

**BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
November 02, 2010  
7:00 PM**

*Times set forth for the agenda items are estimates.  
Items may be heard before or after the times designated.*

**I. CALL TO ORDER (7:00 PM):**

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL.**

**B. PLEDGE OF ALLEGIANCE.**

**1. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:**

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:.**

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

**IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**A. ANNOUNCEMENTS.**

**1. Announcement of action taken at Closed Session, if any.**

**2. Openings on Boards and Commissions:**

Sky Valley Open Space Committee:  
One unexpired term to January 31, 2011

**3. Mayor's Office Hours:**

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

**B. APPOINTMENTS.**

- 1. Appointment of Michael T. Clarke to the Finance, Audit and Budget Committee for an unexpired term to January 31, 2013.**
- 2. Appointment of Anthony Shannon to the Open Government Commission for an unexpired term to January 31, 2013.**

**C. PRESENTATIONS.**

**D. PROCLAMATIONS.**

- 1. In Recognition of Steve Schueler**
- 2. Welcoming Dario Caracappa to Benicia**

**V. ADOPTION OF AGENDA:**

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

**A. WRITTEN COMMENT.**

**B. PUBLIC COMMENT.**

**VII. CONSENT CALENDAR (7:30 PM):**

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

**A. Approval of Minutes for Special Meetings of October 12, 2010 and October 19, 2010, and Regular Meeting of October 19, 2010. (City Clerk).**

**B. GRANTING OF AUTHORITY TO THE CITY TREASURER FOR DEPOSITING AND WITHDRAWING OF CITY MONIES IN THE LOCAL AGENCY INVESTMENT FUND. (Finance Director)**

The attached resolution grants authority to the appointed City Treasurer to deposit and withdraw City monies in the LAIF. The City Treasurer is granted authority at LAIF in case both the Finance Director and Assistant Finance Director are not available. LAIF requires a resolution with the Treasurer's name whenever there is a change, which occurred on October 12, 2010.

**Recommendation: Adopt the resolution authorizing the deposit and withdrawal of City monies in the Local Agency Investment Fund (LAIF) by the appointed City Treasurer.**

**C. REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 2010. (Finance Director)**

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Finance, Audit and Budget Committee have reviewed these reports and recommends acceptance.

**Recommendation: Accept, by motion, the investment report for the quarter ended June 2010.**

**D. APPROVE THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH PUBLIC EMPLOYEES UNION, LOCAL #1. (Administrative Services Director)**

The City concluded negotiations with Local #1 on October 26, 2010. Local #1 consists of 30 incumbents and is comprised of the City's professional, confidential and supervisory employees.

**Recommendation: Adopt the resolution approving the amendments to the July 1, 2010 through June 30, 2012 Labor Agreement with Public Employees Union, Local #1.**

**E. APPROVE THE SALARY AND BENEFITS FOR UNREPRESENTED**

**CONFIDENTIAL EMPLOYEES. (Administrative Services Director)**

Government Code Section 3507.5 permits an agency to restrict management and confidential employees from union representation. Currently, the City's unrepresented employees include the classifications of Legal Technician and Senior Human Resources Analyst. While this group is unrepresented, City representatives have consulted with these individuals regarding this proposed resolution. The incumbents in these two confidential classifications would like to receive the same salary and benefit package afforded to members of Local #1.

**Recommendation: Adopt the resolution authorizing salary adjustments and benefits for the unrepresented employees in the classifications of Legal Technician and Senior Human Resources Analyst to be the same as Local 1 employees per the Local One 2010-12 Memorandum of Understanding.**

- F. **Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.**

**VIII. PUBLIC HEARINGS:**

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

**IX. ACTION ITEMS (7:40 PM):**

**A. APPOINTMENT OF NEW CITY MANAGER. (City Attorney)**

Jim Erickson was appointed City Manager in February of 2003. After years of diligent and dedicated service, Mr. Erickson announced his retirement earlier this year. The City Council hired Peckham and McKenney to conduct a recruitment for the City Manager. After interviews and background checks, the City Council has selected Brad Kilger to be the new City Manager.

**Recommendation: Adopt the resolution appointing Brad Kilger as City Manager, effective December 13, 2010.**

**X. INFORMATIONAL ITEMS:**

- A. **City Manager Reports.**

**XI. COUNCIL MEMBERS REPORTS:**

**XII. ADJOURNMENT (8:30 PM):**

## **Public Participation**

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

## **Disabled Access**

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

## **Meeting Procedures**

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any

such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

### **Public Records**

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us) under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerks Office.

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF MICHAEL T. CLARKE TO THE  
FINANCE, AUDIT & BUDGET COMMITTEE FOR AN UNEXPIRED TERM  
ENDING JANUARY 31, 2013**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Michael T. Clarke to the Finance, Audit & Budget Committee by Mayor Patterson is hereby confirmed.

\*\*\*\*\*

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of November 2010 and adopted by the following vote:

Ayes:

Noes:

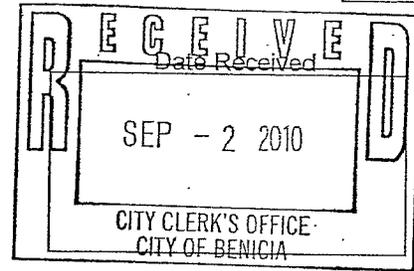
Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk





### City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Arts and Culture Commission
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Civil Service Commission
- Economic Development Board
- Finance, Audit & Budget Committee
- Historic Preservation Review Commission
- Human Services & Arts Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sustainability Commission
- Sky Valley Open Space Committee
- Uniform Code Board of Appeals

Name: Michael T. Clarke

Address: [REDACTED]

Phone: (Work) N/A (Home) [REDACTED]

(Cell) [REDACTED] Fax: N/A

Email: clarke\_m@sbcglobal.net Years as Benicia resident: 24

Occupation/Employer: Retired / Former Employer - Pacific Gas and Electric Company

Please note your most recent community or civic volunteer experience: \_\_\_\_\_

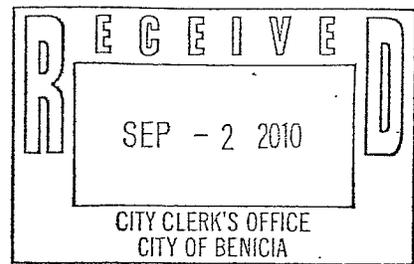
Early 1990's - BUSD School Bond Committee

Please describe any applicable experience/training: \_\_\_\_\_

Mid to Late 1980's - Director of Financial Operations and Budget Analyst for PG&E.

*All applications are considered public records and will be retained in an active file for at least one year from date of receipt.*

Signature: Michael T. Clarke Date: 9/2/10



## Finance, Audit & Budget Committee Supplemental Application

In addition to completing the City of Benicia Board/Commission/Committee Application form, please respond to the following questions:

1. What interests you about serving on the Finance, Audit & Budget Committee? Please describe your familiarity with the Committee.  
Although I have only recently become aware of the vacancy on the Committee, I am familiar with its Mission, Duties and Structure based on publicly available information. I am interested in serving on the Finance, Audit & Budget Committee because I believe the Committee can provide valuable input and advice to the City Council to ensure the long-term financial health of the city.
2. Please list current and past volunteer positions.  
BUSD Budget Committee  
BUSD School Bond Committee  
Benicia Education Foundation  
Vice-President Benicia Stingrays swim team  
President - North Bay YMCA
3. Participation on this Committee involves supporting the Finance, Audit & Budget Committee in a number of venues. These include: attending monthly Finance, Audit & Budget Committee meetings and sometimes appearing at City Council meetings. Do you feel you have the time and commitment to be a viable member of this committee?

Yes.

4. If you could achieve one goal during your term as an Finance, Audit & Budget Committee member, what would it be?

To be recognized by the City Council as a committee that possesses the skills, experience, and impartial judgement necessary to provide sound advice and opinion to the council on critical budget issues.

5. Is there anything else you would like to share with us regarding your qualifications and/or interests?

MBA Finance from UC Berkeley (1974).

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF ANTHONY SHANNON TO  
THE OPEN GOVERNMENT COMMISSION FOR AN UNEXPIRED TERM ENDING  
JANUARY 31, 2013**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Anthony Shannon to the Open Government Commission by Mayor Patterson is hereby confirmed.

\*\*\*\*\*

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 2nd day of November 2010 and adopted by the following vote:

Ayes:

Noes:

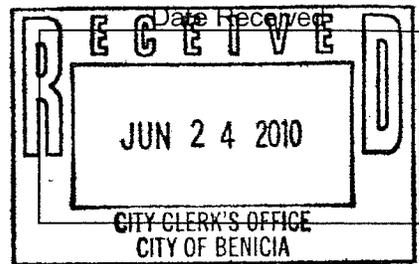
Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk





**City of Benicia Board/Commission/Committee Application**

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Arts and Culture Commission
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Civil Service Commission
- Economic Development Board
- Finance, Audit & Budget Committee
- Historic Preservation Review Commission
- Human Services & Arts Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sustainability Commission
- Sky Valley Open Space Committee
- Uniform Code Board of Appeals

Name: Anthony Shannon

Address: [REDACTED]

Phone: (Work) [REDACTED] (Home) [REDACTED]

(Cell) [REDACTED] Fax: [REDACTED]

Email: tony@miyoji.com Years as Benicia resident: 20

Occupation/Employer: Self - Miyoji Productions

Please note your most recent community or civic volunteer experience:  
Most recently, I participated in the Rebuilding Together Solano County workday, here in Benicia at the house at West 4th St and K St.

Please describe any applicable experience/training:  
I have been running a business in Benicia for 12 years. I have been active in public participation in City Council meetings and sat on the adhoc committee to re-write our Animal Control Ordinance. I currently sit on the Board of Directors of the Vallejo Chamber of Commerce and Vallejo Rotary. I have been an

*All applications are considered public records and will be retained in an active file for at least one year from date of receipt.*

Signature: *Anthony Shannon* Date: 6/29/10





# PROCLAMATION

IN RECOGNITION OF

## STEVE SCHUELER

**WHEREAS**, Steve Schueler was performing maintenance duties at the First Street Pier on June, 2010; and

**WHEREAS**, Steve found a woman who had collapsed inside a public restroom at the First Street Pier; and

**WHEREAS**, Steve quickly contacted 911 for medical assistance; and

**WHEREAS**, without Steve's extra efforts, the woman, who suffered a stroke and had fallen, could have remained there through the night; and

**WHEREAS**, the American Red Cross has an annual program for Solano County residents who perform acts of "extraordinary courage and kindness"; and

**WHEREAS**, Steve received an Act of Kindness and Philanthropy Heroes award for 2010, along with recognition from the Governor and the Office of the State Assembly; and

**WHEREAS**, his actions are a credit to the City of Benicia and to the community.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the City Council, do hereby honor and recognize Steve Schueler's heroic act of kindness.

\_\_\_\_\_  
Elizabeth Patterson, Mayor  
November 2, 2010







# PROCLAMATION

## WELCOMING

### DARIO CARACAPPA

**WHEREAS**, the citizens of Benicia welcome Dario Caracappa from his home in Palermo, Italy; and

**WHEREAS**, Dario will live in Benicia for this school year as part of the Rotary International Youth Exchange Program that exchanges with over 80 countries and over 8,000 students each year; and

**WHEREAS**, Dario will be staying with 3-4 different host families who have opened their homes and their lives, and will experience several Rotary sponsored trips and tours during his stay; and

**WHEREAS**, Dario is a Senior at Benicia High School and is doing very well in school with several A's, is on the soccer team, and hopes to join the wrestling team this winter; and

**WHEREAS**, the citizens of Benicia believe that helping students understand the diversity of cultures throughout the world is beneficial to our community.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the citizens of Benicia, do hereby welcome Dario Caracappa and encourage him to enjoy his stay in our wonderful City of Benicia.

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Elizabeth Patterson, Mayor  
November 2, 2010





MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
October 12, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 5:31 p.m.

**II. CONVENE OPEN SESSION:**

**A. ROLL CALL**

Council Member Campbell was absent.

**B. PLEDGE OF ALLEGIANCE**

Council Member Hughes led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:**

**III. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

**B. PUBLIC COMMENT**

Marilyn Bardet - Ms. Bardet thanked the City and citizens of Benicia for making the 2010 Climate Action Day a success. She invited anyone interested in helping out with the new garden to contact her.

**IV. ADOPTION OF AGENDA:**

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the agenda, as presented, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Hughes, loakimedes

Noes: (None)

**V. ACTION ITEMS:**

**A. FILLING THE VACANCY IN THE OFFICE OF THE CITY TREASURER**

Heather McLaughlin, City Attorney, reviewed the staff report. She described the duties of the City Treasurer. The Finance Department already does almost all of

the duties that used to be required of the position. There is no real power associated with the position. The treasurer would not have the ability to override any duties or information in reports, etc.

Council Member Hughes and Staff discussed any consequences that could occur if Council did not make a decision tonight.

Council concurred with the questions suggested by the City Attorney. The same four questions would be asked of each applicant. Each applicant would wait outside until it was their turn to answer the questions. Council agreed to do a coin toss to see which applicant would go first, since only two of the applicants were present. Chief Vucurevich tossed a coin, and Ms. Davena won the toss. She would go first. Mayor Patterson asked Staff to contact Mr. Fullington to see if he would be attending.

Ms. Davena read an opening statement. Council then asked Ms. Davena the four predetermined questions. No additional questions were asked by Council.

Staff clarified that Mr. Fullington was unaware of the time of the meeting. He was on his way, and should be arriving shortly.

Mr. Langston read an opening statement. Council asked Mr. Langston the four predetermined questions. No additional questions were asked of Mr. Langston.

Council discussed what to do, since Mr. Fullington was still not present. At 6:00 p.m., Council agreed to take a break until Mr. Fullington arrived, or for 15 minutes, whichever came first.

Mr. Fullington arrived at 6:14 p.m.

Mr. Fullington made an opening statement. Council asked Mr. Fullington the four predetermined questions. No additional questions were asked of Mr. Fullington.

Mayor Patterson and Staff discussed the issue of possible conflict if a City employee were appointed (none). They discussed rules regarding candidates who are serving on existing boards or commissions.

Council Member Ioakimedes and Staff discussed the issue of abolishing the position of treasurer in the future. They also discussed what would happen if the issue were put on a ballot, along with the position of the treasurer being on the ballot.

Vice Mayor Schwartzman and Staff discussed the previous direction to Staff to begin working on the issue of eliminating the position of City Treasurer. Ms. McLaughlin clarified that it was her plan to bring forward calling an election to eliminate the position, to bring forward a resolution to reduce the salary to zero,

and to transfer any remaining duties to the City Clerk. Mayor Patterson clarified that it was her understanding that Council had a discussion and asked Ms. McLaughlin to do the research so Council could have further discussions on the issue.

Council discussed whether they would make a decision tonight, or continue the decision to 10/19/10, which would be one day past the deadline. Council agreed it could make a decision tonight.

Public Comment:

None

Council Member Hughes thanked the three candidates for applying. He thought it was the intent and vision of the Council that the position was ceremonial. Based on that, he would select Ms. Davena for the position.

Vice Mayor Schwartzman agreed with Council Member Hughes. He would like to see Teri Davena in the position.

Council Member loakimedes discussed the position of the City Treasurer. It was an opportunity for Council to do an experiment. They have the chance to bring it in-house and try it for a year. He encouraged the other applicants to stay tuned, as the status of the position could change in the future.

Mayor Patterson thanked the candidates for applying. Mayor Patterson discussed her desire to appoint Teri Davena to the position. She was impressed with Mr. Langston's resume, and hoped the City could find a position for him on a commission or board.

Mayor Patterson clarified the previous direction to staff regarding the position of City Treasurer was to pursue the issue of eliminating the position, and to report back to Council on the findings.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the Resolution, appointing Teri Davena as City Treasurer, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Hughes, loakimedes

Noes: (None)

**B. ARSENAL INVESTIGATION AND REMEDIATION COMMITTEE REPORT ON MEETING WITH THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

Heather McLaughlin, City Manager, reviewed the staff report. She discussed the meeting that took place with DTSC, DOJ, Army Corp of Engineers, and various property owners. She discussed Staff's recommendation for the City to hire an

experienced consultant to assist the City with the issue. She recommended sending out a request for qualifications, and having her and the Council Subcommittee review the applications and report back to Council on their findings and recommendations.

Mayor Patterson discussed the need for a person who has experience in dealing with DTSC and the DOD, to ensure the City's interests are protected. She discussed the need to deliver a clear message to them that they need to pay for the pollution that they left. She discussed the devastation that could have been caused by the grenade that was found at the Valero refinery in 2008. Valero feels they need more information and clarity on the situation. She discussed the Army blowing off the issue of the trichloroethylene in the area. She discussed the Army's delay tactics. She was determined to make sure the Army steps up and takes responsibility, at their cost, and not the cost of the City or property owners. She wants to make sure the message to the federal and state elected representatives that we need to challenge the U.S. Government that they need to come forward and put money on the table so we can take the next step and get clarity on contamination, develop standards for clean up, and then do the process of a clean up. She discussed the DOJ's involvement. There needs to be a clear process of clarity and transparency with the property owners. She hoped there would be a direction to the City Attorney to hire consultant who has a successful track record in negotiating with the DTSC and with the federal government (particularly with the Army).

Vice Mayor Schwartzman discussed the City and property owners being stuck in between two bureaucracies (DTSC and DOD). He hoped to find a way to move forward with no cost to the City or property owners. He did not know how that would be done without the property owners coming up with money and not be on the line for the cost of the characterization. The City needs to have an experienced consultant on board. The City might also need an environmental attorney on board. That will be a cost to the City. He did not think the City would be able to recoup the costs. He found some encouragement in the meeting regarding some of the properties not having to be included in the process.

Council Member Hughes discussed his expectation there would be a common sense approach to this that would not have a financial hardship on the property owners. He did not understand why DTSC was not taking that into consideration. Mayor Patterson explained the issues between DTSC and DOD.

Council discussed the differences between an order and a voluntary consent to clean the property up.

Council Member Ioakimedes discussed the bureaucracy that he experienced at the meeting with the DTSC and DOD. They are not our allies in this situation. The DOD and DOJ's goal is to keep this at arms length and spend a minimal amount of money. DTSC's goal is to clean this up, and they will steamroll right

through the City to get it done. Common sense does not enter into it. He agreed the City needed professional help to deal with the issue. The City needs to work with its citizens. He was uncomfortable with why the Arsenal issues had gone underground. He would like to have a conversation as to what happened.

Mayor Patterson discussed how DTSC deals with responsible parties in situations such as this. She discussed the process going 'underground' in 2005.

Public Comment:

Marilyn Bardet - Ms. Bardet discussed her frustration with the City's processes with the Arsenal. She discussed the suspected problems throughout the Arsenal. She discussed her concern for the small-scale property owners in the Arsenal. She discussed the need to involve the EPA. The army should pay its fair share.

Dana Dean, Attorney representing Amports - Ms. Dean discussed DTSC's waking up because the City asked them to. She discussed the DTSC and their obligation to the property owners. The City does not have authority over the DTSC. She asked Council to ask for either a consent order in place or an endangerment order in place. She disagreed with DTSC that an order on the property did not make a difference. Things to think about are the DTSC wanting the City to enter into a contract by 12/9/10. She asked Council to ask the DTSC to slow the process down, so it could be more rational. Potentially responsible parties (PRP) could be identified down the line. She hoped they could work through the negotiating process until Army comes up with a list of PRP's. She agreed the City needs a consultant and a lawyer who is experienced in this area of expertise.

Mayor Patterson discussed Staff seeking clarification on what DTSC wanted to hear by the 12/9/10 date.

Vice Mayor Schwartzman and Ms. Dean discussed various communications between the parties involved, and the need for everyone to have copies of all communications.

Council Member Ioakimedes asked Ms. Dean for clarification on what she would like the City to ask the DTSC for. Other potential courses of action could be PRP letters going out, or entering into a voluntary clean up agreement. Ms. Dean would like the state and federal officials to respect the PRP identification process, and work through the clean up agreement process before they issue endangerment orders.

Council Member Hughes discussed the need for horsepower to move forward with this. He agreed Council should try to get DTSC to slow the process down.

Mayor Patterson discussed the Potter's property, and the issue of

trichloroethylene. She discussed the need to be cautious and not get caught in a trap by the Army, and end up liable for any of this.

Ms. Dean requested the City apply the same kind of political pressure that brought DTSC forward in the first place.

Mayor Patterson and Staff discussed the \$4.9 million cost for sight characterization. Mayor Patterson discussed the need for clarification from the DTSC on the estimates.

Vice Mayor Schwartzman discussed the issue of DTSC's concerns regarding UXO's (unexploded ordnance), plume, and health risk concerns.

Council Member loakimedes discussed the need to figure out what could have been done differently in February 2010 that could have prevented this situation from getting to this point. He would like to have a conversation about that.

Jim Lessenger - Dr. Lessenger discussed the original letter from the Army Core of Engineers many years ago. It is somewhere in the City's archives. It is an embarrassing letter for the Army Core of Engineers. He discussed the State owned property in the Arsenal. He discussed the various other PRP's. He discussed the 1912 explosion at the Clock Tower, and how the Army dealt with it. The issue of UXO's has not been totally answered by the Army Corp of Engineers.

Mayor Patterson gave direction to have Staff find consultant/attorney with experience negotiating with DTSC and the U.S. Government (Army), work on developing a communication plan, coming up with a strategy that would get the Army to look at the munitions of environmental concern and the UXO's, and perhaps providing a priority to look at that, develop strategy for state and federal assistance, getting a clarification of characterization steps and cost, having a strategy meeting with DOJ for the report that is due 12/9/10, getting an understanding of the priority areas in the Arsenal, develop strategy to convince DTSC to slow down, developing a parallel track to convince the Army to look at the UXO's and MEC's (munitions and explosives of concern), and identify a funding mechanism for consultant/attorney costs. Staff will issue an RFQ, and work with the Council Subcommittee, then bring it back to Council. Staff will present this to Council at the second meeting in November. Staff and Council discussed working with the DOJ, coming up with a report, and the possibility of the DTSC working with the City on the 12/9 due date.

## VI. INFORMATIONAL ITEM:

### A. Verbal update on Pipelines and Safety

Chief Vucurevich reviewed the staff report.

Council Member Ioakimedes and Staff discussed the issue of shutoff valves.

Vice Mayor Schwartzman and Staff discussed the age of various pipelines, potential issues (not on PG&E's top 100 list), and the proximity of the pipelines to seismic areas.

Mayor Patterson and Staff discussed possibly getting a video showing the response of the San Bruno explosion for training purposes (lessons learned, etc).

Council Member Hughes discussed the press conference PG&E had today regarding moving forward with improved maintenance of pipelines. Property owners could go online for information on pipelines ([www.pge.com](http://www.pge.com)).

#### Public Comment:

Marilyn Bardet - Ms. Bardet discussed an experience she had in the 1990's with a gas leak.

Mr. Erickson discussed how proactive Staff had been with PG&E since the San Bruno explosion.

## VII. CLOSED SESSION:

Heather McLaughlin read the announcement of Closed Session.

### A. CONFERENCE WITH LABOR NEGOTIATOR (Government Code Section 54957.6 (a))

**Agency negotiators: Council Subcommittee, City Manager,  
Administrative Services Director**

Employee organizations: City Manager, Benicia Middle Management Group, Local 1, Benicia Public Service Employees' Association (BPSEA), Police Officers Association (BPOA), Benicia Firefighters Association (BFA), Benicia Dispatchers Association (BDA), Police Management, Unrepresented.

### B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Subdivision (b) of Government Code Section 54957) Title: City Manager

- C. **PUBLIC EMPLOYEE APPOINTMENT (Government Code Section §54957(b)) Employee: City Manager**
- D. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision (a) of Government Code Section 54956.9) Name of case: City of Benicia vs. Lighthouse Covenant Fellowship, et al.**
- E. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 Number of Potential cases: #1**

**VIII. ADJOURNMENT:**

Mayor Patterson adjourned the meeting to Closed Session at 8:07 p.m.

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
October 19, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 6:00 p.m.

**II. CONVENE OPEN SESSION:**

**A. ROLL CALL**

Council Member Campbell arrived at 6:01 p.m.

**B. PLEDGE OF ALLEGIANCE**

Mayor Patterson led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC**

**III. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

**B. PUBLIC COMMENT**

None

**IV. ADOPTION OF AGENDA:**

**V. CLOSED SESSION:**

Heather McLaughlin, City Attorney, read the announcement of Closed Session.

**A. CONFERENCE WITH LABOR NEGOTIATOR  
(Government Code Section 54957.6 (a))**

**Agency negotiators: Council Subcommittee, City Manager,  
Administrative Services Director**

Employee organizations: City Manager, Local 1, Benicia Public Service

Employees' Association (BPSEA), Police Officers Association (BPOA), Benicia Firefighters Association (BFA), Benicia Dispatchers Association (BDA), Police Management, Unrepresented.

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Subdivision (b) of Government Code Section 54957)**

Title: City Manager

**C. PUBLIC EMPLOYEE APPOINTMENT  
(Government Code Section §54957(b))**

Employee: City Manager

**VI. ADJOURNMENT:**

Mayor Patterson adjourned the meeting to Closed Session at 6:02 p.m.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
October 19, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 7:16 p.m.

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

All Council Members were present.

**B. PLEDGE OF ALLEGIANCE**

Kelly Hughes led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC**

**IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**A. ANNOUNCEMENTS**

**1. Announcement of action taken at Closed Session, if any.**

Ms. McLaughlin listed the Closed Session items. Council did not get to item V.B (Public Employee Performance Evaluation). Council received information from Staff on items V.A and V.C.

