as was withdrawn, i.e., two-to-one.
7. In the event that a participating employee separates from employment on other than a Retirement from Service (Service Retirement or Disability Retirement), the City shall payoff only the employee's portion of the contributions made to the SRA, at the base pay rate for each deposit, and shall not be entitled to any of the City's matching contribution.
8. In the event the SRA survives an active employee, or a retired employee, the City will pay off the balance of the employee's contribution to the survivor of record. Payment will be at the then-current base pay rate for the active employee and/or at the base pay rate of withdrawal for retired employee, including the City's matching contribution.

9. The City reserves and retains the right to hear and make determinations regarding any disputes caused by this provision of the MOU. Determinations shall be made in a manner that no employee shall lose his/her portion of the SRA and the City will not lose its portion of the matching contribution. Any determinations made in hearing a dispute to grant the City's portion of the matching contribution will be made on a case-by-case basis, and will not be determined to be a past practice or official policy of the City.

Any person employed by the City prior to July 1, 1999 who is not currently a member of this unit of representation shall enjoy all benefits and rights of those employees hired prior to July 1, 1999, upon later occupying a position within this unit of representation.

10. Effective July 21, 2012, employees not currently enrolled in the SRA program are not eligible to enroll in this program. This program is closed to new enrollees.

ARTICLE 22 – DENTAL INSURANCE

The City shall continue to provide the current dental program for employees and their eligible dependents under the age of 26.

Each employee is responsible for choosing one of the three plans listed below. In the event that no choice is made, the employee will be deemed to have chosen no dental insurance coverage.

Employees may switch plans only during the open enrollment period designated by the City.

Payment of Premiums. Employees shall pay the amounts shown. Any additional amount necessary to maintain group dental insurance shall be paid by the City.

- A. **50/50 PLAN.** The insurance carrier pays 50% of major expenses (up to a maximum of \$2,000 per calendar year) and the employee pays 50%.

	<u>Monthly</u>
• Employee Only	\$3.00
• Employee & 1 Dependent	\$5.00
• Employee & 2 + Dependents	\$7.50

- B. **80/20 PLAN.** The insurance carrier pays 80% of major expenses (up to a maximum of \$2,000 per calendar year) and the employee pays 20%.

	<u>Monthly</u>
• Employee Only	\$10.00
• Employee & 1 Dependent	\$15.00
• Employee & 2 + Dependents	\$20.00

- C. **HMO PLAN.** The insurance carrier pays a portion of all services based on the fee schedule. Employees who enroll in this plan do not pay any monthly premium. Each employee is responsible for any co-payment associated with this plan.

ARTICLE 23 – LONG TERM DISABILITY INSURANCE

- A. The City shall pay the entire premium for a City-owned long-term disability insurance policy affording coverage to each active employee.
- B. The policy shall have a benefit waiting period of 60 calendar days of continuous disability. Anytime after the expiration of the benefit waiting period, the employee may apply for this insurance and may use accrued leave pursuant to the City's policy thereon.
- C. The maximum benefit for total disability shall be $66 \frac{2}{3}$ of the eligible employee's basic monthly earnings as defined in the policy document, or \$2,500 per month, whichever is less.

ARTICLE 24 – LIFE INSURANCE

- A. The City shall provide group term life insurance (including accidental death and dismemberment) for each employee in the amount of \$25,000. Each employee, at his/her own expense, may purchase additional life insurance from the insurer through the City.
- B. The City shall provide group term life insurance, (including accidental death and dismemberment,) in the amount of \$1,500 for each employee's:
1. legal spouse or registered domestic partner and/or
 2. children under the age of 19.

ARTICLE 25 – CAFETERIA PLAN

- A. The City shall provide a full flexible Cafeteria Plan under IRS Code Section 125, to include Premium Only Conversion, Health Care Spending and Dependent Care Accounts.

- B. The City and individual participants shall divide the cost of the third-party administration service fee. Service fees are to be paid only by employees enrolled in the Health Care Spending Account and/or Dependent Care Spending Account. There is no service fee for participants in the Premium Only Conversion plan. The service fee may be amended from time to time by the City and the third-party administrator. The City will consult with employees prior to increasing any deduction from employees for any plan year.
- C. The City will utilize any assets remaining in the plan at the end of each plan year to off-set service fees for employees enrolled in either the Health Care Spending Account and/or Dependent Care Spending Account. "Plan year" is as defined in the plan documents. This item is governed by the Cafeteria Plan documents as it relates to Plan Year. Asset utilization to off-set service fees shall be determined no later than June 30 of any subsequent year.

ARTICLE 26 – ADMINISTRATION

- A. The City shall have the right to select any insurance carrier or other method of providing coverage to fund the benefits included under the terms of this MOU, provided that the benefits of the employees shall be substantially the same as those in existence prior to implementation of this MOU.
- B. If, during the term of this MOU, any change of insurance carrier or method of funding for any benefit provided hereunder occurs, the City shall meet with the Association prior to any change of insurance carrier or method of funding the coverage.
- C. All group insurance benefits shall be provided and calculated in accordance with the City's contracts with insurance providers.

LEAVES

ARTICLE 27 – HOLIDAYS

- A. The following dates, and such other days or portion of days as may be designated by motion of the City Council, shall be observed as paid holidays.

<u>Holiday</u>	<u>Date</u>
New Year's Day	January 1
Martin Luther King Jr. Day	3 rd Monday in January
Washington's Birthday	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4 th Thursday in November
Day after Thanksgiving	Friday following 4 th Thursday in November
Day before Christmas	December 24
Christmas Day	December 25

- B. In addition to the above, one floating holiday per fiscal year may be earned. This floating holiday shall be designated by the employee and requires management approval, in advance, before it is taken. New hires must be employed for three months before becoming eligible for the floating holiday.
- C. When a holiday occurs on a Saturday the preceding Friday will be observed instead. When a holiday occurs on a Sunday, the following Monday will be observed. When a holiday occurs on an off-Friday, the preceding Thursday shall be observed.
- D. An employee with a probationary or regular appointment that is less than full-time, but is half-time or more, shall earn holiday leave in correlation to the employee's regular scheduled hours during the pay period in which the holiday occurs. Such employees shall receive four and one-half hours of pay for the floating holiday.
- E. Holiday Closure. The City shall close the City Hall, City Yard, and Community Center facilities to the public during the holiday period between Christmas Eve and New Year's Day. During the closure, employees will have the option to use accrued Vacation, Compensatory Time, or Floating Holiday. Employees without sufficient accrued leave time to cover the holiday closure may borrow from future vacation accrual.

The City maintains the right to determine the essential services which still operate during this closure period.

ARTICLE 28 – VACATION LEAVE

A. ACCRUAL. Vacation leave with pay shall accrue to each employee at the following rates:

<u>Years of Service</u>	<u>Vacation Hours Accrued</u>
Less than 5 years	80 hrs. vacation per year (6 2/3 hrs. per month)
5 years to 10 years	120 hrs. vacation per year (10 hrs. per month)
10 years or more	160 hrs. vacation per year (13-1/3 hrs. per month)

An employee having a probationary or regular appointment that is less than full-time, but is half-time or more, shall accrue vacation on a prorated basis, based on the employee's regular (i.e., not overtime) paid hours in each pay period.

B. ACCUMULATION. Accumulation of vacation leave in excess of that earned in two years is prohibited. All vacation leave exceeding the authorized accumulation shall be forfeited.

C. USAGE. Vacation leave taken shall not be in excess of that actually earned at the time the vacation starts.

1. Each employee must take at least 40 hours of vacation each fiscal year.
2. The time during the calendar year at which an employee shall take vacation shall be determined with particular regard for the needs of the service and due regard for the wishes of the employee.
3. In the event one or more municipal holidays falls within a vacation leave, such days shall not be charged as vacation leave, and the vacation leave shall be extended accordingly for employees eligible for such holidays.
4. Any leave of absence without pay shall not accrue vacation leave for each 30 day period of such leave.
5. No employee shall be entitled to any vacation until completion of 12 months of continuous service.
6. All usage of vacation and compensation time should be requested and approved by the employee's department head or designee at least two days prior to the start of vacation time.

D. ANNUAL CONVERSION.

1. Once each fiscal year, an employee may elect to convert up to 40 hours of vacation leave into a cash payment at the employee's then-current rate of base pay. To be eligible for this option, the employee must utilize 40 hours of vacation leave in the preceding fiscal year.
2. Notwithstanding the above paragraph, an employee may convert up to a maximum of 80 hours of annual vacation leave into a cash payment as long as the employee has 240 hours, or more, of annual vacation leave "on the books" after the conversion.

E. VACATION PAY AT SEPARATION. Upon separation, an employee will receive compensation at the current rate of base pay for all unused earned vacation, up to and including the date of separation.

1. An employee who separates while serving a probation period in a classification to which the employee has been promoted shall receive separation vacation pay based on the hourly equivalent of the base pay received immediately prior to promotion, provided the employee has successfully completed a probation period in the classification from which the employee was promoted.
2. An employee who has not completed 12 months of continuous service shall not receive separation vacation pay for regular vacation.