**2. Openings on Boards and Commissions:**

Finance, Audit and Budget Committee: One unexpired term to January 31, 2013

Open Government Commission: One unexpired term to January 31, 2013

Sky Valley Open Space Committee: One unexpired term to January 31, 2011

**3. Mayor's Office Hours**

**B. APPOINTMENTS**

**C. PRESENTATIONS**

**D. PROCLAMATIONS**

**1. In Recognition of Red Ribbon Week**

**V. ADOPTION OF AGENDA:**

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the agenda, as presented, on roll call by the following vote:  
Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes  
Noes: (None)

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

**B. PUBLIC COMMENT**

Marilyn Bardet, Community Sustainability Commission - Ms. Bardet discussed the commission's concern regarding staff support time from the City. The commission needs the staff support in order to carry out its goals.

Mayor Patterson asked Staff to prepare the annual report from the Community Sustainability Commission a few months early. She would like to have it for the second Council meeting in November or first meeting in December. Staff should provide the support to the commissioners and help them prepare the report.

Dan Clark, BOTTG - Mr. Clark discussed the BOTTG's recent production of 'Fences.'

Kimble Goodman - Mr. Goodman discussed the work done by playwright August Wilson. He encouraged people to go to the play.

**VII. CONSENT CALENDAR:**

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the Consent Calendar, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

Council pulled items VII-B, VII-F, VII-H, and VII-K for discussion.

**A. Approval of Minutes for Special Meetings of September 9, 2010, September 20, 2010, September 22, 2010, October 5, 2010 and Regular Meeting of October 5, 2010**

**B. FIVE-YEAR UPDATE TO THE CITY'S URBAN WATER MANAGEMENT PLAN**

RESOLUTION 10-138 - A RESOLUTION APPROVING A CONTRACT WITH CAMP DRESSER & MCKEE, INC. FOR A NOT-TO-EXCEED COST OF \$88,010 TO ASSIST IN PREPARATION OF THE FIVE-YEAR UPDATE TO THE CITY'S URBAN WATER MANAGEMENT PLAN AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

Council Member loakimedes and Staff discussed why the City had to go through this process, when other communities do not even have water meters.

On motion of Council Member loakimedes, seconded by Vice Mayor Schwartzman, Council approved the five-year update to the City's Urban Water Management Plan, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

**C. APPLICATION FOR FUNDING FROM THE BAY AREA REGIONAL FOCUS PROGRAM FOR DOWNTOWN BENICIA PRIORITY DEVELOPMENT AREA**

RESOLUTION 10-133 - A RESOLUTION SUPPORTING AN APPLICATION FOR FUNDING FROM THE BAY AREA REGIONAL FOCUS PROGRAM TO ADVANCE IMPLEMENTATION OF TRANSIT ORIENTED IMPROVEMENTS IN BENICIA'S DOWNTOWN PRIORITY DEVELOPMENT AREA

**D. APPROVAL OF 2010-2011 BUDGET BALANCING ADJUSTMENTS PREVIOUSLY AUTHORIZED BY THE CITY COUNCIL**

RESOLUTION 10-134 - A RESOLUTION APPROVING THE ADJUSTMENTS TO THE MUNICIPAL BUDGETS FOR FISCAL YEAR 2010-2011

**E. DENIAL OF THE CLAIM AGAINST THE CITY BY MARY LOVELACE AND REFERRAL TO INSURANCE CARRIER**

**F. CANCELLATION OF THE NOVEMBER 2, 2010 CITY COUNCIL MEETING**

Council discussed having a short meeting on 11//2/10. They discussed possibly canceling the 12/21/10 meeting instead.

Public Comment:

None

On motion of Council Member Hughes, seconded by Council Member loakimedes, Council did not cancel the 11/2/10 City Council meeting, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

**G. ADOPT CHANGES TO THE MASTER FEE SCHEDULE THAT WERE PREVIOUSLY AUTHORIZED BY THE CITY COUNCIL**

RESOLUTION 10-135 - A RESOLUTION ADOPTING A MASTER FEE SCHEDULE THAT INCLUDES CHANGES IN DEPARTMENTAL FEES AND CHARGES

**H. APPROVAL OF A CONTRACT AMENDMENT FOR ANN GOODRICH**

RESOLUTION 10-139 - A RESOLUTION APPROVING THE CONTRACT AMENDMENT IN THE AMOUNT OF \$40,000 WITH ANN GOODRICH FOR HUMAN RESOURCES SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

Mayor Patterson asked Staff to review this item, as there were concerns raised by the public regarding the use of a contractor for the interim position.

Jim Erickson, City Manager, reviewed various reasons for using Ms. Goodrich, a contractor, in the capacity as Interim Human Resources Manager.

Public Comment:

Dennis Lowry - Mr. Lowry discussed concerns regarding the contractor costs. He believed the costs were more than they would be to hire someone for the position. He was not sure if the City was getting a return on the investment.

Council and Staff discussed the importance of having a highly quality individual in the position.

**I. RESOLUTION AMENDING THE CITY'S CONFLICT OF INTEREST CODE**

RESOLUTION 10-136 - A RESOLUTION AMENDING THE CITY'S CONFLICT OF INTEREST CODE

**J. APPOINTMENT OF THE INTERIM CITY MANAGER**

RESOLUTION 10-137 - A RESOLUTION HIRING JIM ERICKSON AS THE INTERIM CITY MANAGER

**K. APPROVE THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA MIDDLE MANAGEMENT GROUP**

RESOLUTION 10-140 - A RESOLUTION APPROVING THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA MIDDLE MANAGEMENT GROUP

Mayor Patterson pulled this item because this item was very important to the community members. She wanted to bring to the public's attention the approach Council was taking. She asked Staff to highlight the reasons why this agreement was acceptable.

Jim Erickson, City Manager, briefly reviewed the agreement.

Public Comment:

Dennis Lowry - Mr. Lowry urged Council to reconsider the issue. He did not think the proposal went far enough. He recommended the City look at what the private sector was doing regarding salary reduction, vacation, PTO, administrative leave, etc. He stressed the importance of waiting to see what the represented groups agree to before making decisions on non-represented group. He did not think 3% was enough of a reduction in pay.

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

**L. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda**

**VIII. PUBLIC HEARINGS:**

**A. YUBA HEIGHTS TENTATIVE SUBDIVISION MAP REQUEST FOR EXTENSION**

RESOLUTION 10-141 - A RESOLUTION APPROVING A TWO-YEAR EXTENSION TO SEPTEMBER 4, 2012 TO AN APPROVED SUBDIVISION PURSUANT TO CITY COUNCIL RESOLUTION NO. 07-103 FOR THE YUBA HEIGHTS PROPERTY LOCATED ON EAST H AND EAST I STREETS EAST OF EAST SIXTH STREET

Charlie Knox, Public Works & Community Development Director, reviewed the staff report.

Public Hearing Opened

Public Comment:

Dan Rafanti - Mr. Rafanti discussed support for the extension.

Public Hearing Closed

**IX. ACTION ITEMS:**

**A. UPDATE ON STRATEGIC ACTIONS AND CAPITAL PROJECTS**

Jim Erickson, City Manager, reviewed the staff report. He and various staff members reviewed a PowerPoint presentation (copy on file).

Council and Staff discussed the following items:

**Health and Safety:**

CAN System Public Education:

Council and Staff discussed the issue of sirens, and tabletop exercises.

Emergency Communication Interoperability:

Council and Staff discussed the current agreement between Benicia and Vallejo fire dispatch.

**Environment:**

Climate Action Plan Implementation:

Council and Staff discussed the letter the City sent to Valero regarding the leasing of the 1.2-acre property. Staff sent the letter late last week, but had not received a response yet.

New Solid Waste Franchise:

Council discussed the timing of the proposed agreement.

**Economic and Financial:**

Tourism Marketing Program:

Council and Staff discussed how the City would maintain continuity during Ms. Lorentz's maternity leave.

E Street Lot Project:

Mayor Patterson and Staff discussed an email Mayor Patterson sent to Staff. They also discussed how this could affect the future waterfront park.

BIP Technology Needs Assessment:

Council and Staff discussed the need to pull the telecommunication providers together to begin to look at some competition out there. Council discussed the issue of a potential assessment district, as well as some sort of surcharge fee or IT fee.

Arsenal Specific Plan:

Council and Staff discussed the need to make sure the plan does not get gobbled up by DTSC. The City is better served as a community to be as aggressive in the area as possible.

Council discussed the Lower Arsenal Specific Plan, and the issues currently going on with the DTSC. Updates on the Arsenal need to connect the two issues, as they are interrelated.

Staff gave an update on the letter the City is sending to the DTSC.

**Infrastructure:**

2010-11 Street Resurfacing:

Council and Staff discussed concern regarding the lower Rose Drive area, and the number of patches in the streets.

Industrial Way Widening:

Council and Staff discussed the issue of the rising sea level, seepage, etc. There are engineering issues that will make the project difficult.

Transit Service Consolidation:

Council and Staff discussed the issue of Vallejo's bankruptcy, and the money Vallejo Transit has in reserves.

Public Comment:

None

**B. APPROVAL OF SITE PLAN FOR WESTERN GATEWAY INTERMODAL PROJECT**

Charlie Knox, Public Works & Community Development Director, reviewed the staff report.

Council Member Campbell and Staff discussed the funding from STA.

Council Member Hughes and Staff discussed the layout of the site plan, and what various markings were. They discussed a previously approved subdivision in the area, and what affects this plan would have on those homes. They also discussed the public outreach that was done in the area regarding the project.

Vice Mayor Schwartzman and Staff discussed the issue of parking spaces in the area. They discussed how the parking spaces might be affected if houses were built in the area. Mayor Patterson suggested staff monitor the issue.

Public Comment:

None

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council approved the site plan for a Western Gateway Intermodal Project, and directed Staff to proceed with design, environmental clearance, and construction of improvements at the location, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

**C. APPROVAL OF SITE PLAN FOR DOWNTOWN INTERMODAL PROJECT**

Mayor Patterson recused herself due to a conflict of interest.

Charlie Knox, Public Works & Community Development Director, reviewed the staff report.

Council Member Campbell and Staff discussed the issue of bike lanes.

Council Member Hughes and Staff discussed any demand analysis that was done for the project, the indirect impact that could happen if this program became hugely popular.

Public Comment:

Donna Sheehan - Ms. Sheehan spoke in opposition to the proposed tree planting, as it would make visibility difficult for drivers and pedestrians.

Council Member Hughes and Staff discussed the issue of the proposed tree

planting. He asked Staff to ensure the public speakers receive an invitation to any workshop or meeting on this issue.

Jim Wallace - Mr. Wallace discussed concerns regarding the intersection at Military and First Street. He did not like the idea of a plaza. He had concerns regarding altering a historic park.

Council Member Hughes discussed concerns regarding the plaza design. He was inclined to support the recommendations of the workshop.

Council Member loakimedes discussed how he liked the visual design of the plaza, but was concerned about creating a corridor that bypasses the Downtown area.

Council Member Campbell and Staff discussed the possibility of changing the stoplight sequencing to address traffic concerns. He was concerned about the right hand turn lane.

Mr. Knox suggested Council could give Staff the go ahead with the site plan that came out of the workshop, and also give Staff direction to explore the plaza alternative and to bring back the analysis of the plaza alternative to Traffic, Pedestrian and Bicycle Safety Committee so they could make a recommendation to Council.

Mayor Schwartzman discussed his preference for going forward with the workshop plan, but to have the engineers bring back some other information.

Council Member Hughes made a motion to approve a site plan for the intermodal transportation improvements along Military between West 2nd Street and First Street and extending south along First Street to K Street, and direct Staff to proceed with design, environmental clearance, and construction of improvements at this location, and to do additional work on the option of the right-hand turn, and to bring back to Council additional details or creative options as well.

On motion of Council Member Hughes, seconded by Council Member loakimedes, Council approved the site plan for the Downtown Intermodal Project, with additional direction to Staff, on roll call by the following vote:

Ayes: Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

Abstain: Patterson

**X. INFORMATIONAL ITEMS:**

**A. City Manager Reports**

**B. Council Member Committee Reports**

1. **Mayor's Committee Meeting.**  
**Next Meeting Date: October 20, 2010**

Mayor Patterson discussed the upcoming Mayor's Conference that would be hosted by the City of Benicia.

2. **Association of Bay Area Governments (ABAG).**  
**Next Meeting Date: October 21, 2010)**
3. **Finance, Audit and Budget Committee.**  
**Next Meeting Date: October 20, 2010**

Council Member Campbell reported on the committee's discussion of the direction from Council to change the meeting time, and additional work of studying the budget.

Mayor Patterson clarified the previous direction to the FAB. She will make a list of what Council would like the FAB to do.

Council and Staff discussed the previous direction to the FAB. Council could also use Staff to do exploration of various issues. They discussed the issue of a Citizen Budget Task Force. The FAB could sponsor a certain area of concern and hold an informational meeting for the community on that topic.

4. **League of California Cities.**  
**Next Meeting Date: November 16, 2010)**
5. **School Liaison Committee.**  
**Next Meeting Date: December 9, 2010**
6. **Sky Valley Open Space Committee.**  
**Next Meeting Date: November 3, 2010**
7. **Solano EDC Board of Directors.**  
**Next Meeting Date: November 18, 2010**
8. **Solano Transportation Authority (STA).**  
**Next Meeting Date: October 13, 2010**
9. **Solano Water Authority-Solano County Water Agency and Delta Committee.**  
**Next Meeting Date: October 14, 2010**
10. **Traffic, Pedestrian and Bicycle Safety Committee.**  
**Next Meeting Date: October 21, 2010**
11. **Tri-City and County Regional Parks and Open Space.**

**Next Meeting Date: December 13, 2010**

**12. Valero Community Advisory Panel (CAP).  
Next Meeting Date: TBD**

**13. Youth Action Coalition.  
Next Meeting Date: October 27, 2010**

**14. ABAG-CAL FED Task Force-Bay Area Water Forum.  
Next Meeting Date: December 6, 2010**

**XI. COUNCIL MEMBER REPORTS:**

**A. Request to agendaize the Two Step Process**

Vice Mayor Schwartzman discussed the need to revisit the two-step process.

On motion of Council Member Hughes, seconded by Council Member loakimedes, Council approved placing this issue on a future agenda, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

**XII. ADJOURNMENT:**

The meeting was adjourned at 10:33 p.m.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - NOVEMBER 2, 2010**  
**CONSENT CALENDAR**

**DATE** : October 21, 2010

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **GRANTING OF AUTHORITY TO THE CITY TREASURER FOR DEPOSITING AND WITHDRAWING OF CITY MONIES IN THE LOCAL AGENCY INVESTMENT FUND**

**RECOMMENDATION:**

Adopt the resolution authorizing the deposit and withdrawal of City monies in the Local Agency Investment Fund (LAIF) by the appointed City Treasurer.

**EXECUTIVE SUMMARY:**

The attached resolution grants authority to the appointed City Treasurer to deposit and withdraw City monies in the LAIF. The City Treasurer is granted authority at LAIF in case both the Finance Director and Assistant Finance Director are not available. LAIF requires a resolution with the Treasurer's name whenever there is a change, which occurred on October 12, 2010.

**BUDGET INFORMATION:**

There is no budget impact to the City by adopting the resolution.

Attachments:

- Resolution



On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 2<sup>nd</sup> day of November, 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - NOVEMBER 2, 2010**  
**CONSENT CALENDAR**

**DATE** : October 21, 2010

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 2010**

**RECOMMENDATION:**

Accept, by motion, the investment report for the quarter ended June 2010.

**EXECUTIVE SUMMARY:**

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Finance, Audit and Budget Committee have reviewed these reports and recommends acceptance.

**BUDGET INFORMATION:**

There is no effect on the City's budget.

**BACKGROUND:**

The City's investment portfolio consists of cash balances in checking accounts (less outstanding checks), Local Agency Investment Fund, treasury bills, federal agency notes and trustee accounts which manage the installment payments and reserves for bonds issued by the City.

The City has adequate investments to meet its expenditure requirements for the next six months. In addition, the City's investment portfolio is in compliance with Government Code Sections 53600 et seq. and the City's Investment Policy. The Finance, Audit and Budget Committee have reviewed these reports and recommends acceptance.

The attached schedules identify the City's investments by maturity date, investment type, custodian of investment and cost. The market value information is provided by Union Bank and California State Controller's Office for the LAIF investments.

Attachment:

- Investment Report for June 2010

**City of Benicia  
Investment Report  
As of June 30, 2010**

Type of Investment	Name of Issuer	Purchase Date	Maturity Date	Current Yield	Par Value	Cost of Investment	Current Market Value
<b>On Demand</b>							
L.A.I.F.	L.A.I.F.			0.528%	\$ 10,721,519.46	\$ 10,721,519.46	\$ 10,739,143.24
Checking	Bank of America			0.600%	3,290,555.88	3,290,555.88	3,290,555.88
Money Market	Union Bank			0.050%	336,249.49	336,249.49	336,249.49
Money Market	Union Bank			0.050%	194,889.54	194,889.54	194,889.54
Subtotal					14,543,214.37	14,543,214.37	14,560,838.15
<b>Up to 6 Months</b>							
US Obligation	FHLMC	16-Jan-07	16-Aug-10	4.850%	500,000.00	497,190.00	502,905.00
US Obligation	FHLMC	30-Nov-06	8-Dec-10	4.660%	500,000.00	499,370.00	509,845.00
Subtotal					1,000,000.00	996,560.00	1,012,750.00
<b>6 Months to 1 Year</b>							
US Obligation	FFCB	18-Jan-08	18-Jan-11	3.440%	1,000,000.00	1,009,340.00	1,017,190.00
US Obligation	FHLMC	17-Dec-07	24-Feb-11	4.030%	750,000.00	752,227.50	767,580.00
US Obligation	FHLB	17-Nov-08	11-Mar-11	3.190%	1,250,000.00	1,250,650.00	1,274,612.50
US Obligation	FNMA	18-Apr-08	15-Apr-11	4.940%	965,000.00	1,022,186.87	1,001,486.65
US Obligation	FFCB	11-May-07	25-Apr-11	4.630%	500,000.00	498,780.00	517,815.00
US Obligation	FHLB	15-May-08	20-May-11	2.580%	1,000,000.00	979,335.00	1,019,380.00
US Obligation	FHLB	5-Jun-09	3-Jun-11	1.120%	1,000,000.00	993,465.20	1,006,250.00
Subtotal					6,465,000.00	6,505,984.57	6,604,314.15
<b>1 Year to 2 Years</b>							
US Obligation	FHLMC	22-Oct-08	15-Sep-11	5.190%	1,500,000.00	1,580,167.50	1,589,531.25
US Obligation	FHLMC	5-Dec-08	15-Sep-11	5.190%	1,370,000.00	1,477,892.98	1,451,779.05
US Obligation	FHLB	13-Nov-08	18-Nov-11	4.600%	1,400,000.00	1,476,021.40	1,482,250.00
US Obligation	FNMA	24-Nov-09	23-Nov-11	0.990%	750,000.00	751,612.50	754,687.50
US Obligation	FFCB	3-Apr-07	8-Dec-11	4.380%	500,000.00	495,205.00	527,500.00
US Obligation	FFCB	24-Nov-09	17-Jan-12	1.960%	750,000.00	765,547.50	765,937.50
US Obligation	US Treasury	16-Mar-10	29-Feb-12	0.870%	1,000,000.00	998,750.00	1,005,350.00
US Obligation	FHLMC	17-Sep-07	5-Mar-12	4.450%	1,000,000.00	1,003,890.00	1,068,440.00
US Obligation	FNMA	29-May-09	20-Apr-12	1.840%	1,900,000.00	1,907,676.00	1,939,786.00
US Obligation	FNMA	4-Oct-07	18-May-12	4.530%	750,000.00	756,780.00	807,892.50
US Obligation	FHLB	11-Jun-09	20-Jun-12	1.830%	1,050,000.00	1,039,185.00	1,072,974.00
Subtotal					11,970,000.00	12,252,727.88	12,466,127.80

**City of Benicia  
Investment Report  
As of June 30, 2010**

Type of Investment	Name of Issuer	Purchase Date	Maturity Date	Current Yield	Par Value	Cost of Investment	Current Market Value
<b>2 Years to 3 Years</b>							
US Obligation	FFCB	25-Sep-07	1-Aug-12	4.810%	500,000.00	509,923.50	545,940.00
US Obligation	FHLB	1-Mar-10	15-Oct-12	1.120%	1,270,000.00	1,272,946.40	1,271,193.80
US Obligation	FNMA	17-Feb-10	25-Jan-13	2.110%	750,000.00	754,822.50	755,160.00
US Obligation	FNMA	15-Jan-10	22-Feb-13	1.720%	750,000.00	749,260.88	764,535.00
US Obligation	FNMA	26-Feb-10	26-Feb-13	1.120%	1,000,000.00	999,000.00	1,000,630.00
US Obligation	US Treasury	26-Mar-10	15-Mar-13	1.360%	750,000.00	744,404.30	759,727.50
US Obligation	FHLMC	4-Mar-10	15-Apr-13	1.600%	1,000,000.00	998,600.00	1,015,000.00
US Obligation	FNMA	11-May-10	30-Apr-13	2.000%	1,000,000.00	1,001,100.00	1,001,250.00
US Obligation	FHLMC	26-Apr-10	29-May-13	3.280%	1,200,000.00	1,260,252.00	1,282,128.00
US Obligation	FNMA	11-Jun-10	10-Jun-13	1.000%	500,000.00	500,000.00	500,780.00
Subtotal					8,720,000.00	8,790,309.58	8,896,344.30
<b>3 Years to 5 Years</b>							
US Obligation	US Treasury	26-Mar-10	30-Apr-14	1.840%	1,000,000.00	986,601.56	1,018,050.00
US Obligation	FNMA	1-Apr-10	30-Mar-15	2.240%	500,000.00	499,875.00	501,875.00
US Obligation	FNMA	29-Apr-10	29-Apr-15	1.550%	500,000.00	500,000.00	501,565.00
Subtotal					2,000,000.00	1,986,476.56	2,021,490.00

Total (before fiscal agent accounts) \$ 44,698,214.37 \$ 45,075,272.96 \$ 45,561,864.40

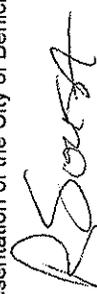
Fiscal Agent Accounts 147,122.25 147,122.25

**TOTAL INVESTMENT PORTFOLIO** \$ 45,222,395.21 \$ 45,708,986.65

**INVESTMENTS WITH PFM** \$ 16,068,856.48 \$ 16,280,066.94  
**INVESTMENTS WITH MBIA** \$ 14,994,341.14 \$ 15,252,098.34

**WEIGHTED AVERAGE MATURITY OF THE INVESTMENT PORTFOLIO** 1.92 Years

The City of Benicia complies with Government Code Sections 53600 et seq. and the City's Investment Policy. The source of market value is Union Bank of California. The City has the ability to meet expenditure requirements for the next six months. This report, to the best of my knowledge, is accurate representation of the City of Benicia's investments.



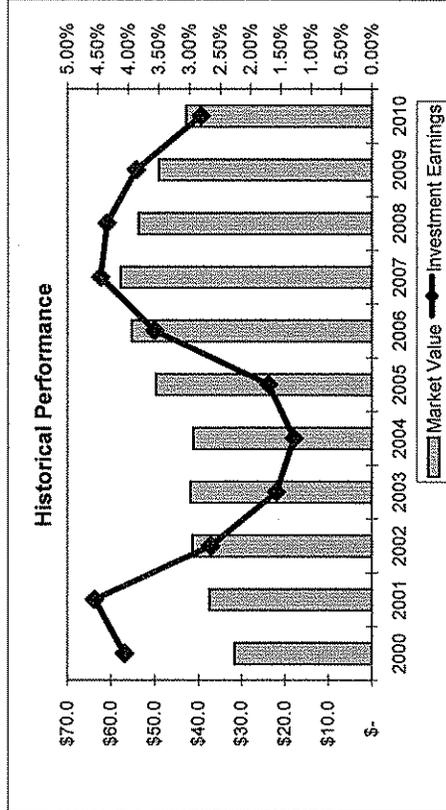
Robert Sousa, Director of Finance

Mark to Market(Gain) \$ 486,591.44

**City of Benicia  
Historical Portfolio Comparison**

Market Value (Millions)					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2000	\$ 28.4	\$ 31.2	\$ 31.8	\$ 35.1	\$ 31.6
2001	33.0	36.7	37.7	42.8	37.5
2002	39.3	41.5	40.3	44.6	41.4
2003	39.7	43.4	39.5	44.8	41.8
2004	39.3	42.8	41.1	41.8	41.3
2005	38.7	53.8	50.0	56.6	49.8
2006	46.9	54.9	55.1	64.3	55.3
2007	57.4	59.3	54.4	60.1	57.8
2008	51.9	54.7	51.4	56.8	53.7
2009	48.1	52.1	47.3	48.7	49.1
2010	42.6	43.7	39.4	45.7	42.9

Investment Earnings					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2000	3.53%	4.17%	4.15%	4.41%	4.06%
2001	4.76%	4.82%	4.58%	4.07%	4.55%
2002	3.52%	2.72%	2.27%	2.01%	2.66%
2003	1.90%	1.61%	1.41%	1.34%	1.57%
2004	1.38%	1.28%	1.24%	1.20%	1.28%
2005	1.31%	1.43%	1.74%	2.33%	1.70%
2006	2.52%	3.76%	3.84%	4.16%	3.57%
2007	4.34%	4.44%	4.46%	4.57%	4.45%
2008	4.56%	4.48%	4.20%	4.15%	4.35%
2009	4.01%	4.07%	4.03%	3.36%	3.87%
2010	3.17%	2.83%	2.65%	2.60%	2.81%



Investment Earnings - Dollars					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2008	319,769.25	789,398.11	474,719.57	731,456.95	578,835.97
2009	275,114.02	580,504.43	577,776.19	736,864.05	542,564.67
2010	299,039.99	294,913.48	228,519.31	92,532.73	228,251.38



**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 2, 2010  
CONSENT CALENDAR**

**DATE** : October 27, 2010

**TO** : Mayor & City Council

**FROM** : City Manager

**SUBJECT** : **APPROVE THE JULY 1, 2010 TO JUNE 30, 2012  
AMENDMENTS TO THE LABOR AGREEMENT WITH PUBLIC  
EMPLOYEES UNION, LOCAL #1**

**RECOMMENDATION:**

Adopt the resolution approving the amendments to the July 1, 2010 through June 30, 2012 Labor Agreement with Public Employees Union, Local #1.

**EXECUTIVE SUMMARY:**

The City concluded negotiations with Local #1 on October 26, 2010. Local #1 consists of 30 incumbents and is comprised of the City's professional, confidential and supervisory employees.

**BUDGET INFORMATION:**

This agreement achieves 3.16% of salary reduction that is required for this group as part of the City's \$1.2 million dollars reduction that is needed in order to balance the City's budget.

Attachments:

- Resolution
- Agreement – Proposed Language
- Agreement – Clean Copy

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
APPROVING THE JULY 1, 2010 TO JUNE 30, 2012 AMENDMENTS TO THE  
LABOR AGREEMENT WITH PUBLIC EMPLOYEES UNION, LOCAL #1**

**WHEREAS**, the existing Agreement between the City of Benicia and Local #1 which covers salaries and other conditions of employment lapsed on June 30, 2010; and

**WHEREAS**, the City has an average of a \$1.2 million dollar deficit over the next two years; and

**WHEREAS**, the City requested Local #1 to negotiate concessions towards closing the \$1.2 million dollar gap; and

**WHEREAS**, the City has concluded negotiations with Local #1 relative to amendments to the Agreement for the term covering July 1, 2010 to June 30, 2012 that achieve the requested concessions; and

**WHEREAS**, Local #1 accepted the terms of the July 1, 2010 to June 30, 2012 amendments to the Agreement.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves changes to the following sections in the July 1, 2010 through June 30, 2012 Agreement with Public Employees Union, Local #1 (a complete copy of the Agreement with the specified amendment language is attached to the staff report), and the City Council authorizes the City Manager to execute the Agreement as amended:

1. Section II - Recognition
2. Section VI – Compensation
3. Section VII - Leave
4. Section XI – Health and Medical Insurance
5. Section XVI – Retirement
6. Section XVIII – Closing Clause

\*\*\*\*\*

On motion of Council Member \_\_, seconded by Council Member  
, the above resolution was introduced and passed by the Council of the City of  
Benicia at a regular meeting of said Council on the 2<sup>nd</sup> day of November, 2010,  
and adopted by the following vote:

Ayes:

Noes:

Absent:

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Elizabeth Patterson, Mayor

ATTEST:

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Lisa Wolfe, City Clerk



**MEMORANDUM OF UNDERSTANDING  
CITY OF BENICIA  
&  
PUBLIC EMPLOYEES UNION, LOCAL #1**

**I. PREAMBLE**

This agreement is entered into by the City of Benicia, hereinafter referred to as the “City,” and the Public Employees Union, Local #1, hereinafter referred to as “Local #1,” for the purpose of promoting harmonious relations between the City and its Professional and Confidential and Supervisory employees to establish an orderly and peaceful procedure, to settle differences which might arise and to set forth the basic, complete and full agreement between the parties concerning salaries and all other conditions of employment, and preclude any further negotiations during its term unless otherwise stated herein.

**II. RECOGNITION**

**A. Recognition of P.E.U., Local #1**

The City of Benicia recognizes Public Employees Union, Local #1 as the majority and exclusive representative of City employees in the Professional and Confidential and Supervisory classifications as set forth below, and in classifications appropriately added to Professional and Confidential or Supervisory hereafter.

**B. Parties to this Agreement**

This agreement is entered into by the City and Public Employees Union, Local #1 in accordance with Government Code Section 3500 et seq.

**C. Professional & Confidential employees covered by this agreement include the following positions:**

Administrative Secretary

Library ~~Assistant~~ Technician I/II

Assistant Engineer

Literacy ~~Project Coordinator~~ Program Supervisor

Assistant Fire Marshall

Management Analyst I/II  
Assistant Planner  
Associate Planner  
Senior Civil Engineer  
Deputy City Attorney I  
Executive Secretary  
~~Information Systems Coordinator~~  
Information Systems ~~Technician~~ Analyst I/II  
~~Youth & Family Counselor~~

Supervisory employees covered by this agreement include the following positions:

Accounting Systems Supervisor  
Field Utilities and Streets Supervisor  
Maintenance Supervisor  
Parks Supervisor  
Plant Supervisor (Water/Wastewater)  
Recreations Supervisor  
Senior Planner  
Water Quality Supervisor

### **III. NON-DISCRIMINATION**

The City shall not discriminate against any employee because of race, color, creed, sex, age, disability, national origin, gender, sexual orientation, or any other State or Federal protected class; nor shall the City discriminate against any employee covered by this Memorandum of Understanding because of membership or non-membership in Local #1, or authorized activity, as required in this Memorandum of Understanding, in behalf of the members of Local #1.

Local #1 shall not unlawfully discriminate against any Professional, Confidential or Supervisory employee because of membership or non-membership in Local #1 or because of race, creed, color, national origin, sex, disability, age, gender or sexual orientation.

The City and Local #1 recognize that the City has an obligation under the Americans With Disabilities Act (ADA) to meet with individual employees who allege a need for reasonable accommodation in the workplace because of a disability. If by reason of the aforesaid requirement, the City contemplates actions to provide reasonable accommodation to an

individual employee in compliance with the ADA which are in potential conflict with any provision of this Memorandum of Understanding, Local #1 will be advised of any such proposed accommodation and be afforded an opportunity to discuss same prior to implementation by the City.

#### **IV. DUES DEDUCTIONS AND FAIR SHARE FEES**

##### **Section 1 Scope of Coverage**

The City and Local #1 have agreed to conduct an election to determine if unit employees wish to implement a Dues Deduction/Fair Share Fee Agreement (hereinafter known as "the Agreement") for employees in the Professional and Confidential and the Supervisory classifications as authorized by Government Code 3502.5. The following provisions shall apply if employees so elect.

##### **Section 2 Deductions**

The City of Benicia agrees to deduct dues, initiation fees and special assessments from the salaries of those employees who sign dues deduction/fair share fee forms said dues/fair share fees, initiation fees and special assessments and remit the total dues/fair share fees, initiation fees and special assessments to Local #1 promptly.

##### **Section 3 Local #1 Responsibilities**

Local #1 agrees that it has a duty to provide fair and nondiscriminatory representation to all employees in the Professional and Confidential and Supervisory classifications, regardless of whether or not they are members of Local #1. All employees in, and all employees subsequently hired, promoted, demoted or transferred into classifications in the Professional and Confidential and Supervisory classifications shall as a condition of employment fulfill one of the following:

- A. Become and remain a member of Local #1; or
- B. Pay to Local #1 a fair share fee in an amount which does not exceed the amount which may be lawfully collected under applicable constitutional, statutory and case law, and which under no circumstances shall exceed the monthly dues, initiation fees and general assessments made during the term of this Agreement; or

- C. Do both of the following:
1. Execute a written declaration to Local #1 with a copy to the Payroll Division of the Auditor/Controller, that the employee has a conscientious religious objection to all unions. The holding of such a belief can be demonstrated by being a member of a bona fide religion, body or sect which has historically held a conscientious objection to joining or financially supporting any union as a condition of employment or providing an affidavit asserting such a conscientious religious belief and statements from two non-relatives that the employee holds such a belief; and
  2. Pay a sum equal to the fair share fee to a nonreligious, non-labor, charitable fund exempt from taxation under Internal Revenue Service Code Section 501(c) (3), chosen by the employee from the following charities:
    - i. Community Action Council of Benicia
    - ii. Friends of Benicia Library
    - iii. Benicia Human Services and Arts Fund
    - iv. Partners Encouraging Parks and Recreation in the Community

#### **Section 4 Compliance**

##### **A. Notice to employee and the City**

An employee in or hired into, a job classification in the Professional and Confidential or Supervisory classifications represented by Local #1 shall be provided with an Employee Authorization for Payroll Deduction form by Local #1. If the form authorizing payroll deduction for Local #1 dues, fair share fees, initiation fee, or charitable contribution is not returned to Local #1 within thirty (30) calendar days after notice of this fair share and initiation fee, Local #1 may, in writing, direct that the City withhold the fair share fee and the initiation fee from the employee's salary, in which case the employee's monthly salary shall be reduced by an amount equal to the fair share and initiation fees, and the City shall pay an equal amount to Local #1.

**B. Forfeiture of Deductions**

If the balance of an employee's wages, after all other involuntary and insurance premium deductions are made in any one pay period, is not sufficient to pay deductions required by this Agreement, no such deduction shall be made for that period.

**C. Withdrawal From Union**

Members shall be able to withdraw their membership by notifying the Union in writing of their desire to withdraw their membership and to become fee payers during the period of May 15-31 of any year. Members may not withdraw from membership at any other time.

**D. Advance Notice of Fair Shares Fees, Fair Share Fee Explanation and Right to Challenge**

No fair share service fee shall be collected from any employee who is not paying dues or a fair share fee until the employee has received written notice from Local #1, which includes legally adequate information concerning the breakdown of "chargeable" and "non-chargeable" expenses. A prompt opportunity, as provided below, shall be established by Local #1 for challenge of the amount of the fee before an impartial arbitrator. An escrow account shall be set up by P.E.U., Local #1 for the amounts in dispute while such challenges are pending.

**Section 5. Hold Harmless**

The authorization for payroll deductions described in this Agreement shall specifically require the employee and Local #1 to agree to hold the City harmless from all claims, demands, suits or other forms of liability that may arise against the City for or on account of any deduction made from the wages of such employee.

Local #1 shall defend, indemnify and hold harmless, release and save the City and its agents and employees against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of, or by reason of, action taken or not taken by the City under this Agreement. This includes but is not limited to the collection and procedures for collection of fair share fees and reasonable cost of City's attorney fees and costs, along with reasonable cost of management preparations time as well.

## **V. MANAGEMENT RIGHTS**

The employee organization agrees that the City retains all its exclusive rights and authority under the law and expressly and exclusively retains its management rights, which include, but are not limited to; the exclusive right to determine the mission of its constituent departments, commissions, boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotions; direct its employees; maintain the efficiency of government operations; determine the methods, means and numbers of kinds of personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to the right to contract for or sub-contract any works operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law; establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. Management rights shall be exercised in a manner consistent with applicable Federal and State laws, and Personnel rules and the MOU. Nothing in this Article is intended to alter the post-agreement rights of the respective parties as established by law to meet and confer or to lawfully refuse to meet and confer on changes which would effect the wages, hours and other terms and conditions of employment.

## **VI. COMPENSATION**

### **A. Salaries**

#### **~~FY 2005-06~~**

~~Local 1 accepts the 2005 salary survey as outlined in the letter to the City's Human Resources Director dated June 7, 2006.~~

~~—Adjustments to 2005 survey:~~

~~—Water Plant Supervisor salary to \$6,697 retroactive to January 1, 2006.~~

#### **~~FY 2006-07~~**

~~—July 1, 2006—~~

~~—2%COLA~~

~~—January 1, 2007—~~

~~—2% COLA~~

~~—2007 Study:~~

~~The parties agree to cooperate in the completion of the classification and compensation study currently in process.~~

~~Following completion of the Citywide Classification and Compensation Study the City and Union agree to reopen this agreement to negotiate Study implementation. Issues to be negotiated include internal relationships, and requirements for Notary duties (any changes to Notary compensation will be retroactive to January 1, 2007). These negotiations shall commence no later than May 15, 2007.~~

~~If City fails to meet the deadline specified above, Local 1 will have the option of immediately referring the matter to the grievance procedure commencing at step 5 (arbitration).~~

~~If a dispute arises as to the proper classification of any member of Local 1, this dispute shall be submitted to a three party panel for resolution. This panel shall consist of a representative of the Union's choosing, a representative of the City's choosing and a third party neutral selected from the State Mediation Services. The recommendation of the panel shall be final and binding on both City and the Union.~~

~~Positions reclassified as Division Managers will be moved from Local One representation and assigned to the Benicia Middle Management Group.~~

**FY 2007-08**

~~July 1, 2007~~

~~Market adjustment, after City/Union review of data, based on completed/implemented classification study.~~

~~Modified Total Compensation Elements for survey are:~~

~~Top Step Salary~~

~~Agency pick-up of employee PERS contributions~~

~~Maximum Healthcare pick-up~~

~~Compensation data from other agencies will be collected for salaries and benefits in effect on April 1, 2007 except that where agencies have committed, via contract or resolution, to increases effective July 1, 2007 the salary after applying such increase shall be used for the comparison.~~

Effective July 1, 2006 the following agencies shall be used for the purposes of salary surveys for benchmarked positions:

- City of Davis
- City of Brentwood
- City of Fairfield
- City of Folsom
- City of Pleasant Hill
- East Bay Municipal Utility District
- Central Contra Costa Sanitary District
- City of Napa
- City of Pinole
- City of Richmond
- City of Vacaville
- City of San Pablo
- Contra Costa Fire District
- Contra Costa Water District
- City of El Cerrito
- City of Vallejo

**FY 2008-09**

~~July 1, 2008~~

~~2% COLA~~

~~January 1, 2009~~

~~2% COLA~~

**FY 2009-10**

~~July 1, 2009 Market adjustment, after City/Union review of data.~~

~~Modified Total Compensation Elements for survey are:~~

~~Top Step Salary~~

~~Agency pick-up of employee PERS contributions~~

~~——Maximum Healthcare pick-up~~

~~Compensation data from other agencies will be collected for salaries and benefits in effect on April 1, 2009 except that where agencies have committed, via contract or resolution, to increases effective July 1, 2009 the salary after applying such increase shall be used for the comparison.~~

There shall be no salary increases or salary surveys during the term of this MOU. Effective November 1, 2010 each step of the salary range for each classification in this unit shall be reduced by 3.16%.

**B. Deferred Compensation**

Employees covered by this MOU may elect a monthly payroll deduction to be placed in the City administered deferred compensation program. Any monies so deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program.

**C. Longevity Pay**

All employees employed in regular full-time positions shall be entitled to a 2 1/2% increase in compensation upon completion of ten (10) years of full-time service. Additionally, for each additional ten (10) year increment, i.e., twenty (20), thirty (30), forty (40) years, of full-time consecutive service, employees shall be entitled to an additional 2 1/2% increase in compensation over the rate for the class in which employed. Upon completion of ten (10) consecutive years of service and receiving longevity compensation, any further pay increase shall be in addition thereto, and not restricted or reduced by reason of the longevity increase.

The current incumbent in the Accounting Systems Supervisor position shall retain her annual single longevity day.

**D. Acting Pay**

Any employee requested to perform the essential duties of a classification at a higher salary range due to a vacancy or the temporary absence of an employee in the higher classification shall receive at least a 5% differential but no less than the first step and no more than the top step of the salary range for the higher classification for all hours that they perform the duties of the higher classification.

Employees assigned in accordance with the foregoing to perform the duties of a higher classification on an acting basis for a period exceeding five (5) consecutive work days shall receive “acting pay” commencing with the sixth (6<sup>th</sup>) consecutive work day retroactive to the first day of assignment and continuing with each consecutive day of work in the higher classification thereafter.

An employee qualifying for “acting pay” shall receive an additional five percent (5%) over his/her then current salary range while working in the higher classification.

**E. Uniform Pay**

Uniform Allowance for Public Safety Members shall be \$40 per month.

**VII. HOURS OF WORK**

**A. 9/80 Work Schedules**

Alternate schedules may be provided pursuant to City Policy 25.

**B. Reduced Work Schedules**

Reduced work schedules may be made available pursuant to City Policy #14.

**C. On Call/Call Back**

Employees within this bargaining unit are not on call and therefore not required to restrict their personal activities outside of their normal work hours.

By May 1, 2007 a Labor Management Committee shall be established consisting of two (2) Local One bargaining unit representatives and two (2) City representatives. The Committee shall meet and discuss issues regarding On Call, Call Back and Standby. Recommendations shall be presented to the City Manager, or designee, for approval. All approved recommendations affecting terms and conditions of employment are subject to the meet and confer process.

**VIII. LEAVE**

**A. Vacation**

Employees covered under this agreement shall accumulate vacation time in accordance with the following vacation entitlement schedule:

## Years of Service

## Weeks of Vacation

An employee may take vacation at times approved by the department head. It is the policy of the City that employees take their normal vacation each year. However, an employee may take less than a normal vacation in one year and carry the balance over to the next year. Such carry-over accumulation shall not exceed 320 hours, and any accrual over 320 hours shall be used by December 31st of each year. Beginning December 2000, and in December of each calendar year, the City will allow employees who have in excess of 320 hours of accrued vacation leave to convert forty (40) hours of vacation leave to sick leave.

### B. Administrative Leave

1. For Fiscal Year 2010 – 2011 the cash out provision allowable in paragraph 3 in this section below on June 1, 2011 and paid by June 30, 2011 shall not be operative. The savings to the City as a result of the employees not cashing out the leave during the 2010 – 2011 fiscal year shall be credited towards the retroactive salary reduction for the period of July 1, 2010 – October 31, 2010 to ensure that the City achieves the full 3.16% annualized salary savings needed.

2. In recognition of the extended hours required of unit employees, including attendance at meetings outside of normal working hours, the following leave policy shall be implemented:

Each FLSA exempt employee shall receive nine (9) days Administrative Leave.

3. On June 1st of each year, employees may elect to convert unused Administrative Leave for cash for an amount up to one half his/her authorized Administrative Leave allowance. Payment for cash conversion shall be made by June 30th. Administrative Leave must be converted to cash payment or used by June 30th of each year.

Upon termination of employment an employee will be entitled to a prorated payout of the current fiscal year's earned Administrative Leave.

0 through 3 years	2 weeks
4 through 7 years	3 weeks
8 through 15 years	4 weeks
16 and over	5 weeks

In extraordinary circumstances such as emergencies, storms etc. Department Heads may authorize the flexing of work schedules for unit employees working excessive hours beyond that compensated for through Administrative Leave.

4. All employees whose status changes to FLSA non-exempt will have their nine (9) days of Administrative Leave added as a percentage increase (3.42%) to their salary on a one-time basis on top of the results of the July 1, 2007 market survey.

### **C. Sick Leave**

Employees covered by this agreement shall accrue sick leave beginning the first day of the month following the employee's completion of one month of service. An employee earns leave with pay at the rate of 8 hours for each calendar month of service. Full sick leave is earned by each full-time employee on paid leave of absence, including sick leave and jury leave. It is not earned by an employee on unpaid leave of absence or paid industrial leave (PIL).

The City allows the unlimited accumulation of sick leave.

The City will reimburse each employee in the Professional/Confidential classifications 25% of their annually accrued, but unused, sick leave during December of each year.

For Supervisory classifications the City will contribute to the individual employee's health retirement savings account an amount equivalent to:

- 1-10 Years – 25% of Annual Unused Sick Leave Accrual
- 11-15 Years – 40% of Annual Sick Leave Accrual
- 16-19 Years – 60% of Annual Sick Leave Accrual
- 20-24 Years – 80% of Annual Sick Leave Accrual
- 25 Years or more – 100% of Annual Sick Leave Accrual

In order for an employee to receive the 40% or greater amounts they must maintain 500 hours of sick leave accrued in their city sick leave account. If they fall below the 500 hours the City will revert to the contribution amount equivalent to 25% of the employee's annual unused sick leave accrual until such time as the employee has again accrued 500 hours. The 500 hours must be in the employee's individual account by December 20th of each year in order to receive

these greater amounts. The Annual Accrual period is January through December and earned contribution amounts will be transferred to ICMA in December of each year.

**D. Supplemental Sick Leave Benefit**

A supplemental sick leave benefit is provided pursuant to City Policy #5.

**E. Paid Industrial Accident Leave**

Each full-time employee shall be granted paid industrial leave (PIL) if the claim is approved by the State Workers' Compensation, with the City paying full, basic salary during such leave. "PIL" shall begin on the first day of said industrial accident and shall extend for a maximum of one year. During such leave, the City shall receive all State Compensation benefits. When an employee is on "PIL", he/she is charged neither vacation nor sick leave but during this time, he/she does not accrue vacation or sick leave. He/she is not eligible for a step increase while on "PIL", and his/her anniversary date will be adjusted so that he/she will observe the normal working period between steps.

Safety employees shall be governed by Section 4850 of the Workers' Compensation Act.

**F. Bereavement Leave**

Any employee shall obtain the approval of the employee's department head in advance of an absence due to a death in the employee's family. Failure to obtain the department head's approval shall result in ineligibility for benefits under this section.

In the event of a death in the immediate family of an employee, he/she shall, upon request, be granted such time off with pay as is necessary to make arrangements for the funeral and attend same, not to exceed three (3) regularly scheduled working days. However, up to an additional two (2) days may be granted for out-of-state funerals. This provision does not apply if the death occurs during the employee's paid vacation, or while the employee is on leave of absence, layoff, or sick leave. For the purposes of this section immediate family shall be defined as follows: Spouse, children, father, mother, brothers, sisters, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparents, grandchildren and members of the employee's household.

Additional Bereavement Leave may be granted to an employee to attend the funeral of a person other than a member of the employee's

immediate family, chargeable to sick leave, compensatory time, or vacation leave.

#### **G. Leave of Absence**

1. Employees covered by this MOU shall be granted a leave of absence with full pay for jury service, and appearances or attendance in court proceedings resulting from the employee's official duties. Any compensation received by the employee for such service shall be remitted to the City.
2. A request for a leave of absence without pay must be made to the department head in writing by the employee stating the dates of leave of absence requested and the reason for the request.
3. A department head may grant an employee a leave of absence without pay for not more than ten (10) working days when it is in the best interest of the City. The City Manager must approve a leave of absence without pay exceeding ten (10) working days.

#### **H. Donation of Leave**

With City approval, employees may voluntarily donate annual leave or administrative leave hours to an employee who has exhausted their own leave time.

#### **IX. EDUCATIONAL REIMBURSEMENT**

An Educational Reimbursement Program is hereby established to encourage employees to continue their self-development and career development by enrolling in job related classroom courses during off duty time. The City agrees to pay up to an amount of \$1,200 in any one twelve (12) month period toward the cost of tuition, books and materials for courses of study undertaken by employees pursuant to this Program and provided such courses and institutions have been approved by the employee's Department Head.

#### **X. HOLIDAYS**

1. New Year's Day (January 1st)
2. Martin Luther King Jr.'s Birthday
3. Lincoln's Birthday
4. Presidents' Day (3rd Monday in February)
5. Memorial Day (last Monday in May)
6. Independence Day (July 4th)

7. Labor Day (1st Monday in September)
8. Columbus Day
9. Veterans' Day
10. Thanksgiving Day
11. Friday after Thanksgiving
12. Christmas Day (December 25)
13. Personal Leave Day (at the employee's option)

The City will observe the Friday preceding a legal holiday falling on Saturday as a legal holiday and the Monday following a legal holiday falling on a Sunday as a legal holiday.

Personal Leave may be taken at any time during the fiscal year with the approval of the employees supervisor and/or department head. Personal Leave may not be accumulated and carried forward to the next fiscal year.

**XI. HEALTH AND MEDICAL INSURANCE**

A. A-The City shall continue to offer hospital-medical-dental and vision plans as those plans are currently structured or as the plans may be amended from time to time by the plan providers. The City may substitute plans currently offered with plans of substantially similar benefits. ~~The City's maximum liability for premium contribution for hospital medical benefits shall be limited to the then current Kaiser Foundation Health Plan contribution rate for the class of dependency coverage involved. For those employees enrolled in other plans, the City shall contribute in addition to the current Kaiser Foundation Health Plan contribution rate, 50% of the difference between the current Kaiser Foundation Health Plan contribution rate and the then contribution rate charged by the City's individual practitioner health maintenance organization provider (HMO) for the class of dependency coverage involved. The City shall contribute the full premium required by the providers of the dental and vision care plans provided herein for the terms of this agreement.~~

Effective the first full pay period after the ratification by the Union and approval by the City Council on its agenda the City's contribution towards medical premiums for the term of the contract shall be a maximum up to the following contributions for any plan:

<u>Employee:</u>	<u>\$592.37</u>
<u>Employee plus One:</u>	<u>\$1,184.75</u>
<u>Employee plus Family:</u>	<u>\$1,575.71</u>

During the term of the MOU, the parties agree to participate with the other bargaining units to determine whether or not any medical plan design changes would assist in reduction of costs to the city and/or reduction of premiums for employees. The parties recognize that any such changes in plan design require agreement by all city bargaining units. In order to allow employees in Health Net time to transition to the City's new capped contribution to any plan, the City will continue the existing City dollar contributions for Health Net participants in effect on September 30, 2010 until June 30, 2011. At that time this extra contribution shall expire and the City's contribution for all participants shall be as described below for fiscal year 2011 - 2012.

For fiscal year 2011-2012 the parties agree to the following cost sharing approach to premium increases in 2011 and 2012 only. Specifically, the City will share evenly any amount that exceeds the current FY 2010-2011 Kaiser contribution levels, up to a capped maximum City contribution amount of \$29.63/month for single, \$59.25/month for employee plus one, and \$79.49/month for employee plus family.