F. CONTINUOUS SERVICE. For the purpose of computing years of service, an employee's continuous service shall be based on the effective date on which the employee received initial probationary appointment in the City service.

ARTICLE 29 – SICK LEAVE

A. ACCRUAL.

1. Each full-time employee shall accrue sick leave with pay at the rate of eight hours for each full calendar month of continuous service in which the employee has worked or has been on authorized leave of absence with pay.
2. Part-Time Appointees. An employee having an appointment that is less than full-time, but is half-time or more, shall accrue sick leave with pay at the rate of four hours for each full calendar month of continuous service in which the employee has worked or has been on authorized leave of absence with pay.
3. Any leave of absence without pay exceeding 15 consecutive days shall result in no accrual of sick leave during the consecutive days of the employee's leave of absence without pay that is in excess of 15 consecutive days.

B. ACCUMULATION. Sick leave may be accumulated without limit.

C. USAGE.

1. Eligibility for Use of Sick Leave. Sick leave may be taken only when the employee has sick leave credits. An employee shall be eligible to take sick leave after he/she has worked one full calendar month.
2. Sick leave may be granted only with the approval of the department head and only in case of a bona fide illness or medical/dental appointments of the employee. The department head may require a physician's certificate or other evidence of the adequacy of the reason for the employee's absence during the period for which sick leave was requested.
3. Sick leave may also be used for a bona fide illness or medical/dental appointments of a family member (spouse, child, brother, sister, mother, father, mother-in-law, father-in-law, grandmother, grandfather) when the presence of the employee is required up to a maximum of three days per individual situation. The department head may require a physician's certificate or other evidence of the adequacy of the reason for the employee's absence during any period for which sick leave was requested.
4. Maternity leave. The employee shall submit a doctor's statement approving her fitness to continue working for a specified term. A post-natal release from the doctor must be submitted prior to returning to work.
5. Sick leave shall not be used in lieu of, or added to, vacation. Accrued vacation leave may be used for sickness when all sick leave has been taken.
6. Sick leave during vacation. An employee who becomes ill while on vacation may have such period of illness charged to accumulated sick leave instead of to vacation, provided that immediately upon return to duty, the employee submits to the department head a written request for sick leave and a written statement signed by the employee's physician describing the nature and dates of the illness.
7. Limitations. No employee shall be entitled to accrue or to take sick leave with pay while absent from duty for all of the following reasons:
 - a. Disability or illness arising from compensated employment other than with the City of Buena Park.
 - b. Leave of absence without pay.
 - c. Absence because of intoxication or for the purpose of recovering from intoxication.

D. MEDICAL LEAVE OF ABSENCE. Upon written request of the employee and recommendation of the department head, the City Manager may authorize in writing a leave of absence without pay for the purpose of recovering from an illness, provided:

1. The employee has used all accumulated sick leave.
2. The employee has been continuously employed in the City service for at least one year.
3. The employee presents to the department head for referral to and consideration by the City Manager a written explanation of the employee's illness and an estimate of the time needed for recovery signed by the employee's physician.
4. Prior to resuming duties, the employee may be required to take a medical examination at the employee's expense and as prescribed by the City Manager. The employment record and the results of such examination shall be considered by the City Manager or designee in determining the employee's fitness to return to work.
5. The maximum period of such leave shall be three calendar months. If the employee desires an extension, the employee shall follow the procedure described in subparagraph 3 above.

E. PENALTY FOR ABUSE. When, in the judgment of the department head, the employee's reason for being absent because of alleged sickness is inadequate, the department head shall indicate on the payroll form that the absence was without pay. The department head may recommend to the City Manager that appropriate disciplinary action be imposed against the employee.

F. ANNUAL BUYBACK PROGRAM.

1. To be eligible, an employee must have:
 - a. 480 hours of accumulated sick leave as of the first pay period of July of the preceding year, and
 - b. 480 hours of accumulated sick leave remaining after the cash out.
2. An employee who wishes to participate must file a written request with his/her department head within 30 days of the end of a fiscal year on June 30. This request will apply for the previous fiscal year sick leave accumulation.
3. Participants will be paid for 50% of the hours accrued during the fiscal year. These hours being paid will be deducted from the employee's sick leave bank. The remaining hours accrued, but not used, will remain in the employee's sick

leave bank. Payment will be based at the employee's base hourly rate in effect at the time of payment.

G. **SICK LEAVE PAY ON SEPARATION.** Except as herein provided, no payment shall be granted to an employee for accrued sick leave at the time of separation. Termination of an employee's continuous service, except by reason of layoff for lack of work or funds, shall abrogate all sick leave accrued at the time of such separation, regardless of whether the employee subsequently reenters the City service. Employees appointed on or after September 20, 1982, shall not be eligible for sick leave pay on termination as provided for in this section.

Employees hired on or prior to September 19, 1982 shall be paid for 50% of the value of his/her unused sick leave based on the employee's rate of base pay at the time of honorable separation or retirement.

Employees may only accrue 120 days (960 hours) of sick leave for the purposes of this section and for the purposes of compensation on separation.

ARTICLE 30 – BEREAVEMENT LEAVE

Whenever an employee who is eligible to receive sick leave is compelled to be absent from duty by reason of the death (or critical illness where death appears imminent) of a family member, the employee shall, upon approval of the department head, be entitled to charge such absence to the employee's accumulated sick leave to a maximum of five working days for each such incident. Use of such leave shall not count against the sick leave buy back or deposits made to the SRA.

"Family member" is defined as the employee's or spouse's:

- Father
- Grandfather
- Sibling(s)
- Spouse
- Mother
- Grandmother
- Child
- Grandchildren

ARTICLE 31 – WORKERS COMPENSATION

A. An employee who is absent from duty because of an on-the-job injury sustained during City employment shall receive his/her normal pay during the first 27 calendar weeks of such accident, provided the employee returns to the City any compensation paid under the provisions of the California Workers' Compensation Law for the corresponding period of time.

During this maximum 27-week period, an employee so entitled shall continue to receive all forms of compensation he/she would be receiving as if at work. The employee shall also be eligible for consideration for merit pay increases during this period.

- B. After this maximum 27-week period, an employee who has not returned to work shall not receive any other form of compensation from the City, including, but not limited to, accrual of vacation and sick leave, holiday pay, special assignment pay, education pay or payment of group insurance premiums. An employee may not use accumulated sick leave or vacation to supplement temporary disability indemnity payments.

ARTICLE 32 – JURY DUTY

No deduction shall be made in the pay of an employee who serves on jury duty if the employee has waived or remitted the jury fee for such jury duty. An employee who serves on jury duty on a scheduled day off shall not be required to remit his/her jury fees for that day. If the employee has not so waived or remitted the jury fee, the employee shall be paid only for the time actually worked in the City position. An employee summoned to jury duty shall immediately notify his/her supervisor in writing. The employee shall remit to the City all fees and allowances payable for jury duty, less reimbursements from the court for meals, travel, or lodging.

ARTICLE 33 – OTHER LEAVES

- A. LEAVE WITHOUT PAY. Upon written recommendation of the department head, the City Manager may authorize a leave of absence without pay for a period not to exceed 30 calendar days in a calendar year.
- B. Authorized leaves of absence without pay of 30 calendar days or less, and leaves of absence with pay for any period shall not constitute an interruption of an employee's continuous service and shall not be deducted in computing total City service. Authorized leaves of absence without pay in excess of 30 calendar days, unless covered by the Family Medical Leave Act, shall be deducted in computing an employee's total City service for advancement in salary range and for other purposes specified in this MOU, but shall not serve to interrupt continuous service.
- C. MILITARY LEAVE. An employee having a probationary or regular appointment shall be entitled to such benefits as are provided in the California Military and Veterans Code. An employee requesting military leave shall present a copy of military orders to the department head prior to the beginning of the leave.

Employees who present military orders for active duty status shall continue to receive all forms of compensation he/she would be receiving as if at work for the first 30 days of such absence in any one fiscal year (except weekend drills and/or training). Weekend drills and/or training are not considered active duty under the Military and Veterans Code and not eligible for salary continuation benefits.

If an employee is called to inactive duty and must report to such duty on days the employee is scheduled to work, the employee must request the time off and use their leave banks for such absence if necessary.

WORKING CONDITIONS

ARTICLE 34 – PAY PERIODS

- A. The City shall utilize the biweekly payroll system. Pay periods shall begin at 12:01 a.m. every other Saturday and end at midnight the second Friday (i.e., 14 calendar days later) thereafter. Paydays shall occur on the Friday following the conclusion of each pay period. The one exception is when that Friday is a federal holiday, the payday shall fall on the preceding business day.
- B. Direct Deposit. The City shall electronically deposit employees' paychecks into a savings or checking account designated by the employee. All employees shall participate in the City's direct deposit payroll program. Each employee shall be responsible for providing the Human Resources Department with the correct routing number and account number of his or her banking institution.