- B. ~~Employees with dual insurance coverage may elect to drop their health insurance coverage and instead receive additional reimbursement at the Kaiser Health Plan individual rate.~~ The City shall allow employees who have dual coverage on their health plan to receive the amount the city contributes towards the single rate listed above; this amount is to be added to the employee's paycheck.
- C. Retirees may voluntarily continue to participate at their own expense in the City's health plans at the same premium as active employees.

## **XII. RETIREE HEALTH SAVINGS PLAN**

The City agrees to contribute 2.0% of base salary for each Supervisory classified employee enrolled in ICMA VantageCare. On the date of implementation for the Professional and Confidential employees, the salaries of such employees shall be reduced by 0.5% in order to pay for the additional value of having this benefit.

In addition to the above provisions, all employees covered by the MOU may contribute additional funds to their VantageCare accounts in accordance with program rules.

### **XIII. LIFE INSURANCE**

The City shall pay the entire cost of providing each insurable regular, full-time employee with \$50,000 group term life insurance with said policy to include \$100,000 accidental death and dismemberment coverage.

### **XIV. MILEAGE REIMBURSEMENT**

Mileage reimbursement shall be in accordance with City Policy #23. Remaining auto allowances will be rolled into salary.

### **XV. PROFESSIONAL AND COMMUNITY ORGANIZATIONS**

Employees required to maintain membership in professional and/or community organizations will be reimbursed for all membership fees and approved expenses.

### **XVI. RETIREMENT**

- A. For non-sworn employees the City shall provide the 2.7 percent at 55 Local Miscellaneous Members Retirement Program. ~~Employee's~~ Employees will assume responsibility for payment, by payroll deduction, of the one (1%) percent increase in the employee's retirement contribution for this benefit. The City will adopt the IRS 414(h)(2) provision allowing for payment of the 1% on a pre-tax basis.

The City shall continue payment of the employees 7%/9% contribution to PERS.

The City implemented Government Code Section 20636(c) and began reporting the 7%/9% employee contribution as Employer Paid Member Contributions (EPMC) as additional compensation for Professional & Confidential Unit Employees.

~~On the date of implementation for Supervisory employees the salaries of such employees shall be reduced by 1.5% in order to pay for the value of having EPMC.~~

The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for miscellaneous employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.

3. Credit for unused sick leave as provided for in Government Code, Section 20965.

B. For sworn employees the City shall provide the PERS three (3) percent at age 50 Local Safety Members' Retirement Program.

€ The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for miscellaneous sworn employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.
3. Credit for unused sick leave as provided for in Government Code, Section 20965.

C. Retirement Reform: The Safety and Miscellaneous employees in this unit agree to the implementation of a new, less costly, CalPERS 2<sup>nd</sup> tier pension formula for new hires contingent upon agreement with all other Safety and Miscellaneous employees to the same and effective thereafter as soon as administratively possible consistent with CalPERS contract amendment requirements.

**XVII. GRIEVANCES/DISCIPLINARY APPEALS**

**A. Definitions**

1) **Grievance:**

A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding, or rules, regulations, resolutions, ordinances and existing practices which specifically govern personnel practices and working conditions of unit members.

2) **Discipline:**

A disciplinary appeal is an appeal by an employee of a discharge, demotion, and reduction in pay or suspension without pay. The process will be determined by the employee's selection as set forth in Section 9.11 of the City of Benicia Personnel Rules.

## **B. Procedure**

Grievances/Appeals filed pursuant to this Memorandum of Understanding shall be processed in the following manner:

For the purposes of this Section, the term "working days" shall mean those days the City is normally open for business.

- 1) The grievance shall be presented in writing either by the employee or by an authorized union representative to the designated supervisor of the employee within ten (10) working days after the cause of such grievance occurs. Disciplinary appeals must be presented to the department head within ten (10) working days from date of receipt of the Notice of Intent to Discipline. Appeals which are not presented within this time limit shall be deemed waived and abandoned.
- 2) The designated supervisor shall have ten (10) working days from the date of receipt of the grievance in which to investigate and respond. If the grievance is not satisfactorily adjusted within this period, the grievance may be presented in writing either by the employee or by an authorized union representative within ten (10) working days to the department head or to such representative as the employee may designate.
- 3) The department head or a designated representative shall have ten (10) working days from date of receipt of grievance/appeal in which to respond. If the grievance is not satisfactorily adjusted/resolved within this period, the grievance/appeal may be presented in writing either by the employee or by an authorized Union representative to the City manager or to such representative as the City Manager may designate.
- 4) If the parties are unable, within ten (10) working days, to reach a mutually satisfactory accord on any grievance/appeal which arises and is presented during the term of this Memorandum of Understanding, such grievance/appeal shall be submitted to an Adjustment Board comprised of two (2) Union representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Union; and two (2) representatives of the City, no more than one (1) of whom shall be either an employee of the City or a member of the staff of any organization employed to represent the City in the meeting and conferring process. No decision of the Adjustment Board shall be final and binding without

receiving the affirmative votes of at least three (3) members of the Board.

- 5) If an Adjustment Board is unable to arrive at a majority decision, either the Union or City may require that the grievance/appeal be referred to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City Manager. The fees and expenses of the arbitrator and a court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation including, but not limited to, preparation and posting hearing briefs, if any. If the Union and the City Manager are unable to agree on an impartial arbitrator a list will be requested from the State Mediation & Conciliation Service and an impartial arbitrator selected by alternately striking names until only one name remains on the list, that person shall be the impartial arbitrator.
- 6) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

### **C. Scope of Procedure**

No Adjustment Board and no arbitrator shall entertain, hear, decide or make recommendations on any dispute unless such dispute involves a position in a unit represented by the Union and unless such dispute falls within the definition of a grievance/appeal as set forth above.

### **D. Change to Memorandum**

Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be arbitrated and no proposal to modify, amend or terminate this Memorandum of Understanding, nor any matter or subject arising out of or in connection with such proposal, may be referred to arbitration under this Section. Neither any Adjustment Board or any arbitrator shall have the power to amend or modify this Memorandum of Understanding or written agreements or addenda supplementary hereto or to establish any new terms or conditions of employment.

### **E. Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints which allege that employees are not being compensated in accordance with the provisions of the Memorandum of

Understanding shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and if not detailed in the Memorandum of Understanding which results from such meeting and conferring process shall be deemed withdrawn until the meeting and conferring process is next opened for such discussion. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

#### **XVIII. CLOSING CLAUSE**

The terms of this agreement shall remain in effect through June 30, ~~2010~~2012. The parties agree that during the term of the agreement, if the Council, after a noticed public hearing, deems additional reductions are necessary to balance the City's budget, the parties agree to reopen the contract for the narrow and specific purpose of meeting and conferring over concessions identified by the City as needed to prevent layoffs of Local One members.

This Memorandum of Understanding shall be in force after its expiration where negotiations between the City and Local #1 have not resulted in a new Memorandum of Understanding until completion of the meet and confer process.

If any section of this Memorandum of Understanding should be found invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other Sections of this Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding. In the event of invalidation of any Section, the City and Local #1 agree to meet within thirty (30) days for the purpose of renegotiating said Section.

This Memorandum of Understanding shall be submitted to the City Council for its adoption.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding this \_\_\_\_\_ day of \_\_\_\_\_, 20072010.

**PUBLIC EMPLOYEES  
UNION, LOCAL 1**

**CITY OF BENICIA**

\_\_\_\_\_  
~~Vicki Shidell~~ Theron Jones  
President

\_\_\_\_\_  
Jim Erickson  
City Manager

\_\_\_\_\_  
Kasmir Zaratkiewicz  
Local 1, Field Representative

\_\_\_\_\_  
~~Diane O'Connell~~ Anne Cardwell  
Human Resources Administrative Services Director

\_\_\_\_\_  
~~Lee Cowles~~

\_\_\_\_\_  
~~Jeff Gregory~~

\_\_\_\_\_  
~~Tonya Gilmore~~

\_\_\_\_\_  
~~Steve Hickman~~

APPROVED AS TO FORM BY  
City Attorney:

\_\_\_\_\_  
Heather Mc Laughlin

**MEMORANDUM OF UNDERSTANDING  
CITY OF BENICIA**

**&**

**PUBLIC EMPLOYEES UNION, LOCAL #1  
July 1, 2010 – June 30, 2012**

**I. PREAMBLE**

This agreement is entered into by the City of Benicia, hereinafter referred to as the “City,” and the Public Employees Union, Local #1, hereinafter referred to as “Local #1,” for the purpose of promoting harmonious relations between the City and its Professional and Confidential and Supervisory employees to establish an orderly and peaceful procedure, to settle differences which might arise and to set forth the basic, complete and full agreement between the parties concerning salaries and all other conditions of employment, and preclude any further negotiations during its term unless otherwise stated herein.

**II. RECOGNITION**

**A. Recognition of P.E.U., Local #1**

The City of Benicia recognizes Public Employees Union, Local #1 as the majority and exclusive representative of City employees in the Professional and Confidential and Supervisory classifications as set forth below, and in classifications appropriately added to Professional and Confidential or Supervisory hereafter.

**B. Parties to this Agreement**

This agreement is entered into by the City and Public Employees Union, Local #1 in accordance with Government Code Section 3500 et seq.

**C. Professional & Confidential employees covered by this agreement include the following positions:**

Administrative Secretary  
Library Technician I/II  
Assistant Engineer  
Literacy Program Supervisor  
Assistant Fire Marshall  
Management Analyst I/II

Assistant Planner  
Associate Planner  
Senior Civil Engineer  
Deputy City Attorney I  
Executive Secretary  
Information Systems Analyst I/II

Supervisory employees covered by this agreement include the following positions:

Accounting Systems Supervisor  
Field Utilities and Streets Supervisor  
Maintenance Supervisor  
Parks Supervisor  
Plant Supervisor (Water/Wastewater)  
Recreations Supervisor  
Senior Planner  
Water Quality Supervisor

### **III. NON-DISCRIMINATION**

The City shall not discriminate against any employee because of race, color, creed, sex, age, disability, national origin, gender, sexual orientation, or any other State or Federal protected class; nor shall the City discriminate against any employee covered by this Memorandum of Understanding because of membership or non-membership in Local #1, or authorized activity, as required in this Memorandum of Understanding, in behalf of the members of Local #1.

Local #1 shall not unlawfully discriminate against any Professional, Confidential or Supervisory employee because of membership or non-membership in Local #1 or because of race, creed, color, national origin, sex, disability, age, gender or sexual orientation.

The City and Local #1 recognize that the City has an obligation under the Americans With Disabilities Act (ADA) to meet with individual employees who allege a need for reasonable accommodation in the workplace because of a disability. If by reason of the aforesaid requirement, the City contemplates actions to provide reasonable accommodation to an individual employee in compliance with the ADA which are in potential conflict with any provision of this Memorandum of Understanding, Local #1 will be advised of any such proposed accommodation and be afforded an opportunity to discuss same prior to implementation by the City.

## **IV. DUES DEDUCTIONS AND FAIR SHARE FEES**

### **Section 1 Scope of Coverage**

The City and Local #1 have agreed to conduct an election to determine if unit employees wish to implement a Dues Deduction/Fair Share Fee Agreement (hereinafter known as "the Agreement") for employees in the Professional and Confidential and the Supervisory classifications as authorized by Government Code 3502.5. The following provisions shall apply if employees so elect.

### **Section 2 Deductions**

The City of Benicia agrees to deduct dues, initiation fees and special assessments from the salaries of those employees who sign dues deduction/fair share fee forms said dues/fair share fees, initiation fees and special assessments and remit the total dues/fair share fees, initiation fees and special assessments to Local #1 promptly.

### **Section 3 Local #1 Responsibilities**

Local #1 agrees that it has a duty to provide fair and nondiscriminatory representation to all employees in the Professional and Confidential and Supervisory classifications, regardless of whether or not they are members of Local #1. All employees in, and all employees subsequently hired, promoted, demoted or transferred into classifications in the Professional and Confidential and Supervisory classifications shall as a condition of employment fulfill one of the following:

- A. Become and remain a member of Local #1; or
- B. Pay to Local #1 a fair share fee in an amount which does not exceed the amount which may be lawfully collected under applicable constitutional, statutory and case law, and which under no circumstances shall exceed the monthly dues, initiation fees and general assessments made during the term of this Agreement; or
- C. Do both of the following:
  - 1. Execute a written declaration to Local #1 with a copy to the Payroll Division of the Auditor/Controller, that the employee has a conscientious religious objection to all unions. The holding of such a belief can be demonstrated by being a member of a bona fide religion, body or sect which has historically held a conscientious objection to joining or

financially supporting any union as a condition of employment or providing an affidavit asserting such a conscientious religious belief and statements from two non-relatives that the employee holds such a belief; and

2. Pay a sum equal to the fair share fee to a nonreligious, non-labor, charitable fund exempt from taxation under Internal Revenue Service Code Section 501(c) (3), chosen by the employee from the following charities:
  - i. Community Action Council of Benicia
  - ii. Friends of Benicia Library
  - iii. Benicia Human Services and Arts Fund
  - iv. Partners Encouraging Parks and Recreation in the Community

#### **Section 4 Compliance**

##### **A. Notice to employee and the City**

An employee in or hired into, a job classification in the Professional and Confidential or Supervisory classifications represented by Local #1 shall be provided with an Employee Authorization for Payroll Deduction form by Local #1. If the form authorizing payroll deduction for Local #1 dues, fair share fees, initiation fee, or charitable contribution is not returned to Local #1 within thirty (30) calendar days after notice of this fair share and initiation fee, Local #1 may, in writing, direct that the City withhold the fair share fee and the initiation fee from the employee's salary, in which case the employee's monthly salary shall be reduced by an amount equal to the fair share and initiation fees, and the City shall pay an equal amount to Local #1.

##### **B. Forfeiture of Deductions**

If the balance of an employee's wages, after all other involuntary and insurance premium deductions are made in any one pay period, is not sufficient to pay deductions required by this Agreement, no such deduction shall be made for that period.

##### **C. Withdrawal From Union**

Members shall be able to withdraw their membership by notifying the Union in writing of their desire to withdraw their membership and to become fee payers during the period of May 15-31 of any year. Members may not withdraw from membership at any other time.

**D. Advance Notice of Fair Shares Fees, Fair Share Fee Explanation and Right to Challenge**

No fair share service fee shall be collected from any employee who is not paying dues or a fair share fee until the employee has received written notice from Local #1, which includes legally adequate information concerning the breakdown of "chargeable" and "non-chargeable" expenses. A prompt opportunity, as provided below, shall be established by Local #1 for challenge of the amount of the fee before an impartial arbitrator. An escrow account shall be set up by P.E.U., Local #1 for the amounts in dispute while such challenges are pending.

**Section 5. Hold Harmless**

The authorization for payroll deductions described in this Agreement shall specifically require the employee and Local #1 to agree to hold the City harmless from all claims, demands, suits or other forms of liability that may arise against the City for or on account of any deduction made from the wages of such employee.

Local #1 shall defend, indemnify and hold harmless, release and save the City and its agents and employees against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of, or by reason of, action taken or not taken by the City under this Agreement. This includes but is not limited to the collection and procedures for collection of fair share fees and reasonable cost of City's attorney fees and costs, along with reasonable cost of management preparations time as well.

**V. MANAGEMENT RIGHTS**

The employee organization agrees that the City retains all its exclusive rights and authority under the law and expressly and exclusively retains its management rights, which include, but are not limited to; the exclusive right to determine the mission of its constituent departments, commissions, boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotions; direct its employees; maintain the efficiency of government operations; determine the methods, means and numbers of kinds of personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and

composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to the right to contract for or sub-contract any works operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law; establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. Management rights shall be exercised in a manner consistent with applicable Federal and State laws, and Personnel rules and the MOU. Nothing in this Article is intended to alter the post-agreement rights of the respective parties as established by law to meet and confer or to lawfully refuse to meet and confer on changes which would effect the wages, hours and other terms and conditions of employment.

## **VI. COMPENSATION**

### **A. Salaries**

Effective July 1, 2006 the following agencies shall be used for the purposes of salary surveys for benchmarked positions:

City of Davis	City of Napa	City of San Pablo
City of Brentwood	City of Pinole	Contra Costa Fire District
City of Fairfield	City of Richmond	Contra Costa Water District
City of Folsom	City of Vacaville	City of El Cerrito
City of Pleasant Hill		City of Vallejo
East Bay Municipal Utility District		
Central Contra Costa Sanitary District		

There shall be no salary increases or salary surveys during the term of this MOU. Effective November 1, 2010 each step of the salary range for each classification in this unit shall be reduced by 3.16%.

## **B. Deferred Compensation**

Employees covered by this MOU may elect a monthly payroll deduction to be placed in the City administered deferred compensation program. Any monies so deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program.

## **C. Longevity Pay**

All employees employed in regular full-time positions shall be entitled to a 2 1/2% increase in compensation upon completion of ten (10) years of full-time service. Additionally, for each additional ten (10) year increment, i.e., twenty (20), thirty (30), forty (40) years, of full-time consecutive service, employees shall be entitled to an additional 2 1/2% increase in compensation over the rate for the class in which employed. Upon completion of ten (10) consecutive years of service and receiving longevity compensation, any further pay increase shall be in addition thereto, and not restricted or reduced by reason of the longevity increase.

The current incumbent in the Accounting Systems Supervisor position shall retain her annual single longevity day.

## **D. Acting Pay**

Any employee requested to perform the essential duties of a classification at a higher salary range due to a vacancy or the temporary absence of an employee in the higher classification shall receive at least a 5% differential but no less than the first step and no more than the top step of the salary range for the higher classification for all hours that they perform the duties of the higher classification.

Employees assigned in accordance with the foregoing to perform the duties of a higher classification on an acting basis for a period exceeding five (5) consecutive work days shall receive "acting pay" commencing with the sixth (6<sup>th</sup>) consecutive work day retroactive to the first day of assignment and continuing with each consecutive day of work in the higher classification thereafter.

An employee qualifying for "acting pay" shall receive an additional five percent (5%) over his/her then current salary range while working in the higher classification.

## **E. Uniform Pay**

Uniform Allowance for Public Safety Members shall be \$40 per month.

**VII. HOURS OF WORK**

**A. 9/80 Work Schedules**

Alternate schedules may be provided pursuant to City Policy 25.

**B. Reduced Work Schedules**

Reduced work schedules may be made available pursuant to City Policy #14.

**C. On Call/Call Back**

Employees within this bargaining unit are not on call and therefore not required to restrict their personal activities outside of their normal work hours.

By May 1, 2007 a Labor Management Committee shall be established consisting of two (2) Local One bargaining unit representatives and two (2) City representatives. The Committee shall meet and discuss issues regarding On Call, Call Back and Standby. Recommendations shall be presented to the City Manager, or designee, for approval. All approved recommendations affecting terms and conditions of employment are subject to the meet and confer process.

**VIII. LEAVE**

**A. Vacation**

Employees covered under this agreement shall accumulate vacation time in accordance with the following vacation entitlement schedule:

<b>Years of Service</b>	<b>Weeks of Vacation</b>
0 through 3 years	2 weeks
4 through 7 years	3 weeks
8 through 15 years	4 weeks
16 and over	5 weeks

An employee may take vacation at times approved by the department head. It is the policy of the City that employees take their normal vacation each year. However, an employee may take less than a normal vacation in one year and carry the balance over to the next year. Such carry-over accumulation shall not exceed 320 hours, and any accrual over 320 hours shall be used by December 31st of each year. Beginning December 2000, and in December of each calendar year, the City will allow employees who have in excess of 320 hours of accrued vacation leave to convert forty (40) hours of vacation leave to sick leave.

## **B. Administrative Leave**

1. For Fiscal Year 2010 – 2011 the cash out provision allowable in paragraph 3 in this section below on June 1, 2011 and paid by June 30, 2011 shall not be operative. The savings to the City as a result of the employees not cashing out the leave during the 2010 – 2011 fiscal year shall be credited towards the retroactive salary reduction for the period of July 1, 2010 – October 31, 2010 to ensure that the City achieves the full 3.16% annualized salary savings needed.
2. In recognition of the extended hours required of unit employees, including attendance at meetings outside of normal working hours, the following leave policy shall be implemented:

Each FLSA exempt employee shall receive nine (9) days Administrative Leave.

3. On June 1st of each year, employees may elect to convert unused Administrative Leave for cash for an amount up to one half his/her authorized Administrative Leave allowance. Payment for cash conversion shall be made by June 30th. Administrative Leave must be converted to cash payment or used by June 30th of each year.

Upon termination of employment an employee will be entitled to a prorated payout of the current fiscal year's earned Administrative Leave.

In extraordinary circumstances such as emergencies, storms etc. Department Heads may authorize the flexing of work schedules for unit employees working excessive hours beyond that compensated for through Administrative Leave.

4. All employees whose status changes to FLSA non-exempt will have their nine (9) days of Administrative Leave added as a percentage increase (3.42%) to their salary on a one-time basis on top of the results of the July 1, 2007 market survey.

## **C. Sick Leave**

Employees covered by this agreement shall accrue sick leave beginning the first day of the month following the employee's completion of one month of service. An employee earns leave with pay at the rate of 8 hours for each calendar month of service. Full sick leave is earned by each full-time employee on paid leave of absence,

including sick leave and jury leave. It is not earned by an employee on unpaid leave of absence or paid industrial leave (PIL).

The City allows the unlimited accumulation of sick leave.

The City will reimburse each employee in the Professional/Confidential classifications 25% of their annually accrued, but unused, sick leave during December of each year.

For Supervisory classifications the City will contribute to the individual employee's health retirement savings account an amount equivalent to:

- 1-10 Years – 25% of Annual Unused Sick Leave Accrual
- 11-15 Years – 40% of Annual Sick Leave Accrual
- 16-19 Years – 60% of Annual Sick Leave Accrual
- 20-24 Years – 80% of Annual Sick Leave Accrual
- 25 Years or more – 100% of Annual Sick Leave Accrual

In order for an employee to receive the 40% or greater amounts they must maintain 500 hours of sick leave accrued in their city sick leave account. If they fall below the 500 hours the City will revert to the contribution amount equivalent to 25% of the employee's annual unused sick leave accrual until such time as the employee has again accrued 500 hours. The 500 hours must be in the employee's individual account by December 20th of each year in order to receive these greater amounts. The Annual Accrual period is January through December and earned contribution amounts will be transferred to ICMA in December of each year.

#### **D. Supplemental Sick Leave Benefit**

A supplemental sick leave benefit is provided pursuant to City Policy #5.

#### **E. Paid Industrial Accident Leave**

Each full-time employee shall be granted paid industrial leave (PIL) if the claim is approved by the State Workers' Compensation, with the City paying full, basic salary during such leave. "PIL" shall begin on the first day of said industrial accident and shall extend for a maximum of one year. During such leave, the City shall receive all State Compensation benefits. When an employee is on "PIL", he/she is

charged neither vacation nor sick leave but during this time, he/she does not accrue vacation or sick leave. He/she is not eligible for a step increase while on "PIL", and his/her anniversary date will be adjusted so that he/she will observe the normal working period between steps.

Safety employees shall be governed by Section 4850 of the Workers' Compensation Act.

**F. Bereavement Leave**

Any employee shall obtain the approval of the employee's department head in advance of an absence due to a death in the employee's family. Failure to obtain the department head's approval shall result in ineligibility for benefits under this section.

In the event of a death in the immediate family of an employee, he/she shall, upon request, be granted such time off with pay as is necessary to make arrangements for the funeral and attend same, not to exceed three (3) regularly scheduled working days. However, up to an additional two (2) days may be granted for out-of-state funerals. This provision does not apply if the death occurs during the employee's paid vacation, or while the employee is on leave of absence, layoff, or sick leave. For the purposes of this section immediate family shall be defined as follows: Spouse, children, father, mother, brothers, sisters, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparents, grandchildren and members of the employee's household.

Additional Bereavement Leave may be granted to an employee to attend the funeral of a person other than a member of the employee's immediate family, chargeable to sick leave, compensatory time, or vacation leave.

**G. Leave of Absence**

1. Employees covered by this MOU shall be granted a leave of absence with full pay for jury service, and appearances or attendance in court proceedings resulting from the employee's official duties. Any compensation received by the employee for such service shall be remitted to the City.
2. A request for a leave of absence without pay must be made to the department head in writing by the employee stating the dates of leave of absence requested and the reason for the request.
3. A department head may grant an employee a leave of absence without pay for not more than ten (10) working days when it is in

the best interest of the City. The City Manager must approve a leave of absence without pay exceeding ten (10) working days.

#### **H. Donation of Leave**

With City approval, employees may voluntarily donate annual leave or administrative leave hours to an employee who has exhausted their own leave time.

#### **IX. EDUCATIONAL REIMBURSEMENT**

An Educational Reimbursement Program is hereby established to encourage employees to continue their self-development and career development by enrolling in job related classroom courses during off duty time. The City agrees to pay up to an amount of \$1,200 in any one twelve (12) month period toward the cost of tuition, books and materials for courses of study undertaken by employees pursuant to this Program and provided such courses and institutions have been approved by the employee's Department Head.

#### **X. HOLIDAYS**

1. New Year's Day (January 1st)
2. Martin Luther King Jr.'s Birthday
3. Lincoln's Birthday
4. Presidents' Day (3rd Monday in February)
5. Memorial Day (last Monday in May)
6. Independence Day (July 4th)
7. Labor Day (1st Monday in September)
8. Columbus Day
9. Veterans' Day
10. Thanksgiving Day
11. Friday after Thanksgiving
12. Christmas Day (December 25)
13. Personal Leave Day (at the employee's option)

The City will observe the Friday preceding a legal holiday falling on Saturday as a legal holiday and the Monday following a legal holiday falling on a Sunday as a legal holiday.

Personal Leave may be taken at any time during the fiscal year with the approval of the employees supervisor and/or department head. Personal Leave may not be accumulated and carried forward to the next fiscal year.

**XI. HEALTH AND MEDICAL INSURANCE**

- A. The City shall continue to offer hospital-medical-dental and vision plans as those plans are currently structured or as the plans may be amended from time to time by the plan providers. The City may substitute plans currently offered with plans of substantially similar benefits.

Effective the first full pay period after the ratification by the Union and approval by the City Council on its agenda the City’s contribution towards medical premiums for the term of the contract shall be a maximum up to the following contributions for any plan:

Employee:	\$592.37
Employee plus One:	\$1,184.75
Employee plus Family:	\$1,575.71

During the term of the MOU, the parties agree to participate with the other bargaining units to determine whether or not any medical plan design changes would assist in reduction of costs to the city and/or reduction of premiums for employees. The parties recognize that any such changes in plan design require agreement by all city bargaining units. In order to allow employees in Health Net time to transition to the City’s new capped contribution to any plan, the City will continue the existing City dollar contributions for Health Net participants in effect on September 30, 2010 until June 30, 2011. At that time this extra contribution shall expire and the City’s contribution for all participants shall be as described below for fiscal year 2011 - 2012.

For fiscal year 2011-2012 the parties agree to the following cost sharing approach to premium increases in 2011 and 2012 only. Specifically, the City will share evenly any amount that exceeds the current FY 2010-2011 Kaiser contribution levels, up to a capped maximum City contribution amount of \$29.63/month for single, \$59.25/month for employee plus one, and \$79.49/month for employee plus family.

- B. The City shall allow employees who have dual coverage on their health plan to receive the amount the city contributes towards the single rate listed above; this amount is to be added to the employee’s paycheck.

C. Retirees may voluntarily continue to participate at their own expense in the City's health plans at the same premium as active employees.

**XII. RETIREE HEALTH SAVINGS PLAN**

The City agrees to contribute 2.0% of base salary for each Supervisory classified employee enrolled in ICMA VantageCare. On the date of implementation for the Professional and Confidential employees, the salaries of such employees shall be reduced by 0.5% in order to pay for the additional value of having this benefit.

In addition to the above provisions, all employees covered by the MOU may contribute additional funds to their VantageCare accounts in accordance with program rules.

**XIII. LIFE INSURANCE**

The City shall pay the entire cost of providing each insurable regular, full-time employee with \$50,000 group term life insurance with said policy to include \$100,000 accidental death and dismemberment coverage.

**XIV. MILEAGE REIMBURSEMENT**

Mileage reimbursement shall be in accordance with City Policy #23. Remaining auto allowances will be rolled into salary.

**XV. PROFESSIONAL AND COMMUNITY ORGANIZATIONS**

Employees required to maintain membership in professional and/or community organizations will be reimbursed for all membership fees and approved expenses.

**XVI. RETIREMENT**

A. For non-sworn employees the City shall provide the 2.7 percent at 55 Local Miscellaneous Members Retirement Program. Employees will assume responsibility for payment, by payroll deduction, of the one (1%) percent increase in the employee's retirement contribution for this benefit. The City will adopt the IRS 414(h)(2) provision allowing for payment of the 1% on a pre-tax basis.

The City shall continue payment of the employees 7%/9% contribution to PERS.

The City implemented Government Code Section 20636(c) and began reporting the 7%/9% employee contribution as Employer

Paid Member Contributions (EPMC) as additional compensation for Professional & Confidential Unit Employees.

The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for miscellaneous employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.
3. Credit for unused sick leave as provided for in Government Code, Section 20965.

- B. For sworn employees the City shall provide the PERS three (3) percent at age 50 Local Safety Members' Retirement Program.

The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for sworn employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.
3. Credit for unused sick leave as provided for in Government Code, Section 20965.

- C. Retirement Reform: The Safety and Miscellaneous employees in this unit agree to the implementation of a new, less costly, CalPERS 2<sup>nd</sup> tier pension formula for new hires contingent upon agreement with all other Safety and Miscellaneous employees to the same and effective thereafter as soon as administratively possible consistent with CalPERS contract amendment requirements.

## **XVII. GRIEVANCES/DISCIPLINARY APPEALS**

### **A. Definitions**

1) **Grievance:**

A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding, or rules, regulations, resolutions, ordinances and existing practices which

specifically govern personnel practices and working conditions of unit members.

2) **Discipline:**

A disciplinary appeal is an appeal by an employee of a discharge, demotion, and reduction in pay or suspension without pay. The process will be determined by the employee's selection as set forth in Section 9.11 of the City of Benicia Personnel Rules.

**B. Procedure**

Grievances/Appeals filed pursuant to this Memorandum of Understanding shall be processed in the following manner:

For the purposes of this Section, the term "working days" shall mean those days the City is normally open for business.

- 1) The grievance shall be presented in writing either by the employee or by an authorized union representative to the designated supervisor of the employee within ten (10) working days after the cause of such grievance occurs. Disciplinary appeals must be presented to the department head within ten (10) working days from date of receipt of the Notice of Intent to Discipline. Appeals which are not presented within this time limit shall be deemed waived and abandoned.
- 2) The designated supervisor shall have ten (10) working days from the date of receipt of the grievance in which to investigate and respond. If the grievance is not satisfactorily adjusted within this period, the grievance may be presented in writing either by the employee or by an authorized union representative within ten (10) working days to the department head or to such representative as the employee may designate.
- 3) The department head or a designated representative shall have ten (10) working days from date of receipt of grievance/appeal in which to respond. If the grievance is not satisfactorily adjusted/resolved within this period, the grievance/appeal may be presented in writing either by the employee or by an authorized Union representative to the City manager or to such representative as the City Manager may designate.
- 4) If the parties are unable, within ten (10) working days, to reach a mutually satisfactory accord on any grievance/appeal which arises and is presented during the term of this Memorandum of Understanding, such

grievance/appeal shall be submitted to an Adjustment Board comprised of two (2) Union representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Union; and two (2) representatives of the City, no more than one (1) of whom shall be either an employee of the City or a member of the staff of any organization employed to represent the City in the meeting and conferring process. No decision of the Adjustment Board shall be final and binding without receiving the affirmative votes of at least three (3) members of the Board.

- 5) If an Adjustment Board is unable to arrive at a majority decision, either the Union or City may require that the grievance/appeal be referred to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City Manager. The fees and expenses of the arbitrator and a court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation including, but not limited to, preparation and posting hearing briefs, if any. If the Union and the City Manager are unable to agree on an impartial arbitrator a list will be requested from the State Mediation & Conciliation Service and an impartial arbitrator selected by alternately striking names until only one name remains on the list, that person shall be the impartial arbitrator.
- 6) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

**C. Scope of Procedure**

No Adjustment Board and no arbitrator shall entertain, hear, decide or make recommendations on any dispute unless such dispute involves a position in a unit represented by the Union and unless such dispute falls within the definition of a grievance/appeal as set forth above.

**D. Change to Memorandum**

Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be arbitrated and no proposal to modify, amend or terminate this Memorandum of Understanding, nor any matter or subject arising out of or in connection with such proposal, may be referred to arbitration under this Section. Neither any Adjustment Board or any arbitrator shall have the power to amend or modify this Memorandum of Understanding or written agreements or addenda

supplementary hereto or to establish any new terms or conditions of employment.

**E. Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints which allege that employees are not being compensated in accordance with the provisions of the Memorandum of Understanding shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and if not detailed in the Memorandum of Understanding which results from such meeting and conferring process shall be deemed withdrawn until the meeting and conferring process is next opened for such discussion. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

**XVIII. CLOSING CLAUSE**

The terms of this agreement shall remain in effect through June 30, 2012. The parties agree that during the term of the agreement, if the Council, after a noticed public hearing, deems additional reductions are necessary to balance the City's budget, the parties agree to reopen the contract for the narrow and specific purpose of meeting and conferring over concessions identified by the City as needed to prevent layoffs of Local One members.

This Memorandum of Understanding shall be in force after its expiration where negotiations between the City and Local #1 have not resulted in a new Memorandum of Understanding until completion of the meet and confer process.

If any section of this Memorandum of Understanding should be found invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other Sections of this Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding. In the event of invalidation of any Section, the City and Local #1 agree to meet within thirty (30) days for the purpose of renegotiating said Section.

This Memorandum of Understanding shall be submitted to the City Council for its adoption.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**PUBLIC EMPLOYEES  
UNION, LOCAL 1**

**CITY OF BENICIA**

\_\_\_\_\_  
Theron Jones  
President

\_\_\_\_\_  
Jim Erickson  
City Manager

\_\_\_\_\_  
Kasmir Zaratkiewicz  
Local 1, Field Representative

\_\_\_\_\_  
Anne Cardwell  
Administrative Services Director

APPROVED AS TO FORM BY  
City Attorney:

\_\_\_\_\_  
Heather Mc Laughlin



**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 2, 2010  
CONSENT CALENDAR**

**DATE** : October 27, 2010

**TO** : Mayor & City Council

**FROM** : City Manager

**SUBJECT** : **APPROVE THE SALARY AND BENEFITS FOR UNREPRESENTED CONFIDENTIAL EMPLOYEES**

**RECOMMENDATION:**

Adopt the resolution authorizing salary adjustments and benefits for the unrepresented employees in the classifications of Legal Technician and Senior Human Resources Analyst to be the same as Local #1 employees per the Local One 2010-12 Memorandum of Understanding.

**EXECUTIVE SUMMARY:**

Government Code Section 3507.5 permits an agency to restrict management and confidential employees from union representation. Currently, the City's unrepresented employees include the classifications of Legal Technician and Senior Human Resources Analyst. While this group is unrepresented, City representatives have consulted with these individuals regarding this proposed resolution. The incumbents in these two confidential classifications would like to receive the same salary and benefit package agreed to by the City for members of Local #1.

**BUDGET INFORMATION:**

This agreement achieves 3.16% of salary reduction that is required for the unrepresented employees as part of the City's \$1.2 million dollars reduction that is needed in order to balance the City's budget.

Attachments:

- Resolution
- Agreement – Proposed Language (Local #1)
- Agreement – Clean Copy (Local #1)

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
APPROVING SALARY AND BENEFITS FOR UNREPRESENTED  
EMPLOYEES**

**WHEREAS**, the existing Agreement between the City of Benicia and Public Employees Union, Local #1 which covers salaries and other conditions of employment lapsed on June 30, 2010 and was applicable to the City's two unrepresented classifications of Legal Technician and Senior Human Resources Analyst; and

**WHEREAS**, the City has an average of a \$1.2 million dollar deficit over the next two years; and

**WHEREAS**, the City requested employee groups to negotiate concessions towards closing the \$1.2 million dollar gap; and

**WHEREAS**, the City has concluded negotiations with Local #1 relative to amendments to the Agreement for the term covering July 1, 2010 to June 30, 2012 that achieve the requested concessions; and

**WHEREAS**, the current incumbents in the City's unrepresented classifications have expressed their desire to provide the requested concessions in a manner which will allow them to continue to receive a similar salary and benefit package afforded to members of Local #1; and

**WHEREAS**, the current incumbents also request that If the City agrees to any other form of payment for the retroactive portion of the salary reduction with any of the bargaining groups, that the City will discuss with the incumbents whether they may be eligible to elect that option as an alternative.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the salary and benefit package outlined in the Memorandum of Understanding covering the term July 1, 2010 through June 30, 2012 for Local #1 for the two unrepresented classifications of Legal Technician and Senior Human Resources Analyst.

\*\*\*\*\*

On motion of Council Member \_\_, seconded by Council Member  
, the above resolution was introduced and passed by the Council of the City of  
Benicia at a regular meeting of said Council on the 2<sup>nd</sup> day of November, 2010,  
and adopted by the following vote:

Ayes:

Noes:

Absent:

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Elizabeth Patterson, Mayor

ATTEST:

---

Lisa Wolfe, City Clerk



**MEMORANDUM OF UNDERSTANDING  
CITY OF BENICIA  
&  
PUBLIC EMPLOYEES UNION, LOCAL #1**

**I. PREAMBLE**

This agreement is entered into by the City of Benicia, hereinafter referred to as the “City,” and the Public Employees Union, Local #1, hereinafter referred to as “Local #1,” for the purpose of promoting harmonious relations between the City and its Professional and Confidential and Supervisory employees to establish an orderly and peaceful procedure, to settle differences which might arise and to set forth the basic, complete and full agreement between the parties concerning salaries and all other conditions of employment, and preclude any further negotiations during its term unless otherwise stated herein.

**II. RECOGNITION**

**A. Recognition of P.E.U., Local #1**

The City of Benicia recognizes Public Employees Union, Local #1 as the majority and exclusive representative of City employees in the Professional and Confidential and Supervisory classifications as set forth below, and in classifications appropriately added to Professional and Confidential or Supervisory hereafter.

**B. Parties to this Agreement**

This agreement is entered into by the City and Public Employees Union, Local #1 in accordance with Government Code Section 3500 et seq.

**C. Professional & Confidential employees covered by this agreement include the following positions:**

Administrative Secretary

Library ~~Assistant~~ Technician I/II

Assistant Engineer

Literacy ~~Project Coordinator~~ Program Supervisor

Assistant Fire Marshall

Management Analyst I/II  
Assistant Planner  
Associate Planner  
Senior Civil Engineer  
Deputy City Attorney I  
Executive Secretary  
~~Information Systems Coordinator~~  
Information Systems ~~Technician~~ Analyst I/II  
~~Youth & Family Counselor~~

Supervisory employees covered by this agreement include the following positions:

Accounting Systems Supervisor  
Field Utilities and Streets Supervisor  
Maintenance Supervisor  
Parks Supervisor  
Plant Supervisor (Water/Wastewater)  
Recreations Supervisor  
Senior Planner  
Water Quality Supervisor

### **III. NON-DISCRIMINATION**

The City shall not discriminate against any employee because of race, color, creed, sex, age, disability, national origin, gender, sexual orientation, or any other State or Federal protected class; nor shall the City discriminate against any employee covered by this Memorandum of Understanding because of membership or non-membership in Local #1, or authorized activity, as required in this Memorandum of Understanding, in behalf of the members of Local #1.

Local #1 shall not unlawfully discriminate against any Professional, Confidential or Supervisory employee because of membership or non-membership in Local #1 or because of race, creed, color, national origin, sex, disability, age, gender or sexual orientation.

The City and Local #1 recognize that the City has an obligation under the Americans With Disabilities Act (ADA) to meet with individual employees who allege a need for reasonable accommodation in the workplace because of a disability. If by reason of the aforesaid requirement, the City contemplates actions to provide reasonable accommodation to an

individual employee in compliance with the ADA which are in potential conflict with any provision of this Memorandum of Understanding, Local #1 will be advised of any such proposed accommodation and be afforded an opportunity to discuss same prior to implementation by the City.

#### **IV. DUES DEDUCTIONS AND FAIR SHARE FEES**

##### **Section 1 Scope of Coverage**

The City and Local #1 have agreed to conduct an election to determine if unit employees wish to implement a Dues Deduction/Fair Share Fee Agreement (hereinafter known as "the Agreement") for employees in the Professional and Confidential and the Supervisory classifications as authorized by Government Code 3502.5. The following provisions shall apply if employees so elect.

##### **Section 2 Deductions**

The City of Benicia agrees to deduct dues, initiation fees and special assessments from the salaries of those employees who sign dues deduction/fair share fee forms said dues/fair share fees, initiation fees and special assessments and remit the total dues/fair share fees, initiation fees and special assessments to Local #1 promptly.

##### **Section 3 Local #1 Responsibilities**

Local #1 agrees that it has a duty to provide fair and nondiscriminatory representation to all employees in the Professional and Confidential and Supervisory classifications, regardless of whether or not they are members of Local #1. All employees in, and all employees subsequently hired, promoted, demoted or transferred into classifications in the Professional and Confidential and Supervisory classifications shall as a condition of employment fulfill one of the following:

- A. Become and remain a member of Local #1; or
- B. Pay to Local #1 a fair share fee in an amount which does not exceed the amount which may be lawfully collected under applicable constitutional, statutory and case law, and which under no circumstances shall exceed the monthly dues, initiation fees and general assessments made during the term of this Agreement; or

- C. Do both of the following:
1. Execute a written declaration to Local #1 with a copy to the Payroll Division of the Auditor/Controller, that the employee has a conscientious religious objection to all unions. The holding of such a belief can be demonstrated by being a member of a bona fide religion, body or sect which has historically held a conscientious objection to joining or financially supporting any union as a condition of employment or providing an affidavit asserting such a conscientious religious belief and statements from two non-relatives that the employee holds such a belief; and
  2. Pay a sum equal to the fair share fee to a nonreligious, non-labor, charitable fund exempt from taxation under Internal Revenue Service Code Section 501(c) (3), chosen by the employee from the following charities:
    - i. Community Action Council of Benicia
    - ii. Friends of Benicia Library
    - iii. Benicia Human Services and Arts Fund
    - iv. Partners Encouraging Parks and Recreation in the Community

#### **Section 4 Compliance**

##### **A. Notice to employee and the City**

An employee in or hired into, a job classification in the Professional and Confidential or Supervisory classifications represented by Local #1 shall be provided with an Employee Authorization for Payroll Deduction form by Local #1. If the form authorizing payroll deduction for Local #1 dues, fair share fees, initiation fee, or charitable contribution is not returned to Local #1 within thirty (30) calendar days after notice of this fair share and initiation fee, Local #1 may, in writing, direct that the City withhold the fair share fee and the initiation fee from the employee's salary, in which case the employee's monthly salary shall be reduced by an amount equal to the fair share and initiation fees, and the City shall pay an equal amount to Local #1.

**B. Forfeiture of Deductions**

If the balance of an employee's wages, after all other involuntary and insurance premium deductions are made in any one pay period, is not sufficient to pay deductions required by this Agreement, no such deduction shall be made for that period.

**C. Withdrawal From Union**

Members shall be able to withdraw their membership by notifying the Union in writing of their desire to withdraw their membership and to become fee payers during the period of May 15-31 of any year. Members may not withdraw from membership at any other time.

**D. Advance Notice of Fair Shares Fees, Fair Share Fee Explanation and Right to Challenge**

No fair share service fee shall be collected from any employee who is not paying dues or a fair share fee until the employee has received written notice from Local #1, which includes legally adequate information concerning the breakdown of "chargeable" and "non-chargeable" expenses. A prompt opportunity, as provided below, shall be established by Local #1 for challenge of the amount of the fee before an impartial arbitrator. An escrow account shall be set up by P.E.U., Local #1 for the amounts in dispute while such challenges are pending.

**Section 5. Hold Harmless**

The authorization for payroll deductions described in this Agreement shall specifically require the employee and Local #1 to agree to hold the City harmless from all claims, demands, suits or other forms of liability that may arise against the City for or on account of any deduction made from the wages of such employee.

Local #1 shall defend, indemnify and hold harmless, release and save the City and its agents and employees against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of, or by reason of, action taken or not taken by the City under this Agreement. This includes but is not limited to the collection and procedures for collection of fair share fees and reasonable cost of City's attorney fees and costs, along with reasonable cost of management preparations time as well.

## **V. MANAGEMENT RIGHTS**

The employee organization agrees that the City retains all its exclusive rights and authority under the law and expressly and exclusively retains its management rights, which include, but are not limited to; the exclusive right to determine the mission of its constituent departments, commissions, boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotions; direct its employees; maintain the efficiency of government operations; determine the methods, means and numbers of kinds of personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to the right to contract for or sub-contract any works operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law; establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. Management rights shall be exercised in a manner consistent with applicable Federal and State laws, and Personnel rules and the MOU. Nothing in this Article is intended to alter the post-agreement rights of the respective parties as established by law to meet and confer or to lawfully refuse to meet and confer on changes which would effect the wages, hours and other terms and conditions of employment.

## **VI. COMPENSATION**

### **A. Salaries**

#### **~~FY 2005-06~~**

~~Local 1 accepts the 2005 salary survey as outlined in the letter to the City's Human Resources Director dated June 7, 2006.~~

~~—Adjustments to 2005 survey:~~

~~—Water Plant Supervisor salary to \$6,697 retroactive to January 1, 2006.~~

#### **~~FY 2006-07~~**

~~—July 1, 2006—~~

~~—2%COLA~~

~~—January 1, 2007—~~

~~—2% COLA~~

~~—2007 Study:~~

~~The parties agree to cooperate in the completion of the classification and compensation study currently in process.~~

~~Following completion of the Citywide Classification and Compensation Study the City and Union agree to reopen this agreement to negotiate Study implementation. Issues to be negotiated include internal relationships, and requirements for Notary duties (any changes to Notary compensation will be retroactive to January 1, 2007). These negotiations shall commence no later than May 15, 2007.~~

~~If City fails to meet the deadline specified above, Local 1 will have the option of immediately referring the matter to the grievance procedure commencing at step 5 (arbitration).~~

~~If a dispute arises as to the proper classification of any member of Local 1, this dispute shall be submitted to a three party panel for resolution. This panel shall consist of a representative of the Union's choosing, a representative of the City's choosing and a third party neutral selected from the State Mediation Services. The recommendation of the panel shall be final and binding on both City and the Union.~~

~~Positions reclassified as Division Managers will be moved from Local One representation and assigned to the Benicia Middle Management Group.~~

**FY 2007-08**

~~July 1, 2007~~

~~Market adjustment, after City/Union review of data, based on completed/implemented classification study.~~

~~Modified Total Compensation Elements for survey are:~~

~~Top Step Salary~~

~~Agency pick-up of employee PERS contributions~~

~~Maximum Healthcare pick-up~~

~~Compensation data from other agencies will be collected for salaries and benefits in effect on April 1, 2007 except that where agencies have committed, via contract or resolution, to increases effective July 1, 2007 the salary after applying such increase shall be used for the comparison.~~

Effective July 1, 2006 the following agencies shall be used for the purposes of salary surveys for benchmarked positions:

- City of Davis
- City of Brentwood
- City of Fairfield
- City of Folsom
- City of Pleasant Hill
- East Bay Municipal Utility District
- Central Contra Costa Sanitary District
- City of Napa
- City of Pinole
- City of Richmond
- City of Vacaville
- City of San Pablo
- Contra Costa Fire District
- Contra Costa Water District
- City of El Cerrito
- City of Vallejo

**FY 2008-09**

~~July 1, 2008~~

~~2% COLA~~

~~January 1, 2009~~

~~2% COLA~~

**FY 2009-10**

~~July 1, 2009 Market adjustment, after City/Union review of data.~~

~~Modified Total Compensation Elements for survey are:~~

~~Top Step Salary~~

~~Agency pick-up of employee PERS contributions~~

~~Maximum Healthcare pick-up~~

~~Compensation data from other agencies will be collected for salaries and benefits in effect on April 1, 2009 except that where agencies have committed, via contract or resolution, to increases effective July 1, 2009 the salary after applying such increase shall be used for the comparison.~~

There shall be no salary increases or salary surveys during the term of this MOU. Effective November 1, 2010 each step of the salary range for each classification in this unit shall be reduced by 3.16%.

### **B. Deferred Compensation**

Employees covered by this MOU may elect a monthly payroll deduction to be placed in the City administered deferred compensation program. Any monies so deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program.

### **C. Longevity Pay**

All employees employed in regular full-time positions shall be entitled to a 2 1/2% increase in compensation upon completion of ten (10) years of full-time service. Additionally, for each additional ten (10) year increment, i.e., twenty (20), thirty (30), forty (40) years, of full-time consecutive service, employees shall be entitled to an additional 2 1/2% increase in compensation over the rate for the class in which employed. Upon completion of ten (10) consecutive years of service and receiving longevity compensation, any further pay increase shall be in addition thereto, and not restricted or reduced by reason of the longevity increase.

The current incumbent in the Accounting Systems Supervisor position shall retain her annual single longevity day.

### **D. Acting Pay**

Any employee requested to perform the essential duties of a classification at a higher salary range due to a vacancy or the temporary absence of an employee in the higher classification shall receive at least a 5% differential but no less than the first step and no more than the top step of the salary range for the higher classification for all hours that they perform the duties of the higher classification.

Employees assigned in accordance with the foregoing to perform the duties of a higher classification on an acting basis for a period exceeding five (5) consecutive work days shall receive “acting pay” commencing with the sixth (6<sup>th</sup>) consecutive work day retroactive to the first day of assignment and continuing with each consecutive day of work in the higher classification thereafter.

An employee qualifying for “acting pay” shall receive an additional five percent (5%) over his/her then current salary range while working in the higher classification.

#### **E. Uniform Pay**

Uniform Allowance for Public Safety Members shall be \$40 per month.

### **VII. HOURS OF WORK**

#### **A. 9/80 Work Schedules**

Alternate schedules may be provided pursuant to City Policy 25.

#### **B. Reduced Work Schedules**

Reduced work schedules may be made available pursuant to City Policy #14.

#### **C. On Call/Call Back**

Employees within this bargaining unit are not on call and therefore not required to restrict their personal activities outside of their normal work hours.

By May 1, 2007 a Labor Management Committee shall be established consisting of two (2) Local One bargaining unit representatives and two (2) City representatives. The Committee shall meet and discuss issues regarding On Call, Call Back and Standby. Recommendations shall be presented to the City Manager, or designee, for approval. All approved recommendations affecting terms and conditions of employment are subject to the meet and confer process.