ARTICLE 35 – ATTENDANCE

- A. Each employee shall be in attendance at his/her work station in accordance with the rules regarding hours of work, holidays, and leaves. All departments shall keep daily attendance records of employees which shall be reported to Payroll on a designated form and on the dates specified. Absence without leave, whether voluntary or involuntary, for a period longer than five consecutive assigned working days is an automatic resignation from City service.
- B. Any employee who is absent from duty shall report the reason for such absence to the department head or immediate supervisor prior to the normal work shift. Absences not reported in such manner may be considered absence without leave. A deduction of pay shall be made for the duration of any absence without leave. Upon return to work, such absence must be justified.

ARTICLE 36 – HOURS OF WORK AND SCHEDULES

Unless otherwise prescribed in writing by the City Manager, the work week, work shift, and work schedule for each position shall be as follows:

- A. WORK WEEK. The work week for all full-time positions shall be 40 hours.
- B. WORK SHIFT. The work shift for all full-time positions scheduled on the “9/80 Work Plan” shall be nine hours a day for eight days, and eight hours for one day for a total of 80 hours in a two-week period.
- C. WORK SCHEDULE. The work schedule for each position shall be as established by the department head. All offices of the City, except those for which special

regulations are required, shall be kept open for business on all days of the year except Saturdays, Sundays, and holidays continuously on week days in accordance with the Alternative Work Schedule.

- D. ALTERNATIVE WORK SCHEDULES. The decision to implement any alternative work schedule, including the 9/80 Plan and the 4/10 Plan, is at the sole discretion of the City. The alternative work schedule may be revoked at any time by the City as long as 30 days notice of revocation is given to the Association and employees. Any modified work schedule shall not be considered a vested right or benefit and the City has no obligation to meet-and-confer or meet and consult prior to revocation. Any revocation shall not be subject to any internal grievance or appeal process or court action.

Except in cases of emergency, the City shall provide two weeks notice to an employee of any changes in his/her work schedule.

ARTICLE 37 – 9/80 PLAN ALTERNATE WORK SCHEDULE

- A. Federal legislation in Air Quality Management District (AQMD) Rule 15 requires employers, including cities, to use alternative methods to reduce vehicular pollution emissions. The 9/80 work schedule will reduce the average number of vehicle trips to the work site between 6:00 a.m. and 10:00 a.m., and comply with the Federal requirements. It also satisfies Council's direction to provide extended service hours to the public and employees.
- B. PLAN DEFINED. The work period will be forty hours per week. It will consist of nine days instead of ten in a two-week pay period. Employees will work eight days for nine hours a day and one day for eight hours for a total of 80 hours in the pay period. The basic work day will increase from 8 eight to 9 nine hours a day. The standard for accounting is 80 hours in a pay period. During a pay period, the employee shall have one occasion of two consecutive days off and one occasion of three consecutive days off. The 9/80 Plan allows employees to be off an additional day during the pay period.

Days off will be consecutive and scheduled at the discretion of the department heads. Days off include every other Friday. Once days off are determined, they are fixed unless otherwise approved.

- C. WORK PERIOD FOR NON-EXEMPT EMPLOYEES. The work period for all employees who are not exempt from FLSA requirements on the 9/80 will continue to be 40 hours and a pay period will still consist of two work periods. However, the first work period will end and the second work period will begin in the middle of the fifth work day shift in the pay period. Depending upon the employee's schedule, four or five hours will belong to the first work period and the remaining four or five hours of that day will belong to the second work period. Work periods can break on different

days of the week depending upon which days the employee works. The work period break in a pay period can be as early as the middle of the first Wednesday or as late as the middle of the second Monday of the pay period. The pay period will still coincide with the current payroll reporting period.

D. PAYROLL PERIOD REPORT DATES – ALL EMPLOYEES. Payroll will still be reported in accordance with our payroll calendar for all employees, including those on the 9/80 Plan.

E. WORK HOURS. For employees who normally work daytime hours Monday through Friday, the following work schedules are available to serve the needs of the City.

- 6:00 a.m. – 3:30 p.m. (30 minute lunch)
- 6:30 a.m. – 4:00 p.m. (30 minute lunch)
- 7:00 a.m. – 4:30 p.m. (30 minute lunch)
- 7:30 a.m. – 5:00 p.m. (30 minute lunch)
- 8:00 a.m. – 5:30 p.m. (30 minute lunch)

The day of the week the employee has off during one work period will be an eight-hour work day the next work period and vice versa. For example, if the employee is off the first Friday of a pay period, he/she will work eight hours on the second Friday of that pay period. All other days worked in that pay period will be nine-hour shifts.

The department head or his/her designee may adjust the designated start/stop schedules as seasonal and/or weather conditions indicate.

The following depicts the four different work schedule patterns within a pay period:

Days Worked Within Pay Period

Group	1	2	3	4	5	6	7	8	9	10
A	9 hrs	9 hrs	9 hrs	9 hrs	8 hrs	9 hrs	9 hrs	9 hrs	9 hrs	Off
B	9 hrs	9 hrs	9 hrs	9 hrs	Off	9 hrs	9 hrs	9 hrs	9 hrs	8 hrs
C	8 hrs	9 hrs	9 hrs	9 hrs	9 hrs	Off	9 hrs	9 hrs	9 hrs	9 hrs
D	Off	9 hrs	9 hrs	9 hrs	9 hrs	8 hrs	9 hrs	9 hrs	9 hrs	9 hrs

F. PAYROLL REPORTING.

1. If an employee uses sick time, vacation time, holiday time or compensation time earned during the pay period and this time had not been reported on the payroll report submitted Monday morning, the time taken must be submitted to the Finance Department in writing.
2. If an employee is in an Absence Without Pay (AWOP) Status at any time during the pay period, and this had not been indicated on the payroll report submitted on

Monday morning, the supervisor or payroll clerk shall call Finance immediately to make a payroll correction.

3. All employees should make every effort to notify their supervisor on Thursday, if they will be using sick leave or AWOP time on Friday.
4. When an employee separates from employment, the employee will be paid for all hours worked.
5. When an employee changes to a different work schedule, it must coincide with the start of a pay period.

G. LEAVE TIME ACCRUALS. Benefit leave time accruals will remain the same as designated in this Memorandum of Understanding. Depending on the work day, benefit leave time off under the 9/80 Plan will be at the rate of either eight or nine hours.

H. HOLIDAYS.

1. If a holiday falls on the Friday the City is closed, the holiday will be observed on the preceding workday.
2. If a holiday falls on the employee's day off, an eight-hour day off must be taken within the same pay period as the holiday. An employee's alternate day off for the holiday must be approved by the department head.
3. If a holiday (including floating holidays) falls on the employee's nine-hour workday, an employee will be credited with nine hours. If a holiday falls on an employee's eight-hour workday, an employee will be credited with eight hours.
4. On pay periods containing holidays where employees' regularly scheduled hours need to be altered, for those employees who are subject to FLSA requirements, additional work schedule adjustments may be required for the day that breaks their two 40 hour work periods within the pay period to ensure the 40 hour work periods are maintained.
5. Holidays occurring on an employee's regular eight-hour work day are not affected by the above schedule.

I. PAID SICK TIME/VACATION.

1. Employees using paid sick leave on an eight-hour day will be charged eight hours.
2. Employees using paid sick leave on a nine-hour day will be charged nine hours.

3. If the scheduled hours are greater than the sick leave balance, the difference will be covered by:
 - a. Use vacation or compensatory time.
 - b. Absence without pay.
4. Vacation is charged in the same manner. Vacations occurring on eight-hour days will be charged eight hours, and those falling on nine-hour days will be charged nine hours.

J. WORKERS COMPENSATION. Employees will be paid for industrial accident leave hours in accordance with their current 9/80 work schedule. An employee will return on the same 9/80 work schedule.

K. MILITARY LEAVE, JURY AND PAID EXTENDED SICK LEAVE. Employees ordered to military duty, summoned to jury duty, or on paid extended sick leave will be paid according to their current work schedule. After the completion of the military leave, jury duty, or paid extended sick leave, the employee will return to his/her regular 9/80 work schedule.

An employee shall not receive overtime (pay or comp time) when such leave falls on his/her day off.

L. 9/80 PLAN REVIEW. A decrease in productivity will represent a negative impact to the alternative work plans. Productivity may be measured by various criteria, which may include, but are not limited to:

- Sick leave usage
- Inadequate staffing
- Measurable work output
- Employee turnover
- Tardiness
- Employee morale

Moreover, other impacts include: service delivery to the public, citizen input through compliments, commendations, or complaints, energy savings, and related costs or funding to the City.

ARTICLE 38 – 4/10 PLAN ALTERNATE WORK SCHEDULE

Effective July 4, 2015, the City shall implement and evaluate a “4/10 Alternative Work Schedule” for a trial period through the end of the contract.

A. The intent is to determine the effectiveness and efficiency of the City Employees Association work force in providing service to the community while working an alternative work schedule that includes a 4/10 component.