### **VIII. LEAVE**

#### **A. Vacation**

Employees covered under this agreement shall accumulate vacation time in accordance with the following vacation entitlement schedule:

## **Years of Service**

## **Weeks of Vacation**

An employee may take vacation at times approved by the department head. It is the policy of the City that employees take their normal vacation each year. However, an employee may take less than a normal vacation in one year and carry the balance over to the next year. Such carry-over accumulation shall not exceed 320 hours, and any accrual over 320 hours shall be used by December 31st of each year. Beginning December 2000, and in December of each calendar year, the City will allow employees who have in excess of 320 hours of accrued vacation leave to convert forty (40) hours of vacation leave to sick leave.

### **B. Administrative Leave**

**1. For Fiscal Year 2010 – 2011 the cash out provision allowable in paragraph 3 in this section below on June 1, 2011 and paid by June 30, 2011 shall not be operative. The savings to the City as a result of the employees not cashing out the leave during the 2010 – 2011 fiscal year shall be credited towards the retroactive salary reduction for the period of July 1, 2010 – October 31, 2010 to ensure that the City achieves the full 3.16% annualized salary savings needed.**

2. In recognition of the extended hours required of unit employees, including attendance at meetings outside of normal working hours, the following leave policy shall be implemented:

Each FLSA exempt employee shall receive nine (9) days Administrative Leave.

3. On June 1st of each year, employees may elect to convert unused Administrative Leave for cash for an amount up to one half his/her authorized Administrative Leave allowance. Payment for cash conversion shall be made by June 30th. Administrative Leave must be converted to cash payment or used by June 30th of each year.

Upon termination of employment an employee will be entitled to a prorated payout of the current fiscal year's earned Administrative Leave.

0 through 3 years	2 weeks
4 through 7 years	3 weeks
8 through 15 years	4 weeks
16 and over	5 weeks

In extraordinary circumstances such as emergencies, storms etc. Department Heads may authorize the flexing of work schedules for unit employees working excessive hours beyond that compensated for through Administrative Leave.

4. All employees whose status changes to FLSA non-exempt will have their nine (9) days of Administrative Leave added as a percentage increase (3.42%) to their salary on a one-time basis on top of the results of the July 1, 2007 market survey.

### **C. Sick Leave**

Employees covered by this agreement shall accrue sick leave beginning the first day of the month following the employee's completion of one month of service. An employee earns leave with pay at the rate of 8 hours for each calendar month of service. Full sick leave is earned by each full-time employee on paid leave of absence, including sick leave and jury leave. It is not earned by an employee on unpaid leave of absence or paid industrial leave (PIL).

The City allows the unlimited accumulation of sick leave.

The City will reimburse each employee in the Professional/Confidential classifications 25% of their annually accrued, but unused, sick leave during December of each year.

For Supervisory classifications the City will contribute to the individual employee's health retirement savings account an amount equivalent to:

- 1-10 Years – 25% of Annual Unused Sick Leave Accrual
- 11-15 Years – 40% of Annual Sick Leave Accrual
- 16-19 Years – 60% of Annual Sick Leave Accrual
- 20-24 Years – 80% of Annual Sick Leave Accrual
- 25 Years or more – 100% of Annual Sick Leave Accrual

In order for an employee to receive the 40% or greater amounts they must maintain 500 hours of sick leave accrued in their city sick leave account. If they fall below the 500 hours the City will revert to the contribution amount equivalent to 25% of the employee's annual unused sick leave accrual until such time as the employee has again accrued 500 hours. The 500 hours must be in the employee's individual account by December 20th of each year in order to receive

these greater amounts. The Annual Accrual period is January through December and earned contribution amounts will be transferred to ICMA in December of each year.

**D. Supplemental Sick Leave Benefit**

A supplemental sick leave benefit is provided pursuant to City Policy #5.

**E. Paid Industrial Accident Leave**

Each full-time employee shall be granted paid industrial leave (PIL) if the claim is approved by the State Workers' Compensation, with the City paying full, basic salary during such leave. "PIL" shall begin on the first day of said industrial accident and shall extend for a maximum of one year. During such leave, the City shall receive all State Compensation benefits. When an employee is on "PIL", he/she is charged neither vacation nor sick leave but during this time, he/she does not accrue vacation or sick leave. He/she is not eligible for a step increase while on "PIL", and his/her anniversary date will be adjusted so that he/she will observe the normal working period between steps.

Safety employees shall be governed by Section 4850 of the Workers' Compensation Act.

**F. Bereavement Leave**

Any employee shall obtain the approval of the employee's department head in advance of an absence due to a death in the employee's family. Failure to obtain the department head's approval shall result in ineligibility for benefits under this section.

In the event of a death in the immediate family of an employee, he/she shall, upon request, be granted such time off with pay as is necessary to make arrangements for the funeral and attend same, not to exceed three (3) regularly scheduled working days. However, up to an additional two (2) days may be granted for out-of-state funerals. This provision does not apply if the death occurs during the employee's paid vacation, or while the employee is on leave of absence, layoff, or sick leave. For the purposes of this section immediate family shall be defined as follows: Spouse, children, father, mother, brothers, sisters, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparents, grandchildren and members of the employee's household.

Additional Bereavement Leave may be granted to an employee to attend the funeral of a person other than a member of the employee's

immediate family, chargeable to sick leave, compensatory time, or vacation leave.

#### **G. Leave of Absence**

1. Employees covered by this MOU shall be granted a leave of absence with full pay for jury service, and appearances or attendance in court proceedings resulting from the employee's official duties. Any compensation received by the employee for such service shall be remitted to the City.
2. A request for a leave of absence without pay must be made to the department head in writing by the employee stating the dates of leave of absence requested and the reason for the request.
3. A department head may grant an employee a leave of absence without pay for not more than ten (10) working days when it is in the best interest of the City. The City Manager must approve a leave of absence without pay exceeding ten (10) working days.

#### **H. Donation of Leave**

With City approval, employees may voluntarily donate annual leave or administrative leave hours to an employee who has exhausted their own leave time.

#### **IX. EDUCATIONAL REIMBURSEMENT**

An Educational Reimbursement Program is hereby established to encourage employees to continue their self-development and career development by enrolling in job related classroom courses during off duty time. The City agrees to pay up to an amount of \$1,200 in any one twelve (12) month period toward the cost of tuition, books and materials for courses of study undertaken by employees pursuant to this Program and provided such courses and institutions have been approved by the employee's Department Head.

#### **X. HOLIDAYS**

1. New Year's Day (January 1st)
2. Martin Luther King Jr.'s Birthday
3. Lincoln's Birthday
4. Presidents' Day (3rd Monday in February)
5. Memorial Day (last Monday in May)
6. Independence Day (July 4th)

7. Labor Day (1st Monday in September)
8. Columbus Day
9. Veterans' Day
10. Thanksgiving Day
11. Friday after Thanksgiving
12. Christmas Day (December 25)
13. Personal Leave Day (at the employee's option)

The City will observe the Friday preceding a legal holiday falling on Saturday as a legal holiday and the Monday following a legal holiday falling on a Sunday as a legal holiday.

Personal Leave may be taken at any time during the fiscal year with the approval of the employees supervisor and/or department head. Personal Leave may not be accumulated and carried forward to the next fiscal year.

**XI. HEALTH AND MEDICAL INSURANCE**

A. A-The City shall continue to offer hospital-medical-dental and vision plans as those plans are currently structured or as the plans may be amended from time to time by the plan providers. The City may substitute plans currently offered with plans of substantially similar benefits. ~~The City's maximum liability for premium contribution for hospital medical benefits shall be limited to the then current Kaiser Foundation Health Plan contribution rate for the class of dependency coverage involved. For those employees enrolled in other plans, the City shall contribute in addition to the current Kaiser Foundation Health Plan contribution rate, 50% of the difference between the current Kaiser Foundation Health Plan contribution rate and the then contribution rate charged by the City's individual practitioner health maintenance organization provider (HMO) for the class of dependency coverage involved. The City shall contribute the full premium required by the providers of the dental and vision care plans provided herein for the terms of this agreement.~~

Effective the first full pay period after the ratification by the Union and approval by the City Council on its agenda the City's contribution towards medical premiums for the term of the contract shall be a maximum up to the following contributions for any plan:

<u>Employee:</u>	<u>\$592.37</u>
<u>Employee plus One:</u>	<u>\$1,184.75</u>
<u>Employee plus Family:</u>	<u>\$1,575.71</u>

During the term of the MOU, the parties agree to participate with the other bargaining units to determine whether or not any medical plan design changes would assist in reduction of costs to the city and/or reduction of premiums for employees. The parties recognize that any such changes in plan design require agreement by all city bargaining units. In order to allow employees in Health Net time to transition to the City's new capped contribution to any plan, the City will continue the existing City dollar contributions for Health Net participants in effect on September 30, 2010 until June 30, 2011. At that time this extra contribution shall expire and the City's contribution for all participants shall be as described below for fiscal year 2011 - 2012.

For fiscal year 2011-2012 the parties agree to the following cost sharing approach to premium increases in 2011 and 2012 only. Specifically, the City will share evenly any amount that exceeds the current FY 2010-2011 Kaiser contribution levels, up to a capped maximum City contribution amount of \$29.63/month for single, \$59.25/month for employee plus one, and \$79.49/month for employee plus family.

- B. ~~Employees with dual insurance coverage may elect to drop their health insurance coverage and instead receive additional reimbursement at the Kaiser Health Plan individual rate. The City shall allow employees who have dual coverage on their health plan to receive the amount the city contributes towards the single rate listed above; this amount is to be added to the employee's paycheck.~~
- C. Retirees may voluntarily continue to participate at their own expense in the City's health plans at the same premium as active employees.

## **XII. RETIREE HEALTH SAVINGS PLAN**

The City agrees to contribute 2.0% of base salary for each Supervisory classified employee enrolled in ICMA VantageCare. On the date of implementation for the Professional and Confidential employees, the salaries of such employees shall be reduced by 0.5% in order to pay for the additional value of having this benefit.

In addition to the above provisions, all employees covered by the MOU may contribute additional funds to their VantageCare accounts in accordance with program rules.

### **XIII. LIFE INSURANCE**

The City shall pay the entire cost of providing each insurable regular, full-time employee with \$50,000 group term life insurance with said policy to include \$100,000 accidental death and dismemberment coverage.

### **XIV. MILEAGE REIMBURSEMENT**

Mileage reimbursement shall be in accordance with City Policy #23. Remaining auto allowances will be rolled into salary.

### **XV. PROFESSIONAL AND COMMUNITY ORGANIZATIONS**

Employees required to maintain membership in professional and/or community organizations will be reimbursed for all membership fees and approved expenses.

### **XVI. RETIREMENT**

- A. For non-sworn employees the City shall provide the 2.7 percent at 55 Local Miscellaneous Members Retirement Program. ~~Employee's~~Employees will assume responsibility for payment, by payroll deduction, of the one (1%) percent increase in the employee's retirement contribution for this benefit. The City will adopt the IRS 414(h)(2) provision allowing for payment of the 1% on a pre-tax basis.

The City shall continue payment of the employees 7%/9% contribution to PERS.

The City implemented Government Code Section 20636(c) and began reporting the 7%/9% employee contribution as Employer Paid Member Contributions (EPMC) as additional compensation for Professional & Confidential Unit Employees.

~~On the date of implementation for Supervisory employees the salaries of such employees shall be reduced by 1.5% in order to pay for the value of having EPMC.~~

The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for miscellaneous employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.

3. Credit for unused sick leave as provided for in Government Code, Section 20965.

B. For sworn employees the City shall provide the PERS three (3) percent at age 50 Local Safety Members' Retirement Program.

~~C.~~ The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for ~~miscellaneous~~ sworn employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.
3. Credit for unused sick leave as provided for in Government Code, Section 20965.

C. Retirement Reform: The Safety and Miscellaneous employees in this unit agree to the implementation of a new, less costly, CalPERS 2<sup>nd</sup> tier pension formula for new hires contingent upon agreement with all other Safety and Miscellaneous employees to the same and effective thereafter as soon as administratively possible consistent with CalPERS contract amendment requirements.

## **XVII. GRIEVANCES/DISCIPLINARY APPEALS**

### **A. Definitions**

1) **Grievance:**

A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding, or rules, regulations, resolutions, ordinances and existing practices which specifically govern personnel practices and working conditions of unit members.

2) **Discipline:**

A disciplinary appeal is an appeal by an employee of a discharge, demotion, and reduction in pay or suspension without pay. The process will be determined by the employee's selection as set forth in Section 9.11 of the City of Benicia Personnel Rules.

## **B. Procedure**

Grievances/Appeals filed pursuant to this Memorandum of Understanding shall be processed in the following manner:

For the purposes of this Section, the term "working days" shall mean those days the City is normally open for business.

- 1) The grievance shall be presented in writing either by the employee or by an authorized union representative to the designated supervisor of the employee within ten (10) working days after the cause of such grievance occurs. Disciplinary appeals must be presented to the department head within ten (10) working days from date of receipt of the Notice of Intent to Discipline. Appeals which are not presented within this time limit shall be deemed waived and abandoned.
- 2) The designated supervisor shall have ten (10) working days from the date of receipt of the grievance in which to investigate and respond. If the grievance is not satisfactorily adjusted within this period, the grievance may be presented in writing either by the employee or by an authorized union representative within ten (10) working days to the department head or to such representative as the employee may designate.
- 3) The department head or a designated representative shall have ten (10) working days from date of receipt of grievance/appeal in which to respond. If the grievance is not satisfactorily adjusted/resolved within this period, the grievance/appeal may be presented in writing either by the employee or by an authorized Union representative to the City manager or to such representative as the City Manager may designate.
- 4) If the parties are unable, within ten (10) working days, to reach a mutually satisfactory accord on any grievance/appeal which arises and is presented during the term of this Memorandum of Understanding, such grievance/appeal shall be submitted to an Adjustment Board comprised of two (2) Union representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Union; and two (2) representatives of the City, no more than one (1) of whom shall be either an employee of the City or a member of the staff of any organization employed to represent the City in the meeting and conferring process. No decision of the Adjustment Board shall be final and binding without

receiving the affirmative votes of at least three (3) members of the Board.

- 5) If an Adjustment Board is unable to arrive at a majority decision, either the Union or City may require that the grievance/appeal be referred to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City Manager. The fees and expenses of the arbitrator and a court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation including, but not limited to, preparation and posting hearing briefs, if any. If the Union and the City Manager are unable to agree on an impartial arbitrator a list will be requested from the State Mediation & Conciliation Service and an impartial arbitrator selected by alternately striking names until only one name remains on the list, that person shall be the impartial arbitrator.
- 6) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

### **C. Scope of Procedure**

No Adjustment Board and no arbitrator shall entertain, hear, decide or make recommendations on any dispute unless such dispute involves a position in a unit represented by the Union and unless such dispute falls within the definition of a grievance/appeal as set forth above.

### **D. Change to Memorandum**

Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be arbitrated and no proposal to modify, amend or terminate this Memorandum of Understanding, nor any matter or subject arising out of or in connection with such proposal, may be referred to arbitration under this Section. Neither any Adjustment Board or any arbitrator shall have the power to amend or modify this Memorandum of Understanding or written agreements or addenda supplementary hereto or to establish any new terms or conditions of employment.

### **E. Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints which allege that employees are not being compensated in accordance with the provisions of the Memorandum of

Understanding shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and if not detailed in the Memorandum of Understanding which results from such meeting and conferring process shall be deemed withdrawn until the meeting and conferring process is next opened for such discussion. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

#### **XVIII. CLOSING CLAUSE**

The terms of this agreement shall remain in effect through June 30, ~~2010~~2012. The parties agree that during the term of the agreement, if the Council, after a noticed public hearing, deems additional reductions are necessary to balance the City's budget, the parties agree to reopen the contract for the narrow and specific purpose of meeting and conferring over concessions identified by the City as needed to prevent layoffs of Local One members.

This Memorandum of Understanding shall be in force after its expiration where negotiations between the City and Local #1 have not resulted in a new Memorandum of Understanding until completion of the meet and confer process.

If any section of this Memorandum of Understanding should be found invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other Sections of this Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding. In the event of invalidation of any Section, the City and Local #1 agree to meet within thirty (30) days for the purpose of renegotiating said Section.

This Memorandum of Understanding shall be submitted to the City Council for its adoption.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding this \_\_\_\_\_ day of \_\_\_\_\_, 20072010.

**PUBLIC EMPLOYEES  
UNION, LOCAL 1**

**CITY OF BENICIA**

\_\_\_\_\_  
~~Vicki Shidell~~ Theron Jones  
President

\_\_\_\_\_  
Jim Erickson  
City Manager

\_\_\_\_\_  
Kasmir Zaratkiewicz  
Local 1, Field Representative

\_\_\_\_\_  
~~Diane O'Connell~~ Anne Cardwell  
Human Resources Administrative Services Director

\_\_\_\_\_  
~~Lee Cowles~~

\_\_\_\_\_  
~~Jeff Gregory~~

\_\_\_\_\_  
~~Tonya Gilmore~~

\_\_\_\_\_  
~~Steve Hickman~~

APPROVED AS TO FORM BY  
City Attorney:

\_\_\_\_\_  
Heather Mc Laughlin

**MEMORANDUM OF UNDERSTANDING  
CITY OF BENICIA**

**&**

**PUBLIC EMPLOYEES UNION, LOCAL #1  
July 1, 2010 – June 30, 2012**

**I. PREAMBLE**

This agreement is entered into by the City of Benicia, hereinafter referred to as the “City,” and the Public Employees Union, Local #1, hereinafter referred to as “Local #1,” for the purpose of promoting harmonious relations between the City and its Professional and Confidential and Supervisory employees to establish an orderly and peaceful procedure, to settle differences which might arise and to set forth the basic, complete and full agreement between the parties concerning salaries and all other conditions of employment, and preclude any further negotiations during its term unless otherwise stated herein.

**II. RECOGNITION**

**A. Recognition of P.E.U., Local #1**

The City of Benicia recognizes Public Employees Union, Local #1 as the majority and exclusive representative of City employees in the Professional and Confidential and Supervisory classifications as set forth below, and in classifications appropriately added to Professional and Confidential or Supervisory hereafter.

**B. Parties to this Agreement**

This agreement is entered into by the City and Public Employees Union, Local #1 in accordance with Government Code Section 3500 et seq.

**C. Professional & Confidential employees covered by this agreement include the following positions:**

- Administrative Secretary
- Library Technician I/II
- Assistant Engineer
- Literacy Program Supervisor
- Assistant Fire Marshall
- Management Analyst I/II

Assistant Planner  
Associate Planner  
Senior Civil Engineer  
Deputy City Attorney I  
Executive Secretary  
Information Systems Analyst I/II

Supervisory employees covered by this agreement include the following positions:

Accounting Systems Supervisor  
Field Utilities and Streets Supervisor  
Maintenance Supervisor  
Parks Supervisor  
Plant Supervisor (Water/Wastewater)  
Recreations Supervisor  
Senior Planner  
Water Quality Supervisor

### **III. NON-DISCRIMINATION**

The City shall not discriminate against any employee because of race, color, creed, sex, age, disability, national origin, gender, sexual orientation, or any other State or Federal protected class; nor shall the City discriminate against any employee covered by this Memorandum of Understanding because of membership or non-membership in Local #1, or authorized activity, as required in this Memorandum of Understanding, in behalf of the members of Local #1.

Local #1 shall not unlawfully discriminate against any Professional, Confidential or Supervisory employee because of membership or non-membership in Local #1 or because of race, creed, color, national origin, sex, disability, age, gender or sexual orientation.

The City and Local #1 recognize that the City has an obligation under the Americans With Disabilities Act (ADA) to meet with individual employees who allege a need for reasonable accommodation in the workplace because of a disability. If by reason of the aforesaid requirement, the City contemplates actions to provide reasonable accommodation to an individual employee in compliance with the ADA which are in potential conflict with any provision of this Memorandum of Understanding, Local #1 will be advised of any such proposed accommodation and be afforded an opportunity to discuss same prior to implementation by the City.

## **IV. DUES DEDUCTIONS AND FAIR SHARE FEES**

### **Section 1 Scope of Coverage**

The City and Local #1 have agreed to conduct an election to determine if unit employees wish to implement a Dues Deduction/Fair Share Fee Agreement (hereinafter known as "the Agreement") for employees in the Professional and Confidential and the Supervisory classifications as authorized by Government Code 3502.5. The following provisions shall apply if employees so elect.

### **Section 2 Deductions**

The City of Benicia agrees to deduct dues, initiation fees and special assessments from the salaries of those employees who sign dues deduction/fair share fee forms said dues/fair share fees, initiation fees and special assessments and remit the total dues/fair share fees, initiation fees and special assessments to Local #1 promptly.

### **Section 3 Local #1 Responsibilities**

Local #1 agrees that it has a duty to provide fair and nondiscriminatory representation to all employees in the Professional and Confidential and Supervisory classifications, regardless of whether or not they are members of Local #1. All employees in, and all employees subsequently hired, promoted, demoted or transferred into classifications in the Professional and Confidential and Supervisory classifications shall as a condition of employment fulfill one of the following:

- A. Become and remain a member of Local #1; or
- B. Pay to Local #1 a fair share fee in an amount which does not exceed the amount which may be lawfully collected under applicable constitutional, statutory and case law, and which under no circumstances shall exceed the monthly dues, initiation fees and general assessments made during the term of this Agreement; or
- C. Do both of the following:
  - 1. Execute a written declaration to Local #1 with a copy to the Payroll Division of the Auditor/Controller, that the employee has a conscientious religious objection to all unions. The holding of such a belief can be demonstrated by being a member of a bona fide religion, body or sect which has historically held a conscientious objection to joining or

financially supporting any union as a condition of employment or providing an affidavit asserting such a conscientious religious belief and statements from two non-relatives that the employee holds such a belief; and

2. Pay a sum equal to the fair share fee to a nonreligious, non-labor, charitable fund exempt from taxation under Internal Revenue Service Code Section 501(c) (3), chosen by the employee from the following charities:
  - i. Community Action Council of Benicia
  - ii. Friends of Benicia Library
  - iii. Benicia Human Services and Arts Fund
  - iv. Partners Encouraging Parks and Recreation in the Community

#### **Section 4 Compliance**

##### **A. Notice to employee and the City**

An employee in or hired into, a job classification in the Professional and Confidential or Supervisory classifications represented by Local #1 shall be provided with an Employee Authorization for Payroll Deduction form by Local #1. If the form authorizing payroll deduction for Local #1 dues, fair share fees, initiation fee, or charitable contribution is not returned to Local #1 within thirty (30) calendar days after notice of this fair share and initiation fee, Local #1 may, in writing, direct that the City withhold the fair share fee and the initiation fee from the employee's salary, in which case the employee's monthly salary shall be reduced by an amount equal to the fair share and initiation fees, and the City shall pay an equal amount to Local #1.

##### **B. Forfeiture of Deductions**

If the balance of an employee's wages, after all other involuntary and insurance premium deductions are made in any one pay period, is not sufficient to pay deductions required by this Agreement, no such deduction shall be made for that period.

##### **C. Withdrawal From Union**

Members shall be able to withdraw their membership by notifying the Union in writing of their desire to withdraw their membership and to become fee payers during the period of May 15-31 of any year. Members may not withdraw from membership at any other time.

**D. Advance Notice of Fair Shares Fees, Fair Share Fee Explanation and Right to Challenge**

No fair share service fee shall be collected from any employee who is not paying dues or a fair share fee until the employee has received written notice from Local #1, which includes legally adequate information concerning the breakdown of "chargeable" and "non-chargeable" expenses. A prompt opportunity, as provided below, shall be established by Local #1 for challenge of the amount of the fee before an impartial arbitrator. An escrow account shall be set up by P.E.U., Local #1 for the amounts in dispute while such challenges are pending.

**Section 5. Hold Harmless**

The authorization for payroll deductions described in this Agreement shall specifically require the employee and Local #1 to agree to hold the City harmless from all claims, demands, suits or other forms of liability that may arise against the City for or on account of any deduction made from the wages of such employee.

Local #1 shall defend, indemnify and hold harmless, release and save the City and its agents and employees against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of, or by reason of, action taken or not taken by the City under this Agreement. This includes but is not limited to the collection and procedures for collection of fair share fees and reasonable cost of City's attorney fees and costs, along with reasonable cost of management preparations time as well.

**V. MANAGEMENT RIGHTS**

The employee organization agrees that the City retains all its exclusive rights and authority under the law and expressly and exclusively retains its management rights, which include, but are not limited to; the exclusive right to determine the mission of its constituent departments, commissions, boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotions; direct its employees; maintain the efficiency of government operations; determine the methods, means and numbers of kinds of personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and

composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to the right to contract for or sub-contract any works operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law; establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. Management rights shall be exercised in a manner consistent with applicable Federal and State laws, and Personnel rules and the MOU. Nothing in this Article is intended to alter the post-agreement rights of the respective parties as established by law to meet and confer or to lawfully refuse to meet and confer on changes which would effect the wages, hours and other terms and conditions of employment.

## **VI. COMPENSATION**

### **A. Salaries**

Effective July 1, 2006 the following agencies shall be used for the purposes of salary surveys for benchmarked positions:

City of Davis	City of Napa	City of San Pablo
City of Brentwood	City of Pinole	Contra Costa Fire District
City of Fairfield	City of Richmond	Contra Costa Water District
City of Folsom	City of Vacaville	City of El Cerrito
City of Pleasant Hill		City of Vallejo
East Bay Municipal Utility District		
Central Contra Costa Sanitary District		

There shall be no salary increases or salary surveys during the term of this MOU. Effective November 1, 2010 each step of the salary range for each classification in this unit shall be reduced by 3.16%.

## **B. Deferred Compensation**

Employees covered by this MOU may elect a monthly payroll deduction to be placed in the City administered deferred compensation program. Any monies so deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program.

## **C. Longevity Pay**

All employees employed in regular full-time positions shall be entitled to a 2 1/2% increase in compensation upon completion of ten (10) years of full-time service. Additionally, for each additional ten (10) year increment, i.e., twenty (20), thirty (30), forty (40) years, of full-time consecutive service, employees shall be entitled to an additional 2 1/2% increase in compensation over the rate for the class in which employed. Upon completion of ten (10) consecutive years of service and receiving longevity compensation, any further pay increase shall be in addition thereto, and not restricted or reduced by reason of the longevity increase.

The current incumbent in the Accounting Systems Supervisor position shall retain her annual single longevity day.

## **D. Acting Pay**

Any employee requested to perform the essential duties of a classification at a higher salary range due to a vacancy or the temporary absence of an employee in the higher classification shall receive at least a 5% differential but no less than the first step and no more than the top step of the salary range for the higher classification for all hours that they perform the duties of the higher classification.

Employees assigned in accordance with the foregoing to perform the duties of a higher classification on an acting basis for a period exceeding five (5) consecutive work days shall receive “acting pay” commencing with the sixth (6<sup>th</sup>) consecutive work day retroactive to the first day of assignment and continuing with each consecutive day of work in the higher classification thereafter.

An employee qualifying for “acting pay” shall receive an additional five percent (5%) over his/her then current salary range while working in the higher classification.

## **E. Uniform Pay**

Uniform Allowance for Public Safety Members shall be \$40 per month.

**VII. HOURS OF WORK**

**A. 9/80 Work Schedules**

Alternate schedules may be provided pursuant to City Policy 25.

**B. Reduced Work Schedules**

Reduced work schedules may be made available pursuant to City Policy #14.

**C. On Call/Call Back**

Employees within this bargaining unit are not on call and therefore not required to restrict their personal activities outside of their normal work hours.

By May 1, 2007 a Labor Management Committee shall be established consisting of two (2) Local One bargaining unit representatives and two (2) City representatives. The Committee shall meet and discuss issues regarding On Call, Call Back and Standby. Recommendations shall be presented to the City Manager, or designee, for approval. All approved recommendations affecting terms and conditions of employment are subject to the meet and confer process.

**VIII. LEAVE**

**A. Vacation**

Employees covered under this agreement shall accumulate vacation time in accordance with the following vacation entitlement schedule:

<b>Years of Service</b>	<b>Weeks of Vacation</b>
0 through 3 years	2 weeks
4 through 7 years	3 weeks
8 through 15 years	4 weeks
16 and over	5 weeks

An employee may take vacation at times approved by the department head. It is the policy of the City that employees take their normal vacation each year. However, an employee may take less than a normal vacation in one year and carry the balance over to the next year. Such carry-over accumulation shall not exceed 320 hours, and any accrual over 320 hours shall be used by December 31st of each year. Beginning December 2000, and in December of each calendar year, the City will allow employees who have in excess of 320 hours of accrued vacation leave to convert forty (40) hours of vacation leave to sick leave.

## **B. Administrative Leave**

1. For Fiscal Year 2010 – 2011 the cash out provision allowable in paragraph 3 in this section below on June 1, 2011 and paid by June 30, 2011 shall not be operative. The savings to the City as a result of the employees not cashing out the leave during the 2010 – 2011 fiscal year shall be credited towards the retroactive salary reduction for the period of July 1, 2010 – October 31, 2010 to ensure that the City achieves the full 3.16% annualized salary savings needed.
2. In recognition of the extended hours required of unit employees, including attendance at meetings outside of normal working hours, the following leave policy shall be implemented:

Each FLSA exempt employee shall receive nine (9) days Administrative Leave.

3. On June 1st of each year, employees may elect to convert unused Administrative Leave for cash for an amount up to one half his/her authorized Administrative Leave allowance. Payment for cash conversion shall be made by June 30th. Administrative Leave must be converted to cash payment or used by June 30th of each year.

Upon termination of employment an employee will be entitled to a prorated payout of the current fiscal year's earned Administrative Leave.

In extraordinary circumstances such as emergencies, storms etc. Department Heads may authorize the flexing of work schedules for unit employees working excessive hours beyond that compensated for through Administrative Leave.

4. All employees whose status changes to FLSA non-exempt will have their nine (9) days of Administrative Leave added as a percentage increase (3.42%) to their salary on a one-time basis on top of the results of the July 1, 2007 market survey.

## **C. Sick Leave**

Employees covered by this agreement shall accrue sick leave beginning the first day of the month following the employee's completion of one month of service. An employee earns leave with pay at the rate of 8 hours for each calendar month of service. Full sick leave is earned by each full-time employee on paid leave of absence,

including sick leave and jury leave. It is not earned by an employee on unpaid leave of absence or paid industrial leave (PIL).

The City allows the unlimited accumulation of sick leave.

The City will reimburse each employee in the Professional/Confidential classifications 25% of their annually accrued, but unused, sick leave during December of each year.

For Supervisory classifications the City will contribute to the individual employee's health retirement savings account an amount equivalent to:

- 1-10 Years – 25% of Annual Unused Sick Leave Accrual
- 11-15 Years – 40% of Annual Sick Leave Accrual
- 16-19 Years – 60% of Annual Sick Leave Accrual
- 20-24 Years – 80% of Annual Sick Leave Accrual
- 25 Years or more – 100% of Annual Sick Leave Accrual

In order for an employee to receive the 40% or greater amounts they must maintain 500 hours of sick leave accrued in their city sick leave account. If they fall below the 500 hours the City will revert to the contribution amount equivalent to 25% of the employee's annual unused sick leave accrual until such time as the employee has again accrued 500 hours. The 500 hours must be in the employee's individual account by December 20th of each year in order to receive these greater amounts. The Annual Accrual period is January through December and earned contribution amounts will be transferred to ICMA in December of each year.

#### **D. Supplemental Sick Leave Benefit**

A supplemental sick leave benefit is provided pursuant to City Policy #5.

#### **E. Paid Industrial Accident Leave**

Each full-time employee shall be granted paid industrial leave (PIL) if the claim is approved by the State Workers' Compensation, with the City paying full, basic salary during such leave. "PIL" shall begin on the first day of said industrial accident and shall extend for a maximum of one year. During such leave, the City shall receive all State Compensation benefits. When an employee is on "PIL", he/she is

charged neither vacation nor sick leave but during this time, he/she does not accrue vacation or sick leave. He/she is not eligible for a step increase while on "PIL", and his/her anniversary date will be adjusted so that he/she will observe the normal working period between steps.

Safety employees shall be governed by Section 4850 of the Workers' Compensation Act.

#### **F. Bereavement Leave**

Any employee shall obtain the approval of the employee's department head in advance of an absence due to a death in the employee's family. Failure to obtain the department head's approval shall result in ineligibility for benefits under this section.

In the event of a death in the immediate family of an employee, he/she shall, upon request, be granted such time off with pay as is necessary to make arrangements for the funeral and attend same, not to exceed three (3) regularly scheduled working days. However, up to an additional two (2) days may be granted for out-of-state funerals. This provision does not apply if the death occurs during the employee's paid vacation, or while the employee is on leave of absence, layoff, or sick leave. For the purposes of this section immediate family shall be defined as follows: Spouse, children, father, mother, brothers, sisters, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparents, grandchildren and members of the employee's household.

Additional Bereavement Leave may be granted to an employee to attend the funeral of a person other than a member of the employee's immediate family, chargeable to sick leave, compensatory time, or vacation leave.

#### **G. Leave of Absence**

1. Employees covered by this MOU shall be granted a leave of absence with full pay for jury service, and appearances or attendance in court proceedings resulting from the employee's official duties. Any compensation received by the employee for such service shall be remitted to the City.
2. A request for a leave of absence without pay must be made to the department head in writing by the employee stating the dates of leave of absence requested and the reason for the request.
3. A department head may grant an employee a leave of absence without pay for not more than ten (10) working days when it is in

the best interest of the City. The City Manager must approve a leave of absence without pay exceeding ten (10) working days.

#### **H. Donation of Leave**

With City approval, employees may voluntarily donate annual leave or administrative leave hours to an employee who has exhausted their own leave time.

#### **IX. EDUCATIONAL REIMBURSEMENT**

An Educational Reimbursement Program is hereby established to encourage employees to continue their self-development and career development by enrolling in job related classroom courses during off duty time. The City agrees to pay up to an amount of \$1,200 in any one twelve (12) month period toward the cost of tuition, books and materials for courses of study undertaken by employees pursuant to this Program and provided such courses and institutions have been approved by the employee's Department Head.

#### **X. HOLIDAYS**

1. New Year's Day (January 1st)
2. Martin Luther King Jr.'s Birthday
3. Lincoln's Birthday
4. Presidents' Day (3rd Monday in February)
5. Memorial Day (last Monday in May)
6. Independence Day (July 4th)
7. Labor Day (1st Monday in September)
8. Columbus Day
9. Veterans' Day
10. Thanksgiving Day
11. Friday after Thanksgiving
12. Christmas Day (December 25)
13. Personal Leave Day (at the employee's option)

The City will observe the Friday preceding a legal holiday falling on Saturday as a legal holiday and the Monday following a legal holiday falling on a Sunday as a legal holiday.

Personal Leave may be taken at any time during the fiscal year with the approval of the employees supervisor and/or department head. Personal Leave may not be accumulated and carried forward to the next fiscal year.

**XI. HEALTH AND MEDICAL INSURANCE**

- A. The City shall continue to offer hospital-medical-dental and vision plans as those plans are currently structured or as the plans may be amended from time to time by the plan providers. The City may substitute plans currently offered with plans of substantially similar benefits.

Effective the first full pay period after the ratification by the Union and approval by the City Council on its agenda the City's contribution towards medical premiums for the term of the contract shall be a maximum up to the following contributions for any plan:

Employee:	\$592.37
Employee plus One:	\$1,184.75
Employee plus Family:	\$1,575.71

During the term of the MOU, the parties agree to participate with the other bargaining units to determine whether or not any medical plan design changes would assist in reduction of costs to the city and/or reduction of premiums for employees. The parties recognize that any such changes in plan design require agreement by all city bargaining units. In order to allow employees in Health Net time to transition to the City's new capped contribution to any plan, the City will continue the existing City dollar contributions for Health Net participants in effect on September 30, 2010 until June 30, 2011. At that time this extra contribution shall expire and the City's contribution for all participants shall be as described below for fiscal year 2011 - 2012.

For fiscal year 2011-2012 the parties agree to the following cost sharing approach to premium increases in 2011 and 2012 only. Specifically, the City will share evenly any amount that exceeds the current FY 2010-2011 Kaiser contribution levels, up to a capped maximum City contribution amount of \$29.63/month for single, \$59.25/month for employee plus one, and \$79.49/month for employee plus family.

- B. The City shall allow employees who have dual coverage on their health plan to receive the amount the city contributes towards the single rate listed above; this amount is to be added to the employee's paycheck.

C. Retirees may voluntarily continue to participate at their own expense in the City's health plans at the same premium as active employees.

## **XII. RETIREE HEALTH SAVINGS PLAN**

The City agrees to contribute 2.0% of base salary for each Supervisory classified employee enrolled in ICMA VantageCare. On the date of implementation for the Professional and Confidential employees, the salaries of such employees shall be reduced by 0.5% in order to pay for the additional value of having this benefit.

In addition to the above provisions, all employees covered by the MOU may contribute additional funds to their VantageCare accounts in accordance with program rules.

## **XIII. LIFE INSURANCE**

The City shall pay the entire cost of providing each insurable regular, full-time employee with \$50,000 group term life insurance with said policy to include \$100,000 accidental death and dismemberment coverage.

## **XIV. MILEAGE REIMBURSEMENT**

Mileage reimbursement shall be in accordance with City Policy #23. Remaining auto allowances will be rolled into salary.

## **XV. PROFESSIONAL AND COMMUNITY ORGANIZATIONS**

Employees required to maintain membership in professional and/or community organizations will be reimbursed for all membership fees and approved expenses.

## **XVI. RETIREMENT**

A. For non-sworn employees the City shall provide the 2.7 percent at 55 Local Miscellaneous Members Retirement Program. Employees will assume responsibility for payment, by payroll deduction, of the one (1%) percent increase in the employee's retirement contribution for this benefit. The City will adopt the IRS 414(h)(2) provision allowing for payment of the 1% on a pre-tax basis.

The City shall continue payment of the employees 7%/9% contribution to PERS.

The City implemented Government Code Section 20636(c) and began reporting the 7%/9% employee contribution as Employer

Paid Member Contributions (EPMC) as additional compensation for Professional & Confidential Unit Employees.

The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for miscellaneous employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.
3. Credit for unused sick leave as provided for in Government Code, Section 20965.

- B. For sworn employees the City shall provide the PERS three (3) percent at age 50 Local Safety Members' Retirement Program.

The City's contract with PERS shall provide the following additional benefits:

1. One year highest compensation benefit as contained in the Government Code, Section 20042 for sworn employees.
2. 1959 Survivor Benefits at the increased level, as provided for in Civil Code Section 21573.
3. Credit for unused sick leave as provided for in Government Code, Section 20965.

- C. Retirement Reform: The Safety and Miscellaneous employees in this unit agree to the implementation of a new, less costly, CalPERS 2<sup>nd</sup> tier pension formula for new hires contingent upon agreement with all other Safety and Miscellaneous employees to the same and effective thereafter as soon as administratively possible consistent with CalPERS contract amendment requirements.

## **XVII. GRIEVANCES/DISCIPLINARY APPEALS**

### **A. Definitions**

1) **Grievance:**

A grievance is any dispute which involves the interpretation or application of any provisions of this Memorandum of Understanding, or rules, regulations, resolutions, ordinances and existing practices which

specifically govern personnel practices and working conditions of unit members.

2) **Discipline:**

A disciplinary appeal is an appeal by an employee of a discharge, demotion, and reduction in pay or suspension without pay. The process will be determined by the employee's selection as set forth in Section 9.11 of the City of Benicia Personnel Rules.

**B. Procedure**

Grievances/Appeals filed pursuant to this Memorandum of Understanding shall be processed in the following manner:

For the purposes of this Section, the term "working days" shall mean those days the City is normally open for business.

- 1) The grievance shall be presented in writing either by the employee or by an authorized union representative to the designated supervisor of the employee within ten (10) working days after the cause of such grievance occurs. Disciplinary appeals must be presented to the department head within ten (10) working days from date of receipt of the Notice of Intent to Discipline. Appeals which are not presented within this time limit shall be deemed waived and abandoned.
- 2) The designated supervisor shall have ten (10) working days from the date of receipt of the grievance in which to investigate and respond. If the grievance is not satisfactorily adjusted within this period, the grievance may be presented in writing either by the employee or by an authorized union representative within ten (10) working days to the department head or to such representative as the employee may designate.
- 3) The department head or a designated representative shall have ten (10) working days from date of receipt of grievance/appeal in which to respond. If the grievance is not satisfactorily adjusted/resolved within this period, the grievance/appeal may be presented in writing either by the employee or by an authorized Union representative to the City manager or to such representative as the City Manager may designate.
- 4) If the parties are unable, within ten (10) working days, to reach a mutually satisfactory accord on any grievance/appeal which arises and is presented during the term of this Memorandum of Understanding, such

grievance/appeal shall be submitted to an Adjustment Board comprised of two (2) Union representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Union; and two (2) representatives of the City, no more than one (1) of whom shall be either an employee of the City or a member of the staff of any organization employed to represent the City in the meeting and conferring process. No decision of the Adjustment Board shall be final and binding without receiving the affirmative votes of at least three (3) members of the Board.

- 5) If an Adjustment Board is unable to arrive at a majority decision, either the Union or City may require that the grievance/appeal be referred to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City Manager. The fees and expenses of the arbitrator and a court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation including, but not limited to, preparation and posting hearing briefs, if any. If the Union and the City Manager are unable to agree on an impartial arbitrator a list will be requested from the State Mediation & Conciliation Service and an impartial arbitrator selected by alternately striking names until only one name remains on the list, that person shall be the impartial arbitrator.
- 6) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto.

**C. Scope of Procedure**

No Adjustment Board and no arbitrator shall entertain, hear, decide or make recommendations on any dispute unless such dispute involves a position in a unit represented by the Union and unless such dispute falls within the definition of a grievance/appeal as set forth above.

**D. Change to Memorandum**

Proposals to add to or change this Memorandum of Understanding or written agreement or addenda supplementary hereto shall not be arbitrated and no proposal to modify, amend or terminate this Memorandum of Understanding, nor any matter or subject arising out of or in connection with such proposal, may be referred to arbitration under this Section. Neither any Adjustment Board or any arbitrator shall have the power to amend or modify this Memorandum of Understanding or written agreements or addenda

supplementary hereto or to establish any new terms or conditions of employment.

**E. Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints which allege that employees are not being compensated in accordance with the provisions of the Memorandum of Understanding shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and if not detailed in the Memorandum of Understanding which results from such meeting and conferring process shall be deemed withdrawn until the meeting and conferring process is next opened for such discussion. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

**XVIII. CLOSING CLAUSE**

The terms of this agreement shall remain in effect through June 30, 2012. The parties agree that during the term of the agreement, if the Council, after a noticed public hearing, deems additional reductions are necessary to balance the City's budget, the parties agree to reopen the contract for the narrow and specific purpose of meeting and conferring over concessions identified by the City as needed to prevent layoffs of Local One members.

This Memorandum of Understanding shall be in force after its expiration where negotiations between the City and Local #1 have not resulted in a new Memorandum of Understanding until completion of the meet and confer process.

If any section of this Memorandum of Understanding should be found invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other Sections of this Memorandum of Understanding shall remain in full force and effect for the duration of this Memorandum of Understanding. In the event of invalidation of any Section, the City and Local #1 agree to meet within thirty (30) days for the purpose of renegotiating said Section.

This Memorandum of Understanding shall be submitted to the City Council for its adoption.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**PUBLIC EMPLOYEES  
UNION, LOCAL 1**

**CITY OF BENICIA**

\_\_\_\_\_  
Theron Jones  
President

\_\_\_\_\_  
Jim Erickson  
City Manager

\_\_\_\_\_  
Kasmir Zaratkiewicz  
Local 1, Field Representative

\_\_\_\_\_  
Anne Cardwell  
Administrative Services Director

APPROVED AS TO FORM BY  
City Attorney:

\_\_\_\_\_  
Heather Mc Laughlin



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - NOVEMBER 2, 2010**  
**ACTION ITEMS**

**DATE** : **OCTOBER 27, 2010**

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **APPOINTMENT OF A NEW CITY MANAGER**

**RECOMMENDATION:**

Adopt the resolution appointing Brad Kilger as City Manager, effective December 13, 2010.

**EXECUTIVE SUMMARY:**

Jim Erickson was appointed City Manager in February of 2003. After years of diligent and dedicated service, Mr. Erickson announced his retirement earlier this year. The City Council hired Peckham and McKenney to conduct a recruitment for the City Manager. After interviews and background checks, the City Council has selected Brad Kilger to be the new City Manager.

**BUDGET INFORMATION:**

The annual base salary for Mr. Kilger is \$187,500, which is approximately 4.39% less than the \$195,727 Mr. Erickson was receiving.

**GENERAL PLAN:**

N/A

**STRATEGIC PLAN:**

N/A

**BACKGROUND:**

After the announcement of Mr. Erickson's retirement, the City Council engaged the services of the Executive Search Firm of Peckham and McKenney to conduct a nationwide search for a new City Manager. Seventy -three applications were received. The applications were screened by Bobbi Peckham who submitted sixteen candidates for Council review and suggested eight candidates to the City Council to interview. The City conducted a total of four interview sessions including the initial candidate interviews, two separate interview sessions with the public member panel (see attached list) and a peer review panel (see list), and the finalist interview session.

Upon completion of the interviews, Council met in closed session to consider the strengths, experience, record and suitability for Benicia of each candidate. As a result of public and peer panel interviews, and Council deliberations, the Council selected Brad Kilger to be the next City Manager for the City of Benicia.

Mr. Kilger has over 31 years of municipal experience and brings a wealth of skills and knowledge to the position. He has served in his current position as City Manager of Ceres since 2006. Before that, he served as Community and Economic Development Director for the City of Modesto, where he was responsible for the overall administration of the City's economic development, redevelopment, planning, building and work force development activities. Prior to Modesto Mr. Kilger served as Town Manager and Redevelopment Agency Executive Director for the Town of Yucca Valley, as Economic and Community Development Director for the City of Murrieta, Deputy Town Manager for the Town of Apple Valley, Planning Director for the City of San Bernardino, and Deputy Planning Director for the County of San Bernardino.

His professional affiliations include being a member of the International City/County Management Association, certification with the American Institute of Certified Planners, on the Board of the California Redevelopment Association and incoming Vice President for the City Manager's Department for the League of California Cities. Mr. Kilger's past experience will help the City of Benicia as it faces the potential development of the industrial park and the Arsenal and help the City meet the economic challenges of the times by bringing his unique economic development and planning perspective.

In recognition of the economic challenges of the times, the Council has negotiated an annual base salary that is approximately 4.39% less than the salary Jim Erickson made. It has been the City's policy to encourage city managers to live in the City. Therefore, eight years ago, Mr. Erickson received a 6-month housing allowance of \$1500 per month and moving expenses. In order to enable Mr. Kilger to live in town, a housing allowance – decreasing annually or until his house is sold, whichever comes first (with a five year limitation) - is provided. This allowance is also in recognition by the Council of the collapse of housing values in the Central Valley and their deeply depressed housing market.

As the resolution and employment contract state Mr. Kilger will begin his first day of employment with the City on December 13 on a reduced hours basis initially.

Attachments:

- Resolution
- Employment Contract
- Employee Bio
- Panel List

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
APPOINTING A CITY MANAGER**

**WHEREAS**, a vacancy in the position of City Manager will exist and pursuant to the Benicia Municipal Code, Chapter 2.08, the City Council may appoint and establish the compensation of qualified persons performing the duties of City Manager during any such vacancy; and

**WHEREAS**, the City Council has determined that Brad Kilger is both qualified and experienced for the position of Benicia City Manager; and

**WHEREAS**, the City has negotiated an Agreement outlining the terms and conditions under which Brad Kilger shall serve as City Manager.

**NOW, THEREFORE BE IT RESOLVED**, that Brad Kilger is appointed City Manager of the City of Benicia effective December 13, 2010.

**BE IT FURTHER RESOLVED** that the agreement between Brad Kilger and the City is approved.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above resolution was approved by the City Council of the City of Benicia at a regular meeting held on the 2<sup>nd</sup> day of November, 2010 by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk



City Manager Panel Interview List

<b>First</b>	<b>Last Name</b>
Lee	Wilder Snider
Rae Lynn	Fiscalini
Dennis	Lowry
Christina	Strawbridge
Jerry	Pollard
Jim	Triplett
Sandy	Moriarty
June	Catalano
Ray	Samuels
Daniel	Healy



## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of November, 2010, by and between the CITY OF BENICIA, hereinafter called "EMPLOYER" and Brad L. Kilger, City Manager, hereinafter called "EMPLOYEE," both of whom understand as follows:

### **RECITALS**

Whereas, it is the desire of the EMPLOYER to provide certain benefits, establish certain conditions of employment and to set working conditions of said EMPLOYEE, which conditions will help to:

1. Secure and retain services of EMPLOYEE and provide inducement for EMPLOYEE to remain in EMPLOYER's employment; and
2. Make possible full productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; and
3. Provide a just means for terminating EMPLOYEE'S services at such time as EMPLOYER may desire to terminate EMPLOYEE.

Whereas, EMPLOYEE has the necessary education, experience, skills and expertise to serve as EMPLOYER's City Manager; and

Whereas, EMPLOYER desires to offer employment to EMPLOYEE as City Manager of the City of Benicia; and

Whereas, EMPLOYEE desires to accept employment as City Manager of the City of Benicia.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, EMPLOYER and EMPLOYEE agree as follows:

### **SECTION I DUTIES AND AUTHORITY**

1. EMPLOYER hereby agrees to employ Brad L. Kilger as City Manager of said EMPLOYER effective December 13, 2010, on a reduced hour basis until December 20, 2010 when full time service will begin. EMPLOYEE shall be the chief executive officer of the City and be responsible to the EMPLOYER for the proper administration of all affairs of the City and agrees to diligently and faithfully perform the duties of the Benicia City Manager. Specific duties include, but are not limited to, the functions and duties specified in Chapter 2.08 of the Benicia Municipal Code as well as other legally permissible and proper duties and functions as the City Council may, from time to time, assign.

2. EMPLOYEE will focus his professional time, ability, and attention to City business during the term of this Agreement. EMPLOYEE shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise without the prior consent of the City Council, except for occasional teaching, writing or consulting for compensation, performed on EMPLOYEE'S time off, provided such activities are not in conflict with his duties and this Employment Agreement and not detrimental to the interests of the City.
3. To ensure that EMPLOYEE is able to effectively carry out his duties in a professional and forthright manner and implement the policies of the City Council impartially and equitably, the City Council and its members agree a) to spend time each year outside of regular meetings to work with EMPLOYEE and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals, b) to adopt a set of communication protocols to assist in maximizing the effectiveness of City Council member interaction with one another, with EMPLOYEE and with City staff, c) to deal with all subordinate City employees, officers, contractors, and consultants solely through EMPLOYEE or his designee, except for the purpose of inquiry and to not give orders to any subordinate of EMPLOYEE, either publicly or privately, d) to not order the appointment or removal of any person to any office or employment under the supervision and control of EMPLOYEE, e) that any criticism of a City staff member will be done privately through EMPLOYEE, f) to not interfere with the execution of the powers and duties of EMPLOYEE and g) that EMPLOYEE shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.
4. EMPLOYER acknowledges that EMPLOYEE is a member of the International City Management Association ("ICMA"). The Parties mutually desire that EMPLOYEE be subject to and comply with the ICMA Code of Ethics (See Attachment). In that regard EMPLOYEE commits to comply with the ICMA Code of Ethics and EMPLOYER agrees that neither the City Council nor any of its members will give EMPLOYEE any order, direction, or request that would require EMPLOYEE to violate the ICMA Code of Ethics.