- B. During this evaluation period, there will be no additional costs (direct or indirect) to the City as a result of a modified work schedule, specifically related to overtime except for call-backs for service and emergency calls and time-off accruals such as sick leave, vacation, holidays, etc. All such accruals will remain unchanged.
- C. At the conclusion of this evaluation period, a review will be conducted by the City to determine the effectiveness of this alternative work schedule. A decrease in productivity will represent a negative impact to this alternative work schedule. Productivity may be measured by various criteria which may include but are not limited to:
- Sick leave usage
 - Inadequate staffing
 - Measurable work output
 - Employee accidents
 - Employee turnover
 - Tardiness
 - Employee morale

Other impacts include service delivery to the public, including citizen input through compliments, commendations, or complaints, energy savings, and related costs or funding to the City.

- D. PLAN DEFINED. Under this work schedule, employees work four consecutive, 10 hour days in a seven day workweek. The 4/10 schedule provides for a 40 hour workweek every seven days and three consecutive days off.

4/10 scheduling will be at the discretion of the department head.

- E. WORK PERIOD. The work period for employees on the 4/10 who are exempt or non-exempt from FLSA requirements will remain the same Saturday through Friday. There are two 40 hour work periods per pay period. This schedule coincides with the current payroll reporting period.

- F. PAYROLL PERIOD REPORT DATES – ALL EMPLOYEES. Payroll will still be reported in accordance with our payroll calendar for all employees, including those on the 4/10 Plan.

- G. PAYROLL REPORTING.

1. If an employee uses sick time, vacation time, holiday time or compensation time earned during the pay period and this time had not been reported on the payroll report submitted Monday morning, the time taken must be submitted to the Finance Department in writing.
2. If an employee is in an Absence Without Pay (AWOP) Status at any time during the pay period, and this had not been indicated on the payroll report submitted on Monday morning, the supervisor or payroll clerk shall call Finance immediately to make a payroll correction.

H. WORK HOURS.

The department head or his/her designee may adjust the designated start/stop schedules as seasonal and/or weather conditions indicate.

I. Enrolling in or Dropping off the 4/10 Plan

1. Prior to enrollment in the 4/10 plan, each employee is required to read the 4/10 plan guidelines and sign a statement that he/she has read all the conditions of the plan. A copy will be placed into the employee's personnel file in the Human Resources office.

To expedite future shift changes that affect many employees' work plans and/or changes many employees' day off, a memo listing each employee's new work schedule and days off should be signed by each employee affected and submitted to Finance (payroll) and to Human Resources where a copy of the memo will be filed in each affected person's employee file. These changes must coincide with the beginning of a new pay period.

2. When an employee separates from employment, the employee will be paid for all hours worked.
3. When an employee changes to a different work schedule, it must coincide with the start of a pay period.

J. LEAVE TIME ACCRUALS. Benefit leave time accruals will remain the same as designated in this Memorandum of Understanding.

K. HOLIDAYS

1. If a holiday falls on the Friday the City is closed, the holiday will be observed on the preceding workday.
2. If a holiday falls on the employee's day off, a 10-hour day off must be taken within the same pay period as the holiday. An employee's alternate day off for the holiday must be approved by the department head.
3. On pay periods containing holidays where employees' regularly scheduled hours need to be altered, for those employees who are subject to FLSA requirements, additional work schedule adjustments may be required for the day that breaks their two 40 hour work periods within the pay period to ensure the 40 hour work periods are maintained.

4. Holidays occurring on an employee's regular 10-hour workday are not affected by the above schedule.
5. When a floating holiday is taken, employees taking the holiday on a 10-hour day will be charged 10 hours.

L. PAID SICK TIME/VACATION

1. Employees using paid sick leave on a 10-hour day will be charged 10 hours.
2. If the scheduled hours are greater than the sick leave balance, the difference will be covered by:
 - a. Use vacation or compensatory time.
 - b. Other leaves
 - c. Absence without pay.
3. Vacation is charged in the same manner. Vacations occurring on 10-hour days will be charged 10 hours.

M. WORKERS COMPENSATION. Employees will be paid for industrial accident leave hours in accordance with their current 4/10 work schedule. An employee will return on the same 4/10 work schedule.

N. MILITARY LEAVE, JURY AND PAID EXTENDED SICK LEAVE. Employees ordered to military duty, summoned to jury duty, or on paid extended sick leave will be paid according to their current work schedule. After the completion of the military leave, jury duty, or paid extended sick leave, the employee will return to his/her regular 4/10 work schedule.

An employee shall not receive overtime (pay or comp time) when such leave falls on his/her day off.

O. DEPARTMENT HEAD RESPONSIBILITY. Changes to an employee's 4/10 work schedule must be coordinated through the department head, Human Resources and Finance to ensure that changes to and from the 4/10 Plan coincide with the beginning of a pay period.

P. The decision to implement any alternative work schedule, including the 9/80 Plan and the 4/10 Plan, is at the sole discretion of the City. The alternative work schedule may be revoked at any time by the City as long as 30 days notice of revocation is given to the Association and employees. Any modified work schedule shall not be considered a vested right or benefit and the City has no obligation to meet-and-confer or meet and consult prior to revocation. Any revocation shall not be subject to any internal grievance or appeal process or court action.

ARTICLE 39 – AGENCY SHOP

A. LEGISLATIVE AUTHORITY. All employees represented by the Association have the right to join or not join the Association. However, the enactment of a local “Agency Shop” requires that as a condition of continuing employment, employees must either join the Association or pay to the Association a service fee in lieu thereof. Such service fee shall be established by the Association, and shall not exceed the standard initiation fee, periodic dues and general assessments of the Association.

B. ASSOCIATION DUES/SERVICE FEES.

1. The Human Resources Office shall provide all current full-time and part-time benefited employees and any full-time and part-time benefited employees hired thereafter, with an authorization notice advising them that Agency Shop has been enacted pursuant to state law and an agreement exists with the Association, and that all employees subject to the Agreement must either join the Association, pay a service fee to the Association, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee’s signature authorizing a payroll deduction of Association dues, a service fee or a charitable contribution equal to the service fee. Said employees shall have 14 calendar days from the date they receive the form to fully execute it and return it to the City’s Human Resources Office.
2. If the form is not completed properly or returned within 14 calendar days, the City shall commence and continue a payroll deduction of service fees from the regular biweekly paychecks of such employee. The effective date of Association dues, service fee, or charitable contribution shall begin no later than the beginning of the first pay period commencing 14 calendar days after receipt of the authorization form by the employee.
3. The employee’s earnings must be sufficient after the other legal and required deductions are made to cover the amount of the dues or fees authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of an employee in a non-pay status only during part of the pay period, whose salary is not sufficient to cover the full withholding, no deduction shall be made.

In the case of an employee who is receiving catastrophic leave benefits during a pay period, no deduction shall be made. In this situation, all other legal and required deductions (including health care and insurance deductions) have priority over Association dues and service fees.

C. MAINTENANCE OF MEMBERSHIP.

1. Any employee in this unit who has authorized Association dues deductions on the effective date of this Memorandum of Understanding (MOU) or at any time subsequent to the effective date of this MOU shall continue to have such dues deductions made by the City during the term of this MOU; provided however, that any employee in the unit may terminate such Association dues in the 14-day period following the anniversary of her/his employment with the City by notifying the Association in writing of her/his termination of Association dues deduction.
2. Such notification shall be delivered in person or by U.S. Mail to an Association Representative and should be in the form of a letter containing the following information:
 - Employee Name
 - Employee Number
 - Job Classification
 - Department Name
 - Name of Association from which dues deductions are to be canceled
3. The Association will then provide the City's Human Resources Department with the appropriate documentation to process these dues cancellations within ten (10) business days after the close of the withdrawal period.

C. RELIGIOUS EXEMPTION. An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations, shall upon presentation of active membership in such religion, body, or sect, not be required to join or financially support any public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a non-religious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The employee may choose from a list of at least three of these funds, designated in a memorandum of understanding between the City and the Association, or if the memorandum of understanding fails to designate the funds, then to any such fund chosen by the employee. Proof of the payments shall be made on a monthly basis to the City as a condition of continued exemption from the requirement of financial support to the Association.

Declarations of, or applications for religious exemption and any other supporting documentation shall be forwarded to the Association within 14 calendar days of receipt by the City. The Association shall have 14 calendar days after receipt of a request for religious exemption to challenge any exemption granted by the City. If challenged, the deduction to the charity of the employee's choice shall commence but shall be held in escrow pending resolution of the challenge. Charitable contributions shall be made by regular payroll deductions only.

D. RESCISSION. This agency shop provision in this MOU may be rescinded by a majority vote of all the employees covered by the MOU, provided that:

1. A request for such a vote is supported by a petition containing the signatures at least 30 percent of the employees in the unit;
2. The vote is by secret ballot;
3. The vote may be taken at any time during the term of MOU, but in no event shall there be more than one rescission vote taken during that term. Notwithstanding the above, the City and the Association may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement.

If a rescission vote is approved by unit members during the term of a current MOU, the Association agrees not to petition for or seek agency shop status for the duration of the current of the MOU.

E. RECORDS. The Association shall keep an adequate itemized record of its financial transactions and shall make available annually to the City, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant.

F. INDEMNIFICATION. The Association shall indemnify, defend, and hold the City harmless against any liability arising from any claims, demands, or other action relating to the City's compliance with the agency fee obligation including claims relating to the Association's use of monies collected under these provisions. The City reserves the right to select and direct legal counsel in the case of any challenge to the City's compliance with the agency fee obligation, and the Association agrees to pay any attorney, arbitrator or court fees related thereto.

ARTICLE 40 – SUBSTANCE ABUSE

A. It is the responsibility of all affected employees to cooperate to protect the lives, personal safety and property of co-workers and fellow citizens. The parties hereto and all affected employees shall take all reasonable steps to accomplish these goals and to minimize potential dangers.

B. It is in the best interest of the City, the Association, employees, and the public to ensure that employees do not appear for work under the influence of drugs or alcohol, or possess illegal substances or alcohol while at work, because such conduct is likely to result in reduced productivity, an unsafe work environment, poor morale, and increased potential liability to the City. "Under the influence" means the knowing use of any illegal substance, alcohol, or knowing misuse of a prescribed

drug in a manner and to a degree that substantially impairs the employee's work performance or the ability to use City property or equipment safely.

- C. An employee, not on paid standby, who is called at home to return to work may decline to return if he/she feels physically unable to perform his/her job even if the employee perceives that the inability to perform is the result of having consumed alcoholic beverages. No reason need be given by the employee and the employee shall not be subjected to discipline for his/her refusal to return to work.
- D. The City provides an Employee Assistance program for employees who have problems with drugs and/or alcohol. Every effort shall be made by the City to refer employees who have such problems to this counseling service for assistance.
- E. The City may, upon showing of reasonable suspicion that this policy is being violated, compel an employee who is unable to perform the duties of his/her position to submit to a medical examination on City time and at the City's expense. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable and prudent supervisor to suspect that an employee is "under the influence" in that the employee's ability to perform the functions of the job is impaired or the employee's ability to perform his/her job safely is reduced. Allegations of harassment pursuant to this paragraph shall be reported to the Human Resources Department. The Human Resources Department shall conduct an investigation into the alleged harassment and take appropriate corrective action as a result of its investigation. Nothing contained herein shall limit the City's right to discipline or discharge any employee.

ARTICLE 41 – EMERGENCY MEDICAL ATTENTION

In case of emergency, an employee may seek immediate medical attention without having to wait for a supervisor to accompany him/her.

ARTICLE 42 – GRIEVANCE PROCEDURE

- A. DEFINITION. A grievance shall be considered as any matter for which appeal is not provided for concerning a dispute about the interpretation or application of any ordinance, rule, or regulation governing personnel practices or working conditions.
- B. PURPOSE.
 - 1. To promote improved employer-employee relations by establishing grievance procedures on matters for which appeal or hearing is not provided by other regulations.
 - 2. To afford employees, individually or through qualified employee organizations, a systematic means of obtaining further consideration of problems after every other reasonable effort has failed to resolve them through discussions.

3. To provide that grievances shall be settled as near as possible to the point of origin.
4. To provide that grievances shall be heard and settled as informally as possible.

C. PROCEDURE. Whenever an employee feels that the policy of the City is not being appropriately applied, to his/her circumstance, he or she can file a grievance to resolve the dispute. The limitation on filing a grievance must be within sixty (60) calendar days from the date the employee or the Association first became aware of, or should have become aware of, the issue(s) underlying the grievance. To file a grievance, he or she shall take the following action(s):

1. The dispute should be discussed fully with the employee's most immediate supervisor, who should make every effort to resolve the dispute in a fair and equitable manner and in accordance with established policy. After the employee and the supervisor have discussed the incident, the supervisor will give the employee a written response within two working days.
2. The process described above shall continue through the line of supervision, up to and including the department head, if the aggrieved party is not satisfied with the resolution at the initial or preceding step(s). However, the employee must notify the department head of the dispute in writing.
3. Should the dispute not be resolved by the department head to the satisfaction of both parties, the employee will notify the Director of Human Resources of the dispute in writing. The Director of Human Resources will interview both parties in the dispute and others affected and report those findings to the City Manager and recommend steps to be taken to resolve the problem within the Department. Within 10 working shifts, the parties will be provided with a written response from the City Manager. The decision of the City Manager shall be the final step in the Administrative process.

ARTICLE 43 – ADVISORY ARBITRATION

City Council Resolution 1883, Personnel Rules and Regulations, Rule XVI, Section 2 and Section 5 shall be amended and is incorporated herein and attached as Exhibit F.

ARTICLE 44 – PERFORMANCE EVALUATION

The parties agree that performance evaluations may not be appealed to advisory arbitration. The appeal process shall end at the City Manager level as provided in the grievance procedure contained herein.

SIGNATURES

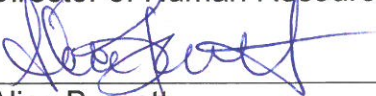
Adopted June 12, 2018

FOR THE
CITY OF BUENA PARK

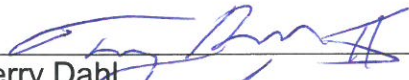
FOR THE BUENA PARK CITY
EMPLOYEES ASSOCIATION




Eddie Fenton
Director of Human Resources



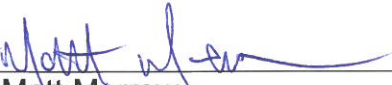
Alice Burnett
Sr. Human Resources Analyst



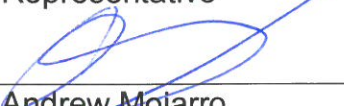
Terry Dahl
Representative



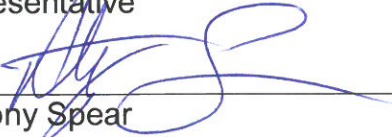
Alex Gonzalez
Representative



Matt Merrow
Representative



Andrew Mojarro
Representative



Anthony Spear
Representative

**EXHIBIT A – PAY SCHEDULE – EFFECTIVE JUNE 30, 2018
BUENA PARK CITY EMPLOYEES ASSOCIATION**

Position	Range	Step 1			Step 2			Step 3			Step 4			Step 5			Step 6		
		Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual
Custodian	521	20.81	3,608	43,290	21.80	3,779	45,344	22.85	3,961	47,530	23.94	4,151	49,802	25.10	4,351	52,206	26.33	4,564	54,763
Driver/Scheduler	511	16.46	2,854	34,243	17.24	2,989	35,860	18.04	3,127	37,521	18.91	3,278	39,335	19.82	3,435	41,214	20.75	3,597	43,159
Facilities Maintenance Technician	526	23.45	4,065	48,775	24.57	4,260	51,113	25.76	4,466	53,583	27.00	4,681	56,161	28.30	4,906	58,871	29.68	5,145	61,734
Facilities Maintenance Worker	522	21.31	3,694	44,317	22.34	3,872	46,459	23.40	4,056	48,666	24.53	4,253	51,026	25.71	4,457	53,474	26.96	4,673	56,074
Fleet Mechanic	529	25.17	4,364	52,359	26.38	4,573	54,872	27.66	4,795	57,538	29.00	5,027	60,313	30.39	5,269	63,220	31.87	5,524	66,279
Lead Facilities Maintenance Technician	531	26.10	4,524	54,288	27.40	4,749	56,992	28.77	4,987	59,842	30.21	5,236	62,837	31.72	5,498	65,978	33.31	5,774	69,285
Lead Fleet Mechanic	533	27.67	4,797	57,560	29.03	5,032	60,379	30.42	5,272	63,263	31.89	5,527	66,323	33.42	5,793	69,513	35.06	6,077	72,922
Lead Maintenance Worker	531	26.10	4,524	54,288	27.40	4,749	56,992	28.77	4,987	59,842	30.21	5,236	62,837	31.72	5,498	65,978	33.31	5,774	69,285
Lead Sewer Services Technician	534	27.38	4,746	56,948	29.22	5,065	60,772	31.04	5,380	64,553	32.85	5,695	68,333	34.69	6,014	72,157	36.51	6,329	75,938
Lead Signs & Markings Technician	531	26.10	4,524	54,288	27.40	4,749	56,992	28.77	4,987	59,842	30.21	5,236	62,837	31.72	5,498	65,978	33.31	5,774	69,285
Lead Water Services Technician	534	27.38	4,746	56,948	29.22	5,065	60,772	31.04	5,380	64,553	32.85	5,695	68,333	34.69	6,014	72,157	36.51	6,329	75,938
Maintenance Helper	502	13.35	2,315	27,775	14.01	2,428	29,130	14.61	2,534	30,397	15.34	2,659	31,905	16.04	2,781	33,369	16.79	2,911	34,921
Maintenance Worker	522	21.31	3,694	44,317	22.34	3,872	46,459	23.40	4,056	48,666	24.53	4,253	51,026	25.71	4,457	53,474	26.96	4,673	56,074
Sewer Services Technician	522	21.31	3,694	44,317	22.34	3,872	46,459	23.40	4,056	48,666	24.53	4,253	51,026	25.71	4,457	53,474	26.96	4,673	56,074
Sr. Maintenance Helper	508	15.36	2,663	31,949	16.09	2,789	33,457	16.83	2,918	35,008	17.63	3,056	36,669	18.48	3,204	38,439	19.34	3,353	40,231
Sr. Maintenance Worker	526	23.45	4,065	48,775	24.57	4,260	51,113	25.76	4,466	53,583	27.00	4,681	56,161	28.30	4,906	58,871	29.68	5,145	61,734
Sr. Sewer Services Technician	526	23.45	4,065	48,775	24.57	4,260	51,113	25.76	4,466	53,583	27.00	4,681	56,161	28.30	4,906	58,871	29.68	5,145	61,734
Sr. Traffic Painter	526	23.45	4,065	48,775	24.57	4,260	51,113	25.76	4,466	53,583	27.00	4,681	56,161	28.30	4,906	58,871	29.68	5,145	61,734
Sr. Water Services Technician	526	23.45	4,065	48,775	24.57	4,260	51,113	25.76	4,466	53,583	27.00	4,681	56,161	28.30	4,906	58,871	29.68	5,145	61,734
Water Services Technician	522	21.31	3,694	44,317	22.34	3,872	46,459	23.40	4,056	48,666	24.53	4,253	51,026	25.71	4,457	53,474	26.96	4,673	56,074