## **SECTION II - TERM**

1. The term of this Employment Agreement shall be for an indeterminate period of time and is subject to termination by EMPLOYER as provided herein. EMPLOYEE acknowledges that he is employed to an "at will" position and serves at the pleasure of the City Council subject only to the restrictions imposed by local ordinance and the terms and conditions of this Employment Agreement.
2. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYER to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section VI of this agreement.

3. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with EMPLOYER, subject only to the provisions set forth in Section VI of this agreement.

### **SECTION III - HOURS OF WORK**

1. It is recognized that the position of City Manager is an executive management position which often requires more than a conventional forty-hour week to provide the desired level of professional service. It is further recognized that to properly fulfill his duties and responsibilities, EMPLOYEE will devote a considerable amount of time outside normal office hours to the business of the City. Therefore, while EMPLOYEE shall spend sufficient hours on site to perform the City Manager's duties, EMPLOYEE has discretion over his work schedule and work location and will not be required to maintain a strict forty (40) hour-per-week on-site presence at City Hall, and may be occasionally absent from City Hall during normal business hours as is reasonable and appropriate.

### **SECTION IV - COMPENSATION**

1. Base Salary
  - a. EMPLOYER agrees to pay EMPLOYEE for his services rendered, pursuant hereto, an annual base salary of one hundred and eighty-seven thousand and five hundred dollars (\$187,500.00) payable pro rata at the same time as other City employees are paid. The compensation shall be payable in installments as provided to other employees of EMPLOYER are so paid. EMPLOYER may not, at any time during the term of this Agreement, reduce the salary, compensation, or other financial benefits of EMPLOYEE without his consent.
  - b. EMPLOYER agrees to annually consider increases in EMPLOYEE'S base salary and/or other benefits of EMPLOYEE in such amounts and to such extent as the City Council in its sole discretion after consultation with EMPLOYEE may determine is justified based upon an annual performance review of EMPLOYEE as provided for in Section V of this Agreement. Increases may include additional compensation paid to EMPLOYEE'S deferred compensation account.
  - c. Notwithstanding EMPLOYEE'S annual base salary as set forth herein, the annual salary of EMPLOYEE shall never be less than the annual base salary (excluding overtime, other pay or and any incentive compensation) of the City's next highest paid employee. In the event that a promotion, an adjustment to the salary table, or a general management salary reduction would result in EMPLOYEE being paid less than the next highest paid employee's annual base salary, EMPLOYEE'S annual base salary will be set at the annual base salary of the City's next highest paid employee after action by the City Council at a public meeting.
2. Deferred Compensation

EMPLOYER agrees to also contribute annually on behalf of the EMPLOYEE additional compensation in an amount equal to nine and one-half percent (9.5 %) of the EMPLOYEE'S annual base salary to the ICMA Retirement Corporation 401a Deferred Compensation Program, or other deferred compensation plan in equal installments at the same time other employees are paid, commencing on date of employment. In no event shall the EMPLOYER or EMPLOYEE contributions exceed the allowed IRS rates for deferred compensation programs. EMPLOYER agrees to transfer ownership to succeeding employers upon separation of employment.

## **SECTION V - PERFORMANCE EVALUATION**

1. The Council shall annually review and evaluate the performance of the EMPLOYEE. The annual evaluation will be scheduled to occur during December of each year with the establishment of organizational goals and objectives as described herein in January of each year to coincide with the initiation of the annual budget process.
2. Within sixty (60) days from commencement of employment with the City, EMPLOYEE and the City Council will create the initial set of evaluation criteria, employee tasks and outcomes, organizational goals and objectives described herein, which will provide the basis for determining the EMPLOYEE'S performance. .
3. The review and evaluation shall be in accordance with specific evaluation criteria developed jointly by EMPLOYER and EMPLOYEE. Such criteria shall serve as a written memorandum of the City Council's expectations for the EMPLOYEE'S performance. The criteria shall generally include, but not be limited to such performance categories as initiative, customer service, job knowledge, problem solving, communication, integrity and honesty, among others. The criteria shall also include defined employee tasks and outcomes and measure whether EMPLOYEE in his words and actions, adequately and properly reflected, demonstrated, and promoted the organizational values as established by the City Council.
4. In addition, as part of the performance evaluation process the City Council and EMPLOYEE shall jointly define such organizational goals and objectives that are determined necessary for the proper operation of the organization, and in the attainment of the City Council's policy objectives. A relative priority among those various goals and objectives shall also be established. They shall generally be challenging but attainable within the time limitations as specified, and the annual operation budget and capital budget and appropriations provided. Said goals and objectives shall be reduced to writing.
5. EMPLOYER and EMPLOYEE agree that a performance evaluation, for the purpose of mid-course corrections, may occur several times during the year; however the parties will endeavor to meet on a quarterly basis in closed session for the purpose of conducting an informal review of the progress that the City Council and EMPLOYEE

have made in achieving the established performance criteria, and organizational goals and objectives.

6. In the event such performance criteria cannot be established by mutual consent, then the Council will have the final authority to determine the standards by which EMPLOYEE'S performance will be evaluated. Said performance criteria may also be added to or deleted from by the City Council in consultation with EMPLOYEE as part of the annual evaluation process.
7. When discussing the performance of EMPLOYEE, the Council shall meet in closed session with or without EMPLOYEE. EMPLOYEE'S performance evaluation may be facilitated by an outside consultant, as mutually determined by EMPLOYEE and the Council. Further, the Council shall provide the EMPLOYEE with a written summary statement of the evaluation and provide the EMPLOYEE an adequate opportunity to discuss his evaluation with the Council in closed session and provide a written response if so desired by EMPLOYEE. The completed performance evaluation shall be signed by the City Council and EMPLOYEE and placed in the EMPLOYEE'S personnel file.
8. As a component of the EMPLOYEE'S annual evaluation the City Council may require that EMPLOYEE undergo a 360-degree evaluation by selected members of the City's staff.
9. The City Council agrees to consider a performance incentive program for all senior management employees. Such a program will only be implemented when the economy improves and if it makes economic sense to implement such a program.

#### **SECTION VI - TERMINATION AND SEVERANCE PAY**

1. It is understood by and between the parties to this Agreement that EMPLOYEE, in providing City Manager's duties to the City of Benicia, serves at the pleasure of the City Council. EMPLOYEE may be terminated only by an affirmative vote of three (3) members of the City Council, convened in a council meeting. The City Council shall furnish EMPLOYEE with a written notice stating the City Council's intention to terminate his employment with the City at least 30 days before the effective date of his termination. Such action shall not be taken within ninety (90) days after 1) any election to which a council member has been elected or, 2) a new council member has been appointed.
2. In the event EMPLOYEE is involuntarily terminated by the City Council during such time that EMPLOYEE is willing and able to perform his duties under this Agreement, then, in that event, EMPLOYER agrees to pay EMPLOYEE a lump sum cash payment. If EMPLOYEE is involuntarily terminated in the first year of this Agreement, said payment will include 6 months of the base salary and all earned sick leave, vacation, holidays, and other accrued benefits to date, calculated at the rate of pay in effect upon termination, and not include the monthly housing allowance. If

EMPLOYEE is involuntarily terminated in the second or later year of this Agreement, the annual base salary said payment will include 12 months of the base salary and all earned sick leave, vacation, holidays, and other accrued benefits to date, calculated at the rate of pay in effect upon termination, and not include the monthly housing allowance.

3. Also, in such event, and in addition to the lump sum payment, EMPLOYER shall provide for continuance of the EMPLOYEE health and other related insurance benefits provided for in this Agreement for the same number of months as provide for base salary in accordance with paragraph 2 above, from and after the date of termination or until EMPLOYEE obtains other employment, whichever first occurs. EMPLOYEE shall also be entitled to full compensation at the final rate of pay of all unused sick leave and vacation accrued.
4. In the event EMPLOYEE voluntarily resigns his position with EMPLOYER, then EMPLOYEE shall give EMPLOYER 45 days written notice, in advance, unless the parties otherwise agree. In such event EMPLOYER shall only pay EMPLOYEE for accrued vacation, sick leave and administrative leave and any other accrued benefits in accordance with the terms of this Agreement.
5. The term "Involuntary Termination" as used in this section includes any action by EMPLOYER resulting in: 1) EMPLOYEE'S discharge or dismissal by EMPLOYER as provided for in this Section; 2) EMPLOYEE'S resignation following a salary, compensation and/or benefit reduction without his consent; 3) a reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position and 4) EMPLOYEE'S resignation following a formal demand by the City Council, approved by a majority vote of three council members that the EMPLOYEE resign.
6. Furthermore, in the event EMPLOYER refuses, following written notice of noncompliance, to comply with any provision in this Employment Agreement benefiting EMPLOYEE, or EMPLOYEE resigns following a formal action by a majority of the City Council that EMPLOYEE resign, then, in that event, EMPLOYEE may, at EMPLOYEE'S option, be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and the provisions of this Section shall be actuated.
7. Notwithstanding the provisions of this Section, on separation from City employment, EMPLOYEE may choose to apply all unused accrued leave allowances provided in this Agreement to a deferred compensation plan. Accumulated leave balances shall be paid at EMPLOYEE'S monthly salary rate at the effective date of separation.
8. In the event the EMPLOYEE dies while employed by the City under this Agreement, the EMPLOYEE'S beneficiaries or those entitled to the EMPLOYEE'S estate, shall be entitled to the EMPLOYEE'S earned salary, and any in-lieu payments for accrued

benefits, including compensation for the value of all accrued leave balances as provided for in this Agreement.

### **SECTION VII – DISABILITY OR INABILITY TO PERFORM**

In the event EMPLOYEE becomes mentally or physically incapable of performing his/her functions and duties with reasonable accommodations and it reasonably appears such incapability will last for more than six (6) months, the City Council may terminate employment of EMPLOYEE; however in such instance, EMPLOYEE shall be entitled to severance pay as provided herein. If EMPLOYEE is terminated because of permanent disability, he shall be compensated in a lump sum for any accrued benefits, to the extent that such benefits are compensable under this Agreement. (See Section V of this Agreement.) However, Employer shall have no responsibility to make severance payments pursuant to SECTION V.2 and Section V.3 of this Agreement if, and only if, as a result of said disability, EMPLOYEE is eligible for PERS disability retirement. If notwithstanding said disability, EMPLOYEE is determined not to be eligible for PERS disability retirement, then EMPLOYER shall pay EMPLOYEE severance pay from the effective date of his termination in accordance with SECTION V.2 and Section V.3 of this Agreement.

### **SECTION VIII - RETIREMENT**

1. EMPLOYEE shall be covered by the retirement program (i.e., Public Employees Retirement System – PERS) by which the City Attorney is covered.
2. EMPLOYER agrees to pay for participation in and pay all EMPLOYER and EMPLOYEE contributions to the EMPLOYER’S PERS retirement plan, including paying all fees and premiums. EMPLOYEE recognizes that the City is interested in restructuring its retirement programs including the “employee contribution pick up” provision currently provided to City miscellaneous employees and may negotiate this in the future.

### **SECTION IX - FRINGE BENEFITS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

1. Sick Leave  
EMPLOYEE will accrue sick leave at the rate of 8 hours per month. There is unlimited sick leave accrual and it may be applied as a credit to PERS retirement. Unused sick leave may be annually cashed out or contributed to the 457 deferred compensation plan at the rate of 50%. The sick leave balance of EMPLOYEE will be reduced accordingly. EMPLOYEE shall be credited forty (40) hours of supplemental sick leave by EMPLOYER upon commencement of employment.
2. Holiday and Personal Leave  
Included as part of the EMPLOYEE’S base pay, EMPLOYER agrees to provide EMPLOYEE twelve (12) holidays and two (2) personnel leave days in accordance

with the City's standard holiday schedule.

3. Vacation

Upon the Commencement Date, the EMPLOYEE shall be credited with (i.e., provided a "bank" of) 80 hours of vacation leave. If EMPLOYEE is terminated prior to the time he would have normally accrued these 80 hours, he shall not be entitled to convert the remaining 80 hours or to cash it out. Upon the Commencement Date, EMPLOYEE shall accrue additional vacation leave at the rate of 13.3 hours per month. In the interest of EMPLOYEE health and for budgetary reasons, EMPLOYEE shall do everything possible to use his allotted vacation time and shall not accrue vacation hours in excess of 200 hours. Any hours in excess of 200 hours shall be converted to cash or to the 457 deferred compensation plan.

4. Bereavement Leave

Bereavement leave shall be provided to employee in the same manner and under the same terms as offered to the Senior Management employees.

5. Administrative Leave

EMPLOYEE shall receive sixteen (16) days of annual Administrative Leave each fiscal year in the manner given to Senior Management employees. Up to ½ of the unused Administrative leave may be cashed out on June 30 of each year or deposited into the 457 deferred compensation plan. The first annual allocation will be credited to the EMPLOYEE on a prorated basis upon commencement of employment.

6. Automobile

EMPLOYEE shall be reimbursed by EMPLOYER for use of his personal automobile when used in the normal course of City business. Reimbursement shall be on a mileage basis in accordance with City policies. To promote the City's Greenhouse Gas Reduction Goals, EMPLOYEE is encouraged to use one of EMPLOYER's hybrid vehicles in the normal course of business. EMPLOYEE shall be responsible for paying liability insurance as required by state law and for maintenance and repair of his automobile.

7. Health and Other Insurance

EMPLOYER agrees to make required health insurance coverage premium payments for EMPLOYEE and dependents, including insurance policies for accident, sickness, dental, vision, hospitalization, surgical and comprehensive medical insurance and any other benefits as provided to other Senior Management employees of EMPLOYER. EMPLOYER agrees to work with EMPLOYEE to coordinate the various health and other insurance benefits selected by EMPLOYEE and available through EMPLOYER to insure that no exclusion, hiatus, or break in coverage occurs for EMPLOYEE and his family. EMPLOYEE may participate in the City's Supplemental Sick Leave Program established in accordance with City of Benicia Policy & Procedure #5.

8. Life Insurance

EMPLOYER agrees to purchase and pay the required premiums for a term life

insurance policy on the life of EMPLOYEE in the sum of \$300,000.00. This policy shall be owned by EMPLOYEE and paid for by EMPLOYER.

9. Professional Development and Dues, Subscriptions, Training and License Fees

EMPLOYER recognizes that it is in the best interest of the City and EMPLOYEE that EMPLOYEE enrich his professional development and represent the interests of the City by participating in various national, state, regional and local associations and organizations relevant to his profession and the interests of the City. Such activities will be considered part of EMPLOYEE'S normal work activities. The organizations or associations may be selected by EMPLOYEE so long as the expenses do not exceed the budgeted amounts. EMPLOYER therefore agrees annually to budget and pay for:

- a. Professional dues and subscriptions on behalf of the City Manager which are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City, and for the City Manager's continued professional participation and advancement.
- b. Travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Manager serves as a member.
- c. Travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager.

10. Civic Clubs and Community Organizations

EMPLOYER recognizes the desirability of representation in and before local civic and other organizations, therefore the EMPLOYEE is authorized and encouraged to become a member of civic clubs or organizations and EMPLOYER agrees to pay membership dues as budgeted by EMPLOYER.

11. General Business and Work Related Expenses

General business expenses incurred by EMPLOYEE on a routine basis that are non-personal and work related, will be reimbursed to EMPLOYEE to the extent that they qualify for reimbursement under the adopted policies of EMPLOYER and do not exceed the budgeted amounts. EMPLOYER shall provide the EMPLOYEE a City credit card to charge appropriate and lawful business expenses.

12. Housing Expenses

EMPLOYER recognizes that due to the current recession's impact on housing values, EMPLOYEE might be unable to sell his current residence for a significant period of time. EMPLOYER further recognizes that the cost of housing in Benicia and the surrounding region is substantially higher than the average cost of housing in other communities within the State. It is the desire of both the EMPLOYER and the EMPLOYEE that the EMPLOYEE resides in the City of Benicia. Therefore

EMPLOYER agrees to pay EMPLOYEE an annual housing allowance for up to five years or until EMPLOYEE sells his residence in the Central Valley or unless EMPLOYEE is terminated pursuant to Section VI, whichever event (5 years, sale or termination) comes first. The housing allowance shall be as follows:

1. \$2000 per month for the first year;
2. \$1750 per month for the second year;
3. \$1500 per month for the third year;
4. \$1000 per month for the fourth year; and
5. \$1000 per month for the fifth year.

Said payments shall begin on his first day of work. EMPLOYER further agrees to provide the EMPLOYEE a loan for the down payment on the purchase of a home within the city limits of Benicia in an amount not to exceed \$100,000. The loan shall be secured by a deed of trust in the property no lower than second position, and interest shall be at the rate earned on the City's investment portfolio earnings and adjusted annually. EMPLOYEE shall repay EMPLOYER in an amount and in a manner agreed to by both parties.

13. Relocation Expenses

EMPLOYER agrees to pay EMPLOYEE for the expenses of moving EMPLOYEE, his family and personal property from Modesto to Benicia. The payment will be based on the lowest of three bids from professional movers submitted by EMPLOYEE.

14. Annual Physical

EMPLOYEE agrees to submit a complete physical examination by a qualified physician of his choosing covered by his selected health plan once a calendar year, the costs of which shall be paid by EMPLOYER pursuant to the health coverage.

15. Other Terms and Conditions Of Employment

- a. EMPLOYER shall provide the EMPLOYEE with a private office, administrative assistants, staff, office equipment, necessary technological tools, including but not limited to computer, laptop computer, high-speed internet access, advanced cellular phone (smart phone), supplies, and all other facilities and services adequate for the performance of the City Manager's duties.
- b. EMPLOYER, in consultation with EMPLOYEE, shall address any other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinances or any other law.

**SECTION X – INDEMNIFICATION**

1. EMPLOYER shall defend, hold harmless, and indemnify EMPLOYEE against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of

EMPLOYEE'S duties as City Manager. EMPLOYER may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination or separation of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to EMPLOYEE, by the City of Benicia, as described herein, for any acts undertaken or committed in EMPLOYEE'S capacity as City Manager, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand or other legal action occurs during or following EMPLOYEE'S employment with EMPLOYER.

2. In the event that the EMPLOYEE shall serve as the chief executive of other City related legal entities, then each provision of this Section shall be equally applicable to each City related legal entity as though set forth in an indemnity agreement between the EMPLOYEE and that legal entity. The EMPLOYER hereby guarantees the performance of this indemnity obligation by the City related legal entity, and shall indemnify and hold the EMPLOYEE harmless against any failure or refusal by City related legal entity to perform its obligations under this Section.

#### **SECTION XI – BONDING**

EMPLOYER shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under any law or ordinance.

#### **SECTION XII - NOTICES**

Notices pursuant to this Agreement shall be given by deposit in the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be subsequently furnished by either party in writing:

- (1) Mayor  
City of Benicia  
250 East L Street  
Benicia, CA 94510
  
- (2) Brad L. Kilger  
City of Benicia  
250 East L Street  
Benicia, CA 94510

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

#### **SECTION XIII - GENERAL PROVISIONS**

1. The text herein and referenced attachment shall constitute the entire agreement between the parties.
2. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
3. This Agreement shall become effective immediately upon the adoption of a resolution authorizing the Mayor to execute this agreement.
4. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

**IN WITNESS WHEREOF**, the City of Benicia has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk and the EMPLOYEE has signed and executed this Agreement, the day and year first written above.

**CITY OF BENICIA, EMPLOYER:**

**EMPLOYEE:**

\_\_\_\_\_  
 Elizabeth Patterson, Mayor  
 City of Benicia

\_\_\_\_\_  
 Brad L. Kilger

**Attest:**

**Approved as to Form:**

\_\_\_\_\_  
 Lisa Wolfe, City Clerk

\_\_\_\_\_  
 City Attorney

# ICMA Code of Ethics

## With Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in July 2004.

*The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:*

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

### *Guideline*

#### **Advice to Officials of Other Local Governments.**

When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

### *Guidelines*

**Public Confidence.** Members should conduct themselves so as to maintain public confidence in their profession, their local government, and in their performance of the public trust.

**Impression of Influence.** Members should conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

**Appointment Commitment.** Members who accept an appointment to a position should not fail to report for that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time, but once a *bona fide* offer of a position has been accepted, that commitment should be honored. Oral acceptance of an employment offer is considered binding unless the employer makes fundamental changes in terms of employment.

**Credentials.** An application for employment or for ICMA's Voluntary Credentialing Program should be complete and accurate as to all pertinent details of education, experience, and personal history. Members should recognize that both omissions and inaccuracies must be avoided.

**Professional Respect.** Members seeking a management position should show professional respect for persons formerly holding the position or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity in order to be appointed to a position.

implement local government policies adopted by elected officials.

**Reporting Ethics Violations.** When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report the matter to ICMA. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis.

**Confidentiality.** Members should not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

**Seeking Employment.** Members should not seek employment for a position having an incumbent administrator who has not resigned or been officially informed that his or her services are to be terminated.

4. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

*Guideline*

**Length of Service.** A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and

*Guideline*

**Conflicting Roles.** Members who serve multiple roles--working as both city attorney and city manager for the same community, for example--should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

*Guidelines*

**Elections of the Governing Body.** Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not engage in active participation in the election campaign on behalf of or in opposition to candidates for the governing body.

**Elections of Elected Executives.** Members should not engage in the election campaign of any candidate for mayor or elected county executive.

**Running for Office.** Members shall not run for elected office or become involved in political activities related to running for elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

**Elections.** Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues.

However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

**Elections on the Council-Manager Plan.**

Members may assist in preparing and presenting materials that explain the council-manager form of government to the public prior to an election on the use of the plan. If assistance is required by another community, members may respond. All activities regarding ballot issues should be conducted within local regulations and in a professional manner.

**Presentation of Issues.** Members may assist the governing body in presenting issues involved in referenda such as bond issues, annexations, and similar matters.

- 8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

*Guidelines*

**Self-Assessment.** Each member should assess his or her professional skills and abilities on a periodic basis.

**Professional Development.** Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

- 9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

- 10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

*Guideline*

**Information Sharing.** The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

- 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.

*Guideline*

**Equal Opportunity.** All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

- 12. Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

*Guidelines*

**Gifts.** Members should not directly or indirectly solicit any gift or accept or receive any gift--whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form--under the following circumstances: (1) it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or (2) the gift was intended to serve as a reward for any official action on their part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In *de minimus* situations, such as meal checks, some modest maximum dollar value should be determined by the member as a guideline. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

**Investments in Conflict with Official Duties.**

Member should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

In the case of real estate, the potential use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that members' official actions and decisions can be influenced if there is a conflict with personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided (see the guideline on "Confidential Information").

Because personal investments may prejudice or may appear to influence official actions and decisions, members may, in concert with their governing body, provide for disclosure of such investments prior to accepting their position as local government administrator or prior to any official action by the governing body that may affect such investments.

**Personal Relationships.** Members should disclose any personal relationship to the governing body in any instance where there could be the appearance of a conflict of interest. For example, if the manager's spouse works for a developer doing business with the local government, that fact should be disclosed.

**Confidential Information.** Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

**Private Employment.** Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

**Representation.** Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

**Endorsements.** Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, whether or not for compensation. Members may, however, agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.



**Professional  
Experience (cont.)**

August 1996 – May 2002      Town Of Yucca Valley      Yucca Valley, CA

**Town Manager/Executive Director Yucca Valley Redevelopment Agency**

- Under policy direction of the City Council, responsible for the planning, organizing, coordinating and administration, through management staff, of all Town functions, including budgeting, personnel administration, contract and risk management and managing the City's Redevelopment Agency.

July 1995 - August 1996      City Of Murrieta      Murrieta, CA

**Director of Economic & Community Development/Assistant Executive Director Murrieta Redevelopment Agency**

- Executive management level position reporting directly to City Manager; responsible for directing the activities of the City's Redevelopment, Economic Development, Planning, Code Compliance, Housing, and Community Development Block Grant Divisions.

November 1989 - July 1995      Town Of Apple Valley      Apple Valley, CA

**Deputy City Manager: Economic And Community Development**

- Executive management level position reporting directly to Town Manager responsible for long-range planning, and engineering and building plan check and inspection services.

November 1988 – Nov. 1989      City of San Bernardino      San Bernardino, CA

**Director of Planning**

- Department head position reporting directly to City Administrator, responsible for management of all City long-range planning and development application processing activities. Also served as staff advisor to City Administrator, Planning Commission, and City Council.

January 1979 – Nov. 1988      County of San Bernardino      San Bernardino, CA

- **Deputy Planning Officer**
- **Senior Planner**
- **Associate Planner**

**Affiliations**

- **California Redevelopment Association (CRA) Board of Directors (President - 2003)**
- **League of California Cities' City Managers Department Executive Committee**
- **League of California Cities' Housing, Economic & Community Development Policy Committee**
- **American Institute of Certified Planners (AICP #8922)**
- **International City/County Management Association**

**Past Affiliations**

- **California Planning Roundtable Board of Directors**
- **California Association for Local Economic Development (CALED) Board of Directors**
- **Morongo Basin Regional Economic Development Consortium Board of Directors**
- **Governor appointee to the California Rural Development Council, 2001 - 2003**

**Publications**

- **“Achieving Economic Success in Difficult Financial Times.” Western City Magazine, May 2004**
- **“How the Desert Mountain Division Made Strategic Planning its Priority.” Western City Magazine, June 2000**