***Monthly and Annual Salary are only approximate rates based on the Hourly conversion.**

EXHIBIT B – COMPENSATION PLAN

- A. PURPOSE. The purpose of this Plan is to establish a Merit system of compensation for all general employees represented by BPCEA in all classes of work, based upon performance and productivity, with due consideration for all qualities of service and contribution to the City.
- B. SALARY RANGES AND SALARY RATES. The establishment of salary ranges and salary rates and the allocation of classes thereto shall be by Resolution of the City Council. The type of appointment shall determine whether an employee's salary rate shall be on a biweekly or hourly basis.
1. Full-Time, Probationary, Provisional, Temporary and Acting Appointments. An employee having a provisional, temporary, probationary, or acting appointment that is on a full-time basis, shall be compensated at a biweekly rate.
 2. Other Appointments. An employee having any other type of appointment shall be compensated at an hourly rate.
- C. RESPONSIBILITIES OF CITY MANAGER. Employees shall be paid at biweekly or hourly rates as determined by the City Manager, subject to the provisions of this Resolution.

At least annually the City Manager shall review the existing Compensation Plan and recommend to the City Council a salary range and salary rates for each class for which the City Manager is appointing authority. In determining salary range and salary rates, consideration shall be given to both base pay, fringe benefits, and working conditions.

- D. COMPENSATION PROCEDURES.
1. Entry Level Salary Rates.
 - a. In General. Except as otherwise provided herein, all new employees shall be appointed at Step 1 of the salary range in effect for the class in which the appointment is made.
 - b. Exceptions. The City Manager may authorize such new appointments at a salary rate up to Step 6, when it is determined that equity among employees and the interests of the City will best be served.
 - c. Temporary Appointees. Persons employed or re-employed for part-time, temporary, or seasonal service may, upon written recommendation of the Department Head and approval of the City Manager, be compensated at any rate established for the class.

- d. Acting Appointments. Acting appointments may carry additional compensation if recommended by the Department Head and approved by the City Manager, or when the City Manager determines that equity among employees and the interests of the City will best be served.
2. Step Increases Within The Range. All salary increases within the range shall be made in five percent increments whenever possible.
 - a. Step 1 is the minimum rate and is normally the hiring rate for the class.
 - b. Employees are eligible to progress through the second and third steps, any time after completion of six months of service at the preceding step. These salary increases are awarded in recognition of good performance and as an incentive for continued work improvement. These increases shall be made only if recommended by the Department Head and approved by the City Manager.
 - c. Employees are eligible for additional salary increases to the fourth, fifth and sixth steps, any time after completion of one year of service at the preceding step on their salary anniversary date. These increases shall be made only if recommended by the Department Head and approved by the City Manager and are awarded in recognition of good performance and as an incentive for continued work improvement.

E. COMPENSATION UPON PROMOTION.

1. Every promotion from one class to a higher class shall carry a minimum salary increase of five percent. In the event a promotion is made within six months of the employee's salary anniversary date, the placement on the new range shall be to the step of the new range which shall be 7-1/2 percent, or 10 percent over the current rate.
2. The probation and salary procedures for the position shall follow those prescribed in the various applicable paragraphs of Section D.
3. If the promotion is to a position (class) assigned to a Salary Schedule other than the General Employees Salary Schedule, the probation and salary procedures shall follow those prescribed in the various applicable paragraphs of the Resolution for the appropriate Salary Schedule.

F. COMPENSATION ON DEMOTION.

1. Involuntary Demotion. An employee who is involuntarily demoted shall be reduced in salary to the nearest lowest salary rate of the class of position to which demoted. The employee shall not be required to serve a probation period in the lower position unless specifically determined by the City Manager.

2. Voluntary Demotion. An employee who is demoted at his/her own request shall retain current salary rate if such rate is within the salary range of the lower classification. If salary rate prior to the demotion was higher than the maximum salary of the lower position, the employee shall receive the latter. The employee shall not be required to serve a probation period in the lower position unless specifically determined by the City Manager.
- G. FAILURE TO COMPLETE PROBATION PERIOD. The compensation of an employee who is rejected during a probation period in a classification and who is assigned to a classification having a lower salary range shall be as follows:
1. If the employee had previously completed a probation period in a lower classification, the employee shall not be required to serve another one; the employee's last salary rate in the lower position shall be the new salary rate upon reassignment to that position, and eligibility shall be earned to receive subsequent merit salary advancements in accordance with appropriate paragraphs in Section D.
 2. If the employee had not previously completed a probation period in a lower classification, the effective date of reassignment to that class shall be the new probationary anniversary date, and the employee shall be required to serve a probation period.
- H. COMPENSATION ON POSITION RECLASSIFICATION. The salary of an employee in a position that is reclassified shall be determined as follows:
1. Class with Same Salary Range. If the position is reclassified to a class with the same salary range as the previous class, and if the incumbent is appointed to the reclassified position, the salary rate and the salary review date of the employee shall not be changed. This provision shall also apply to a change of class title provided there is no change in the basic duties of the position.
 2. Class with Higher Salary Range. If the position is reclassified to a class with a higher salary range than the previous class, and if the incumbent is appointed to the reclassified position, the salary of the employee shall be governed by the Section on Compensation Upon Promotion.
 3. Class with Lower Salary Range. If the position is reclassified to a class with a lower salary range than the previous class, and if the incumbent is appointed to the reclassified position, the employee's salary shall not change, and the employee shall not be required to serve a new probation period.
- I. COMPENSATION ON TRANSFER. The salary rate and salary review date of an employee who is transferred in class shall not change.
- J. COMPENSATION FOR PORTION OF PAY PERIOD. A regular or probationary appointee serving on a full-time basis who works less than a full biweekly pay period

except when on authorized leave of absence with pay, shall receive as compensation for such period an amount equal to the number of hours worked times the employee's hourly rate. The number of hours worked in such pay period shall include paid holidays.

- K. CHANGES IN CLASS SALARY RANGE. If a class is allocated to a different salary range, an employee in a position in that class shall be compensated at the same lettered step in the new range as the employee was receiving in the previous range, and the employee's salary review date shall not change.
- L. COMPENSATION FOR ACTING APPOINTMENTS. Subject to the following conditions, an employee who is required on the basis of an acting appointment to serve in a class with a higher salary range than that of the class in which the employee is normally assigned shall receive the entry level salary rate of the higher salary range or the rate five percent higher than the rate the employee normally receives, whichever is greater, for all such hours assigned.
1. The employee must perform all the duties and assume all the responsibilities of the higher class.
 2. Compensation for acting appointments shall be limited to the temporary filling of a vacant regular position due to termination, promotion, or extended sick leave of the incumbent lasting longer than 30 days or the temporary filling of newly budgeted positions, where the needs of the City require that the position be filled.
 3. Acting appointments shall not receive merit increases and shall not be permitted for a period in excess of six continuous months, except in the manner provided in Section 2.20.080 of the Buena Park City Code.
 4. The City Manager must approve all such appointments upon findings meeting the criteria set forth in this paragraph.
- M. CHANGES IN SALARY ANNIVERSARY DATE. The granting of any leave of absence without pay exceeding 30 calendar days shall result in a new salary anniversary date plus the number of calendar days of the employee's leave in excess of 30 calendar days.
- N. PROBATIONARY APPOINTMENT FOLLOWING PROVISIONAL APPOINTMENT. Notwithstanding the other provisions of this Resolution, a provisional appointee in a class who, without a break in service, receives a probationary appointment to a position in the same class shall be eligible for consideration for a salary advance after six months of satisfactory service, including provisional service, as evidenced in writing by the Department Head and approved by the City Manager, and shall accrue leave benefits from the date of the provisional appointment.

The employee's probation period shall commence with the date of provisional appointment. Satisfactory completion of such probation period shall be on written recommendation of the Department Head and approval of the City Manager.

The salary advance provision of this section shall not apply when a provisional appointee in a class receives, without a break in continuous City service, a probationary appointment to a position in a different class having a higher salary range. The salary review date of such appointee shall be the date of the probationary appointment

- O. CONSIDERATION OF EMPLOYEE REQUESTS. Any employee shall have the right to consideration by the City Manager of any request with respect to a claimed inequity resulting from the strict application of any of the sections contained herein. The employee shall submit to the Department Head a written statement of the claimed inequity and the employee's request. The Department Head shall promptly forward the statement, the employee's request, and a written recommendation to the City Manager.
- P. CONTINUITY OF SERVICE REQUIREMENTS. Continuous service, as required for advancement within salary ranges and for other purposes specified in this Resolution, is defined as City Employment on a probationary, regular, or acting appointment basis without break or interruption.
- Q. AVOIDANCE OF INEQUITIES. The City Manager may authorize special adjustments to avoid or eliminate inequities resulting from the strict application of any of the provisions of this Resolution.
- R. ADMINISTRATIVE REGULATIONS. The City Manager is authorized to issue written administrative personnel regulations designed to augment or clarify the provisions of this Resolution. Prior to issuance, such regulations shall be referred to the City Attorney as to their conformance with this Resolution, and to the appropriate bargaining unit representative(s), if such regulations would modify the wages, hours or terms and conditions of employment. At least annually such regulations shall be considered for possible incorporation in a revision of this Resolution.

EXHIBIT C – HIRING OF EMPLOYEE RELATIVES

The hiring of relatives of City employees is based upon the following criteria:

A “relative” is defined as a spouse, child, step-child parent, step-parent, parent-in-law, legal guardian, brother, sister, brother-in-law, sister-in-law, step-brother, step-sister, aunt, uncle, niece, nephew, grandchild, grandparent, regardless of their place of residence, or any other individual related by blood or marriage living within the same household as the City employee.

An “employee” is defined as any person who receives a City payroll check for services, full or part-time rendered to the City of Buena Park.

The employment of relatives of City employees within the City of Buena Park is limited to the following situations: Any relative of a Councilmember or the City Manager shall not be considered for employment within the City of Buena Park in any capacity, either full-time or part-time.

Any relative of a City-appointed commissioner, board or committee member, or department manager, may not be considered for employment within the department or area of responsibility of such City-appointed commissioner, board or committee member or department manager. The employment of relatives of all other City employees is prohibited within the department of the existing employee when such related employee may: perform joint duties, share responsibility or authority; report to the same immediate supervisor; or be supervised by or would supervise a relative.

Relatives of City employees, except for relatives of Council members, the City Manager, City-appointed commissioners, board or department managers may be hired for seasonal assignments. However, such employment shall not exceed twenty percent (20%) of the compliment of seasonal employees in that classification and shall be selected only by an open recruitment process.

City employees who are related as described above, shall not be affected in their current job status except when the City Manager determines that the circumstances of such employment raises an undue hardship upon the other employees within the particular work unit and that such employment is detrimental to the supervision, safety, security or morale of the particular work unit.

If two existing City employees become married and their employment conflicts with the policy stated above, they may continue employment provided that such employment does not directly or indirectly place an undue hardship upon other employees within the particular work unit of the married couple and such employment is not detrimental to the supervision, safety, security or morale of the particular work unit. The City manager shall determine whether or not such detriment or undue hardship exists.

The City Manager is authorized to issue written guidelines to implement and enforce this policy. All determinations made by the City Manager shall be final and conclusive and not subject to Section 2-136 of the Administrative Section of the City Code. In all situations where the City Manager determines a conflict to exist between existing or future related employees, the City Manager shall attempt to resolve such conflict in the following manner:

Attempt to redefine the job responsibilities of the related employees within the department to minimize the conflict.

If such redefinition of job status is not feasible, attempt to transfer one of the employees to a similar position (without guarantee or identical salary) that would not be in violation of this policy.

If transfer is not feasible or acceptable, request the voluntary resignation of one of the employees.

If one of the employees does not voluntarily resign, the employee with the least employment experience in the City of Buena Park may be discharged by the City Manager.

EXHIBIT D – HARASSMENT IN EMPLOYMENT POLICY

I. PURPOSE OF POLICY

- A. To define and issue to all employees the City's policy on the prohibition and prevention of harassment, discrimination, retaliation and bullying in the workplace.
- B. To fully inform all employees of their right to have a safe work environment and be free of unlawful harassment, discrimination, retaliation, and bullying in the workplace.
- C. To fully inform all employees that the City of Buena Park does not and will not tolerate any conduct that is believed to violate this Policy in the workplace.
- D. To inform all employees of their rights if they believe that they are or have been the victim of harassment, discrimination, retaliation, and bullying.
- E. To provide a means for the prompt reporting and full and effective investigation of harassment, discrimination, retaliation, and bullying complaints and to provide for effective remedial action against the harasser and for the victim.

II. STATEMENT OF POLICY

It is the Policy of the City that it will not tolerate verbal or physical conduct by any employee which harasses, discriminates, retaliates, disrupts, or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment. In addition to prohibiting all forms of harassment, discrimination and retaliation, the City also prohibits any form of "intimidation or bullying" in the workplace or elsewhere, such as at offsite events.

Harassment or discrimination against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification as defined below is prohibited and will not be tolerated.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Harassment violates Title VII of the Civil Rights Act of 1974, the California Government Code, and regulatory guidelines of the Equal Employment Opportunity Commission and the California Fair Employment and Housing Commission.

All employees will be expected to comply with this Policy and take appropriate measures to ensure that such conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this Policy against harassment, discrimination, retaliation, and bullying in the workplace. Based on the seriousness of the offense, disciplinary action will be taken up to and including termination.

When a violation of this Policy is reported, an investigation shall be conducted to determine if there was knowledge, or should have been knowledge, on the part of any supervisor, and whether any supervisor had failed to take immediate and appropriate corrective action.

Negligent supervision, tacit approval by “turning a blind eye”, treating the situation as a joke, failure to take action, or concealing a situation will subject the supervisor involved to disciplinary action.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

III. DEFINITION OF HARASSMENT

- A. Protected Classifications: This policy prohibits harassment or discrimination because of an individual’s protected classification. “Protected Classification” includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), and military or veteran status.
- B. Policy Coverage: This Policy prohibits the employer, elected or appointed officials, officers, employees, or contractors from harassing or discriminating against applicants, officers, officials, employees, unpaid interns, volunteers, or contractors because of: 1) an individual’s protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.
- C. Discrimination: This policy prohibits treating individuals differently because of the individual’s protected classification as defined in this Policy.

D. Harassment may include, but is not limited to, the following types of behavior that is taken because of a person's protected classification. Note that harassment is not limited to conduct that city employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public:

1. Verbal Harassment – For example, epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
2. Physical Harassment – For example, assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, proposition, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
3. Visual Forms of Harassment – For example, derogatory posters, notices, bulletins, cartoons, emails, pictures or drawings related to a protected classification.
4. Sexual Harassment – Unwelcome sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or creates an intimidating, hostile or offensive work environment.

E. Guidelines for Identifying Harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:

1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.
3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment

can evolve over time. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.

4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
 5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).
- F. Retaliation: Any adverse conduct taken because an applicant, employee or contractor has reported harassment, discrimination, or bullying or has participated in the complaint and investigation process described herein, is prohibited. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment, discrimination, or bullying, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment, discrimination, or bullying, or real or implied threats of intimidation to prevent an individual from reporting harassment, discrimination, or bullying. The following individuals are protected from retaliation: those who make good faith reports of harassment, discrimination, or bullying, those who associate with an individual who is involved in reporting harassment, discrimination, or bullying, and those who participate in the complaint or investigation process.

IV. DEFINITION OF BULLYING

- A All employees, consultants, independent contractors, and visitors have the right to be treated with respect. Bullying is the use of aggression with the intention of harming another individual. It can include any intentional written, visual, verbal, or physical act when the act physically harms the individual or damages his or her property; has the effect of interfering with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening environment.
- B Bullying comes in many shapes and sizes and can take many forms including, but not limited to, excluding, tormenting, taunting, abusive comments, using threatening gestures; pushing, shoving, punching, unwanted physical contact, or any use of violence; graffiti; name calling, sarcasm, spreading rumors, and teasing. Such conduct can also occur via use of electronic or telephonic communications such as the internet, email and chat room misuse, mobile threats by text messaging, or calls or misuse of cameras and video equipment. Under certain circumstances, bullying can also include conduct taken by those

who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public.

V. DEFINITION OF EMPLOYEE

For the purposes of this policy, an employee shall be defined as any individual, regardless of classification, employed by the City of Buena Park, or job applicants, unpaid interns, volunteers, or contractors working under the supervision of the City, vendors and contract employees.

VI. COMPLAINT PROCEDURE

A Any employee, job applicant, unpaid intern, volunteer, or contractor who believes he or she has been the subject of harassment or any form of bullying should report the alleged act immediately verbally or in writing with any of the following. There is no need to follow the chain of command:

1. Immediate supervisor;
2. Any supervisor or manager within or outside of the department;
3. Department Head; or
4. Director of Human Resources.

B The limitation on reporting alleged acts of harassment, discrimination, retaliation, and bullying must be within twelve months of the incident or incidents.

C If a complaint involves a supervisor or manager, the complaint shall be filed directly with the department head or Director of Human Resources.

D Any supervisor or department head who receives a harassment, discrimination, retaliation, or bullying complaint is to immediately notify the Director of Human Resources.

E Upon notification of a harassment, discrimination, retaliation or bullying complaint, the Director of Human Resources will:

1. Inform the complainant of his or her right to initiate the complaint.
2. Authorize the investigation of the complaint and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint.
3. Investigation of a complaint will include interviewing the complainant, accused harasser and any named or apparent witness. Employees shall be

protected from coercion, intimidation, retaliation, interference, or discrimination for filing a complaint or assisting in an investigation.

4. All complaints will be handled in a timely and confidential manner. In no event will information be released to anyone who is not involved with the investigation; nor will anyone involved be permitted to discuss the subject outside the investigation.
 5. Review factual information gathered through the investigation to reach a reasonable conclusion to determine whether the alleged conduct constitutes harassment, discrimination, retaliation, or bullying giving consideration to all factual information, the totality of the circumstances, including the nature of the verbal, physical, visual or sexual favor aspect of the advance, and the context in which the alleged incidents occurred.
 6. Timely report a summary of the results of the investigation and the determination as to whether harassment, discrimination, retaliation or bullying occurred to the appropriate person including complainant, alleged harasser, supervisor, and the department head. If discipline is imposed, the level of discipline will not be communicated to the complainant.
 7. If conduct in violation of this Policy occurred, take and/or recommend to the department head prompt and effective remedial action against the harasser. The remedial action will be commensurate with the severity of the offense. Notify the victim that necessary steps of corrective action have been taken to resolve the problem.
 8. Reasonable steps will be taken to protect the victim and other potential victims from further harassment, discrimination, retaliation, or bullying.
 9. Reasonable steps will be taken to protect the victim from any retaliation as a result of communicating the complaint.
- F The city takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, retaliation or bullying may be occurring, regardless of whether the recipient or third party reports a potential violation.
- G Option to report to outside administrative agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal and a complaint process. The nearest offices and telephone numbers are listed on the posters that are located on City bulletin boards at the following locations:

- Human Resources Office

- Community Center
- Police Department
- City Yard
- Ehlers Event Center
- California Welcome Center

VII. CONFIDENTIALITY

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. However, complete confidentiality cannot occur due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The employer will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

VIII. RESPONSIBILITIES

Elected Officials, Appointed Officials, Managers, and Supervisors are responsible for:

1. Modeling appropriate and respectful behavior.
2. Informing employees, volunteers, and contractors of this Policy.
3. Taking all steps necessary to prevent harassment, discrimination, retaliation or bullying from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language and behavior.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Informing those who complain of harassment, discrimination, retaliation or bullying of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
8. Assisting, advising, or consulting with employees and the Director of Human Resources regarding this Policy and Complaint Procedure.

9. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's Personnel Rules and Regulations, up to and including termination.
10. Implementing appropriate disciplinary and remedial actions.
11. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Director of Human Resources or the department head.
12. Participating in periodic training and scheduling employees for training.

Each employee or contractor is responsible for:

1. Modeling appropriate and respectful behavior.
2. Treating all employees, volunteers, and contractors with respect and consideration.
3. Participating in periodic training.
4. Fully cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Maintaining the confidentiality of any investigation that the City conducts by not disclosing the substance of any investigatory interview, except as directed by the department head or Director of Human Resources.
6. Reporting any act he or she believes in good faith constitutes, harassment, discrimination, retaliation or bullying as defined in this Policy, to his or her immediate supervisor, or department head, or Director of Human Resources.

IX. MANDATORY TRAINING

As part of its commitment to ensuring a work environment free from bullying, harassment, and discrimination, the City requires that all of its supervisors and elected officials receive training on this Policy at least once every two years. Human Resources will schedule multiple training sessions in the Spring biennially to ensure that employees and elected officials are able to attend the mandatory training. Attendance at the training will be documented.

X. DISSEMINATION OF POLICY

All Elected Officials and City employees, supervisors and managers shall receive a copy of this Policy. All management personnel will be informed of their responsibilities in enforcing this policy. The Policy may be updated from time to time and redistributed with a form for the employee to sign and return acknowledging that the employee has received, read, and understands this Policy.

This Policy shall be posted in appropriate places.

EXHIBIT E – ADVISORY ARBITRATION

With respect to the bargaining members in this unit, City Council Resolution 1883, Personnel Rules and Regulations, Rule XVI, Section 2 and Section 5 shall be amended as follows:

Section 2: Disciplinary Procedures

(h) Appeal to City Manager: The employee, upon receipt of notice of the imposition of disciplinary action against him, shall have the right to appeal the Department Head's decision in writing to the City Manager, except that an oral or written reprimand may not be so appealed. Said appeal shall be delivered to the City Manager within ten (10) business days of the employee's receipt of notice of the imposition of discipline. Otherwise, the Department Head's action shall be final and binding.

Should the employee desire to appeal the Department Head's decision directly to advisory arbitration rather than having the matter reviewed by the City manager, he may do so by filing with the Human Resources Director within ten (10) business days of his receipt of the notice of imposition of discipline by the Department Head, a written appeal to the City Council. Said written appeal shall be in form and content as required by these rules and, in addition, shall state that the employee knowingly and intentionally waives his opportunity to have the action of the Department Head first reviewed by the City manager. In such a situation, the provisions of subparagraphs (h) and (i) of this Section 2 shall be deemed inapplicable to the subject proceeding.

...

(j) Advisory Arbitration: The employee, upon receipt of notice of the affirmation of disciplinary action against him by the City Manager, whether by way of total affirmation or modification of the Department Head's action, shall have the right to appeal the City Manager's decision in an advisory arbitration; except that an oral or written reprimand as provided by these Rules may not be so appealed. Said appeal shall be delivered to the Human Resources Director within ten (10) business days of the employee's receipt of notice of the City Manager's action. Otherwise, the City Manager's action shall be final and binding. The advisory arbitration shall be conducted in accordance with the provisions of Section 5 of this Rule XVI.

Section 5: Advisory Arbitration

(a) Any regular employee shall have the right to appeal a decision by the City Manager involving dismissal, demotion, reduction in pay or suspension, or of a Department Head, if City Manager review is waived by the employee, provided, however that only one (1) advisory arbitration hearing shall be allowed as to any one (1) disciplinary action.

(b) The employee's appeal shall be heard in an advisory arbitration by an impartial hearing officer selected from a list of advisory arbitrators from the California State

Mediation and Conciliation Service (SMCS). The City will pay SMCS's fee for providing the list.

(c) The employee may be represented by his/her Association/Union representative, any other regular employee of the City, or his/her attorney.

(d) The hearing officer shall issue subpoenas to compel the attendance of witnesses, if such be necessary at the request of either party.

(e) If both parties request that the hearing be recorded by a certified shorthand reporter, then the expenses for such recording services shall be borne equally by the City and the employee. If only one party requests that the hearing be recorded by a certified shorthand reporter, then that party alone will bear the expenses. Each party shall be responsible for any specialized or extraordinary services they might individually request.

(f) The expenses for the hearing officer shall be borne equally by the City and the Association, and each party shall be responsible for expenses they incur. The maximum expense for the hearing officer borne by the Association is \$2,000.

(g) At the hearing, both the appealing employee and the City shall have the right to be heard and to present evidence.

(h) Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party called him/her to testify, and to rebut the evidence against him/her.

(i) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules that might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

(j) After the close of the hearing, the hearing officer shall prepare a written advisory award and findings of fact and conclusions of law based on the evidence presented at the hearing, and shall present his/her findings to the City Council and the employee within thirty (30) calendar days, or a longer period of time as stipulated by the parties. In rendering an award, the hearing officer shall be limited to the express terms of this document and shall not have the power to modify, amend, or delete any terms or provisions of this document. Failure of either party to insist upon compliance with any provision of this document at any given time or times under any given set or sets of circumstances shall not operate to waive or modify such provision, or in any manner

whatsoever to render it unenforceable, as to any other time or times or as to any other occurrence or occurrences, whether the circumstances are, or are not, the same.

(k) The City Council shall review the hearing officer's recommendation, but shall not be bound thereby. The City Council shall adopt, amend, modify or reject the recommended findings, conclusions and/or opinion of the hearing officer. Prior to making a decision which adopts the hearing officer's recommendation, the City Council may order and read the transcript, at the Council's discretion. Prior to making a decision which modifies or rejects the hearing officer's recommendation, the City Council shall order and read the transcript of the Board hearing.

(l) The City Council shall not conduct a de novo hearing. The City Council may, at its sole option, allow limited oral arguments from either party before making a decision.

(m) The decision of the City Council shall be final and binding, subject only to review by the courts under California Code of Civil Procedure section 1094.5.

(n) The City staff shall notify the appellant in writing, within five working days of the City Council's decision. Such notice shall indicate the effective date of the action to be taken.